

KAKL

DEPARTMENT OF
WATER RESOURCES

Attorney for Louis L. "Leon"
and Iris B. Hubsmith

**In the Matter of License Nos. 37-7268,
37-7454, 37-7602 and 37-8679**

PETITION TO CORRECT AND AMEND LICENSES

PETITION TO CORRECT AND AMEND LICENSES - 1

processed Proof of Beneficial Use which caused advancement of the priority date for License No. 37-7268 and reduction of the place of use for License No. 37-7602.¹

This Petition is supported by Idaho Department of Water Resources (“IDWR”) License files for the above-referenced water rights, SRBA Court documents, other matters of record with IDWR, and the Exhibits filed contemporaneously with this Petition in the enclosed Exhibit Volume. *Exhibits 1 to 4* are the respective water right Licenses with the requested corrections identified. These corrections are requested as a package since revisions to one License, without analogous revisions to another License, may inappropriately affect the collective nature and scope of the water rights.

Background

Three water right water Permits (Nos. 37-7268, 37-7602 and 37-7454) were obtained during the 1970's for irrigation of Lincoln County lands from a new well. Each of the Permits was obtained at a different time, had a different Proof of Beneficial Use deadline and provided for the irrigation of different lands, although all three Permits related to the same well. The Hubsmiths now own these three water rights, along with a more recently issued water right (No. 37-8679) covering the same well.

In the Spring of 2003, the Hubsmiths contacted attorney Dana Hofstetter after realizing that the designated combined quantity limitation for Water Right License

¹ Additionally, as noted on *Exhibit 2*, a place of use government lot legal description which is facially incorrect is requested to be corrected for License No. 37-7454.

Nos. 37-7268 and 37-8679 was 6.2 cubic feet per second (“cfs”), instead of the approximately 7.5 cfs that actually are necessary to properly irrigate the covered lands. In the process of reviewing the IDWR license files for the water rights associated with this same well, Ms. Hofstetter additionally discovered that a Proof of Beneficial Use form, which had been submitted in 1978, apparently was improperly identified as being for Water Right No. 37-7602, rather than 37-7268. As a result, Permit No. 37-7268 improperly had lapsed and the acreage on Water Right License No. 37-7602 improperly had been reduced due to an early field examination.

Negotiations promptly were commenced with IDWR and efforts were undertaken to set aside the SRBA Partial Decrees for Water Right Nos. 37-7454 and 37-7602, so that all the associated Licenses appropriately could be corrected. *Exhibits 6, 7 and 8.* In December 2003, the SRBA Court set aside the Partial Decrees so that IDWR could consider correction of the Hubsmiths’ related Licenses. Now, the Hubsmiths, in this proceeding, seek to have the licensed combined quantity limitation corrected from 6.2 cfs to 7.81 cfs, the original priority date for License No. 37-7268 reinstated, and the unduly small acreage and quantity for License No. 37-7602 adjusted as appropriate.

The Combined Quantity Limitation Correction

Shortly after Leon Hubsmith purchased the subject property, he learned of lapsed Permit No. 37-7268, and quickly took steps to reinstate the Permit. *Exhibit 7-E.* He also made application for Permit No. 37-8679 to cover additional acreage that apparently had

been irrigated since the early 1980's, but had not been included in any other existing water rights. *Exhibit 7-N*. During the resulting 1990 field examination for Permit No. 37-7268, Charles G. Brockway, then a student intern with IDWR, was unable to make a water level measurement and, therefore, calculated a theoretical capacity of 6.2 cfs and noted that four pivots and four sets of handlines were served by the well.

Exhibit 9. In the 1991 Field Examination Report for Permit No. 37-8679, Justin Bolles similarly noted the inability to take an accurate measurement and likewise calculated a theoretical capacity of 6.28 cfs, while noting that the system contains "four standard pivots and [approximately] 20 handlines." *Exhibit 10*. The source of the incorrect combined quantity limitation was these field examinations for Permit Nos. 37-7268 and 37-8679. Because the field examiners were unable to take actual measurements, they had relied on a 70% theoretical pump efficiency in their calculations. *Exhibits 9 and 10*. The field examiners relied on the default value of 70%, although Mr. Hubsmith previously had submitted information to IDWR identifying the actual pump efficiency, based on the pump curve, to be 83%. *See Exhibit 7-E, Attachment*.

In 2003, shortly after realizing the discrepancy between their actual water needs and the combined quantity limitation, the Hubsmiths asked Charles G. Brockway to review these prior Field Examination Reports. Mr. Brockway prepared an initial report of September 29, 2003, and, pursuant to IDWR request, a follow-up report of

February 11, 2005. *Exhibits 11 and 12*. At the outset, Dr. Brockway noticed a patent error in the Field Examination Reports: A diversion rate substantially greater than 6.28 cfs, based on the presence of four pivots alone, would be necessary. Yet, the system, as reported in the Field Examination Reports, had four pivots plus numerous handlines. *Exhibit 11 at 1*.

Dr. Brockway measured the flow of the system during the Summer of 2003, and based on these measurements, determined that system capacity actually was 7.46 cfs. *Id. at 3*. It should be noted that Dr. Brockway's determination is consistent with a 1994 Idaho Power measurement of 3300 gpm, taken shortly after the IDWR field examinations in the early 1990's. *Exhibit 13*. In his September 29, 2003 Report, Dr. Brockway explained that the difference between the theoretical calculation of 6.28 cfs and the more accurate measured capacity of 7.46 cfs likely was due to the use of the default value of 70% for pump efficiency in those theoretical calculations, rather than the actual pump efficiency of 82% as determined by the pump curve. *Exhibit 11 at 4*.

In his follow-up report of February 11, 2005, Dr. Brockway calculated the pre-1989 system capacity, since the original irrigation system had been reconfigured somewhat in 1989. Based on detailed information concerning the pre-1989 system, Dr. Brockway concluded that the system capacity at that time was at least 3505 gallons per minute ("gpm") or 7.81 cfs. *Exhibit 12 at 3*. It is significant that this conclusion comports with the January 20, 1976 receipt for the pump which notes an 83% pump

efficiency and a capacity of 3500 gpm. *Exhibit 7-E, Attachment*. Since Mr. Hubsmith had submitted this 1976 receipt to IDWR in support of his request to reinstate Permit No. 37-7268, the 83% actual pump efficiency information was available in the file and the field examiners could have used it, rather than the less precise default value of 70% in their calculations.² *Id.*

This evidence overwhelmingly demonstrates that the actual pre-1989 system capacity was approximately 7.81 cfs, rather than 6.2 cfs. The 6.2 cfs figure represents a theoretical capacity calculation based on an inaccurate pump capacity, while 7.81 cfs more closely represents actual beneficial use both prior to and after 1989. Further, it is readily apparent that the 6.2 cfs quantity would not have been sufficient to serve the four pivot plus handlines in place, as Dr. Brockway noted in his September 29, 2003 Report. Ample evidence from a number of different sources establishes that the 6.2 cfs combined quantity limitation did not accurately represent system capacity, and that the correct capacity was approximately 7.81 cfs. Accordingly, pursuant to Idaho Code § 67-5254(1), the Hubsmiths respectfully request amendment of Water Right License No. 37-7268 to more accurately reflect actual water usage and actual water needs for both the pre-1989 and the post-1989 systems. *See IDWR Final Order, In the Matter of License No. 61-07189 In The Name of Magic West, Inc. (January 22, 1999) (Exhibit 14).*

² In the 1980 field examinations for Water Right Nos. 37-7454 and 37-7602, system capacity was measured to be 5.09 cfs. *See Exhibit 7-J*. However, in 1980, much less acreage was being irrigated than would be just a few years later. The relatively few acres under irrigation in 1980 resulted in this low capacity measurement.

The Mis-Numbered Proof of Beneficial Use Form Consequences:
License No. 37-7268 Priority Advancement and License No. 37-7602
Acreage and Quantity Reduction

1. The Mis-Numbered Proof of Beneficial Use

Permit Nos. 37-7268, 37-7602 and 37-7454 sequentially were obtained during the 1970's to provide for the irrigation of new lands from the same well.³ Because Permit No. 37-7268 had been obtained first, its Proof of Beneficial Use form was due the earliest, by September 1, 1978. *Exhibit 7-A.* Proof of Beneficial Use for Permit No. 37-7454 was not due until December 1, 1980. *Exhibit 7-L.* And Proof of Beneficial Use for Permit No. 37-7602 was not due until June 1, 1982. *Exhibit 7-I.* As described more fully below, IDWR's designation of Permit No. 37-7602 on the Proof of Beneficial Use form that Mr. Shaw apparently submitted for Permit No. 37-7268 in 1978, resulted in the lapsing of Permit No. 37-7268 and an early field examination for Permit No. 37-7602. Ultimately, this caused the priority date for License No. 37-7268 to be advanced to 1988, and License No. 37-7602 unduly to be limited to only 35 acres and 0.70 cfs. *See Exhibit 5.*

As is customary, IDWR on June 30, 1978 sent the permitholder, Steve Shaw, a sixty day notice regarding the September 1, 1978 Proof of Beneficial Use deadline for

³ On September 19, 1973, IDWR (then called the Department of Water Administration) issued Permit No. 37-7268 to Ralph Bowen for a ground water right. *Exhibit 7-A.* On September 8, 1975, Ralph Bowen assigned Permit No. 37-7268 to Steven Shaw. *Exhibit 7-B.* Steven Shaw then proceeded to obtain other Permits to irrigate additional lands from the same well. On December 30, 1975, IDWR issued Permit No. 37-7454 to Steven Shaw for irrigation of an additional 200 acres. *Exhibit 7-L.* Likewise on June 29, 1977, IDWR issued Permit

Permit No. 37-7268. *Exhibit 7-C.* Mr. Shaw, after receiving this 60 day notice letter, went to IDWR's Southern Regional office on August 2, 1978. *Exhibit 7-H.* It appears that on that date IDWR personnel assisted Mr. Shaw with preparation of the Proof of Beneficial Use form, since the form was typed in a manner similar to the way IDWR Southern Regional office staff typically typed forms at that time, the notary public acknowledging Steve Shaw's signature on the form was an employee of IDWR's Southern Regional office and the form was filed with IDWR Southern on the same day it was signed. *Exhibit 8.* Given these facts, it is likely that Mr. Shaw had come to IDWR's Southern Regional office on August 2, 1978 to submit the Proof of Beneficial Use that was due by September 1, 1978. However, in preparing and completing the form, an IDWR employee made an error in identifying Permit No. 37-7602, rather than Permit No. 37-7268. *Exhibit 7-H.* The IDWR employee preparing the form for Mr. Shaw on August 2, 1978 had typed an incorrect Permit number, a Permit for which Mr. Shaw's Proof of Beneficial Use was not due until 1982.

As a result of the erroneous identification of Permit No. 37-7602, Mr. Shaw's Permit No. 37-7268 lapsed for the failure to submit that Proof of Beneficial Use form by the September 1, 1978 deadline. *Exhibit 7-D.* Further, the field examination for Permit No. 37-7602 that was conducted in 1980 as a result of the submission of the Proof of Beneficial Use was premature. That 1980 field examination identified only 35 acres

No. 37-7602 to Steve Shaw for an additional 3.2 cfs to irrigate 160 acres from the well. *Exhibit 7-I.*

under Permit No. 37-7602 irrigated at the time, instead of the 160 acres that Permit No. 37-7602 authorized. *Exhibit 7-J*. As a result of this, License No. 37-7602 was issued for irrigation of only 35 acres and 0.70 cfs, instead of the full 160 acres and 3.20 cfs authorized under the Permit. *Exhibit 7-K*. This cascading series of events and the disastrous consequences of the permit number mis-identification on the Proof of Beneficial Use form are summarized on *Exhibit 5*.

2. License No. 37-7268's Priority Date Advancement

Mr. Hubsmith's efforts in the late 1980's and early 1990's to reinstate Permit No. 37-7268 were successful; however, because of the belief that Proof of Beneficial Use had not been timely submitted for this water right, IDWR advanced the priority date on the water right from August 23, 1973 to July 11, 1988 and ultimately, License No. 37-7268 issued with an advanced priority date of July 11, 1988. *Exhibits 7-A, 7-F and 7-G*. However, available information establishes that the acreage covered by lapsed Permit No. 37-7268 actually had been irrigated by 1978 when proof originally was due. In the 1980 field examination report for Permit No. 37-7602, the IDWR field examiner noted that the lands in Section 19 which were covered by Permit No. 37-7602 were not yet being irrigated, but that the lands in Section 30 covered by Permit No. 37-7268 were being irrigated:

Lands in Sec. 19 not irrigated at present by well. [H]owever, other lands not listed on Permit and not covered by other rts. [rights] are irrigated.

Exhibit 7-J. At the time of the 1980 field examination, Permit No. 37-7268 had lapsed and therefore, the field examiner found that the irrigated lands in Section 30 were not covered by another water right. *Id.* However, comparison of the lands that were found to be irrigated in the field examination report to Permit No. 37-7268 confirms that the acres found to be irrigated in Section 30, but with no associated water right, actually were covered by Permit No. 37-7268. *Exhibits 7-A and 7-J.*

In the December 8, 1988 IDWR Order reinstating Permit No. 37-7268, IDWR specifically found that adequate evidence had been submitted by the Hubsmiths establishing that the water had been put to beneficial use by the original 1978 deadline, but that the death of the previous permitholder and other factors constituted good cause for the Proof of Beneficial Use not being submitted in a timely manner. *Exhibit 7-F.* **Thus, with respect to the acreage licensed under 37-7268, IDWR already has made an official determination that beneficial use had been properly accomplished by the original deadline, although at the time of that 1988 Order, it was believed that Proof of Beneficial Use had not been submitted in a timely manner. *Id.***

It has become clear that Proof of Beneficial Use had been timely submitted, that the Proof of Beneficial Use form had been designated an incorrect permit number by an IDWR employee, and that had the correct permit number been put on the form, the priority date for License No. 37-7268 would not have been advanced to 1988. On this

basis, reinstatement of the original priority date for License No. 37-7268 is appropriate pursuant to Idaho Code § 42-218a.

3. License No. 37-7602's Reduction to 35 Acres and 0.70 cfs

On the other hand, because the Proof of Beneficial Use form was premature for Permit No. 37-7602, most of the acreage covered by Permit No. 37-7602 was not yet irrigated at the time of the 1980 field examination. Thus, License No. 37-7602, when issued, authorized only the irrigation of 35 acres. The additional acreage later became covered under junior License No. 37-8679, instead of 37-7602.

At the time of reinstatement of Permit No. 37-7268 in the early 1990's, IDWR found that acreage in excess of what was authorized under that Permit also was being irrigated from the well. Accordingly, Mr. Hubsmith applied for Permit No. 37-8679 to cover the approximately 100 irrigated acres for which no water right was on record.

Exhibit 7-N. However, based on aerial photography, IDWR confirmed that the acreage under Application No. 37-8679 actually had been irrigated since the early 1980's: "The application will be considered a trust water filing due to the post 1984 priority date, but the acreage will not be counted as trust acreage due to the pre-1984 development." *Exhibit 7-O.* On this basis, a total of 96 acres ultimately was included under License No. 37-8679.

This record evidence establishes that if the field examination for Water Right

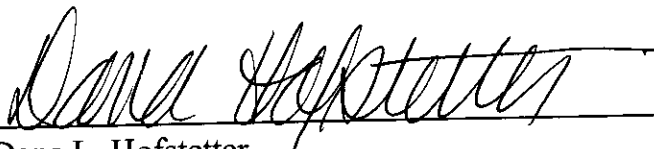
No. 37-7602 had been conducted after 1982 when the Proof of Beneficial Use actually was due, rather than in 1980, these 96 acres would have been included in License No. 37-7602. Therefore, had Proof of Beneficial Use for Permit No. 37-7602 been submitted in 1982 when it was due, the acreage and quantity elements under this License would have been greater than 35 acres and 0.70 cfs respectively. Thus, pursuant to Idaho Code § 67-5254(1), this Petition also requests correction of the place of use licensed under 37-7602 by amendment of that License to include the 96 acres and associated quantities covered under License No. 37-8679.

Conclusion

WHEREFORE, the Hubsmiths respectfully request correction of License Nos. 37-7268, 37-7454, 37-7602, and 37-8679, as specifically indicated on *Exhibits 1-4*, which are incorporated herein as if set forth in full.

DATED this 23rd day of February, 2005.

HOFSTETTER LAW OFFICE, LLC

By 
Dana L. Hofstetter
Attorney for Louis L. "Leon" and Iris B. Hubsmith

CERTIFICATE OF SERVICE

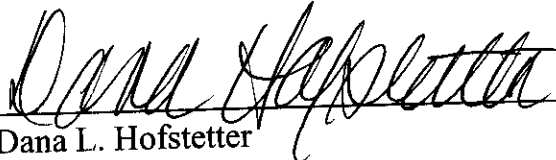
I HEREBY CERTIFY that on the 23rd day of February, 2005, I caused the foregoing **PETITION TO CORRECT AND AMEND LICENSES** and the associated **VOLUME OF EXHIBITS** to be served by the method(s) indicated on the following:

Original to:

Karl J. Dreher, Director
Idaho Department of Water Resources
The Idaho Water Center
322 East Front Street
Boise, Idaho 83702
☐ U.S. Mail ☐ Fed Ex ☒ Hand ☐ Fax

Copy to:

Gary Spackman
Idaho Department of Water Resources
The Idaho Water Center
322 East Front Street
Boise, Idaho 83702
☐ U.S. Mail ☐ Fed Ex ☒ Hand ☐ Fax


Dana L. Hofstetter

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KARL

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FEB 23 2005

**DEPARTMENT OF
WATER RESOURCES**

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Boise, Idaho 83702
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Attorney for Louis L. "Leon"
and Iris B. Hubsmith

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

In the Matter of License Nos. 37-7268,
37-7454, 37-7602 and 37-8679

Case No. _____

**VOLUME OF EXHIBITS TO
PETITION TO CORRECT AND
AMEND LICENSES**

February 23, 2005

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- Exhibit 4** Proposed Amended License No. 37-8679
- Exhibit 5** Chart Summarizing Permitting and Licensing Events
- Exhibit 6** *Motion to Set Aside Judgments and Memorandum in Support,*
SRBA Subcases Nos. 37-7454 and 37-7602
- Exhibit 7** *Affidavit of Dana L. Hofstetter,* SRBA Subcase Nos. 37-7454 and 37-7602
- Exhibit 7-A** Permit No. 37-7268
- Exhibit 7-B** Assignment of Permit No. 37-7268
- Exhibit 7-C** June 30, 1978, IDWR Letter to Mr. Shaw regarding Permit No. 37-7268
- Exhibit 7-D** September 7, 1978, IDWR Letter to Mr. Shaw regarding lapsing of Permit No. 37-7268
- Exhibit 7-E** July 8, 1988, Letter from Leon Hubsmith to IDWR regarding Permit No. 37-7268
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- Exhibit 9** IDWR Field Examination, Permit No. 37-7268
- Exhibit 10** IDWR Field Examination, Permit No. 37-8679
- Exhibit 11** Brockway Engineering, "Report on Well and Irrigation System Capacity for
Leon Hubsmith, Dietrich, Idaho" (September 29, 2003)
- Exhibit 12** Brockway Engineering, "Supplemental Report on Well and Irrigation System Capacity -
Leon Hubsmith, Dietrich, Idaho" (February 11, 2005)
- Exhibit 13** Idaho Power, "Irrigation System Analysis" (July 6, 1994)
- Exhibit 14** IDWR, "Final Order: In the Matter of License 61-07189 in the Name of Magic West, Inc."
(January 22, 1999)

State of Idaho
Department of Water Resources

WATER RIGHT LICENSE

WATER RIGHT NO. 37-07268

Priority: ~~July 11, 1988~~
August 23, 1973

Maximum Diversion Rate: 3.20 CFS
Maximum Diversion Volume: 640.0 AF

This is to certify, that DARLENE I HUBSMITH
LOUIS L HUBSMITH

PO BOX 397
DIETRICH ID 83324

August 2, 1978
has complied with the terms and conditions of the permit, issued pursuant to Application for Permit dated August 23, 1973; and has submitted Proof of Beneficial Use on ~~July 11, 1988~~. An examination indicates that the works have a diversion capacity of ~~6.200 cfs~~ of water from a GROUNDWATER source, and a water right has been established as follows:

<u>BENEFICIAL USE</u>	<u>PERIOD OF USE</u>	<u>RATE OF DIVERSION</u>	<u>ANNUAL VOLUME</u>
IRRIGATION	03/15 to 11/15	3.20 CFS	640.0 AF

LOCATION OF POINT(S) OF DIVERSION:

NWNE, Sec. 30, Township 06S, Range 19E
LINCOLN County

PLACE OF USE: IRRIGATION

<u>TWN</u>	<u>RGE</u>	<u>SEC</u>	<u>ACRES</u>	<u>ACRES</u>	<u>ACRES</u>	<u>TOTAL</u>
06S	19E	19	Lot 12 (SESW) 29			29
		30	NWNE 40	SWNE 40	Lot 1 (NENW) 40	
			Lot 6 (SENW) 11			131

Total number of acres irrigated: 160

CONDITIONS/REMARKS:

1. The maximum diversion volume is defined as the maximum allowable volume of water that may be diverted annually from the source under this right. The use of water confirmed by this right limited to the amount that can actually be beneficially use used. The maximum diversion volume may be adjusted to more accurately describe the beneficial use or to implement accepted standards of diversion and use efficiency.
2. This water right is appurtenant to the described place of use.
3. This right is subject to all prior water rights and may be forfeited by five years of non-use.
4. Modifications to or variance from this license must be made within the limits of Section 42-222, Idaho Code, or the applicable Idaho law.
5. This right when combined with all other rights shall provide no more than 4.0 afa per acre for the lands above.
6. The maximum diversion rate under this right and right N 37-07454 and 37-07602 shall not exceed ~~6.2~~ cfs.

7.81

JUN 24 1992

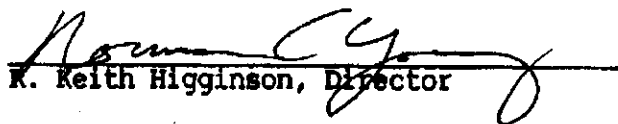
State of Idaho
Department of Water Resources

WATER RIGHT LICENSE

WATER RIGHT NO. 37-07268

This license is issued pursuant to the provisions of Section 42-219, Idaho Code.
Witness the seal and signature of the Director, affixed at Boise, this 10th
day of JUNE, 1992.

Acting for


R. Keith Higginson, Director

JUN 24 1992

WATER RIGHT LICENSE

THIS IS TO CERTIFY, that STEVEN R. SHAW

Beneficial Use Period of Use Rate of Diversion Annual Volume

Irrigation from March 15 to November 15 at 4.0 cfs and 800 acre feet

from _____ cfs and _____

from _____ at _____ cfs and _____

(month dates inclusive)

Description and location of place of use:

[illegible]

and 37-7268 7.81
This right when combined with 37-7602 shall provide no more than ~~5.09~~ cfs nor more than 4.0 acre feet per annum.

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

Witness the seal and signature of the Director, affixed at Boise, Idaho, this 24 day of December, 19 80.

Directo

WATER RIGHT LICENSE

EXHIBIT 3

State of Idaho
Department of Water Resources

WATER RIGHT LICENSE
WATER RIGHT NO. 37-08679

Priority: August 23, 1990

Maximum Diversion Rate:

1.92 CFS

This is to certify, that LOUIS L HUBSMITH
PO BOX 397
DIETRICH ID 83324

has complied with the terms and conditions of the permit, issued pursuant to Application for Permit dated August 23, 1990; and has submitted Proof of Beneficial Use on March 25, 1991. An examination indicates that the works have a diversion capacity of 6.280 cfs of water from a GROUNDWATER source, and a water right has been established as follows:

<u>BENEFICIAL USE</u>	<u>PERIOD OF USE</u>	<u>RATE OF DIVERSION</u>	<u>ANNUAL VOLUME</u>
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IRRIGATION	04/01 to 10/31	1.92 CFS	
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LOCATION OF POINT(S) OF DIVERSION:

NWNE, Sec. 30, Township 06S, Range 19E
LINCOLN County

PLACE OF USE: IRRIGATION

<u>TWN</u>	<u>RGE</u>	<u>SEC</u>	<u>ACRES</u>	<u>ACRES</u>	<u>ACRES</u>	<u>TOTAL</u>
06S	19E	19	Lot 7(NESW) 33	Lot 11(SWSW) 35	Lot 12(SESW) 11	79
	30		Lot 5(SWNW) 3	Lot 7(NESW) 7	NWSE 7	17
Total number of acres irrigated:						96

CONDITIONS/REMARKS:

1. This water right is appurtenant to the described place of use.
2. This right is subject to all prior water rights and may be forfeited by five years of non-use.
3. Modifications to or variance from this license must be made within the limits of Section 42-222, Idaho Code, or the applicable Idaho law.
4. This right is for the use of trust water and is subject to review 20 years after the issuance of the permit to determine availability of water and to re-evaluate the public interest.
5. Diversion and use of water under this right is subject to an annual use fee if rules are subsequently promulgated which provide for the submittal of the fee.
6. The Director retains jurisdiction of the right issued to change, add or remove any requirement as determined to be appropriate.
7. The right holder shall fully use all surface water rights appurtenant to the lands identified above prior to using water under this right.
8. Use of this right with the rights listed below is limited to a total combined diversion rate of 6.28 cfs and shall not exceed 4.0 af per acre for the lands above. The combined rights include: 37-07268, 37-07454 and 37-07602.

AUG 1991

EXHIBIT 4

State of Idaho
Department of Water Resources

WATER RIGHT LICENSE
WATER RIGHT NO. 37-08679

This license is issued pursuant to the provisions of Section 42-219, Idaho Code.
Witness the seal and signature of the Director, affixed at Boise, this 25TH
day of JULY, 1994.

Acting for R. Keith Higginson, Director

Cancelled Subject to other License Amendment

AUG 09 1994

Permit No.	Date of Approval	Permit Acres	Beneficial Use Deadline	Beneficial Use Filed	Exam Acres
37-7268	9/19/1973	160	9/1/1978	<i>Permit Lapsed</i>	160 (Pre-1978 acreage per 12/8/1988 IDWR Order)
37-7454	12/30/1975	200	12/1/1980	7/30/1980	200 (Year: 1980)
37-7602	6/29/1977	160	6/1/1982	8/2/1978	35 (Year: 1980)
37-8679	3/7/1991	108	3/2/1992	3/25/1991	96 (Pre-1984 acreage per 2/21/1991 IDWR Memo)

DISTRICT COURT - SRBA
TWIN FALLS CO., IDAHO
FILED _____
2003 JUN 6 PM 4 27

Louis L. "Leon" and Iris B. Hubsmith

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Hofstetter Law Office, LLC
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Boise, Idaho 83702
Phone: (208) 424-7800
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IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

In Re SRBA	)	Subcase Nos. 37-07454 and 37-07602
	)	
Case No. 39576	)	MOTION TO SET ASIDE JUDGMENTS
_____	)	AND MEMORANDUM IN SUPPORT

Motion

Pursuant to SRBA Administrative Order 1 and Rule 60(b) of the Idaho Rules of Civil Procedure, Louis L. "Leon" and Iris B. Hubsmith, by and through their counsel of record, Dana L. Hofstetter of Hofstetter Law Office, LLC, respectfully move that the Court set aside its judgments with respect to Subcase Nos. 37-07454 and 37-07602.

This Motion is made on the grounds of mistake, inadvertence, surprise, excusable neglect, and newly discovered evidence, as well as the existence of material facts that constitute a meritorious defense. These grounds are more specifically described in the

Memorandum below, and this Motion is further supported by the Affidavit of Allen Merritt and the Affidavit of Dana L. Hofstetter filed contemporaneously herewith.

