

**STARTING
LEFT
SIDE OF
FILE**

BEFORE THE DEPARTMENT OF WATER RESOURCES
FOR THE STATE OF IDAHO

IN THE MATTER OF APPLICATION)
FOR PERMIT NOS. 65-13912, 65-13913)
and 65-13986 IN THE NAME OF CAROL)
LYNN MACGREGOR)
_____)

**ORDER CONSOLIDATING
PROCEEDINGS**

At the prehearing conference on January 3, 2005, the parties agreed that the proceedings on Application No. 65-13986 should be consolidated with the proceedings on Application Nos. 65-13912 and 65-13913. Finding that these three applications present issues that are related and that the rights of the parties will not be prejudiced:

It is hereby ORDERED pursuant to IDAPA 37.01.01.556 that the proceedings on Application Nos. 65-13986, 65-13912 and 65-13913 are CONSOLIDATED. The scheduling order issued on January 7, 2005, shall apply to this consolidating proceeding.

Dated this 14th day of January, 2005.



Peter R. Anderson
Hearing Officer

CERTIFICATE OF SERVICE

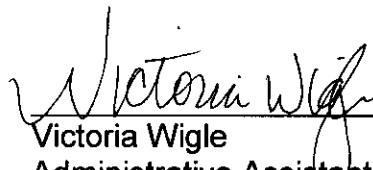
I HEREBY CERTIFY that on this 14th day of January, 2005, the above and foregoing document was served on the following by placing a copy of the same in the United States Mail, postage prepaid and properly addressed to the following:

Scott L. Campbell
MOFFATT THOMAS
PO Box 829
Boise, Idaho 83701

Julie Fischer
WHITE PETERSON
5700 E. Franklin Road, Suite 200
Nampa, Idaho 83687

Sherl Chapman
ERO Resources
1106 N. Cole Road, Suite C
Boise, Idaho 83704-8685

Terry Scanlan
SPF Water Engineering
600 E. River Park Lane, Suite 105
Boise, Idaho 83706

A handwritten signature in cursive script, appearing to read "Victoria Wigle", is written over a horizontal line.

Victoria Wigle
Administrative Assistant to the Director
Idaho Department of Water Resources

BEFORE THE DEPARTMENT OF WATER RESOURCES
FOR THE STATE OF IDAHO

IN THE MATTER OF APPLICATION	)	
FOR PERMIT NOS. 65-13912 and	)	SCHEDULING ORDER
65-13913 IN THE NAME OF CAROL LYNN	)	
MACGREGOR	)	
_____	)	

IT IS HEREBY ORDERED that the following schedule shall apply to this matter:

February 11, 2005: Submission of IDWR staff memorandum, if any.

February 18, 2005: By this date parties shall exchange the following information:

- a. The names of any experts or other witnesses that may be called at the hearing, together with a brief narrative summary of their possible testimony;
- b. A description of all documents and exhibits that may be introduced into evidence at the hearing;
- c. An identification of any expert reports and prepared testimony; and
- d. A copy of any reports, studies and data compilations in the Party's possession containing information directly applicable to the Application at issue; and

e. A list of all persons with specific knowledge regarding the Application at issue.

April 8, 2005:

Parties shall exchange on or before this date witness and exhibit lists, and copies of pre-marked exhibits. The parties shall use the following exhibit numbers:

Macgregor: 1-99.

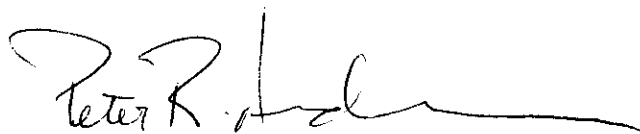
Pancheri: 100-199

April 21 & 22, 2005:

Two day hearing.

The precise times and locations of the April 21 & 22 hearing will be provided to the parties by notice from IDWR.

DATED this 7th day of January, 2005.

A handwritten signature in black ink, appearing to read "Peter R. Anderson", written over a horizontal line.

Peter R. Anderson
Hearing Officer

CERTIFICATE OF MAILING

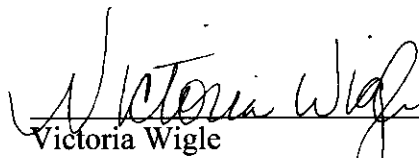
I hereby certify that on the 7th day of January, 2005, I mailed a true and correct copy thereof, postage prepaid, to each of the parties listed below.

Scott L. Campbell
MOFFATT THOMAS
PO Box 829
Boise, Idaho 83701

Julie Fischer
WHITE PETERSON
5700 E. Franklin Road, Suite 200
Nampa, Idaho 83687

Sherl Chapman
ERO Resources
1106 N. Cole Road, Suite C
Boise, Idaho 83704-8661

Terry Scanlan
SPF Water Engineering
600 E. River Park Lane, Suite 105
Boise, Idaho 83706



Victoria Wigle
Director's Administrative Assistant
Idaho Department of Water Resources

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

IN THE MATTER OF APPLICATION)
FOR PERMIT NO. 65-13986 IN THE)
NAME OF CAROL LYNN MACGREGOR)
_____)

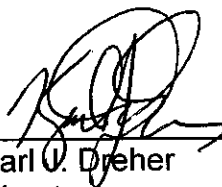
**ORDER APPOINTING
HEARING OFFICER**

This matter having come before the Idaho Department of Water Resources (department), as a result of protests filed against the referenced applications, the department makes the following Order:

ORDER

IT IS THEREFORE, HEREBY ORDERED that Peter R. Anderson is appointed effectively January 10, 2005 to serve as hearing officer, and is authorized to hear this matter on behalf of the Idaho Department of Water Resources pursuant to IDAPA Rules 37.01.01.410-413 and the provisions of chapter 52, title 67, Idaho Code.

Dated this 10th day of January, 2005.



Karl V. Dreher
Director

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 14th day of January, 2005, the above and foregoing document was served on the following by placing a copy of the same in the United States mail, postage prepaid and properly addressed to the following:

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Boise, Idaho 83701

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ERO Resources
1106 N. Cole Road, Suite C
Boise, Idaho 83704-8661

Terry Scanlan
SPF Water Engineering
600 E. River Park Lane, Suite 105
Boise, Idaho 83706



Victoria Wigle
Administrative Assistant to the Director
Idaho Department of Water Resources

**NOW
STARTING
RIGHT
SIDE OF
FILE**

**PLEASE REFER TO FILE
FOLDER NO. 3**

**FOR THE
CONTINUATION OF THIS
WATER RIGHT FILE**

No. 65-13912

RECEIVED

FEB - 1 2005

DEPARTMENT OF
WATER RESOURCES

IDWR STAFF MEMORANDUM

MacGregor

Applications: 65-13912, 65-13913, 65-13986

From: J. Westra, Western Region

Date: 1/27/05

1. An analysis by IDWR whether the applications at issue should be granted:

The concern expressed by IDWR has been possible injury to the senior water rights (Pancheri). Geothermal resource systems are fragile; invasive actions could result in possible non-reversible injury to the resource and senior water rights. The letters of November 12 and June 5, 2003 outline IDWR's responsibilities and concerns relating to the resource.

2. A listing of IDWR memoranda that are applicable to the these applications:

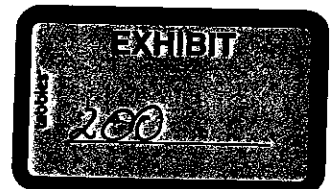
02/18/04	IDWR Memorandum- Application Processing Sequence
11/12/03	IDWR Letter- Applicant's Test Well Proposal Rejection
06/05/03	IDWR Letter-Test Well Proposal
03/25/03	IDWR Letter-Excess Diversion by protestant

3. An analysis of the availability of water at the proposed point of diversion or analysis of related studies:

05/20/03 Sherl Chapman's letter to Scott Campbell—analysis of Belvidere Springs
09/02/03 Terry Scanlan's Test Well Proposal submitted to IDWR.
-Studies/reports referenced in the Scanlan Test Well Proposal

4. GIS Maps relating to the applications:

See attached maps-2 copies



Applications For Permit #65-13912 & #65-13913-Contested

Applicant: Carol MacGregor

J. Westra, Western Region

2/18/04

RE: IDWR Processing Sequence

8/02/99	Applications filed with IDWR for geothermal heating and commercial use. Protests are received from Pancheri
3/10/00	1 st Prehearing protest conference held, applicant does not appear.
6/20/00	Prehearing conference is held—protest is not resolved.
9/18/00	Hearing date is set for 11/14/00
11/03/00	IDWR Order issued to interrupt processing and cancel hearing
1/03/01	IDWR Order issued for discovery
1/25/01	Amended Discovery Order issued to extend deadlines
3/12/01	Monitoring agreement facilitated by the applicant and protestant Flow monitoring begins-Pancheri
6/06/01	IDWR order issued acknowledging the monitoring agreement
10/01/02	Flow monitoring at the Pancheri site is discontinued
11/28/02	Applicant requests total monitoring, test well monitoring
3/25/03	IDWR letter discusses applicant's request-related to test well
6/05/03	Test well proposal discussed by IDWR letter
6/12/03	Site visit by IDWR representatives
9/04/03	IDWR receives test well proposal from Scanlan Engineering
10/02/03	IDWR receives test well proposal analysis from S. Chapman, (Pancheri)
11/12/03	Test well proposal is rejected by IDWR



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

March 25, 2002 ~~3~~

Josephine P. Beeman
Attorney at Law
409 West Jefferson Street
Boise, ID 83702

Scott L. Campbell
Attorney at Law
P.O. Box 829
Boise, ID 83701 0829

Re: Application to Appropriate Water Nos. 65-13992 & 65-13993 in the name of Carol Lynn MacGregor

Dear Jo and Scott:

I received a letter from Jo Beeman on January 30, 2003 on behalf of Carol Lynn MacGregor, asserting that Duane & Darwin Pancheri are diverting water in excess of their water rights, and asking the Idaho Department of Water Resources (IDWR) to require installation of measuring devices and reporting of measurements to IDWR. I also received a letter from Scott Campbell on February 19, 2003, representing protestants Duane & Darwin Pancheri, disputing the alleged over-diversion of water and objecting to the requested measurement and reporting. These letters were written because of earlier letters sent to me by two consultants who are working for the parties. Sherl Chapman (employed by Pancheri) initially wrote a letter requesting discontinuation of a joint measuring program. Terry Scanlan (employed by MacGregor) responded by stating that the measuring program should continue and requested that Pancheris install measuring devices, read the measurements, and annually report the measured flows to IDWR.

IDWR issued an amended order authorizing discovery on January 25, 2002. The order granted a period of one year for discovery. The order also granted a time period of approximately one month for the parties to negotiate an agreement for water flow data gathering. To insure that MacGregor would be able to gather the information necessary for hearing preparation, IDWR would have required Pancheris to measure and report water diversion if the parties had not agreed to gather data. The parties agreed to a measuring plan, and IDWR did not require measuring and reporting.

The request for additional flow measurement and monitoring is related to a proposal to drill a test well. The drilling of a test well, test pumping (or discharge if water flows from the well because of artesian pressure), and measurement of impacts to other related waters has not yet been approved. Because of the proposed location of the test well and the possibility that the drilling of the well may negatively impact other water rights, the proposal for construction of the test well is being reviewed internally within IDWR. After brief discussions with staff about the test well, I am confident that IDWR will expect significantly more detail about the proposed

Jo Beeman & Scott Campbell
March 25, 2003
Page 2

construction of the test well and the plan for testing. These additional information will be requested shortly.

When all the details of the proposed drilling of a test well and the associated test are submitted to IDWR and served on the protestants, IDWR will review the proposal to determine whether IDWR should allow the construction and test to proceed. If IDWR determines a test is appropriate, MacGregor should attempt to negotiate access for the measurements. If MacGregor is unsuccessful, the request that Pancheris install measuring devices and measure and report may be renewed.

IDWR will not initiate any action against Pancheris at the present time for diversion of more volume of water than is authorized by the water rights. There is insufficient proof at the present time that the total volume authorized for diversion is being exceeded.

Sincerely,

A handwritten signature in cursive script, appearing to read "Gary Spackman".

Gary Spackman

cc. Rob Whitney
Terry Scanlan
Sherl Chapman



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

June 5, 2003

SCOTT CAMPBELL
ATTORNEY AT LAW
MOFFATT THOMAS
PO BOX 829
BOISE ID 83701-0829

JOSEPHINE BEEMAN
ATTORNEY AT LAW
409 W JEFFERSON
BOISE ID 83702

Re: MacGregor's Proposal to Drill a Test Well; Application to Appropriate Water
No. 63-13913

Dear Scott & Jo:

I have received two letters from Scott Campbell inquiring about Carol MacGregor's proposal to drill a test well for geothermal water. Mr. Campbell's letters specifically request that the Idaho Department of Water Resources (IDWR) provide an opportunity for critical scientific scrutiny of the final proposal for a test well. IDWR will not grant a drilling permit to drill a well to test for the geothermal resource until Pancheris and their technical consultants have had a full opportunity to review the proposal and provide meaningful input.

Rob Whitney of this office has asked Terry Scanlan to arrange an onsite visit to pinpoint the location of the test well. I anticipate that Rob Whitney and at least one other IDWR employee with well drilling expertise will attend. The attorneys, the parties, and their technical consultants should be invited. During the onsite visit, the technical consultants can express their concerns in an open discussion with IDWR personnel.

IDWR staff has already voiced some of the same concerns expressed by Mr. Chapman in his letter. Drilling very near or in vents through which the geothermal water flows may alter the artesian flow of the water to the Pancheris's point of diversion. There is also a possibility of temperature change caused by commingling or by flow reduction. If the test well must be abandoned after it is drilled and tested, the materials used to fill and seal the well may also fill and seal the natural water passages, reducing flow and perhaps pressure.

If IDWR approves the drilling of a test well, IDWR will almost certainly require that MacGregor post a bond in an amount necessary to insure proper abandonment and to protect existing water right holders from injury. IDWR recently required a \$20,000 bond for drilling a cold water test well in Round Valley, Idaho. A bond for the drilling of a low temperature geothermal test well could be significantly larger than \$20,000.

Campbell, Beeman
June 5, 2003
Page -2-

In addition to a site visit, IDWR will require the following additional information to accompany a proposal for a test well:

1. Data gathered from well logs, interviews with drillers in the area, and geological surveying in the area that will better describe the formations that will be encountered, and the nature of the low temperature geothermal aquifer sought to be appropriated included the venting system through which the aquifer is discharging.
2. The data should be summarized and conclusions about the data should be written.
3. A detailed description of the method of construction that will protect the low temperature geothermal system and minimize the risk of injury to other water rights. The description should contain both a diagram of the proposed well and a narrative of the proposed construction.
4. A detailed description of the tests that will be performed on the well and any other water sources, and what data will be gathered. The detail must include methods and timing of measurement and data gathering.

MacGregor should distribute the above information to Pancheris and to IDWR.

IDWR will grant a period of time for technical review and comment following submittal. IDWR will then determine whether drilling a test well is appropriate.

Sincerely,



Gary Spackman

CC: Terry Scanlan
Sherl Chapman
Rob Whitney
~~Mark Shifka~~



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

November 12, 2003

JOSEPHINE BEEMAN
ATTORNEY AT LAW
BEEMAN & ASSOCIATES
409 W JEFFERSON
BOISE ID 83702

SCOTT CAMPBELL
ATTORNEY AT LAW
MOFFATT THOMAS
PO BOX 829
BOISE ID 83701-829

RE: McGregor Application #65-13913 (Protested); Test Well Proposal

Dear Ms. Beeman and Mr. Campbell:

On 1/30/2003 the Idaho Department of Water Resources (Department) received a proposal for construction of a geothermal test well at Belvidere Springs relating to the McGregor Application for Permit #65-13913. Additional information was received from Scanlan Engineering addressing specific questions on 9/4/2003. The Department also received correspondence from Sherl Chapman of ERO Resources presenting analysis and concerns from the protestant's position on 10/07/03.

Pursuant to Idaho Code Sections 42-235 & 42-237a, the Director is charged with protecting the environment, preventing the mixture of water from different aquifers, and protecting the resource from damage and depletion. In addition, IDAPA 37, Chapter 9, Rule 45.01.d states that "[d]rilling permits will not be issued for construction of a well which requires another separate approval from the department, such as a water right permit . . . until the other separate approval has been given by the department." The Director may grant a waiver "if the public interest will be served by the expedited approval." Finally, Idaho Code § 42-1805 grants the Director the authority to "conduct surveys, tests, investigations, research, examinations, studies . . . relating to availability of unappropriated water . . ." The need for additional information, the public interest in gathering the information, and the risk of injury to other water users should be considered in determining whether to approve a drilling permit.

J. Beeman and S. Campbell
Application #65-13913
Page 2.

The Department has reviewed the proposal submitted by Scanlan Engineering and analysis from Sherl Chapman of ERO Resources. In consideration of State Law, Administrative Rules, and information presented by the parties, the Department concludes the following:

* Drilling into the low temperature geothermal system at Belvidere presents a substantial risk for permanent damage to the resource, and additionally subjects the Pancheri water right to possible injury. MacGregor can attempt to establish proof of water sufficiency at the location by other means. The Department will not consider approval of a drilling permit at the proposed location until the following has occurred:

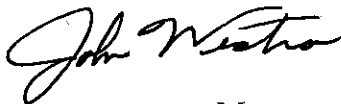
Application for permit #65-13913 is approved, and a drilling permit can be considered.

OR

An agreement to compensate for possible damages is executed by the applicant and protestant.

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

Sincerely,



John Westra, Manager
Western Region

cc: Sherl Chapman, ERO
Terry Scanlan, Scanlan Engineering

PANCHERI IRRIGATION WELL

PUMP STATION

INFILTRATION GALLERY

LOWER SPRING VENT

UPPER SPRING VENT

NEW WELL LOCATION

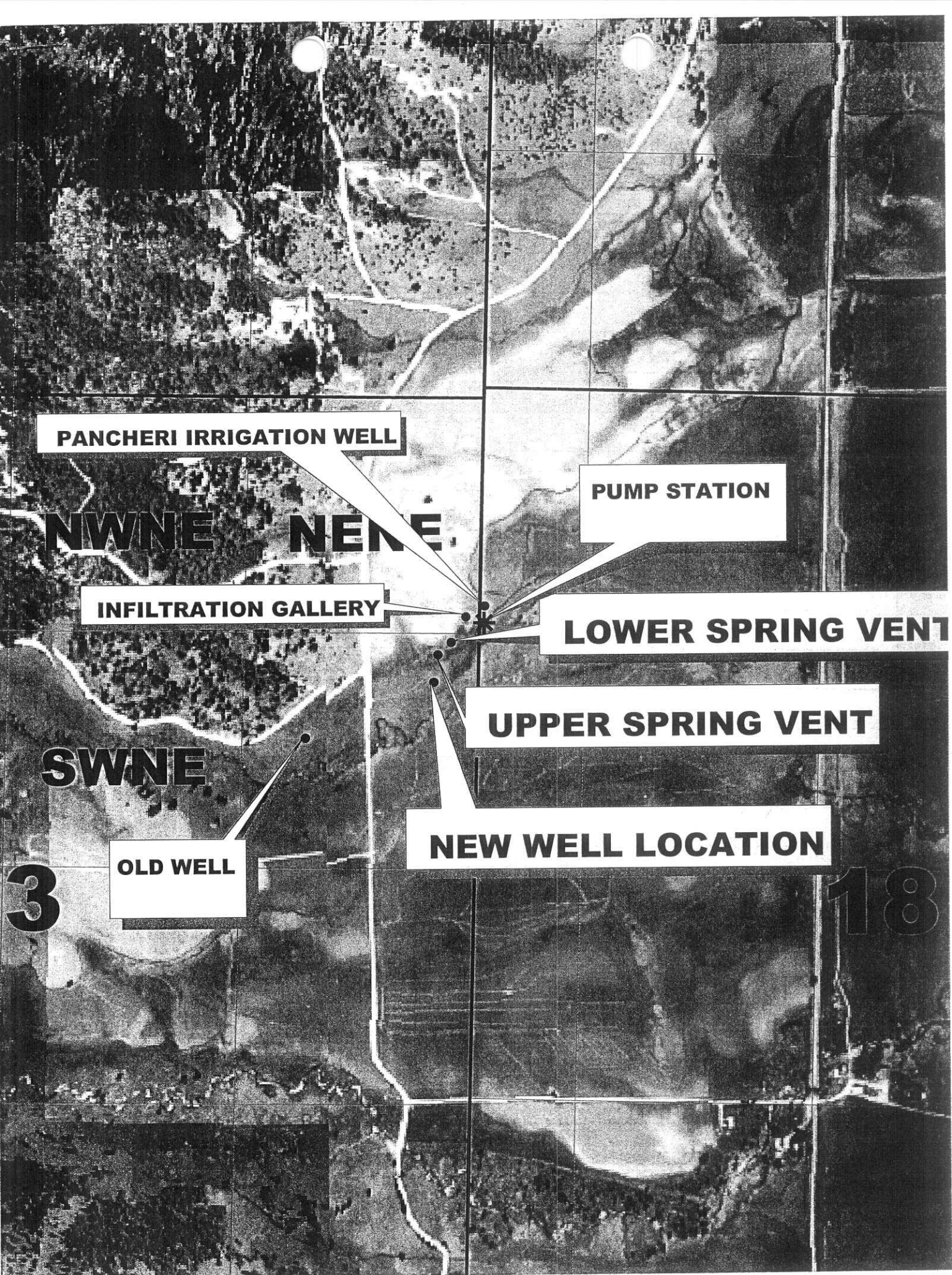
OLD WELL

NWNE NENE

SWNE

3

18



PANCHERI IRRIGATION WELL

PUMP STATION

INFILTRATION GALLERY

LOWER SPRING VENT

UPPER SPRING VENT

NEW WELL LOCATION

OLD WELL

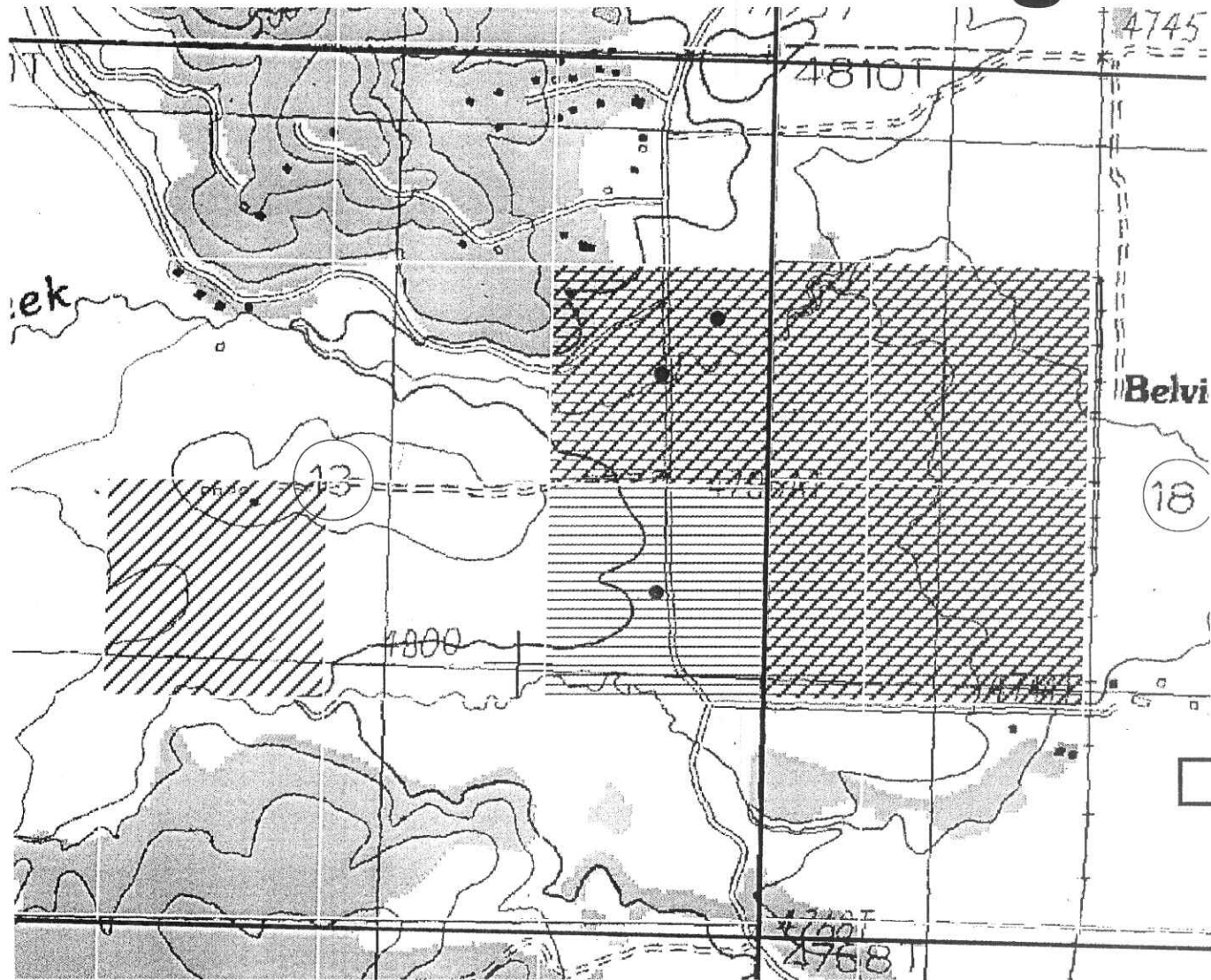
NWNE NENE

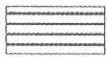
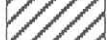
SWNE

3

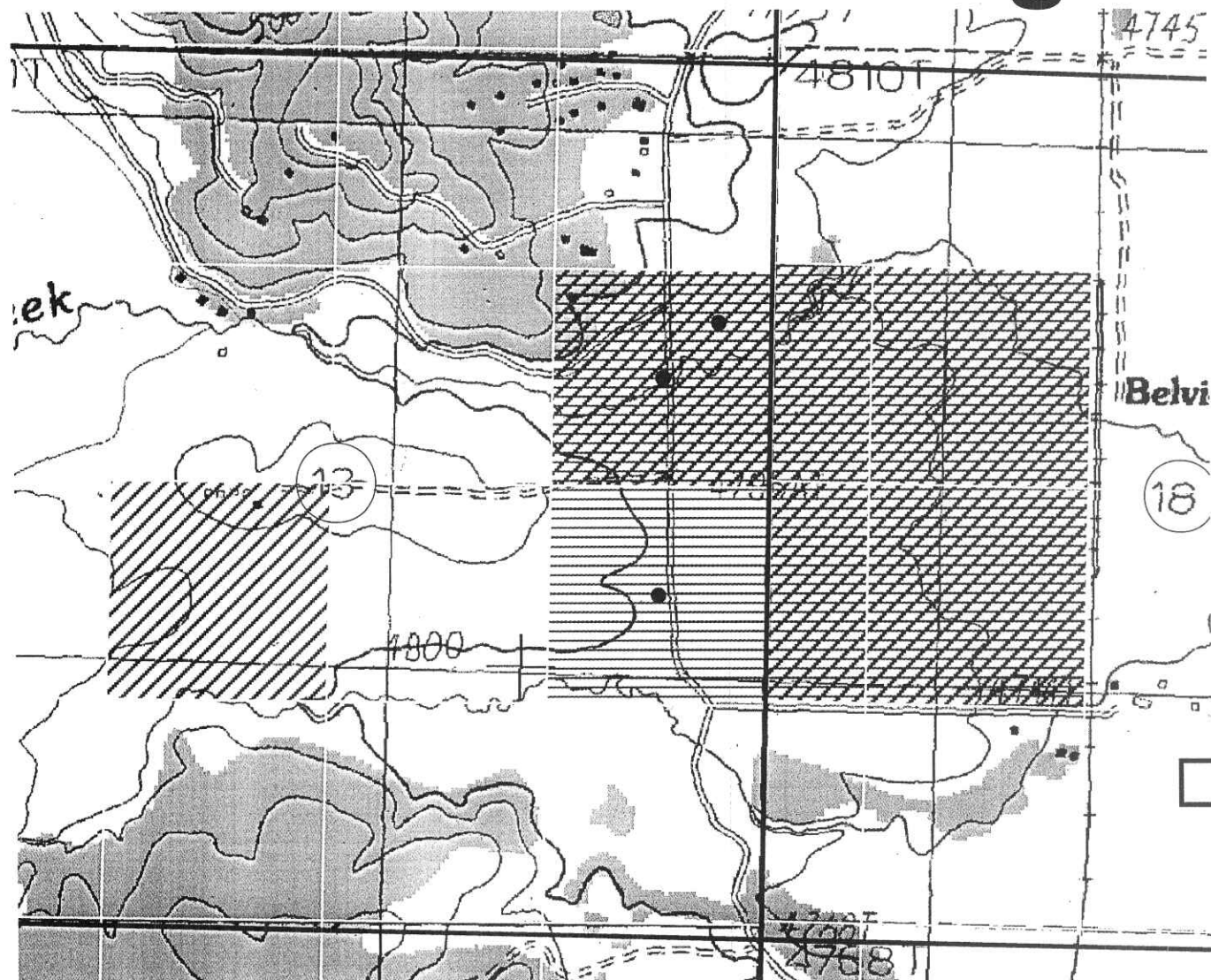
18

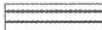
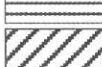
MacGregor



-  Section lines
-  1/4 1/4 lines
-  POD (65-13913 & 65-13986)
-  POD (65-13986)
-  POD (65-13912)
-  POU (65-13912 & 65-13913)
-  POU (65-13986)

MacGregor



-  **Section lines**
- 1/4 1/4 lines**
- **POD (65-13913 & 65-13986)**
 - **POD (65-13986)**
 - **POD (65-13912)**
-  **POU (65-13912 & 65-13913)**
-  **POU (65-13986)**

CERTIFICATE OF SERVICE

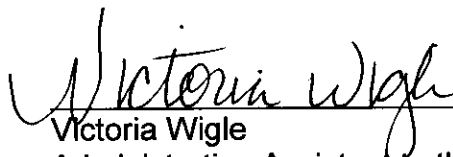
I HEREBY CERTIFY that on this 4th day of February, 2005, the above and foregoing, IDWR Staff Memorandum, was served on the following by placing a copy of the same in the United States Mail, postage prepaid and properly addressed to the following:

Scott L. Campbell
MOFFATT THOMAS
PO Box 829
Boise, Idaho 83701

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Victoria Wigle
Administrative Assistant to the Director
Idaho Department of Water Resources

BEFORE THE DEPARTMENT OF WATER RESOURCES
FOR THE STATE OF IDAHO

IN THE MATTER OF APPLICATION)
FOR PERMIT NOS. 65-13912, 65-13913)
and 65-13986 IN THE NAME OF CAROL)
LYNN MACGREGOR)
_____)

**REQUEST FOR IDWR
STAFF MEMORANDUM**

WHEREAS IDAPA 37.01.01.600 allows the Idaho Department of Water Resources ("IDWR's") "experience, technical competence and specialized knowledge" to be used in the evaluation of evidence; and

WHEREAS IDAPA 37.01.01.602 allows a hearing officer to notice technical or scientific facts within IDWR's specialized knowledge, including agency staff memoranda and data; and

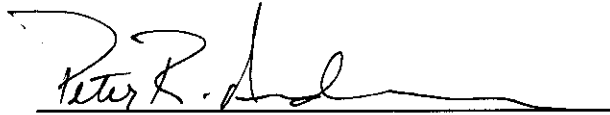
WHEREAS the hearing officer is not an employee of IDWR and has no means to utilize IDWR's experience, technical competence and specialized knowledge other than by querying IDWR;

THEREFORE the hearing officer invites IDWR to present staff memoranda regarding the above-captioned matter, which could include, without limitation:

1. An analysis by IDWR staff of whether the applications at issue should be granted and, if so, any conditions that should be placed on that approval;
2. A listing of any IDWR memoranda that are applicable to these applications;
3. An analysis of the availability of water at the proposed point of diversion, or analysis of any studies related to the availability of water at the proposed points of diversion; and
4. A G.I.S. map showing the proposed places of use and points of diversion as described by the applicant.

