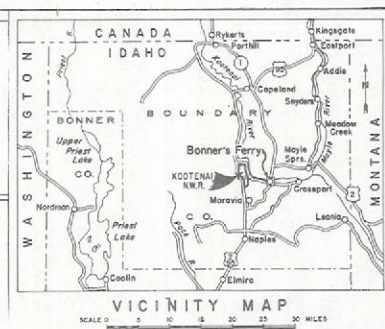


UNITED STATES
DEPARTMENT OF THE INTERIOR

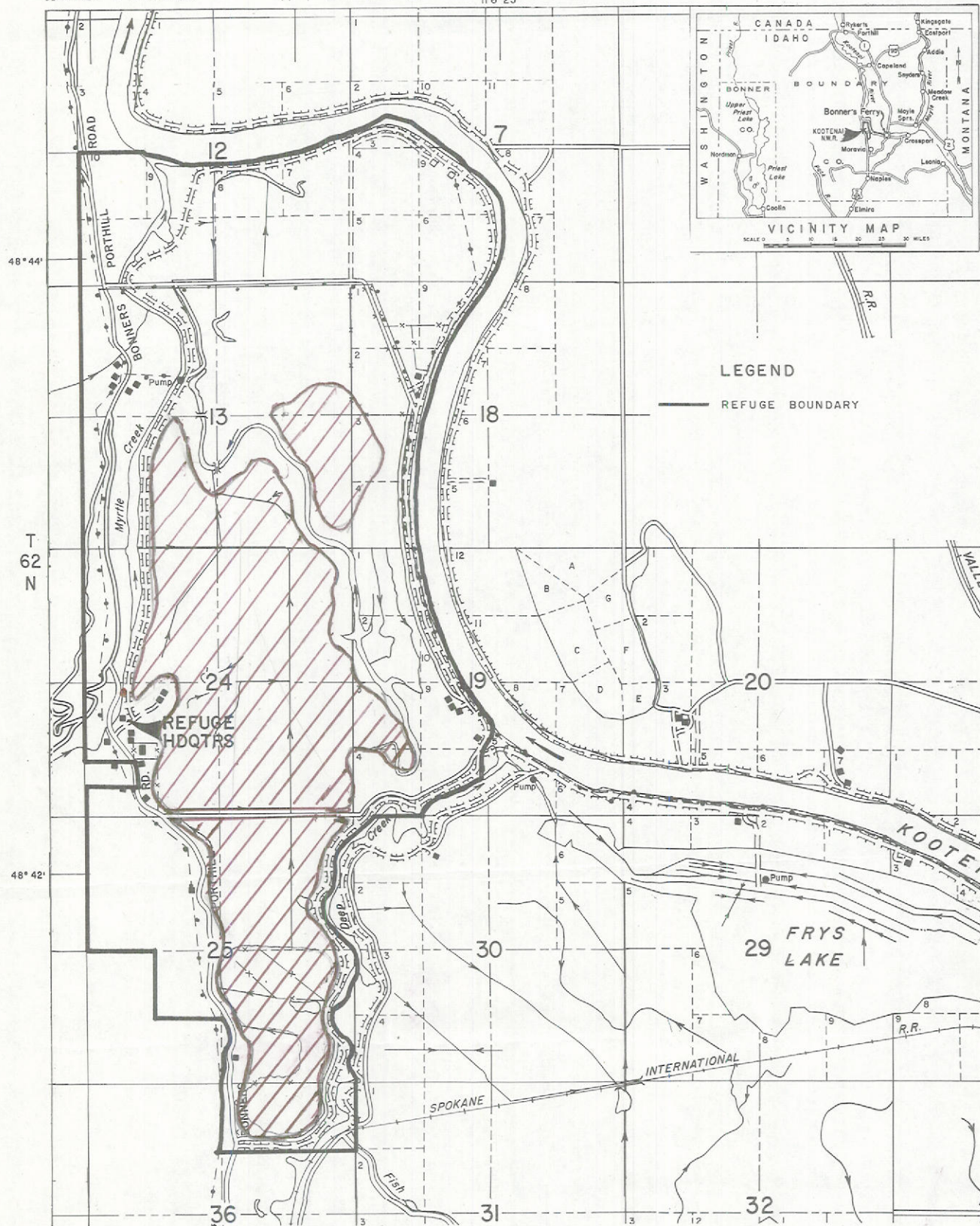
11 6°23'

FISH AND WILDLIFE SERVICE
BUREAU OF SPORT FISHERIES AND WILDLIFE



LEGEND

REFUGE BOUNDARY



BOUNDARY COUNTY, IDAHO

BOISE MERIDIAN

A graphic scale bar with two rows of markings. The top row is labeled 'BOISE MERIDIAN' and has markings at 0, 20, 40, 80, 120, and 160 CHAINS. The bottom row is labeled 'SCALE' and has markings at 0, 1/4, 1/2, 1, 1 1/2, and 2 MILES. The bar is divided into segments by vertical lines, with the top row segments being longer than the bottom row segments.