Memorandum

1. Factual Background.

Three water right water permits (nos. 37-07268, 37-07602 and 37-07454) were obtained during the 1970's for irrigation of Lincoln County lands from a new well. Each of the permits was obtained at a different time, had a different proof of beneficial use deadline and provided for the irrigation of different lands, although all three permits related to the same well. An apparent error in designating the wrong water right number on a proof of beneficial use form, resulted in the erroneous lapsing of one permit (37-07268) and the incorrect diminishment of another (37-07602). These errors, which only recently were discovered, underlie the basis for this Motion. While water right no. 37-07454, apparently was not directly involved in this confusion, it has a combined use limitation with water right no. 37-07602 which will need to be corrected in conjunction with correction of the acreage and quantity of water right no. 37-07602.

On September 19, 1973, the Idaho Department of Water Resources (then called the Department of Water Administration) issued Permit No. 37-07268 to Ralph Bowen for a ground water right from a well located in Section 30, Township 6 South, Range 18 East, Boise Meridian in Lincoln County, Idaho. *Affidavit of Dana L. Hofstetter, Exhibit A.* On

September 8, 1975, Ralph Bowen assigned Permit No. 37-07268 to Steven R. Shaw.

Affidavit of Dana L. Hofstetter, Exhibit B. Steven Shaw then proceeded to obtain other permits to irrigate additional lands from the Section 30 well. On December 30, 1975, the Idaho Department of Water Resources ("IDWR") issued Permit No. 37-07454 to Steven R. Shaw for irrigation of an additional 200 acres. *Affidavit of Dana L. Hofstetter, Exhibit L.* Likewise on June 29, 1977, IDWR issued Permit No. 37-07602 to Steve Shaw for an additional 3.2 cubic feet per second ("cfs") to irrigate 160 acres from the well in Section 30. *Affidavit of Dana L. Hofstetter, Exhibit I.*

Because Permit No. 37-07268 had been obtained first, its proof of beneficial use form was due the earliest, by September 1, 1978. *Affidavit of Dana L. Hofstetter, Exhibit A.* Proof of beneficial use for Permit No. 37-05454 was not due until December 1, 1980. *Affidavit of Dana L. Hofstetter, Exhibit L.* And proof of beneficial use for Permit No. 37-07602 was not due until June 1, 1982. *Affidavit of Dana L. Hofstetter, Exhibit I.*

As is customary, IDWR on June 30, 1978 sent Mr. Shaw a sixty day notice regarding the September 1, 1978 proof of beneficial use deadline for Permit No. 37-07268. *Affidavit of Dana L. Hofstetter, Exhibit C.* On August 2, 1978, Mr. Shaw filed with IDWR's Southern Regional office a Proof of Application of Water to Beneficial Use form. *Affidavit of Dana L. Hofstetter, Exhibit H and Affidavit of Allen Merritt.* While the exact circumstances concerning the filing are not available since Mr.

Shaw is deceased, it appears that IDWR personnel assisted Mr. Shaw with completion and filing of the form on August 2, 1978. *Affidavit of Dana L. Hofstetter, Exhibit H and Affidavit of Allen Merritt.* The form is typed in a fashion similar to the way that IDWR Southern personnel prepared forms at the time. *Affidavit of Allen Merritt.* The person notarizing Mr. Shaw's signature on the form was an IDWR Southern Regional office employee at the time, and the form was notarized in Twin Falls, although the form indicates that Mr. Shaw resided elsewhere. *Affidavit of Allen Merritt.*

In preparing and completing the form, an error was made in identifying Permit No. 37-07602, rather than Permit No. 37-07268. While proof of beneficial use for Permit No. 37-07268 was due September 1, 1978, proof of beneficial use for 37-07602 was not due for almost four more years, until June 1, 1982. As a result of the erroneous identification of Permit No. 37-07602, Mr. Shaw's Permit No. 37-07268 lapsed for the failure to submit that proof of beneficial use form by the September 1, 1978 deadline. *Affidavit of Dana L. Hofstetter, Exhibit D.*

The field examination for Permit No. 37-07602 that was conducted as a result of the submission of the proof of beneficial use was premature. That 1980 field examination identified only 35 acres under Permit No. 37-07602 actually irrigated at that time, instead of the 160 acres that Permit No. 37-07602 authorized. *Affidavit of Dana L. Hofstetter, Exhibit J.* As a result of this, License No. 37-07602 was issued for irrigation of only 35

acres and 0.70 cfs, instead of the full 160 acres and 3.20 cfs authorized under the Permit. *Affidavit of Dana L. Hofstetter, Exhibit K.* While Permit No. 37-07454 proceeded to licensing without apparent direct involvement in the proof of beneficial use form mix up, License No. 37-05454's combined quantity limitation with License No. 37-07602 now links the two water rights. *Affidavit of Dana L. Hofstetter, Exhibit M.* Proper correction of License No. 37-07602 likely will invoke the need to correct the combined quantity limitation with water right no. 37-07454.¹

Shortly after Leon Hubsmith purchased the subject property, he learned of lapsed Permit No. 37-07268 for he quickly took steps to reinstate the Permit. *Affidavit of Dana L. Hofstetter, Exhibit E.* These steps were successful; however, because of the belief that proof of beneficial use had not been timely submitted for this water right, IDWR advanced the priority date on the water right from August 23, 1973 to July 11, 1988. *Affidavit of Dana L. Hofstetter, Exhibits A and F.* Ultimately, License No. 37-07268 did issue with an advanced priority date of July 11, 1988. *Affidavit of Dana L. Hofstetter,*

¹ It also should be noted that this combined quantity limitation (5.09 cfs) exceeds the total quantities of each individual water right as licensed (4.0 and 0.7 cfs) and appears on its face to be erroneous. Ordinarily a combined quantity limitation is less than or equal to the total of the individual quantities of the associated water rights. In this case, the combined quantity limitation exceeds the total of the individual quantities of both rights. Nevertheless, this combined use quantity may be determined inappropriate if IDWR has an opportunity to reevaluate the proof of beneficial use form submitted on August 2, 1978 and the appropriate quantity for water right no. 37-07602.

Exhibit G. The incorrectly numbered proof of beneficial use form was discovered only recently in April 2003, after Mr. Hubsmith hired legal counsel to advise him on another matter related to Water Right No. 37-07268. *Affidavit of Dana L. Hofstetter.*

2. **Standard of Review.**

Two requirements apply to setting aside a default judgment. *Clear Springs Trout Co. v. Anthony*, 123 Idaho 141, 143, 845 P.2d 559, 561. A ground, such as mistake, inadvertence, surprise, or excusable neglect, under Rule 60(b), I.R.C.P., must apply. *Id.* Newly discovered evidence is also a basis for setting aside a judgment under Rule 60(b). Further, the movant must plead facts which, if established, would constitute a meritorious defense. *Clear Springs*, at 143, 845 P.2d at 561. The decision of whether to set aside a default judgment lies within the sound discretion of the trial court. *Baldwin v. Baldwin*, 114 Idaho 525, 527, 757 P.2d 1244, 1246 (Ct. App.1988). However, defaults are not favored and relief from a default judgment should be granted in doubtful cases. *Id.* at 528, 757 P.2d at 1247.

3. **Not Just One, But Several of the Grounds for Setting Aside a Judgment are Satisfied.**

(a) **The proof of beneficial use form for water right no. 37-07268 mistakenly identified water right no. 37-07602.**

The identification of Permit No. 37-07602 on the proof of beneficial use form was a clear mistake. Proof of beneficial use for Permit No. 37-07602 was not due until almost

four years later on June 1, 1982, whereas proof of beneficial use for Permit No. 37-07268 was due by the next month, on September 1, 1978. *Affidavit of Dana L. Hofstetter, Exhibits A and F.* Further evidence that the proof of beneficial use form submitted in August 1978 was not intended to apply to Permit No. 37-07602 is found in the 1980 field examination report. In that report, the IDWR field examiner noted that the lands in Section 19 which were covered by Permit No. 37-07602 were not yet being irrigated and further found that the lands in Section 30 covered by Permit No. 37-07268, however, were being irrigated:

Lands in Sec. 19 not irrigated at present by well. [H]owever, other lands not listed on permit and not covered by other rts. [rights] are irrigated.

Affidavit of Dana L. Hofstetter, Exhibit J. Because the proof of beneficial use form was premature for Permit No. 37-07602, most of the acreage covered by Permit No. 37-07602 was not yet irrigated. At the time of the field examination, Permit No. 37-07268 had been lapsed and the field examiner erroneously found that the irrigated lands in Section 30 were not covered by another water right. *Affidavit of Dana L. Hofstetter, Exhibit J.* However, comparison of the lands that were found to be irrigated to Permit No. 37-07268 confirms that 110 acres found to be irrigated in Section 30 but with no associated water right, actually were covered by Permit No. 37-07268. *Affidavit of Dana L. Hofstetter, Exhibits A and J.*

Based on the evidence, it appears that the permit holder, Steve Shaw, after receiving the 60 day notice letter regarding the September 1, 1978 proof of beneficial use deadline for Permit No. 37-07268 went to IDWR's Southern Regional office on August 2, 1978. *Affidavit of Dana L. Hofstetter, Exhibit H.* It further appears that on that date IDWR personnel assisted with preparation of the proof of beneficial use form as the form is typed in a manner similar to the way IDWR Southern Regional office staff typically typed forms at that time, the notary public acknowledging Steve Shaw's signature on the form was an employee of IDWR's Southern Regional office and the form was filed with IDWR Southern on the same day. *Affidavit of Allen Merritt.* Given these facts, it appears likely that Mr. Shaw had come to IDWR's Southern Regional office on August 2, 1978 to submit the Proof of Beneficial Use that was due by September 1, 1978. The evidence establishes that the IDWR employee preparing the form for Mr. Shaw typed an incorrect permit number, a permit for which beneficial use was not due until 1982. This mistake resulted in the subsequent lapsing of Permit No. 37-07268 and the identification of reduced acreage and quantity on License No. 37-07602. *Affidavit of Dana L. Hofstetter, Exhibits D and K.* While we may never know why or how an incorrect permit number came to be identified on the proof of beneficial use form, the evidence establishes that the form incorrectly identified a permit number for which proof was not due until 1982 and for which the subject land was not yet fully irrigated. * 2

A mistake of fact, such as this one concerning the proof of beneficial use, is sufficient to set aside a default judgment. *See Gro-Moore, Inc. v. Butts*, 109 Idaho 1020, 1023, 712 P.2d 721, 724 (Ct. App. 1985). For relief under Rule 60(b), the mistake need not have been made by the movant, but may have been made by others. *See Sines v. Blaser*, 98 Idaho 435, 438, 566 P.2d 758, 761 (1977) (“[T]he mistake, inadvertence, surprise or excusable neglect need not be that of the party making the motion.”). On the basis of mistake with regard to water right no. 37-07602 and, indirectly, also to related water right no. 37-05454, the judgments should be set aside.

(b) **In addition, inadvertence, surprise and excusable neglect justify setting aside the judgments.**

Mr. And Mrs. Hubsmith believed that the SRBA Director’s Report recommendation for Water Right No. 37-07602, based on the previously issued license, was correct. Until the recent discovery of the misnumbered proof of beneficial use form, they had no reason to believe otherwise. Since the Hubsmiths believed that the Director’s Report recommendation correctly reflected the water right, they did not realize the need to object. Under the circumstances, the Hubsmiths’ failure to realize that it was necessary to file an objection with the SRBA Court constituted inadvertence and excusable neglect. The discovery of the misnumbered proof of beneficial use form, buried deep in IDWR files, only just recently occurred, in April 2003. *Affidavit of Dana L. Hofstetter*. This discovery and the determination that water right no. 37-07602 had been inappropriately

limited in acreage and quantity came as an unexpected surprise.

(c) **Newly discovered evidence also
justifies setting aside the judgments.**

The very recent discovery of the misnumbered proof of beneficial use form also constitutes newly discovered evidence which independently justifies setting aside the judgments. Ever since Mr. Hubsmith acquired the land and associated water rights, he operated under the mistaken belief that Permit No. 37-07268 had been properly lapsed for the failure to submit a timely proof of beneficial use form. He took action to get the lapsed permit reinstated based on the fact that he needed additional water rights to cover all of the irrigated acreage on the property. *Affidavit of Dana L. Hofstetter, Exhibit E.* However, since he believed the Permit had been properly lapsed, he agreed to advancement of the priority date. *Affidavit of Dana L. Hofstetter, Exhibit G.*

The ultimate discovery of the error required a side-by-side comparison of two license files, IDWR File Nos. 37-07268 and 37-07602. *Affidavit of Dana L. Hofstetter.* That Steve Shaw had submitted a very early proof of beneficial use in August 1978 for one permit, yet had failed to submit a proof of beneficial use form for the other permit with the impending deadline, was the error discovered in April 2003. *Id.* The actions of the Hubsmiths and IDWR confirm that the error had remained undiscovered prior to April 2003. Accordingly, also on the basis of newly discovered evidence, the judgments should be set aside.

4. **There is a Mentorious Case that Water Right No. 37-07602 Should have More Acreage and a Greater Quantity.**

The license files confirm the premature submission of the proof of beneficial use for water right no. 37-07602 and the concomitant reduction in acreage and quantity as a result of that premature submission. The Hubsmiths would like an opportunity, with the aid of aerial photographs, witnesses, documents and other available evidence, to confirm the proper development of Permit No. 37-07602. There is substantial evidence in IDWR records that the Section 30 acreage which originally had been covered by Permit No. 37-07602 but ultimately was not licensed as a result of the premature proof of beneficial use submission, actually would have been licensed, had proof of beneficial use been submitted in accordance with the correct 1982 deadline. *Affidavit of Dana L. Hofstetter, Exhibits G, O and P.* Some of this acreage and associated water quantity was included on License No. 37-07268 which ultimately issued with the advanced priority date. *Affidavit of Dana L. Hofstetter, Exhibit G.* The remainder of this Section 30 acreage appeared on License No. 37-08679 after IDWR specifically found that there was sufficient information justifying out of sequence water right issuance since the evidence established irrigation of the subject lands by the early 1980's. *Affidavit of Dana L. Hofstetter, Exhibits N, O and P.*

The evidence confirms that proof of beneficial use for Permit No. 37-07602 was submitted prematurely and that this resulted in an inappropriate acreage limitation of 35

acres and an associated 0.70 cfs. Other evidence indicates by the early 1980's when the proof of beneficial use actually was due for Permit No. 37-07602, virtually all of the originally 160 permitted acres actually were irrigated. Accordingly, had proof of beneficial use for Permit No. 37-07602 been properly submitted in 1982 when it was due, the ultimately licensed acreage and quantity elements would have been greater than 35 acres and 0.70 cfs respectively. Accordingly, based on available evidence, a meritorious case justifying the setting aside of the judgments is presented.

5. Conclusion.

For the foregoing reasons, the judgments with respect to Water Right Nos. 37-07454 and 37-07602 should be set aside.

DATED this 6th day of June, 2003.

HOFSTETTER LAW OFFICE, L.L.C.
For Louis L. "Leon" and Iris B. Hubsmith

By 
Dana L. Hofstetter

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 6th day of June, 2003, I caused a true copy of the foregoing MOTION TO SET ASIDE JUDGMENTS AND MEMORANDUM IN SUPPORT to be served by the method(s) indicated on the following:

Original to:

Clerk of the District Court
Snake River Basin Adjudication
253 3rd Avenue North
Twin Falls, Idaho 83303
☐ U.S. Mail ☐ Fed Ex ☒ Hand ☐ Fax

Copies to:

IDWR Document Depository
P. O. Box 83720
Boise, Idaho 83720-0098
☒ U.S. Mail ☐ Fed Ex ☐ Hand ☐ Fax

Chief, Natural Resources Division
Office of the Attorney General
P. O. Box 44449
Boise, ID 83711-4449
☒ U.S. Mail ☐ Fed Ex ☐ Hand ☐ Fax

United States Department of Justice
Environment and Natural Resources Division
550 West Fort Street, MSC 033
Boise, ID 83724
☒ U.S. Mail ☐ Fed Ex ☐ Hand ☐ Fax

Leon and Iris Hubsmith
647 E. 130 S.
Dietrich, Idaho 83324
☒ U.S. Mail ☐ Fed Ex ☐ Hand ☐ Fax



DANA L. HOFSTETTER

E:\4018.1\5574

DISTRICT COURT-SRBA
TWIN FALLS CO., IDAHO
FILED _____
2003 JUN 6 PM 4 27

Louis L. "Leon" and Iris B. Hubsmith

Dana L. Hofstetter, ISB #3867
Hofstetter Law Office, LLC
608 West Franklin Street
Boise, Idaho 83702
Phone: (208) 424-7800
Facsimile: (208) 424-8774
E-Mail: Dana@IdahoWaterLaw.com

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

In Re SRBA	)	Subcase Nos. 37-07454 and 37-07602
	)	
Case No. 39576	)	AFFIDAVIT OF
_____	)	DANA L. HOFSTETTER

STATE OF IDAHO)
) ss:
COUNTY OF ADA)

Dana L. Hofstetter, after being first duly sworn upon oath, hereby deposes and
says as follows:

1. I am a member of the firm of Hofstetter Law Office, LLC, counsel of record
for movants Louis L. "Leon" and Iris B. Hubsmith.
2. In April 2003, I requested from Christine Johnston of the Idaho

Department of Water Resources office at 1301 North Orchard Street, in Boise, Idaho, copies of water right license files for water right nos. 37-07268, 37-07454, 37-07602 and 37-08679.

3. Based on my over fourteen years of experience practicing water law in Idaho, I understand that Ms. Johnston works in the vault at the Idaho Department of Water Resources where original water right files are stored.

4. In response to my request, Ms. Johnston provided me complete copies of the requested license files stored in a digital format on a compact disc ("CD").

5. Attached hereto as Exhibits A, B, C, D, E, F, and G are true and correct copies of documents I printed from License File No. 37-07268 on the CD that Ms. Johnston provided to me.

6. Because the filing date stamp on the Proof of Beneficial Use form from License File No. 37-07602 on the CD that Ms. Johnston provided to me was illegible, I separately requested that Ms. Johnston send me a legible copy of that document by mail. Attached as Exhibit H is a true and correct copy of that document which I received by mail from Ms. Johnston on or about May 30, 2003.

7. Attached hereto as Exhibits I, J and K are true and correct copies of documents I printed from License File No. 37-07602 on the CD that Ms. Johnston provided to me.

8. Attached hereto as Exhibits L and M are true and correct copies of

documents I printed from License File No. 37-07454 on the CD that Ms. Johnston provided to me.

9. Attached hereto as Exhibits N, O and P are true and correct copies of documents I printed from License File No. 37-08679 on the CD that Ms. Johnston provided to me.

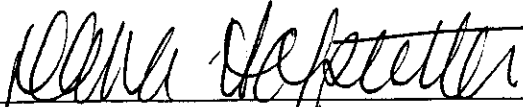
10. On June 6, 2003, I requested and obtained IDWR's certification that the exhibits attached to this Affidavit are true copies of documents on file with IDWR.

11. Upon information and belief, I understand that Mr. Steve Shaw, the former permitholder of Permit Nos. 37-07268, 37-07602 and 37-07454, is deceased and accordingly, I have not contacted him to obtain any information regarding the subject water rights.

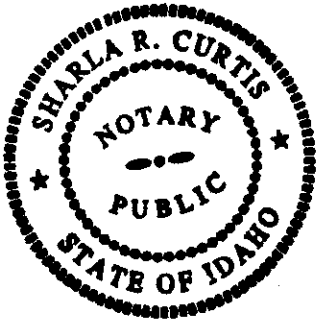
12. I discovered the incorrect designation of the permit number on the proof of beneficial use in IDWR's License File No. 37-07602 in April 2003, shortly after Mr. Hubsmith contacted me regarding a different water right matter. I discovered this apparent error after I had reviewed and compared IDWR License File Nos. 37-07602 and 37-07268.

FURTHER YOUR AFFIANT SAYETH NAUGHT.

DATED this 6th day of June, 2003.


DANA L. HOFSTETTER

SUBSCRIBED AND SWORN to before me this 6th day of June, 2003.



Sharla R. Curtis

Notary Public in and for the State of Idaho

Residing at: Emmett, Idaho

My Commission Expires: 12/6/2007

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 6th day of June, 2003, I caused a true copy of the foregoing AFFIDAVIT OF DANA L. HOFSTETTER to be served by the method(s) indicated on the following:

Original to:

Clerk of the District Court
Snake River Basin Adjudication
253 3rd Avenue North
Twin Falls, Idaho 83303
☐ U.S. Mail ☐ Fed Ex ☒ Hand ☐ Fax

Copies to:

IDWR Document Depository
P. O. Box 83720
Boise, Idaho 83720-0098
☒ U.S. Mail ☐ Fed Ex ☐ Hand ☐ Fax

Chief, Natural Resources Division
Office of the Attorney General
P. O. Box 44449
Boise, ID 83711-4449
☒ U.S. Mail ☐ Fed Ex ☐ Hand ☐ Fax

United States Department of Justice
Environment and Natural Resources Division
550 West Fort Street, MSC 033
Boise, ID 83724
☒ U.S. Mail ☐ Fed Ex ☐ Hand ☐ Fax

Leon and Iris Hubsmith
647 E. 130 S.
Dietrich, Idaho 83324
☒ U.S. Mail ☐ Fed Ex ☐ Hand ☐ Fax



DANA L. HOFSTETTER

E:\4018.1\5581

Application No. 77-724

APPROVED

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

1. Name of applicant Ralph Bowen
 post office address Dietrich, Idaho 83324
2. Source of water supply Groundwater which is a tributary of _____
3. a. Location of point of diversion is NE $\frac{1}{4}$ of NW $\frac{1}{4}$ of Section 30 Township 6S
18E 8.M. Lincoln County; additional points of diversion if any: _____
- b. If water is not consumed, it will be discharged into _____ at a point in _____ $\frac{1}{4}$ of _____ $\frac{1}{4}$ of Section _____ Township _____ Range _____ 8.M.
4. Water will be used for the following purposes:
 Amount 3.2 cfs for irrigation purpose from Mar. 15 to Nov. 15 (both dates inclusive)
(cfs or acre-feet per annum)
 Amount _____ for _____ purpose from _____ to _____ (both dates inclusive)
(cfs or acre-feet per annum)
 Amount _____ for _____ purpose from _____ to _____ (both dates inclusive)
(cfs or acre-feet per annum)
5. Total quantity to be appropriated:
 a. 3.2 cubic feet per second and/or
 b. _____ acre feet per annum.
6. Proposed diverting works:
 a. Description of ditches, flumes, pumps, headgates, etc. well and pump
- b. Height of storage dam _____ feet; active reservoir capacity _____ acre feet; total reservoir capacity _____ acre feet; materials used in storage dam: _____
 Period of year during which storage will occur _____ to _____ inclusive.
(Mo. Day) (Mo. Day)
- c. Proposed well diameter is 18 inches; proposed depth of well is 300 feet.
7. a. Time required for the completion of the works and application of the water to the proposed beneficial use is 5 years.
 b. Estimated construction cost is \$ 15,000.00.
8. Description of proposed use:
 a. if water is not for irrigation.
 (1) Give the place of use of water: _____ $\frac{1}{4}$ of _____ $\frac{1}{4}$ of Section _____ Township _____ Range _____ 8.M.
 (2) Amount of power to be generated: _____ hp under _____ feet of head.
 (3) List number of each kind of livestock to be watered _____
 (4) Name of municipality to be served _____
 (5) Name of industrial establishment _____
 (6) Name of institution to be served _____

EXHIBIT

A

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

Total number of acres to be irrigated.....160

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

9. e. Who owns the property the point of diversion Applicant

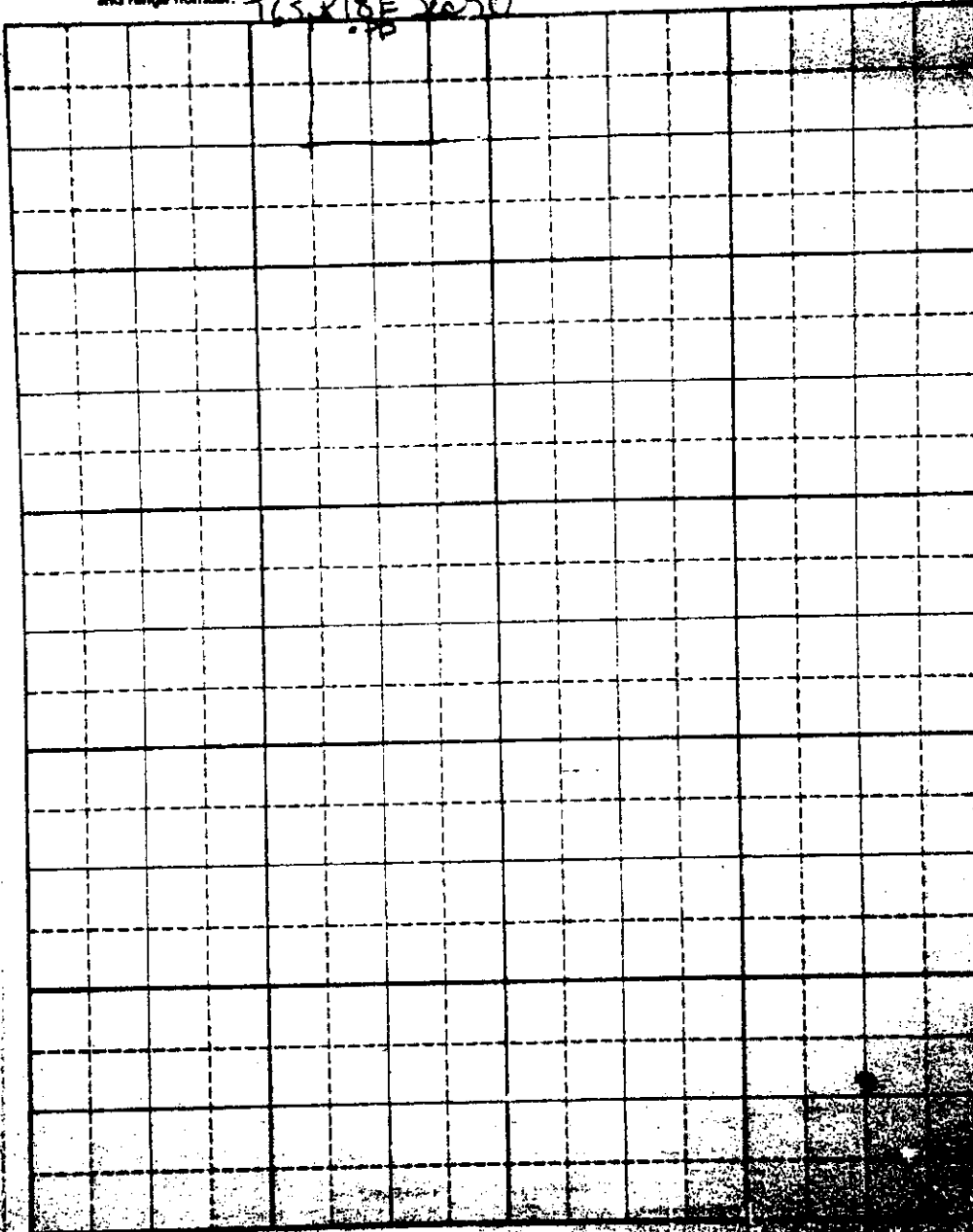
b. Who owns the land to be irrigated or piece of use Applicant

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

10. Remarks

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

T6S R18E S230



Scale: 2 inches equal 1 mile

Expedited Priority 8-23-1973

Received by OWH Date 8-25-73 Time 10:30 AM
Preliminary check by OWH Fee 1.50
Receipted by OWH Date 8-25-73 No. 11602
Publication prepared by OWH Date 8-25-73
Published in Idaho State Gazette
Publication dates 8-30 & 9-6-73
Publication approved OWH Date 9-14-73
Priority Expedited 8-23-73 Reason _____

Protests filed by: _____

Copies of protests forwarded by: _____

Hearing held by: _____ Date: _____

Recommended for approval denial by OWH

ACTION OF THE DIRECTOR, DEPARTMENT OF WATER ADMINISTRATION

This is to certify that I have examined Application for Permit to appropriate the public waters of the State of Idaho No. 37-7268 and said application is hereby APPROVED.