Any such staff memoranda shall be submitted to the hearing officer on or before February 11, 2005, and served upon the parties to this matter. IDWR would be required to make relevant staff available for cross-examination at any hearing set in this matter pursuant to IDAPA 37.01.01.201 and 602.

Dated this 14th day of January, 2005.

A handwritten signature in black ink, appearing to read "Peter R. Anderson", written over a horizontal line.

Peter R. Anderson
Hearing Officer

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 14th day of January, 2005, the above and foregoing document was served on the following by placing a copy of the same in the United States Mail, postage prepaid and properly addressed to the following:

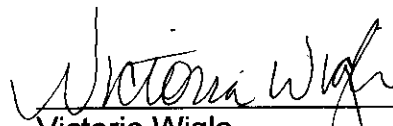
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Terry Scanlan
SPF Water Engineering
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John Westra
IDWR Western Regional Office
2735 Airport Way
Boise, Idaho 83705-5082



Victoria Wigle
Administrative Assistant to the Director
Idaho Department of Water Resources

ERO Resources Corp.
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Fax: 373-7985

Denver • Boise

www.eroresources.com
eroboise@eroresources.com

RECEIVED
JAN 07 2005
DEPARTMENT OF
WATER RESOURCES

January 5, 2005

Peter Anderson
c/o Victoria Wigle
Idaho Department of Water Resources
P.O. Box 83720
Boise, ID 83720-0098

RE: MacGregor / Pancheri Dispute

Dear Mr. Anderson:

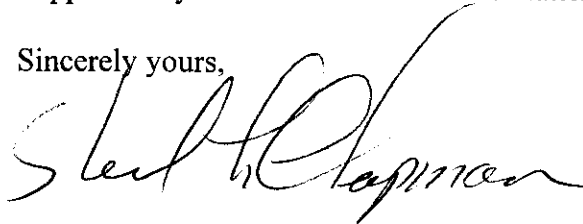
I understand you need specific information regarding my availability as an expert witness for the MacGregor / Pancheri water right hearing. I also understand you have been given information as to my working relationship with ERO Resources Corp. that may not be accurate.

Regarding my existing and previous arrangements with ERO Resources Corp., I merged my consulting company with them in the year 2000. Contractually I was required to "use my best efforts" to work 64 hours per month as a part time employee until August 1, 2002. After August 1, 2002 the only work requirement is that if I work it has to be through ERO Resources Corp. I do not routinely consult nor do I travel to the Boise office on a routine basis for work related activities. Typically I work on one to five small projects per year, if that.

Mr. Campbell has, I believe, informed you that I will be out of state until about April 15, 2005. Each year, because of my wife's health, we travel to southern Arizona. She has severe rheumatoid arthritis and cannot tolerate Idaho winters. We have already paid the rental for our RV space and no refunds are given. If we are required to return to Idaho to meet a hearing schedule it will impose both a health and financial hardship. I hope that a hearing date at the end of April or the first part of May would be acceptable in order to accommodate our required travel. It would seem to me that after this period of time of investigation that a few more weeks should not be critical.

I appreciate your consideration of this matter.

Sincerely yours,

A handwritten signature in black ink, appearing to read "Sherl L. Chapman". The signature is fluid and cursive, with a large initial "S" and a long, sweeping underline.

Sherl L. Chapman

SLC:sw

cc: Scott Campbell
Duane Pancheri
Darwin Pancheri

ROSTER OF ATTENDANCE

IN THE MATTER OF APPLICATION)
FOR PERMIT NOS. 65-13912 and)
65-13913 IN THE NAME OF CAROL LYNN)
MACGREGOR)

JANUARY 3, 2005
PREHEARING CONFERENCE
Beginning at 10:15 a.m.
Conducted by Peter Anderson,
Hearing Officer

NAME

ADDRESS

REPRESENTING

Scott Campbell	P.O. Box 829 Boise, Id. 83701	Pancher's
Duane Pancher	19010 So Canada Melba Id. 83641	
John R Koepsen	5700 E Franklin Rd Nampa, ID	Dr. MacGregor
Jalie Fischer	5700 E Franklin Rd. Nampa	Dr. MacGregor
Carol MacGregor	60 Raspberry Rd, Cascade, Id 83601	self

BEFORE THE DEPARTMENT OF WATER RESOURCES
FOR THE STATE OF IDAHO

IN THE MATTER OF APPLICATION)
FOR PERMIT NOS. 65-13912 and)
65-13913 IN THE NAME OF CAROL LYNN)
MACGREGOR)
_____)

**AMENDED NOTICE OF
PREHEARING CONFERENCE**

The prehearing conference set for December 30, 2004, is VACATED. The Department of Water Resources has rescheduled this matter for a prehearing conference as follows:

Date: Monday, January 3, 2005
Location: IDWR Conference Room A
322 E. Front Street
Boise, Idaho
(208) 287-4800
Time: 10:15 a.m.

This prehearing conference will be held for the purposes set forth in IDAPA 37.01.01.510 (Rule 510) and will be held formally according to IDAPA 37.01.01.512 (Rule 512). The Department's authority to hold hearings in this matter is based in I.C. § 42-222.

The prehearing conference will be conducted in a facility meeting 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 prehearing conference.

Dated this 29th day of December, 2004.



Peter R. Anderson
Hearing Officer

CERTIFICATE OF SERVICE

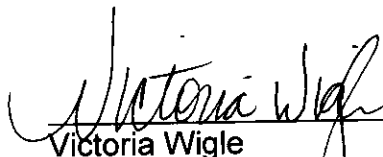
I HEREBY CERTIFY that on this 29th day of December, 2004, the above and foregoing document was served on the following via facsimile:

Scott L. Campbell
MOFFATT THOMAS
PO Box 829
Boise, Idaho 83701
(208) 385-5384

Julie Fischer
WHITE PETERSON
5700 E. Franklin Road, Suite 200
Nampa, Idaho 83687
(208) 466-4405

Sherl Chapman
ERO Resources
1106 N. Cole Road, Suite C
Boise, Idaho 83704-8661
(208) 373-7985

Terry Scanlan
SPF Water Engineering
600 E. River Park Lane, Suite 105
Boise, Idaho 83706
(208) 383-4156



Victoria Wigle
Administrative Assistant to the Director
Idaho Department of Water Resources

* * * Memory TX Result Report (Dec. 29. 2004 2:08PM) * * *

1) Idaho Dept. of Water Resources
2)

Date/Time: Dec. 29. 2004 2:08PM

File No.	Mode	Destination	Pg(s)	Result	Page Not Sent
0007	Memory TX	93855384	P. 2	OK	

Reason for error
 E. 1) Hang up or line fail
 E. 3) No answer
 E. 5) Exceeded max. E-mail size

E. 2) Busy
 E. 4) No facsimile connection

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

IN THE MATTER OF APPLICATION)
 FOR PERMIT NOS. 65-13812 and)
 65-13813 IN THE NAME OF CAROL LYNN)
 MACGREGOR)

**AMENDED NOTICE OF
PREHEARING CONFERENCE**

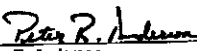
The prehearing conference set for December 30, 2004, is VACATED. The Department of Water Resources has rescheduled this matter for a prehearing conference as follows:

Date: Monday, January 3, 2005
 Location: IDWR Conference Room A
 322 E. Front Street
 Boise, Idaho
 (208) 287-4800
 Time: 10:15 a.m.

This prehearing conference will be held for the purposes set forth in IDAPA 37.01.01.510 (Rule 510) and will be held formally according to IDAPA 37.01.01.512 (Rule 512). The Department's authority to hold hearings in this matter is based in I.C. § 42-222.

The prehearing conference will be conducted in a facility meeting 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 prehearing conference.

Dated this 29th day of December, 2004.


 Peter R. Anderson
 Hearing Officer

* * * Memory TX Result Report (Dec. 29. 2004 2:10PM) * * *

1) Idaho Dept. of Water Resources
2)

Date/Time: Dec. 29. 2004 2:09PM

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Reason for error
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 E. 3) No answer
 E. 5) Exceeded max. E-mail size

E. 2) Busy
 E. 4) No facsimile connection

BEFORE THE DEPARTMENT OF WATER RESOURCES
 FOR THE STATE OF IDAHO

IN THE MATTER OF APPLICATION
 FOR PERMIT NOS. 65-13812 and
 65-13813 IN THE NAME OF CAROL LYNN
 MACGREGOR

AMENDED NOTICE OF
 PREHEARING CONFERENCE

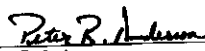
The prehearing conference set for December 30, 2004, is VACATED. The Department of Water Resources has rescheduled this matter for a prehearing conference as follows:

Date: Monday, January 3, 2005
 Location: IDWR Conference Room A
 322 E. Front Street
 Boise, Idaho
 (208) 287-4800
 Time: 10:15 a.m.

This prehearing conference will be held for the purposes set forth in IDAPA 37.01.01.510 (Rule 510) and will be held formally according to IDAPA 37.01.01.512 (Rule 512). The Department's authority to hold hearings in this matter is based in I.C. § 42-222.

The prehearing conference will be conducted in a facility meeting 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 prehearing conference.

Dated this 21st day of December, 2004.


 Peter R. Anderson
 Hearing Officer

* * * Memory TX Result Report (Dec. 29. 2004 2:14PM) * * *

1) Idaho Dept. of Water Resources
2)

Date/Time: Dec. 29. 2004 2:13PM

File No. Mode	Destination	Pg(s)	Result	Page Not Sent
0010 Memory TX	93834156	P. 2	OK	

Reason for error
 E. 1) Hang up or line fail
 E. 3) No answer
 E. 5) Exceeded max. E-mail size

E. 2) Busy
 E. 4) No facsimile connection

BEFORE THE DEPARTMENT OF WATER RESOURCES
 FOR THE STATE OF IDAHO

IN THE MATTER OF APPLICATION)
 FOR PERMIT NOS. 65-13912 and)
 65-13913 IN THE NAME OF CAROL LYNN)
 MACGREGOR)

AMENDED NOTICE OF
 PREHEARING CONFERENCE

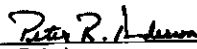
The prehearing conference set for December 30, 2004, is VACATED. The Department of Water Resources has rescheduled this matter for a prehearing conference as follows:

Date: Monday, January 3, 2005
 Location: IDWR Conference Room A
 322 E. Front Street
 Boise, Idaho
 (208) 287-4800
 Time: 10:15 a.m.

This prehearing conference will be held for the purposes set forth in IDAPA 37.01.01.510 (Rule 510) and will be held formally according to IDAPA 37.01.01.512 (Rule 512). The Department's authority to hold hearings in this matter is based in I.C. § 42-222.

The prehearing conference will be conducted in a facility meeting 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 prehearing conference.

Dated this 29th day of December, 2004.


 Peter R. Anderson
 Hearing Officer

* * * Memory TX Result Report (Dec. 30. 2004 8:24AM) * * *

1) Idaho Dept. of Water Resources
2)

Date/Time: Dec. 30. 2004 8:23AM

File No. Mode	Destination	Pg(s)	Result	Page Not Sent
0012 Memory TX	93737985	P. 2	OK	

Reason for error
 E. 1) Hang up or line fail
 E. 3) No answer
 E. 5) Exceeded max. E-mail size

E. 2) Busy
 E. 4) No facsimile connection

BEFORE THE DEPARTMENT OF WATER RESOURCES
 FOR THE STATE OF IDAHO

IN THE MATTER OF APPLICATION)
 FOR PERMIT NOS. 65-13912 and)
 65-13913 IN THE NAME OF CAROL LYNN)
 MACGREGOR)

AMENDED NOTICE OF
 PREHEARING CONFERENCE

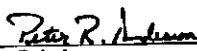
The prehearing conference set for December 30, 2004, is VACATED. The Department of Water Resources has rescheduled this matter for a prehearing conference as follows:

Date: Monday, January 3, 2005
 Location: IDWR Conference Room A
 322 E. Front Street
 Boise, Idaho
 (208) 287-4800
 Time: 10:15 a.m.

This prehearing conference will be held for the purposes set forth in IDAPA 37.01.01.510 (Rule 510) and will be held formally according to IDAPA 37.01.01.512 (Rule 512). The Department's authority to hold hearings in this matter is based in I.C. § 42-222.

The prehearing conference will be conducted in a facility meeting 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 prehearing conference.

Dated this 29th day of December, 2004.


 Peter R. Anderson
 Hearing Officer

* * * Memory TX Result Report (Dec. 29. 2004 2:17PM) * * *

1) Idaho Dept. of Water Resources
2)

Date/Time: Dec. 29. 2004 2:10PM

File No. Mode	Destination	Pg(s)	Result	Page Not Sent
0009 Memory TX	93737985	P. 2	E-3) 3)	P. 1-2

Reason for error
 E. 1) Hang up or line fail
 E. 3) No answer
 E. 5) Exceeded max. E-mail size

E. 2) Busy
 E. 4) No facsimile connection

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

IN THE MATTER OF APPLICATION
 FOR PERMIT NOS. 85-13912 and
 85-13913 IN THE NAME OF CAROL LYNN
 MACGREGOR

**AMENDED NOTICE OF
PREHEARING CONFERENCE**

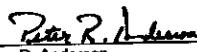
The prehearing conference set for December 30, 2004, is VACATED. The Department of Water Resources has rescheduled this matter for a prehearing conference as follows:

Date: Monday, January 3, 2005
 Location: IDWR Conference Room A
 322 E. Front Street
 Boise, Idaho
 (208) 287-4800
 Time: 10:15 a.m.

This prehearing conference will be held for the purposes set forth in IDAPA 37.01.01.510 (Rule 510) and will be held formally according to IDAPA 37.01.01.512 (Rule 512). The Department's authority to hold hearings in this matter is based in I.C. § 42-222.

The prehearing conference will be conducted in a facility meeting 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 prehearing conference.

Dated this 29th day of December, 2004.


 Peter R. Anderson
 Hearing Officer

Moffatt Thomas

MOFFATT THOMAS BARRETT ROCK & FIELDS, CHTD.

US Bank Plaza Building
101 S Capitol Blvd 10th Fl
PO Box 829
Boise Idaho 83701 0829208 345 2000
208 385 5384 Fax
208 385 5323 Direct**FACSIMILE**

From: Scott L. Campbell **Date:** December 23, 2004
Re: In the Matter of Application for Permit Nos. 65-13912 **File No.:** 19136.0
and 65-13913 in the Name of Carol Lynn MacGregor

Number of pages being transmitted including the cover page: 3
Please call fax operator at (208) 345-2000 if all pages are not received.

	Name	Organization	Fax No.	Voice No.
To:	Idaho Department of Water Resources		287-6700	287-4800
	Peter R. Anderson		395-0222	395-0068
	Julie Klein Fischer	White Peterson	466-4405	466-9272

Message:

Motion for filing with the IDWR. Copy to be conformed will be sent via U.S. mail.

PLEASE DELIVER IMMEDIATELY

The information contained in this facsimile message is attorney privileged and confidential information intended only for the use of the individual or entity named above. If you have received this communication in error, please immediately notify us by telephone to arrange for return of the original document to us. Thank you.

Attorneys for Duane and Laura Pancheri
and Darwin and Joan Pancheri

Scott L. Campbell, ISB No. 2251
Angela Schaefer Kaufmann, ISB No. 5436
MOFFATT, THOMAS, BARRETT, ROCK &
FIELDS, CHARTERED
101 S. Capitol Blvd., 10th Floor
Post Office Box 829
Boise, Idaho 83701
Telephone (208) 345-2000
Facsimile (208) 385-5384
19136.0

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

IN THE MATTER OF APPLICATION FOR
PERMIT NOS. 65-13912 AND 65-13913 IN
THE NAME OF CAROL LYNN
MACGREGOR

MOTION TO RESCHEDULE PREHEARING
CONFERENCE

The protestants in this matter, Duane and Laura Pancheri and Darwin and Joan Pancheri, through their attorney, Scott L. Campbell, hereby move the Idaho Department of Water Resources for an order rescheduling the PreHearing Conference set for Thursday, December 30, 2004. This request for rescheduling the PreHearing Conference is based upon the unavailability of the Pancheris due to pre-existing travel plans for the holidays. Prior to receiving the Notice of PreHearing Conference, counsel's administrative assistant, Debby Long, was advised that the date of December 30, 2004, was a tentative date for the PreHearing Conference. This communication was made by Victoria Wigle of the Idaho Department of Water Resources.

Subsequent to that conversation counsel for the Pancheris' received telephone communication from them indicating they were not available for attendance at the conference due to their planned vacation. The Pancheri will be available for PreHearing Conference immediately following January 2, 2005.

They respectfully request that the PreHearing Conference be rescheduled to a date mutually agreeable to the parties after January 2, 2005.

DATED this 23rd day of December, 2004.

MOFFATT, THOMAS, BARRETT, ROCK &
FIELDS, CHARTERED

By Scott L. Campbell
Scott L. Campbell - Of the Firm
Attorneys for Duane and Laura Pancheri
and Darwin and Joan Pancheri

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 23rd day of December, 2004, I caused a true and correct copy of the foregoing MOTION TO RESCHEDULE PREHEARING CONFERENCE to be served by the method indicated below, and addressed to the following:

Julie K. Fischer
WHITE PETERSON, P.A.
5700 East Franklin Road, Suite 200
Nampa, ID 83687
Fax: (208) 466-4405

() U.S. Mail, Postage Prepaid
() Hand Delivered
() Overnight Mail
(X) Facsimile

Peter R. Anderson
729 W. Braemere Road
Boise, ID 83702
Fax: 395-0222

() U.S. Mail, Postage Prepaid
() Hand Delivered
() Overnight Mail
(X) Facsimile

Scott L. Campbell
Scott L. Campbell

BEFORE THE DEPARTMENT OF WATER RESOURCES
FOR THE STATE OF IDAHO

IN THE MATTER OF APPLICATION)
FOR PERMIT NOS. 65-13912 and)
65-13913 IN THE NAME OF CAROL LYNN)
MACGREGOR)
_____)

**NOTICE OF PREHEARING
CONFERENCE**

The Department of Water Resources has scheduled this matter for a prehearing conference as follows:

Date: Thursday, December 30, 2004
Location: IDWR Conference Room D
 322 E. Front Street
 Boise, Idaho
 (208) 287-4800
Time: 10:00 a.m.

This prehearing conference will be held for the purposes set forth in IDAPA 37.01.01.510 (Rule 510) and will be held formally according to IDAPA 37.01.01.512 (Rule 512). The Department's authority to hold hearings in this matter is based in I.C. § 42-222.

The prehearing conference will be conducted in a facility meeting 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 prehearing conference.

Dated this 17th day of December, 2004.



Peter R. Anderson
Hearing Officer

CERTIFICATE OF SERVICE

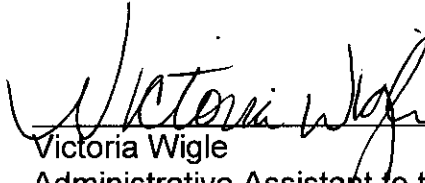
I HEREBY CERTIFY that on this 20th day of November, 2004, the above and foregoing document was served on the following by placing a copy of the same in the United States mail, postage prepaid and properly addressed to the following:

Scott L. Campbell
MOFFATT THOMAS
PO Box 829
Boise, Idaho 83701

Julie Fischer
WHITE PETERSON
5700 E. Franklin Road, Suite 200
Nampa, Idaho 83687

Sherl Chapman
ERO Resources
1106 N. Cole Road, Suite C
Boise, Idaho 83704-8661

Terry Scanlan
SPF Water Engineering
600 E. River Park Lane, Suite 105
Boise, Idaho 83706


Victoria Wigle
Administrative Assistant to the Director
Idaho Department of Water Resources

RECEIVED

DEC 15 2004

DEPARTMENT OF
WATER RESOURCES

Julie K. Fischer
Idaho State Bar No. 4601
John R. Kormanik
Idaho State Bar No. 5850
WHITE PETERSON, P.A.
5700 East Franklin Road, Suite 200
Nampa, Idaho 83687
Telephone: (208) 466-9272
Facsimile: (208) 466-4405
jkf@whitepeterson.com

Attorneys for Petitioner, Carol Lynn MacGregor

BEFORE THE IDAHO DEPARTMENT OF WATER RESOURCES

OF THE STATE OF IDAHO

IN THE MATTER OF APPLICATION FOR
PERMIT NOS. 65-13912 AND 65-13913 IN
THE NAME OF CAROL LYNN
MACGREGOR

)
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**REPLY TO PROTESTANT'S
OPPOSITION TO REQUEST FOR
HEARING**

COMES NOW, the Applicant, Carol Lynn MacGregor ("MacGregor"), by and through her attorneys WHITE PETERSON, P.A., and replies to Protestants, the Pancheri's, *Response to Motion and Request for Hearing* (hereinafter "Response") as follows.

BRIEF HISTORY

On August 2, 1999, nearly six years ago, MacGregor applied for two permits to divert water

from her property in Valley County, Idaho. Specifically, Application 65-13912 and 65-13913. In October 2000, MacGregor filed a third Application, No. 65-13986. The Pancheris have protested all three applications.¹ MacGregor and the Pancheris attempted to resolve the protests unsuccessfully and the above-referenced permit applications still are pending.

On November 12, 2004, MacGregor requested the Department schedule a hearing on her pending applications. The Pancheris objected claiming a hearing was “premature” and contrary to an agreement reached by the parties. *See Response* p. 1; *See also* Agreement for Specifications and Location of Flow Meters attached to Affidavit of Julie Fischer as Exhibit A (hereinafter the “Agreement”). Pancheris’ position is that the Agreement serves to stay all proceedings on all MacGregor’s applications pending the expiration of one year of monitoring under the Agreement. Such a position is unsupportable.

ARGUMENTS

1. The Agreement does not Preclude a Hearing

The Pancheris rely exclusively on paragraphs 1 and 3 of the Agreement to support their position that a hearing is premature. Paragraph 1 provides, in part: “The meters will be in place for at least one year, following installation, but no longer than three years following installation.” Paragraph 3 of the Agreement states: “The flow meters are to be monitored for a minimum of one year.” *See* Agreement, Exhibit A to Fischer Affidavit.

¹ Notably, Pancheris have protested every application for water right MacGregor ever has sought in connection with her Valley County property, including her application for a domestic right. *See* IDWR Water Right file 65-13978 and related protest which has been withdrawn.

It is well established under Idaho law that the meaning of an *unambiguous* contract must be determined from the plain meaning of the contract's own words. *Reynolds v. Shoemaker*, 139 Idaho 591, 83 P.3d 135 (2003); *W. Heritage Insurance v. Geren*, 137 Idaho 832, 54 P.3d 948 (2002). Unless a contract is "ambiguous" it is not subject to interpretation.²

In the instant case, the Agreement is *not* ambiguous at all. Rather, it simply states monitoring will occur for a minimum of one year – a term that is clear and undisputed. Neither the Agreement nor any information supplied by Pancheris supports their position that the proceedings are "stayed" pending one year of monitoring. The plain language of the Agreement does not preclude a hearing, and Pancheris attempt to read *more* into paragraphs 1 and 3 of the Agreement than is stated is misplaced and contrary to Idaho law. Certainly, had the Pancheris intended the Agreement to actually suspend proceedings, the Agreement itself would reflect such a significant term.

In short, any attempt by Pancheris to assert the Agreement means something other than what it plainly states is improper. The Agreement is clear and unambiguous, does not require further interpretation, and cannot be used to preclude a hearing in *this* matter.

2. The Parties Negotiations Demonstrate the Request for Hearing is *not* Premature

In addition to the fact the Agreement, *itself*, does not preclude a hearing, the parties negotiations leading up to the Agreement actually contemplate a hearing before a full year of monitoring has occurred.

Obviously, testing and monitoring the Pancheris' water rights (which Pancheris claim are

² Ambiguity is not established merely because different possible interpretations are presented. *McKay v. Boise Project Board of Control*, 2004 WL 1631158 (July 22, 2004) citing *Chubbuck v. City of Pocatello*, 127 Idaho 198, 899 P.2d 411 (1995); *State v. Browning*, 123 Idaho 748, 852 P.2d 500 (Ct. App. 1993).

subject to injury from MacGregor's proposed diversions), has always been at the forefront of this matter. MacGregor identified a need to monitor the springs, from which Pancheris' rights originate, as early as November 2000 and has continued to advocate for the gathering of data in order to document existing spring diversions.³

Unfortunately, and for a number of reasons, it was not until early 2004 that the parties began seriously negotiating an agreement to install totalizing flow meters. *See* Exhibit A to Affidavit of Scott Campbell filed in support of Pancheris' *Response*. Those negotiations occurred primarily between Mr. Campbell and MacGregor's former attorney, Josephine Beeman, and are documented by email and revised drafts of the Agreement. It is not necessary for the purposes of this pleading to describe the entire history of negotiations. However, there are several significant statements by Pancheris' counsel, Mr. Campbell, that erode their position a hearing is precluded by the Agreement.

Specially, in a letter dated April 16, 2004 from Mr. Campbell to Ms. Beeman, Mr. Campbell proposed the following language be added to the Agreement, "Dr. MacGregor will be responsible for the maintenance costs of the flow meters until a hearing is conducted on the protested Application for Permits Numbers 63-13912 [sic] and 65 13913" (emphasis added). *See* Exhibit B to the Fischer Affidavit. Additionally, in an email from Mr. Campbell to Ms. Beeman dated May 6, 2004, Mr. Campbell again proposed the following wording be added to the Agreement: "Absent an order from IDWR or until a hearing is conducted on the protested Application for Permits Numbers 63-13912 [sic] and 65-13913, the flow meters are not to be removed without written consent of both

³ The Agreement, which provides for the installation of totalizing flow meters, was contemplated in connection with Macgregor's desire to drill test wells on her property. In a letter from Terry Scanlan to the Department, dated September 2, 2003, Mr. Scanlan explained that monitoring (via flow meters) should occur "for several weeks or several months prior to drilling and testing in order to document any trends in flow rate." *See* Exhibit E to Fischer Affidavit. This has been done, and further supports that none of the parties considered one year of monitoring to be a prerequisite to a hearing.

parties.” *Id.* at Exhibit C.

Although these additions ultimately were not included in the Agreement they show the parties contemplated a hearing could occur before the expiration of the monitoring period. The parties considered using a hearing date as a trigger to stop testing, but in the end opted for a time certain *without precluding* the opportunity for a hearing in the interim.⁴

Accordingly, and contrary to Pancheris’ argument, it is clear that the parties anticipated a hearing could occur during the monitoring period.

3. The Agreement Relates Primarily to Right 65-13913

Finally, even if the Department determines a hearing is premature because of the Agreement (which it is not) MacGregor still should be allowed to proceed to hearing on Application Nos. 65-13912 and 65-13986.

