

LOCATION MAP SHOWING McDERMOTT CREEK
AND UN-NAMED SPRINGS AND DIVERSION POINT AND DITCH



Identification No. _____
Claim No. 96-7020
Map No. _____

STATE OF IDAHO
DEPARTMENT OF WATER ADMINISTRATION

CLAIM TO A WATER RIGHT

Established by Diversion and Application to Beneficial Use

Under the provisions of Section 42-225a, Idaho Code, a person may file a claim to a right to use water which has been established by diversion and application to beneficial use. **The filing of this claim does not confirm the water right but will serve for information purposes only.** It may, however, become the basis for future adjudication of the water right by the Court.

(Please refer to the instructions on the back of this form)

1. Name of claimant HAROLD H. ^{OR} AND JOAN L SHARROW
post office address BAYVIEW IDAHO 83803
2. The point of diversion is in NW $\frac{1}{4}$ of NW $\frac{1}{4}$ Section 27 Township 54 NORTH
Range 2 WEST B.M. located on UN NAMED SPRING
(name of source)
tributary to MCDERMOTT CREEK in BONNER County.

3. Dates of priority claimed: list the priority for each separate quantity that you claim. Priority dates should be based upon the earliest diversion of the water which has resulted in continued beneficial use since that time. If there has been an interval of five years or greater when the water was not beneficially used for the same purpose as originally appropriated, the priority that you claim should date from the time that the water was again beneficially applied following the period of non-use.

a. Date of priority claimed:

SEPT. 23 - 1944 amount: 1 c.f.s. or _____ acre feet
_____ amount: _____ c.f.s. or _____ acre feet
_____ amount: _____ c.f.s. or _____ acre feet
Total claimed 1 c.f.s. or _____ acre feet.

- b. Explain the purpose for which the water has been used and the time during the year when you have used the right claimed:

use DOMESTIC period of use from JAN 1 to DEC 31 (both dates inclusive)
use IRRIGATION period of use from JUNE 1 to NOV 1 (both dates inclusive)
use _____ period of use from _____ to _____ (both dates inclusive)
use _____ period of use from _____ to _____ (both dates inclusive).

4. Description of diverting works:

- a. Surface water diversion dam and/or headgate: material is composed of ROCKS AND EARTH
_____ ; length is 4 feet; height is 1 feet;
width at bottom is 3 feet; width at top is 4 feet; explain any increase in diversion capacity since structure was first built, giving dates and estimated capacities if known _____

- b. Underground water diverting works: is well flowing or pumped _____ ; depth of well is _____ feet; diameter of well is _____ inches; type of pump is _____
capacity of pump is _____ g.p.m.; name and address of well driller is _____
_____ ;

c. Conveying works: length of ditch to place of use is 900 feet; width of ditch at top is 15 feet; width of bottom of ditch is 1 feet; depth of water is VARIES feet; grade of ditch per 1000 feet is 80 feet; material through which ditch passes is MED. HARD EARTH ; maximum length of pipe line to first place of use is _____ feet; diameter of pipe line is _____ inches; type of pipe _____ ; grade of pipe per 1000 feet is _____ . Please explain any changes or increase in size of conveying system since water was first appropriated, giving date and dimensions if possible _____ .

d. If water is stored: name of reservoir UN-NAMED

total capacity of reservoir is 2.5 acre feet; active capacity of reservoir is 1.5 acre feet; year construction commenced 1930; year completed 1930; date first used 7-15-1931 to JAN 1 DEC 31; is reservoir drained each year NO; ~~is reservoir on or off stream~~ explain AT LOWER END OF WATER DITCH ~~OFF~~

if feeder canal is used give maximum carrying capacity _____ c.f.s.; if reservoir is off stream, describe location of reservoir by 40-acre subdivisions _____

has there been any enlargement of the reservoir since it was first built. NO, if so, give dates and describe

5. a. Where water is used for irrigation, describe area irrigated by 40-acre subdivisions and give total acres:

[illegible]

Total number of acres to be irrigated.

Explain any significant increase in area irrigated since first use, give dates and acreages if known.

b. Do you get water through a ditch owned by several users? NO If yes, give the name of the ditch
_____. The other users and their respective
interests in the ditch are (if known) _____

6. Where water is used for stock watering, give number of each kind of stock watered 20 BEEF CATTLE
PROJECTED

7. Where water is used for domestic or municipal purposes give number of families served 2
name of town supplied _____

8. Where water is used for other purposes not above enumerated, give the nature of use, the extent of use,
and any details regarding the initiation of the right or subsequent later expansion. Be as specific as possible,
giving dates and quantities _____

9. Remarks: please explain any details of your claim which you feel need clarification or additional explanation
THE WATER HAS BEEN USED AND DIVERTED IN THE WAY
STATED FOR A PERIOD OF 35 YEARS OR MORE.
THE WATER APPLIED FOR IS THE ONLY SOURCE OF WATER
FOR MY HOME AND LAND. PLEASE FIND ENCLOSED COPY
OF MY DEED - CERTIFIED ENGINEER'S REPORT - WATER
PERMIT AND PROVEN WATER RIGHTS TO WALTER NEWMAN
DATED, NOV 3-1950 - CHAIN OF TITLES TO PROPERTY.

State of Idaho

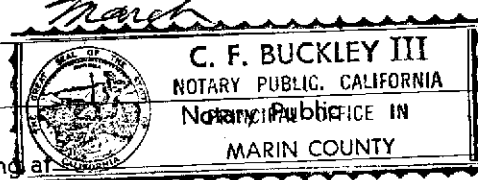
County of _____

ss.

Be it known that the undersigned, being duly sworn, deposes and says that he, she, they subscribed the
foregoing claim to a water right, together with all attached information, and that the matters and facts therein are
true to the best of the affiants knowledge.