1. Approval of said application is subject to the following limitations and conditions:

- a. SUBJECT TO ALL PRIOR WATER RIGHTS.
- b. Proof of construction of works and application of water to beneficial use shall be submitted on or before September 1, 1978.
- c. Other: A measuring device of a type approved by this Department shall be permanently installed and maintained as part of the diverting works.

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

Witness my hand this 18th day of September, 1973.

The foregoing is a true and certified copy of the document on file at the Department of Water Resources.

Signed this 6 day of June, 2003

Silviana J. Gibson

RECEIVED

SEP 8 1975

State of Idaho
Department of Water Resources

Department of Water Resources

ASSIGNMENT OF PERMIT

1. RALPH BOWEN, hereby assign to STEVEN R. SHAW
of Route #1, Dietrich, Idaho Address _____

CHECK ONE:

All my right, title, and interest in and to Permit No. 37-7268
to appropriate the public waters of the State of Idaho.

The following described portion of my right, title, and interest in and to Permit No. _____ to appropriate the public waters of the State of Idaho.

(Describe that portion of the permit being assigned by listing the acreage within each 40-acre subdivision, the point of diversion and the amount of water in cubic feet per second for direct diversion, or acre feet for storage)

Made this 8th day of September, 19 75

Permit Holder

Spouse of Permit Holder

State of Idaho

County of Linn, Iowa)

On this 8th day of September, 19 75, personally appeared before me the signer(s) of the above instrument, who duly acknowledged to me that he (she) (they) executed the same.

з е а 1

Notary Public residing at

My commission expires:

8-10-1979

The foregoing is a true and certified copy of the document on file at the department of Water Resources.

Signed this 6th day of June, 2003

Deborah J. Gibson

EXHIBIT

B



State of Idaho
DEPARTMENT OF WATER RESOURCES
STATE OFFICE, 373 W. Franklin Street, Boise, Idaho

COMMISSIONER
Boise

C. J. HENNINGSEN
Boise

June 30, 1978

CERTIFIED MAIL

Boise, Idaho
Boise, Idaho
Boise, Idaho
Boise, Idaho

Re: Permit No. 17-7268

138826

Steven R. Shaw
Route 1
Dietrich, ID 83324

Dear Mr. Shaw:

One of the conditions of approval of your water Permit No. 17-7268 (see last page of your approved permit) was that evidence of the extent of development be submitted as proof of application of water to beneficial use to this office on or before September 1, 1978. Enclosed is an affidavit form which must be used to submit the required proof of beneficial use.

If you have not fully completed your project, and you have not previously received an extension of time, you may request an extension of time provided the delay is for reasonable cause as indicated in Section 42-204, Idaho Code, amended. If you have been prevented from proceeding by a governmental agency or by litigation, more than one extension of time can be granted.

Either the beneficial use affidavit or a request for an extension of time must be received by this Department on or before the above mentioned date, otherwise, the permit will lapse and be of no further force or effect.


KAREN WRIGHT
Karen Wright

Encl.: Proof affidavit

The foregoing is a true and certified copy of
the document on file at the Department of
Water Resources.

Signed this 16 day of June, 1978


EXHIBIT

tabbies

C



State of Idaho
DEPARTMENT OF WATER RESOURCES
STATE OFFICE: 873 W. Franklin Street, Boise, Idaho

KIMBLE CHASE

Director

C. STEPHEN ALLRED

Deputy

MAHONEY, JAMES

Secretary

Boise, Idaho 83720-0001
(208) 333-2211

September 7, 1978

Steven R. Shaw
Route 1
Blatch, ID 83324

RE: Permit No. 37-7265

Dear Mr. Shaw:

You are hereby notified that under the provisions of Section 42-218a of the Idaho Code, Permit No. 37-7265 was denied since you have not notified us that you have completed the procedure for the data required on your permit. You were provided forms for that purpose in our notice to you dated June 30, 1978.

Your permit cannot be reinstated unless you submit the proof of beneficial use affidavit, enclosed, or some other reasonable cause why the permit should be reinstated within 60 days from the date of this lapse notice.


KIMBLE CHASE
Director

CSA:jm

Encl.

This document is a true and certified copy of the document on file at the Department of Water Resources.

Boise, Idaho 83720-0001

September 14, 1978


JAMES MAHONEY
Secretary

EXHIBIT

D

tabbies

RECEIVED

JUL 11 1988

LOUIS L. HUBSMITH

P. O. Box 397
Dietrich, Idaho 83324
544-7581

Department of Water Resources

July 8, 1988

Idaho Department of Water Resources
1301 North Orchard
Boise, ID 83706

Re: Application to Appropriate No. 37-7268

Gentlemen:

I am writing this letter to you to request that the above-designated Application for Permit to Appropriate water for irrigation purposes be reinstated. The Application was for 3.2 cfs of irrigation water from ground water source to irrigate the W $\frac{1}{2}$ NE $\frac{1}{4}$ and the E $\frac{1}{2}$ NW $\frac{1}{4}$ of Section 30, Township 5 South, Range 18 East of the Boise Meridian, Lincoln County, Idaho. The original Application was made by Mr. Ralph Bowen, who was the owner of the property in 1973 when the Application was made. Thereafter, Mr. Bowen sold the land to Mr. Steve Shaw, who owned the land and completed the irrigation system under Permit No. 37-7268 in 1976. Mr. Shaw was killed in an automobile accident. Prior to his death he had mortgaged the property to Southern Idaho Production Credit Association. I acquired the land from Southern Idaho Production Credit Association, as shown on a deed hereinafter listed.

The work required by the Permit was completed by the time required for proof of completion of works and application to beneficial use. However, these proofs were never submitted to your Department.

To support this Application for Reinstatement of this Permit, I am enclosing the following the following documents:

1. Copy of Proof of Beneficial Use.
2. Copy of Aurora Pump Company invoice for 400 hp motor and 3500 gmp pump.

DEC 21 1988

EXHIBIT

E

Idaho Department of Water Resources

Page 2

July 8, 1988

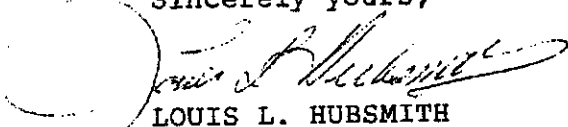
3. Copy of installation report showing well size, depth and water level.
4. Letter from Idaho Power Company showing power hookup in 1976 and continued usage for irrigation purposes since such time.
5. Affidavit of Jess Southwick showing that the land has been farmed since 1976 and is now farmed.
6. Affidavit of Neal Bowman showing development of the farm in 1976 and continued operation since such time.
7. ASCS map from Lincoln County ASCS Office showing a center pivot on said land.
8. Copy of deed from Southern Idaho Production Credit Association deeding subject land to Mr. and Mrs. Hubsmith.

I do hereby request that Permit No. 37-7268 be reinstated in my name. The supporting documentation as listed above is enclosed.

I am also enclosing my check for the examination fee on proof of completion of works and beneficial use.

I would appreciate your considering this Application for Reinstatement as soon as possible. If there is any additional documentation or information needed, please feel free to call me.

Sincerely yours,


LOUIS L. HUBSMITH

Encls.

The foregoing is a true and certified copy of the document on file at the department of Water Resources.

Signed this 6 day of June, 2003


with attachments, excluding #7 (ASCS map).

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DEC 21 1988

Form 217
03/86

RECEIVED
JUL 11 1988

For Office Use Only
Fee Received 150.00
Date 7/12/88
Receipt # C001771
Receipt by CP
Reviewed by _____
Sent to region _____

STATE OF IDAHO
Department of Water Resources
DEPARTMENT OF WATER RESOURCES

PROOF OF BENEFICIAL USE

The Idaho Department of Water Resources will consider this form as a statement that the permit holder(s) has completed all development that will occur under this permit and that water has been applied according to the provisions of the permit for the beneficial use(s) described below. This form must be accompanied by a license examination fee or a completed field examination report prepared by a certified water right examiner who has been appointed by the department.

Permit No. 37-7268

Name(s) of Permit Holder: Louis L. Hubsmith

Post Office Address: P. O. Box 397, Dietrich, ID 83324

Telephone No. 544-7581

Source of Water: Groundwater

Extent of Use:

Domestic _____ (number of households)

Stockwater _____ (number and type of stock)

Irrigation 160 (acres)

Other/Remark _____

Total rate and/or volume for which proof is submitted 3.0 cfs _____ acre-feet

Show the date water was first diverted and beneficially used under this permit: 1976

Measuring Device: Required? ☐ Yes ☒ No
Installed? ☐ Yes ☒ No

Fee enclosed \$ 150.00
(See License Examination Fee Schedule)

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

Randy Lobb of IDWR recently did efficiency test on well

Person to contact to accompany the Department representative during the field examination:

Same

(Name)

(Telephone Number)

(Address)

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

RECEIVED

DEC 21 1988

8 July 88
Date

[Signature]
Signature of Permit Holder (and title, if appropriate)

Verli-Line
AURORA PUMPS
AUROR PUMP
A UNIT OF GENERAL SIGNAL
 P.O. BOX 1300 • LA PUENTE, CALIFORNIA • 91749

FORMERLY LAYNE AND BOWLER PUMP CO.

 SOLD TO **IDAHO IRRIGATION**
BOX 1264
BURLEY, ID 83318

 SHIP TO **SAVE**

ALL INQUIRY AND CORRESPONDENCE SHOULD BE SENT TO LA PUENTE, CALIF. WITH THIS NUMBER

ORDER NUMBER

376-70510

DUNS NO. 06-523-4997

INVOICE NO.

2-54992CUST. ORDER NO. **389**

INVOICE DATE

05-683-873

We hereby certify that these goods were prepared in compliance with all applicable requirements of the Fair Labor Standards Act of 1938, as amended, and all regulations and orders thereunder.
 If any sales, use, or transfer tax is payable with respect to the goods described herein, purchaser will upon demand pay to us the amount of any such tax plus any interest and penalty thereon for which we might be or become liable.
 This invoice is also subject to terms and conditions on our acknowledgment and is for amounts listed in quantity shipped column.

TERMS - NET 30 DAYS

A FINANCE CHARGE COMPUTED AT A PERIODIC RATE OF 1% PER MONTH WHICH IS AN ANNUAL PERCENTAGE RATE OF 12% OF HIGHEST LAWFUL RATE, WILL BE APPLIED TO PAST DUE ACCOUNTS AFTER DEDUCTING CURRENT PAYMENTS AND/OR CREDITS.

PAYABLE IN U.S. FUNDS ONLY.

MANUFACTURING POINT

 1 N. AURORA BL.
 (AURORA)
 CITY OF INDUSTRY
 (LAKE VERNON)

COLLECT

PREPAID ALLOWED

PREPAID NOT ALLOWED

FRT

TERMS

ORDER NUMBER	DATE RECEIVED	CUSTOMER'S ORDER NO.	CERT	PIS	CURVES	BUL'INS	INSTR'IONS	PARTS LISTS	SHIPMENT REQUESTED
376-70510	5-14-76	389							
AP-OR	CUST. CODE	S. TAX EXEMP. NUMBER	S. SOLD	DIST. NO	S SHIP'D	C SHIP'D	SHIP VIA		SHIPMENT SCHEDULE
				065			RIC		

PROD. CODE	QTY ORDERED	PRICE EACH	PART OR MODEL	DESCRIPTION	UNIT PRICE	QTY SHIPPED	TOTAL PRICE
5810	1		STEVE SHAW	400 HP MOTOR W/1751 ENT			8158.00
	1		20AC-12 HEAD	260" OF 12 X 3 X 1 15/16			
			5 STGS 15 KWH - N BOWLS	5' OF 12" SUCTION W/CONE			12,393.00
			INSTALLATION				400.00
TOTAL							20,951.00

IMPELLER PATT.	DIA.	CAPACITY	TOTAL HEAD	SPEED	EFFICIENCY	PUMPING TEMPERATURE	LIQUID	SOLID
		3500 G.P.M.	402 FT					
STAGES	SPEC. GRAY.	VISCOSITY	BRAKE HORSE POWER	SUCTION PRESSURE	VAPOR PRESSURE	PSIA	AVAIL	REQ'D

MICROFILMED

DEC 21 1988

11-84(182.5
11-96(253.5



AURORA PUMP
A SUBSIDIARY OF THE AURORA PUMP
UNIT OF GENERAL SIGNAL
1740 Kimberly Rd., P.O. Box 892, Twin Falls, ID 83301



DEEP WELL TURBINE PUMP

ESTIMATE SHEET ORDER

SOLD TO: <i>Electrical Equipment Co. file</i>		DATE: <i>1-20-76</i>		
ADDRESS: <i>TWIN FALLS, IDAHO</i>		P.O. NO.		
SHIP TO:		QUOTATION NO.		
ADDRESS:		BID DATE		
SHIP VIA:		NO. OF PUMPS <i>ONE</i>		
CUSTOMER JOB NO. <i>Steve Shaw</i> LOCATION <i>Dieterich</i>		ITEM NO.		
Well Diameter (Inside)	Inches	Type	No. Stages <i>5</i>	RPM
Well Depth	Feet	Impeller <i>3-M-2-L</i>	Curve No.	
Static Water Level	Feet	K. Value <i>25.8</i>	Total Thrust <i>13,500</i>	Lbs.
Drawdown	Feet	GPM	HEAD	% EFF.
Pumping Level	Feet	<i>3500</i>	<i>402</i>	<i>83</i>
Dsch. Pressure (<i>74</i> psig)	Feet			BHP
				<i>428</i>
Total Pumping Head	Feet			<i>3</i>
Pump Capacity	GPM			<i>431</i>
		Motor Eff.	% (full load)	% (1/2 load)
				Overall Eff.
DESCRIPTION		PRICING SCHEDULE		Approx. Wgt.
1 MOTOR: Make <i>400</i> HP <i>1800</i> RPM <i>460</i> Volts		<i>830290</i> x <i>.96</i> <i>8008</i>		
Phase <i>3</i> Cycle <i>60</i> Type		Frame No. <i>6043</i>		
Special Features: <i>175% EHT</i>		N/R/R <i>NO</i>		
2 HEAD SIZE: <i>20 AC 12</i>		<i>77.5</i>		
Companion Flanges				
(Surface Dschg.) (Below Ground Dschg.)		"Base to (Dschg.)		
3 DISCHARGE PIPE: <i>NO</i> Ft. of		<i>15"</i> Std. Pipe		
4 COL <i>260</i> Ft. <i>12</i> "Std. Pipe x <i>3</i> "Tube x <i>1 1/16</i> " Shaft, per Ft. \$		<i>10,476</i>		
5 BOWLS: Size <i>16</i> Type <i>KHM-H</i>		No. Stages <i>5</i>		
6 SUCTION PIPE: <i>5-0</i> Ft. of <i>12</i> "Std. Pipe		<i>237</i>		
7 STRAINER: Size <i>12</i> "Type <i>CONC</i>		Matl. <i>Galv.</i>		
8 AIR LINE: Ft. of		"(Galv.) (Copper) \$		
9. ALTITUDE GAUGE & FITTINGS:		Hand Pump <i>10880</i>		
10 STARTING EQUIPMENT				
11 <i>By Customer</i>				
12				
13				
14				
15 ACCESSORIES, SPECIAL CONSTRUCTION, VARIATIONS:				
16				
17 <i>Freight</i>				<i>428.00</i>
18				
19				
20 ACCESSORIES, SPECIAL CONSTRUCTION, VARIATIONS:				
21				
22				
23				
24				
25				
26				
27				
28				
INSTALLATION SERVICE <i>YES - NEAR Dieterich</i>		TOTALS		<i>400.00</i>
WIRING		NET TOTAL EACH		
		NET TOTAL - UNITS		<i>\$ 20,950.00</i>

REMARKS:

QUOTED BY

Rue Hunt

SNAKE RIVER



HYDRO POWER

IDAHO POWER COMPANY

RECEIVED

July 6, 1988

JUL 11 1988

Department of Water Resources

Mr. Louis Hubsmith
Box 397
Dietrich, ID 83324

RE: Irrigation Pump #0555

Dear Mr. Hubsmith:

Upon your request I am writing this letter to verify that the above pump has been in use since 1976. In that year, Mr. Steve Shaw signed an irrigation electric service agreement with Idaho Power guaranteeing a minimum annual payment to Idaho Power for its special investments in extending its lines and facilities to the customer to supply him with pumping power service. Mr. Shaw signed a ten (10) year agreement with Idaho Power. I can verify that Mr. Shaw did exceed the agreed upon annual payment for each of those ten (10) years, thus verifying irrigation pump usage for those ten (10) years.

Very truly yours,

SANDY CAMERON
Customer Service Rep.
Shoshone Office
IDAHO POWER COMPANY

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DEC 21 1988

i worked for Steve Shaw in 1976
when section 30 was cleared. It
has been turned ever since.

by *Jess Southwick*

Jess Southwick

Dietrich Id. 43324

RECEIVED

JUL 11 1988

Department of Water Resources

MICROFILMED

DEC 21 1988

29 June 1988

I Neal Bowman know from personal knowledge
that Section 30 was developed in 1976 & has been
continually farmed since 1977.

Neal Bowman

RECEIVED

JUL 11 1988

Department of Water Resources

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DEC 21 1988

CORPORATION WARRANTY DEED

FOR VALUE RECEIVED, SOUTHERN IDAHO PRODUCTION CREDIT ASSOCIATION, a corporation duly organized and existing under the laws of the State of Idaho, Grantor, does hereby Grant, Bargain, Sell and Convey unto LOUIS L. HUBSMITH and DARLENE I. HUBSMITH, Grantees, whose mailing address is P. O. Box 397, Dietrich, Idaho 83324, the following described real property, situated in Lincoln County, Idaho, to-wit:

Township 6 South, Range 19 East of the Boise Meridian
Section 19: Lots 7, 11 and 12
Section 30: NE $\frac{1}{4}$ NE $\frac{1}{4}$, W $\frac{1}{2}$ E $\frac{1}{4}$, Lots 1, 2, 6, 7 and 12

Together with 123.45 shares of stock in the Big Wood Canal Company, Ltd.

SUBJECT to taxes and assessments for 1986 and subsequent years and easements and rights of way of record.

ALSO SUBJECT to an Agreement dated June 25, 1975, wherein Ralph E. Bowen and Bernice Jean Bowen, husband and wife, were the sellers, and Steven R. Shaw and Betty Lorraine Shaw, husband and wife, were the Buyers.

TO HAVE AND TO HOLD, the said premises, with their appurtenances unto the said Grantees and to the Grantees' heirs and assigns forever. And the Grantor does hereby covenant to and with the said Grantees, that the Grantor is the owner in fee simple of said premises; that they are free from all encumbrances except as above described and that Grantor will warrant and defend the same from all lawful claims whatsoever.

IN WITNESS WHEREOF, the Grantor, pursuant to a resolution of its Board of Directors has caused its corporate name to be hereunto subscribed by its Site Manager.

DATED this 10th day of June, 1986.

MICROFILMED

DEC 21 1988

SOUTHERN IDAHO PRODUCTION
CREDIT ASSOCIATION

By John F. Brinis

1 STATE OF IDAHO)
2 County of Gooding) ss.
3 County of Twin Falls)

4 On this 10th day of July, 1986, before me, a Notary
5 Public in and for said County and State, personally appeared
6 John F. Birnie, known to me to be the
7 Site manager of the corporation that executed
8 this instrument or the person who executed the instrument on
9 behalf of said corporation, and acknowledged to me that such
10 corporation executed the same.

11 IN WITNESS WHEREOF, I have hereunto set my hand and
12 affixed my official seal the day and year in this certificate
13 first above written.

14 Deanna R. Long
15 NOTARY PUBLIC
16
17
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COPY

MICROFILMED

DEC 21 1988



State of Idaho

DEPARTMENT OF WATER RESOURCES

1301 North Orchard Street, Statehouse Mail, Boise, Idaho 83720 - (208) 334-7900

CECIL D. ANDRUS
GOVERNOR
R. KEITH HIGGINSON
DIRECTOR

December 14, 1988

RE: Permit No. 37-7268

Louis L. & Darlene I. Hubsmith
P.O. Box 397
Dietrich, ID 83324

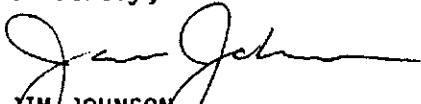
Dear Permit Holder(s):

We acknowledge receipt of the statement of beneficial use and the supporting documentation for reinstating the above referenced permit. Enclosed is a copy of the Order of Reinstatement. Please note that the priority date has been advanced to July 11, 1988.

Before a license can be issued, a field examination will be made by a representative of this Department.

If you have any questions regarding this matter, please contact this office or our Southern Regional Office at 734-3578.

Sincerely,


JIM JOHNSON
Water Rights Supervisor

JJ:sc

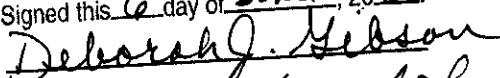
Enclosure

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DEC 21 1988

The foregoing is a true and certified copy of the document on file at the department of Water Resources.

Signed this 6 day of June, 2003


with attachment of
12/8/88 Order.

EXHIBIT

F

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE
STATE OF IDAHO

IN THE MATTER OF PERMIT
NO. 37-7268 IN THE NAME OF
LOUIS L. & DARLENE I. HUBSMITH

ORDER

This matter having come before the Idaho Department of Water Resources (Department) the Department finds as follows:

FINDINGS OF FACT

1. On September 19, 1973 the Director of the Department of Water Resources issued Permit No. 37-7268 with a condition of approval that proof of construction of works and application of water to beneficial use be submitted on or before September 1, 1978.

2. On June 30, 1978 the Department sent a proof due notice to the permit holders.

3. On September 7, 1978 the Department sent a lapse notice to the permit holders since neither proof of beneficial use nor a request for extension of time had been received from the permit holders.

4. On July 11, 1988 Proof of Beneficial Use was received by the Department from the permit holders.

5. Section 42-218a, Idaho Code, authorizes the Department to reinstate a lapsed permit, with the priority date advanced to the date that proof of beneficial use was received, upon submittal of evidence clearly establishing the

MICROFILMED

DEC 21 1988

extent of beneficial use prior to the proof due date and a showing of reasonable cause why the proof was submitted late.

6. The permit holders submitted evidence to confirm that water has been put to beneficial use. These documents include: a copy of an ASCS 1977 aerial photo with date confirmed and signed by a Lincoln County ASCS agent; copy of well pump invoice dated May 19, 1976; copy of well pump installation report dated May 1, 1976; letter from Idaho Power Company customer service representative verifying power installation to pump in 1976 and continuous service since that time; two affidavits from persons familiar with the land and farming operation which state that the land was irrigated continuously since 1976; and a copy of deed from Southern Idaho Production Credit Association deeding land to Louis and Darlene Hubsmith.

7. The permit holders have stated that the previous permit holder had died after mortgaging the land to Southern Idaho Production Credit Association and completing the development. Because of these events, permit holders state that Proof of Beneficial Use was not submitted in a timely manner.

CONCLUSIONS OF LAW

1. The permit holders have submitted proof of beneficial use along with supporting evidence which establishes that water was in fact beneficially used as identified on the permit.

2. The permit holders have shown sufficient cause why the proof of beneficial use was not submitted in a timely manner.

3. The permit can be reinstated with the date of priority advanced to the date proof of beneficial use was received by the Department.

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DEC 31 1988

ORDER

IT IS HEREBY ORDERED that Permit No. 37-7268 is reinstated.

IT IS FURTHER ORDERED that the date of priority of this permit is
advanced to July 11, 1988.

Dated this 8th day of December, 1988.


L. GLEN SAXTON
Chief, Operations Bureau

MICROFILMED

DEC 21 1988

State of Idaho
Department of Water Resources

WATER RIGHT LICENSE

WATER RIGHT NO. 37-07268

Priority: July 11, 1988

Maximum Diversion Rate: 3.20 CFS
Maximum Diversion Volume: 640.0 AF

This is to certify, that DARLENE I HUBSMITH
LOUIS L HUBSMITH

PO BOX 397

DIETRICH ID 83324

has complied with the terms and conditions of the permit, issued pursuant to Application for Permit dated August 23, 1973; and has submitted Proof of Beneficial Use on July 11, 1988. An examination indicates that the works have a diversion capacity of 6.200 cfs of water from a GROUNDWATER source, and a water right has been established as follows:

<u>BENEFICIAL USE</u>	<u>PERIOD OF USE</u>	<u>RATE OF DIVERSION</u>	<u>ANNUAL VOLUME</u>
IRRIGATION	03/15 to 11/15	3.20 CFS	640.0 AF

LOCATION OF POINT(S) OF DIVERSION: NWNE, Sec. 30, Township 06S, Range 19E
LINCOLN County

<u>PLACE OF USE:</u>	<u>IRRIGATION</u>	<u>ACRES</u>	<u>ACRES</u>	<u>ACRES</u>	<u>TOTAL</u>
<u>TWN RGE SEC</u>					
06S 19E 19	Lot 12(ESW) 29				29
30	NWNE 40	SWNE 40	Lot 1(NENW) 40		131
	Lot 6(SENW) 11				

Total number of acres irrigated: 160

CONDITIONS/REMARKS:

1. The maximum diversion volume is defined as the maximum allowable volume of water that may be diverted annually from the source under this right. The use of water confirmed by this right limited to the amount that can actually be beneficially use used. The maximum diversion volume may be adjusted to more accurately describe the beneficial use or to implement accepted standards of diversion and use efficiency.
2. This water right is appurtenant to the described place of use.
3. This right is subject to all prior water rights and may be forfeited by five years of non-use.
4. Modifications to or variance from this license must be made within the limits of Section 42-222, Idaho Code, or the applicable Idaho law.
5. This right when combined with all other rights shall provide no more than 4.0 afa per acre for the lands above.
6. The maximum diversion rate under this right and right N 37-07454 and 37-07602 shall not exceed 6.2 cfs.

JUN 24 1992

EXHIBIT

G

PAGE 2

State of Idaho
Department of Water Resources

WATER RIGHT LICENSE

WATER RIGHT NO. 37-07268

This license is issued pursuant to the provisions of Section 42-219, Idaho Code.
Witness the seal and signature of the Director, affixed at Boise, this 10th
day of JUNE, 1992.

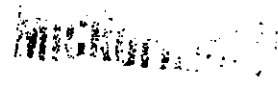
Acting for


K. Keith Higginson, Director

The foregoing is a true and certified copy of
the document on file at the department of
Water Resources.

