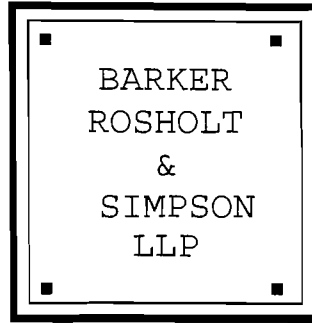


*John A. Rosholt
Albert P. Barker
John K. Simpson
Travis L. Thompson
Shelley M. Davis
Paul L. Arrington*



1010 W. Jefferson St., Suite 102
Post Office Box 2139
Boise, Idaho 83701-2139
(208) 336-0700 telephone
(208) 344-6034 facsimile
brs@idahowaters.com

113 Main Avenue West, Suite 303
Twin Falls, Idaho 83301-6167
(208) 733-0700 telephone
(208) 735-2444 facsimile
jar@idahowaters.com

*Norman M. Semanko
Of Counsel*

January 10, 2007

VIA US MAIL

Allen D. Merritt
Southern Region Manager
Idaho Department of Water Resources
1341 Fillmore Street, Suite 200
Twin Falls, ID 83301-3380

RECEIVED
JAN 11 2007
DEPT. OF WATER RESOURCES
SOUTHERN REGION

Re: Application for Permit No. 45-07745 (USDA Forest Service)

Dear Allen:

On October 19, 2006, Earl Warthen sent you a letter regarding Application for Permit No. 45-07745, in which he expressed his understanding that he and the Forest Service "had settled this matter." The purpose of this letter is to reinforce that point, to ensure that the settlement is enforced, and to provide clarification regarding Mr. Warthen's role in the current IDWR hearing process.

On June 14, 2006, Mr. Warthen and the Forest Service entered into the enclosed Stipulation to Resolve Objections in SRBA Subcase Nos. 45-04114 and 45-13795, to "agree and stipulate that the element of each water right listed should be decreed as recommended by the Director of the Idaho Department of Water Resources ('IDWR') in the Directors Report filed September 7, 2004, with the Snake River Basin Adjudication Court." The Director's Report for 45-04114, also enclosed, defines the quantity of the right as .06 cfs for commercial use, with a period of use from November 1 to April 30 (essentially, the non-irrigation season).

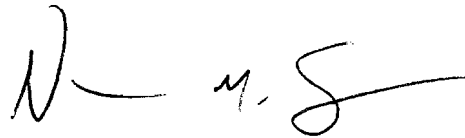
Of course, Application for Permit No. 45-07745, also enclosed, proposes to use 45-04114 for snow making. Consistent with the above-described settlement, in conformance with the order of the SRBA Court, and to avoid an inconsistent result, the use proposed in this application must be limited to no more than .06 cfs, and limited to use during the non-irrigation season of November 1 to April 30 only. Additional use beyond these limits would be inconsistent with the Stipulation and would also result in injury to Mr. Warthen's water rights.

Allen D. Merritt
January 10, 2007
Page 2

Given Mr. Warthen's settlement with the Forest Service, he has chosen to withdraw his protest and will not be represented by counsel at the hearing on January 30-31. Accordingly, we ask that you consider this letter as a formal withdrawal of his protest to Application for Permit No. 45-07745. Recognizing that this does not resolve the concerns of the other parties in the matter, and given his desire to see the terms of the Stipulation enforced, Mr. Warthen will be in attendance at the hearing and will be available as a public witness to testify with regard to the Stipulation and any potential injury to his water rights that would result from a failure to enforce the agreement.

Please do not hesitate to contact us with any questions.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'N. M. Semanko', with a stylized flourish at the end.