As duly noted by the Department in a March 25, 2002 letter to counsel (*See* Exhibit D to the Fischer Affidavit), the purpose of taking additional flow measurements and monitoring the Pancheris’ rights from the spring is directly related to MacGregor’s proposal to drill test wells. *See also* Exhibit E to Fischer Affidavit. The test wells are contemplated to explore the availability of ground water related to Permit Application 65-13913. Permit Application 65-13912 is for additional spring water and will require no drilling and 65-13986 is for cold water. At a minimum, MacGregor should be allowed to proceed to hearing on these permit applications.

⁴ As is clear from the record, the parties anticipate a benefit from monitoring before and after the development of MacGregor’s water rights.

CONCLUSION

Significant time has passed since MacGregor applied for permits from the Department. MacGregor is entitled to a determination of her applications and believes, based on a history of unsuccessful negotiations, that the only way to do so is by way of hearing. In the spirit of resolving the pending applications as efficiently as possible, MacGregor respectfully requests she be assigned a hearing date in this matter.

DATED this 15 day of December, 2004.

WHITE PETERSON, P.A.

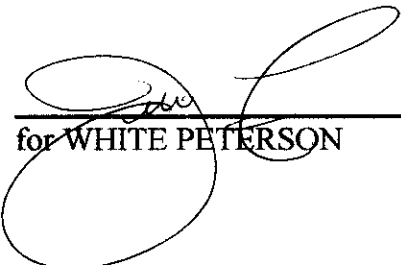


Julie Klein Fischer, of the Firm

CERTIFICATE OF SERVICE

I hereby certify that on this 15th day of December, 2004, I caused to be served a true and correct copy of the foregoing document by the method indicated below to the following:

<u> </u>	US Mail	Scott L. Campbell
<u> </u>	Overnight Mail	Moffatt Thomas
<u> X </u>	Hand Delivery	101 S. Capitol Blvd. 10 th Floor
<u> </u>	Facsimile No. 385-5384	Boise, Idaho 83701
<u> </u>		
<u> X </u>	US Mail	Sherl Chapman
<u> </u>	Overnight Mail	ERO Resources
<u> </u>	Hand Delivery	1106 N. Cole Road, Suite C
<u> </u>	Facsimile No. <u> </u>	Boise, ID 83704-8661
<u> </u>		
<u> X </u>	US Mail	Terry Scanlan
<u> </u>	Overnight Mail	SPF Water Engineering
<u> </u>	Hand Delivery	600 E. River Park Lane, Suite 105
<u> </u>	Facsimile No. <u> </u>	Boise, Idaho 83706



for WHITE PETERSON

da:Z:\Work\MMacGregor, Carol\Request for Notice of Hearing.doc

RECEIVED

DEC 15 2004

DEPARTMENT OF
WATER RESOURCES

Julie K. Fischer
Idaho State Bar No. 4601
John R. Kormanik
Idaho State Bar No. 5850
WHITE PETERSON, P.A.
5700 East Franklin Road, Suite 200
Nampa, Idaho 83687
Telephone: (208) 466-9272
Facsimile: (208) 466-4405
jkf@whitepeterson.com
jkormanik@whitepeterson.com

Attorneys for Petitioner, Carol Lynn MacGregor

BEFORE THE IDAHO DEPARTMENT OF WATER RESOURCES

OF THE STATE OF IDAHO

IN THE MATTER OF APPLICATION FOR)
PERMIT NOS. 65-13912 AND 65-13913 IN)
THE NAME OF CAROL LYNN)
MACGREGOR)

**AFFIDAVIT OF JULIE KLEIN
FISCHER IN SUPPORT OF
REQUEST FOR HEARING**

STATE OF IDAHO)
: ss.
County of Canyon)

Julie Klein Fischer, Being first duly sworn upon oath, deposes and says:

1. I am an attorney with the law firm of White Peterson, P.A., attorneys of record for the Applicant, Dr. Carol Lynn MacGregor.

2. I have reviewed the file and record in this matter and for ease of reference have attached certain materials referenced in Dr. MacGregor's *Reply to Protestant's Opposition to Request For Hearing*.

ORIGINAL

3. Attached hereto as Exhibit "A" is a true and correct copy of the Agreement for Specifications and Locations for Flow Meters.

4. Attached hereto as Exhibit "B" is a true and correct copy of letter dated April 16, 2004 from Scott L. Campbell to Josephine Beeman.

5. Attached hereto as Exhibit "C" are true and correct copies of emails between Scott L. Campbell and Josephine Beeman.

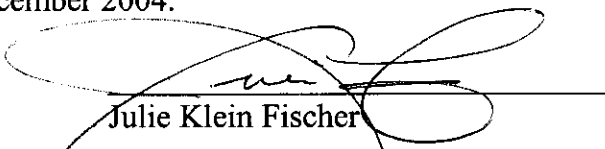
6. Attached hereto as Exhibit "D" is a true and correct copy of letter dated March 25, 2002 from the Department of Water Resources.

7. Attached hereto as Exhibit "E" is a true and correct copy of letter dated September 2, 2003 from Terry M. Scanlan to the Department of Water Resources.

FURTHER YOU AFFIANT SAYETH NAUGHT.

DATED this 15 day of December 2004.




Julie Klein Fischer

SUBSCRIBED AND SWORN TO me this 15 day of December 2004.


NOTARY FOR THE STATE OF IDAHO
My commission expires 07/19/09

CERTIFICATE OF SERVICE

I hereby certify that on this 15 day of December 2004, I caused to be served a true and correct copy of the foregoing document by the method indicated below to the following:

<u> </u>	US Mail	Scott L. Campbell
<u> </u>	Overnight Mail	Moffatt Thomas
<u> X </u>	Hand Delivery	101 S. Capitol Blvd. 10 th Floor
<u> </u>	Facsimile No. 385-5384	Boise, Idaho 83701
<u> X </u>	US Mail	Sherl Chapman
<u> </u>	Overnight Mail	ERO Resources
<u> </u>	Hand Delivery	1106 N. Cole Road, Suite C
<u> </u>	Facsimile No. <u> </u>	Boise, ID 83704-8661
<u> X </u>	US Mail	Terry Scanlan
<u> </u>	Overnight Mail	SPF Water Engineering
<u> </u>	Hand Delivery	600 E. River Park Lane, Suite 105
<u> </u>	Facsimile No. <u> </u>	Boise, Idaho 83706


for WHITE PETERSON

da:Z:\Work\M\MacGregor, Carol\Pleadings\Affidavit - Support Mtn for Hearing.doc

EXHIBIT “A”

**AGREEMENT FOR
SPECIFICATIONS AND LOCATIONS FOR FLOW METERS**

1. Flow meter for water right 65-12891 (Laura and Duane Pancheri):
 Model (or equal): Water Specialties ML-03 (low velocity, 50 to 500 gpm flow range); Specifications attached.

 Location of installed flow meter for 65-12891:
 4-inch pipeline on south side of Brush Creek (See attached map):
 Easting: 338646.50; Northing: 375210.42
 (GPS coordinates, Scanlan Engineering, Arcview aerial photograph)
 Point of Diversion for 65-12891 ("Pancheri Spring Source" on map identifies the infiltration gallery which is the common point of diversion for 65-12891 and 65-13332):
 Easting: 338016.00; Northing: 375783.14
 (GPS coordinates, Rob Whitney, IDWR field exam, June 2003)

2. Flow meter for water right 65-13332 (Joan and Darwin Pancheri):
 Model (or equal): 1-inch Niagara MTX Model 122 (2 to 50 gpm flow range); Specifications attached show this model has a 1-1/4 inch connection.

 Location of installed flow meter for 65-13332:
 Discharge pipe in pump house (See attached map)
 Easting: 338047.09; Northing: 375770.70
 (GPS coordinates, Rob Whitney, IDWR field exam, June 2003)
 Point of Diversion for 65-13332 ("Pancheri Spring Source" on map identifies the infiltration gallery which is the common point of diversion for 65-12891 and 65-13332):
 Easting: 338016.00; Northing: 375783.14
 (GPS coordinates, Rob Whitney, IDWR field exam, June 2003)

COSTS

1. Dr. MacGregor will pay for the meters and installation at each location. The meters will be in place for at least one year, following installation, but no longer than three years following installation. At any time after one year, Dr. MacGregor may remove either or both meters, but will remove both meters at the end of three years. Dr. MacGregor will be responsible for maintenance while either or both meters are in place.

2. The Pancheris may add continuous dataloggers to the totalizing flow meters, if they wish at their expense. The Pancheris do not choose to add a continuous datalogger at the time the flow meters are installed, but may later.

INSTALLATION

1. Installation of both flow meters is to be completed by July 30, 2004. Both installation sites are on Pancheri property.
2. The contractor for the installations will be Interwest Supply.
3. The Pancheris may assist, if they wish.
4. Sherl Chapman will be contacted so that he may be present at the installation.
5. Dr. MacGregor will make arrangements to complete the installations by July 30, 2004.
6. Following July 30, 2004, if the Pancheris want to add a continuous datalogger to either or both flow meters, Terry Scanlan must review and agree to the datalogger specifications; and Mr. Scanlan must be contacted so that he may be present at the installation.

DATA COLLECTION

1. Once installed, the totalizing flow meters can be read by Terry Scanlan, or Sherl Chapman, or a mutual designee of Mr. Chapman and Mr. Scanlan, or IDWR staff, including Water District 65 personnel.
2. The totalizing flow meters installed on the Pancheri properties can be accessed for purposes of reading on Monday between the hours of 12:00 noon and 3:00 p.m. every two weeks following execution of this agreement. Access to the Pancheri properties for reading the totalizing flow meters may occur on a more frequent basis as agreed in writing by the parties.
3. The flow meters are to be monitored for a minimum of a year.

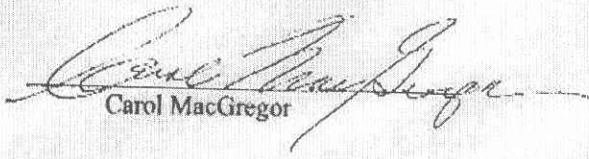
Date: June _____, 2004

Laura or Duane Pancheri

Date: June _____, 2004

Joan or Darwin Pancheri

Date: June 16, 2004


Carol MacGregor

7:32102/6124P (Final)

INSTALLATION

1. Installation of both flow meters is to be completed by July 30, 2004. Both installation sites are on Pancheri property.
2. The contractor for the installations will be Interwest Supply.
3. The Pancheris may assist, if they wish.
4. Sheri Chapman will be contacted so that he may be present at the installation.
5. Dr. MacGregor will make arrangements to complete the installations by July 30, 2004.
6. Following July 30, 2004, if the Pancheris want to add a continuous datalogger to either or both flow meters, Terry Scanlan must review and agree to the datalogger specifications; and Mr. Scanlan must be contacted so that he may be present at the installation.

DATA COLLECTION

1. Once installed, the totalizing flow meters can be read by Terry Scanlan, or Sheri Chapman, or a mutual designee of Mr. Chapman and Mr. Scanlan, or IDWR staff, including Water District 65 personnel.
2. The totalizing flow meters installed on the Pancheri properties can be accessed for purposes of reading on Monday between the hours of 12:00 noon and 3:00 p.m. every two weeks following execution of this agreement. Access to the Pancheri properties for reading the totalizing flow meters may occur on a more frequent basis as agreed in writing by the parties.
3. The flow meters are to be monitored for a minimum of a year.

Date: June 19, 2004

Duane Pancheri
Laura or Duane Pancheri

Date: June _____, 2004

Joan or Darwin Pancheri

Date: June _____, 2004

Carol MacGregor

Z:\2102\6124F (Final)

INSTALLATION

1. Installation of both flow meters is to be completed by July 30, 2004. Both installation sites are on Pancheri property.
2. The contractor for the installations will be Interwest Supply.
3. The Pancheris may assist, if they wish.
4. Sherl Chapman will be contacted so that he may be present at the installation.
5. Dr. MacGregor will make arrangements to complete the installations by July 30, 2004.
6. Following July 30, 2004, if the Pancheris want to add a continuous datalogger to either or both flow meters, Terry Scanlan must review and agree to the datalogger specifications; and Mr. Scanlan must be contacted so that he may be present at the installation.

DATA COLLECTION

1. Once installed, the totalizing flow meters can be read by Terry Scanlan, or Sherl Chapman, or a mutual designee of Mr. Chapman and Mr. Scanlan, or IDWR staff, including Water District 65 personnel.
2. The totalizing flow meters installed on the Pancheri properties can be accessed for purposes of reading on Monday between the hours of 12:00 noon and 3:00 p.m. every two weeks following execution of this agreement. Access to the Pancheri properties for reading the totalizing flow meters may occur on a more frequent basis as agreed in writing by the parties.
3. The flow meters are to be monitored for a minimum of a year.

Date: June _____, 2004

Laura or Duane Pancheri

Date: June 18, 2004

Darwin Pancheri
Joan or Darwin Pancheri

Date: June _____, 2004

Carol MacGregor

Z:\2102\6124F (Final)

EXHIBIT “B”

Boise
Idaho Falls
Pocatello

Moffatt Thomas

MOFFATT THOMAS BARRETT ROCK & FIELDS, CHTD.

Eugene C. Thomas
John W. Barrett
R. B. Rock
Richard C. Fields
Robert E. Bakes
John S. Simko
John C. Ward
D. James Manning
Gary T. Dance
Larry C. Hunter
Morgan W. Richards
Mark A. Ellison
Randall A. Peterman
Mark S. Prusynski
Stephen R. Thomas

Glenna M. Christensen
Gerald T. Husch
Scott L. Campbell
Robert B. Burns
James C. Dale
Michael E. Thomas
Patricia M. Olsson
James C. deGlee
Bradley J. Williams
Lee Radford
Michael O. Roe
David S. Jensen
James L. Martin
C. Clayton Gill
David P. Gardner

Julian E. Gabiola
Angela Schaer Kaufmann
Benjamin H. Schwartz
Jon A. Stenquist
Eric M. Barzee
Bradley J. Dixon
Jason G. Murray
Mark C. Peterson
Andrew J. Waldera
Shawn C. Nunley

Willis C. Moffatt, 1907-1980
Kirk R. Helvie, 1956-2003

April 16, 2004

US Bank Plaza Building
101 S Capitol Blvd 10th Fl
PO Box 829
Boise, Idaho 83701 0829

208 345 2000
800 422 2889
208 385 5384 Fax
www.moffatt.com

Josephine P. Beeman
Beeman & Associates P.C.
409 W. Jefferson Street
Boise, ID 83702

Re: MacGregor / Pancheri
MTBR&F File No. 19136.0

Dear Jo:

I am writing to you in response to the proposal which you provided to me via e-mail on March 16, 2004. I have enclosed a copy of that e-mail for your ease of reference and will refer to each item by number. Please note that there are two items numbered 1, the second of which is found on the second page of your e-mail.

Darwin and Duane Pancheri concur with items 1, 2, 3, and 5, in your e-mail. Items numbered 4 and 1 on the second page, need modification for the Pancheris to agree.

I will address item number 4 concerning data collection. In an effort to avoid misunderstandings and difficulties resulting from the language proposed in your communication, the Pancheris wish to suggest an alternative approach for measurement readings. Because of the distance between their Round Valley properties and their permanent residences in the Treasure Valley, the Pancheris believe it would be more appropriate to agree upon a routine schedule for access to their property for reading the totalizing flow meters. The proposal would read as follows:

“The totalizing flow meters installed on the Pancheri properties can be accessed for purposes of reading on Monday between the hours of 12:00 noon and 3:00 p.m. every two weeks following execution of this agreement. Access to the Pancheri properties for reading the totalizing flow meters may occur on a more frequent basis as agreed in writing by the parties.”

As to the cost issue described in item number 1 on page two of your e-mail, the Pancheris believe that the following alternative proposal is appropriate: “Dr. MacGregor will be responsible for the maintenance costs of the flow meters until a hearing is conducted on the protested Application for Permits Numbers 63-13912 and 65-13913, or until she provides

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4-16-04

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Josephine P. Beeman
April 16, 2004
Page 2

written consent for the removal of the flow meters pursuant to item number 5 hereof, which ever date is later."

Please advise me of your client's reaction to these suggested changes.

Very truly yours,


Scott L. Campbell

SLC/dll

Enclosures

cc: Darwin & Joan Pancheri (w/encls.)
Duane & Laura Pancheri (w/encls.)
Sherl Chapman (w/encls.)

EXHIBIT “C”

Debby Long - Re: measurement program: MacGregor/Pancheri

From: Scott Campbell
To: Jo Beeman
Date: 5/6/2004 12:13:56 PM
Subject: Re: measurement program: MacGregor/Pancheri

Dear Jo,

I appreciate your client's agreement to most of the changes to the last draft of the agreement. I have one concern which arises because of the change suggested in your e-mail of the word "first" for "later." Because of the language which you provided in paragraph 4, the Pancheri's could be left in a position of having the flow meters in place up to a hearing, but Carol MacGregor may not provide written consent to the removal of the meters, and the Pancheris would be left with the cost of maintenance of these meters for an undetermined time period until written consent or an order from IDWR is obtained. Under your suggested change to paragraph 1, the maintenance costs would shift to the Pancheris as soon as a hearing takes place. Under my version, the maintenance costs would not shift to the Pancheris until Carol MacGregor consents to the removal of the meters.

Perhaps Carol MacGregor does not intend the unintended potential impact which could result from this change from "last" to "first." The suggested change would be acceptable if the language of paragraph 4 is changed to read:

4. Absent an order from IDWR or until a hearing is conducted on the protested Application for Permits Numbers 63-13912 and 65-13913, the flow meters are not to be removed without written consent of both parties.

Please let me know if this approach is acceptable or if you have some other alternative to deal with the potential problem I have identified. Thank you for your help. I am glad we are finally getting the bugs worked out.

Scott

>>> "Jo Beeman" <jo.beeman@beemanlaw.com> 5/3/2004 10:07:20 PM >>>
Dear Scott,

Carol MacGregor and Terry Scanlan have only one edit from your suggestions of April 16, 2004 on behalf of the Pancheris: the word "first" replaces the word "later", as shown below and on the attached agreement. This is based on the understanding that once the flow meters are removed, there would be no cause for maintenance. I attach the agreement with your additions and deletions marked. We can prepare signature blocks for the final version. Thank you for all your work.

Jo

Dr. MacGregor will pay for the meters and installation at each location. Dr. MacGregor will be responsible for maintenance of the flow meters until a hearing is conducted on the protested Application for Permits Numbers 63-13912 and 65-13913, or until she provides written consent for the removal of the flow meters (pursuant to DATA COLLECTION, item number 4), which ever date is FIRST.

Josephine P. Beeman

Beeman & Associates, P.C.

Phone: 208-331-0950

Fax: 208-331-0954

jo.beeman@beemanlaw.com <jo.beeman@beemanlaw.com>

CONFIDENTIALITY NOTICE: This transmission is intended only for the use of the individual(s) named as recipients. It may contain information that is privileged, confidential and/or protected from disclosure under applicable law including, but not limited to, the attorney client privilege and/or work product doctrine. If you are not the intended recipient of this transmission, please notify the sender immediately by telephone. Do not deliver, distribute or copy this transmission, disclose its contents, or take any action in reliance on the information it contains.

EXHIBIT “D”

2102



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

March 25, 2002

Josephine P. Beeman
Attorney at Law
409 West Jefferson Street
Boise, ID 83702

RECEIVED MAR 27 2003

Scott L. Campbell
Attorney at Law
P.O. Box 829
Boise, ID 83701 0829

Re: Application to Appropriate Water Nos. 65-13992 & 65-13993 in the name of Carol Lynn MacGregor

Dear Jo and Scott:

I received a letter from Jo Beeman on January 30, 2003 on behalf of Carol Lynn MacGregor, asserting that Duane & Darwin Pancheri are diverting water in excess of their water rights, and asking the Idaho Department of Water Resources (IDWR) to require installation of measuring devices and reporting of measurements to IDWR. I also received a letter from Scott Campbell on February 19, 2003, representing protestants Duane & Darwin Pancheri, disputing the alleged over-diversion of water and objecting to the requested measurement and reporting. These letters were written because of earlier letters sent to me by two consultants who are working for the parties. Sherl Chapman (employed by Pancheri) initially wrote a letter requesting discontinuation of a joint measuring program. Terry Scanlan (employed by MacGregor) responded by stating that the measuring program should continue and requested that Pancheris install measuring devices, read the measurements, and annually report the measured flows to IDWR.

IDWR issued an amended order authorizing discovery on January 25, 2002. The order granted a period of one year for discovery. The order also granted a time period of approximately one month for the parties to negotiate an agreement for water flow data gathering. To insure that MacGregor would be able to gather the information necessary for hearing preparation, IDWR would have required Pancheris to measure and report water diversion if the parties had not agreed to gather data. The parties agreed to a measuring plan, and IDWR did not require measuring and reporting.

The request for additional flow measurement and monitoring is related to a proposal to drill a test well. The drilling of a test well, test pumping (or discharge if water flows from the well because of artesian pressure), and measurement of impacts to other related waters has not yet been approved. Because of the proposed location of the test well and the possibility that the drilling of the well may negatively impact other water rights, the proposal for construction of the test well is being reviewed internally within IDWR. After brief discussions with staff about the test well, I am confident that IDWR will expect significantly more detail about the proposed

cc fax Carol 3.27.03

Jo Beeman & Scott Campbell

March 25, 2003

Page 2

construction of the test well and the plan for testing. These additional information will be requested shortly.

When all the details of the proposed drilling of a test well and the associated test are submitted to IDWR and served on the protestants, IDWR will review the proposal to determine whether IDWR should allow the construction and test to proceed. If IDWR determines a test is appropriate, MacGregor should attempt to negotiate access for the measurements. If MacGregor is unsuccessful, the request that Pancheris install measuring devices and measure and report may be renewed.

IDWR will not initiate any action against Pancheris at the present time for diversion of more volume of water than is authorized by the water rights. There is insufficient proof at the present time that the total volume authorized for diversion is being exceeded.

Sincerely,

A handwritten signature in black ink, appearing to read "Gary Spackman", with a stylized flourish at the end.

Gary Spackman

cc. Rob Whitney
Terry Scanlan
Sherl Chapman

EXHIBIT “E”

SCANLAN ENGINEERING

Groundwater and Environmental Engineering

September 2, 2003

Mr. Rob Whitney
Idaho Department of Water Resources
2735 Airport Way
Boise, ID 83705

Subject: MacGregor Test Well Proposal

Dear Rob:

In response to your email of July 1, 2003, and Gary Spackman's letter of June 5, 2003, this letter provides additional information related to Carol MacGregor's proposal for test well drilling at Belvidere.

The following items were requested.

1. Data gathered from well logs, interviews with driller's in the area, and geological surveying in the area that will better describe the formations that will be encountered, and the nature of the low temperature geothermal aquifer sought to be appropriated including the venting system through which the aquifer is discharging. The data should be summarized and conclusions about the data should be written.
2. A detailed description of the method of construction that will protect the low temperature geothermal system and minimize risk of injury to other water rights. The description should contain both a diagram of the proposed well and a narrative of the proposed construction.
3. A detailed description of the test that will be performed on the well and any other water sources, and what data will be gathered. The detail must include methods and timing of measurement and data gathering.
4. Provide monitoring information collected to date, and an indication of whether the parties intend to collect any additional flow and temperature measurement and/or install flow and totalizing meters.
5. A proposed monitoring plan for the well and springs if the well is completed as a production well.
6. A proposed bond amount and mitigation plan sufficient enough to insure proper abandonment of the well or test hole and to protect existing water right holders from injury due to losses in temperature, pressure, or quantity.

TESTING AND MONITORING PLAN

Monitoring. Discharge rate and temperature at the MacGregor spring vents and from the Pancheri infiltration gallery will be monitored before, during, and after drilling and testing. Flow will be monitored with V-notch weirs set in the stream channels below the springs. A totalizing flow meter on the Duane Pancheri pipeline will also be monitored. Monitoring of the totalizing flow meter on the Pancheri pipeline should be conducted for several weeks or months prior to drilling and testing in order to document any trends in flow rate. The flow meter should be installed as soon as possible.

Temperature should be monitored at the existing measuring points (upper bathhouse vent, lower bathhouse vent, MacGregor weir, Pancheri weir, Pancheri pipeline vent, Pancheri pump sump).

Monitoring frequency shall vary depending on the type of activity that is taking place. For instance, monitoring of flow and temperature is recommended on a weekly basis for at least four weeks prior to and following drilling. During active drilling periods, monitoring should take place on a daily basis.

Monitoring frequency following development of a successful well shall be at monthly intervals for the first year of operation, and quarterly intervals thereafter during the permit period.

Testing. The test well, if successful, will be tested by pumping or by artesian flow. Temperatures and flows from the spring will be monitored during any well tests.

We anticipate that the test pumping or artesian flow testing would be conducted for a minimum of 24 hours, and potentially as long as several weeks. A definitive test plan is difficult to prepare until the well is drilled and estimates of production rate and temperature are obtained. However, for purposes of this plan, we propose the following test procedure.

1. Shut the well in (if flowing artesian) or allow water level to stabilize (if not flowing) for a minimum of 24 hours before pump testing or flow testing. During this period, monitor both temperature and flow at the existing monitoring locations described above.
2. Flow or test pump the well using typical well testing protocol. For instance, water level, pressure, or well flow rate measurements should be collected on a log-time scale during constant rate (or constant flow), with measurement intervals of approximately 1 minute for the first 10 minutes, 5 minutes from 10 to 100 minutes, 20 minutes from 100 to 500 minutes, and one hour intervals from 500 to 1500 minutes, 6-hour intervals from 1500 to 3000 minutes, and 12 or 24-hour intervals after 3000 minutes.
3. Temperature measurements and spring flow measurements at the existing monitoring locations should be taken on minimum two-hour intervals during the first day of the test, and at the same intervals as pressure or well flow measurements after the first day of the test.

MITIGATION AND BONDING

Bond. A bond of \$20,000 will be posted prior to drilling in order to provide funding for well abandonment. The \$20,000 amount is based on IDAPA 37.03.09.030.02, and assumes that a bottom hole temperature in excess of 150 degree F is possible.

Mitigation. Mitigation for impacts to existing water rights will depend on the type of impact. For instance, a temporary impact during test pumping can potentially be mitigated (if necessary) by pumping hot water from the test well to the water users.

If exploration or water development activities by MacGregor reduce geothermal water supply below the amount that historically has been both legally and physically available to the Pancheris, then MacGregor would mitigate impacts for material injury to the Pancheri water rights pursuant to Idaho law. Potential mitigation methods to address material injury to the beneficial use of the Pancheri water rights could include:

1. Provide well water of a temperature and rate (within water right volume limitations) to address material injury to the Pancheri water rights. The water would be delivered to the Pancheris at the MacGregor/Pancheri property line or other mutually acceptable location.
2. Supply an alternate heat source to Pancheris (electric, natural gas, etc.) to the extent necessary to address material injury to the beneficial use of the Pancheri water rights.
3. Increase the efficiency of the Pancheri delivery or heating system in order to address material injury to the beneficial use of the Pancheri water rights.

Please contact me with any questions or comments. We look forward to your response.

Sincerely,



Terry M. Scanlan, P.E., P.G.

Cc: Carol MacGregor
Jo Beeman
Sherl Chapman
Scott Campbell

RECEIVED

DEC - 1 2004

DEPARTMENT OF
WATER RESOURCES

Attorneys for Duane and Laura Pancheri
and Darwin and Joan Pancheri

Scott L. Campbell, ISB No. 2251
Angela Schaer Kaufmann, ISB No. 5436
MOFFATT, THOMAS, BARRETT, ROCK &
FIELDS, CHARTERED
101 S. Capitol Blvd., 10th Floor
Post Office Box 829
Boise, Idaho 83701
Telephone (208) 345-2000
Facsimile (208) 385-5384
19136.0

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

IN THE MATTER OF APPLICATION FOR
PERMIT NOS. 65-13912 AND 65-13913 IN
THE NAME OF CAROL LYNN
MACGREGOR

AFFIDAVIT OF SCOTT L. CAMPBELL

State of Idaho)
) ss.
County of Ada)

SCOTT L. CAMPBELL, being first duly sworn upon oath, deposes and says:

1. I am one of the attorneys of record providing legal representation to Duane and Laura Pancheri and Darwin and Joan Pancheri ("Pancheris") in the above-captioned matter. I have knowledge of the files pertinent to this matter, and I make this affidavit based upon personal knowledge.

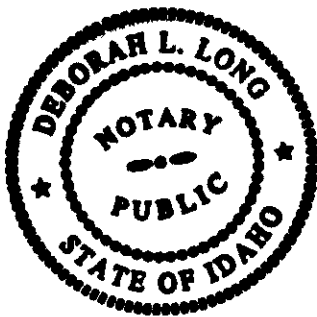
2. I have corresponded with Dr. MacGregor's new counsel regarding, among other things, the effective date of service in this matter. Counsel has agreed that I was not served with the Motion and Request for Hearing until November 17, 2004.

3. Appended hereto as Exhibit A is a true and correct copy of correspondence from Josephine Beeman, Dr. MacGregor's former counsel, to John Westra of the Idaho Department of Water Resources, outlining the terms of what became the Agreement for Monitoring in this matter.

DATED this 30th day of November, 2004.

By Scott L. Campbell
Scott L. Campbell

SUBSCRIBED AND SWORN to before me this 30th day of November, 2004.