Sworn to before me this 24th day of March 19 71

Donald A. Hancock
Claimant



Residing at _____

C. F. BUCKLEY III

My commission expires My Commission Expires April 3, 1971

For Department Use Only

Received by ex Date 3/29/71

Exception filed by: _____

Forwarded to
claimant by: _____

Date _____

Prelim. check by Re Date 3-31-71

Fee received by ex Date 3/31/71 Fee \$ 10.00

Approved for publication by _____

Published in Sandpoint News Dates 4-15 & 4-22, 1971

Bulletin at Sandpoint, Idaho

96 4020

INSTRUCTIONS

Your claim should set forth all necessary information to describe your claimed right. Failure to give enough information may make your claim of little value. Some of the items in the form may not apply to your situation. Please use additional sheets if space provided is not sufficient to fully answer the questions.

Paragraph No.

1. Give full name and post office address of person or company making the claim.
2. Describe the point of diversion by 40-acre subdivision. Give the name of the source, the drainage to which it is tributary if surface water, and the county in which the point of diversion is located. If there is more than one point of diversion, list others in the remarks section.
3. Give the priority dates and the quantities of water that you claim. You should accurately list the dates that you initiated each new use of the water. List separately the dates and amounts of water involved in each enlargement of the diversion. (Example: if you diverted 0.8 c.f.s. of water for irrigation on May 18, 1871, for the first time for use on 40 acres of land, and then later you enlarged the diversion by diverting an additional 0.4 c.f.s. of water to irrigate an additional 20 acres of land on June 1, 1901, your right should be described as follows:

Date of priority claimed:	May 18, 1871	amount:	0.8 c.f.s. or	acre feet
	June 1, 1901	amount:	0.4 c.f.s. or	acre feet
	Total claimed:	1.2 c.f.s. or	acre feet	

Since the water was used for irrigation between April 1 and October 31 on that particular farm, part b. would be completed as follows:

use irrigation period of use from April 1 to October 31 (both dates inclusive). If the water had been used for any other purpose, you would have described the priority date, amount, use, and period of use in a similar manner.

4. Describe the diversion works and explain any changes since the right was first initiated.
5. If the water is used for irrigation, give the total acreage and list the lands irrigated by 40-acre subdivisions and complete the other questions.
- 6, 7, & 8. Describe any other uses of water.
9. In the remarks section, give any information or details that you feel are not fully covered or that need clarifying. You might explain your operation, where the water is returned to it for an industrial or non-consumptive right, the condition and temperature of the returned water, and any other information to help explain your claim.

You may wish to include as a part of your claim, affidavits of witnesses who are familiar with your right and who have a personal knowledge of the circumstances which you have described in your claim. You may submit maps, drawings, certified copies of posted notices which may have been filed in the county courthouse, water measurement records, or any other document which you feel will support your claim.

Your claim will be advertised in a county newspaper for two weeks. Exceptions to your claim which dispute the water right that you have described may be received by the Department of Reclamation and you will be provided a copy of such exceptions.

The fee for filing this claim with the Department of Reclamation, Room 107, Statehouse, Boise, Idaho 83701, is \$10.00.

SURFACE WATER USE IN THE NW $\frac{1}{4}$ OF SECTION 27

The only record use of surface water in the NW $\frac{1}{4}$ of Section 27 disclosed by the records of Bonner County is the attached "Certificate of Completion of Works.

Field investigation indicates that the point of diversion is upon one of the spring channels near gauging station "B" in Government Lot 1 (NW $\frac{1}{4}$ NW $\frac{1}{4}$) of Section 27. This channel may have been known as McDermott Creek since the original patent to this property was issued to William McDermott. The diverted water was transported southerly by open ditch to a bifurcation point North of the dwelling site. At this point part of the water was diverted to the house and barn yard for domestic use. The main ditch continues South to a ground reservoir from which the open field South of the dwelling site was irrigated. The lumber in the reservoir appears to have been in place more than thirty years. There is no other apparent source of water for the farmstead.

SURFACE WATER STUDY
for
H. H. Sharrow

LOCATION

The NW $\frac{1}{4}$ of Section 27, Township 54 North, Range 2 West of the Boise Meridian in Bonner County Idaho.

NATURAL SURFACE DRAINAGE

1. A creek, shown as Salee Creek on County Maps, coursing South near the West boundary of the NW $\frac{1}{4}$ drains the West half of the NW $\frac{1}{4}$ and is gauged at Station "A".
2. A creek, shown as Salee Creek on the United States Geological Survey Bayview Quadrangle Map, coursing South near the East Boundary of the NW $\frac{1}{4}$ drains the East half of the NW $\frac{1}{4}$ and was not gauged.
3. Several small spring channels coursing generally West feed Creek No. 1. The two main spring channels were gauged at Stations "B" and "C".