NORMAN M. SEMANKO
Attorney at Law

Enclosures

cc: Service list for Application for Permit No. 45-07745

Names of Parties Serving Document:

UNITED STATES OF AMERICA

EARL WARTHEN

Attorneys' Names and Addresses:

SUE ELLEN WOOLDRIDGE
Assistant Attorney General
United States Department of Justice
Environment and Natural Resources Division

SHELLEY M. DAVIS (ISB#6788)
Barker, Rosholt & Simpson LLP
205 N. 10th Street, Ste. 520
P.O. Box 2139
Boise, ID 83701-2139
Telephone: (208) 336-0700
Facsimile: (208) 344-6034

DAVID L. NEGRI (ISB #6697)
United States Department of Justice
Environment and Natural Resources Division
Natural Resources Section
550 West Fort Street, MSC 033
Boise, Idaho 83724
(208) 334-1936; facsimile (208) 334-1414
ISB# 6697

**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 Numbers: 45-04114 and 45-13795
	)	
	)	STIPULATION TO RESOLVE
Case No. 39576	)	OBJECTIONS
	)	
	)	
_____	)	

The United States of America, by and through the US Department of Agriculture, Forest Service ("United States"), and Earl Warthen (collectively, "Parties"), by and through their respective undersigned counsel, hereby stipulate and agree as follows as to the above captioned water right numbers.

1. WITHDRAWAL OF OBJECTIONS BY EARL WARTHEN. Earl Warthen agrees to dismiss with prejudice his objections to water right claim numbers 45-04114 and 45-13795. The Parties agree and stipulate that the elements of each water right listed should be decreed as recommended by the Director of the Idaho Department of Water Resources ("IDWR") in the Directors Report filed September 7, 2004, with the Snake River Basin Adjudication Court.

2. WITHDRAWAL OF APPLICATION FOR WATER RIGHT TRANSFER NO. 66616. The United States will dismiss with prejudice its application for transfer number 66616, also known as transfer number 5194, filed with IDWR January 15, 1998, involving water right claim number 45-04114.

3. CONFORMING DOCUMENTS. The Parties agree that they will execute and file any necessary documents with the SRBA Court and IDWR to conform to the provisions described in this Stipulation.

4. STIPULATION NOT TO BE USED AGAINST THE PARTIES. The Parties agree that this Stipulation has been entered into based upon good faith negotiations for the purpose of resolving legal disputes, including pending litigation, by compromise and settlement and that nothing in this Stipulation, or any offers or compromises made in the course of negotiating this Stipulation, shall be construed as admissions against interest or tendered or used as evidence to show the validity or invalidity of any water right claims made by the Parties, or as an admission or concession of wrongdoing or liability, or shall be used in any manner by any party in the SRBA in any future proceedings in the SRBA, in any appellate proceedings concerning the SRBA, or in any other proceeding, other than those seeking approval of this Stipulation by the SRBA Court, for

interpretation or enforcement of this Stipulation, or for a purpose contemplated by Idaho Rule of Evidence 408.

5. VOLUNTARY EXECUTION. This Stipulation was entered into and executed voluntarily by the Parties in good faith, and without any fraud, misunderstanding, overreaching, misrepresentation, duress, or undue influence.

6. BINDING EFFECT. This Stipulation shall be binding on any and all successors, assigns, heirs, executors, and administrators of each of the Parties.

7. COSTS AND ATTORNEY FEES. Each Party shall bear their own costs and attorney fees.

8. EFFECTIVE DATE. This Stipulation shall become effective upon execution by all of the Parties.

DATED this ____ day of June, 2006.

David L. Negri
United States Department of Justice

Attorney for the United States of America

DATED this 14th day of June, 2006.

Shelley M. Davis
Barker, Rosholt & Simpson LLP

Attorney for Earl Warthen

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this ____ day of June, 2006, I served a true and correct copy of the foregoing **STIPULATION TO RESOLVE SUBCASES**, by depositing a copy thereof in the U.S. mail, postage prepaid, or by other service where indicated, upon the following:

Shelley M. Davis
Barker, Rosholt & Simpson LLP
P.O. Box 2139
Boise, ID 83701-2139

Chief, Natural Resources Division
Office of the Attorney General
State of Idaho
P.O. Box 44449
Boise, ID 83711-4449

IDWR Document Depository
P.O. Box 83720
Boise, ID 83720-0098

David Negri

04/18/2005

IDAHO DEPARTMENT OF WATER RESOURCES
RECOMMENDED WATER RIGHTS ACQUIRED UNDER STATE LAW

RIGHT NUMBER: 45-4114

NAME AND ADDRESS: UNITED STATES OF AMERICA ACTING THROUGH
USDA FOREST SERVICE
550 W FORT ST MSC 033
BOISE ID 83724

SOURCE: SPRINGS TRIBUTARY: HOWELL CREEK
RIGHT INCLUDES ACCOMPLISHED CHANGE IN SOURCE PURSUANT TO SECTION
42-1425, IDAHO CODE.