Deborah Long
NOTARY PUBLIC FOR IDAHO
Residing at Boise, Idaho
My Commission Expires 10/10/07

CERTIFICATE OF SERVICE

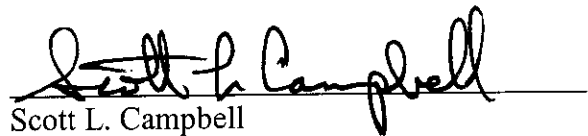
I HEREBY CERTIFY that on this 30th day of November, 2004, I caused a true and correct copy of the foregoing **AFFIDAVIT OF SCOTT L. CAMPBELL** to be served by the method indicated below, and addressed to the following:

Julie K. Fischer
WHITE PETERSON, P.A.
5700 East Franklin Road, Suite 200
Nampa, ID 83687
Fax: (208) 466-4405

- ☒ U.S. Mail, Postage Prepaid
☐ Hand Delivered
☐ Overnight Mail
☐ Facsimile

Peter Anderson
Hearing Officer
729 W. Braemere Road
Boise, ID 83702
Fax: (208) 395-0222

- ☒ U.S. Mail, Postage Prepaid
☐ Hand Delivered
☐ Overnight Mail
☐ Facsimile


Scott L. Campbell

BELMAN & 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

February 26, 2004

Via Email and Hand Delivery

John Westra
Idaho Department of Water Resources
2735 Airport Way
Boise, ID 83705

Re: Application 65-13912 (Carol Lynn MacGregor)
Measurement of 65-12891 and 65-13332 (Pancheri)

Dear John:

Carol MacGregor's water right application 65-13912 seeks to divert .5 cfs of unappropriated flow from Belvidere Hot Springs. Joan & Darwin Pancheri and Laura & Duane Pancheri protested the application. In order for Dr. MacGregor to proceed forward with Application 65-13912, the parties have discussed and would hope to provide IDWR a written agreement regarding the installation of two totalizing flow meters and the monitoring of data from the flow meters. One flow meter would measure diversions under license 65-12891 (Laura & Duane Pancheri); the other flow meter would measure diversions under permit 65-13332 (Joan & Darwin Pancheri).

Dr. MacGregor and the Pancheris have already corresponded with IDWR regarding measurement and monitoring of the Pancheris' diversions and water use, following the end of the parties' previous monitoring agreement. The monitoring which ended in 2001 did not include any continuous diversion measurements. We refer you to Terry Scanlan's letter of November 22, 2002, and Scott Campbell's letter of January 16, 2003.

We hope that a written agreement regarding monitoring and measurement with totalizing flow meters will be provided to you no later than March 15, 2004. We enclose a copy of our letter to Scott Campbell which seeks that result and includes the same information we are providing with our letter to you.

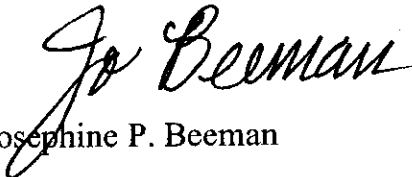
John Westra
Re: 65-12891 and 65-13332
February 26, 2004
Page 2

If the parties do not have a written agreement to you by March 15, 2004, please consider this letter as a request to order immediately the installation of totalizing flow meters on the pipelines which supply license 65-12891 and permit 65-13332. The attachment to this letter provides specific information about equipment, location, installation, costs, and data collection. Since the flow meters will be located on pipelines, we also include GPS coordinates for the point of diversion of each of the Pancheri water rights.

As noted in the attachment, Dr. MacGregor requests that installation be completed by June 20, 2004, with measurements for at least one year. Under either an agreement or order, she has offered to pay for purchase and installation of the flow meters.

Sincerely,

BEEMAN & ASSOCIATES, P.C.



Josephine P. Beeman

JPB:ja
Enclosures
cc: Carol MacGregor (w/ enclosures)
Terry Scanlan (w/enclosures)
Scott Campbell, Counsel for Pancheris (w/ enclosures)
Z:\2102\6124

RECEIVED

DEC - 1 2004

DEPARTMENT OF
WATER RESOURCES

Attorneys for Duane and Laura Pancheri
and Darwin and Joan Pancheri

Scott L. Campbell, ISB No. 2251
Angela Schaer Kaufmann, ISB No. 5436
MOFFATT, THOMAS, BARRETT, ROCK &
FIELDS, CHARTERED
101 S. Capitol Blvd., 10th Floor
Post Office Box 829
Boise, Idaho 83701
Telephone (208) 345-2000
Facsimile (208) 385-5384
19136.0

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

IN THE MATTER OF APPLICATION FOR
PERMIT NOS. 65-13912 AND 65-13913 IN
THE NAME OF CAROL LYNN
MACGREGOR

**PROTESTANTS' RESPONSE TO MOTION
AND REQUEST FOR HEARING**

Duane and Laura Pancheri and Darwin and Joan Pancheri, ("Pancheris") by and through their counsel of record MOFFATT THOMAS BARRETT ROCK & FIELDS, CHTD., and in accordance with Idaho Department of Water Resources Rules of Procedure 270.02 (IDAPA 37.01.01.270.02), hereby respond to Applicant Carol MacGregor's Motion and Request for Hearing ("Motion"). The Pancheris request that the Motion and Request be denied because they are premature, and contrary to an agreement reached by the parties.

I.
PRELIMINARY PROCEDURAL MATTER

As a preliminary matter, the Pancheris note that due to an addressing error, counsel for the Pancheris was not served with the Motion until November 17, 2004. Counsel for Dr. MacGregor has agreed that counsel was not served until that date. Affidavit of Scott L. Campbell, ¶ 2. Therefore, under IDAPA 37.01.01.270.02, the Pancheris' response to the Motion is not due until December 1, 2004, and is thus timely.

II.
PROCEDURAL BACKGROUND

A review of the procedural background of this matter is helpful. Dr. MacGregor filed applications for Permit Numbers 65-13912 and 65-13913 in 1999. The Pancheris protested those applications in order to protect their own water rights. The Pancheris own water rights 65-12891 (License), 65-13332 (Permit), and 65-13458 (Permit), with priority dates of October 19, 1988, July 2, 1991, and June 22, 1993, respectively, rights which they sought to protect by protesting Dr. MacGregor's applications for permit.

After the Pancheris protested Applications for Permit Number 65-13912 and 65-13913, Dr. MacGregor filed additional Applications for Permits Number 65-13986 and 65-13978. The Pancheris protested, but eventually withdrew their Protest to Application for Permit Number 65-13978.

During the course of proceedings, the Hearing Officer issued several discovery orders. As part of that process, the Hearing Officer authorized entry upon the Pancheris property for the measurement and inspection of the source of their water rights. The Hearing Officer also directed the parties to reach an agreement for that measurement and inspection. Amended Order Authorizing Discovery, p. 2 (January 25, 2001). The parties negotiated an agreement they titled

a Geothermal Monitoring Plan in 2001. However, as Dr. MacGregor's counsel noted, the 2001 monitoring "did not include any continuous diversion measurements." Ex. A to Campbell Aff. After a significant amount of correspondence and discussion, the parties reached an additional Agreement for Water Flow Monitoring ("Agreement") on the geothermal springs which are present on the property owned by the Pancheris. The Agreement, on file with the Department, is discussed in more detail below.

III. THE MOTION IS PREMATURE AND SHOULD BE DENIED

The Pancheris' position, which is supported by the facts in this matter, is that Dr. MacGregor's Motion is premature. Throughout the proceedings to date, Dr. MacGregor has maintained that she should be allowed to conduct measurements of the Pancheris' springs (for which they have clearly established water rights) in order to determine whether her proposed use will injure their pre-existing water rights. The Department agreed, as early as 2001, that measurements and monitoring should occur, and the Pancheris were able to reach an agreement with Dr. MacGregor to allow monitoring, under specific terms set forth in the Agreement.

The Agreement was previously filed with the Department, and a copy is attached hereto for ease of reference. The Agreement provides the specifications and locations of flow meters to be installed on the Pancheri springs. Critically, for purposes of this response, the Agreement provides that:

Dr. MacGregor will pay for the meters and installation at each location. ***The meters will be in place for at least one year, following installation***, but no longer than three years following installation.

(Emphasis added). The flow meters were to be installed by July 30, 2004. *Id.*, p. 2. The Agreement ends by emphasizing yet again, that “[t]he flow meters are to be monitored for a minimum of a year.” *Id.*

The Pancheris’ understanding, and in fact the only logical meaning of the Agreement is that at least one year’s data must be obtained before a hearing can proceed on Dr. MacGregor’s applications. In fact, it was Dr. MacGregor herself (or her counsel on her behalf), who specifically requested that the monitoring occur for one year. On February 26, 2004, Dr. MacGregor’s former counsel sent correspondence to John Westra with IDWR outlining the terms of what eventually became the Agreement. The draft Agreement included the one year provision, and the correspondence emphasized that “Dr. MacGregor requests that installation be completed by June 20, 2004, with measurements for at least one year.” Exhibit A to Campbell Aff. (emphasis added). Ultimately, the June 20 date was changed to June 30, 2004, but the import of that term remains the same: monitoring was to occur and data collected for at least one year.

Presumably, one could argue that a hearing on this matter could go forward even though measurements had not been taken for the year requested by Dr. MacGregor and agreed to by the Pancheris. However, to go forward without the full complement of data contemplated by the parties simply makes no sense, and is contrary to the spirit and intent of the carefully negotiated and drafted Agreement in this matter. The Pancheris are disappointed that after the parties were able to agree on the terms of the Agreement, Dr. MacGregor seeks to effectively breach the same.

Therefore, the Pancheris respectfully request that the Hearing Officer deny the Motion, and issue an order staying a hearing in the above-captioned matter until after June 30, 2005, or such time as may be mutually agreeable by the parties.

DATED this 30th day of November, 2004.

MOFFATT, THOMAS, BARRETT, ROCK &
FIELDS, CHARTERED

By Scott L. Campbell
Scott L. Campbell – Of the Firm

By Angela Schaer Kaufmann
Angela Schaer Kaufmann – Of the Firm
Attorneys for Duane and Laura Pancheri
and Darwin and Joan Pancheri

CERTIFICATE OF SERVICE

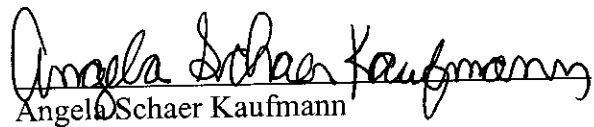
I HEREBY CERTIFY that on this 30th day of November, 2004, I caused a true and correct copy of the foregoing **PROTESTANTS' RESPONSE TO MOTION AND REQUEST FOR HEARING** to be served by the method indicated below, and addressed to the following:

Julie K. Fischer
WHITE PETERSON, P.A.
5700 East Franklin Road, Suite 200
Nampa, ID 83687
Fax: (208) 466-4405

- ☒ U.S. Mail, Postage Prepaid
- ☐ Hand Delivered
- ☐ Overnight Mail
- ☐ Facsimile

Peter Anderson
Hearing Officer
729 W. Braemere Road
Boise, ID 83702
Fax: (208) 395-0222

- ☒ U.S. Mail, Postage Prepaid
- ☐ Hand Delivered
- ☐ Overnight Mail
- ☐ Facsimile


Angela Schaer Kaufmann

IDAHO DEPARTMENT OF WATER RESOURCES
APPROPRIATION APPLICATION ANALYSIS SHEET

INITIAL REVIEW BY: DAN DATE: 11-8-99 APPLICATION: 65-13912

REQUIRED INFORMATION

- ☒ Name: (If applicant is a corporation or partnership, names and addresses for the director, officers, and other partners must be included.)
- ☒ Address:
- ☒ Source: (See USGS Quad for names of water sources)
- ☒ Point of Diversion: (10 acres for spring, lot & block descriptions for Subdivisions, local name)
- ☒ County:
- ☒ Quantity: (flow and/or volume) *Need to verify quantity through heating needs.* Gov't. Lots: NO P/D YES P/U
- ☒ Period of use:
- ☒ Nature of proposed use: (Include description of use)
- ☒ Description of diverting works:
- ☒ Time required for beneficial use of water:
- ☒ Place of use or acres irrigated:
- ☒ Map: (show T, R, S, QQ &/or QQQ)
- N/A Subdivision plat: (for > 1 home in restricted area. $\geq$ 5 homes in non-restricted area)
- ☒ Signature: (If applicant is corp., partnership, or municipality, title of signatory is required)
- ☒ Correct fee paid

ADDITIONAL INFORMATION

yes ADVERTISE REMARK(S)
(Reviewer identify which remarks)

☒ T FLAG CHANGED TO P FLAG

YES NO

- ☒ ☐ Overlapping place of use: (Describe source & relationship to present application on next page.)
- ☒ ☐ Overlapping point of diversion.
- ☐ ☒ Critical groundwater area:
- ☐ ☒ Groundwater management area:
- ☐ ☒ 1992 moratorium:
- ☒ ☐ Surface water source, IDFG letter needed.
- ☐ ☒ Protected river or minimum flow reach, notify water planning bureau.
- ☐ ☒ E-mail to SCA staff: (perennial stream, non-pump diversion &/or any mining).
- ☐ ☒ E-mail to Dam Safety staff: (for any storage)
- ☒ ☐ Mitigation plan: Check any that apply.
- ☐ ☐ immediate = acceptable plan required and submitted.
- ☐ ☒ future = open areas, acceptance of condition of approval is in file.
- ☐ ☒ Send power requirement letter &/or fish farm requirement letter.
- ☐ ☒ Power residency affidavit:
- ☐ ☒ Diversion greater than 5 cfs or 500 af or irrigation greater than 200 acres: (If yes, attach Large Diversion supplementary analysis sheet.)
- ☒ ☐ *REQUEST ADDITIONAL INFORMATION FROM THE APPLICANT

Need Heating Data From TERRY SCANLON

Date Requested 11-10-99

Date Response Received 11-12-99

PROCESSING

APP. NO. 15-13912

YES NO

☒

In form for advertising:

☒

Statewide advertising: (> 10 cfs &/or 1000 af)

☒

Fee amount, receipt number and date recorded on application:

SEND COPIES TO: NOTE IF E-MAIL COMMENT LETTER USED.

YES NO

☒

I.D. Health & Welfare

☒

I.D. District Health

☒

I.D. Fish & Game

☒

I.D. Lands

YES NO

☒

U.S. BLM

☒

U.S. Forest Service

☒Water Dist. # 65☒

Water Planning Bureau

Other Darwin Pancheri9325 Missouri AveNampa, ID 83686**FINAL REGIONAL PROCESSING REVIEW:**

YES NO

☐
☐

Affidavit of publication received:

Application published correctly: If not, record action taken.

☐
☐

Publication dates and paper recorded on application:

Final date for protest 1-3-00☐

Protests received.

☐

Recommendations attached:

☐

Measuring device required:

☐

Water delivered by water master? District #

☐

Special conditions of approval or cover letter:

See below for additional information

Recommended Date or Priority

Date:

Recommended by:

ADDITIONAL INFORMATION:

There are overlapping water rights
for P1D & P14. Only the rights
owned by the Pancheri's seem significant.
Please see letter dated 11-24-99
for additional information required.



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

November 17, 2004

Julie K Fischer, Attorney
White Peterson PA
5700 E Franklin RD, Suite 200
Nampa ID 83687

RE: MacGregor Applications 65-13912 & 6513913-Contested

Dear Ms. Fischer:

This letter is to acknowledge receipt of the Notices of Motion & Request for Hearing and Substitution of Counsel from you with regard to the above contested applications.

I have forward the hearing request to the Department Administration for appoint of a hearing officer. The appointed hearing officer will set a hearing date and notify parties.

Should you have any questions, please contact me at the Western Regional Office, phone 334-2190.

Sincerely,

A handwritten signature in cursive script that reads "John Westra".

John Westra
Manager, Western Region

cc: S Campbell, T Scanlan, Sherl Chapman

CERTIFICATE OF SERVICE

I hereby certify that on this 11 day of November, 2004, I caused to be served a true and correct copy of the foregoing document by the method indicated below to the following:

☒

US Mail
Overnight Mail
Hand Delivery
Facsimile No. 384-5844

Scott L. Campbell
ELAM & BURKE, P.A.
Key Financial Center
702 West Idaho Street
P.O. Box 1539
Boise, ID 83701

Moffatt Thomas
PO Box 829
Boise ID 83701
CC's

☒

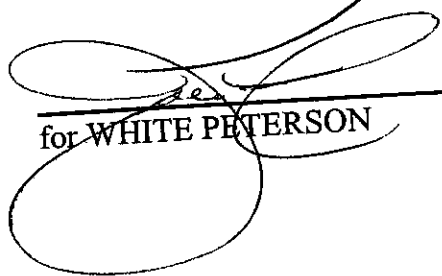
US Mail
Overnight Mail
Hand Delivery
Facsimile No. _____

Sherl Chapman
ERO Resources
1106 N. Cole Road, Suite C
Boise, ID 83704-8661

☒

US Mail
Overnight Mail
Hand Delivery
Facsimile No. _____

Terry Scanlan
SPF Water Engineering
600 E. River Park Lane, Suite 105
Boise, Idaho 83706


for WHITE PETERSON

da:Z:\Work\M\MacGregor, Carol\Request for Notice of Hearing.doc

Conversation Memorandum-Telephone

Julie Fischer—Attorney, White Peterson

RE: MacGregor Application—#65-13986--Protested

From: J. Westra

Date: 11/17/04

I contacted Ms. Fischer regarding the above reference application. I asked if she would like to include the application in the hearing process along with 65-13912 & 13913 as it was also protested by the Pancheris. Although, it is for groundwater irrigation use it is related to the other applications. She agreed that including 65-13986 in the hearing process would be the most desirable, and that it should be included.

RECEIVED

NOV 12 2004

WATER RESOURCES
WESTERN REGION

Julie K. Fischer
WHITE PETERSON, P.A.
5700 East Franklin Road, Suite 200
Nampa, Idaho 83687
Telephone: (208) 466-9272
Facsimile: (208) 466-4405
Idaho State Bar No. 4601
jkf@whitepeterson.com

Attorneys for Petitioner, Carol Lynn MacGregor

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

IN THE MATTER OF APPLICATION FOR)
PERMIT NOS. 65-13912 AND 65-13913 IN)
THE NAME OF CAROL LYNN)
MACGREGOR)

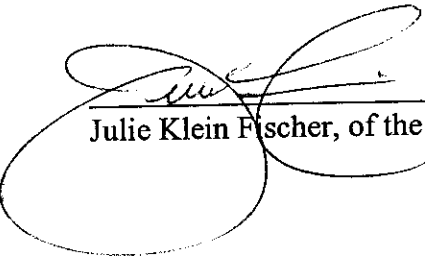
**MOTION AND REQUEST FOR
HEARING**

COMES NOW, the Applicant, Carol Lynn MacGregor ("MacGregor"), and hereby requests that the above matter be set for hearing on a time and date convenient with the Department and counsel.

MacGregor's available dates for hearing are: January 18 through 21; January 25 – 28; anytime during the month of February, 2005. MacGregor anticipates a two day hearing will be necessary.

DATED this 11 day of November, 2004.

WHITE PETERSON, P.A.

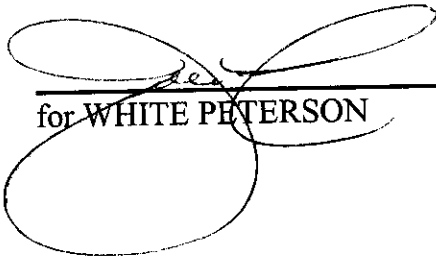


Julie Klein Fischer, of the Firm

CERTIFICATE OF SERVICE

I hereby certify that on this 11 day of November, 2004, I caused to be served a true and correct copy of the foregoing document by the method indicated below to the following:

☒	US Mail	Scott L. Campbell
☐	Overnight Mail	ELAM & BURKE, P.A.
☐	Hand Delivery	Key Financial Center
☐	Facsimile No. 384-5844	702 West Idaho Street
		P.O. Box 1539
		Boise, ID 83701
 ☒	 US Mail	 Sherl Chapman
☐	Overnight Mail	ERO Resources
☐	Hand Delivery	1106 N. Cole Road, Suite C
☐	Facsimile No. _____	Boise, ID 83704-8661
 ☒	 US Mail	 Terry Scanlan
☐	Overnight Mail	SPF Water Engineering
☐	Hand Delivery	600 E. River Park Lane, Suite 105
☐	Facsimile No. _____	Boise, Idaho 83706


for WHITE PETERSON

da:Z:\Work\M\MacGregor, Carol\Request for Notice of Hearing.doc

RECEIVED

NOV 12 2004

WATER RESOURCES
WESTERN REGION

Julie K. Fischer
WHITE PETERSON, P.A.
5700 East Franklin Road, Suite 200
Nampa, Idaho 83687
Telephone: (208) 466-9272
Facsimile: (208) 466-4405
Idaho State Bar No. 4601
jkf@whitepeterson.com

Attorneys for Applicant, Carol Lynn MacGregor

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

IN THE MATTER OF APPLICATION FOR	)	
PERMIT NOS. 65-13912 AND 65-13913 IN	)	
THE NAME OF CAROL LYNN	)	NOTICE OF SUBSTITUTION OF
MACGREGOR	)	COUNSEL
	)	

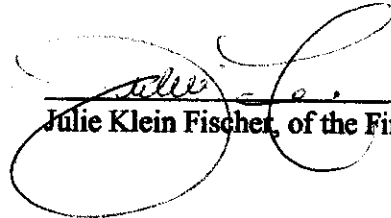
COMES NOW, Applicant Carol Lynn MacGregor, and notifies this Department and Respondents, Duane, Laura, Darwin and Joan Pancheri, that the law firm of White Peterson, P.A. will substitute as counsel of record in the place of Josephine P. Beeman, of Beeman & Associates, P.C., and that the latter firm hereby withdraws as counsel of record. The handling attorney for White Peterson, P.A. will be Julie Klein Fischer.

NOTICE OF SUBSTITUTION OF COUNSEL - 1

ORIGINAL

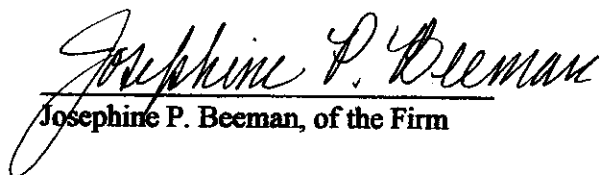
DATED this 11 day of November, 2004.

WHITE PETERSON, P.A.



Julie Klein Fischer, of the Firm

BEEMAN & ASSOCIATES, P.C.



Josephine P. Beeman, of the Firm

CERTIFICATE OF SERVICE

I hereby certify that on this 11 day of November, 2004, I caused to be served a true and correct copy of the foregoing document by the method indicated below to the following:

☒ US Mail
☐ Overnight Mail
☐ Hand Delivery
☐ Facsimile No. 384-5844

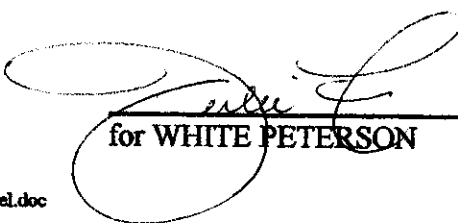
Scott L. Campbell
ELAM & BURKE, P.A.
Key Financial Center
702 West Idaho Street
P.O. Box 1539
Boise, ID 83701

☒ US Mail
☐ Overnight Mail
☐ Hand Delivery
☐ Facsimile No. _____

Sheri Chapman
ERO Resources
1106 N. Cole Road, Suite C
Boise, ID 83704-8661

☒ US Mail
☐ Overnight Mail
☐ Hand Delivery
☐ Facsimile No. _____

Terry Scanlan
SPF Water Engineering
600 E. River Park Lane, Suite 105
Boise, Idaho 83706


for WHITE PETERSON

da:Z:\Work\MMacGregor, Carol\Notice of Substitution of Counsel.doc

BEEMAN & ASSOCIATES, P.C.

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

Josephine P. Beeman
jo.beeman@beemanlaw.com

RECEIVED

JUN 30 2004

WATER RESOURCES
WESTERN REGION

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

June 28, 2004

Carol Lynn MacGregor
1109 Warm Springs Avenue
Boise, ID 83712

Scott Campbell
Moffatt, Thomas, Barrett, Rock & Fields.
P.O. Box 829
Boise, ID 83701-0829

Terry Scanlan
Scanlan Engineering
600 East River Park Lane, Suite 105
Boise, ID 83706

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

Re: *MacGregor/Pancheri Flow Meter Agreement*

Dear Parties:

Enclosed are the following:

1. A completed copy of the *Agreement for Specifications and Locations of Flow Meters*, executed by the Pancheris and Dr. MacGregor (on separate signature pages: Carol MacGregor- June 16, 2004; Darwin Pancheri – June 18, 2004; and Duane Pancheri, June 19, 2004);
2. Letter from Scott Campbell dated June 24, 2004;
3. A color map from Terry Scanlan dated February 26, 2004, showing the flow meter location; and
4. Two (2) flow meter specifications.

Sincerely,

BEEMAN & ASSOCIATES, P.C.



Joyce E. Angell, PLS
Office Manager

:ja
Enclosures
Z:\2102\6266

AGREEMENT FOR
SPECIFICATIONS AND LOCATIONS FOR FLOW METERS

1. Flow meter for water right 65-12891 (Laura and Duane Pancheri):
Model (or equal): Water Specialties ML-03 (low velocity, 50 to 500 gpm flow range); Specifications attached.

Location of installed flow meter for 65-12891:
4-inch pipeline on south side of Brush Creek (See attached map):
Easting: 338646.50; Northing: 375210.42
(GPS coordinates, Scanlan Engineering, Arcview aerial photograph)
Point of Diversion for 65-12891 ("Pancheri Spring Source" on map identifies the infiltration gallery which is the common point of diversion for 65-12891 and 65-13332):
Easting: 338016.00; Northing: 375783.14
(GPS coordinates, Rob Whitney, IDWR field exam, June 2003)
2. Flow meter for water right 65-13332 (Joan and Darwin Pancheri):
Model (or equal): 1-inch Niagara MTX Model 122 (2 to 50 gpm flow range); Specifications attached show this model has a 1-1/4 inch connection.

Location of installed flow meter for 65-13332:
Discharge pipe in pump house (See attached map)
Easting: 338047.09; Northing: 375770.70
(GPS coordinates, Rob Whitney, IDWR field exam, June 2003)
Point of Diversion for 65-13332 ("Pancheri Spring Source" on map identifies the infiltration gallery which is the common point of diversion for 65-12891 and 65-13332):
Easting: 338016.00; Northing: 375783.14
(GPS coordinates, Rob Whitney, IDWR field exam, June 2003)

COSTS

1. Dr. MacGregor will pay for the meters and installation at each location. The meters will be in place for at least one year, following installation, but no longer than three years following installation. At any time after one year, Dr. MacGregor may remove either or both meters, but will remove both meters at the end of three years. Dr. MacGregor will be responsible for maintenance while either or both meters are in place.
2. The Pancheris may add continuous dataloggers to the totalizing flow meters, if they wish at their expense. The Pancheris do not choose to add a continuous datalogger at the time the flow meters are installed, but may later.

INSTALLATION

1. Installation of both flow meters is to be completed by July 30, 2004. Both installation sites are on Pancheri property.
2. The contractor for the installations will be Interwest Supply.
3. The Pancheris may assist, if they wish.
4. Sheri Chapman will be contacted so that he may be present at the installation.
5. Dr. MacGregor will make arrangements to complete the installations by July 30, 2004.
6. Following July 30, 2004, if the Pancheris want to add a continuous datalogger to either or both flow meters, Terry Scanlan must review and agree to the datalogger specifications; and Mr. Scanlan must be contacted so that he may be present at the installation.

DATA COLLECTION

1. Once installed, the totalizing flow meters can be read by Terry Scanlan, or Sheri Chapman, or a mutual designee of Mr. Chapman and Mr. Scanlan, or IDWR staff, including Water District 65 personnel.
2. The totalizing flow meters installed on the Pancheri properties can be accessed for purposes of reading on Monday between the hours of 12:00 noon and 3:00 p.m. every two weeks following execution of this agreement. Access to the Pancheri properties for reading the totalizing flow meters may occur on a more frequent basis as agreed in writing by the parties.
3. The flow meters are to be monitored for a minimum of a year.

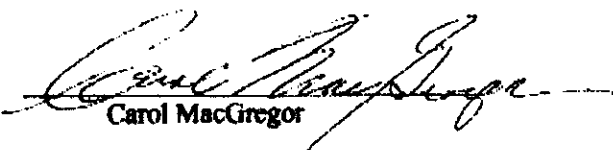
Date: June _____, 2004

Laura or Duane Pancheri

Date: June _____, 2004

Joan or Darwin Pancheri

Date: June 16, 2004


Carol MacGregor

7:\2102\61241\ (Final)

INSTALLATION

1. Installation of both flow meters is to be completed by July 30, 2004. Both installation sites are on Pancheri property.
2. The contractor for the installations will be Interwest Supply.
3. The Pancheris may assist, if they wish.
4. Sherl Chapman will be contacted so that he may be present at the installation.
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6. Following July 30, 2004, if the Pancheris want to add a continuous datalogger to either or both flow meters, Terry Scanlan must review and agree to the datalogger specifications; and Mr. Scanlan must be contacted so that he may be present at the installation.