LOW WATER FLOW

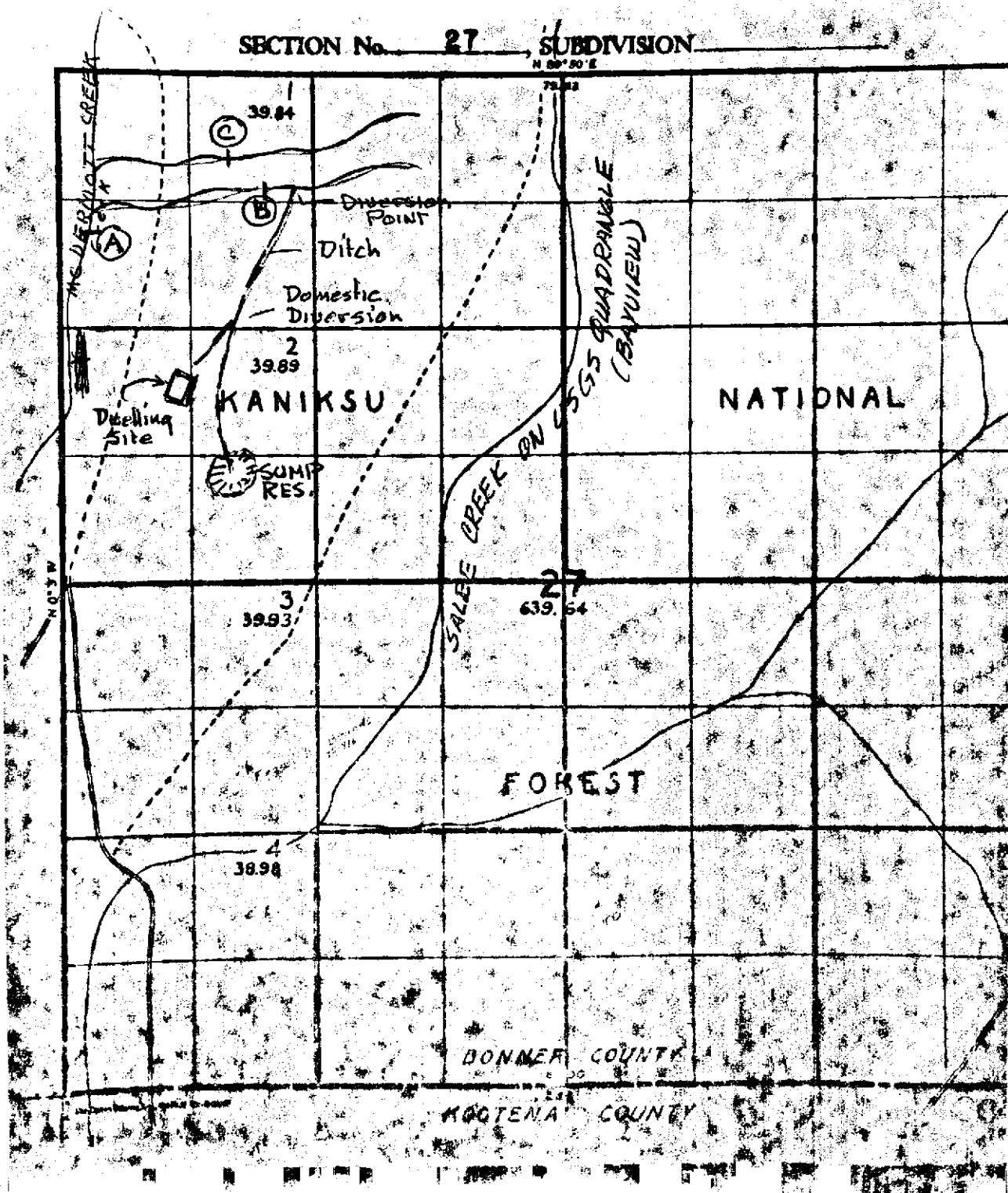
Gauging stations were established and the flows measured on November 17 and December 31, 1970. The measurements on the two dates were practically the same and in my opinion represent the low water flows of the streams measured.

Station "A" - - -	0.36	Cubic feet per second,	90% of flow measured.	corrected DATA 0.396
Station "B" - - -	0.15	" " " "	" " " "	0.165
Station "C" - - -	0.06	" " " "	80% " " "	0.074

CHAIL OF TITLE

Instrument	Vendee	Date	Book	Page
Patent	William McDermott	7/8/12	25	206
Deed	H. D. & Grace Fuckett	8/5/31	52	417
Deed	Federal Land Bank	6/23/32	53	11
Deed	Walter & Elizabeth Newman	6/15/44	69	399
Certificate - Copy of Abstract Plotter attached			1	101
Quiet Title Case No. 8179				
Q.C.D.	Louis & Desiderata Simioni	4/15/55	105	362
W. D.	Alfred C. & Edith Peck	10/16/52	105	364
W. D.	Roy C. & Genevera Gustafson	7/29/54	105	365
Q. C. D.	" " "	4/14/59	106	200
W. D.	John E. & Jane L. Flynn	5/20/61	111	321
W. D.	<i>Harold</i> ~~Hugh~~ H. & Joan Sharrow	6/11/65	117	279

LOCATION MAP SHOWING McDERMOTT CREEK
AND UN-NAMED SPRINGS AND DIVERSION POINT AND DITCH



6527

Permit No. 19540

CERTIFICATE OF COMPLETION OF WORKS

TO ALL WHOM IT MAY CONCERN:

This is to certify that Walter Newman of Bayview, County of Bonner, and State of Idaho, the holder of Permit No. 19540, issued upon Application No. 27051 bearing date of priority of September 23, 1944, authorizing the diversion of One second foot of the waters of McDermott Creek, County of Bonner, State of Idaho, for irrigation and domestic purposes, has fully complied with the provisions of the laws of the State of Idaho relating to the proof of completion of the works of diversion set out and described in said Permit; that said works are adequate for diverting and conveying to the place of intended use 35 cusecs or 0.7 second foot of the waters of McDermott Creek; that the point of diversion of said waters is in the NW $\frac{1}{4}$ NW $\frac{1}{4}$ Section 27, Township 54 North, Range 2 West, B.M. and that the lands proposed to be irrigated by the use of said water are described as follows, to-wit: SW $\frac{1}{4}$ NW $\frac{1}{4}$ Section 27, Township 54 North, Range 2 West, B.M.

Witness my hand this 3rd day of November, A.D. 1950.

Mark R. Kulp
State Reclamation Engineer

Filed in the office of the County Recorder of Bonner County, Idaho on November 13, 1950 at 3:20 PM as Document No. 36542 and recorded in Book 1 of Water Rights, Page 181

CC 4820

WARRANTY DEED

279

For Value Received John E. Flynn and Jane L. Flynn, husband & wife

the grantor s, do hereby grant, bargain, sell and convey unto Harold H. Sharrow
Joan L. Sharrow, husband & wife

the grantees, the following described premises, in Bonner.....County Idaho, to wit:

The NW¹ of Section 27, Township 54 North, Range 2 W. B. M.,
Bonner County, Idaho..