QUANTITY: 0.060 CFS

USE OF THE RIGHTS LISTED BELOW IS LIMITED TO A TOTAL COMBINED
DIVERSION RATE OF 0.06 CFS . COMBINED RIGHT NOS. 45-4114 and
45-13795

PRIORITY DATE: 05/01/1965

POINT OF
DIVERSION: T138 R242 S1 NW1/4NW Lot 3 Within CASSIA County
T136 R242 S11 NW1/4NE Within CASSIA County

PURPOSE AND PERIOD OF USE:			
<u>PURPOSE OF USE</u>	<u>PERIOD OF USE</u>	<u>QUANTITY</u>	
COMMERCIAL	11/01 04/30 ⁱ	0.060 CFS	

PLACE OF USE: COMMERCIAL Within CASSIA County
T13S R24E S01 NWSW

OTHER PROVISIONS NECESSARY FOR DEFINITION OR ADMINISTRATION OF THIS WATER RIGHT:

This partial decree is subject to such general provisions necessary for the definition of the rights or for the efficient administration of the water rights as may be ultimately determined by the Court at a point in time no later than the entry of a final unified decree. Section 42-1412(6), Idaho Code.

EXPLANATORY MATERIAL: BASIS OF CLAIM - Beneficial Use

COMMERCIAL USE IS FOR THE POMERELLE SKI LODGE FACILITIES.

THE SOURCE IN TWP 13S, RNG 24E SEC 11 NWNENE IS ALSO KNOWN AS POMERELLE SPRING

RIGHT INCLUDES ACCOMPLISHED CHANGE IN POINT OF DIVERSION
PURSUANT TO SECTION 42-1425, IDAHO CODE.

Ident. No.

SEP 03 1999

DEPARTMENT OF WATER RESOURCES

To appropriate the public waters of the State of Idaho

- * Per Phone Conv. Vildan Hancock 9/3/65
Adm

EXHIBIT 1

9. Description of place of use:

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

TWP	RGE	SEC	N E				N W				S W				S E				TOTALS
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
135	24 E	1										C	C						
135	24 E	2			C	C					C			C	C	C	C	C	
135	24 E	11	C	C			C												

Total number of acres to be irrigated _____

10. Describe any other water rights used for the same purposes as described above. Claim #45-04114 as a secondary source consistent with the existing amended claim.

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

12. Remarks: Three 1 to 2 surface acre reservoirs with earthen dams, maxium depth 10 feet.
Primary source of water is ephemeral surface runoff during snow melt. No perennial
streams will be impounded or diverted. Secondary source of water would be existing
spring diversions and pump delivery system identified in and consistent with amended claim
#45-04114, no increase in diversion rate.

13. MAP OF PROPOSED PROJECT REQUIRED - Attach an 8½"x11" map clearly identifying the proposed point of diversion, place of use, section #, township & range. (A photocopy of a USGS 7.5 minute topographic quadrangle map is preferred.)