Signed this 6 day of June, 2003


Deborah G. Gibson


JUN 24 1992

Identification No. 37-

Permit No. 37-7602

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

RECEIVED

AUG 2 1978

PROOF OF APPLICATION OF WATER TO BENEFICIAL USE

Department of Water Resources
Southern District Office

1. a) Name of Permit Holder Steve Shaw
b) Post Office Address Dietrich, Idaho 83324
2. Permit Number 37-7602
3. Date of Priority that you are prepared to establish 5-4-77
4. a) Source from which water was appropriated ground water
b) Location of the point of diversion: NW $\frac{1}{4}$ NE $\frac{1}{4}$, Section 30
Township 6S, Range 19E Boise Meridian, Other points of diversion: _____
5. a) The amount of water and use to which the water has been applied:
Amount 3.2 cfs for irrigation purposes from Mar 15 to Nov 15 incl.
(cfs and/or acre-feet per annum) (Month-Day) (Month-Day)
Amount _____ for _____ purposes from _____ to _____ incl.
(cfs and/or acre-feet per annum) (Month-Day) (Month-Day)
Amount _____ for _____ purposes from _____ to _____ incl.
(cfs and/or acre-feet per annum) (Month-Day) (Month-Day)
b) Total amount appropriated 3.2 cfs and/or acre-feet per annum
c) Describe how and by whom measurement of rate of flow or amount of storage was made and the qualifications of the person making the measurement: amount applied for
6. If the means of diversion and conveyance are owned by someone other than the Permit Holder:
a) Give the name or description of the canal, ditch or other works by which the water is conducted to the place of use: _____
b) Describe the agreement or understanding by which you take water from the works: _____
7. a) Briefly describe the works for diverting and conveying the water to the place of use, (If from a subterranean source, give the pump size, motor size, size of well casing, depth of well; if from surface water, give brief description of diversion structure and/or canal or ditch) well (18" x 300'), 400 hp pump, 10" & 12" buried main lines, handline sprinklers
b) Describe the type and size of measuring device which you have installed at your point of diversion: Rockwell flow meter
c) Give well driller's name and address and the date the well was completed: Norman Ridinger, Dietrich, Idaho. Completed March, 1976.
8. If for other than irrigation, describe the beneficial use to which you have applied the water and the place of use: _____

PROFILED
DATE 4-9-03

MICROFILMED

EXHIBIT

H

Exam typed 11/21/78 by _____

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

APPLICATION FOR PERMIT **APPROVED**

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

1. Name of applicant Steve Shaw Phone: 544-2276
post office address Dietrich, Idaho 83324
2. Source of water supply groundwater which is a tributary of _____
3. a. Location of point of diversion is NW $\frac{1}{4}$ of NE $\frac{1}{4}$ of Section 30 Township 6S
Range 19E, B.M. Lincoln County; additional points of diversion if any: _____

b. If water is not consumed, it will be discharged into _____ at a point in _____ $\frac{1}{4}$
of _____ $\frac{1}{4}$ of Section _____ Township _____ Range _____ B.M. _____
4. Water will be used for the following purposes:
Amount 3.2 cfs/irrig. purpose from March 15 to Nov. 15 (both dates inclusive)
(cfs or acre-feet per annum)
Amount _____ for _____ purpose from _____ to _____ (both dates inclusive)
(cfs or acre-feet per annum)
Amount _____ for _____ purpose from _____ to _____ (both dates inclusive)
(cfs or acre-feet per annum)
5. Total quantity to be appropriated:
a. 3.2 cfs cubic feet per second and/or
b. _____ acre feet per annum.
6. Proposed diverting works:
a. Description of ditches, flumes, pumps, headgates, etc. well, pump & sprinkler system

b. Height of storage dam _____ feet, active reservoir capacity _____ acre feet; total reservoir
capacity _____ acre feet, materials used in storage dam: _____
Period of year during which storage will occur _____ to _____ inclusive.
(Mo. Day) (Mo. Day)
c. Proposed well diameter is 18 inches; proposed depth of well is 280 feet.
7. a. Time required for the completion of the works and application of the water to the proposed beneficial use
is 5 years.
b. Estimated construction cost is \$ _____.
8. Description of proposed uses:
a. If water is not for irrigation:
(1) Give the place of use of water: _____ $\frac{1}{4}$ of _____ $\frac{1}{4}$ of Section _____ Township _____
Range _____ B.M. _____
(2) Amount of power to be generated: _____ hp under _____ feet of head.
(3) List number of each kind of livestock to be watered _____

(4) Name of municipality to be served _____, or number of families to be
supplied with domestic water _____.
9. If water is to be used for other purposes describe: _____

RECORDED

EXHIBIT

I

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

TWP.	RANGE	SEC.	NE 1/4				NW 1/4				SW 1/4				SE 1/4				TOTALS
			NE 1/4	NW 1/4	SW 1/4	SE 1/4	NE 1/4	NW 1/4	SW 1/4	SE 1/4	NE 1/4	NW 1/4	SW 1/4	SE 1/4	NE 1/4	NW 1/4	SW 1/4	SE 1/4	
6S	19E	30					40				40								40
6S	19E	19									40		40	40					120

160

Total number of acres to be irrigated

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

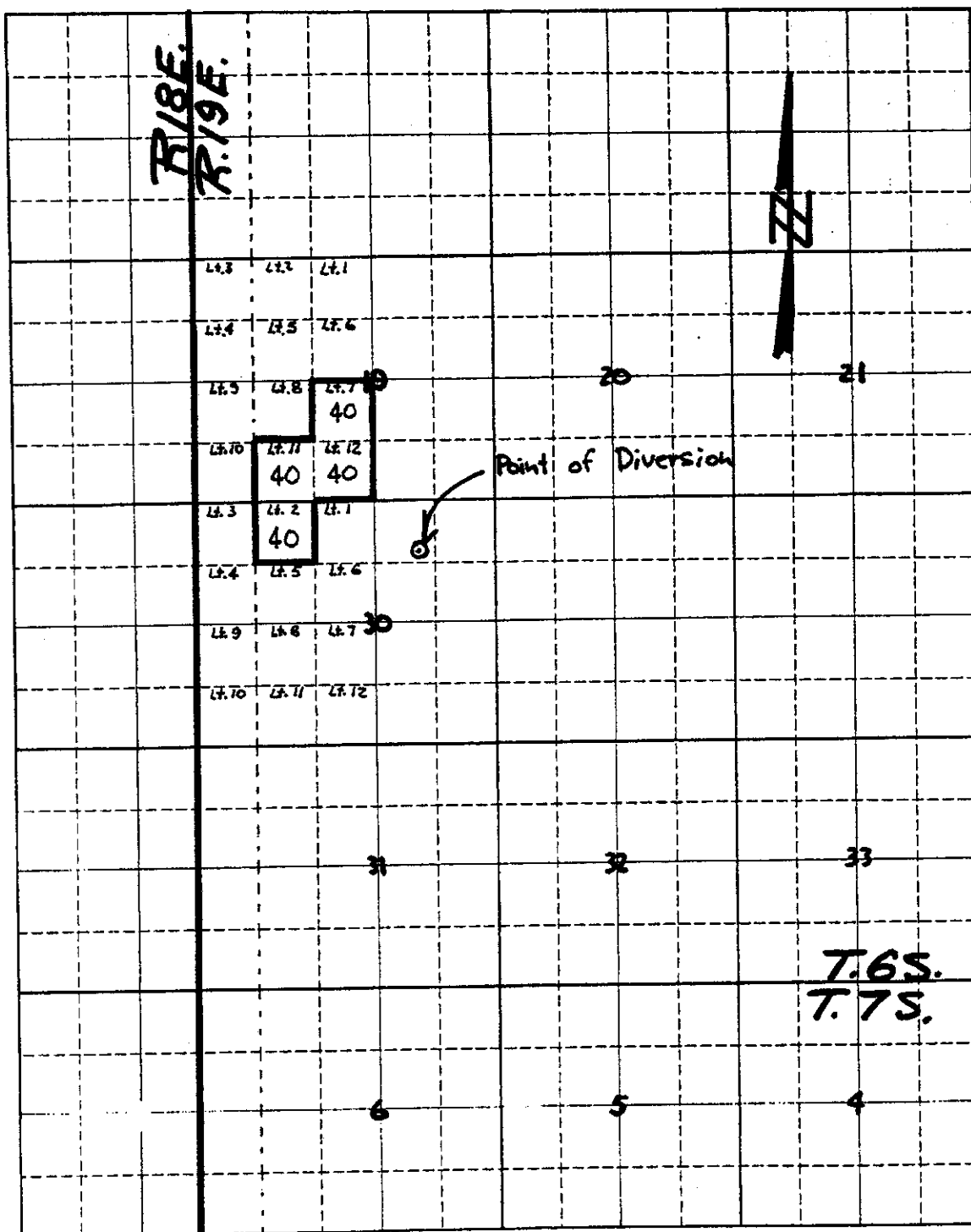
9. a. Who owns the property at the point of diversion APPLICANT

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

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

10. Remarks

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



Scale: 2 inches equal 1 mile

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

Steve Shaw
(Applicant)

Proposed Priority 5/ 4/77

Received by AB Date 5/5/77 Time _____

Preliminary check by ADM Fee \$ 55.00 # 3586

Receipted by AB Date 5/4/77

Publication prepared by Am Date 5/10/77

Published in Lincoln City Leader

Publication dates 5/19 & 5/26/77

Publication approved Am Date 6/09/77

Priority reduced to _____ Reason _____

Protests filed by: _____

Copies of protests forwarded by _____

Hearing held by _____ Date _____

Recommended for approval denial by mls jc

ACTION OF THE DIRECTOR, DEPARTMENT OF WATER RESOURCES

This is to certify that I have examined Application for Permit to appropriate the public waters of the State of Idaho No. 37-7602, and said application is hereby APPROVED.

1. Approval of said application is subject to the following limitations and conditions:

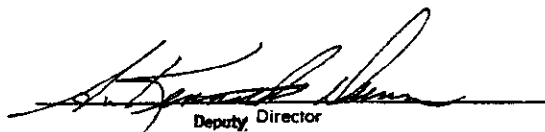
a. SUBJECT TO ALL PRIOR WATER RIGHTS.

b. Proof of construction of works and application of water to beneficial use shall be submitted on or before June 1, 19 82.

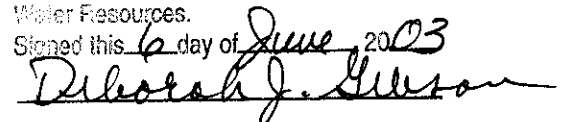
c. Other: A measuring device of a type approved by this Department shall be permanently installed and maintained as part of the diverting works.

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

Witness my hand this 29 day of June, 19 77.


Deputy Director

The foregoing is a true and certified copy of the document on file at the department of Water Resources.

Signed this 6 day of June, 2003


State of Idaho
DEPARTMENT OF WATER RESOURCES
FIELD REPORT

37-7602

Permit No.

CONTACT WITH PERMIT HOLDER

DATE _____

INITIALS

REMARKS

- ☐ Appointment letter mailed:
- ☐ Telephone call made:
(List Telephone No. used)
- ☐ Appointment scheduled for:
(Date, time, location)

EXAMINATION

Date 7/30/80 Accompanied by Norm Ridinger Total Q measured 509 cfs ✓

If source is surface water, estimate total flow of source

Methods of measurement Access Port Meets Permit requirements? Yes

Measurement calculations:

well #3 2285 gpm $\Rightarrow$ 5.09 cfs

Allow 0.02 cfs for 145 acres = 2.90 cfs ✓

Meter 091475 Correction -2.06" H₂O

Bar 091421 10.02"

Reading of 37" H₂O

$$\text{Vol.} = (145 \text{ Acres}) (4.0 \text{ Afg/Acre}) = 580.0 \text{ Afg} \checkmark$$
[illegible]

System Description Well delivers to mainlines which irrigate lands via
handlines. Well also irrigates other lands which have a pivot on it.

*Code with map on reverse side. Disregard code if only one.

RECOMMENDED AMOUNTS

Irrigation requirement = 4.0 AFA/Acre

USE

Irrigation

Q (cfs)

2.90 cfs

V (afa)

580.0

FROM

3-15

TO

11-15

Total

2.9 cfs

580.0

Remarks

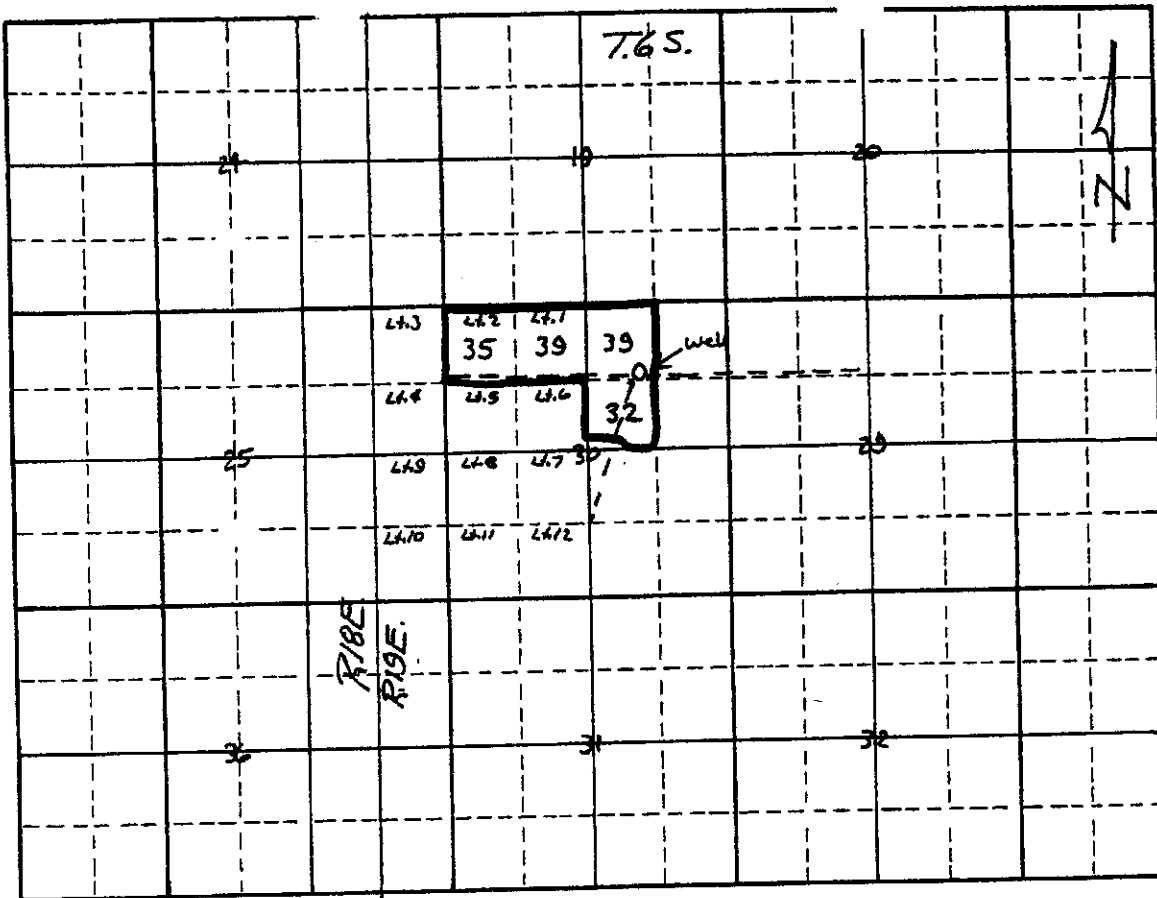
Lands in Sec. 19 not irrigated at present by well however other lands not listed on permit and not covered by other rts. are irrigated. This rt. is recommended to be amended to cover these lands.

The well also supplies water for rts. 37-7454 & 37-7149

EXHIBIT

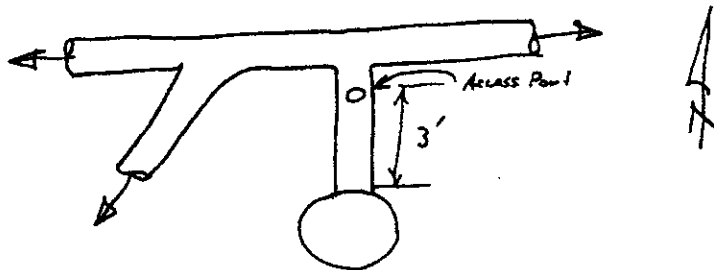
Appendix 1

MAP (Attach Aerial Photo)



SCHEMATIC DIAGRAM OF SYSTEM

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



Point(s) of diversion: NW 1/4 NE 1/4 Sec. 30, T.6S., R.19E., B.M.

Place(s) of Use

TWP.	RGE.	SEC.	NE 1/4				NW 1/4				SW 1/4				SE 1/4				TOTALS
			NEX	NW 1/4	SW 1/4	SE 1/4	NEX	NW 1/4	SW 1/4	SE 1/4	NEX	NW 1/4	SW 1/4	SE 1/4	NEX	NW 1/4	SW 1/4	SE 1/4	
6S.	19E.	30		39	32		39	35											145

Recommended Amendments:

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

Examiner's Signature

Checked by

Approved by

Date 8/7/80

Date 8-8-80

Date 8/17/80

The foregoing is a true and certified copy of the document on file at the Department of Water Resources.
Signed this 16 day of June, 20 03
Dorothy G. Gibson

State of Idaho
Department of Water Resources

WATER RIGHT LICENSE

License of Water Right No. 37-7602 Priority May 4, 1977 Amount 0.70 cfs

THIS IS TO CERTIFY, that Steve Shaw
of Dietrich, Idaho, has complied with the terms and conditions of Permit
No. 37-7602 issued pursuant to Application for Permit dated May 4, 1977,
and has submitted proof to the Department of Water Resources on August 2, 1978,
that he has applied water to a beneficial use; an examination by the Department indicates that the works have a
capacity for the diversion of 5.09 cfs of water from a groundwater source,
tributary to _____, and that the permit holder has applied to a beneficial use and
established a right to use water as follows:

Beneficial Use	Period of Use	Rate of Diversion	Annual Volume
<u>Irrigation</u>	from <u>March 15</u> to <u>November 15</u>	at <u>0.70</u> cfs and	<u>140.0</u> acre feet
	from _____ to _____	at _____ cfs and	_____
	from _____ to _____	at _____ cfs and	_____

(both dates inclusive)

Subject, however, to the condition that no more than 0.70 cfs of water be diverted at any one time, and
that the amount of water so diverted and to which such right is entitled and confirmed for the purpose
aforementioned and is limited to the amount which can actually be beneficially used and shall not exceed
140.0 acre feet per year, said waters to be diverted within the NW1/4, Section 30, Twp.
6S, Rge. 19E in the County of Lincoln

Description and location of place of use:

Twp.	Range	Sec.	NE1/4				NW1/4				SW1/4				Totals
			NE1/4	NW1/4	SE1/4	SW1/4	NE1/4	NW1/4	SE1/4	SW1/4	NE1/4	NW1/4	SE1/4	SW1/4	
6S	19E	30													35

Total number of acres irrigated 35

This right when combined with Right No. 37-7454 shall not exceed 5.09 cfs.

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

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

Witness the seal and signature of the Director, affixed at Boise, Idaho, this 31 day of August, 19 82.

[Signature]
Director

The foregoing is a true and correct copy of the document on file at the Department of Water Resources.

Signed this 16 day of June, 2003
Deborah J. Giverson

EXHIBIT

K

Identification No. _____

Application No. 37 7454

APPROVED

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
APPLICATION FOR PERMIT

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

544-2274
-2216

1. Name of applicant STEVEN R. SHAW Phone: _____
post office address Route #1, Dietrich, Idaho
2. Source of water supply Groundwater which is a tributary of _____
3. a. Location of point of diversion is NW $\frac{1}{4}$ of NE $\frac{1}{4}$ of Section 30 Township 6S
Range 18E B.M. Lincoln County; additional points of diversion if any: _____
SW $\frac{1}{4}$, Section 30, Township 6S, Range 18E, B.M.
- b. If water is not consumed, it will be discharged into _____ at a point in _____ $\frac{1}{4}$
of _____ $\frac{1}{4}$ of Section _____ Township _____ Range _____ B.M. _____
4. Water will be used for the following purposes: ALLOW 4.0 (see letter of October 31)
Amount 4.0 for Irrigation purpose from March 15 to November 15 both dates inclusive
(cfs or acre-feet per annum)
Amount _____ for _____ purpose from _____ to _____ both dates inclusive
(cfs or acre-feet per annum)
Amount _____ for _____ purpose from _____ to _____ both dates inclusive
(cfs or acre-feet per annum)
5. Total quantity to be appropriated:
a. 4.0 cubic feet per second and/or
b. _____ acre feet per annum.
6. Proposed diverting works:
a. Description of ditches, flumes, pumps, headgates, etc. well, pump & sprinkler system

b. Height of storage dam _____ feet, active reservoir capacity _____ acre feet; total reservoir
capacity _____ acre feet, materials used in storage dam: _____
Period of year during which storage will occur _____ to _____ inclusive.
(Mo. Day) (Mo. Day)
c. Proposed well diameter is 18 inches; proposed depth of well is 280 feet.
7. a. Time required for the completion of the works and application of the water to the proposed beneficial use
is 5 years.
b. Estimated construction cost is \$ 80,000.00.
8. Description of proposed uses:
a. If water is not for irrigation:
(1) Give the place of use of water: _____ $\frac{1}{4}$ of _____ $\frac{1}{4}$ of Section _____ Township _____
Range _____ B.M. _____
(2) Amount of power to be generated: _____ hp under _____ feet of head.
(3) List number of each kind of livestock to be watered _____

(4) Name of municipality to be served _____, or number of families to be
supplied with domestic water _____
(5) If water is to be used for other purposes describe: _____

EXHIBIT

tabbies

L

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

[illegible]

Total number of acres to be irrigated 200 -240-

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

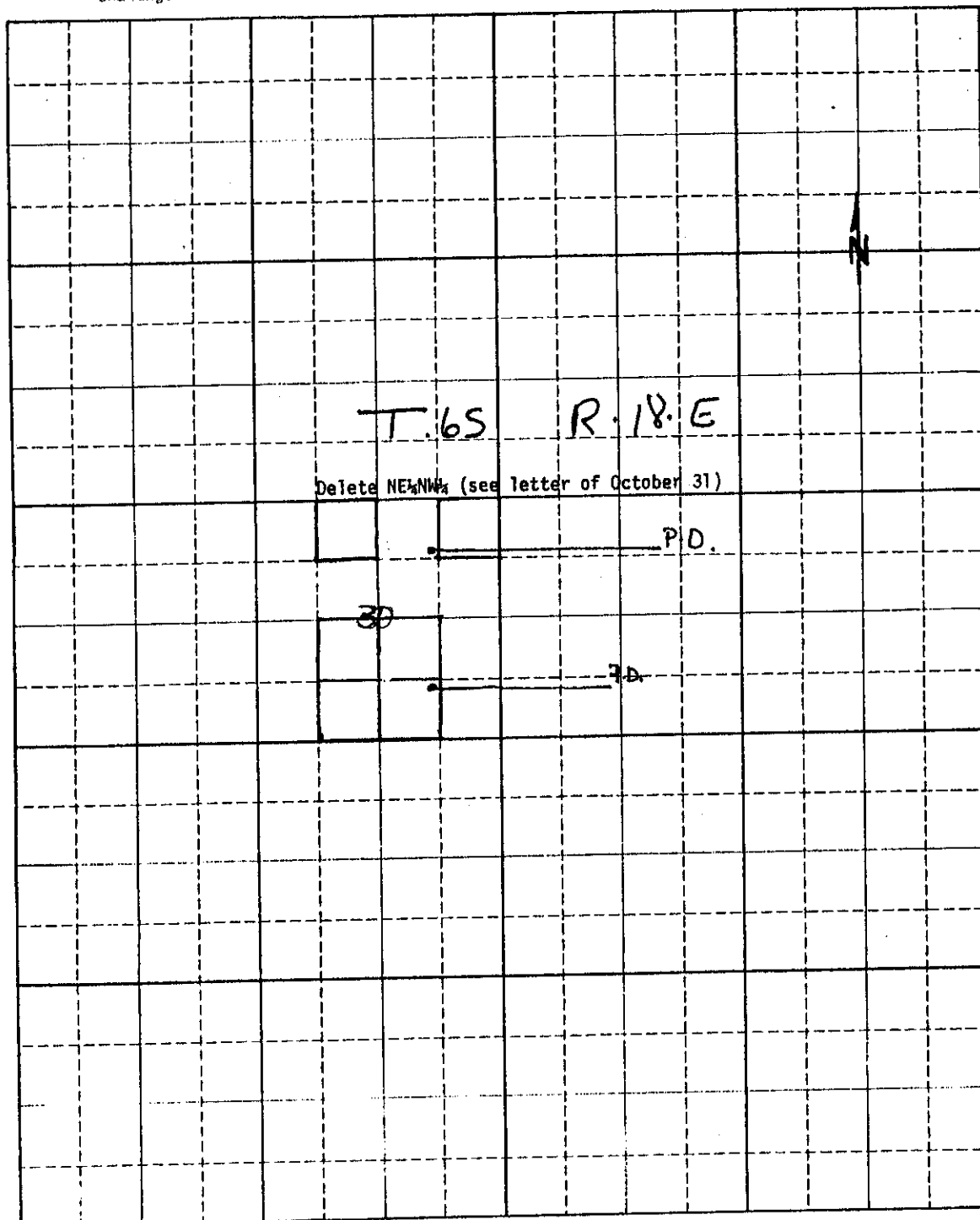
9. a. Who owns the property at the point of diversion Applicant

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

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

10. Remarks _____

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



Scale: 2 inches equal 1 mile

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

Arthur R. Shaw
(Applicant)

Proposed Priority 9-08-1975

ADM 9975 Received by hls Date 9-8-75 Time 2:45
Preliminary check by SLF Fee \$ 65.00 H 1674
Receipted by CC Date 9-5-75
Publication prepared by CC Date 9-10-75
Published in Lincoln County Journal
Publication dates 9-18-75 & 9-25-75
Publication approved CC Date 9-30-75
Priority reduced to _____ Reason _____

Protests filed by: _____

Copies of protests forwarded by _____
Hearing held by _____ Date _____
Recommended for approval denial by DDF

ACTION OF THE DIRECTOR, DEPARTMENT OF WATER RESOURCES

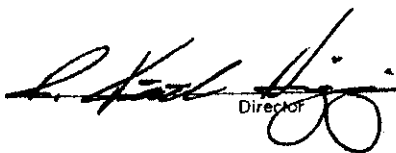
This is to certify that I have examined Application for Permit to appropriate the public waters of the State of Idaho No. 37-7454, and said application is hereby APPROVED.

1. Approval of said application is subject to the following limitations and conditions:

- a. SUBJECT TO ALL PRIOR WATER RIGHTS.
- b. Proof of construction of works and application of water to beneficial use shall be submitted on or before December 1, 19 80.
- c. Other: A measuring device of a type approved by the Director shall be permanently installed and maintained as part of the diverting works.

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

Witness my hand this 30 day of December 19 75.


Director

This is a true and certified copy of the document on file at the department of water resources.

Sgt. at Arms June 20 1983
Deborah J. Gibson

WATER RIGHT LICENSE

THIS IS TO CERTIFY, that STEVEN R. SHAW

Beneficial Use	Period of Use	Rate of Diversion	Annual Volume
Irrigation	from March 15 to November 15	4.0 cfs and	800 acre feet
	from	cfs and	
	from	cfs and	

(Open date (exclusive))

Description and location of place, of use:

[illegible]

Witness the seal and signature of the Director, affixed at Boise, Idaho, this 24 day of December, 19 80.

Director

The foregoing is true and correct to the best of my knowledge and belief.

5-20-1966 6:03 a.m. June 2 03

Deborah F. Gibson

EXHIBIT

M

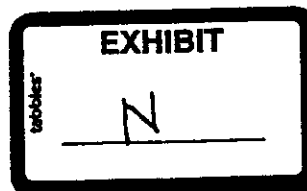
DE-T

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
APPLICATION FOR PERMIT

To appropriate the public waters of the State of Idaho

1. Name of applicant Louis L. Hubsmith Phone 544-7581
Post office address P.O. Box 397 Dietrich, ID 83324
2. Source of water supply Groundwater which is a tributary of _____
3. Location of point of diversion is _____ ¼ of NW ¼ of NE ¼, Govt. Lot _____
Sec. 30 Township 6S Range 19E B.M. Lincoln County; additional
points of diversion if any: _____
4. Water will be used for the following purposes:
Amount 2.16 for Irrigation purposes from Mar 15 to Nov 15 (both dates inclusive)
(cfs or acre-feet per annum)
Amount _____ for _____ purposes from _____ to _____ (both dates inclusive)
(cfs or acre-feet per annum)
Amount _____ for _____ purposes from _____ to _____ (both dates inclusive)
(cfs or acre-feet per annum)
Amount _____ for _____ purposes from _____ to _____ (both dates inclusive)
(cfs or acre-feet per annum)
5. Total quantity to be appropriated is (a) 2.16 and/or (b) _____
cubic feet per second acre feet per annum
6. Proposed diverting works:
a. Description of ditches, flumes, pumps, headgates, etc. Existing well & pump; mainline to
center pivot and hand lines

b. Height of storage dam _____ feet; active reservoir capacity _____ acre-feet; total
reservoir capacity _____ acre-feet; period of year when water will be diverted to storage:
_____ to _____ inclusive.
c. Proposed well diameter is _____ inches; proposed depth of well is _____ feet.
d. Is ground water with a temperature of greater than 90°F being sought? No
7. Time required for the completion of the works and application of the water to the proposed beneficial use is
1 years (minimum 1 year).