DATA COLLECTION

1. Once installed, the totalizing flow meters can be read by Terry Scanlan, or Sherl Chapman, or a mutual designee of Mr. Chapman and Mr. Scanlan, or IDWR staff, including Water District 65 personnel.
2. The totalizing flow meters installed on the Pancheri properties can be accessed for purposes of reading on Monday between the hours of 12:00 noon and 3:00 p.m. every two weeks following execution of this agreement. Access to the Pancheri properties for reading the totalizing flow meters may occur on a more frequent basis as agreed in writing by the parties.
3. The flow meters are to be monitored for a minimum of a year.

Date: June _____, 2004

Laura or Duane Pancheri

Date: June 18, 2004

Darwin Pancheri
Joan or Darwin Pancheri

Date: June _____, 2004

Carol MacGregor

Z:\2102\6124F (Final)

INSTALLATION

1. Installation of both flow meters is to be completed by July 30, 2004. Both installation sites are on Pancheri property.
2. The contractor for the installations will be Interwest Supply.
3. The Pancheris may assist, if they wish.
4. Sherl Chapman will be contacted so that he may be present at the installation.
5. Dr. MacGregor will make arrangements to complete the installations by July 30, 2004.
6. Following July 30, 2004, if the Pancheris want to add a continuous datalogger to either or both flow meters, Terry Scanlan must review and agree to the datalogger specifications; and Mr. Scanlan must be contacted so that he may be present at the installation.

DATA COLLECTION

1. Once installed, the totalizing flow meters can be read by Terry Scanlan, or Sherl Chapman, or a mutual designee of Mr. Chapman and Mr. Scanlan, or IDWR staff, including Water District 65 personnel.
2. The totalizing flow meters installed on the Pancheri properties can be accessed for purposes of reading on Monday between the hours of 12:00 noon and 3:00 p.m. every two weeks following execution of this agreement. Access to the Pancheri properties for reading the totalizing flow meters may occur on a more frequent basis as agreed in writing by the parties.
3. The flow meters are to be monitored for a minimum of a year.

Date: June 19, 2004

Laura or Duane Pancheri
Laura or Duane Pancheri

Date: June _____, 2004

Joan or Darwin Pancheri

Date: June _____, 2004

Carol MacGregor

Z:\2102\6124F (Final)

2102/6202

Boise
Idaho Falls
Pocatello

Moffatt Thomas

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D. James Manning
Gary T. Dance
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Randall A. Peterman
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Scott L. Campbell
Robert B. Burns
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Jon A. Stenquist
Eric M. Barzee
Bradley J. Dixon
Jason G. Murray
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Andrew J. Waldera
Shawn C. Nunley

Willis C. Moffatt, 1907-1980
Kirk R. Helvie, 1956-2003

June 24, 2004

US Bank Plaza Building
101 S Capitol Blvd 10th Fl
PO Box 829
Boise, Idaho 83701 0829

208 345 2000
800 422 2889
208 385 5384 Fax
www.moffatt.com

Josephine P. Beeman
Beeman & Associates P.C.
409 W. Jefferson Street
Boise, ID 83702

Re: Application 65-13912 (Carol Lynn MacGregor)
Measurement of 65-12891 and 65-13332 (Pancheris)
MTBR&F File No. 19136.0

Dear Jo:

I have enclosed copies of the signature pages of the Agreement for Water Flow Monitoring of the geothermal springs on the Pancheris' property. Duane and Darwin Pancheri signed separate signature pages.

Please provide me with a copy of the Agreement evidencing the signature pages by the Pancheris and the signature page evidencing Carol MacGregor's execution of the document. After I receive this copy of the Agreement with all signatures, I will deem the Agreement to be fully executed and operational.

Please contact me if you have any questions.

Very truly yours,



Scott L. Campbell

SLC/dll

Enclosures

cc: Darwin & Joan Pancheri (w/encls.)
Duane & Laura Pancheri (w/encls.)

RECEIVED JUN 24 2004

BOI_MT2:550250.1

100-4-04

EXPLANATION

 Flow Meter
  Proposed Test Well Locations
  Approximated Hot Springs Location
  Approximated Pipeline
  Land Ownership Boundary

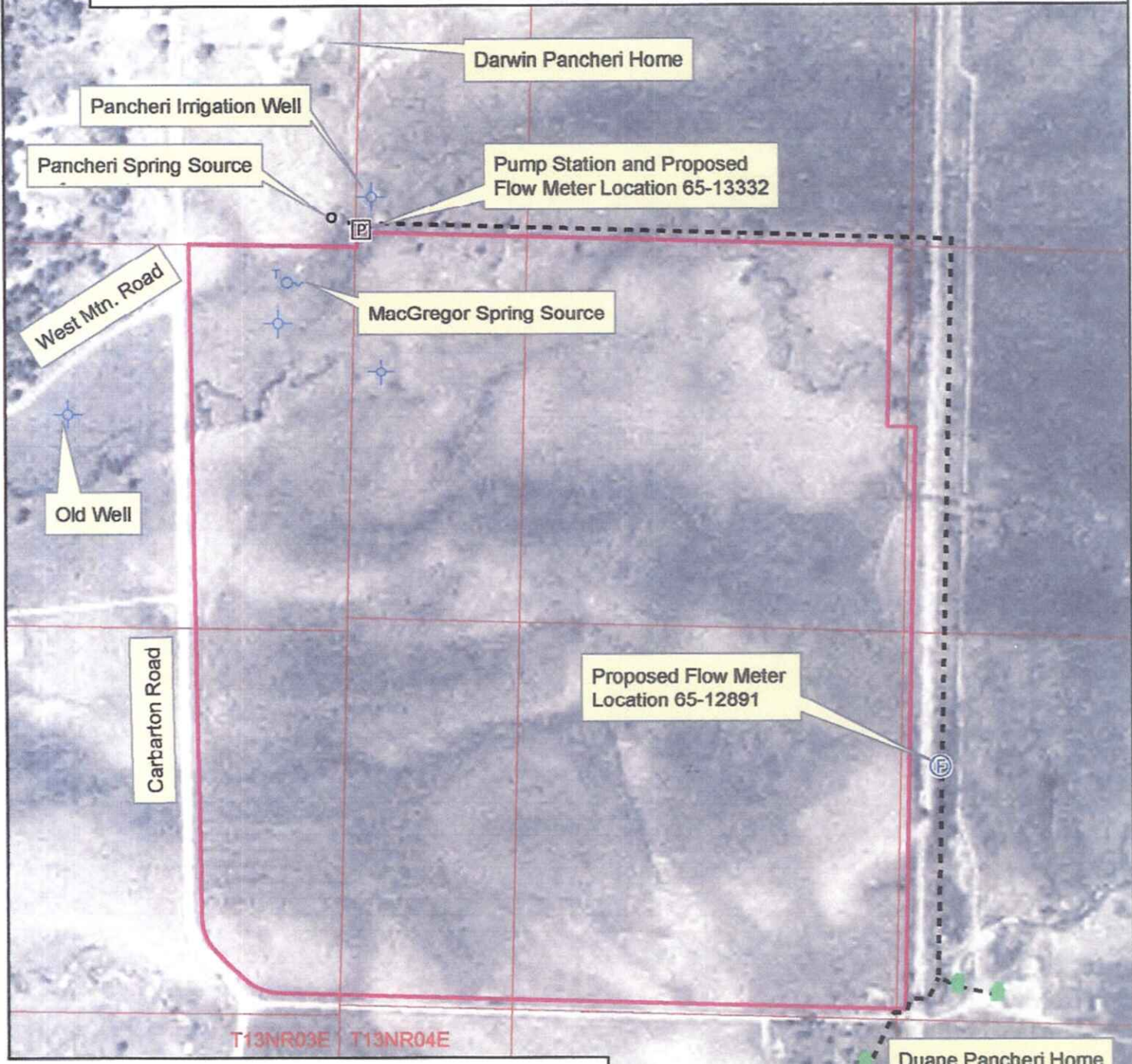


Figure 1: Belvidere Hot Spring Vicinity Map.

0 500 1,000 Feet



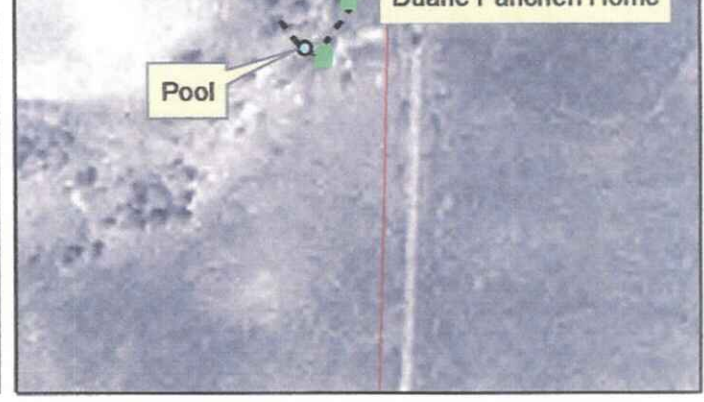
Projection System: IDTM

Data Sources: USGS, BLM

Date: February 26, 2004

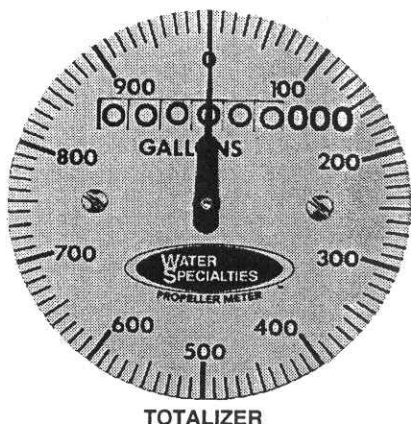
Scanlan Engineering

600 E. River Park Lane
Suite 105
Boise, ID 83706

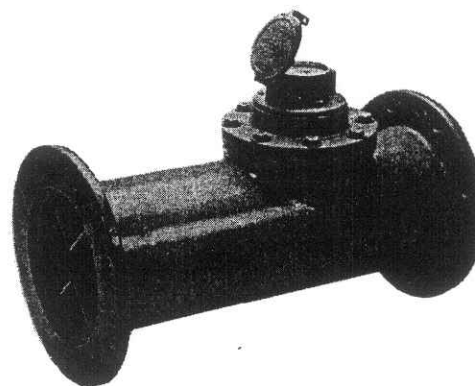




MODEL ML-03
150 psi FLANGED TUBE METER
SEALED METER MECHANISM - MAGNETIC DRIVE
SEALED TOTALIZER
SIZES 2" thru 48"



TOTALIZER



DESCRIPTION

MODEL ML-03 FLANGED TUBE METERS are manufactured to the highest standards. Materials used on all meters and flow ranges for the low velocity meter meet or exceed AWWA standard C704. The flanged end tube design permits use in a wide range of applications with up to 150 psi working pressure. Flanged ends are 150 lb. AWWA class D flat face steel flanges. Fabricated steel meter tubes have straightening vanes and are protected internally and externally with 12-15 mils of NSF approved, fusion bonded epoxy resin.

INSTALLATION is made similar to placing a short length of flanged end pipe in the line. The meter can be installed in any of the following positions: vertically, horizontally or inclined on suction or discharge lines. The meter must have a full flow of liquid for proper accuracy. Fully opened gate valves, fittings or other obstructions that tend to set up flow disturbances should be a minimum of five pipe diameters upstream and two pipe diameters downstream from the meter.

PROPELLER is magnetically coupled with the drive mechanism through the sealed oil filled gearbox. This completely eliminates water entering the meter assembly, as well as the need for any packing gland. The propeller is a conical shaped three bladed propeller, injection molded of thermoplastic material resistant to normal water corrosion and deformity due to high flow velocities.

BEARING in propeller is a water lubricated ceramic sleeve and spindle bearing system with a ceramic/stainless steel spindle. Dual ceramic thrust bearings, standard on all meters, handle flows in both forward and reverse directions. The bearing design promotes extended periods of maintenance free propeller operation. Bearings within the sealed meter mechanism are shielded precision stainless steel bearings and are factory lubricated for the life of the meter.

TOTALIZER is o-ring sealed and magnetically coupled with the driving mechanism, and features a six digit totalizer with a full 3" diameter, 100 division, center sweep dial that permits extremely accurate readings for timing purposes in determining flow rates. The totalizer dial can be furnished in gallons, cubic feet, acre feet or any standard liquid measuring units. The bonnet, with padlock hasp, can be positioned in four different directions for the easiest possible reading when the meters are mounted in unusual positions.

CHANGE GEARS may be easily exchanged in the field when changing the dial, or when recalibrating for different pipe sizes. It is not necessary to remove pressure from the line for these changes.

O-RING SEALS are used at the meter head and all points where seals are required, making the meter mechanism completely immune to any of the corrosive effects of atmospheric moisture or the liquids measured by the meter assembly.

SPECIFICATIONS

ACCURACY plus or minus 2% of actual flow within the range specified for each meter size.

PRESSURE RANGE up to 150 PSI maximum working pressure.

TEMPERATURE RANGE 140° F Maximum. Consult factory for special construction for higher temperatures.

MINIMUM FLOWS as shown for each meter size and construction are required for accurate registration. See flow chart. NOTE: Minimum flow will be higher when auxiliary equipment is added.

MAXIMUM FLOWS as shown for each meter size and construction are rated for continuous operation. See flow chart.

INTERMITTENT FLOWS as shown for each meter size are rated for 10%-15% of the total time the meter is operating. Consult factory for High Velocity construction when intermittent flows are higher than shown on flow chart and/or when longer operating periods are required.

MATERIALS used in construction are chosen to minimize the corrosive effects of the liquids measured by the meter assembly.

MAGNETS are permanent ceramic type.

INTERIOR BEARINGS are shielded stainless steel.

PROPELLER BEARING is ceramic sleeve type.

PROPELLER SPINDLE is ceramic coated stainless steel.

PROPELLER is injection molded thermoplastic.

GEARBOX is cast bronze.

SEPARATOR and **SHAFTS** are stainless steel.

METER HEAD BOLTS are stainless steel on 2"-20" units and plated steel on 24"-48" units.

METER HEAD is cast iron or fabricated steel NSF approved, fusion bonded epoxy coated.

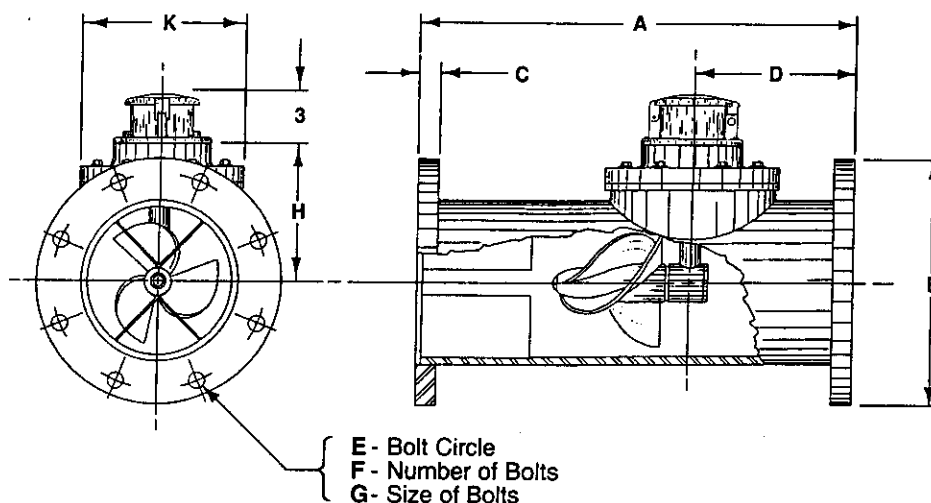
METER TUBE is fabricated steel with straightening vanes and coated, inside and out, with 12-15 mils of NSF approved, fusion bonded epoxy by the fluidized bed method.

OPTIONAL EQUIPMENT is available upon request, including totalizer extensions, special construction or materials and a wide range of controls and instruments for indicating, totalizing and recording flow data.

A 5 YEAR GUARANTEE IS AVAILABLE FOR 2"-36" METERS.

ORDERING INFO must be specified by the customer and should include minimum and maximum flow ranges, the temperature of the meter environment, the totalizer dial units required, the type of materials/ construction needed and optional equipment desired.

MODEL ML-03
150 psi FLANGED TUBE METER
SEALED METER MECHANISM - MAGNETIC DRIVE
SEALED TOTALIZER
SIZES 2" thru 48"



METER & PIPE SIZE	*LOW VELOCITY CONSTRUCTION MIN. - MAX.	FLOW RANGES,GPM STANDARD CONSTRUCTION MIN. - MAX. - INT.	HIGH VELOCITY CONSTRUCTION MIN. - MAX.	DIMENSIONS									SHIPPING WEIGHT POUNDS
				A	B	C	D	E	F	G	H	K	
2	N/A	40-160-225	N/A	18	6	5/8	7	43/4	4	5/8	5 1/4	9	70
3	40-250	45-250-350	N/A	18	7 1/2	5/8	7	6	4	5/8	5 1/4	9	70
4	50-500	55-500-700	200-700	18	9	5/8	7	7 1/2	8	5/8	5 1/4	9	80
6	90-1200	120-1200-1500	300-1500	22	11	11/16	9	9 1/2	8	3/4	6 1/4	9	120
8	100-1500	150-1500-2000	400-2500	24	13 1/2	11/16	9	11 3/4	8	3/4	7 1/4	9	150
10	125-2000	180-2000-3000	500-3500	26	16	11/16	10	14 1/4	12	7/8	8 1/2	11	200
12	150-2800	200-3000-3500	800-5000	28	19	13/16	10	17	12	7/8	9 1/2	11	250
14	250-3750	300-4000-4500	1000-6000	42	21	15/16	12	18 3/4	12	1	10 1/2	13 1/2	350
16	350-4750	400-5000-6000	1200-7500	48	23 1/2	1	12	21 1/4	16	1	11 1/2	13 1/2	570
18	450-5625	700-6000-7500	1500-9000	54	25	1 1/16	15	22 3/4	16	1 1/8	12 1/2	13 1/2	665
20	550-6875	850-8000-9000	2000-12000	60	27 1/2	1 1/8	15	25	20	1 1/8	13 1/2	13 1/2	780
24	800-10000	1000-10000-13500	3000-15000	72	32	1 1/4	18	29 1/2	20	1 1/4	17 1/2	21	1250
30	1200-15000	1800-15000-21000	4000-25000	84	38 3/4	1 3/8	18	36	28	1 1/4	20 1/2	21	2010
36	1500-20000	2000-20000-30000	5000-35000	96	46	1 5/8	20	42 3/4	32	1 1/2	23 1/2	21	2840
42	2000-28000	3000-30000-40000	6000-50000	96	53	1 3/4	24	49 1/2	36	1 5/8	28	32	4300
48	2500-35000	5500-35000-50000	7000-60000	96	59 1/2	1 7/8	24	56	44	1 5/8	31	32	4730

Standard construction will be supplied for all main line meters unless special flow range, materials, or construction are required.

* Low velocity (LV) construction has the same low and maximum flow rates as AWWA C704.



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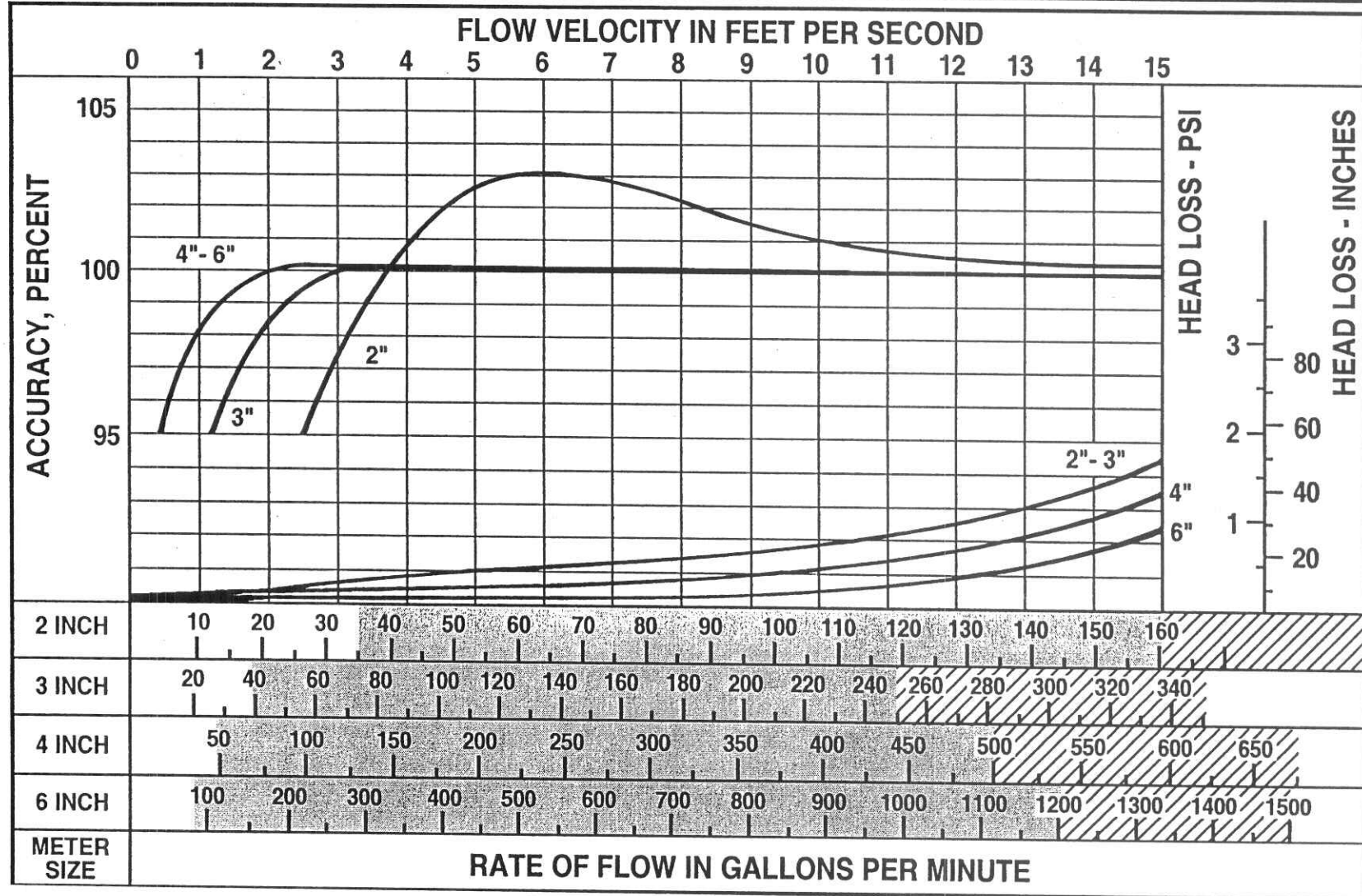


PROPELLER METERS ACCURACY AND HEAD LOSS CURVES



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Branom Instrument Co.*Manufacturers' Representatives*

Spokane office : N. 626 Helena
Spokane, WA 99202

Phone: 509-534-9395
Fax: 509-534-9397

FACSIMILE TRANSMITTAL SHEET

Date 8-15-02

Company SCANLIN Engineering

City Boise

Phone _____ FAX 208-383-4156

Attention Terry

Reference Totalizing Flow meter

From Tim Holliday

Total number of pages including this sheet 5

MESSAGE: _____

(1) Aaliant Niagara P/N 60480 P004

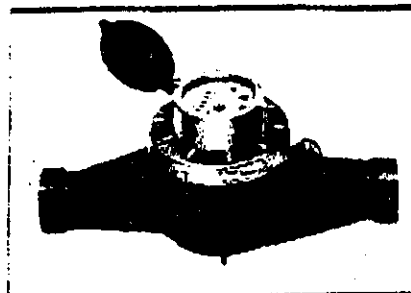
1" model 122, 250°F, WITH Totalizing register

The Niagara Series MTX flow-meters are ideal for the measurement of cold or hot water in commercial and industrial applications. These high performance meters are unsurpassed in the marketplace today.

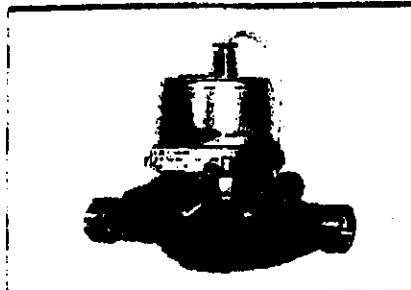
The Series MTX employs the latest technical achievements in multi-jet impeller meters. The impeller is the only moving part in the flow stream and is magnetically coupled to the register.

Features

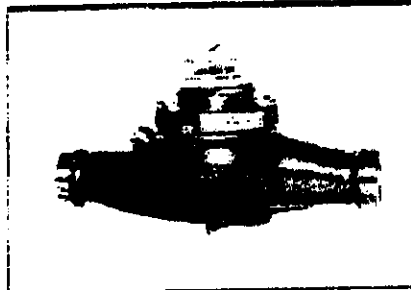
- Brass main case resists corrosion.
- The hermetically sealed magnetically driven register prevents condensation or fogging due to variations of temperature. The magnetic coupling eliminates packing leaks.
- An impeller is the only moving part in the precision molded measuring chamber which assures long life and accuracy at all flow rates within the range of the meter.
- The multi-jet design balances the force on the impeller and extends the life of the meter.
- Modular construction allows ease of service and repair in the field.
- The strainer in the inlet port removes foreign material from the flow stream that would damage or clog the meter.



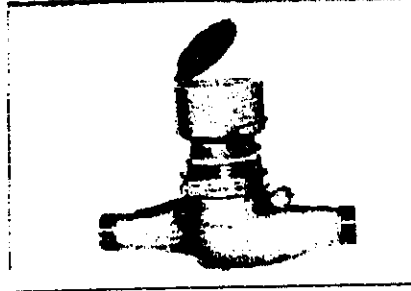
Model 122 - hot
Model 123 - cold
Displays continuous totalization.



Model 413 - hot
Displays continuous totalization and provides a calibrated contact closure for hot water.



Model 433 - cold
Displays continuous totalization and provides a calibrated contact closure for cold water.



Model 420 - cold
Model 421 - hot
Displays continuous totalization
Options:
• It can be fitted with up to two Model 840 Switches to provide a calibrated contact closure.
• In addition a Model 860 Pulse Transmitter can be utilized for a high frequency signal.

Specifications

Models 122 - hot and 123 - cold

Size		3/4"	1"	1 1/2"	2"
Flow Rate		1-20 gpm	2-50 gpm	3-85 gpm	4-130 gpm
Pressure		250 psi	250 psi	250 psi	250 psi
Temperature	Cold	120 F	120 F	120 F	120 F
	Hot	250 F	250 F	250 F	250 F
Accuracy		± 1%	± 1%	± 1%	± 1%
Registration *		US Gallons	US Gallons	US Gallons	US Gallons
Threads/Flanges		1" NPT	1 1/4" NPT	2" NPT	6 1/2" Flg

* Other units of registration available (consult factory).

Model 413 - hot

Size		3/4"	1"	1 1/2"	2"
Flow Rate		1-20 gpm	2-50 gpm	3-85 gpm	4-130 gpm
Pressure		250 psi	250 psi	250 psi	250 psi
Temperature		250 F	250 F	250 F	250 F
Accuracy		± 1%	± 1%	± 1%	± 1%
Registration *		US Gallons	US Gallons	US Gallons	US Gallons
Gallons per Contact		1	1	10	10
Threads/Flanges		1" NPT	1 1/4" NPT	2" NPT	6 1/2" Flg

* Other units of registration available (consult factory).

Models 420 - cold and 421 - hot

Size		3/4"	1"	1 1/2"	2"
Flow Rate		1-20 gpm	2-50 gpm	3-85 gpm	4-130 gpm
Pressure		250 psi	250 psi	250 psi	250 psi
Temperature	Cold	120 F	120 F	120 F	120 F
	Hot	250 F	250 F	250 F	250 F
Accuracy		± 1%	± 1%	± 1%	± 1%
Registration *		US Gallons	US Gallons	US Gallons	US Gallons
Gallons per contact with 840 Switch		10 or 100	10 or 100	10 or 100	10 or 100
Full Scale Freq. HZ with 860 Pulser **	Cold	20.63	16.66	14.16	21.66
	Hot	38.57			
Pulses per gallon	Cold	61.89	20	10	10
	Hot	115.71			
Threads/Flanges		1" NPT	1 1/4" NPT	2" NPT	6 1/2" Flg

* Other units of registration available (consult factory).

Model 433 - cold

Size	3/4"	1"	1 1/2"	2"
Flow Rate	1-20 gpm	2-50 gpm	3-85 gpm	4-130 gpm
Pressure	250 psi	250 psi	250 psi	250 psi
Temperature	120 F	120 F	120 F	120 F
Accuracy	± 1%	± 1%	± 1%	± 1%
Registration *	US Gallons	US Gallons	US Gallons	US Gallons
Gallons per contact	1	1	10	10
Threads/Flanges	1" NPT	1 1/4" NPT	2" NPT	6 1/2" Flg

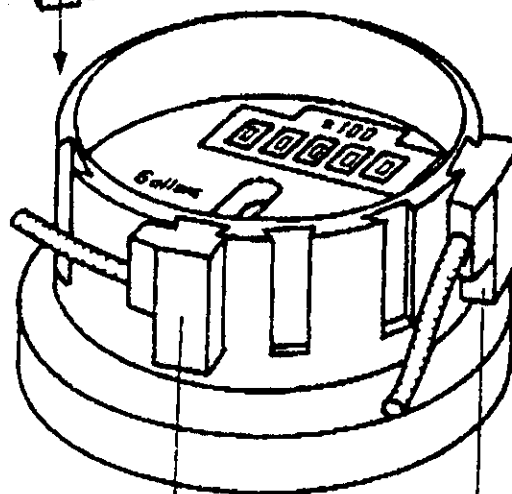
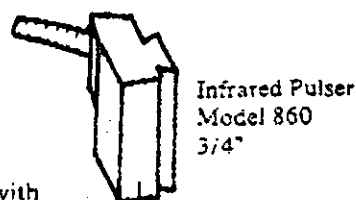
* Other units of registration available (contact factory).