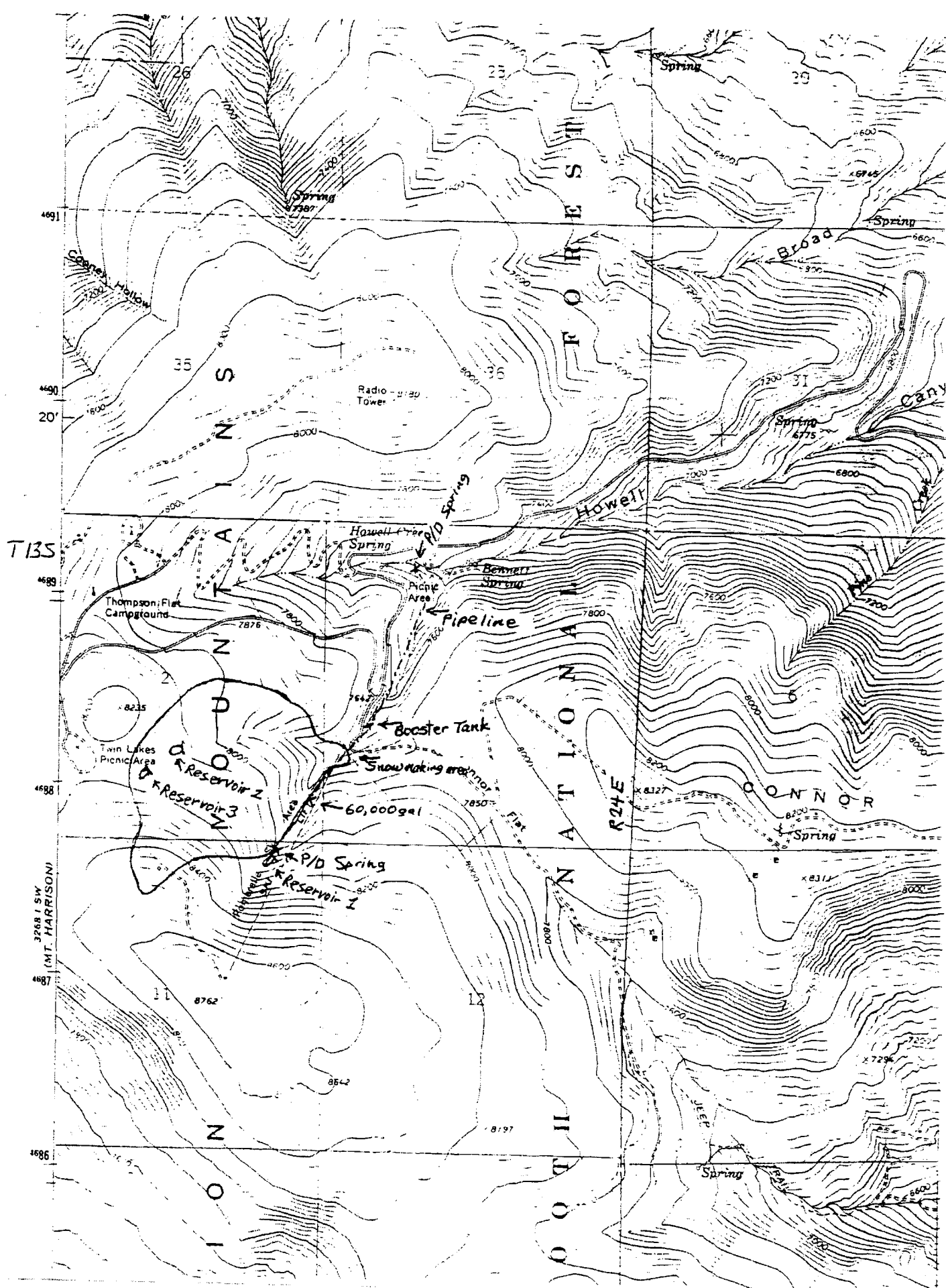
BE IT KNOWN that the undersigned hereby makes this application for permit to appropriate the public waters of the State of Idaho as herein set forth.