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

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

9. Description of place of use:

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

TWP	RANGE	SEC.	NE¼				NW¼				SW¼				SE¼				TOTALS
			NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	
6S	19E	19									40		40	11					91
6S	19E	30						3		7						7			14 17 *

* Per telecon w/applicant 8-24-90

Total number of acres to be irrigated 108 *

10. Describe any other water rights used for the same purposes as described above. _____

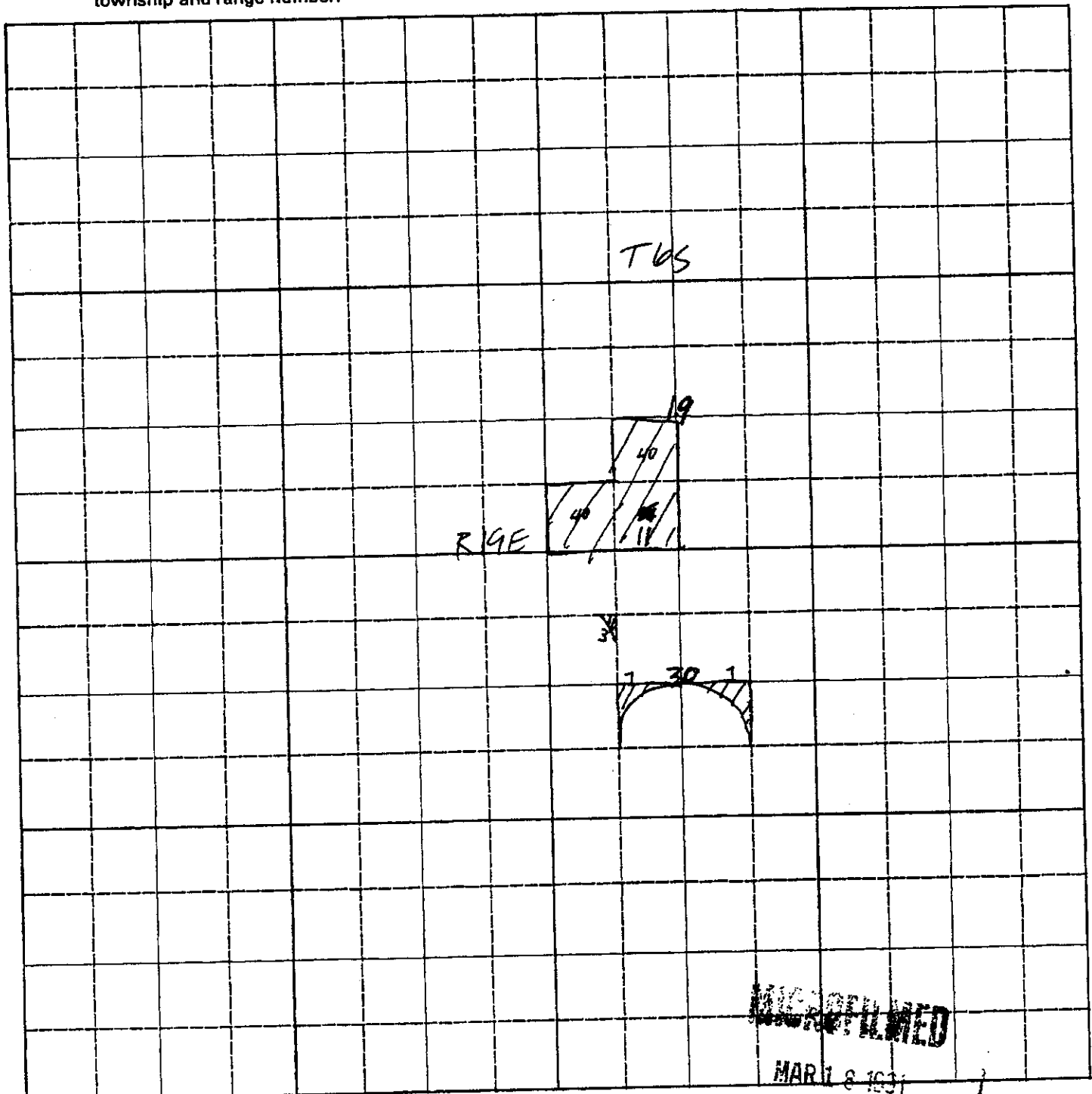
- Who owns the property at the point of diversion? Applicant
- Who owns the land to be irrigated or place of use? Applicant
- If the property is owned by a person other than the applicant, describe the arrangement enabling the applicant to make this filing. _____

12. Remarks: System was developed under a previous permit in 1976. Previous owner did not file proof of development, so permit lapsed.

RECEIVED

MAR 18 1991

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



Scale: 2 inches equal 1 mile.

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

Geo. S. Nussmitt 8/20/90
(Applicant)

Received by M. Baldwin Date 8/23/90 Time 10:10 Preliminary check by AD
Fee \$ 85⁰⁰ Receipted by J. Feltenton # 5012600 Date 8-24-90
Publication prepared by M. Baldwin Date 10/24/90 Published in Lincoln Co. Journal
Publication approved M. Baldwin Date 11/19/90

ACTION OF THE DIRECTOR, DEPARTMENT OF WATER RESOURCES

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

1. Approval of said application is subject to the following limitations and conditions:

- a. SUBJECT TO ALL PRIOR WATER RIGHTS.
- b. Proof of construction of works and application of water to beneficial use shall be submitted on or before _____, 19 ____.
- c. The rate of diversion, if water is to be used for irrigation under this permit, when combined with all other water rights for the same land shall not exceed 0.02 cubic feet per second for each acre of land.
- d. The water right acquired under this permit if for hydropower purposes shall be junior and subordinate to all rights to the use of water, other than hydropower, within the State of Idaho that are initiated later in time than the priority of this permit and shall not give rise to any right or claim against any future rights to the use of water, other than hydropower, within the State of Idaho initiated later in time than the priority of this permit.
- e. Other:

This foregoing is a true and correct copy of
the record on file at the department of
water resources.

Given this 6 day of June, 2003
Dorothy J. Gibson



MEMORANDUM

TO: FILE

FROM: TIM LUKE

RE: APP. NO. 37-8679/Trust Water Processing

DATE: 2-21-91

This trust water filing has been forwarded to the state office by the region for out of sequence processing. There appears to be sufficient information in the file providing evidence of development prior to October of 1984. I have also reviewed a 1983 infrared photo on file with the department and have found that all of the acreage under the application appears to have been irrigated at that time. The 1986 IDWR classification of irrigated acreage also confirms irrigation of the same lands at that time.

Due to evidence of prior development, the application may be approved out of sequence. The application will be considered a trust water filing due to the post 1984 priority date, but the acreage will not be counted as trust acreage due to the pre-1984 development.

RECEIVED

MAR 1 8 1991

The foregoing is a true and correct copy of the document on file at the Department of Water Resources.

Signed this 6 day of June 1991

Deborah J. Nelson

EXHIBIT

tabbies
0

State of Idaho
Department of Water Resources

WATER RIGHT LICENSE

WATER RIGHT NO. 37-08679

Priority: August 23, 1990

Maximum Diversion Rate:

1.92 CFS

This is to certify, that LOUIS L HUBSMITH

PO BOX 397

DIETRICH ID 83324

has complied with the terms and conditions of the permit, issued pursuant to Application for Permit dated August 23, 1990; and has submitted Proof of Beneficial Use on March 25, 1991. An examination indicates that the works have a diversion capacity of 6.280 cfs of water from a GROUNDWATER source, and a water right has been established as follows:

<u>BENEFICIAL USE</u>	<u>PERIOD OF USE</u>	<u>RATE OF DIVERSION</u>	<u>ANNUAL VOLUME</u>
IRRIGATION	04/01 to 10/31	1.92 CFS	

LOCATION OF POINT(S) OF DIVERSION:

NWNE, Sec. 30, Township 06S, Range 19E
LINCOLN County

PLACE OF USE: IRRIGATION

<u>TWN</u>	<u>RGE</u>	<u>SEC</u>	<u>ACRES</u>	<u>ACRES</u>	<u>ACRES</u>	<u>TOTAL</u>
06S	19E	19	Lot 7(NESW) 33	Lot 11(SWSW) 35	Lot 12(SESW) 11	79
		30	Lot 5(SWNW) 3	Lot 7(NESW) 7	NWSE 7	17

Total number of acres irrigated: 96

CONDITIONS/REMARKS:

1. This water right is appurtenant to the described place of use.
2. This right is subject to all prior water rights and may be forfeited by five years of non-use.
3. Modifications to or variance from this license must be made within the limits of Section 42-222, Idaho Code, or the applicable Idaho law.
4. This right is for the use of trust water and is subject to review 20 years after the issuance of the permit to determine availability of water and to re-evaluate the public interest.
5. Diversion and use of water under this right is subject to an annual use fee if rules are subsequently promulgated which provide for the submittal of the fee.
6. The Director retains jurisdiction of the right issued to change, add or remove any requirement as determined to be appropriate.
7. The right holder shall fully use all surface water rights appurtenant to the lands identified above prior to using water under this right.
8. Use of this right with the rights listed below is limited to a total combined diversion rate of 6.28 cfs and shall not exceed 4.0 af per acre for the lands above. The combined rights include: 37-07268, 37-07454 and 37-07602.

AUG 9 1994

EXHIBIT

P

State of Idaho
Department of Water Resources

WATER RIGHT LICENSE

WATER RIGHT NO. 37-08679

This license is issued pursuant to the provisions of Section 42-219, Idaho Code,
Witness the seal and signature of the Director, affixed at Boise, this 25TH
day of June, 1994.

Acting for R. Keith Higginson, Director

The foregoing is a true and correct copy of
the original on file in the office of the
Director of Water Resources.

Subscribed and sworn to before me this

June 23
Deborah G. Gibson

AUG 09 1994

DISTRICT COURT - SRBA
TWIN FALLS CO., IDAHO
FILED _____

2003 JUN 6 PM 4 27

Louis L. "Leon" and Iris B. Hubsmith

Dana L. Hofstetter, ISB #3867
Hofstetter Law Office, LLC
608 West Franklin Street
Boise, Idaho 83702
Phone: (208) 424-7800
Facsimile: (208) 424-8774
E-Mail: Dana@IdahoWaterLaw.com

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

In Re SRBA	)	Subcase Nos. 37-07454 and 37-07602
	)	
Case No. 39576	)	AFFIDAVIT OF
_____	)	ALLEN MERRITT
STATE OF IDAHO	)	
	)	ss:
COUNTY OF TWIN FALLS	)	

Allen Merritt, after being first duly sworn upon oath, hereby deposes and says as follows:

1. I am the Regional Manager of the Idaho Department of Water Resources' ("IDWR") Southern Regional office located at 1341 Fillmore Street, Suite 200, Twin Falls, Idaho 83301-3380.
2. My educational background includes an A.A. degree in mathematics from the College of Southern Idaho in 1971, a B.S. in civil engineering from the University of Idaho in 1973, and a M.S. in civil engineering from the University of Idaho in 1982.
3. I have been registered as a professional engineer in Idaho since 1982. To become

registered, I spent four years as an engineer-in-training and passed an eight hour examination.

4. From 1975 to 1976, I worked for IDWR's Southern Regional office as a Water Right Agent. My duties included reviewing applications, conducting beneficial use field examinations, drafting recommendations for the licensing of water rights, and other water resources related data collection.

5. From 1976 to 1979, I worked for IDWR's Southern Regional office as a Water Resource Analyst, except for a brief period in 1977 to 1978 when I returned to school. My duties included those of a Water Right Agent listed above and also expanded to include dam safety inspections for dams within the Region.

6. As referenced above, on December 19, 1977 I left IDWR and returned to the University of Idaho to work on my M.S. of civil engineering degree. During that period, I also worked as a graduate assistant for Professor Calvin Warnick and my duties included collection of field data for various graduate studies involving irrigation and power use. I also drafted and reduced data for various graduate projects. I was rehired by IDWR on June 1, 1978 as a Water Resource Analysis.

7. In June of 1979 I was promoted to Senior Water Resources Analyst. My duties included those of a Water Right Analyst but with more responsibilities. I conducted the more difficult field reviews and reviewed the work of others. I also drafted recommendations for approval of transfers and, at times, managed the office while the Region's Supervisor was absent. I also conducted construction inspections for the development of the Cyprus mines tailings and sediment retention dams.

8. From 1984 to 1988, I worked for IDWR's Southern Regional office as a Water Resource Engineer. My duties remained pretty much the same as for the Senior Water Resource Analyst position described above.

9. From 1988 to 1994, I worked for IDWR's Southern Regional office as a

Water Rights Supervisor of the Region's Adjudication Unit. My duties included, but were not limited to: supervising the adjudication functions of the Southern Region, including oversight of six staff assigned to the adjudication project. I also coordinated with others in the Adjudication Bureau of IDWR to formulate procedures for claims review. I personally assisted in taking thousands of claims and conducting hundreds of claim verifications and recommendations.

10. From 1994 to the present, I worked for IDWR's Southern Regional office as the Regional Manager. My duties include, but are not limited to: overseeing all activities, including personnel, salary and budgetary matters, at the Southern Regional Office. Among the matters I oversee are water right permitting and licensing actions, the office's Adjudication Unit and the coordination of various activities in the office.

11. I am familiar with many of the past and present practices within the IDWR Southern Regional office.

12. Attached hereto as Exhibit A is a true and correct copy of the Proof of Application of Water to Beneficial Use form from IDWR License File No. 37-07602.

13. In August 1978 when Exhibit A was signed and notarized, IDWR's Southern Regional office frequently scribed, typed or otherwise generally assisted water right holders by drafting forms, including Proof of Application of Water to Beneficial Use forms. This practice continues today noting that many water right or SRBA forms can now be electronically drafted for applicants/claimants review, signature and filing.

14. Exhibit A contains a date stamp indicating that it was filed with IDWR's Southern Regional office on August 2, 1978. Sheryl R. Merritt, who notarized Exhibit A, was an employee of IDWR's Southern Regional office in August 1978 and I also recognize her signature on Exhibit A. At that time, I was married to the same Sheryl R. Merritt but we have since divorced.

15. While I personally do not recall the circumstances concerning the

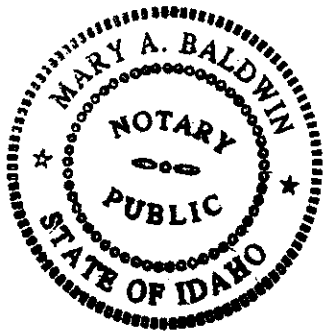
completion and filing of Exhibit A and probably was not involved, from my review of Exhibit A, I conclude that it is likely that IDWR Southern Regional office personnel assisted with the completion of Exhibit A. Exhibit A is typed in a manner similar to the way IDWR Southern staff typically typed forms at that time. Further, the permit holder, Steve Shaw, signed the form on the same date that it was filed with IDWR Southern Regional office and the notarization indicates that the form was signed by Steve Shaw in Twin Falls in the presence of an employee of IDWR's Southern Regional office at the time.

FURTHER YOUR AFFIANT SAYETH NAUGHT.
DATED this 27th day of May, 2003.



ALLEN MERRITT

SUBSCRIBED AND SWORN to before me this 27th day of May, 2003.





Notary Public in and for the State of Idaho
Residing at: Twin Falls, ID
My Commission Expires: 10/16/2004

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 6th day of June, 2003, I caused a true copy of the foregoing AFFIDAVIT OF ALLEN MERRITT to be served by the method(s) indicated on the following:

Original to:

Clerk of the District Court
Snake River Basin Adjudication
253 3rd Avenue North
Twin Falls, Idaho 83303
☐ U.S. Mail ☐ Fed Ex ☒ Hand ☐ Fax

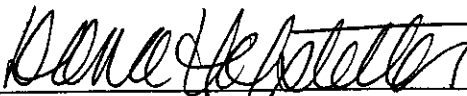
Copies to:

IDWR Document Depository
P. O. Box 83720
Boise, Idaho 83720-0098
☒ U.S. Mail ☐ Fed Ex ☐ Hand ☐ Fax

Chief, Natural Resources Division
Office of the Attorney General
P. O. Box 44449
Boise, ID 83711-4449
☒ U.S. Mail ☐ Fed Ex ☐ Hand ☐ Fax

United States Department of Justice
Environment and Natural Resources Division
550 West Fort Street, MSC 033
Boise, ID 83724
☒ U.S. Mail ☐ Fed Ex ☐ Hand ☐ Fax

Leon and Iris Hubsmith
647 East 130 South
Dietrich, Idaho 83324
☒ U.S. Mail ☐ Fed Ex ☐ Hand ☐ Fax



DANA L. HOFSTETTER

E:\4018.1\5580

Exhibit A

Form No. 42-217
1-18-1978

Identification No. 37-
Permit No. 37-7602

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

PROOF OF APPLICATION OF WATER TO BENEFICIAL USE

REC-2
AFC 2 1978

1. a) Name of Permit Holder Steve Shaw
b) Post Office Address Dietrich, Idaho 83326
Department of Water Resources
Southern District Office
2. Permit Number 37-7602
3. Date of Priority that you are prepared to establish 5-4-77
4. a) Source from which water was appropriated ground water
b) Location of the point of diversion: NV 4 NE 4 Section 30
Township 68 Range 19E Boise Meridian, Other points of diversion:
5. a) The amount of water and use to which the water has been applied:
Amount 3.2 cfs for irrigation purposes from Mar 15 to Nov 15 incl.
(cfs and/or acre-feet per annum) (Month-Day) (Month-Day)
Amount _____ for _____ purposes from _____ to _____ incl.
(cfs and/or acre-feet per annum) (Month-Day) (Month-Day)
Amount _____ for _____ purposes from _____ to _____ incl.
(cfs and/or acre-feet per annum) (Month-Day) (Month-Day)
b) Total amount appropriated 3.2 cfs and/or acre-feet per annum
c) Describe how and by whom measurement of rate of flow or amount of storage was made and the qualifications of the person making the measurement: amount applied for
6. If the means of diversion and conveyance are owned by someone other than the Permit Holder:
a) Give the name or description of the canal, ditch or other works by which the water is conducted to the place of use:
b) Describe the agreement or understanding by which you take water from the works:
7. a) Briefly describe the works for diverting and conveying the water to the place of use, (if from a subterranean source, give the pump size, motor size, size of well casing, depth of well; if from surface water, give brief description of diversion structure and/or canal or ditch) well (18" x 300'), 400 hp pump, 10" x 12" buried main lines, handline sprinklers
b) Describe the type and size of measuring device which you have installed at your point of diversion: Rockwell flow meter
c) Give well driller's name and address and the date the well was completed: Norman Ridinger, Dietrich, Idaho, Completed March, 1976.
8. If for other than irrigation, describe the beneficial use to which you have applied the water and the place of use:

the foregoing is a true and correct copy
of the document on file at the department of
Water Resources
Signed this 27th day of May 1978
[Signature]

Exam typed 11/21/78

[illegible]

Total number of acres irrigated 160

10. Remarks:

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

8-2-78
(Date)

Steve Shaw
(Signature)

State of Idaho)
County of Twin Falls) ss.

On this 2nd day of August, 1978, personally appeared before me the signer(s) of the above instrument, who duly acknowledged to me that he (she) (they) executed the same.

Sheryl R. Munn
Notary Public residing at
Twins Falls, Idaho

My commission expires 2/10/82

The foregoing is a true and certified copy of the document on file at the Department of Water Resources.

Signed this 27th day of May 2007

[Signature]

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
BENEFICIAL USE FIELD REPORT

A. GENERAL INFORMATION

Permit No. 37-7268
1. Owner: Louis L. Habsmith Phone No. 544-7581
Current Address: P.O. Box 397 Dietrich, ID 83324
2. Accompanied by: Louis EXAM. DATE: 7/24/90
Address: _____ Phone No. _____
Relationship to Permit Holder: _____
3. Source: ground water tributary to _____

B. OVERLAP REVIEW

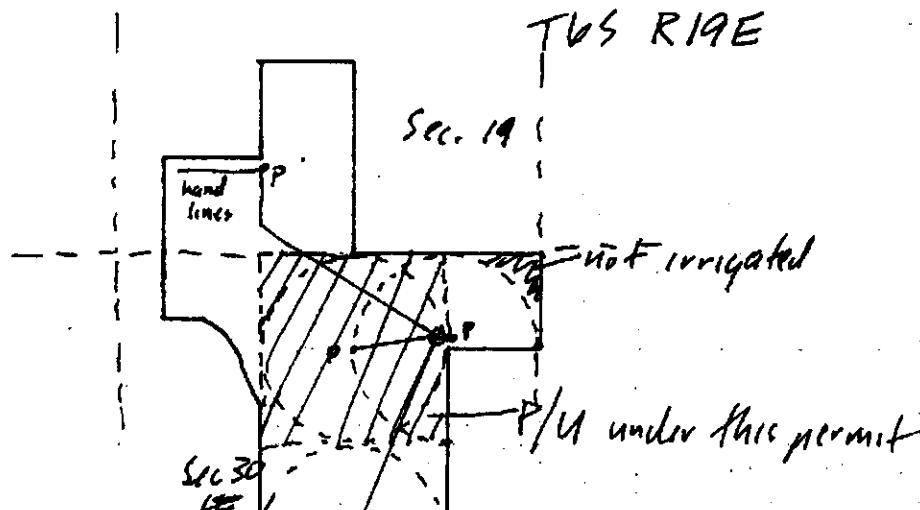
1. Other water rights with same place of use: 37-07454, 37-07602

☐ Copies Attached
2. Other water rights with same point of diversion: 37-07454, 37-07602

☐ Copies Attached ☐ Copies of Field Exam's Attached

C. SYSTEM DESCRIPTION

1. **Diversion System Diagram:** Indicate all major components and distances between components. Indicate weir size/ditch size/pipe i.d. as applicable. ☐ Alternative diagram attached



System Description (continued)

3. Narrative; Description (As operating at time of measurement. Indicate pressure, number of sprinklers, etc.)

Well & pump
4 pivots max. 4 hand lines w/ 32 birds/line 9/4" nozzles
65 psi at pump. Pump rated at 3500 gpm

See Remarks on page 4 for continuation

Well or Diversion Identification No.*	Motor Make	Hp	Motor Serial No.	Pump Make	Pump Serial No. or Discharge Size
	GE	400	LL1105915	Anvora	V78-70570

*Code to correspond with No. on map and aerial photo

5. Point(s) of Diversion:

Ident. No.	Gov't. Lot	1/4	1/4	1/4	Sec.	Twp.	Rge.	County	Method of Determination/Remarks
			NW	NE	30	6S	19E	Lincoln	

6. Place(s) of Use:

Indicate Method of Determination

Twp.	Rge.	Sec.	NE 1/4				NW 1/4				SW 1/4				SE 1/4				Totals
			NE 1/4	NW 1/4	SW 1/4	SE 1/4	NE 1/4	NW 1/4	SW 1/4	SE 1/4	NE 1/4	NW 1/4	SW 1/4	SE 1/4	NE 1/4	NW 1/4	SW 1/4	SE 1/4	
10S	19E	30	40	40	40	40													160
10S	19E	29							11										131
		19												29					29

INDEXED

JUN 24 1992

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D. FLOW MEASUREMENTS

☒ Additional Data Sheets Attached

1.

Measurement Equipment	Type	Make	Model No.	Serial No.	Size	Calib. Date

2. Measurements:

Not measured - see Groundwater Measurement Requirement Analysis.

E. FLOW CALCULATIONS

☐ Additional Computation Sheets Attached

1. Measured Method:

2. Alternate Method for Checking Purposes:

Theoretical $Q = \frac{400(8.8)(1.7)}{250 + 2.3(65)} = 6.2 \text{ cfs}$

F. PUMP EFFICIENCY DATA (Optional)

Discharge Pressure: _____ psi x 2.31 = _____ ft (1); Dynamic pumping level: _____ ft (2)

Total Head: (1) + (2) = _____ (3)

; Flow rate: _____ cfs (4)

Water HP: (3) x (4) ÷ 8.8 = _____ (5)

Meter Input KW: 3.6 x _____ KH x _____ CTR or _____ MULT x _____ PTR x _____ N/ _____ T = _____ (6)

Meter Input HP: (6) x 1.34 = _____ (7)

Panel Input KW: _____ Ave PF x _____ Ave Volts x _____ Ave Amps x .001732 = _____ (6)

Panel Input HP: (6) x 1.34 = _____ (7) Efficiency: (5)/(7) x 100 = _____ %

G. VOLUME CALCULATIONS

1. Volume Calculations for Irrigation:

$V_{i,r} = (\text{Acres Irrigated}) \times (\text{Irrigation Requirement}) = 160(4.0) = 640$

$V_{d,r} = [\text{Diversion Rate (cfs)}] \times (\text{Days in Irrigation Season}) \times 1.9835 = 3.0(245)(1.9835) = 1458$

$V = \text{Smaller of } V_{i,r} \text{ and } V_{d,r} = 640 \text{ ac/ann}$

2. Volume Calculations for Other Uses:

RECEIVED
JUN 24 1992

H. REMARKS AND OVERLAP REVIEW ANALYSIS

See photos - no possible place to install access port or flow meter. Repeated attempts to determine pumping water level with well probe failed. Water level for this well is not avail. but wells in area have fairly constant levels of around 250' (very little drawdown). 250' was used in theoretical calculation.

*See additional diagram for overlap analysis
There is no record of irrigation in south 1/2 of Sec. 19 being covered under any right. ~~*****~~

P/D should be NWNE S30 T6S R19E P/U should be in R19E

I. RECOMMENDATIONS

1. Recommended Amounts

Beneficial Use	Period of Use		Rate of Diversion Q (cfs)	Annual Volume V (afa)
	From	To		
Irrigation	3/15	11/15	3.0	640
Totals:			3.0	640

2. Recommended Amendments

☒ Change P.D. as reflected above

☐ Add P.D. as reflected above

☐ None

☒ Change P.U. as reflected above

☐ Add P.U. as reflected above

☐ Other

J. AUTHENTICATION

Field Examiner's Name

Signature

Certification Date

Field Report Preparation Date

Chuck Brockman
4/12/91
8/10/90



K. Licensing recommendation shall be prepared by an Idaho Department of Water Resources employee on a computer printout attached hereto.

JUN 24 1991

REMARKS, cont.-

29 acres in SENW Sec 30 are licensed for a full 1"/acre, so new licensed can only be issued for 11 acres. The permittee will amend P/U to ~~update~~ move the ~~29 acres~~ ^{remaining 29 acres} from SENW Sec 30 to SESW Sec ~~30~~ ¹⁹, and will file a new application for the remaining 105 acres in Section 19, and the 14 acres in NWSE Sec 30 and NESE Sec 30.