TO HAVE AND TO HOLD the said premises, with their appurtenances unto the said Grantee s,
their heirs and assigns forever. And the said Grantor s do hereby covenant to and
with the said Grantee s, that they are the owners in fee simple of said premises; that they are free
from all incumbrances

and that they will warrant and defend the same from all lawful claims whatsoever.

Dated: June 11th 1965

John E. Flynn
Jane L. Flynn

STATE OF ~~MISSO~~ ^{CALIF.} COUNTY OF ~~SAN LUIS OBISPO~~ ^{SAN LUIS OBISPO}
On this 11th day of June, 1965,
before me, a notary public in and for said State, personally
appeared John E. Flynn and Jane L.
Flynn, husband & wife

STATE OF IDAHO, COUNTY OF
I hereby certify that this instrument was filed for record at
the request of
at 12 minutes past 4 o'clock P.m.,
this 15 day of Sept.,
1965, in my office, and duly recorded in Book 117
of Deeds at page 279

DORIS L. KENNEY

Ex-Officio Recorder

By *Sharon Sharrow* Deputy.

Fees \$ 1.00
Mail to:

Harold Sharrow
526 Red Hill
Idaho

known to me to be the persons whose names are
subscribed to the within instrument, and acknowledged to
executed the same.

Notary Public
My Commission Expires May 30, 1967

INSTRUMENT NO

Affidavit of Publication

STATE OF IDAHO, } ss.
County of Bonner, }

L.E. Pietsch being first duly sworn on
oath deposes and says that he is Publisher
of The Sandpoint News-Bulletin, a weekly
newspaper printed and published at Sandpoint,
Bonner County, Idaho; that the said Sandpoint
News-Bulletin has been continuously and unin-
terruptedly published in said Bonner County
during a period of 18 months or 78 weeks
prior to the first publication of the hereto
attached notice for publication in the case of
NOTICE OF CLAIM TO WATER RIGHT
in the matter of Harold and/or
Joan L. Sharrow.

as it was published in the regular and entire issue
of the said paper for a period of two
consecutive weeks, commencing on the 15
day of April, 1971, and end-
ing on the 22 day of April,
1971, and that said notice was published in said
newspaper, and not in supplemental form.

L.E. Pietsch

Subscribed and sworn to before me this

22nd day of april, 1971.

Chas. G. Gress

Notary Public for Idaho,
Residing at Sandpoint, Idaho.

NOTICE OF CLAIM TO A WATER RIGHT No. 96-4020

Notice is hereby given that
Harold H. and/or Joan L.
Sharrow, Bayview, Idaho,
have filed a claim to a water
right established by diversion
and application to beneficial
use of 1.0 cubic feet per sec-
ond of water from an un-
named spring, tributary to
McDermott Creek, with point
of diversion in the NW $\frac{1}{4}$ NW $\frac{1}{4}$
Sec. 27, T. 54N, R. 2W, B.M.,
Bonner County.

The water is claimed to be
used from Jan. 1 to Dec. 31
for domestic purposes and
from June 1 to Nov. 1 for
irrigation purposes with a
priority of September 23, 1944,
the place of use is within the
W $\frac{1}{2}$ NW $\frac{1}{4}$ Sec. 27, T. 54N, R.
2W, B.M.

Any exception to this claim
of water right may be filed
with the Idaho Department of
Water Administration, State-
house, Boise, Idaho.

R. KEITH HIGGINSON,
Director.

Published in the Sandpoint
News - Bulletin, Sandpoint,
Idaho, on April 15 and April
22, 1971.
A15-22

October 14, 1971

Mr. Harold H. Sharrow
526 Redhill Ave.
San Anselmo, California 94960

Dear Mr. Sharrow:

In answer to your letter of October 6, 1971, we are enclosing a copy of our letter dated April 20, 1970. As this letter was not returned to our office, the Department was not aware that you did not receive said correspondence.

We are sorry for any inconvenience caused you, but we cannot be responsible for the mail service.

Very truly yours,

M. RUSSELL BOSCH
Administrative Assistant

MRB:DR
Enclosure

SC 4020

526 Redhill Ave.
San Anselmo, Calif. 94960
October 6, 1971

RECEIVED

Mr. M. Russell Bosch
State of Idaho
Department of Water Administration
Statehouse - Annex 2
Boise, Idaho 83707

Dear Sir,

Department of Water Administration

On April 20, 1970 your office supposedly mailed me a letter addressed to my Bayview, Idaho address. This letter was in regards to and was meant to warn me of Mr. Wesley Peck's water rights on Salee Creek. I never received this letter and only learned of its existence from a Court file. I would like an answer as to what happened to this letter. Was it returned to you unclaimed, and was it not therefore put in a file in your office? Also, is it not customary in cases of letters warning a person of a water rights, where it is known that 2 parties are using the water from the same creek or source, to send such letters registered mail with return receipt?

Please advise me as to the whereabouts of this letter. It is important to me to have an early answer.

Thanking you in advance for your help in this matter.

Sincerely,

Harold A. Sharous

96 4020

u: Phone Call of 6-22-71

Keith!

I've talked to Attorney Hoffmeister re: this correspondence. He assured me that he was not at all upset with or irritated by the exchange & that he generally holds you and your department in the highest regard.

His only purpose in sending the ~ Plttr after the notice was published was to get something in nature of a protest into our records, or so he now states.

All is, therefore, sweetness & light.

Phil

96 4020

Good R/H

LYONS AND HOFMEISTER

ATTORNEYS AT LAW

P. O. BOX C

SANDPOINT, IDAHO 83864

April 16, 1970

HARDY C. LYONS

EVERETT D. HOFMEISTER

CO 3-3115

State Reclamation Engineer
Department of Reclamation
Stathouse Annex 2
Boise, Idaho / 83707

Dear Sir;

Enclosed please find a copy of a license and certificate of water right issued to Mr. Wesley Peck, together with a copy of a letter from your office dated April 7, 1970.