Wetted Material Of Construction

Body:	High Strength Brass Body for 2" flanged is cast iron
Measuring Element:	120 F - Polystyrene 250 F - Noryl
Impeller:	120 F - Polystyrene 250 F - Noryl
O Ring Seals:	EPDM

Options for Models 420 and 421**Model 860
Infrared Pulser**

- Provides a high frequency pulse output for interface with Hersey instrumentation.
- Supply Voltage: 30 VDC max.
- Current Requirement: 15-20 mA.
- Output Signal: Non-symmetrical square pulse train (equal to supply voltage).
- Wiring: Pigtail, 36", 3-wire 22 gauge.



Infrared Pulser
Model 860
1" - 2"

Reed Switch
Model 840
3/4" - 2"

Note: When ordering MTX with 860 pulser that is not being used with Hersey Measurement instrumentation, order a pre-amp to eliminate the need for current resistors.

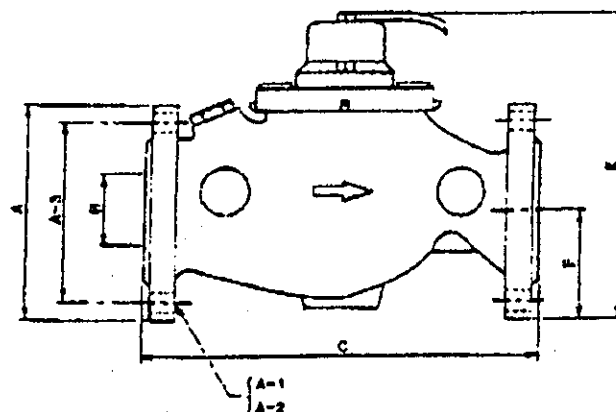
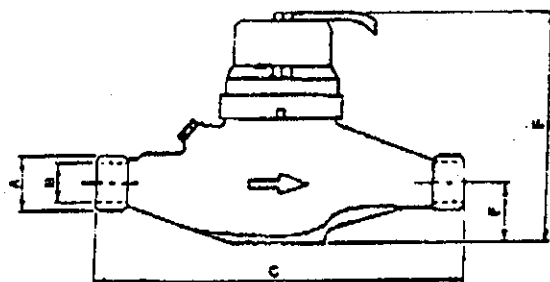
**Model 840
Reed Switch**

- Provides a calibrated contact closure.
- Contact Rating
Switching Voltage: 30 VDC max.
Current DC Resistive 0.2A max.
Wattage: 3 WDC max.
- Wiring: Pigtail, 36", 3-wire 22 gauge.

Dimensions

All Models 3/4" - 1 1/2"

All Models 2"



Size	inches (mm)	3/4"	1"	1 1/2"	2"
Threads/Flanges	A	1" NPT (25.4)	1 1/4" NPT (31.75)	2" NPT (50.80)	6 1/2" (165.10)
Bolt Holes	A-1	----	----	----	4
Bolt Holes Dia.	A-2	----	----	----	5/8" (15.88)
Bolt Circle Dia.	A-3	----	----	----	4 3/4" (120.65)
Bore Dia.	B	3/4" Nominal	1" Nominal	1 1/2" Nominal	2" Nominal
Length	C	7 1/2" (190.50)	10 1/2" (266.70)	12" (304.80)	10 3/4" (273.05)
Width	D	3 3/4" (95.25)	4" (101.60)	5 1/2" (139.70)	6 1/2" (165.10)
Height	E *	6" (152.40)	7 1/4" (184.15)	8 3/4" (222.25)	10 1/2" (266.70)
Center Line to Base	F	1 1/4" (31.75)	1 1/2" (38.10)	1 3/4" (44.45)	3 1/8" (79.37)
Weight lbs (kg)		4 1/2 lbs. (2.04)	6 1/2 lbs. (2.9)	11 1/2 lbs. (5.2)	27 1/2 lbs. (12.5)

* For 123/420 hot water meters, add 1 1/2 inches.



Phone: 803-574-0960
 1-800-945-2101 (except in SC)
 Fax: 803-574-7300

Hersey Distributor:

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Form # S 211
 4M-0326

Westra, John

From: Jo Beeman [jo.beeman@beemanlaw.com]
Sent: Wednesday, June 09, 2004 7:09 PM
To: 'Scott Campbell'
Cc: Carol MacGregor; Terry Scanlan; John Westra (IDWR State); Rob Whitney (IDWR Western); Scott Campbell (cc)
Subject: RE: Measurement program: MacGregor/Pancheri



6124C Revised 9
June 2004 -att...

Scott,

The attached agreement has tracked changes which match Carol MacGregor's agreement to pay the maintenance with the period of time one or both meters are in place. The period of time is not less than one year or longer than three years. Carol has the election and responsibility for removal. There are no IDWR orders.

Jo

Josephine P. Beeman
Beeman & Associates, P.C.
Phone: 208-331-0950
Fax: 208-331-0954
jo.beeman@beemanlaw.com

-----Original Message-----

From: Scott Campbell [mailto:SLC@moffatt.com]
Sent: Wednesday, June 09, 2004 8:45 AM
To: jo.beeman@beemanlaw.com
Cc: TMSCANLAN@aol.com; joyce.angell@beemanlaw.com; cmacgregor@dctweb.net
Subject: RE: Measurement program: MacGregor/Pancheri

Jo,

While I appreciate your optimism about no impasse occurring after one year of measurements, I can not have my clients rely upon your positive outlook. The proposed agreement needs to be worded so my clients are not forced to expend more funds to seek an order from the Department which your client may oppose. Alternatively, the language requiring the flow meters to remain beyond the period of your client's agreement to pay the maintenance could be altered so that the meters will be removed at your clients' expense after one year.

Scott

>>> "Jo Beeman" <jo.beeman@beemanlaw.com> 6/8/2004 9:23:20 PM >>>
Scott,

I see no problem going forward with the Agreement. All the necessary commitments are in place for a year of measurement.

I expect Terry, Sherl, and IDWR to have recommendations regarding continued monitoring and maintenance after the first year. At that time, I'm certain IDWR won't hesitate to enter an order, if

necessary, but I really doubt that an impasse will occur.
Jo

Josephine P. Beeman
Beeman & Associates, P.C.
Phone: 208-331-0950
Fax: 208-331-0954
jo.beeman@beemanlaw.com

-----Original Message-----

From: Scott Campbell [mailto:SLC@moffatt.com]
Sent: Friday, June 04, 2004 4:58 PM
To: jo.beeman@beemanlaw.com
Cc: TMSANLAN@aol.com; joyce.angell@beemanlaw.com;
cmacgregor@dctweb.net
Subject: Re: Measurement program: MacGregor/Pancheri

Jo,

I have received your facsimile copy of the "revised Agreement," referenced in your e-mail, which was executed by your client.

The revisions do not resolve the problem which I identified in my prior e-mail of May 6, 2004. Your modification of paragraph one would place my clients in the position of paying for the maintenance of the measuring meters for an indefinite period after one year unless they obtain an order from the Department of Water Resources or unless your client consents to removal of the meters.

Sherl Chapman has indicated that maintenance of these meters can be a significant cost item and lack of maintenance can produce inaccurate measurement data. Based upon these concerns, I can not recommend to my clients that they execute the agreement with your revisions. Again, if your client insists upon the flow meters, my clients believe they should not be forced to incur additional costs (over an indefinite time period and in an undetermined amount). While they will cooperate, as I have indicated in prior communications with you, they do not believe they should be forced to expend their funds because your client wants data collection to benefit her water permit applications.

Given the June 20 deadline you established in prior communications for installation of the flow meters, please advise if you believe your client is willing to work towards a mutual resolution of this last issue.

Thank you for your anticipated cooperation.

Very truly,

Scott

>>> "Jo Beeman" <jo.beeman@beemanlaw.com> 5/18/2004 4:13:56 PM >>>
Scott,

As per Jo Beeman's instructions, attached is the revised Agreement, in final. In consideration of the Pancheris' concern stated in your May 6 email, the language related to maintenance costs of the flow meter has been clarified. With that clarification, there is no need to reference a hearing in the section related to maintenance costs or in the

section
related to flow meter removal. We hope that with these
clarifications,
the Pancheris will agree to sign the Agreement.

Dana Rose

From the computer of

Josephine P. Beeman

Beeman & Associates, P.C.

Phone: 208-331-0950

Fax: 208-331-0954

<mailto:jo.beeman@beemanlaw.com> jo.beeman@beemanlaw.com

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Moffatt Thomas Barrett Rock & Fields, Chartered
(208) 345-2000 (800) 422-2889

**

**

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Moffatt Thomas Barrett Rock & Fields, Chartered
(208) 345-2000 (800) 422-2889

**

Westra, John

From: Scott Campbell [SLC@moffatt.com]
Sent: Thursday, May 06, 2004 12:14 PM
To: jo.beeman@beemanlaw.com
Cc: TMSCANLAN@aol.com; cmacgregor@dctweb.net; jwestra@idwr.state.id.us; rwhitney@idwr.state.id.us; dll@moffatt.com.
Subject: Re: measurement program: MacGregor/Pancheri

Dear Jo,

I appreciate your client's agreement to most of the changes to the last draft of the agreement. I have one concern which arises because of the change suggested in your e-mail of the word "first" for "later." Because of the language which you provided in paragraph 4, the Pancheri's could be left in a position of having the flow meters in place up to a hearing, but Carol MacGregor may not provide written consent to the removal of the meters, and the Pancheris would be left with the cost of maintenance of these meters for an undetermined time period until written consent or an order from IDWR is obtained. Under your suggested change to paragraph 1, the maintenance costs would shift to the Pancheris as soon as a hearing takes place. Under my version, the maintenance costs would not shift to the Pancheris until Carol MacGregor consents to the removal of the meters.

Perhaps Carol MacGregor does not intend the unintended potential impact which could result from this change from "last" to "first." The suggested change would be acceptable if the language of paragraph 4 is changed to read:

4. Absent an order from IDWR or until a hearing is conducted on the protested Application for Permits Numbers 63-13912 and 65-13913, the flow meters are not to be removed without written consent of both parties.

Please let me know if this approach is acceptable or if you have some other alternative to deal with the potential problem I have identified. Thank you for your help. I am glad we are finally getting the bugs worked out.

Scott

>>> "Jo Beeman" <jo.beeman@beemanlaw.com> 5/3/2004 10:07:20 PM >>>
Dear Scott,

Carol MacGregor and Terry Scanlan have only one edit from your suggestions of April 16, 2004 on behalf of the Pancheris: the word "first" replaces the word "later", as shown below and on the attached agreement. This is based on the understanding that once the flow meters are removed, there would be no cause for maintenance. I attach the agreement with your additions and deletions marked. We can prepare signature blocks for the final version. Thank you for all your work.

Jo

Dr. MacGregor will pay for the meters and installation at each location. Dr. MacGregor will be responsible for maintenance of

the
flow meters until a hearing is conducted on the protested Application
for Permits Numbers 63-13912 and 65-13913, or until she provides
written
consent for the removal of the flow meters (pursuant to DATA
COLLECTION,
item number 4), which ever date is FIRST.

Josephine P. Beeman

Beeman & Associates, P.C.

Phone: 208-331-0950

Fax: 208-331-0954

<mailto:jo.beeman@beemanlaw.com> jo.beeman@beemanlaw.com

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Moffatt Thomas Barrett Rock & Fields, Chartered
(208) 345-2000 (800) 422-2889

Applications For Permit #65-13912 & #65-13913-Contested

Applicant: Carol MacGregor

J. Westra, Western Region

2/18/04

RE: IDWR Processing Sequence

8/02/99	Applications filed with IDWR for geothermal heating and commercial use. Protests are received from Pancheri
3/10/00	1 st Prehearing protest conference held, applicant does not appear.
6/20/00	Prehearing conference is held—protest is not resolved.
9/18/00	Hearing date is set for 11/14/00
11/03/00	IDWR Order issued to interrupt processing and cancel hearing
1/03/01	IDWR Order issued for discovery
1/25/01	Amended Discovery Order issued to extend deadlines
3/12/01	Monitoring agreement facilitated by the applicant and protestant Flow monitoring begins-Pancheri
6/06/01	IDWR order issued acknowledging the monitoring agreement
10/01/02	Flow monitoring at the Pancheri site is discontinued
11/28/02	Applicant requests total monitoring, test well monitoring
3/25/03	IDWR letter discusses applicant's request-related to test well
6/05/03	Test well proposal discussed by IDWR letter
6/12/03	Site visit by IDWR representatives
9/04/03	IDWR receives test well proposal from Scanlan Engineering
10/02/03	IDWR receives test well proposal analysis from S. Chapman, (Pancheri)
11/12/03	Test well proposal is rejected by IDWR

SPECIFICATIONS AND LOCATIONS FOR FLOW METERS

1. Flow meter for water right 65-12891 (Laura and Duane Pancheri):

Model (or equal): Water Specialties ML-03 (low velocity, 50 to 500 gpm flow range); Specifications attached.

Location of installed flow meter for 65-12891:

4-inch pipeline on south side of Brush Creek (See attached map):

Easting: 338646.50; Northing: 375210.42

(GPS coordinates, Scanlan Engineering, Arcview aerial photograph)

Point of Diversion for 65-12891 ("Pancheri Spring Source" on map identifies the infiltration gallery which is the common point of diversion for 65-12891 and 65-13332):

Easting: 338016.00; Northing: 375783.14

(GPS coordinates, Rob Whitney, IDWR field exam, June 2003)

2. Flow meter for water right 65-13332 (Joan and Darwin Pancheri):

Model (or equal): 1-inch Niagara MTX Model 122 (2 to 50 gpm flow range); Specifications attached show this model has a 1-1/4 inch connection.

Location of installed flow meter for 65-13332:

Discharge pipe in pump house (See attached map)

Easting: 338047.09; Northing: 375770.70

(GPS coordinates, Rob Whitney, IDWR field exam, June 2003)

Point of Diversion for 65-13332 ("Pancheri Spring Source" on map identifies the infiltration gallery which is the common point of diversion for 65-12891 and 65-13332):

Easting: 338016.00; Northing: 375783.14

(GPS coordinates, Rob Whitney, IDWR field exam, June 2003)

COSTS

1. Dr. MacGregor will pay for the meters and installation at each location. Dr. MacGregor will be responsible for maintenance of the flow meters until a hearing is conducted on the protested Application for Permits Numbers 63-13912 and 65-13913, or until she provides written consent for the removal of the flow meters (pursuant to DATA COLLECTION, item number 4), which ever date is FIRST. ~~for one year, following installation; after one year, continued maintenance will be at Dr. MacGregor's option.~~
2. The Pancheris may add continuous dataloggers to the totalizing flow meters, if

they wish at their expense. The Pancheris do not choose to add a continuous datalogger at the time the flow meters are installed, but may later.

INSTALLATION

1. Installation of both flow meters is to be completed by June 20, 2004. Both installation sites are on Pancheri property.
2. The contractor for the installations will be Interwest Supply.
3. The Pancheris may assist, if they wish.
4. Sherl Chapman will be contacted so that he may be present at the installation.
5. Dr. MacGregor will make arrangements to complete the installations by June 20, 2004.
6. Following June 20, 2004, if the Pancheris want to add a continuous datalogger to either or both flow meters, Terry Scanlan must review and agree to the datalogger specifications; and Mr. Scanlan must be contacted so that he may be present at the installation.

DATA COLLECTION

1. Once installed, the totalizing flow meters can be read by Terry Scanlan, or Sherl Chapman, or a mutual designee of Mr. Chapman and Mr. Scanlan, or IDWR staff, including Water District 65 personnel.
2. The totalizing flow meters installed on the Pancheri properties can be accessed for purposes of reading on Monday between the hours of 12:00 noon and 3:00 p.m. every two weeks following execution of this agreement. Access to the Pancheri properties for reading the totalizing flow meters may occur on a more frequent basis as agreed in writing by the parties.
- ~~2. Notice in advance of access for measurement: at least 24 hours in advance, the Pancheris will be given information as to what day and approximately what time, measurement will occur and by whom. The Pancheris will designate a phone number and an email address for purposes of receiving this notice. Notice is~~

~~complete upon direct phone contact or transmission of an email.~~

3. The flow meters are to be monitored for a minimum of a year.
4. Absent an order from IDWR, the flow meters are not to be removed without written consent of both parties.

Z:\2102\6124a

Applications For Permit #65-13912 & #65-13913-Protested

Applicant: Carol MacGregor

J. Westra, Western Region

2/18/04

RE: IDWR Processing Sequence

8/02/99	Applications filed with IDWR for geothermal heating and commercial use. Protests are received from Pancheri
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6/05/03	Test well proposal discussed by IDWR letter
6/12/03	Site visit by IDWR representatives
9/04/03	IDWR receives test well proposal from Scanlan Engineering
10/02/03	IDWR receives test well proposal analysis from S. Chapman, (Pancheri)
11/12/03	Test well proposal is rejected by IDWR

Applications For Permit #65-13912 & #65-13913-Protested

Applicant: Carol MacGregor

J. Westra, Western Region

2/18/04

RE: IDWR Processing Sequence

8/02/99	Applications filed with IDWR for geothermal heating and commercial use. Protests are received from Pancheris
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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

February 26, 2004

Via Email and Hand Delivery

RECEIVED

John Westra
Idaho Department of Water Resources
2735 Airport Way
Boise, ID 83705

FEB 27 2004

WATER RESOURCES
WESTERN REGION

Re: Application 65-13912 (Carol Lynn MacGregor)
Measurement of 65-12891 and 65-13332 (Pancheri)

Dear John:

Carol MacGregor's water right application 65-13912 seeks to divert .5 cfs of unappropriated flow from Belvidere Hot Springs. Joan & Darwin Pancheri and Laura & Duane Pancheri protested the application. In order for Dr. MacGregor to proceed forward with Application 65-13912, the parties have discussed and would hope to provide IDWR a written agreement regarding the installation of two totalizing flow meters and the monitoring of data from the flow meters. One flow meter would measure diversions under license 65-12891 (Laura & Duane Pancheri); the other flow meter would measure diversions under permit 65-13332 (Joan & Darwin Pancheri).

Dr. MacGregor and the Pancheris have already corresponded with IDWR regarding measurement and monitoring of the Pancheris' diversions and water use, following the end of the parties' previous monitoring agreement. The monitoring which ended in 2001 did not include any continuous diversion measurements. We refer you to Terry Scanlan's letter of November 22, 2002, and Scott Campbell's letter of January 16, 2003.

We hope that a written agreement regarding monitoring and measurement with totalizing flow meters will be provided to you no later than March 15, 2004. We enclose a copy of our letter to Scott Campbell which seeks that result and includes the same information we are providing with our letter to you.

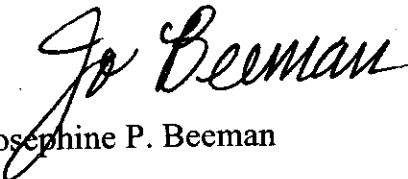
John Westra
Re: 65-12891 and 65-13332
February 26, 2004
Page 2

If the parties do not have a written agreement to you by March 15, 2004, please consider this letter as a request to order immediately the installation of totalizing flow meters on the pipelines which supply license 65-12891 and permit 65-13332. The attachment to this letter provides specific information about equipment, location, installation, costs, and data collection. Since the flow meters will be located on pipelines, we also include GPS coordinates for the point of diversion of each of the Pancheri water rights.

As noted in the attachment, Dr. MacGregor requests that installation be completed by June 20, 2004, with measurements for at least one year. Under either an agreement or order, she has offered to pay for purchase and installation of the flow meters.

Sincerely,

BEEMAN & ASSOCIATES, P.C.



Josephine P. Beeman

JPB:ja
Enclosures
cc: Carol MacGregor (w/ enclosures)
Terry Scanlan (w/enclosures)
Scott Campbell, Counsel for Pancheris (w/ enclosures)
ZA 2102\6124

Westra, John

From: Jo Beeman [jo.beeman@beemanlaw.com]
Sent: Friday, March 26, 2004 4:44 PM
To: Scott Campbell
Cc: Scott Campbell (cc); Terry Scanlan; John Westra (IDWR State); Rob Whitney (IDWR Western); Carol MacGregor
Subject: FW: MacGregor & Pancheri measurements

Scott,

I haven't heard from you. Let me know by the end of the day Monday what your comments are, if any, to my March 16 email (below). Thanks. Jo

Josephine P. Beeman
 Beeman & Associates, P.C.
 Phone: 208-331-0950
 Fax: 208-331-0954
jo.beeman@beemanlaw.com

-----Original Message-----

From: Jo Beeman [mailto:jo.beeman@beemanlaw.com]
Sent: Tuesday, March 16, 2004 6:32 PM
To: Scott Campbell
Cc: Scott Campbell (cc); Terry Scanlan
Subject: MacGregor & Pancheri measurements

Scott,

Terry Scanlan and I have gone over my notes from your phone call last Friday. I have discussion below. 6124AArevised (attached) shows what the changes would look like. In addition, I've highlighted in yellow the changes which are new from Carol MacGregor or need information from the Pancheris. The specs are from the February 27 email. Thanks. I don't have jury duty tomorrow, but could again Thursday and Friday. Jo

Pancheris' comments with response on behalf of Carol MacGregor:

1. Meter specifications for Darwin Pancheri's pipe: The pipe is 1-1/4 inch in diameter. The specification sheet shows that the nominal one-inch flow meter has both one inch and 1-1/4 inch connections. This should address Sherl Chapman's concern that the meter and pipe diameter be the same.
2. Cost: The Pancheris don't choose to add a continuous datalogger at this time, but may later.
3. Installation: Contact Sherl Chapman so he can be present when the installation is done;

3/29/2004

Pancheris had no objection as to installer. If the Pancheris want to add a continuous datalogger later, Terry Scanlan needs to review and agree to the specifications; Contact Terry Scanlan so that he may be present when the dataloggers are installed.

4. Data Collection: The Pancheris want actual notice of the day and approximate time at least 24 hours prior to any access for reading the totalizing flow meters. In response, I recommend that the Pancheris provide one phone number (their own) and an email address (their own or their legal counsel). Notice is deemed complete upon direct phone contact to Pancheris (at the one phone number) or transmission of an email.
5. Data Collection: (Item #3): In response to the Pancheris: Absent an order from IDWR, the flow meters are not to be removed without written consent of both parties.

Carol MacGregor has the following point of clarification:

1. Cost: Dr. MacGregor will be responsible for maintenance of the flow meters for one year, following installation; after one year, continued maintenance will be at Dr. MacGregor's option.

Josephine P. Beeman
Beeman & Associates, P.C.
Phone: 208-331-0950
Fax: 208-331-0954
jo.beeman@beemanlaw.com

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3/29/2004

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SPECIFICATIONS AND LOCATIONS FOR FLOW METERS

1. Flow meter for water right 65-12891 (Laura and Duane Pancheri):
Model (or equal): Water Specialties ML-03 (low velocity, 50 to 500 gpm flow range); Specifications attached.

Location of installed flow meter for 65-12891:

4-inch pipeline on south side of Brush Creek (See attached map):

Easting: 338646.50; Northing: 375210.42

(GPS coordinates, Scanlan Engineering, Arcview aerial photograph)

Point of Diversion for 65-12891 ("Pancheri Spring Source" on map identifies the infiltration gallery which is the common point of diversion for 65-12891 and 65-13332):

Easting: 338016.00; Northing: 375783.14

(GPS coordinates, Rob Whitney, IDWR field exam, June 2003)

2. Flow meter for water right 65-13332 (Joan and Darwin Pancheri):
Model (or equal): 1-inch Niagara MTX Model 122 (2 to 50 gpm flow range); Specifications attached show this model has a 1-1/4 inch connection.

Location of installed flow meter for 65-13332:

Discharge pipe in pump house (See attached map)

Easting: 338047.09; Northing: 375770.70

(GPS coordinates, Rob Whitney, IDWR field exam, June 2003)

Point of Diversion for 65-13332 ("Pancheri Spring Source" on map identifies the infiltration gallery which is the common point of diversion for 65-12891 and 65-13332):

Easting: 338016.00; Northing: 375783.14

(GPS coordinates, Rob Whitney, IDWR field exam, June 2003)

COSTS

1. Dr. MacGregor will pay for the meters and installation at each location. Dr. MacGregor will be responsible for maintenance of the flow meters for one year, following installation; after one year, continued maintenance will be at Dr. MacGregor's option.
2. The Pancheris may add continuous dataloggers to the totalizing flow meters, if they wish at their expense. The Pancheris do not choose to add a continuous datalogger at the time the flow meters are installed, but may later.

INSTALLATION

1. Installation of both flow meters is to be completed by June 20, 2004. Both installation sites are on Pancheri property.
2. The contractor for the installations will be Interwest Supply.
3. The Pancheris may assist, if they wish.
4. Sherl Chapman will be contacted so that he may be present at the installation.
- 4.5. Dr. MacGregor will make arrangements to complete the installations by June 20, 2004.
6. Following June 20, 2004, if the Pancheris want to add a continuous datalogger to either or both flow meters, Terry Scanlan must review and agree to the datalogger specifications; and Mr. Scanlan must be contacted so that he may be present at the installation.

DATA COLLECTION

1. Once installed, the totalizing flow meters can be read at any time by Terry Scanlan, or Sherl Chapman, or a mutual designee of Mr. Chapman and Mr. Scanlan, or IDWR staff, including Water District 65 personnel.
2. Notice in advance of access for measurement: at least 24 hours in advance, the Pancheris will be given information as to what day and approximately what time, measurement will occur and by whom. The Pancheris will designate a phone number and an email address for purposes of receiving this notice. Notice is complete upon direct phone contact or transmission of an email.
- 2.3. The flow meters are to be monitored for a minimum of a year.
3. Absent an order from IDWR, the flow meters are not to be removed without written consent of both parties. Absent an order from IDWR, the flow meter is not to be removed without written consent of both parties. Removal by the Pancheris at any time after a year will constitute agreement that the data collected to that time will be the measurement data for evaluation of future water use under 65-12891 and

~~65-13332.~~

4.

Z:\2102\6124a

Branom Instrument Co.

Manufacturers' Representatives



Spokane office : N. 626 Helena
Spokane, WA 99202

Phone: 509-534-9395
Fax: 509-534-9397

FACSIMILE TRANSMITTAL SHEET

Date 8-15-02

Company SCANLIN Engineering

City Boise

Phone _____ FAX 208-383-4156

Attention Terry

Reference Totalizing Flow meter

From Tim Holliday

Total number of pages including this sheet 5

MESSAGE:

(1) Aalignt Niagara P/N 60480 P004

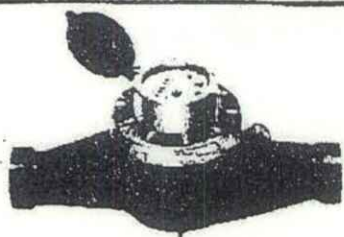
1" model 122, 250°F, WITH Totalizing register

The Niagara Series MTX flow meters are ideal for the measurement of cold or hot water in commercial and industrial applications. These high performance meters are unsurpassed in the marketplace today.

The Series MTX employs the latest technical achievements in multijet impeller meters. The impeller is the only moving part in the flow stream and is magnetically coupled to the register.

Features

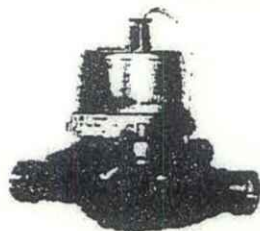
- Brass main case resists corrosion.
- The hermetically sealed magnetically driven register prevents condensation or fogging due to variations of temperature. The magnetic coupling eliminates packing leaks.
- An impeller is the only moving part in the precision molded measuring chamber which assures long life and accuracy at all flow rates within the range of the meter.
- The multijet design balances the force on the impeller and extends the life of the meter.
- Modular construction allows ease of service and repair in the field.
- The strainer in the inlet port removes foreign material from the flow stream that would damage or clog the meter.



Model 122 - hot

Model 123 - cold

Displays continuous totalization.



Model 413 - hot

Displays continuous totalization and provides a calibrated contact closure for hot water.



Model 433 - cold

Displays continuous totalization and provides a calibrated contact closure for cold water.



Model 420 - cold

Model 421 - hot

Displays continuous totalization.

Options:

- It can be fitted with up to two Model 840 Switches to provide a calibrated contact closure.
- In addition a Model 860 Pulse Transmitter can be utilized for a high frequency signal.

Specifications

Models 122 - hot and 123 - cold

Size		3/4"	1"	1 1/2"	2"
Flow Rate		1-20 gpm	2-50 gpm	3-85 gpm	4-130 gpm
Pressure		250 psi	250 psi	250 psi	250 psi
Temperature	Cold	120 F	120 F	120 F	120 F
	Hot	250 F	250 F	250 F	250 F
Accuracy		± 1%	± 1%	± 1%	± 1%
Registration *		US Gallons	US Gallons	US Gallons	US Gallons
Threads/Flanges		1" NPT	1 1/4" NPT	2" NPT	6 1/2" Flg

* Other units of registration available (consult factory).