Amendments needed:

- change P/D to NWNE S30 T6S R19E
- change P/U from R18E to R19E, delete 29 acres from SENW Sec 30, add 29 acres to SESW Sec 19

RECEIVED
JUN 24 1964

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
BENEFICIAL USE FIELD REPORT

RECEIVED

OCT 13 1993

Department of Water Resources

A. GENERAL INFORMATION

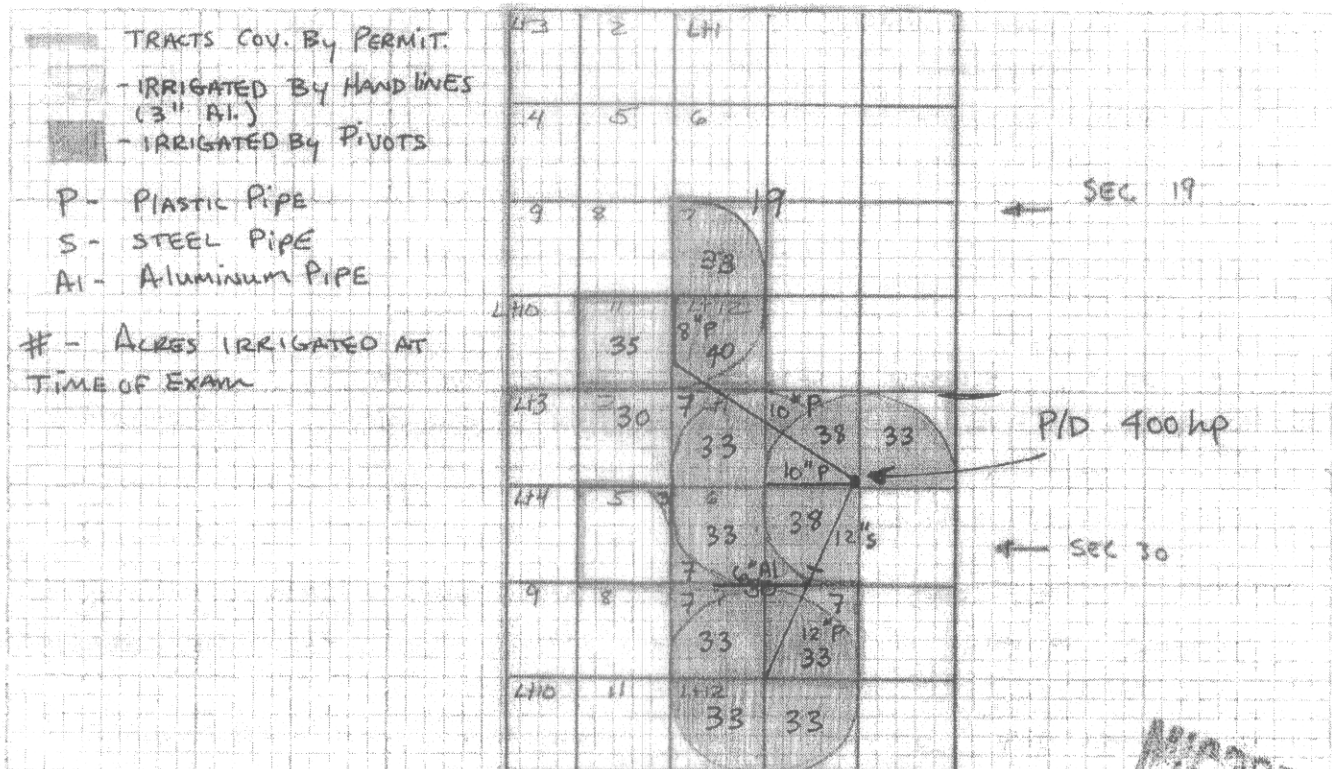
1. Owner: LOUIS L. HUBSMITH Permit No. 37-08679
Current Address: P.O. Box 397 Phone No. 37-8679
DIETRICH, ID 83324
2. Accompanied by: _____ EXAM. DATE: 8-8-91
Address: _____ Phone No. _____
Relationship to Permit Holder: _____
3. Source: GROUNDWATER tributary to _____

B. OVERLAP REVIEW

1. Other water rights with same place of use: NONE (Big Lost Canal Co & 3 Am. Falls Res. District) shares, per SRBA claim ☐ Copies Attached
2. Other water rights with same point of diversion: 37-07454, 37-07602, 37-07268
37-07499 ☒ Copies Attached ☒ Copies of Field Exam's Attached

C. SYSTEM DESCRIPTION

1. Diversion System Diagram: Indicate all major components and distances between components. Indicate weir size/ditch size/pipe i.d. as applicable. ☐ Alternative diagram attached



Scale: 1" = 1/2 mile.

2. ☒ Copy of U.S.G.S. Quadrangle Attached Showing location(s) of point(s) of diversion and place(s) of use (required).
☒ Photo of Diversion and System Attached (required for all but single household domestic groundwater, and stockwater).
☒ Aerial Photo Attached (required for irrigation of 10 acres or more).

AUG 09 1994

System Description (continued)

3. Narrative: Description (As operating at time of measurement. Indicate pressure, number of sprinklers, etc.)

SYSTEM OPERATING AT TIME OF MEASUREMENT -
 SUBMERSIBLE PUMP WITH MOTOR - PUMP RATED AT 3500 gpm
 SYSTEM CONTAINS 4 STANDARD PIVOTS AND ~ 20 HANDLINES
 HANDLINES CONTAIN - RAINBIRD 9/64" NOZZLES AND ARE 3" ALUMINUM

MR. HUBSMITH ALSO PUMPS WATER FROM A BIGWATER CANAL Co.
 CANAL LOCATED IN THE SW SE SW SEC 19 06S 19E

☐ See Remarks on page 4 for continuation

4.

Well or Diversion Identification No.*	Motor Make	Hp	Motor Serial No.	Pump Make	Pump Serial No. or Discharge Size
	GENERAL ELEC	400hp	LLJ1105975	AURORA	V 78 - 70570

*Code to correspond with No. on map and aerial photo

5. Point(s) of Diversion:

Ident. No.	Gov't. Lot	1/4	1/4	1/4	Sec.	Twp.	Rge.	County	Method of Determination/Remarks
			NW	NE	30	06S	19E	LINCOLN	TOPOMAP / PROOF REP / FIELD EXAM

6. Place(s) of Use:

Indicate Method of Determination

Twp.	Rge.	Sec.	NE 1/4				NW 1/4				SW 1/4				SE 1/4				Totals
			NE 1/4	NW 1/4	SW 1/4	SE 1/4	NE 1/4	NW 1/4	SW 1/4	SE 1/4	NE 1/4	NW 1/4	SW 1/4	SE 1/4	NE 1/4	NW 1/4	SW 1/4	SE 1/4	
06S	19E	19									40	40	11						91
06S	19E	30						3	7					7					17
65	19E	19									33	35	11						79
		30						3	7					7					17
																			96

permitted

To be censal

AUG 09 1994

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D. FLOW MEASUREMENTS

☐ Additional Data Sheets Attached

1.

Measurement Equipment	Type	Make	Model No.	Serial No.	Size	Calib. Date
ANNUBAR		STATE ID	# 91430		12.00	

2. Measurements:

MEASURED WITH ANNUBAR, but SYSTEM SET-UP DOES NOT ALLOW FOR AN ACCURATE READING.

E. FLOW CALCULATIONS

☒ Additional Computation Sheets Attached

1. Measured Method: THEORETICAL (HORSEPOWER EQ.)
 $(8.8)(.7)(400) / 242 + (2.31 \times 70) = 6.1 \text{ cfs}$

2. Alternate Method for Checking Purposes: ANNUBAR

F. PUMP EFFICIENCY DATA (Optional)

Discharge Pressure: _____ psi x 2.31 = _____ ft (1); Dynamic pumping level: _____ ft (2)
 Total Head: (1) + (2) = _____ (3) ; Flow rate: _____ cfs (4)

Water HP: (3) x (4) ÷ 8.8 = _____ (5)
 Meter Input KW: 3.6 x _____ KH x _____ CTR or _____ MULT x _____ PTR x _____ N/ _____ T = _____ (6)
 Meter Input HP: (6) x 1.34 = _____ (7)
 Panel Input KW: _____ Ave PF x _____ Ave Volts x _____ Ave Amps x .001732 = _____ (6)
 Panel Input HP: (6) x 1.34 = _____ (7) Efficiency: (5)/(7) x 100 = _____ %

G. VOLUME CALCULATIONS

1. Volume Calculations for Irrigation:

$V_{I.R.} = (\text{Acres Irrigated}) \times (\text{Irrigation Requirement}) = (108)(4.0) = 432 \text{ afa}$
 $V_{D.R.} = [\text{Diversion Rate (cfs)}] \times (\text{Days in Irrigation Season}) \times 1.9835 = (2.16)(245)(1.9835) = 1050 \text{ afa}$
 $V = \text{Smaller of } V_{I.R.} \text{ and } V_{D.R.} = 432 \text{ afa}$

2. Volume Calculations for Other Uses:

AUG 09 1994

H. REMARKS AND OVERLAP REVIEW ANALYSIS

PERMIT - 2.16 CTS IRR.

Exam - 6.28 cfs IRR.

RECOMMEND - ~~2.16~~ $\frac{2.16}{1.92}$ CFS IRR.

1.92

Would Recommend licensing $\frac{1.92}{2.16}$ cfs For Irrigation Purposes.

* SEE ATTACHED SHEETS FOR FURTHER REMARKS.

* This well no longer diverts to 37-7149 system & hasn't for many years.

x In combination with 37-7268, -7454 & -7602 the diversion rate shall not exceed 6.28 cfs per diversion volume of 4 AFA on ppw of 491 acres (ie 1964 AF per yr)

I. RECOMMENDATIONS

1. Recommended Amounts

Beneficial Use	Period of Use		Rate of Diversion Q (cfs)	Annual Volume V (afa)
	From	To		
IRRIGATION	~~3/15~~ 4/1	10/31 ~~11/15~~	1.92 ~~2.16 cfs~~	384 ~~432 afa~~
		Totals:	1.92 ~~2.16 cfs~~	~~432 afa~~ 384 AFA

2. Recommended Amendments

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

J. AUTHENTICATION

Field Examiner's Name

Justin Bolles

Douglas Jones

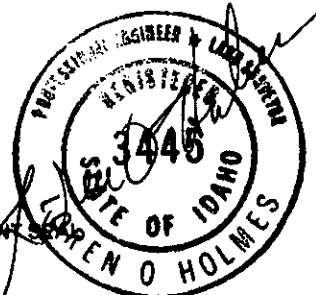
Signature

Certification Date

Field Report Preparation Date

8/31/93

8-16-91



K. Licensing recommendation shall be prepared by an Idaho Department of Water Resources employee on a computer printout attached hereto.

AUG 19 1994

SYSTEM MEASUREMENT

ANNUBAR - ANNUBAR RESULTS WERE INCONCLUSIVE, BECAUSE OF THE LOCATION OF THE MEASUREMENT PORT. TURBULENCE WITHIN SYSTEM CREATES A READING MUCH TOO HIGH.

THEORETICAL - AN ACCURATE WATER LEVEL AT THE TIME OF THE FIELD EXAM WAS IMPOSSIBLE TO DETERMINE. WELL HAS AN OBSTRUCTION BETWEEN THE LEVELS OF 90 FT AND 130 FT.

FOR CALCULATION USED DYNAMIC PUMPING LEVEL INCLUDED ON PROOF OF BENEFICIAL USE FORM.
(242 ft.)

OWNER APPROXIMATED PSI-RATING AT 70. SYSTEM DOES HAVE SOME PRESSURE GAUGES, BUT MANY ARE BROKEN AND NOT LOCATED IN THE RIGHT POSITIONS.

$$Q = \frac{(8.8)(.7)(400 \text{ hp})}{242 \text{ ft} + (2.31 \times \frac{65}{70} \text{ psi})} = \boxed{6.28 \text{ cfs}}$$

AUG 9 1994

State of Idaho
DEPARTMENT OF WATER RESOURCES
SUPPLEMENTAL FIELD REPORT FOR ANNUBAR MEASUREMENT

Measured by: Justin Bolles Date: 8/8/91
Owner: Louis L. Hubsmith Permit No. 37-08679

Description of well &/or measuring site

- Include any clarifications of the sketch
- Include legal description if more than one p.d. is described in the Field Report

NW NE SEC 30 OBS 19E

MEASURED INSIDE PIPE DIAMETER IN INCHES (ID)

CIR = Pipe Circumference in Inches = 44.5"
T = Pipe Thickness in Inches = .290"
 $ID = 2 [(0.1592 \times CIR) - T] = \dots\dots\dots 13.59$

ANNUBAR DESCRIPTION & CONSTANT (C)

Size Used in Test 12.00
State ID No. # 91430

Select C based on size from Table below.

Nominal Pipe Size	C
4"	4.23
6"	3.75
8"	3.87
10"	3.94
12"	3.99
14" - 16"	4.01
18" - 24"	4.02
30" or larger	4.03

C selected 4.01

DIFFERENTIAL PRESSURE READING IN INCHES OF H₂O (H)

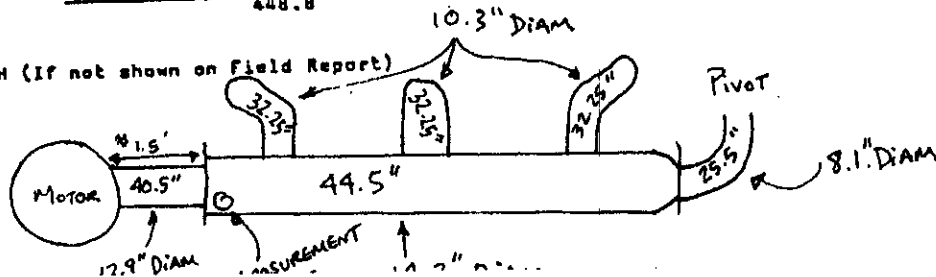
High Reading = 48.2
Low Reading = 4.4
High - Low = H = 43.8

CALCULATION OF DISCHARGE IN CFS (Q)

$$Q = \frac{(10)^2 \cdot (\sqrt{H}) \cdot (C)}{448.8}$$

$$Q = \frac{(13.59)^2 (\sqrt{43.8}) (4.01)}{448.8} = 10.9 \text{ cfs}$$

SKETCH (If not shown on Field Report)



AUG 09 1994

Report on Well and Irrigation System Capacity for Leon Hubsmith, Dietrich, Idaho

Brockway Engineering, PLLC
C. G. Brockway, P.E.
September 29, 2003

Background

This report presents the results of a pump capacity analysis for a well and irrigation system owned by Leon Hubsmith. The well is located near Dietrich, Idaho in the NW1/4 NE1/4 Section 30, T. 6 S., R. 19 E. Water rights appurtenant to the well include 37-8679, 37-7268, 37-7454 and 37-7602. The Idaho Department of Water Resources conducted beneficial use examinations for water rights 37-7268 and 37-8679, the first on July 24, 1990 and the second on August 8, 1991. During both exams, it was not possible to measure the well discharge directly using flow meters available at the time because no suitable measurement location could be found. The examiner in 1991 attempted a measurement using an annubar, but the results were deemed inconclusive due to excessive turbulence at the measuring point. Both examiners therefore utilized an approximate theoretical method to estimate the maximum well discharge. To utilize this equation, the pump efficiency was assumed to be 70% (a default value used by IDWR) without reference to the actual pump performance curve. It appears that the system pressure may also have been estimated rather than measured. Neither examiner was able to directly measure the dynamic pumping level due to an obstruction preventing the electric probe from descending down the casing. The pumping level was estimated at 250 feet by the 1990 examiner and 242 feet by the 1992 examiner. Given the assumptions above, the examiners applied the theoretical equations correctly and computed a maximum system capacity of 6.28 cfs (2,818 gpm). In the licensing process, the maximum diversion under all appurtenant rights was limited to 6.28 cfs.

A review of the licensed diversion rate revealed that it is not consistent with the size and number of center pivots and hand line systems that are normally operated on the Hubsmith farm. Normally, four (4) center pivots plus at least one hand line field are operated simultaneously. The design flows of the pivots alone, based on data from the irrigation companies' design charts, indicate a diversion rate substantially greater than 6.28 cfs.

Pump Capacity Testing

In order to determine whether IDWR's capacity estimates may have been in error, additional system documentation and flow measurements were conducted on July 30 and 31, 2003. The purpose of this investigation was to determine what the actual pump capacity was at the time of the original beneficial use exams. According to documentation provided by Mr. Hubsmith, the well pump was replaced in 1989 and no

additional work has been performed on the system since the time of the original beneficial use examinations. The well pump, motor, manifold, mainlines, and irrigation systems are the same as in 1990-91. In other words, the components of the system and the installed equipment are the same in 2003 as they were during the 1990-91 exams, with one difference: the addition of a variable-frequency drive to the well pump. In order to replicate conditions with the fixed-speed drive in 1990-91, the pump was run at a frequency of 60.0 to 61.0 Hz during the tests.

The attached diagram illustrates the irrigation systems relative to the well, and shows the approximate location of the mainlines. For the test, a "maximum" operating condition was selected, consisting of the south pivot, west pivot, east pivot, and north pivot operating. Hand lines in field HL2 were also operating, but the other hand lines were off. The farm manager confirmed that this condition was a maximum operating condition and that turning on any further hand line systems would cause a low pressure condition. Operating pressure at the well was 48 psi during the test. The pivots are equipped with pressure regulators of 20 psi or less, so this system pressure was sufficient to operate the pivots. No low pressure condition was observed at any sprinkler system.

All flow measurements were made with a Fuji Portaflow X ultrasonic flow meter, using FLG1S transducers. This meter and transducer set was tested on April 11, 2003 using the University of Idaho testing lab at Kimberly, Idaho. It was found that with 8" steel pipe or greater, the meter error was 2.5% or less.

The attached photo of the well illustrates the manifold at the well and the various mainlines feeding each of the irrigation systems. This photo shows the difficulty of making measurements with any type of meter at this location. No acceptable location on either the manifold or any of the mainlines was evident. A measurement on one of the mainlines was attempted, but no reading could be obtained.

Because flow readings were not possible at the well, individual flow measurements were made at each of the center pivots and on the mainline feeding field HL2. At each location, an acceptable meter location was available, good signal strength was obtained, and the flow readings were stable. The volume was totaled for at least 10 minutes to obtain an average reading. Field worksheets and photos at each location are provided with this report. The flow measurements are summarized as follows:

Location	Measured flow (gpm)
South pivot, no handlines on, end gun on	893
West pivot	679
North pivot, end gun off	615
Field HL2 mainline	188
East pivot	823
Total measured flow	3,198 gpm

Adjustments to Measured Flow

In order to estimate the total discharge at the well, two adjustments to the sum of the individual measured flows were necessary to account for 1) system leakage, and 2) the

fact that the end gun on the north pivot was off due to the position of the pivot. Leakage at pipe joints, valves, or other pinhole leaks was estimated at 1% of the total discharge. The end gun discharge was assumed to be 50 gpm, which is at the low end of typical end gun discharges. Addition of the end gun discharge will not materially affect the remainder of the system flows since the center pivots are pressure-regulated. With these adjustments, the best estimate of discharge from the well pump on July 30-31, 2003 is 3,280 gpm.

To estimate the well pump capacity in 1990-91, an adjustment for pump performance deterioration must be made. Over a 13-year period, pump efficiency could be expected to decrease by 5 to 10%. In fact, the measured efficiency reduction is 5.4% (see analysis below). Efficiency reduction will be manifested as a decrease in discharge, TDH, or both, depending on the nature of the deterioration of the pump impellers and bowls. As an approximation, the pump curve may simply shift downward, and the corresponding reduction in discharge will then be governed largely by the slope of the total system curve at the point of intersection with the pump curve. Since the center pivot sprinkler nozzles on the Hubsmith farm all have pressure regulators, changes in system pressure will have limited effects on discharge; this fact tends to create a "steep" system curve. The hand line sprinklers are not pressure-regulated, so there will be a significant variation of discharge with system pressure for these fields. Given the unknown pressure-flow relationships of the various sprinkler systems, it is not possible to calculate the total system curve with reasonable accuracy. It is only possible to say that with a 5.4% decrease in pump efficiency, the change in discharge will likely be small. For the present analysis, the discharge change was assumed to be 2%. Applying this adjustment yields an estimate of the maximum system capacity in 1990-91 of 3,346 gpm, or 7.46 cfs.

The calculated discharge agrees closely with a flow measurement of 3,300 gpm made in 1994 by Richard Hawkes of the Idaho Power Company. It is not known precisely how this flow was measured or in what condition the system was operating during the test, but Mr. Hawkes' report indicates that a sonic meter was used.

Check of Measurements Against Pump Performance Curve

The flow measurements were verified against the pump performance curve for the installed Vertiline 14THC 5-stage vertical turbine pump. For a discharge of approximately 3,200 gpm, the following calculations were made:

System pressure = 48 psi = 110.7 feet (measured at gauge during test)
Pumping level = 250 feet (based on known 260 feet of pump column, estimated static water level of 235 feet recorded by the pump installer in 1976, and Idaho Power measurement of pumping level of 252 feet at a discharge of 3300 gpm in 1994)
Column friction loss for 12" column, 1-15/16" shaft = 10.1 feet (manufacturer's data)
Discharge head loss = 1.0 foot (manufacturer's data)
Velocity head in 12" pipe = 1.3 feet

TDH at pump bowls = $110.7 + 250 + 10.1 + 1.0 + 1.3 = 373.1$ feet.
TDH per stage = $373.1 / 5 = 74.6$ feet

From the pump curve, the rated TDH at 3200 gpm is 79.0 feet per stage, or 395 feet total. Therefore, the measured TDH is 22 feet less than the curve value, or 5.6% less. This corresponds to a decrease in efficiency of 4.4 percentage points (from 82% to 77.6%), a 5.4% reduction in efficiency. This measured pump performance deterioration is consistent with the effects of pump wear over 13 years, although it is likely on the low end of the expected range.

Capacity Prior to 1989

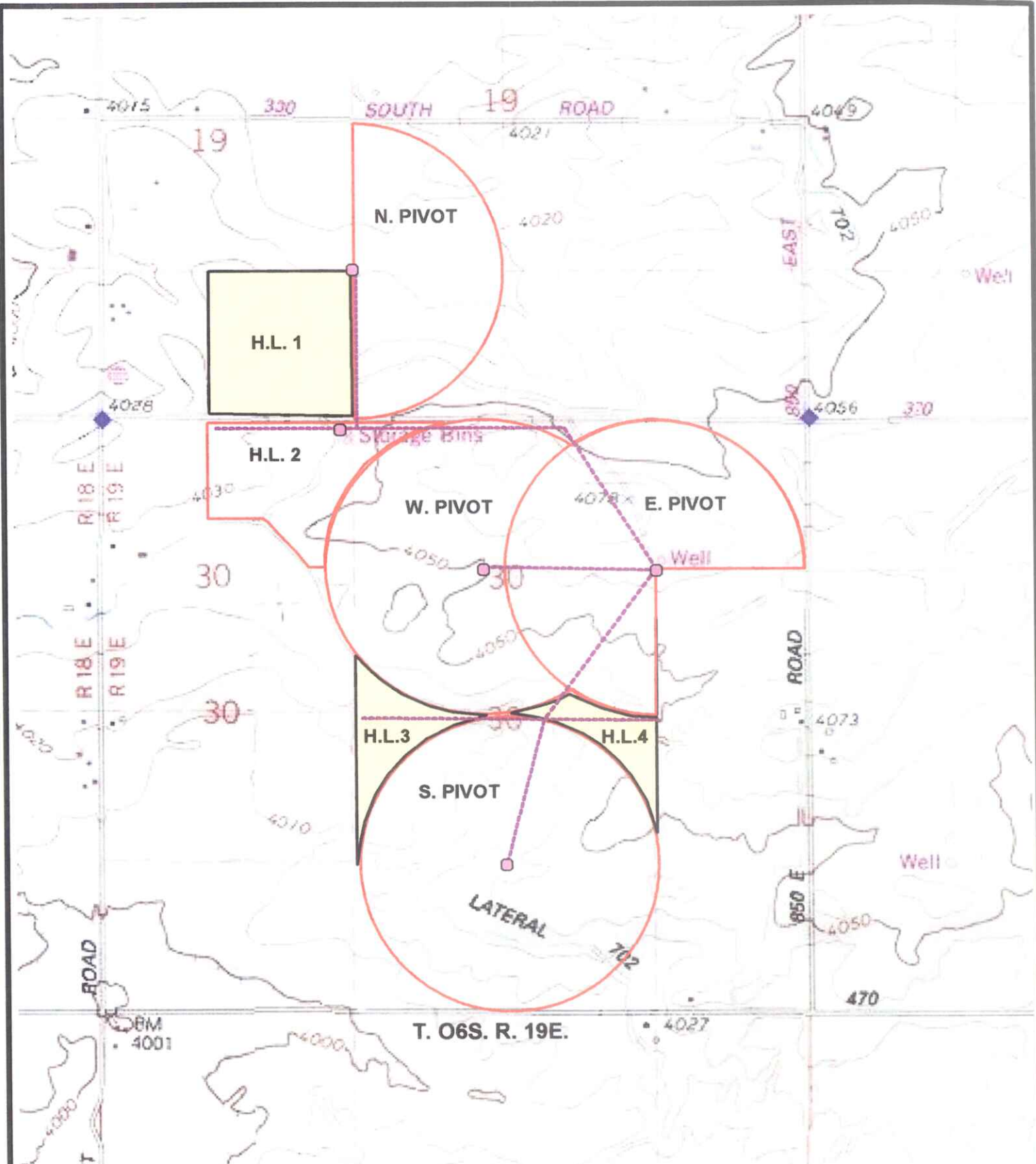
The well pump that existed prior to the pump change in 1989 was a Vertiline 16KHM. This pump has a higher rated discharge and TDH at the operating condition than the Vertiline 14THC. Therefore, the capacity prior to 1989 is at least as great as the capacity determined in the present analysis, provided the irrigation systems were substantially the same during that period.

Conclusions

Based on the data and analyses presented above, the best estimate of the capacity of the Hubsmith irrigation system at the time of the original IDWR field examinations (1990-91) is 3,346 gpm (7.46 cfs). The system capacity was at least as great prior to the pump change in 1989 if the irrigation systems were substantially the same during that period.

The error in the theoretical calculations made by the two IDWR field examiners was in the assumed efficiency value. The actual pump efficiency at the time of the examinations was 82%, based on the manufacturer's performance curves. If this value had been used instead of the "default" value of 70%, the examiners would have calculated discharges very close to the value of 7.46 cfs determined in the present analysis.