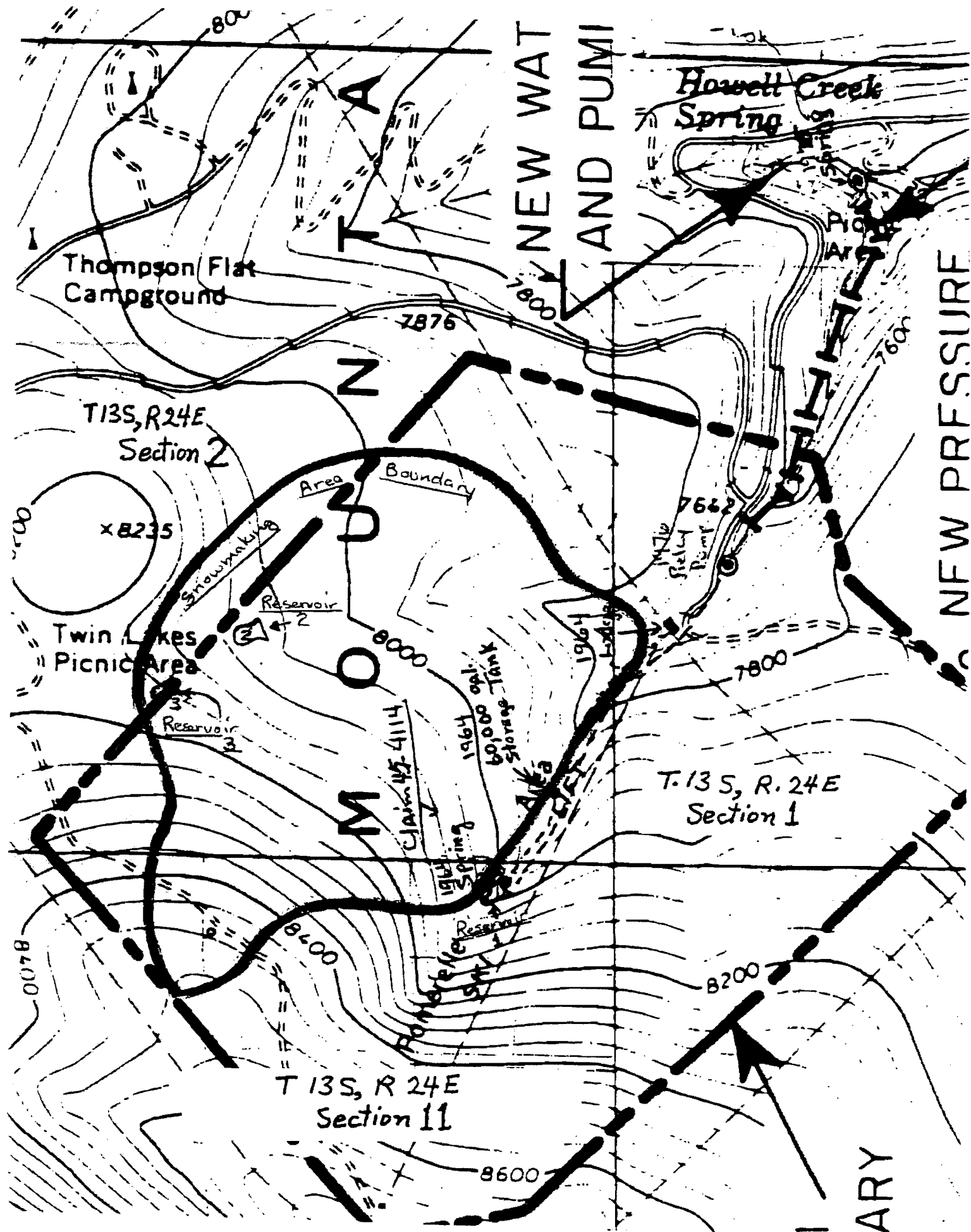
United States of America (USDA-Forest Service)

William A. LeVine

Signature of Applicant (and title, if applicable)
 (for) JACK A BLACKWELL, Regional Forester

Received by ADM Date 9/3/99 Time 8:59 Preliminary check by _____
 Fee \$ 50.00 Receipted by ADM # 5022518 Date 9/3/99
 Publication prepared by MB Date 11/4/99 Published in Id. Press
 Publication approved MB Date 12/15/99







Snowmaking Corridors and Summer Trails

- New Building Location
- New Roads, Parking
- New Mountain Bike Route
- New Snowmaking Corridor
- Snowmaking Reservoir