Model 413 - hot

Size		3/4"	1"	1 1/2"	2"
Flow Rate		1-20 gpm	2-50 gpm	3-85 gpm	4-130 gpm
Pressure		250 psi	250 psi	250 psi	250 psi
Temperature		250 F	250 F	250 F	250 F
Accuracy		± 1%	± 1%	± 1%	± 1%
Registration *		US Gallons	US Gallons	US Gallons	US Gallons
Gallons per Contact		1	1	10	10
Threads/Flanges		1" NPT	1 1/4" NPT	2" NPT	6 1/2" Flg

* Other units of registration available (consult factory).

Models 420 - cold and 421 - hot

Size		3/4"	1"	1 1/2"	2"
Flow Rate		1-20 gpm	2-50 gpm	3-85 gpm	4-130 gpm
Pressure		250 psi	250 psi	250 psi	250 psi
Temperature	Cold	120 F	120 F	120 F	120 F
	Hot	250 F	250 F	250 F	250 F
Accuracy		± 1%	± 1%	± 1%	± 1%
Registration *		US Gallons	US Gallons	US Gallons	US Gallons
Gallons per contact with 840 Switch		10 or 100	10 or 100	10 or 100	10 or 100
Full Scale Freq. HZ with 860 Pulsar **	Cold	20.63	16.66	14.16	21.66
	Hot	38.57			
Pulses per gallon	Cold	61.89	20	10	10
	Hot	115.71			
Threads/Flanges		1" NPT	1 1/4" NPT	2" NPT	6 1/2" Flg

* Other units of registration available (consult factory).

Model 433 - cold

Size	3/4"	1"	1 1/2"	2"
Flow Rate	1-20 gpm	2-50 gpm	3-85 gpm	4-130 gpm
Pressure	250 psi	250 psi	250 psi	250 psi
Temperature	120 F	120 F	120 F	120 F
Accuracy	± 1%	± 1%	± 1%	± 1%
Registration *	US Gallons	US Gallons	US Gallons	US Gallons
Gallons per contact	1	1	10	10
Threads/Flanges	1" NPT	1 1/4" NPT	2" NPT	6 1/2" Flg

* Other units of registration available (contact factory).

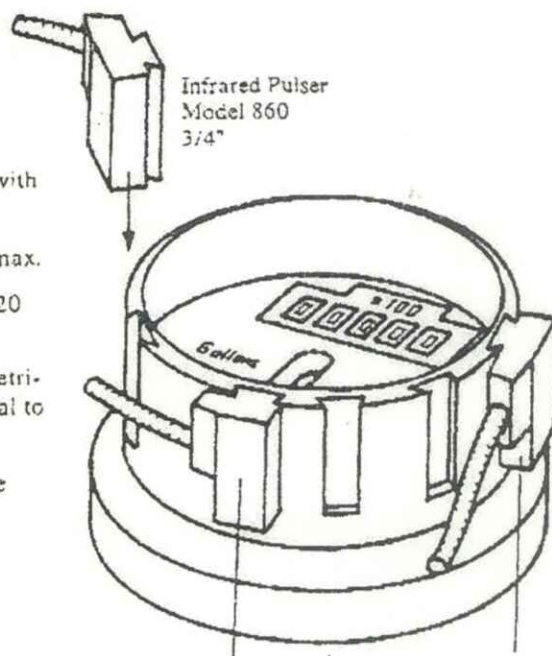
Wetted Material Of Construction

Body:	High Strength Brass Body for 2" flanged is cast iron
Measuring Element:	120 F - Polystyrene 250 F - Noryl
Impeller:	120 F - Polystyrene 250 F - Noryl
O Ring Seals:	EPDM

Options for Models 420 and 421

Model 860 Infrared Pulser

- Provides a high frequency pulse output for interface with Hersey instrumentation.
- Supply Voltage: 30 VDC max.
- Current Requirement: 15-20 mA
- Output Signal: Non-symmetrical square pulse train (equal to supply voltage).
- Wiring: Pigtail, 36", 3-wire 22 gauge.



Infrared Pulser
Model 860
1" - 2"

Model 840 Reed Switch

- Provides a calibrated contact closure.
- Contact Rating
Switching Voltage: 30 VDC max.
Current DC Resistive 0.2A max.
Wattage: 3 WDC max.
- Wiring: Pigtail, 36", 3-wire 22 gauge.

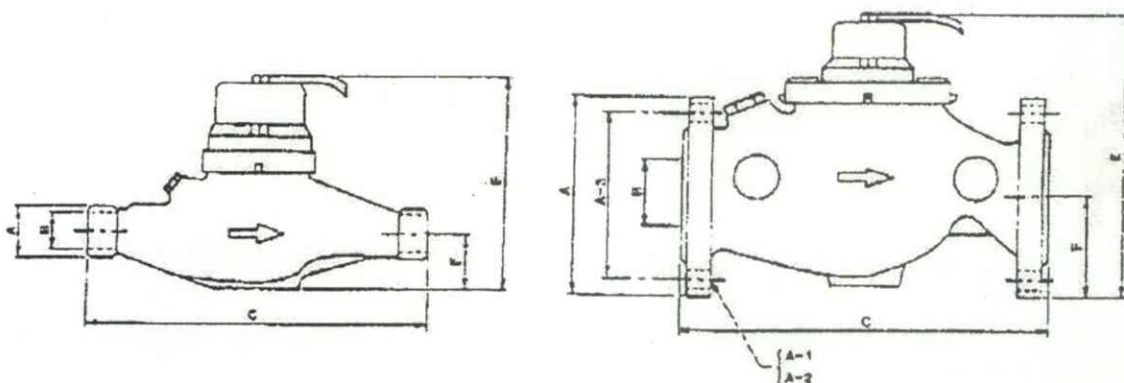
Note: When ordering MTA with 860 pulser that is not being used with Hersey Measurement instrumentation, order a pre-amp to eliminate the need for current resistors.

Reed Switch
Model 840
3/4" - 2"

Dimensions

All Models 3/4" - 1 1/2"

All Models 2"



Size	inches (mm)	3/4"	1"	1 1/2"	2"
Threads/Flanges	A	1" NPT (25.4)	1 1/4" NPT (31.75)	2" NPT (50.80)	6 1/2" (165.10)
Bolt Holes	A-1	---	---	---	4
Bolt Holes Dia.	A-2	---	---	---	5/8" (15.88)
Bolt Circle Dia.	A-3	---	---	---	4 3/4" (120.65)
Bore Dia.	B	3/4" Nominal	1" Nominal	1 1/2" Nominal	2" Nominal
Length	C	7 1/2" (190.50)	10 1/2" (266.70)	12" (304.80)	10 3/4" (273.05)
Width	D	3 3/4" (95.25)	4" (101.60)	5 1/2" (139.70)	6 1/2" (165.10)
Height	E*	6" (152.40)	7 1/4" (184.15)	8 3/4" (222.25)	10 1/2" (266.70)
Center Line to Base	F	1 1/4" (31.75)	1 1/2" (38.10)	1 3/4" (44.45)	3 1/8" (79.37)
Weight lbs (kg)		4 1/2 lbs. (2.04)	6 1/2 lbs. (2.9)	11 1/2 lbs. (5.2)	27 1/2 lbs. (12.5)

* For 123/420 hot water meters, add 1 1/2 inches.



A Division of Flow Measurement, Inc.

Phone: (616) 574-1860
 (616) 574-2101 (Spartanburg, SC)
 Fax: (616) 574-7300

Hersey Distributor:

Hersey liquid level, flow, and flow measurement products are updated on a continual basis of technical improvement. Hersey Measurement Company reserves the right to change specifications without notice. Hersey Measurement Company is an equal opportunity employer. ©1988 Hersey Measurement Company. All rights reserved.

Form # S 211
 4M-0396

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

June 4, 2004

Scott Campbell
Moffatt, Thomas, Barrett, Rock & Fields, Chtd.
P.O. Box 829
Boise, ID 83701-0829

Re: *Measurement Agreement*

Dear Scott:

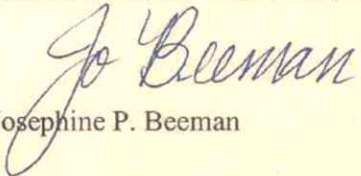
I am forwarding the Measurement Agreement we sent to you on May 18, 2004. Carol MacGregor has signed the Agreement and will schedule installation of the flow meters for no later than June 20.

In the communications to date, Dr. MacGregor and the Pancheris agree on the specifications and locations for the flow meters, as well as installation and access for data collection. This final version of the Agreement, sent to you May 18, 2004, incorporates changes that address the Pancheris' concerns about maintenance and removal of the flow meters, discussed in your May 6, 2004 email.

Please have your clients sign the attached Agreement and return the original to us by June 13, 2004. Call me if you have any questions.

Sincerely,

BEEMAN & ASSOCIATES, P.C.



Josephine P. Beeman

DHR:ja
Enclosure
cc: Carol MacGregor
Terry Scanlan
John Westra, IDWR Western
Rob Whitney, IDWR Western
Z:\2102\6230

**AGREEMENT FOR
SPECIFICATIONS AND LOCATIONS FOR FLOW METERS**

1. Flow meter for water right 65-12891 (Laura and Duane Pancheri):
Model (or equal): Water Specialties ML-03 (low velocity, 50 to 500 gpm flow range); Specifications attached.

Location of installed flow meter for 65-12891:
4-inch pipeline on south side of Brush Creek (See attached map):
Easting: 338646.50; Northing: 375210.42
(GPS coordinates, Scanlan Engineering, Arcview aerial photograph)
Point of Diversion for 65-12891 ("Pancheri Spring Source" on map identifies the infiltration gallery which is the common point of diversion for 65-12891 and 65-13332):
Easting: 338016.00; Northing: 375783.14
(GPS coordinates, Rob Whitney, IDWR field exam, June 2003)
2. Flow meter for water right 65-13332 (Joan and Darwin Pancheri):
Model (or equal): 1-inch Niagara MTX Model 122 (2 to 50 gpm flow range); Specifications attached show this model has a 1-1/4 inch connection.

Location of installed flow meter for 65-13332:
Discharge pipe in pump house (See attached map)
Easting: 338047.09; Northing: 375770.70
(GPS coordinates, Rob Whitney, IDWR field exam, June 2003)
Point of Diversion for 65-13332 ("Pancheri Spring Source" on map identifies the infiltration gallery which is the common point of diversion for 65-12891 and 65-13332):
Easting: 338016.00; Northing: 375783.14
(GPS coordinates, Rob Whitney, IDWR field exam, June 2003)

COSTS

1. Dr. MacGregor will pay for the meters and installation at each location. Dr. MacGregor will be responsible for maintenance of the flow meters for one year, following installation; after one year, continued maintenance will be at Dr. MacGregor's option. If Dr. MacGregor chooses not to continue maintenance after one year, the Pancheris may choose to be responsible for maintenance, but are not otherwise obligated by this agreement.
2. The Pancheris may add continuous dataloggers to the totalizing flow meters, if they wish at their expense. The Pancheris do not choose to add a continuous datalogger at the time the flow meters are installed, but may later.

INSTALLATION

1. Installation of both flow meters is to be completed by June 20, 2004. Both installation sites are on Pancheri property.
2. The contractor for the installations will be Interwest Supply.
3. The Pancheris may assist, if they wish.
4. Sherl Chapman will be contacted so that he may be present at the installation.
5. Dr. MacGregor will make arrangements to complete the installations by June 20, 2004.
6. Following June 20, 2004, if the Pancheris want to add a continuous datalogger to either or both flow meters, Terry Scanlan must review and agree to the datalogger specifications; and Mr. Scanlan must be contacted so that he may be present at the installation.

DATA COLLECTION

1. Once installed, the totalizing flow meters can be read by Terry Scanlan, or Sherl Chapman, or a mutual designee of Mr. Chapman and Mr. Scanlan, or IDWR staff, including Water District 65 personnel.
2. The totalizing flow meters installed on the Pancheri properties can be accessed for purposes of reading on Monday between the hours of 12:00 noon and 3:00 p.m. every two weeks following execution of this agreement. Access to the Pancheri properties for reading the totalizing flow meters may occur on a more frequent basis as agreed in writing by the parties.
3. The flow meters are to be monitored for a minimum of a year.
4. Absent an order from IDWR, the flow meters are not to be removed without written consent of both parties.

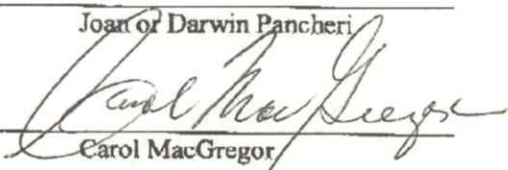
Date: June _____, 2004

Laura or Duane Pancheri

Date: June _____, 2004

Joan or Darwin Pancheri

Date: June 3, 2004



Carol MacGregor

Z:\2102\6124AA

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

February 26, 2004

Via Email and Hand Delivery

RECEIVED

John Westra
Idaho Department of Water Resources
2735 Airport Way
Boise, ID 83705

FEB 27 2004

WATER RESOURCES
WESTERN REGION

Re: Application 65-13912 (Carol Lynn MacGregor)
Measurement of 65-12891 and 65-13332 (Pancheri)

Dear John:

Carol MacGregor's water right application 65-13912 seeks to divert .5 cfs of unappropriated flow from Belvidere Hot Springs. Joan & Darwin Pancheri and Laura & Duane Pancheri protested the application. In order for Dr. MacGregor to proceed forward with Application 65-13912, the parties have discussed and would hope to provide IDWR a written agreement regarding the installation of two totalizing flow meters and the monitoring of data from the flow meters. One flow meter would measure diversions under license 65-12891 (Laura & Duane Pancheri); the other flow meter would measure diversions under permit 65-13332 (Joan & Darwin Pancheri).

Dr. MacGregor and the Pancheris have already corresponded with IDWR regarding measurement and monitoring of the Pancheris' diversions and water use, following the end of the parties' previous monitoring agreement. The monitoring which ended in 2001 did not include any continuous diversion measurements. We refer you to Terry Scanlan's letter of November 22, 2002, and Scott Campbell's letter of January 16, 2003.

We hope that a written agreement regarding monitoring and measurement with totalizing flow meters will be provided to you no later than March 15, 2004. We enclose a copy of our letter to Scott Campbell which seeks that result and includes the same information we are providing with our letter to you.

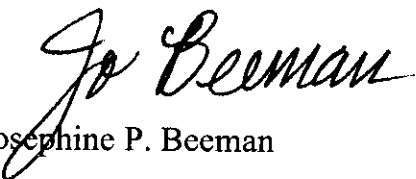
John Westra
Re: 65-12891 and 65-13332
February 26, 2004
Page 2

If the parties do not have a written agreement to you by March 15, 2004, please consider this letter as a request to order immediately the installation of totalizing flow meters on the pipelines which supply license 65-12891 and permit 65-13332. The attachment to this letter provides specific information about equipment, location, installation, costs, and data collection. Since the flow meters will be located on pipelines, we also include GPS coordinates for the point of diversion of each of the Pancheri water rights.

As noted in the attachment, Dr. MacGregor requests that installation be completed by June 20, 2004, with measurements for at least one year. Under either an agreement or order, she has offered to pay for purchase and installation of the flow meters.

Sincerely,

BEEMAN & ASSOCIATES, P.C.


Josephine P. Beeman

JPB:ja
Enclosures
cc: Carol MacGregor (w/ enclosures)
Terry Scanlan (w/enclosures)
Scott Campbell, Counsel for Pancheris (w/ enclosures)
Z:\2102\6124

FEB 27 2004

WATER RESOURCES
WESTERN REGION**SPECIFICATIONS AND LOCATIONS FOR FLOW METERS**

1. Flow meter for water right 65-12891 (Laura and Duane Pancheri):
Model (or equal): Water Specialties ML-03 (low velocity, 50 to 500 gpm flow range); Specifications attached.

Location of installed flow meter for 65-12891:

4-inch pipeline on south side of Brush Creek (See attached map):

Easting: 338646.50; Northing: 375210.42

(GPS coordinates, Scanlan Engineering, Arcview aerial photograph)

Point of Diversion for 65-12891 ("Pancheri Spring Source" on map identifies the infiltration gallery which is the common point of diversion for 65-12891 and 65-13332):

Easting: 338016.00; Northing: 375783.14

(GPS coordinates, Rob Whitney, IDWR field exam, June 2003)

2. Flow meter for water right 65-13332 (Joan and Darwin Pancheri):
Model (or equal): 1-inch Niagara MTX Model 122 (2 to 50 gpm flow range); Specifications attached.

Location of installed flow meter for 65-13332:

Discharge pipe in pump house (See attached map)

Easting: 338047.09; Northing: 375770.70

(GPS coordinates, Rob Whitney, IDWR field exam, June 2003)

Point of Diversion for 65-13332 ("Pancheri Spring Source" on map identifies the infiltration gallery which is the common point of diversion for 65-12891 and 65-13332):

Easting: 338016.00; Northing: 375783.14

(GPS coordinates, Rob Whitney, IDWR field exam, June 2003)

COSTS

1. Dr. MacGregor will pay for the meters and installation at each location.
2. The Pancheris may add continuous dataloggers to the totalizing flow meters, if they wish at their expense.

INSTALLATION

1. Installation of both flow meters is to be completed by June 20, 2004.
2. The contractor for the installations will be Interwest Supply.
3. The Pancheris may assist, if they wish.
4. Dr. MacGregor will make arrangements to complete the installations by June 20, 2004.

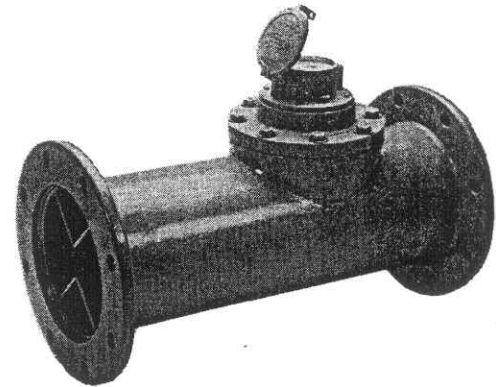
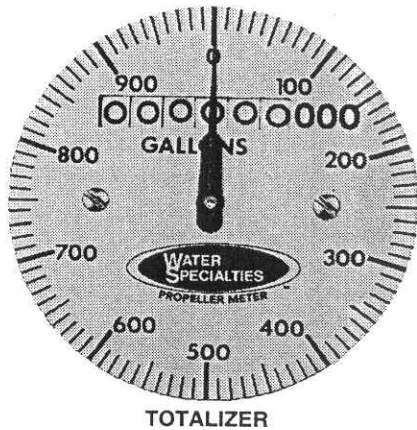
DATA COLLECTION

1. Once installed, the totalizing flow meters can be read at any time by Terry Scanlan, or Sherl Chapman, or a mutual designee of Mr. Chapman and Mr. Scanlan, or IDWR staff, including Water District 65 personnel.
2. The flow meters are to be monitored for a minimum of a year.
3. Removal by the Pancheris at any time after a year will constitute agreement that the data collected to that time will be the measurement data for evaluation of future water use under 65-12891 and 65-13332.

Z:\2102\6124a



MODEL ML-03
 150 psi FLANGED TUBE METER
 SEALED METER MECHANISM - MAGNETIC DRIVE
 SEALED TOTALIZER
 SIZES 2" thru 48"



DESCRIPTION

MODEL ML-03 FLANGED TUBE METERS are manufactured to the highest standards. Materials used on all meters and flow ranges for the low velocity meter meet or exceed AWWA standard C704. The flanged end tube design permits use in a wide range of applications with up to 150 psi working pressure. Flanged ends are 150 lb. AWWA class D flat face steel flanges. Fabricated steel meter tubes have straightening vanes and are protected internally and externally with 12-15 mils of NSF approved, fusion bonded epoxy resin.

INSTALLATION is made similar to placing a short length of flanged end pipe in the line. The meter can be installed in any of the following positions: vertically, horizontally or inclined on suction or discharge lines. The meter must have a full flow of liquid for proper accuracy. Fully opened gate valves, fittings or other obstructions that tend to set up flow disturbances should be a minimum of five pipe diameters upstream and two pipe diameters downstream from the meter.

PROPELLER is magnetically coupled with the drive mechanism through the sealed oil filled gearbox. This completely eliminates water entering the meter assembly, as well as the need for any packing gland. The propeller is a conical shaped three bladed propeller, injection molded of thermoplastic material resistant to normal water corrosion and deformity due to high flow velocities.

BEARING in propeller is a water lubricated ceramic sleeve and spindle bearing system with a ceramic/stainless steel spindle. Dual ceramic thrust bearings, standard on all meters, handle flows in both forward and reverse directions. The bearing design promotes extended periods of maintenance free propeller operation. Bearings within the sealed meter mechanism are shielded precision stainless steel bearings and are factory lubricated for the life of the meter.

TOTALIZER is o-ring sealed and magnetically coupled with the driving mechanism, and features a six digit totalizer with a full 3" diameter, 100 division, center sweep dial that permits extremely accurate readings for timing purposes in determining flow rates. The totalizer dial can be furnished in gallons, cubic feet, acre feet or any standard liquid measuring units. The bonnet, with padlock hasp, can be positioned in four different directions for the easiest possible reading when the meters are mounted in unusual positions.

CHANGE GEARS may be easily exchanged in the field when changing the dial, or when recalibrating for different pipe sizes. It is not necessary to remove pressure from the line for these changes.

O-RING SEALS are used at the meter head and all points where seals are required, making the meter mechanism completely immune to any of the corrosive effects of atmospheric moisture or the liquids measured by the meter assembly.

SPECIFICATIONS

ACCURACY plus or minus 2% of actual flow within the range specified for each meter size.

PRESSURE RANGE up to 150 PSI maximum working pressure.

TEMPERATURE RANGE 140° F Maximum. Consult factory for special construction for higher temperatures.

MINIMUM FLOWS as shown for each meter size and construction are required for accurate registration. See flow chart. NOTE: Minimum flow will be higher when auxiliary equipment is added.

MAXIMUM FLOWS as shown for each meter size and construction are rated for continuous operation. See flow chart.

INTERMITTENT FLOWS as shown for each meter size are rated for 10%-15% of the total time the meter is operating. Consult factory for High Velocity construction when intermittent flows are higher than shown on flow chart and/or when longer operating periods are required.

MATERIALS used in construction are chosen to minimize the corrosive effects of the liquids measured by the meter assembly.

MAGNETS are permanent ceramic type.

INTERIOR BEARINGS are shielded stainless steel.

PROPELLER BEARING is ceramic sleeve type.

PROPELLER SPINDLE is ceramic coated stainless steel.

PROPELLER is injection molded thermoplastic.

GEARBOX is cast bronze.

SEPARATOR and SHAFTS are stainless steel.

METER HEAD BOLTS are stainless steel on 2"-20" units and plated steel on 24"-48" units.

METER HEAD is cast iron or fabricated steel NSF approved, fusion bonded epoxy coated.

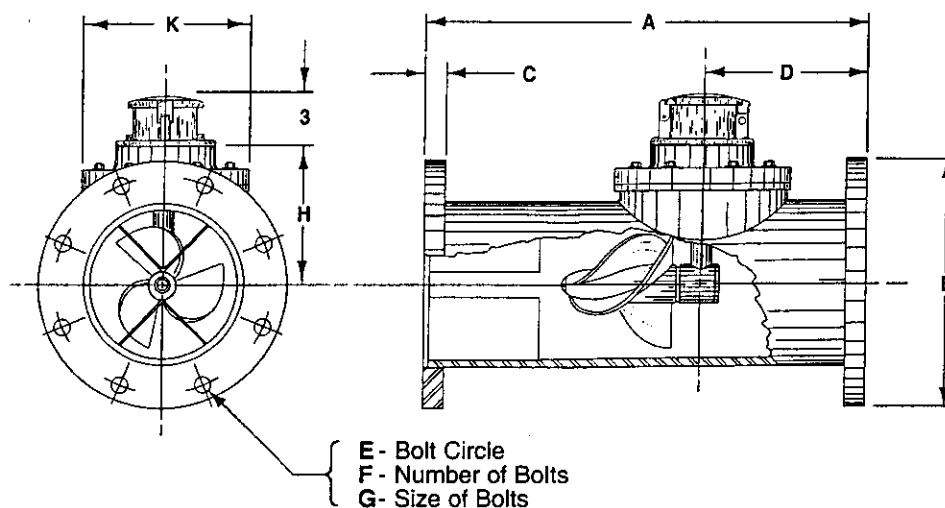
METER TUBE is fabricated steel with straightening vanes and coated, inside and out, with 12-15 mils of NSF approved, fusion bonded epoxy by the fluidized bed method.

OPTIONAL EQUIPMENT is available upon request, including totalizer extensions, special construction or materials and a wide range of controls and instruments for indicating, totalizing and recording flow data.

A 5 YEAR GUARANTEE IS AVAILABLE FOR 2"-36" METERS.

ORDERING INFO must be specified by the customer and should include minimum and maximum flow ranges, the temperature of the meter environment, the totalizer dial units required, the type of materials/construction needed and optional equipment desired.

MODEL ML-03
 150 psi FLANGED TUBE METER
 SEALED METER MECHANISM - MAGNETIC DRIVE
 SEALED TOTALIZER
 SIZES 2" thru 48"



METER & PIPE SIZE	*LOW VELOCITY CONSTRUCTION MIN. - MAX.	FLOW RANGES,GPM STANDARD CONSTRUCTION MIN. - MAX. - INT.	HIGH VELOCITY CONSTRUCTION MIN. - MAX.	DIMENSIONS									SHIPPING WEIGHT POUNDS
				A	B	C	D	E	F	G	H	K	
2	N/A	40-160-225	N/A	18	6	5/8	7	4 ³ / ₄	4	5/8	5 ¹ / ₄	9	70
3	40-250	45-250-350	N/A	18	7 ¹ / ₂	5/8	7	6	4	5/8	5 ¹ / ₄	9	70
4	50-500	55-500-700	200-700	18	9	5/8	7	7 ¹ / ₂	8	5/8	5 ¹ / ₄	9	80
6	90-1200	120-1200-1500	300-1500	22	11	11/16	9	9 ¹ / ₂	8	3/4	6 ¹ / ₄	9	120
8	100-1500	150-1500-2000	400-2500	24	13 ¹ / ₂	11/16	9	11 ³ / ₄	8	3/4	7 ¹ / ₄	9	150
10	125-2000	180-2000-3000	500-3500	26	16	11/16	10	14 ¹ / ₄	12	7/8	8 ¹ / ₂	11	200
12	150-2800	200-3000-3500	800-5000	28	19	13/16	10	17	12	7/8	9 ¹ / ₂	11	250
14	250-3750	300-4000-4500	1000-6000	42	21	15/16	12	18 ³ / ₄	12	1	10 ¹ / ₂	13 ¹ / ₂	350
16	350-4750	400-5000-6000	1200-7500	48	23 ¹ / ₂	1	12	21 ¹ / ₄	16	1	11 ¹ / ₂	13 ¹ / ₂	570
18	450-5625	700-6000-7500	1500-9000	54	25	1 ¹ / ₁₆	15	22 ³ / ₄	16	1 ¹ / ₈	12 ¹ / ₂	13 ¹ / ₂	665
20	550-6875	850-8000-9000	2000-12000	60	27 ¹ / ₂	1 ¹ / ₈	15	25	20	1 ¹ / ₈	13 ¹ / ₂	13 ¹ / ₂	780
24	800-10000	1000-10000-13500	3000-15000	72	32	1 ¹ / ₄	18	29 ¹ / ₂	20	1 ¹ / ₄	17 ¹ / ₂	21	1250
30	1200-15000	1800-15000-21000	4000-25000	84	38 ³ / ₄	1 ³ / ₈	18	36	28	1 ¹ / ₄	20 ¹ / ₂	21	2010
36	1500-20000	2000-20000-30000	5000-35000	96	46	1 ⁵ / ₈	20	42 ³ / ₄	32	1 ¹ / ₂	23 ¹ / ₂	21	2840
42	2000-28000	3000-30000-40000	6000-50000	96	53	1 ³ / ₄	24	49 ¹ / ₂	36	1 ⁵ / ₈	28	32	4300
48	2500-35000	5500-35000-50000	7000-60000	96	59 ¹ / ₂	1 ⁷ / ₈	24	56	44	1 ⁵ / ₈	31	32	4730

Standard construction will be supplied for all main line meters unless special flow range, materials, or construction are required.

* Low velocity (LV) construction has the same low and maximum flow rates as AWWA C704.