HUBSMITH SYSTEM CAPACITY TEST
Water Rights 37-8679, 37-7268, 37-7454, 37-7602

LEGEND

-  Flow Measurement Point
-  Main Line
-  Fields Active During Test
-  Fields Inactive During Test

BROCKWAY ENGINEERING, PLLC.
ALR SEP. 29, 2003



South pivot flow measurement



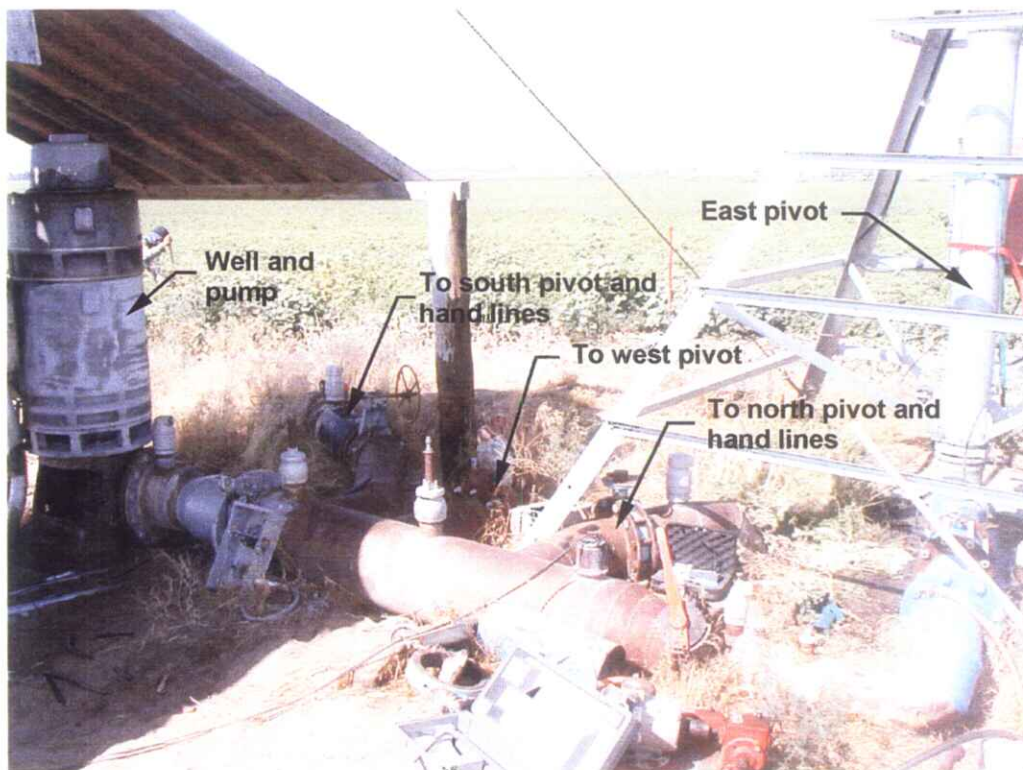
HL1 mainline flow measurement



North pivot flow measurement



West pivot flow measurement



Well, manifold, and east pivot



East pivot flow measurement

Leon H. Smith - 5 Stage Full Size

CURVE NO.
18-151X
6-1-80

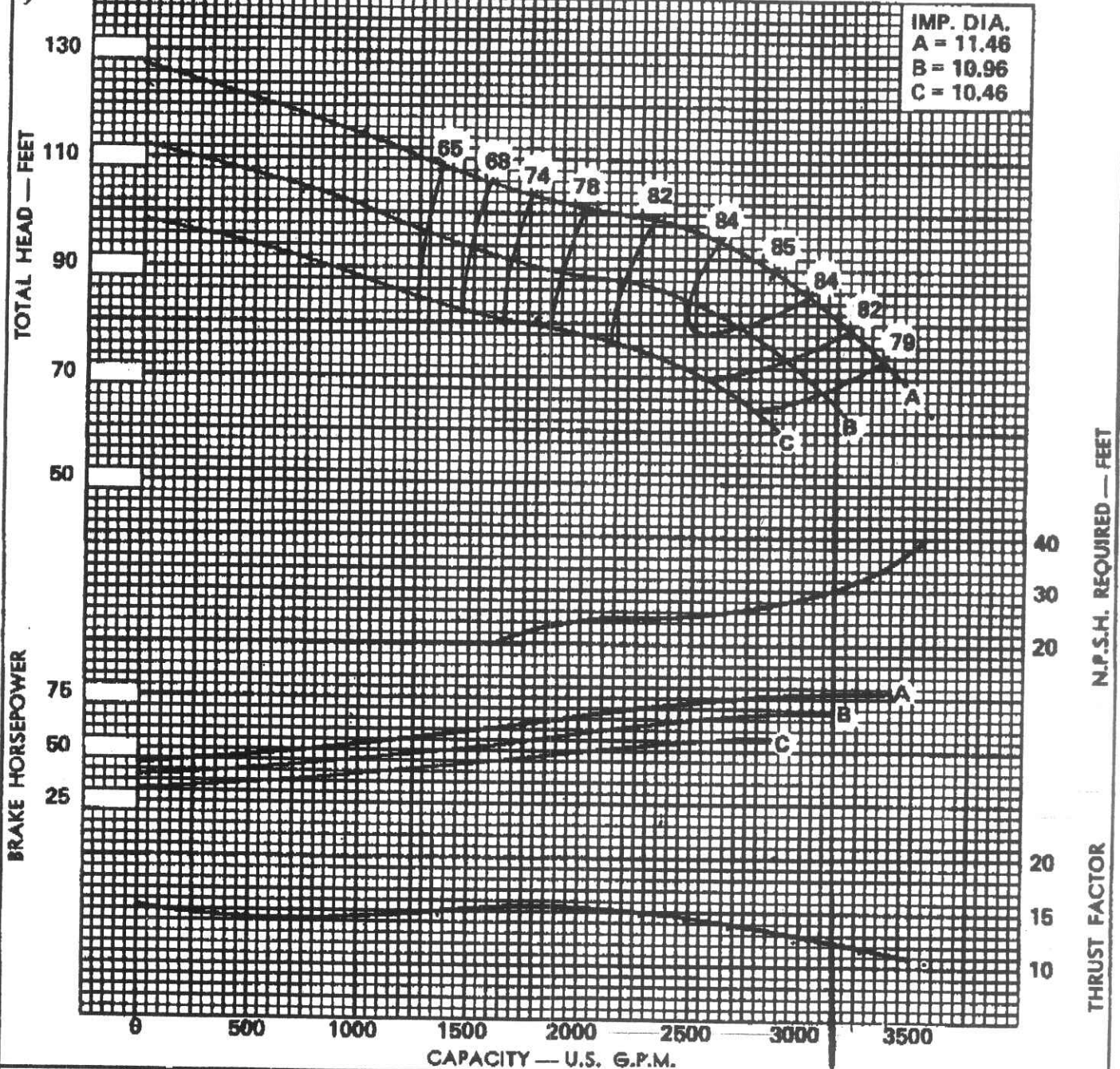
No. Stages	Eff. Change	MATERIAL	Eff. Change
1	-1	IMP. - C.I.	-1
2	0	IMP. - NI-RI	-1
3		BOWL - BRZ.	-1
4		BOWL - NI-R.	-1

14THC

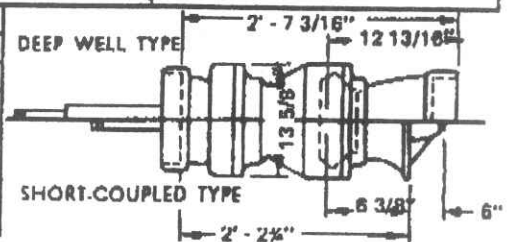
1770 R.P.M.

SINGLE STAGE LAB PERFORMANCE WITH STANDARD MATERIALS. EFFICIENCY SHOWN FOR 2 OR MORE STAGES. HORSE POWER SHOWN FOR ONE STAGE BASED ON 2 STAGE EFFICIENCY. CORRECTIONS SHOULD BE MADE FOR STAGES AND MATERIAL.

ONE STAGE STAGES *151* 260' of 12X3 X 1-15/16 CUSTOM PERFORMANCE *3155 GPM @ 402' TDA*
Pump S/N Venturini 87670510



EYE AREA — SQ. IN. = 35.81	IMPELLER WT. - LBS. = 31.8
WR ² PER IMPELLER = 2.75 LB.-FT. ²	ONE STAGE WT. - LBS. = 435
MAX. SPHERE SIZE = 1.25 in.	ADD'L STAGE WT. - LBS. = 164
MAX. NO. STD. STAGES = 7	IMPELLER NUMBER = 7717
MAX. OPERATING P.S.I. = 390	DISCH. SIZES = 10.12
STD. LATERAL = 0.76 in.	SUCTION SIZES = 10
STD. SHAFT DIA. = 1.937 in.	MAX. LATERAL = 1.28 in.
MAX. SHAFT DIA. = 2.187 in.	BOWL CONN. FLANGED - COLLET
MIN. SUBMERGENCE = 47 in.	ADD 13 " PER ADDITIONAL STAGE.



Supplemental Report on Well and Irrigation System Capacity – Leon Hubsmith, Dietrich, Idaho

Brockway Engineering, PLLC
C. G. Brockway, P.E.

Project No. 642-01-2003
February 11, 2005

This report presents supplemental information to the Brockway Engineering report dated September 29, 2003 regarding the Hubsmith irrigation system. This information has been requested by the Idaho Department of Water Resources in a letter from Nick Spencer dated March 16, 2004.

Specifically, this report clarifies two issues regarding the pump efficiency and pump model history, and provides an estimate of the capacity of the system from the early 1980s to approximately 1989, i.e. before the installation of the mainlines and center pivots that exist today.

Issue 1: Pump efficiency. First, it is important to note that pump efficiency was not used in the September 29, 2003 report to determine system capacity. System capacity was determined using actual flow measurements; the efficiency value was reported only to demonstrate that 1) the observed efficiency decrease is consistent with expected pump wear, and 2) if the IDWR field examiners had used the actual pump efficiency in estimating capacity instead of a default value, they would have calculated a discharge very close the measured discharge. Second, the well pump efficiency of 82% comes from the *actual pump performance curve* (see the report, page 4), and is not the result of engineering judgment. Using an assumed value such as 70% may be warranted in the absence of other information, but not when an actual performance curve is available.

Issue 2: Pump model history. According to information on file in the office of Layne Pump in Twin Falls, the pump was in fact changed, not refurbished, in approximately 1989. Prior to this time, the pump had been a 5-stage Vertiline 16KHM. This pump was replaced with a 5-stage Vertiline 14THC. The discharge head was not replaced, nor was the nameplate on the head, i.e. the nameplate still says 16KHM and lists the same serial number even though the pump in the well is a 14THC. Since the pump was assumed to be a 14THC in the September 29, 2003 report, no modifications are necessary to the analysis or conclusions.

Estimate of System Capacity Pre-1989

Prior to approximately 1989, a different irrigation system configuration was used to supply water to the property. The south pivot was in place (it was installed in the 1970s), but the remainder of the property was irrigated with 3" aluminum hand lines with head spacing of 40 feet. According to Mr. Hubsmith, the nozzle size was 9/64", and at least 16 quarter-mile lines could be run at the same time as the center pivot. A hydraulic

analysis was performed to verify that the system could operate in this condition and to estimate the system capacity at this time. As noted above, the well pump was a 16KHM, 5-stage.

Since no known discharge measurements prior to 1989 are available, and the system has been extensively modified since that time, it is necessary to make a theoretical analysis of the system capacity. This was done by developing system curves based on the known size and length of mainlines, and the known type and number of hand lines. The intersection of the system curve and the pump head-flow performance curve will yield the pump discharge. This is a standard engineering approach to determining the operating point of the system¹.

As discussed above, the pump performance curve is known. The system curve may be developed by determining head losses in the various system components under selected operating conditions. The attached diagram shows the system configuration in 1986, overlain on a 1986 aerial photo. The well delivered water to a 15-inch steel mainline running east-west. A 10-inch steel mainline ran north to serve the fields north of the road as shown. Hand lines were connected to risers on each mainline. The mainline serving the south center pivot is the same pipe that exists today. The pivot nozzling is different, however. According to Sliman and Butler irrigation, who has installed and serviced the pivot, the nozzle package in place prior to 1989 was designed for 1165 gpm, compared to the 900 gpm package in place today. The nozzles were pressure-regulated, so the flow would not be expected to change significantly with system pressure.

In developing the system curves, pipe friction losses, minor losses, well pumping level, pump column losses, and discharge head losses were taken into account. Two scenarios were examined: 1) with the pivot operating and the hand lines situated at the nearest point to the well, and 2) with the pivot operating and the hand lines situated at the most remote point, i.e. at the north end of the 10-inch mainline.

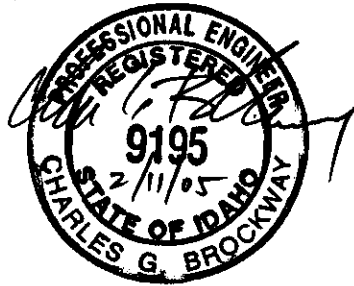
The pivot discharge was assumed to be constant at the design flow of 1165 gpm, with the remainder of the flow delivered to the hand lines. The attached spreadsheets and charts show the results of this analysis for the two scenarios. The system operating point is at the intersection of the system curve and pump head-flow curve. A summary of the results is provided in the following table:

	Scenario 1	Scenario 2
Total pump discharge (gpm)	3505 gpm	3250 gpm
Flow to pivot (gpm)	1165 gpm	1165 gpm
Flow to hand lines (gpm)	2340 gpm	2085 gpm
Operating head at pump	419 feet	445 feet
Discharge pressure	67 psi	79 psi
Operating head at hand lines (psi)	147.8 feet (64 psi)	117.2 feet (50.8 psi)

¹ Any standard hydraulic engineering textbook or handbook, e.g. Prasuhn, Alan L., Fundamentals of Hydraulic Engineering, 1987.

The calculated discharge pressures at the pump coincide with the recollection of Mr. Hubsmith, which is that the pump routinely operated at 60 to 70 psi. The calculated pressures at the main lines are more than adequate to operate the impact sprinklers, confirming that the system could have been satisfactorily operated in either condition.

Based on this analysis, the pre-1989 system capacity was at least 3505 gpm (7.81 cfs).





HUBSMITH PRE-1989 IRRIGATION SYSTEM
WATER RIGHTS 36-8679,36-7268,36-7454,36-7602
1986 AERIAL PHOTO

BROCKWAY ENGINEERING, PLLC.
ALR MARCH 2, 2004

System Curve Development for Pre-1989 Condition

Hubsmith Farm -- Dietrich, Idaho

SCENARIO 1: Pivot on, hand lines at closest point to pump

Pipe length - 15"	600
Pipe length - 10"	0
Friction factor	0.0155
Friction loss coeff - 15"	7.44
Friction loss coeff - 10"	0
Well pump column diam.	12 inches
Well pumping level	250 ft (assume constant)

Number of hand lines on	16
No. of heads per hand line	32
Total number of heads	512
Nozzle diameter	9/64"

Minor loss coeffs - 15" pipe:

	No.	C loss
90-deg bend	2	0.8
45-deg bend	1	0.4
Tee, side outlet	1	1.8
Total minor loss coefficient		3.8

15" to 10" reducer 1 0.35

Minor loss coeffs - 10" pipe:

	No.	C loss
90-deg bend	2	0.8
45-deg bend	1	0.4
Total minor loss coefficient		2.0

Sprinkler curve (assume Rainbird 30H, 9/64" nozzle):

P (psi)	H (ft)	Q (gpm)	Fitted Q
25	57.7	2.9	2.86
30	69.2	3.1	3.14
35	80.8	3.4	3.39
40	92.3	3.6	3.62
45	103.8	3.8	3.84
50	115.4	4.1	4.04
55	126.9	4.2	4.24
60	138.5	4.4	4.43
65	150.0	4.6	4.61
70	161.5	4.8	4.78
75	173.1	5.0	4.95
80	184.6	5.1	5.11

Fitted Q equation:
 $Q = 0.3804H^{0.4978}$
 or
 $H = 6.97Q^{2.01}$

Total Q (gpm)	Q to pivot (gpm)	Q to hand lines (gpm)	(cfs)	V-10" (ft/s)	V-15" (ft/s)	Pipe H loss (feet)	Flow per nozzle (gpm)	Avg. head at sprinklers (ft)	Est. column + disch head loss	Vh at pump	TDH at pump	20 hand lines
1600	1165	435	1.0	1.8	0.8	0.2	0.8	5.0	2.8	0.3	258.3	256.7
1800	1165	635	1.4	2.6	1.2	0.5	1.2	10.7	3.5	0.4	265.1	261.7
2000	1165	835	1.9	3.4	1.5	0.8	1.6	18.6	4.3	0.5	274.3	268.3
2200	1165	1035	2.3	4.2	1.9	1.3	2.0	28.7	5.2	0.6	285.8	276.5
2400	1165	1235	2.8	5.0	2.2	1.8	2.4	40.9	6.2	0.7	299.7	286.4
2600	1165	1435	3.2	5.9	2.6	2.4	2.8	55.3	7.3	0.8	315.9	298.0
2800	1165	1635	3.6	6.7	3.0	3.1	3.2	71.9	8.5	1.0	334.5	311.2
3000	1165	1835	4.1	7.5	3.3	3.9	3.6	90.7	9.8	1.1	355.5	326.1
3200	1165	2035	4.5	8.3	3.7	4.8	4.0	111.6	11.1	1.3	378.9	342.7
3400	1165	2235	5.0	9.1	4.1	5.8	4.4	134.8	12.5	1.4	404.6	360.9
3600	1165	2435	5.4	9.9	4.4	6.9	4.8	160.1	14.0	1.6	432.7	380.8
3800	1165	2635	5.9	10.8	4.8	8.1	5.1	187.7	15.7	1.8	463.2	402.4
4000	1165	2835	6.3	11.6	5.1	9.4	5.5	217.4	17.3	2.0	496.1	425.7
4200	1165	3035	6.8	12.4	5.5	10.8	5.9	249.3	19.1	2.2	531.4	450.6
4400	1165	3235	7.2	13.2	5.9	12.2	6.3	283.4	21.0	2.4	569.1	477.2
4600	1165	3435	7.7	14.0	6.2	13.8	6.7	319.8	22.9	2.6	609.1	505.5
4800	1165	3635	8.1	14.8	6.6	15.4	7.1	358.3	25.0	2.9	651.6	535.4
5000	1165	3835	8.5	15.7	7.0	17.2	7.5	399.0	27.1	3.1	696.4	567.0

System Curve Development for Pre-1989 Condition
Hubsmith Farm -- Dietrich, Idaho
SCENARIO 2: Pivot on, hand lines at most remote location

Pipe length - 15"	2600
Pipe length - 10"	2600
Friction factor	0.0155
Friction loss coeff - 15"	32.24
Friction loss coeff - 10"	48.36
Well pump column diam.	12 inches
Well pumping level	250 ft (assume constant)

Number of hand lines on	16
No. of heads per hand line	32
Total number of heads	512
Nozzle diameter	9/64"

Minor loss coeffs - 15" pipe:

	No.	C loss
90-deg bend	2	0.8
45-deg bend	1	0.4
Tee, side outlet	1	1.8
Total minor loss coefficient		3.8
15" to 10" reducer	1	0.35

Minor loss coeffs - 10" pipe:

	No.	C loss
90-deg bend	2	0.8
45-deg bend	1	0.4
Total minor loss coefficient		2.0

Sprinkler curve (assume Rainbird 30H, 9/64" nozzle):

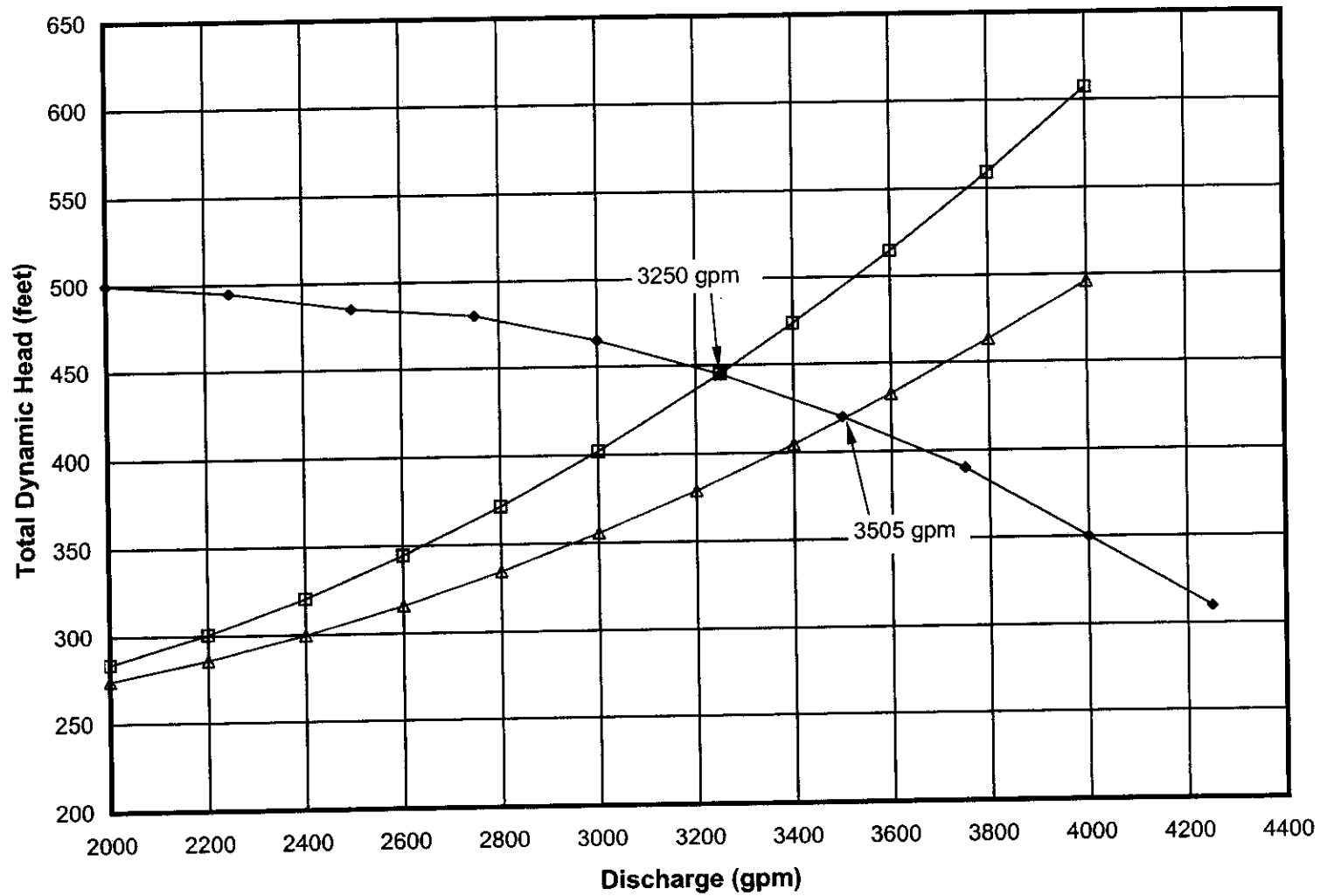
P (psi)	H (ft)	Q (gpm)	Fitted Q
25	57.7	2.9	2.86
30	69.2	3.1	3.14
35	80.8	3.4	3.39
40	92.3	3.6	3.62
45	103.8	3.8	3.84
50	115.4	4.1	4.04
55	126.9	4.2	4.24
60	138.5	4.4	4.43
65	150.0	4.6	4.61
70	161.5	4.8	4.78
75	173.1	5.0	4.95
80	184.6	5.1	5.11

Fitted Q equation:
 $Q = 0.3804H^{0.4978}$
 or
 $H = 6.97Q^{2.01}$

Total Q (gpm)	Q to pivot (gpm)	Q to hand lines (gpm)	(cfs)	V-10" (ft/s)	V-15" (ft/s)	Pipe H loss (feet)	Flow per nozzle (gpm)	Avg. head at sprinklers (ft)	Est. column + disch head loss	Vh at pump	TDH at pump	20 hand lines
1600	1165	435	1.0	1.8	0.8	2.8	0.8	5.0	2.8	0.3	261.0	256.7
1800	1165	635	1.4	2.6	1.2	6.0	1.2	10.7	3.5	0.4	270.7	261.7
2000	1165	835	1.9	3.4	1.5	10.4	1.6	18.6	4.3	0.5	283.9	268.3
2200	1165	1035	2.3	4.2	1.9	16.0	2.0	28.7	5.2	0.6	300.6	276.5
2400	1165	1235	2.8	5.0	2.2	22.9	2.4	40.9	6.2	0.7	320.7	286.4
2600	1165	1435	3.2	5.9	2.6	30.9	2.8	55.3	7.3	0.8	344.3	298.0
2800	1165	1635	3.6	6.7	3.0	40.1	3.2	71.9	8.5	1.0	371.4	311.2
3000	1165	1835	4.1	7.5	3.3	50.4	3.6	90.7	9.8	1.1	402.0	326.1
3250	1165	2085	4.6	8.5	3.8	65.1	4.1	117.2	11.4	1.3	445.1	342.7
3400	1165	2235	5.0	9.1	4.1	74.8	4.4	134.8	12.5	1.4	473.6	360.9
3600	1165	2435	5.4	9.9	4.4	88.8	4.8	160.1	14.0	1.6	514.6	380.8
3800	1165	2635	5.9	10.8	4.8	104.0	5.1	187.7	15.7	1.8	559.1	402.4
4000	1165	2835	6.3	11.6	5.1	120.4	5.5	217.4	17.3	2.0	607.1	425.7
4200	1165	3035	6.8	12.4	5.5	138.0	5.9	249.3	19.1	2.2	658.6	450.6
4400	1165	3235	7.2	13.2	5.9	156.8	6.3	283.4	21.0	2.4	713.6	477.2
4600	1165	3435	7.7	14.0	6.2	176.8	6.7	319.8	22.9	2.6	772.1	505.5
4800	1165	3635	8.1	14.8	6.6	198.0	7.1	358.3	25.0	2.9	834.1	535.4
5000	1165	3835	8.5	15.7	7.0	220.4	7.5	399.0	27.1	3.1	899.6	567.0

Hubsmith Pre-1989 Capacity Analysis

Well Pump Curve and System Curves for Scenarios 1 and 2



**IDAHO POWER
IRRIGATION SYSTEM ANALYSIS**

Page 1.1

Customer Name Leon Hubsmith
 Street Address Box 397
 City and State Dietrich, ID 83324
 Phone # 544-7581
 Location # 0555, 0521
 Customer Account # 1052-012058-0
 Other System Acct#(s) 1052-012042-0

Inspection # 52-03-84
 Inspection Date 07-08-94
 District Jerome
 Total Irrigated Acres 450
 Typical Crop Type(s) Potatoes, Hay
Beans & Wheat
 # of Laterals 4 pivots, H.L.s
 Soil Type Sandy Loam/Loam

Inspector(s) R.D. Hawkes
 Pumps in System 2

	Existing Crops	Acres
#1.	Wheat	105
#2.	Hay	121
#3.	Com	130
#4.	Beans	93

This irrigation system assumed to be
 at Maximum Operating Conditions.

System Name Shaw Place

Pump #1 of 2 Pump(s) Definition of Pump: 400 HP deep-well

1. Main X
2. Booster -
3. Series -
4. Parallel -

89 → SECOND.
BY LAYNE
PUMP

Motor Information

1. Make GE
2. Frame # 6318P24
3. Rated HP 400
4. Rated Volts 480
5. Rated Amps 462
6. RPM 1775

Pump Information

1. Make Layne
a. Centrifugal 2
b. Turbine-Sub DW
2. Model # 14 THC ✓
3. Hd/Serial # V76-70510
4. Rated Head 402 ft
5. Rated Flow 3155 gpm
6. Impeller Dia Full in ✓
7. Column Length 260 ft
8. # of Stages 5 ✓
9. Col Tub Sft 12 X 3 X 1 15/16
10. Well Depth 280 ft
11. Casing Dia 2 in
12. Dischg Head Dia 2 in

Utility Meter Input Data

1. Meter # 50575924G
2. Meter Constant Kh 4.8
3. PTR/Multiplier 120
4. Disc Revolutions 3
5. Time 19.22 sec
kW Metered 323.7 kW

Pump Panel Input Data

	1-2	1-3	3-2	Average
1. Line Voltage	476	477	477	476.7
2. Amperage	481.0	457.0	480.0	458.3
3. Power Factor	0.817	0.833	0.843	0.831

kW Measured 315.1 kW

Measured Flow and Pressure

1. Measurement Device Sonic
2. Pipe Inside Dia 12.0 in
3. Flow Reading 3300 gpm
4. Average Velocity 9.38 fps
5. Discharge Pressure 35.0 psi
-- Hg Inches 2 0.0 psi

Miscellaneous

1. Meter kW = Panel kW NO
2. Total System EHP 433.9
3. Est Total Shaft HP Loss~ 5.50
4. SHP - Shaft Loss = BHP 385.8
*Panel measurement used for EHP.
~Estimated from manufacturer's specs.

Water Level and Friction Losses

1. Pumping Lift 252.0 ft
2. Inlet Head 0.0 ft
-- in psi 2 0.0 ft
3. Static Water 2 ft
4. Water Level Fluctuation 2 ft
5. Misc Friction Loss 11.5 ft

Pumping Plant Conditions

1. Total Dynamic Head 344.4 ft
2. Flow 3300 gpm
3. Water HP 287.0 WHP
4. Input HP 422.4 EHP
5. Est Motor HP 391.3 SHP
6. Pump Plant Efficiency 87.8%

COMMENTS

Panel Load is NOT the only Load on Meter
Motor Supply Voltage OK
Motor Current Within Rating
Power Factor Level is ... OK
Voltage Balance in Tolerance
Current Balance in Tolerance
Power Factor Balance is ... OK
Est Full-Load Motor Efficiency 92.8%
Est Isolated Pump Efficiency 74.4%
Percent of Motor Load 97.8%
Motor Shaft OUTPUT is SHP
Pump Shaft INPUT is BHP
Pump Water OUTPUT is WHP
Isolated Efficiency is Curve Efficiency

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO

IN THE MATTER OF LICENSE NO. 61-07189)
IN THE NAME OF MAGIC WEST, INC.)