The property owned by Mr. Peck has been using the water involved for a period exceeding forty (40) years. However, during the last two (2) years there has not been an ample supply of water for the Peck property and their neighbor, Mr. Harold H. Sharrow, has, during the critical portion of the summer, used three-fourths (3/4) of the water available. The water left to seek its way to the Peck property is quickly evaporated during the summer months and finds its way into the ground rather than to availability to Mr. Peck.

This letter is, therefor, to request your assistance in resolving this critical situation and in restoring to Mr. and Mrs. Peck the amount of water that they are entitled to and have been using and entitled to for a period exceeding thirty-five (35) years.

Yours prompt attention to this matter is appreciated.

Yours very truly,

LYONS AND HOFMEISTER

BY:
EDH/pt

cc: Mr. & Mrs. Alfred Peck

93-2154
19523
96 4020

19523

April 20, 1970

Harold H. Sharrow
Bayview,
Idaho 83808

Dear Mr. Sharrow:

We have just recently been informed by Mr. Wesley Peck that he no longer can obtain the water he is entitled to by reason of his water license. It seems that when you applied for the water it has interfered with his senior right. Since all water permits are issued with the understanding that they will not interfere with any senior rights, you should be sure that Mr. Peck receives his 40 inches of water before you take water from the same source.

Very truly yours,

M. RUSSELL BOSCH
Administrative Assistant

MRB:efw

cc: Mr. and Mrs. Peck
Everett D. Hofmeister, Attorney

94-2154
19523

86 4020

LYONS AND HOFMEISTER

ATTORNEYS AT LAW

P.O. BOX C

SANDPOINT, IDAHO 83864

September 8, 1970

RECEIVED

SEP 10 1970

HARDY C. LYONS

EVERETT D. HOFMEISTER

Department of Water Administration CO 3-3115

Idaho Department of Water
Administration
State House
Boise, Idaho

RE: Protest Against Issuance of License 32828/962302

Gentlemen:

This letter is in response to the "Notice of Existing Water Permit" published in the Sandpoint News Bulletin on September 3, 1970, regarding protests against issuance of such license to Mr. Charles Thompson, Route 1, Rathdrum, Idaho.

This is to advise that there is a temporary injunction issued out of the District Court of the First Judicial District of the State of Idaho in and for the County of Bonner in a suit pending against all owners and claimants of the waters of Salee Creek in the Northwest Quarter of Section 27, Township 54 North, Range 2 West of the Boise Meridian in Bonner County, Idaho.

The notice published in the News Bulletin deals with Salee Creek in the Southwest Quarter of the Southwest Quarter of said section and issue exists as to whether there are two (2) Salee Creeks or if there be one (1) Salee Creek the issuance of the license to Mr. Thompson would be contrary to a court order. Now?

My clients, Mr. and Mrs. Alfred Peck and Mr. Wesley Peck have been issued permits for the waters of Salee Creek.

It would be appreciated if you would clarify whether there is more than one Salee Creek, and whether the license if issued to Mr. Thompson would interfere with the up-water rights of Mr. and Mrs. Peck.

This letter may be accepted as a protest unless the department indicates that there are two (2) separate Salee Creeks in the same section and that the issuance of the license to Mr. Thompson will in no way interfere with the rights of my clients.

96 4020

96-2302
32828

Page - 2 -

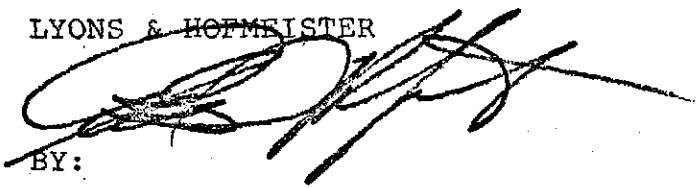
Idaho Department of Water Administration
September 8, 1970

This is to advise further that you will receive a request from the Honorable James Towles, District Judge, in accordance with Idaho Code 42-1401 in the lawsuit now pending.

I am sure that Mr. Thompson, as well as Mr. Peck desire to have any confusion clarified in the records of your office to avoid any conflict that might arise in the future by reason of such confusion.

Yours very truly,

LYONS & HOFMEISTER

BY: 

EDH:aj

cc: Mr. and Mrs. Alfred Peck
Mr. Charles Thompson

86 4020

32828
96-2302

September 21, 1970

C Mr. Everett D. Hofmeister
Attorney at Law
P. O. Box C
Sandpoint, Idaho 83864

Re: Permit No. 96-2302

O Dear Mr. Hofmeister:

Upon examination of our files we find that the permit issued to Mr. Charles Thompson applies to the same Salee Creek which is apparently subject to litigation in Bonner County. We have, therefore, recorded your protest in our records and you will be notified of the time and place of the future conference or hearing concerning the matter.

P For your information, this office has received a number of petitions for assistance to the courts in pending water rights adjudications. We are currently involved in preparation of a proposed finding of water rights on the Payette River and Lemhi River systems. These two activities have completely tied up the Department's capability in this field. Therefore, if requested by Judge Towles to assist in the matter currently before his court, we would have to advise him that we could not do so for the next year or so. Because of the great interest in this program statewide it may be possible to obtain additional funding from the Legislature, but that will have to wait until the 1971 Session.

Y Very truly yours,

R. KEITH HIGGINSON
Director

RKH:cc

96 4020

32828
96-2302

STATE OF IDAHO

DEPARTMENT OF WATER ADMINISTRATION

Statehouse -- Annex 2
Boise, Idaho 83707
(208) 384-2215



R. Keith Higginson
Director

Water Rights Administration
Water Resource Investigations
Dam and Reservoir Safety
Water Well Drilling
Flood Plain Management
Irrigation and
Flood Control Districts

January 12, 1971

Re: Permit No. 96-2302 - Charles Thompson
Application No. 96-7055 - Richard Hansen

Mr. Scott W. Reed
Attorney-at-Law
P.O. Box A
Coeur d'Alene, Idaho 83814

Dear Mr. Reed:

Permit no. 96-2302, filed by Charles Thompson on April 6, 1966 and approved by the Department on April 12, 1966, authorizes Mr. Thompson to divert up to a maximum of 2.0 c.f.s. for domestic purposes from Salee Creek. However, the approval of the permit in no way authorizes the easements necessary to cross Mr. Hansen's land.