- Double Chair Lift
- Triple Chair Lift
- Handle Tow

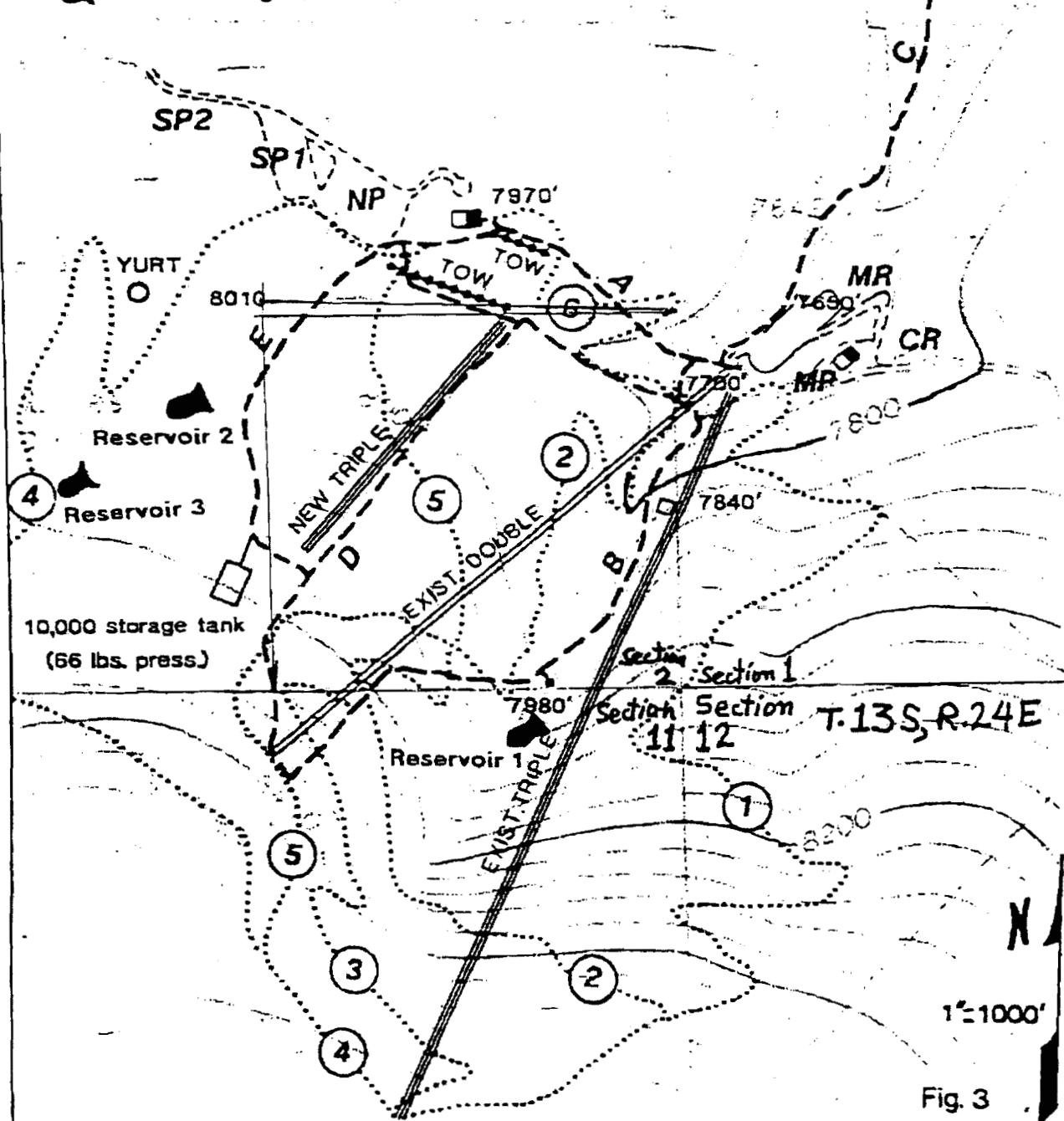


Fig. 3