Visit our Website: www.mccrometer.com
 E-Mail: info@mccrometer.com

3255 WEST STETSON AVENUE • HEMET, CALIFORNIA 92343-7799 USA
 TEL: 909-652-6811 • FAX: 909-652-3078

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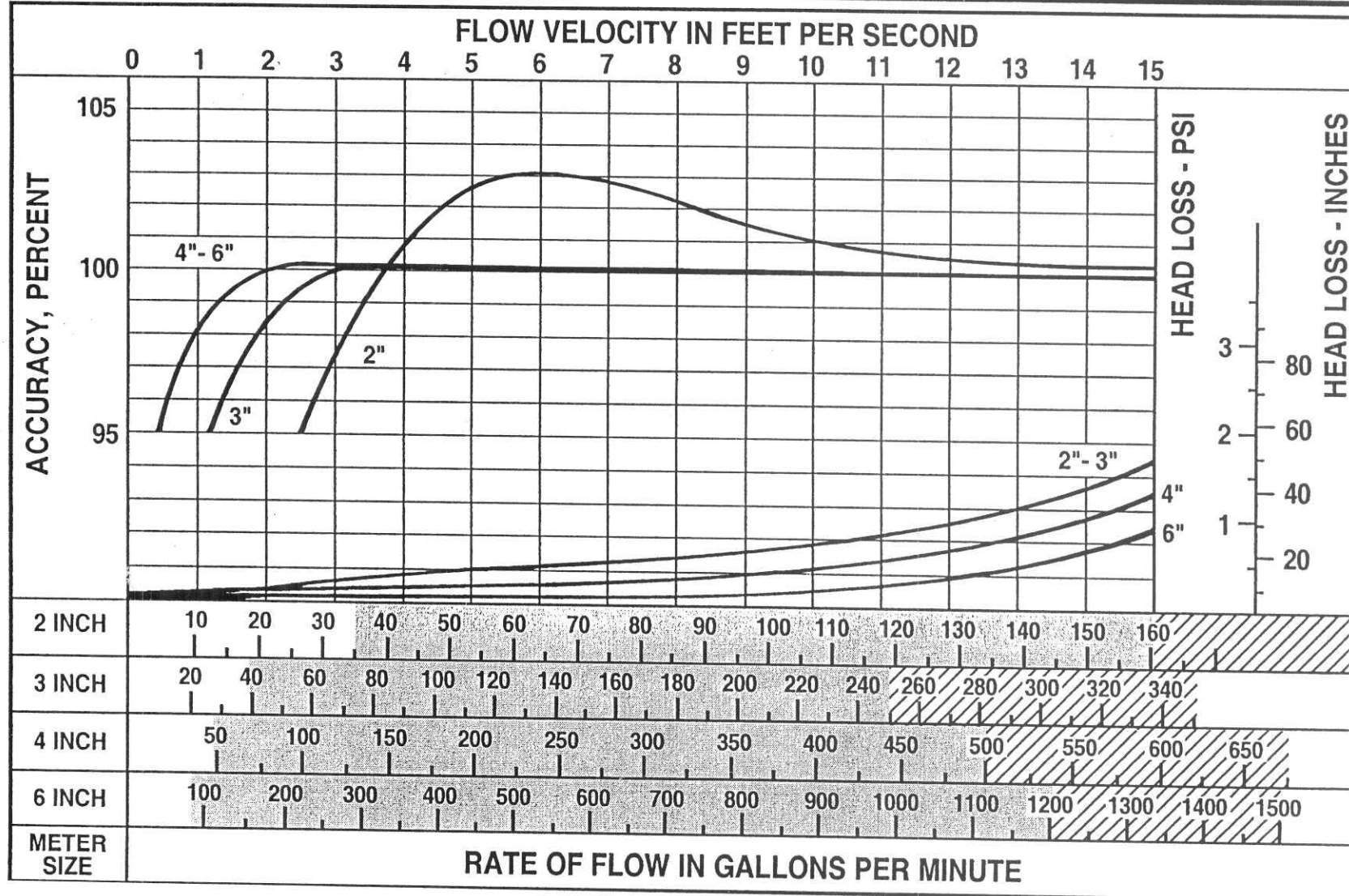


PROPELLER METERS ACCURACY AND HEAD LOSS CURVES



McCrometer

3255 WEST STETSON AVENUE • HEMET, CALIFORNIA 92545-7799 USA • TEL: 909-652-6811 • FAX: 909-652-3078
Visit our Website: www.mccrometer.com • E-Mail: info@mccrometer.com



Branom Instrument Co.

Manufacturers' Representatives



Spokane office : N. 626 Helena
Spokane, WA 99202

Phone: 509-534-9395
Fax: 509-534-9397

FACSIMILE TRANSMITTAL SHEET

Date 8-15-02

Company SCAN/IN Engineering

City Boise

Phone _____ FAX 208-383-4156

Attention Terry

Reference Totalizing Flow meter

From Tim Holliday

Total number of pages including this sheet 5

MESSAGE: _____

(1) Aalient Niagara PIN 60480 P004
1" model 122, 250°F, WITH Totalizing register



NIAGARA
LIQUID METERS

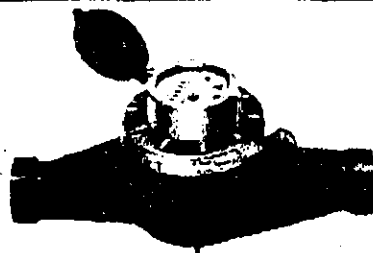
Series MTX

The Niagara Series MTX flow-meters are ideal for the measurement of cold or hot water in commercial and industrial applications. These high performance meters are unsurpassed in the marketplace today.

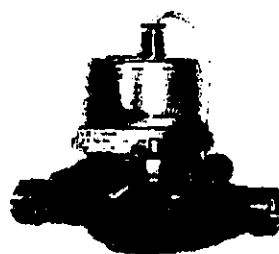
The Series MTX employs the latest technical achievements in multi-jet impeller meters. The impeller is the only moving part in the flow stream and is magnetically coupled to the register.

Features

- Brass main case resists corrosion.
- The hermetically sealed magnetically driven register prevents condensation or fogging due to variations of temperature. The magnetic coupling eliminates packing leaks.
- An impeller is the only moving part in the precision molded measuring chamber which assures long life and accuracy at all flow rates within the range of the meter.
- The multi-jet design balances the force on the impeller and extends the life of the meter.
- Modular construction allows ease of service and repair in the field.
- The strainer in the inlet port removes foreign material from the flow stream that would damage or clog the meter.



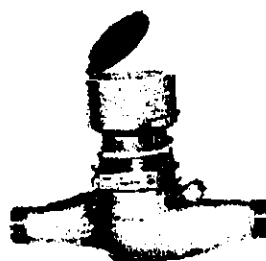
Model 122 - hot
Model 123 - cold
Displays continuous totalization.



Model 413 - hot
Displays continuous totalization and provides a calibrated contact closure for hot water.



Model 433 - cold
Displays continuous totalization and provides a calibrated contact closure for cold water.



Model 420 - cold
Model 421 - hot
Displays continuous totalization.
Options:
• It can be fitted with up to two Model 840 Switches to provide a calibrated contact closure.
• In addition a Model 860 Pulse Transmitter can be utilized for a high frequency signal.

Specifications

Models 122 - hot and 123 - cold

Size		3/4"	1"	1 1/2"	2"
Flow Rate		1-20 gpm	2-50 gpm	3-85 gpm	4-130 gpm
Pressure		250 psi	250 psi	250 psi	250 psi
Temperature	Cold	120 F	120 F	120 F	120 F
	Hot	250 F	250 F	250 F	250 F
Accuracy		± 1%	± 1%	± 1%	± 1%
Registration *		US Gallons	US Gallons	US Gallons	US Gallons
Threads/Flanges		1" NPT	1 1/4" NPT	2" NPT	6 1/2" Flg

* Other units of registration available (consult factory).

Model 413 - hot

Size		3/4"	1"	1 1/2"	2"
Flow Rate		1-20 gpm	2-50 gpm	3-85 gpm	4-130 gpm
Pressure		250 psi	250 psi	250 psi	250 psi
Temperature		250 F	250 F	250 F	250 F
Accuracy		± 1%	± 1%	± 1%	± 1%
Registration *		US Gallons	US Gallons	US Gallons	US Gallons
Gallons per Contact		1	1	10	10
Threads/Flanges		1" NPT	1 1/4" NPT	2" NPT	6 1/2" Flg

* Other units of registration available (consult factory).

Models 420 - cold and 421 - hot

Size		3/4"	1"	1 1/2"	2"
Flow Rate		1-20 gpm	2-50 gpm	3-85 gpm	4-130 gpm
Pressure		250 psi	250 psi	250 psi	250 psi
Temperature	Cold	120 F	120 F	120 F	120 F
	Hot	250 F	250 F	250 F	250 F
Accuracy		± 1%	± 1%	± 1%	± 1%
Registration *		US Gallons	US Gallons	US Gallons	US Gallons
Gallons per contact with 840 Switch		10 or 100	10 or 100	10 or 100	10 or 100
Full Scale Freq. HZ with 860 Pulser **	Cold	20.63	16.66	14.16	21.66
	Hot	38.57			
Pulses per gallon	Cold	61.89	20	10	10
	Hot	115.71			
Threads/Flanges		1" NPT	1 1/4" NPT	2" NPT	6 1/2" Flg

* Other units of registration available (consult factory).

Model 433 - cold

Size	3/4"	1"	1 1/2"	2"
Flow Rate	1-20 gpm	2-50 gpm	3-85 gpm	4-130 gpm
Pressure	250 psi	250 psi	250 psi	250 psi
Temperature	120 F	120 F	120 F	120 F
Accuracy	± 1%	± 1%	± 1%	± 1%
Registration *	US Gallons	US Gallons	US Gallons	US Gallons
Gallons per contact	1	1	10	10
Threads/Flanges	1" NPT	1 1/4" NPT	2" NPT	6 1/2" Flg

* Other units of registration available (contact factory).

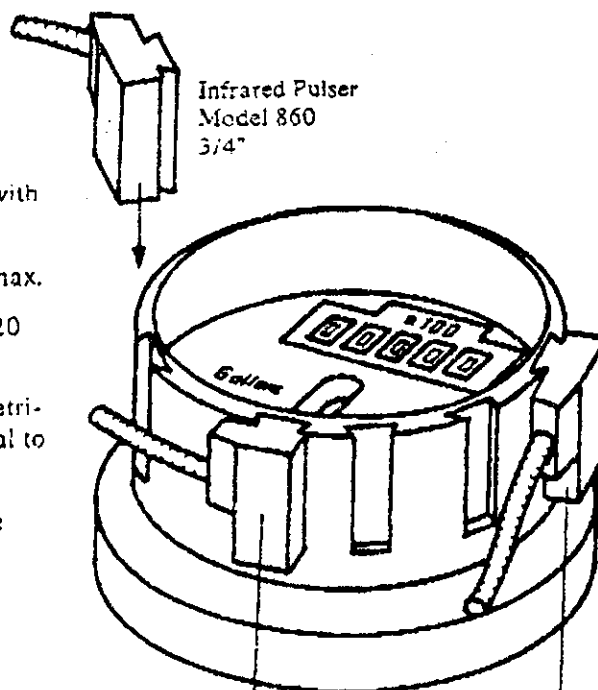
Wetted Material Of Construction

Body:	High Strength Brass Body for 2" flanged is cast iron
Measuring Element:	120 F - Polystyrene 250 F - Noryl
Impeller:	120 F - Polystyrene 250 F - Noryl
O Ring Seals:	EPDM

Options for Models 420 and 421

Model 860 Infrared Pulser

- Provides a high frequency pulse output for interface with Hersey instrumentation.
- Supply Voltage: 30 VDC max.
- Current Requirement: 15-20 mA
- Output Signal: Non-symmetrical square pulse train (equal to supply voltage).
- Wiring: Pigtail, 36", 3-wire 22 gauge.



Infrared Pulser
Model 860
1" - 2"

Model 840 Reed Switch

- Provides a calibrated contact closure.
- Contact Rating
Switching Voltage: 30 VDC max.
Current DC Resistive 0.2A max.
Wattage: 3 WDC max.
- Wiring: Pigtail, 36", 3-wire 22 gauge.

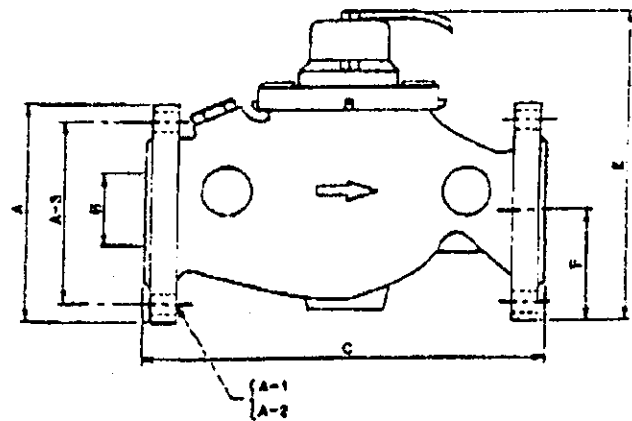
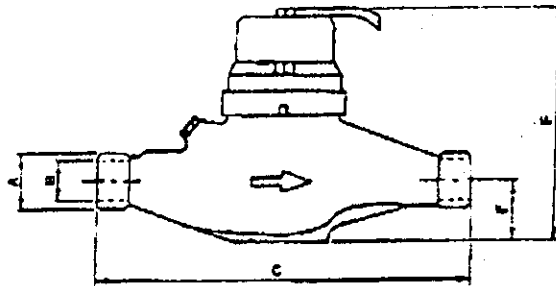
Reed Switch
Model 840
3/4" - 2"

Note: When ordering MTA with 860 pulser that is not being used with Hersey Measurement instrumentation, order a pre-amp to eliminate the need for current resistors.

Dimensions

All Models 3/4" - 1 1/2"

All Models 2"



Size	inches (mm.)	3/4"	1"	1 1/2"	2"
Threads/Flanges	A	1" NPT (25.4)	1 1/4" NPT (31.75)	2" NPT (50.80)	6 1/2" (165.10)
Bolt Holes	A-1	---	---	---	4
Bolt Holes Dia.	A-2	---	---	---	5/8" (15.88)
Bolt Circle Dia.	A-3	---	---	---	4 3/4" (120.65)
Bore Dia.	B	3/4" Nominal	1" Nominal	1 1/2" Nominal	2" Nominal
Length	C	7 1/2" (190.50)	10 1/2" (266.70)	12" (304.80)	10 3/4" (273.05)
Width	D	3 3/4" (95.25)	4" (101.60)	5 1/2" (139.70)	6 1/2" (165.10)
Height	E *	6" (152.40)	7 1/4" (184.15)	8 3/4" (222.25)	10 1/2" (266.70)
Center Line to Base	F	1 1/4" (31.75)	1 1/2" (38.10)	1 3/4" (44.45)	3 1/8" (79.37)
Weight lbs (kg)		4 1/2 lbs. (2.04)	6 1/2 lbs. (2.9)	11 1/2 lbs. (5.2)	27 1/2 lbs. (12.5)

* For 123/420 hot water meters, add 1 1/2 inches.



A Division of Flow Measurement, Inc.

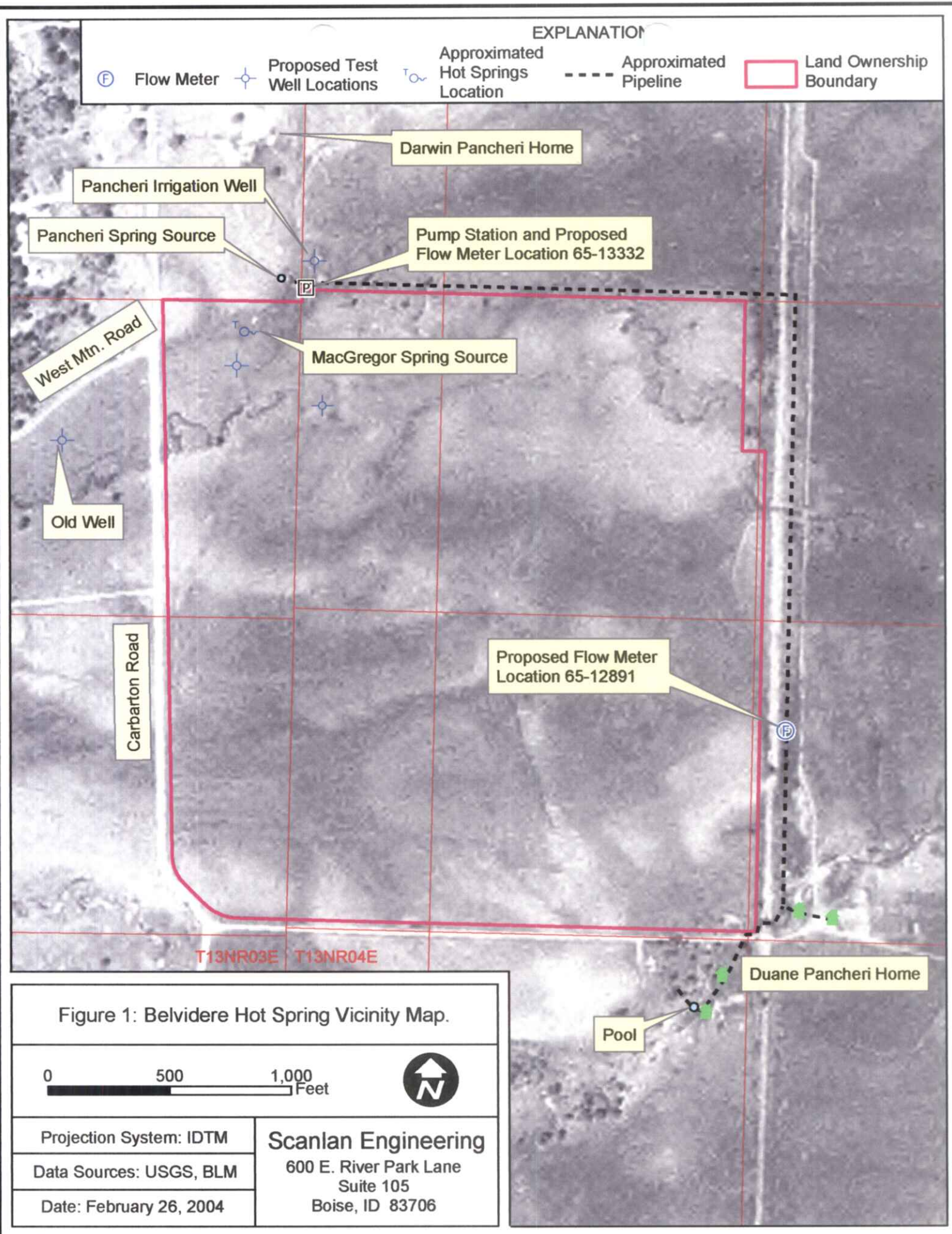
Phone: 864-574-8960
 Fax: 864-574-8961
 Fax: 864-574-7100

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Form # S 211
 4M-0596



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February 26, 2004

Scott Campbell
Moffatt, Thomas, Barrett, Rock & Fields, Chtd.
P.O. Box 829
Boise, ID 83701-0829

Re: Application 65-13912 (Carol Lynn MacGregor);
Measurement of 65-12891 and 65-13332 (Pancheris)

Dear Scott:

I enclose my letter to John Westra (IDWR) which discusses the specifics of equipment, installation and costs, to allow monitoring and measurement on the pipeline that supplies water right 65-12891 and the pipeline that supplies water right 65-13332. Both the letter to you and the letter to John Westra contain identical descriptions of the equipment, location, installation, costs, and data collection. The letter to John Westra specifically refers to Terry Scanlan's letter of November 22, 2002, and your letter of January 16, 2003, both addressed to Gary Spackman at IDWR regarding measurement.

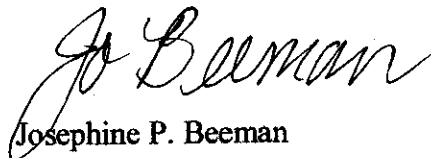
Carol MacGregor, Terry Scanlan, and I want to facilitate an agreement with the Pancheris by March 15, 2004, and avoid an order from IDWR regarding monitoring and measurement. Due to weather constraints, installation by agreement or IDWR order should be completed by June 20, 2004.

If a response to your January 16, 2003 letter regarding the "30-day notice" provision would have facilitated measurement during 2003, please accept my apology.

Please call me at your earliest convenience to discuss this. I look forward to working with you.

Sincerely,

BEEMAN & ASSOCIATES, P.C.



Josephine P. Beeman

JPB:ja
Enclosures
cc: Carol MacGregor
Terry Scanlan
John Westra, IDWR Western
Z:\2102\6125

Westra, John

From: Jo Beeman [jo.beeman@beemanlaw.com]
Sent: Tuesday, March 02, 2004 5:47 PM
To: John Westra (IDWR State); Rob Whitney (IDWR Western)
Cc: Carol MacGregor; Terry Scanlan
Subject: FW: my letter of February 26, 2004



6129 - Nov 28 02
letter from T...

John and Rob,

This is the Terry Scanlan letter referenced in my February 26 letters. I just provided a copy to Scott Campbell and noticed I had the wrong date for when monitoring ended. It was 2002, not 2001. Terry's data summary shows measurements through 10/09/2002.

Jo

Josephine P. Beeman
Beeman & Associates, P.C.
Phone: 208-331-0950
Fax: 208-331-0954
jo.beeman@beemanlaw.com

-----Original Message-----

From: Jo Beeman [mailto:jo.beeman@beemanlaw.com]
Sent: Tuesday, March 02, 2004 4:11 PM
To: 'Scott Campbell'
Cc: 'Debby Long'
Subject: RE: Your letter of February 26, 2004

Scott,

No problem. Terry Scanlan's letter is attached, but I notice an error in my letter of February 26, 2004 to John Westra which Terry and Sherl would notice immediately. The measurement and monitoring of the Pancheri diversions ended in 2002, not 2001. Terry's data summary has the dates.

Jo

Josephine P. Beeman
Beeman & Associates, P.C.
Phone: 208-331-0950
Fax: 208-331-0954
jo.beeman@beemanlaw.com

-----Original Message-----

From: Scott Campbell [mailto:SLC@moffatt.com]
Sent: Tuesday, March 02, 2004 2:30 PM
To: jo.beeman@beemanlaw.com
Cc: Debby Long

MEETING NOTES

RESOURCE MEETING

Applications 65-13913 & 65-13912—MacGregor Protested

From: J. Westra

Date: 2/24/04

Location: Western Regional Office

Attendance: see attached roster

Rob Whitney, IDWR

Gary Spackman, IDWR

RE: Department Letter of 11/12/03- Test Well Proposal, Rejection

The meeting began with participants initially directing specific questions regarding the resource. The applicant had developed a set of questions that were directed to the Department, copy attached. Other methods of determining information for the resource were discussed by the group such as seismic, electronic methods. No one had much experience or knowledge with these test methods. Mr. Scanlan discussed with Rob Whitney what changes would be needed on a specifications for a new test well application. Mr. Whitney stated, the specifications could be worked out, and that was not really the issue in the Department's denial of the test well proposal. Could there be conditions on the drilling permit that would reduce damage risk? Move the test well to a more distant site away from the springs. Mr. Whitney indicated, the Department would put conditions on the drilling permit, and consider more distant test sites.

Ms. Beaman had concerns about the alleged over diversion of water by the Pancheris and that total volume meters should be installed. She referenced a previous request by the applicant to the Department for a volume measurement order. The applicant lacks volume measurement information from the Pancheris spring use, which she believes is crucial. The role of the Payette River Watermaster was brought to the discussion. I stated, this area of the Water District was not being regulated by the Watermaster at this time. If need be the Watermaster could be called to regulate the diversions. The applicant also discussed the possibility of the Department setting a hearing for just the surface water application #65-13912 solo, and the possibility of amending the application to reflect a more realistic amount of available hot water. Mr. Scanlan rough estimates show approximately +0.1 cfs on the MacGregor property. The applicant insisted the diverted volume to the Pancheris was vital to preparation for a hearing.

Mr. Campbell discussed the measurement that had been done previously with the cooperation of Terry Scanlan and Sherl Chapman. The Pancheri's private property rights, and invasion issues with the volume meters. The need for a damage agreement with the applicant was emphasized. Gary Spackman outlined the situations with the Ringel and Tammerack test wells, and how they differed with the Department. He express concerns about placing liability on the Department for damages. I discussed, the Department's reasoning for rejection of the test well proposal. The resource is very fragile, causing a direct risk to the resource and Pancheri's water rights..

Ms. Beaman requested a break and requested she talk with her client in private. She met with the applicant in the Manager's office, the Pancheris met in the conference room, and . Department staff left. Both attorneys met privately.

After the break, the applicant stated, she would stand the cost and installation for the volume flow meters on the Pancheri's diversions. Ms. Beaman insisted an agreement be made at the meeting for meter installation, and the specifications made in a previous request were adequate.

I stated, the Department would need specifications and details of the test/monitoring proposal or a written request for watermaster regulation of the diversion, depending what was really being proposed. Both attorneys made arguments concerning the monitoring in a heated discussion. Ms. Beaman proposed, she would submit a written monitoring proposal to the protestant with a 14 day window of approval. The Department would be asked to respond after the deadline if there was not protestant approval. Mr. Campbell stated, much would depend on how the proposal was presented; if the Pancheris would agree to the volume monitoring. Mr. Chapman and Mr. Scanlan would be conferring in development of the proposal.

-Overall, little was accomplished during the meeting. The previous measurement agreement should have addressed the Pancheri diversion volume issue. Flow/monitoring/measurement on Pancheri diversions 3/12/01 to 10/01/02. In review of the file, there has been no progress made in resolution of the issues over the past 4 years. The applications need to be placed in a hearing setting for formal resolution. No additional Department resources should be spent in an informal conference or meeting setting.

ROSTER OF ATTENDANCE

IDAHO DEPARTMENT OF WATER RESOURCES

2735 AIRPORT WAY, BOISE, IDAHO 83705

Re: Meeting with MacGregors

Place: IDWR Western Region, 2735 Airport Way, Boise, Idaho 83705

Date: February 24, 2004

Conducted by: John Westra

NAME

ADDRESS

Rob Whitney

IDWR - Western

Terry Scanlan

600 E River Park Lane #105, Boise 83706

Carol MacGregor

1109 Warm Springs Av. Boise 83712

Jo Beeman

409 W. Jefferson Boise 83702

Toan Pancheri

9325 Missouri Ave Nampa 83686

Darwin Pancheri

9325 Missouri Ave. Nampa 83686

Laura Pancheri

19010 So Canada Nampa 83641

Deane Pancheri

19010 So Can. ada. Nampa 83641

Scott L. Campbell

P.O. Box 829 Boise, Idaho 83701

Applications For Permit #65-13912 & #65-13913-Contested

Applicant: Carol MacGregor

J. Westra, Western Region

2/18/04

RE: IDWR Processing Sequence

8/02/99	Applications filed with IDWR for geothermal heating and commercial use. Protests are received from Pancheri
3/10/00	1 st Prehearing protest conference held, applicant does not appear.
6/20/00	Prehearing conference is held—protest is not resolved.
9/18/00	Hearing date is set for 11/14/00
11/03/00	IDWR Order issued to interrupt processing and cancel hearing
1/03/01	IDWR Order issued for discovery
1/25/01	Amended Discovery Order issued to extend deadlines
3/12/01	Monitoring agreement facilitated by the applicant and protestant Flow monitoring begins-Pancheri
6/06/01	IDWR order issued acknowledging the monitoring agreement
10/01/02	Flow monitoring at the Pancheri site is discontinued
11/28/02	Applicant requests total monitoring, test well monitoring
3/25/03	IDWR letter discusses applicant's request-related to test well
6/05/03	Test well proposal discussed by IDWR letter
6/12/03	Site visit by IDWR representatives
9/04/03	IDWR receives test well proposal from Scanlan Engineering
10/02/03	IDWR receives test well proposal analysis from S. Chapman, (Pancheri)
11/12/03	Test well proposal is rejected by IDWR

February 24, 2004

QUESTIONS

1. Given the lack of information about ground water in the area, especially subsurface conditions (artesian pressures near the surface; actual geology; temperature; cold water resource; geothermal resource), is there any other way to get the data without a test well? The November 12 letter states that proof of water sufficiency must be "by other means".
2. If the lack of information is understood, and its necessity to this application is acknowledged, are there conditions that would allow the test well proposal to go forward?

Are there statements in the test well proposal which can become conditions on the drilling permit? First drill at 600'?

Can the approach used in the Ringel test well be guidance?

If IDWR is concerned about a proposal to use 12" surface casing and 8" well casing for the exploration well, is there another logical way to explore the resource and be able to meet IDWR's rules with smaller size casing? The rule requiring two strings of casing is IDAPA 37.03.09.30.03 (<http://www2.state.id.us/adm/adminrules/rules/idapa37/0309.pdf>) Casings also protect the resource from artesian pressures and contamination of a cold water resource and wasting of the geothermal resource.

What is the safest drilling method from a well construction standpoint and a resource protection standpoint? Geothermal test well drilling requires the safety measures that would go beyond what would be required for cold water production wells.

What conditions has IDWR used in the past to address changes to temperature and/or flow during the test well phase?

3. Can a test well proceed without measurement of the Pancheris' flow? Both the water right applications and the associated test well proposal continue to need adequate monitoring of spring discharge as well as diversions under the Pancheri water rights. The best approach is to install a flow meter, monitor flow through a full heating season, and then drill mid-summer.

Conditions:

- Discharge -
- Abandonment.
- Construction

4. What should the role of the water master of basin 65 be, given the condition on license 65-12891 that states the "use of water under this water right will be regulated by the watermaster of State Water District No. 65."
5. Application 65-13912 is for the diversion of unappropriated spring flow. Shouldn't it proceed now? -

1/2 ccs - push to hearing -

Z:\2102\6091E

Scott Campbell - Pauley

Impact geology -

Burden of information

- Senior duty

- Bond between g

65-(1972-1973) Carols -