At the time Mr. Thompson's permit was approved in 1966, the Department accepted an application listing the point of diversion and place of use for a water project as being a prima facie showing of authority to make the application in question. We felt, at the time, that the public deserved notice of all applications at the time they were approved and not at the time of beneficial use. Therefore, we proposed and successfully made the changes adopted in the 1967 session of the Legislature, which provides that now, before an application is approved, a notice is publicized soliciting protests.

We are still advised at this time by the Idaho Attorney General's office that in all cases, except those involving State or Federal agencies, the question of right-of-way for diversion points, ditches, and other conveyance methods is removed in as much as Sections 42-1101 through 42-1103 of the Idaho Code, as well as much case law, provide the necessary tools of obtaining satisfactory right-of-ways. To the best of our knowledge, the permit holder or applicant must show that he has a valid interest in a place of use in order to remove the question of speculation.

Again we should point out that the Department in 1966 accepted such applications with the understanding that the applicant had made a prima facie showing of his right to use the property by filing his application.

96 4020

Page II

Re: Permit No. 96-2302 - Charles Thompson
Application No. 96-7055 - Richard Hansen

We are enclosing a copy of a protest filed in the behalf of Mr. and Mrs. Alfred Peck and a copy of the Department's letter of September 21 and September 24, 1970. There is no time limit for submitting a protest in connection with the notice of existing permit. Logically, the only requirement is that the protest be received prior to licensing.

At this time, Mr. Thompson has until April 12, 1976 to complete the licensing. We are enclosing a copy of permit no. 96-2302 so that you may better evaluate your client's position.

If we can assist you further, please contact us.

Very truly yours,

Donald W. McEldowney
Appropriation Supervisor

DWM/DG

Enc: copy of protest
copy of letters of September 21 and 24, 1970
copy of permit no. 96-2302

66-6020

LYONS AND HOFMEISTER

ATTORNEYS AT LAW

P.O. BOX C

SANDPOINT, IDAHO 83864

April 23, 1971

HARDY C. LYONS

EVERETT D. HOFMEISTER

RECEIVED

APR 27 1971

CO 3-3115

Idaho Department of Water
Administration
Statehouse
Boise, Idaho

RE: Protest Against Notice of Claim to a Water Right Number
96-4020

Gentlemen:

This letter is in response to a Notice of a Claim to a Water Right published in the Sandpoint News-Bulletin on behalf of Harold H. and Joan L. Sharrow.

This is to refer you to my letter of September 8, 1970 regarding a Protest Against issuance of License 32828/962302. This is to further refer you to my letter to the State Reclamation Engineer, dated April 16, 1970 and to the correspondence regarding permit number 96-2302. Also your files should contain a letter from the Honorable James Towles, District Judge of the First Judicial District. *Not on file*

I must warn your office that the waters in the vicinity are presently the subject of litigation between my clients, Wesley W. Peck and Bertha Peck and Al Peck and Edith Peck, and Mr. and Mrs. Sharrow. There have been temporary injunctions issued in this matter out of the District Court of the First Judicial District of the State of Idaho, in and for the County of Bonner. I must advise that if your office and Mr. Sharrow attempt to circumvent the issues now pending before the District Court your agency will be named as a defendant and an additional injunction will be issued against Mr. Sharrow. *MISS*

The Department of Reclamation has been previously requested to act in accordance with Idaho Code 42-1401 which request has been rejected. This latter fact when coupled with the water right claimed recently indicates that you are becoming a participant assisting Mr. Sharrow, who is in turn acting in bad faith.

Please accept this letter as a protest and an exception claiming

96 4020

Page - 2 -

Idaho Department of Water Administration
April 23, 1971

all waters involved by reason that the issues involved are
presently before the District Court.

Yours very truly,

LYONS & HOFMEISTER

BY: *Everett Hofmeister* /adj.

EDH:aj

cc: Mr. Raymond T. Greene, Jr.
Mr. and Mrs. Al Peck

April 28, 1971

Re: Claim No. 96-4020

Mr. Everett D. Hofmeister
Lyons and Hofmeister
P.O. Box C
Sandpoint, Idaho 83864

Dear Mr. Hofmeister:

You have, apparently, made some erroneous assumptions in your recent letter related to the publication of notice concerning the claim to water right filed by Harold H. and Joan L. Sharrow. You should be aware that this Department does not solicit the filing of claims, under the provisions of Section 42-225a, Idaho Code. When such claims are filed, however, we are obligated, under Section 42-225b, to publish a notice in a local newspaper that the claim has been filed. This office has no authority and takes no position concerning the existence of the right as claimed but, on the other hand, we have no authority to refuse to accept the claim. I doubt very much that the court would be able to issue an injunction setting aside the provisions of these two Sections prohibiting an individual from claiming whatever he might please.

Your letter also inferred that this office has refused a request made by you, under the provisions of Section 42-1401. You are, apparently, referring to our reply to your previous letter, which was dated September 21, 1970. In that letter, I indicated that, if requested by Judge Towles to assist in the matter currently before his court, we would have to advise him that we could not do so for the next year or so. A careful reading of Section 42-1401 will reveal that it contains the following provisions:

"Prior to referring any such determination of water rights to the Department of Water Administration for a survey and report the judge of the district court shall ascertain from the department whether it has personnel and funds available to assist the court in preparation of such survey and report and an approximation of the time when such information could be completed."