FINAL ORDER

On September 4, 1998, the hearing officer for the Idaho Department of Water Resources (the "Department") issued a Recommended Order in connection with the above captioned matter. On September 25, 1998, Magic West, Inc. ("Magic West" or "petitioner") filed exceptions to the Recommended Order. On October 9, 1998, intervenor Robert K. Hall filed a response to the exceptions of Magic West. On October 23, 1998, intervenor Edward T. Potucek filed a response to the exceptions of Magic West. The Director of the Department has reviewed the exceptions and responses and responds as follows:

1. **The Department has the statutory authority to amend the Water Right License for Water Right No. 61-07189 in accordance with § 67-5254(1), Idaho Code.** In response to exceptions filed by Magic West, intervenor Edward T. Potucek contends that the Department has no authority to amend the license for Water Right No. 61-07189. Similarly, in his objection to exceptions filed by Magic West, intervenor Robert K. Hall renews his motion to dismiss Magic West's Petition for Adjustment and Clarification of Existing Order/License. Under Idaho Code § 67-5201, " 'License' means the whole or part of any agency permit, certificate, approval, registration, charter, or similar form of authorization required by law, but does not include a license required solely for revenue purposes." Idaho Code § 67-5254(1) grants the authority to the Department to amend such a license when "the agency first gives notice and an opportunity for an appropriate contested case" Because the Department has complied with this statute, the Department will amend the license for Water Right No. 61-07189 as ordered herein. Also, an additional element is included in this final order denying intervenor Hall's renewed motion for dismissal.

2. **The Department initially required Magic West to install and maintain a device to measure groundwater diversions, and Magic West could have used such measurements to document the extent of beneficial use under its permit to appropriate water.** In its exceptions, Magic West contends that use of data and information subsequent to the period for development authorized by Permit to Appropriate Water No. 61-07189, or the alternative use of a theoretical calculation of maximum groundwater diversions based on pump capacity, is reasonable for determining the extent of beneficial use under the permit because "there were no actual measurements made or required during the development period." However, when the Department approved the permit to appropriate water on August 29, 1974, a condition of approval was that "A measuring device ... be

permanently installed and maintained as part of the diverting works." Although the Department removed the requirement for a measuring device by order dated August 28, 1978, Magic West was not relieved of its burden to offer sufficient proof of the extent of beneficial use prior to the Department licensing the water right, a burden that Magic West could have met by installing an adequate device to measure actual diversions and water use.

3. The Department is not required or obligated to use the input-output formula proposed by Magic West or the data and information provided by Magic West regarding water use that occurred after the development period to estimate water use during the development period. Magic West contends that the diversion volume recommended by the Hearing Officer "is not a Reasonable Determination of Actual Beneficial Use under the Input-Output Formula." At issue is not whether the determination of the Hearing Officer resulted from reasonable and complete use of the input-output formula proposed by Magic West, but whether the determination of the Hearing Officer is appropriate given the lack of measurements of diversions and use during the period for development authorized by the permit to appropriate water. Magic West contends that based on the Department's Final Order for Transfer No. 4985, in the name of Mark T. Gates, "all available data should be included in making relevant calculations." While the Department procedurally erred by failing to contact the representative identified by Magic West to accompany the Department during the beneficial use field examination, in determining whether to amend Water Right License No. 61-07189 the Department should only consider data and information concerning beneficial use during the permit development period that could have been provided by Magic West's designated representative had that representative been notified of the Department's beneficial use field examination. Data and information for time periods subsequent to the permit development period should only be considered if it is conclusively shown that groundwater diversions and beneficial use subsequent to the development period were the same as groundwater diversions and beneficial use during the development period. Magic West has not provided measured data or information derived during the period authorized for development by the permit to appropriate water for five of the six variables in the input-output formula proposed by Magic West to determine the seventh variable, the volume of groundwater diverted and beneficially used during the development period. Magic West has also not conclusively shown that groundwater diversions and beneficial use subsequent to the development period were essentially the same as groundwater diversions and beneficial use during the development period.
4. Records of waste water pumped from Magic West's plant to Magic West's waste water farm do not corroborate the testimony of witnesses for Magic West that Magic West's plant operations and associated beneficial use of water were the same during and following the time period authorized for development by the permit to appropriate water. Consequently, the

calculation of annual volume of groundwater beneficially used during the development period proposed by Magic West is not supported by adequate evidence. During the hearing held on December 15, 1997, the plant manager for Magic West, Mr. Jack C. Anderson, testified describing the operations at the plant since 1985. Tr. at 120, Ln. 1-17.¹ Mr. Anderson testified that from 1985 through 1997, the plant generally processed potatoes year-round, six to seven days per week, 24 hours per day, for 21 days. Following this 21-day time period, Magic West's plant was taken out of service 8 to 12 hours for clean up. Mr. Anderson testified that the cycle of 21 days of 24-hour operations followed by 8 to 12 hours for clean up was continuously repeated year-round, excluding holidays. Mr. Doug Ogden, who was the plant manager from August of 1974 through June of 1979, testified that "We run [the plant] the same way [as described by Mr. Anderson for the time period 1985 through 1997]." Tr. at 193, Ln. 19. Mr. Ogden testified that "There were some weeks we could only run [the plant] five [days]." Tr. at 195, Ln. 5-7. But that the amount of raw potatoes processed at the plant each year of operations beginning in 1974 through 1979 was about the same as the amount processed in 1997. Tr. at 196, Ln. 16-17. Mr. Ogden further testified that the amount of waste water sent to Magic West's waste water farm during each year beginning in 1974 through 1979 was "awfully close" to the amount of waste water sent to the farm in 1997. Tr. at 198, Ln. 4-7. Finally, Mr. William S. Schow, vice president for Magic West from 1975 through 1997, testified that the plant was always operated 24 hours per day, 7 days per week, year-round. He testified that it was therefore reasonable to determine water use during the years 1974 through 1979 using more recent information because plant operations were similar. Tr. at 222 and 233, Ln. 8-23.

No testimony was offered to refute the testimony described in the preceding paragraph. However, recorded measurements of the volume of waste water discharged from the Magic West plant to Magic West's waste water farm do not corroborate the testimony of Magic West's witnesses. During Magic West's fiscal year ending October 31, 1978, records of waste water discharge submitted by Magic West to the Idaho Division of Environmental Quality show that a total of 44.1368 million gallons waste water were discharged to the waste water farm during 217 days (Petitioner's Exhibit 1A). For Magic West's fiscal year ending October 31, 1997, records of waste water discharge show that more than 103.7492 million gallons of waste water were discharged to the waste water farm during more than 313 days (Petitioner's Exhibit 1A). Because the number of days during which waste water was discharged to the waste water farm must be directly related to the number of days during which the plant was in operation. Magic West's plant was operated approximately 50 percent more days in fiscal year 1997 than in fiscal year 1978. As a result, approximately 250 percent more waste water

¹ Unofficial transcript of hearing held on December 15, 1997, provided by Mr. Norman Semanko on behalf of Petitioner, Magic West.

was discharged to the waste water farm in fiscal year 1997 than was discharged in fiscal year 1978. The primary difference between the days of plant operation in 1978 and 1997 occurred because in fiscal year 1978, the plant operated only about 15 days in January, less than 10 days in March, no days in August, and less than 10 days in September. Although records of waste water discharged for 1978 may not be representative of plant operations for all years of the 1974 to 1979 period authorized for development by the permit to appropriate water, 1978 was the only fiscal year during the development period for which complete records of waste water discharged to the waste water farm and use of water supplied by the City of Glenns Ferry were provided. Based on the significant differences in plant operations indicated during Magic West's fiscal years 1978 and 1997, Magic West has not shown that groundwater diversions and beneficial use subsequent to the period authorized for development by the permit to appropriate water were the same as groundwater diversions and beneficial use during the development period. Therefore, it is not reasonable to determine groundwater use during the 1974 through 1979 development period using information derived during various years subsequent to the development period.

5. The information available to the Department does not support the use of data for waste water discharged to the City of Glenns Ferry sewer system during one year of the period authorized for development by the permit to appropriate water together with waste water discharged to the waste water farm during other years of the development period to estimate water use during the development period. Petitioner's Exhibit 1 includes a copy of recorded measurements of waste water from the Magic West plant discharged to the City of Glenns Ferry sewer system for calendar year 1975. In its exceptions, Magic West contends that the Hearing Officer should have included the amount of waste water discharged to the Glenns Ferry sewer system in addition to the amount of waste water discharged to the waste water farm in his determination of the amount of water used at the plant during the time period authorized by the permit to appropriate water. However, no records for the amount of waste water discharged to the waste water farm were provided for calendar year 1975, and no records for the amount of waste water discharged to the Glenns Ferry sewer system were provided for the years corresponding to records of discharge to the waste water farm. In its exceptions, Magic West describes that more waste water was discharged to the Glenns Ferry sewer system during the development period than in later years because of odor problems associated with waste water discharged to the waste water farm, which have since been corrected. Since Magic West has not conclusively shown that the amount of waste water discharged to the Glenns Ferry sewer system in 1975 was similar to the amounts of waste water discharged to the sewer system during other years of the development period, it is possible that a relatively small volume of waste water was discharged to the waste water farm in 1975 or that a relatively small volume of waste water was discharged to the Glenns Ferry sewer system in 1978 when records of waste water discharged to the waste water farm were provided.

Therefore, it is not appropriate to add the volume of waste water discharged to the Glenns Ferry sewer system in 1975 to the volume of waste water discharged to the waste water farm in 1978 in estimating the amount of water used at the plant during the development period.

6. The alternate calculation proposed by Magic West to estimate beneficial use during the development period is not supported by adequate evidence. In its exceptions, Magic West contends that "There is no dispute that the plant has always been operated 24-hours per day, using 3 8-hour shifts per day. Tr. at 120 (Anderson), 195 (Ogden), 222 (Schow). It was also undisputed that the flow of the plant was constant while it was in operation. Tr. at 28, 231-32." Therefore, as an alternate calculation to the use of Magic West's proposed input-output formula, Magic West proposes to multiply 0.67 cfs (which is equivalent to a flow rate of 433,000 gallons per day) by the number of days the plant was operated during 1978 (217 days) and by the conversion factor 1.9835, which is the volume of water in acre-feet that results from a constant flow rate of 1 cfs for 24 hours. However, the records of waste water discharged to the waste water farm during fiscal year 1978 show that the plant was not operated at a constant flow rate for 24 hours each day the plant was in operation. At maximum operations, during June of 1978, the records of waste water discharged to Magic West's waste water farm show that Magic West's plant was operated 28 days for an average of 22.8 hours per day and discharged an average of 235,064 gallons of waste water per day to the waste water farm. At minimum operations, during September of 1978, the records of waste water discharged show that Magic West's plant was operated 8 days for an average of 17.5 hours per day and discharged an average of 156,687 gallons of waste water per day to the waste water farm. These records are not consistent with Magic West's contention the flow rate of water through the plant was constant each day the plant was in operation.
7. The limitation on the volume of ground water diverted annually should not be removed from the Water Right License for Water Right No. 61-07189. Section 42-219, Idaho Code, provides that a license issued by the Department shall state the "quantity of water which may be used" among other parameters. In licensing Water Right No. 61-07189, the Department specified an annual volume limitation together with a rate of diversion limitation to limit the quantity of water that can be used under the water right to the quantity of water that was beneficially used during the time period authorized for development under the permit to appropriate water. Because the records of waste water discharged from Magic West's plant to Magic West's waste water farm show that the plant was not operated using a constant flow rate 24 hours per day, 365 days per year, the diversion rate alone is not sufficient to limit the quantity of water that can be used to the amount beneficially used during the development period authorized by the permit to appropriate. Hence, the diversion volume should not be removed from the license as suggested by Magic West.

8. The requirement for reporting ground water diversions every three months is necessary to verify that use of water by Magic West under Water Right License No. 61-07189 does not exceed the authorized volume of water that can be diverted and beneficially used on an annual basis. Magic West contends that the requirement for reporting ground water diversions every three months is either inappropriate or unnecessary. However, the records of plant operations submitted by Magic West and the testimony of witnesses for Magic West show that Magic West has consistently violated the limitation on annual volume of ground water that can be diverted under Water Right License No. 61-07189 as originally issued or as amended herein. Therefore, this Final Order includes a cease and desist order directing Magic West to comply with the amended water right license forthwith as provided under § 42-350, Idaho Code. To ensure Magic West complies with the cease and desist order, Magic West is required to measure all ground water diversions and report the volume of ground water diverted to the Department every three months as described herein.

Based upon his understanding of the law and the facts in this matter, the Director makes the following Findings of Fact, Conclusions of Law and Final Order:

FINDINGS OF FACT

1. On October 27, 1990, the Department issued Water Right License No. 61-07189 (the "license") in the name of Magic West, Inc. as follows:

Source:	Groundwater
Priority:	July 10, 1974
Use:	Industrial
Rate of diversion:	0.67 cubic feet per second ("cfs")
Volume:	12.9 acre feet per year ("afa")
Season of use:	August 15 of each year to July 1 of the following year
Point of diversion:	SW1/4SE1/4 Section 29, T5S, R10E, B.M.
Place of use:	SW1/4SW1/4 Section 29, T5S, R10E, B.M.

2. On May 5, 1997, Magic West submitted a Petition for Adjustment and Clarification of Existing Order/License ("petition") to the Department. The petition represented that Magic West had beneficially used a larger volume of water under the permit to appropriate water, issued on August 29, 1974, than the 12.9 afa subsequently provided on the license that was issued on October 27, 1990. In the petition, Magic West contends that because a larger volume of water was beneficially used during the time period authorized by the permit, and prior to the beneficial use examination conducted by the Department on August 4, 1987, the volume limitation set forth in License No. 61-07189 should be clarified or amended to reflect the higher volume of water beneficially used during the permit period. Alternatively, Magic West contends that the volume limitation should be removed from the license.

3. On October 22, 1997, the Department issued an Order Designating Contested Case: Appointing Hearing Officer; and Scheduling Hearing. The order provided that a hearing was appropriate "to provide Magic West the opportunity to establish through plant production records, or other similar evidence, the extent of beneficial use that existed under right no. 61-07189 prior to the submission of proof of beneficial use on June 13, 1979."

4. On December 15, 1997, the Department conducted a hearing in the matter. Magic West was represented by Norman M. Semanko. Intervenor Robert K. Hall was present and was represented by Perce Hall. Intervenor Edward T. Potucek was present and was represented by Daniel V. Steenson.

5. At the hearing held on December 15, 1997, intervenor Edward T. Potucek filed a Motion in Limine and to Strike: Re. Introduction of Certain Evidence to Establish Diversion Volume, which motion the hearing officer took under advisement.

6. Exhibits premarked, offered, or accepted as a part of the record include the following:

- a. Petitioner's Exhibit 1 - Report on Annual Diversion Volume for License No. 61-07189 During Authorized Development Period 1974-1979
- b. Petitioner's Exhibit 1A - Water Discharge Records from DEQ in connection with Magic West's plant
- c. Petitioner's Exhibit 2 - Water Use Measurements 1996-1997 (Oct. 20 to Oct. 18)
- d. Petitioner's Exhibit 3 - Water Usage Chart - Well Water - 1996 and 1997
- e. Petitioner's Exhibit 4 - Water Usage Chart - City Water - 1996 and 1997
- f. Petitioner's Exhibit 5 - Magic West Water Usage Chart - Discharge/Waste Water Pumped to Farm
- g. Petitioner's Exhibits 6 thru 12 - NOT OFFERED
- h. Petitioner's Exhibit 13 - Magic West Farm Water Report 04/06/87 through 04/30/87
- i. Petitioner's Exhibit 14 - Magic West Farm Water Report 04/30/87 through 05/31/87
- j. Petitioner's Exhibit 15 - Magic West Farm Water Report 06/01/87 through 06/30/87
- k. Intervenor's Exhibits A thru D - NOT OFFERED

- l. Intervenor's Exhibit E - Letter to Magic West, Inc. from Kay Walker dated August 9, 1979
- m. Intervenor's Exhibit F - NOT OFFERED
- n. Intervenor's Exhibit G - Letter to Magic West, Inc. from Steve Lester dated July 23, 1987
- o. Intervenor's Exhibits H thru Q - NOT OFFERED
- p. Intervenor's Exhibit R - Memorandum to Gary Spackman from Steve Lester dated May 2, 1997
- q. Intervenor's Exhibit S - NOT OFFERED
- r. Intervenor's Exhibit T - Sale Agreement dated September 11, 1959
- s. Intervenor's Exhibit U - Map of Glenns Ferry area showing total depth of selected wells
- t. Intervenor's Exhibit V - Conservation Plan Map - Soils, Photo No. 3EE 102, April 1975

7. During the hearing, the hearing officer took official notice of all water right records in the Department's files.

- 8. Issues identified by the parties for post-hearing briefing included the following:
 - a. the Department's authority to issue an amended license
 - b. the Motion in Limine and Motion to Strike certain evidence
 - c. injury to intervenor Potucek
 - d. the extent of beneficial use of water by Magic West during the period authorized to appropriate water

9. The license examination information submitted to the Department by Magic West on April 21, 1987, advised the Department that Jack Anderson was the company's designated representative who was to accompany the Department's field examiner during the license examination conducted to determine the extent of beneficial use made of water under Permit to Appropriate Water No. 61-07189. The Department procedurally erred by not specifically contacting Mr. Anderson to schedule his participation in the field examination. Instead, Mr. Doug Mason, the maintenance superintendent at the Magic West facilities in Glenns Ferry.

accompanied the Department's field examiner during the license examination conducted on August 4, 1987.

10. Magic West contends that its potato processing operations at its plant in Glenns Ferry have not significantly changed from the late 1970s to the present time. Consequently, Magic West claims that water use data collected at its plant during 1996 and 1997 generally represent water use at its plant in the late 1970s during the development period authorized by the permit to appropriate water. To estimate the amount of water diverted from its well prior to June 13, 1979, Magic West relies upon records of waste water discharged from its plant to its waste water farm, records of water discharged to the sewer system of the City of Glenns Ferry, records of water provided by the City of Glenns Ferry to the plant, records of water trucked to a sludge pond, and processing records for consumptive uses and losses.

11. Magic West used an input-output relationship to estimate the amount of groundwater diverted from its well during the years 1975 through 1979, since Magic West did not actually measure the amount of groundwater diverted until October 1996. Using this relationship, the amount of groundwater diverted from Magic West's well added to the amount of water provided to Magic West's processing plant by the City of Glenns Ferry is estimated to approximately equal the discharge of wastewater from the plant to Magic West's farm, plus discharge to the Glenns Ferry sewer system, plus water trucked to a sludge pond, plus the net processing consumption and losses in the plant, reduced by the water contained in the incoming potatoes.

12. Magic West's records indicate the amount of water provided to the plant by the City of Glenns Ferry during Magic West's fiscal year 1978 (November 1, 1977 through October 31, 1978) was 25.49 million gallons per year. (See petitioner's Exhibit 1).

13. Magic West's records of the discharge of waste water to its waste water farm include complete records for only one year during the time period authorized by the permit to appropriate water: Magic West's fiscal year 1978. The records show that for fiscal year 1978, there were 44.1368 million gallons of waste water discharged from the plant to Magic West's farm over 217 days in the 12 month time period of the fiscal year. (see petitioner's Exhibit 1A).

14. The records submitted by Magic West do not include corresponding data for fiscal year 1978 documenting discharge to the city sewer system, water trucked to the sludge pond, or the net consumption and losses in Magic West's processing plant.

15. Magic West's records show the amount of water discharged to the City of Glenns Ferry sewer system during calendar year 1975 only, and Magic West bases its estimate of net losses and consumption during plant processing on data for one (1) week in March 1997.

16. The 1997 data showing waste water discharged from the processing plant to the waste water farm indicate that the plant operated 352 days and discharged approximately 112.7974 million gallons of waste water to the farm.

17. Based on comparing the number of days waste water was discharged from Magic West's processing plant to its waste water farm, and the corresponding amounts of waste water discharged, Magic West's use of water in 1997 was clearly larger than its water use during the time period authorized to appropriate water in the late 1970s. Therefore, Magic West's water use in 1997 is not representative of Magic West's water use during the time period authorized by the permit to appropriate water.

18. Magic West has consistently exceeded the limitation on annual volume of ground water that can be diverted under Water Right License No. 61-07189 as originally issued or as amended herein.

19. Intervenor Potucck alleges that he would incur injury if the Department amends the license increasing the annual volume of water diverted under the license from the 12.9 afa now provided by the license.

20. Magic West has filed Claim No. A61-02248B in the Snake River Basin Adjudication claiming the use of 0.40 cfs of groundwater from the same point of diversion as for Water Right No. 61-07189 for industrial use in connection with its potato processing plant in Glens Ferry. This water right was previously licensed by the Department and has also been claimed by a different party in the Snake River Basin Adjudication.

21. As issued, License No. 61-02248 provides the following:

Source:	Groundwater
Priority:	April 3, 1939
Rate of diversion:	0.40 cfs
Point of diversion:	Lot 3, Section 32, T5S, R10E, B.M.
Uses:	Domestic and bathing, irrigation of 3 acres
Place of use:	Same as point of diversion.

Remarks:	Use of low temperature geothermal water under this license was the subject of a Local Ground Water Board Ruling in April 1960. The board held that the authorized rate of diversion be reduced to 0.08 cfs. After October 1, 1960, the order of the board became permanent.
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CONCLUSIONS OF LAW

1. The Department has the statutory authority to amend the Water Right License for Water Right No. 61-07189 in accordance with § 67-5254(1), Idaho Code.

2. Magic West's use of water in 1997 was clearly larger than its water use during the 1970s, both in duration and the amount of water diverted and is not representative of Magic West's use of water in the late 1970s during the time period authorized by the permit to appropriate water.

3. The Department issued Water Right License No. 61-07189 based on information provided by Magic West during the beneficial use field examination conducted on August 4, 1987. Although the license was issued based on data provided by Magic West, the Department erred procedurally by failing to involve Magic West's designated representative in the field examination and subsequent requests for information.

4. The records submitted by Magic West during the hearing on December 15, 1997, show that Magic West used more water under Permit to Appropriate Water No. 61-07189 than reported to the Department in 1987 during the beneficial use field examination.

5. The data submitted by Magic West showing water discharged to the City of Glenns Ferry sewer system and the net amount of water lost during plant operations should not be considered in determining the amount of water actually diverted under the permit to appropriate water because the information available in the record is not sufficient to relate these data to actual plant operations and use of water during the time period authorized to appropriate water under the permit. With respect to the data showing discharge to the City of Glenns Ferry sewer system during 1975, the record does not show that a similar discharge was made to the sewer system during fiscal year 1978, the only year during the appropriation period authorized by the permit for which complete data are available documenting the amount of waste water discharged by Magic West to its waste water farm and the volume of water supplied by the City of Glenns Ferry. Similarly, the record does not establish that the net processing consumption and losses at the plant during 1997 are comparable to those during fiscal year 1978.

6. The Motion in Limine and to Strike: Re. Introduction of Certain Evidence to Establish Diversion Volume, filed by intervenor Edward Potucek, should be denied. Approval would have precluded the hearing that the Department authorized in its order dated October 22, 1997, designating a contested case.

7. The injury alleged by intervenor Potucek has no bearing on the extent of beneficial use of water made by Magic West during the period to appropriate water authorized by the permit. The present proceeding is to determine the volume of water authorized for diversion under License No. 61-07189. If Potucek, or one or more other groundwater users, can demonstrate injury because of groundwater diversions by Magic West, the Department's "Rules for Conjunctive Management of Surface and Groundwater Resources" provide procedures for the

holder of a senior water right for groundwater to call for delivery of water against the holder of a junior water right for groundwater causing injury to the senior water right.

8. The parameters for Water Right License No. 61-07189 should be based upon the extent of diversion and beneficial use made of water within the time period authorized for appropriation of water under the permit and prior to submittal of proof of beneficial use, i.e. within the time period of August 29, 1974 to June 13, 1979.

9. The Department should issue an amended license based on the amount of water diverted and applied to beneficial use within the time period beginning August 29, 1974 and ending June 13, 1979.

10. The amended license should limit annual diversions of groundwater to a volume of 58 afa instead of 12.9 afa. The volume of 58 afa is calculated using fiscal year 1978 data for the volume of water discharged from Magic West's processing plant to its waste water farm and the volume of water provided by the City of Glenns Ferry to the processing plant. The volume of waste water discharged to Magic West's farm is taken to be the volume of water used at the processing plant without additions for water discharged to the City of Glenns Ferry sewer system, water trucked to the sludge pond, or the net amount of water consumed and lost during processing, because actual data for these additions during the period of appropriation authorized by the permit do not exist in the record. Therefore, the volume of groundwater diverted from Magic West's well in fiscal year 1978 is calculated to be the volume of waste water discharged from the processing plant in fiscal year 1978 less the volume of water supplied by the City of Glenns Ferry in fiscal year 1978 as follows:

44.1368 million gallons used in 1978 less 25.49 million gallons from Glenns Ferry
0.325850 million gallons per acre-foot

— 58 acre-feet (rounded up)

11. Magic West should not be authorized to divert more water than 58 afa under terms of Amended Water Right License No. 61-07189.

12. The records of plant operations submitted by Magic West and the testimony of witnesses for Magic West show that Magic West has consistently violated the limitation on annual volume of ground water that can be diverted under Water Right License No. 61-07189 as originally issued or as amended herein. Therefore, Magic West should be ordered to cease and desist forthwith from diverting larger volumes of ground water than authorized by Amended Water Right License No. 61-07189. The hearing held on this matter by the Department on December 15, 1997, satisfies the substantive due process requirements of § 42-350, Idaho Code, for issuance of a cease and desist order.

13. To ensure Magic West complies with the cease and desist order, Magic West should be required to measure all ground water diversions and report the volume of ground water diverted under Amended Water Right License No. 61-07189 during four, consecutive, three

month periods annually to the Department until such time as the Department determines annual reporting is sufficient to ensure compliance with the provisions of Amended Water Right License No. 61-07189.

ORDER

IT IS THEREFORE, hereby ORDERED as follows:

1. The renewed motion for dismissal filed by intervenor Hall is **DENIED**.
2. The Motion in Limine and to Strike: Re. Introduction of Certain Evidence to Establish Diversion Volume, filed by intervenor Potucek, which motion the hearing officer took under advisement, is **DENIED**.
3. Water Right License No. 61-07189 issued by the Department on October 27, 1990, is amended to change the authorized diversion volume from 12.9 afa to 58 afa. All other terms and conditions of License No. 61-07189 are included in Amended License No. 61-07189 without change. The Amended License No. 61-07189 replaces the original license issued on October 27, 1990.
4. Upon receiving this order, Magic West shall cease and desist forthwith from diverting amounts of groundwater under Amended Water Right License No. 61-07189 that exceed the annual volume authorized by the amended license.
5. In addition to maintaining an approved totalizing measuring device on its point of diversion, Magic West shall report the volume of groundwater diverted and used to the Department every three (3) months beginning June 1, 1999 for the three-month period beginning on February 1, 1999, and ending April 30, 1999. Magic West shall continue to report the volume of groundwater diverted and used pursuant to Amended Water Right License No. 61-07189, and any other water right authorizing use of the same point of diversion, within thirty (30) days following each three-month period thereafter until such time as the Department determines that annual reporting is sufficient to ensure compliance with Amended Water Right License No. 61-07189.

Signed this 22nd day of January, 1999.



KARL J. DREHER
Director

CERTIFICATE OF MAILING

I DO HEREBY CERTIFY that on this 22nd day of January, 1999, the above and foregoing document was served upon the following, via certified mail, by placing a copy of the same in the United State Mail, postage prepaid and properly addressed to the following:

MAGIC WEST INC
PO BOX 475
RUPERT ID 83350

PERCE HALL ESQ
340 E 2ND N
MOUNTAIN HOME ID 83647

EDWARD T POTUCEK
ROSEVEAR RD
PO BOX 537
GLENN'S FERRY ID 83623

NORMAN SEMANKO
ROSHOLT ROBERTSON TUCKER
PO BOX 1906
TWIN FALLS ID 83303-1906

DANIEL V STEENSON
RINGERT CLARK CHARTERED
PO BOX 2773
BOISE ID 83701-2773

ROBERT K HALL
RT 1 BOX 103
GLENN'S FERRY ID 83623


JULIE L. YARBROUGH
Senior Secretary, Water Allocation Bureau