96 4020

Mr. Everett D. Hofmeister

- 2 -

April 28, 1971

To my knowledge we have never been contacted by Judge Towles and requested to assist him under these provisions and, therefore, have never rejected such request. My letter to you was to advise that our capability to do this type of survey and report preparation is fully committed to two large river systems the Payette and the Lemhi rivers.

I want to emphasize that this Department takes no position whatever in any controversy, which may currently be before the court in Bonner County.

C If you have any further questions concerning this matter, please let me know.

C Very truly yours,

O R. KEITH HIGGINSON
Director

O RKH:kh

P

Y

96 4020

Although referenced in the
Title The order does not appear to
enjoin "and all the owners known &
unknown & claimants to the waters
of Satee Creek."

How was service made upon
whom

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF BONNER

WESLEY W. PECK and BERTHA
M. PECK, husband and wife,
and ALFRED C. PECK and EDITH
E. PECK, Husband and wife,

Plaintiffs,

-VS-

HAROLD H. SHARROW and JANE DOE
SHARROW, husband and wife, and
the Agents, Representatives,
Heirs and Successors of Harold
H. Sharrow, and all the owners
known and unknown and claimants
to the waters of Salee Creek in
the Northwest Quarter of Section
27, Township 54 North, Range 2
West of the Boise Meridian, in
Bonner County, Idaho,

Defendants.

10688
TEMPORARY INJUNCTION

Plaintiffs' Motion for a temporary restraining Order
having come on for hearing before the undersigned Judge of the
above-entitled Court on this 14th day of July, 1970, and the
Defendant, Harold H. Sharrow, having appeared together with
his attorney, Raymond Greene, and evidence having been sub-
mitted to the Court and the Court being advised in the premises,
NOW THEREFORE;

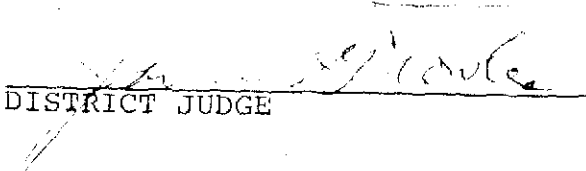
IT IS HEREBY ORDERED, That you, Harold H. Sharrow,
and all other persons acting for your benefit, be and are
hereby enjoined and restrained from diverting or reducing the
flow of water from Salee Creek or its tributaries in Township
54 North, Range 2 West of the Boise Meridian in Bonner County,
Idaho, that would directly or indirectly reduce the flow of
said waters at the point of diversion by the Plaintiffs in
Section 28 in the above-described Township and Range in Bonner
County, Idaho, to less than, and so that the Plaintiffs' do not

FILED
JULY 16 1970
CLERK OF D. C.
DEPUTY
J. L. HOFMEISTER
NEWS AT LAW
R. SUPERIOR
IDAHO 83864

receive less than, Eight-Tenths (0.8) cubic feet per second capacity at the Plaintiffs' point of diversion in said Section 28.

IT IS FURTHER ORDERED, That this Restraining Order shall be effective and take full force and effect during the pendency of these proceedings until further Order of the Court immediately upon the Plaintiffs herein posting a Bond of not less than One-thousand (\$1,000.00) Dollars with the Clerk of the above-entitled Court.

DATED AND DONE in open Court this 14th day of July, 1970.


DISTRICT JUDGE

PERMIT AND LICENSED RIGHTS ON _____ CO., IDAHO

May 11, 1971 AS RECORDED IN DEPARTMENT OF RECLAMATION, STATE OF IDAHO Water Dist. No. _____ Revised

LICENSE	PERMIT	NAME	AMT. (c.f.s.)	Date of Filing or Priority	Point of Diversion			PLACE OF USE, REMARKS, ETC.
					Subdiv.	Sec.	Twp, Rge.	
		UNNAMED SPRINGS						
(Claim)	96-4020	Harold H. and/or Joan L. Sharrow	1.0	9-23-44	NW $\frac{1}{4}$ NW $\frac{1}{4}$	27	54N 2W	Domestic, and Irrigation of 30 acres.
	96-7015	Harold H. or Joan L. Sharrow	.50 3 AF/A	8-12-68	NE $\frac{1}{4}$ NW $\frac{1}{4}$ NW $\frac{1}{4}$ NW $\frac{1}{4}$	27	54N 2W	Domestic, Stockwater, and Irrigation of 30 acres.
		McDERMOTT CREEK						
	96-2155	CANCELLED, February 9, 1971						
		SALEE CREEK						
*	96-2042	Prairie Development Company, Limited	10	7-28-10	NW $\frac{1}{4}$ NW $\frac{1}{4}$	34	54N 2W	Domestic, Municipal, and Irrigation of 640 acres.
*	96-2093	Wesley W. Peck	.2	8-03-35	NE $\frac{1}{4}$ SE $\frac{1}{4}$	28	54N 2W	Domestic, and Irrigation of 40 acres.
*	96-2152	Mike M. Sirkoff	.1	6-01-43	NW $\frac{1}{4}$ SW $\frac{1}{4}$	34	54N 2W	Irrigation of 1 acre.
*	96-2154	Wesley Walter Peck	.8	6-05-44	NE $\frac{1}{4}$ SE $\frac{1}{4}$	28	54N 2W	Domestic, and Irrigation of 50 acres.
	96-2302	Chas. Thompson	2	4-12-66	SW $\frac{1}{4}$ SW $\frac{1}{4}$	27	54N 2W	Domestic purposes.

May 10, 1971

Re: Claim to a Water Right No. 96-4020

Mr. & Mrs. Harold H. Sharrow
Bayview, Idaho 83803

Dear Mr. & Mrs. Sharrow:

The Department of Water Administration has completed the processing of your claim to a water right, and no further action is authorized under Sections 42-225a and 42-225b, Idaho Code. Your claim will be retained in our files and will be available at any time for use by you or the court.

As you are aware, the filing of your claim does not, in itself, guarantee you a water right; it only records and preserves the information and the evidence which you included in your claim.

If, at a later date, you find that you have additional information or supporting evidence that you would like to have included in your claim file, you may have that information or evidence added at any time. Please refer to your claim number when corresponding with this office.

We are enclosing, for your records, a copy of your claim. If you have any questions, or if we can be of further assistance, please feel free to call upon us.

Very truly yours,

Donald W. McEldowney
Appropriation Supervisor

DWM:dr
Enclosure: Copy of claim

96 4020

April 28, 1971

Re: Claim No. 96-4020

Mr. Everett D. Hofmeister
Lyons and Hofmeister
P. O. Box C
Sandpoint, Idaho 83864

Dear Mr. Hofmeister:

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96 4020

Mr. Everett D. Hofmeister

- 2 -

April 28, 1971

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I want to emphasize that this Department takes no position whatever in any controversy, which may currently be before the court in Bonner County.

If you have any further questions concerning this matter, please let me know.

Very truly yours,

R. KEITH HIGGINSON
Director

RKH:kh

LYONS AND HOFMEISTER

ATTORNEYS AT LAW

P.O. BOX C

SANDPOINT, IDAHO 83864

April 23, 1971

HARDY C. LYONS
EVERETT D. HOFMEISTER

CO 3-3115

Idaho Department of Water
Administration
Statehouse
Boise, Idaho

RE: Protest Against Notice of Claim to a Water Right Number
96-4020

Gentlemen:

This letter is in response to a Notice of a Claim to a Water Right published in the Sandpoint News-Bulletin on behalf of Harold H. and Joan L. Sharrow.

This is to refer you to my letter of September 8, 1970 regarding a Protest Against issuance of License 32828/962302. This is to further refer you to my letter to the State Reclamation Engineer, dated April 16, 1970 and to the correspondence regarding permit number 96-2302. Also your files should contain a letter from the Honorable James Towles, District Judge of the First Judicial District.

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The Department of Reclamation has been previously requested to act in accordance with Idaho Code 42-1401 which request has been rejected. This latter fact when coupled with the water right claimed recently indicates that you are becoming a participant assisting Mr. Sharrow, who is in turn acting in bad faith.

Please accept this letter as a protest and an exception claiming

123 45678

Page - 2 -

Idaho Department of Water Administration
April 23, 1971

all waters involved by reason that the issues involved are
presently before the District Court.

Yours very truly,

LYONS & HOFMEISTER

BY: *Everett Hofmeister /adj*

EDH:aj

cc: Mr. Raymond T. Greene, Jr.
Mr. and Mrs. Al Peck

April 6, 1971

Re: Claim No. 96-4020 - Harold H. &/or Joan L. Sharrow

Sandpoint News Bulletin
P.O. Box 218
Sandpoint, Idaho 83864

Gentlemen:

Enclosed you will find a legal notice which we wish to have published once a week for two consecutive weekly issues of your newspaper. We have inserted the publication dates allowing ample time for you to submit us a galley proof for our review before publication.

After sending us a galley proof, proceed with the publication on the dates we have inserted assuming the notice is correct. If we have any corrections, we will notify you before the first publication date. If you cannot publish the notice on the proposed dates, please contact us immediately.

An affidavit of publication must be submitted to the Department along with the publication bill. In order to receive payment, the following certification must appear on the bill:

"I hereby certify that the foregoing account is just and correct, that the amount claimed is legally due, after allowing all just credits, and that no part of the same has been paid."

(signature of claimant)

Very truly yours,

Donald W. McKelowney
Appropriation Supervisor

*Bill submitted
4-28-71
ds*

DWM:DR
Enc: Legal notice

96 4020

NOTICE OF CLAIM TO A WATER RIGHT

No. 96-4020

Notice is hereby given that Harold H. and/or Joan L. Sharrow,
Bayview, Idaho, have
~~have~~ filed a claim to a water right established by diversion and appli-
cation to beneficial use of 1.0 cubic feet per second ~~approximately~~
of water from an unnamed spring, tributary to McDermott Creek,
with point of diversion in the NW1/4 Sec. 27, T. 54N, R. 2W, B.M.,
Bonner County.

The water is claimed to be used from Jan. 1 to Dec. 31 ~~in~~ for domestic
purposes and from June 1 to Nov. 1 for irrigation purposes
with a priority of September 23, 1944;
the place of use is within the W1/4 Sec. 27, T. 54N, R. 2W, B.M.

Any exception to this claim of water right may be filed with the
Idaho Department of Water Administration., Statehouse, Boise, Idaho.

R. KEITH HIGGINSON

Director

Published in the Sandpoint News Bulletin, Sandpoint, Idaho,
on April 15 and April 22, 1971.

96 4020

March 31, 1971

Harold A. Sharrow
Bayview,
Idaho 83803

Dear Mr. Sharrow:

Returned herewith is your receipt No. 5830 in the amount of \$10.00
for your Claim application,
which was received in this office under the above date.

Very truly yours,

M. RUSSELL BOSCH
Administrative Assistant

MRB:ejw

Enclosure

January 28, 1971

Re: Application for Permit

Joan L. Sharrow
526 Redhill Avenue
San Anselmo, California 94960

Dear Ms. Sharrow:

Enclosed are the forms you requested in your letter of January 26, 1971. If you should have any questions, please feel free to contact this office.

Very truly yours,

BOBBY D. FLEENOR
Assistant Director

BDF:kh

Enclosure

96 4020

526 Redhill Avenue
San Anselmo, Calif. 94960
January 26, 1971

RECEIVED

JAN 26 1971

Dept. of Reclamation
Statehouse-Annex 2
Boise, Idaho 83707

Dear Sir,

Department of Water Reclamation

Please send all the papers needed to file for
a water permit on the waters of the State of Idaho.

Sincerely,

Joan L. Sharrow
Joan L. Sharrow

96 4020