082565

98-7006

WILSON & WALTER
ATTORNEYS AT LAW
P. O. BOX 749
BONNERS FERRY, IDAHO — 83805

RECEIVED
FEB 6 1968
Department of Reclamation

205 W. KOOTENAI
PHONE AN 7-3127
AN 7-3128

CERTIFIED MAIL - Return Receipt Requested

February 5, 1968

Mr. R. Keith Higginson
State Reclamation Engineer
Department of Reclamation
Statehouse
Boise, Idaho

Re: Applications No. 98-7006
and No. 98-7003

Dear Sir:

Comes now the City of Bonners Ferry, Idaho, and does protest the above applications on the following grounds:

1. That the City of Bonners Ferry has appropriated the water of Myrtle Creek to its own use by the following means:
 - a) Permit No. 16480; and — 98-2033
 - b) By appropriation.
2. That there is insufficient water in Myrtle Creek or its tributaries to supply the amount of water requested under the above applications.

It is not the intention of the City of Bonners Ferry to attempt to prevent the applicant from obtaining water; however, it is the desire of the City to have it clearly determined that the residents of the City of Bonners Ferry have a prior right to the water from Myrtle Creek than does applicant.

Any hearings held on this petition are requested to be held in Bonners Ferry upon the grounds that this is the nearest location to the stream in question and that most witnesses reside in or near Bonners Ferry.

16480 copy

98-7006

NOTICE OF APPLICATION

FOR WATER

Notice is hereby given that the United States of America - Bureau of Sports Fisheries and Wildlife, Box 3737, Portland, Oregon has on December 4, 1967 applied for permit to divert 10 cubic feet per second of water from Myrtle Creek, tributary of Kootenai River under application No. 98-7006. Water will be diverted by culvert and ditches within the NW1/4SW1/4, sec. 24, T. 62 N, R. 1 W, B.M., Boundary County and is to be used from April 1 to November 30 for crop and pasture irrigation and from January 1 to December 31 for stockwater and wildlife in the SW1/4NW1/4, W1/2SW1/4, sec. 18, SW1/4NW1/4, W1/2SW1/4, sec. 18, T. 62 N, R. 1 E, B.M. and S1/2NE1/4, E1/2SW1/4, SE1/4, sec. 13; all of sec. 24; NE1/4, E1/2NW1/4, NE1/4SW1/4, SE1/4, sec. 25; N1/2NE1/4, sec. 36, T. 62 N, R. 1 W, B.M.

Any protest against this application must be filed with the Department of Reclamation within ten days from the last date of publication of this notice.

R. KEITH HIGGINSON

State Reclamation Engineer

Published in the Bonners Ferry Herald, Bonners Ferry, Idaho, on January 25 and February 1.

AFFIDAVIT OF PUBLICATION

STATE OF IDAHO }
County of Boundary } ss.

W. A. Chubb

being first duly sworn up his oath, deposes and says that he is the publisher (or foreman) **publisher**

of The Bonners Ferry Herald, a newspaper of general circulation, published weekly at Bonners Ferry, Boundary County, State of Idaho; that the said Bonners Ferry Herald has been continuously and uninterruptedly published in said Boundary County during a period of 18 months or 78 weeks prior to the first publication of the hereto attached notice; that

the advertisement of **Department of Reclamation**

a **Notice of Application for water #98-7006**

Notice for Publication, a printed copy of which is attached hereto was published in said newspaper and not in a supplement thereof for **2** consecutive issues, commencing with the issue dated **Jan. 25**, 196 **8**, and ending with the issue dated **Feb. 1**, 196 **8**

Subscribed and sworn to before me this **7** day of **Feb**, 196 **8**

Notary Public in and for the County of Boundary, State of Idaho, residing at Bonners Ferry, Idaho.

98-7006

STATEMENT

BONNERS FERRY HERALD

Complete Newspaper Coverage of Boundary County

P. O. Box 539

BONNERS FERRY, IDAHO — 83806

Department of Reclamation

Department of Reclamation
107 State House-Water Rights Clerk
Boise, Idaho 83701

1968

Feb. 1 Notice of Application for water-
#98-7006-34 lines 2 times

\$ 9.16

"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 same has been paid.

SIGNED:

Bonnors Ferry Herald

BY:

W. A. Clark, Publisher

98-7006

R. 1 W

R. 1 E

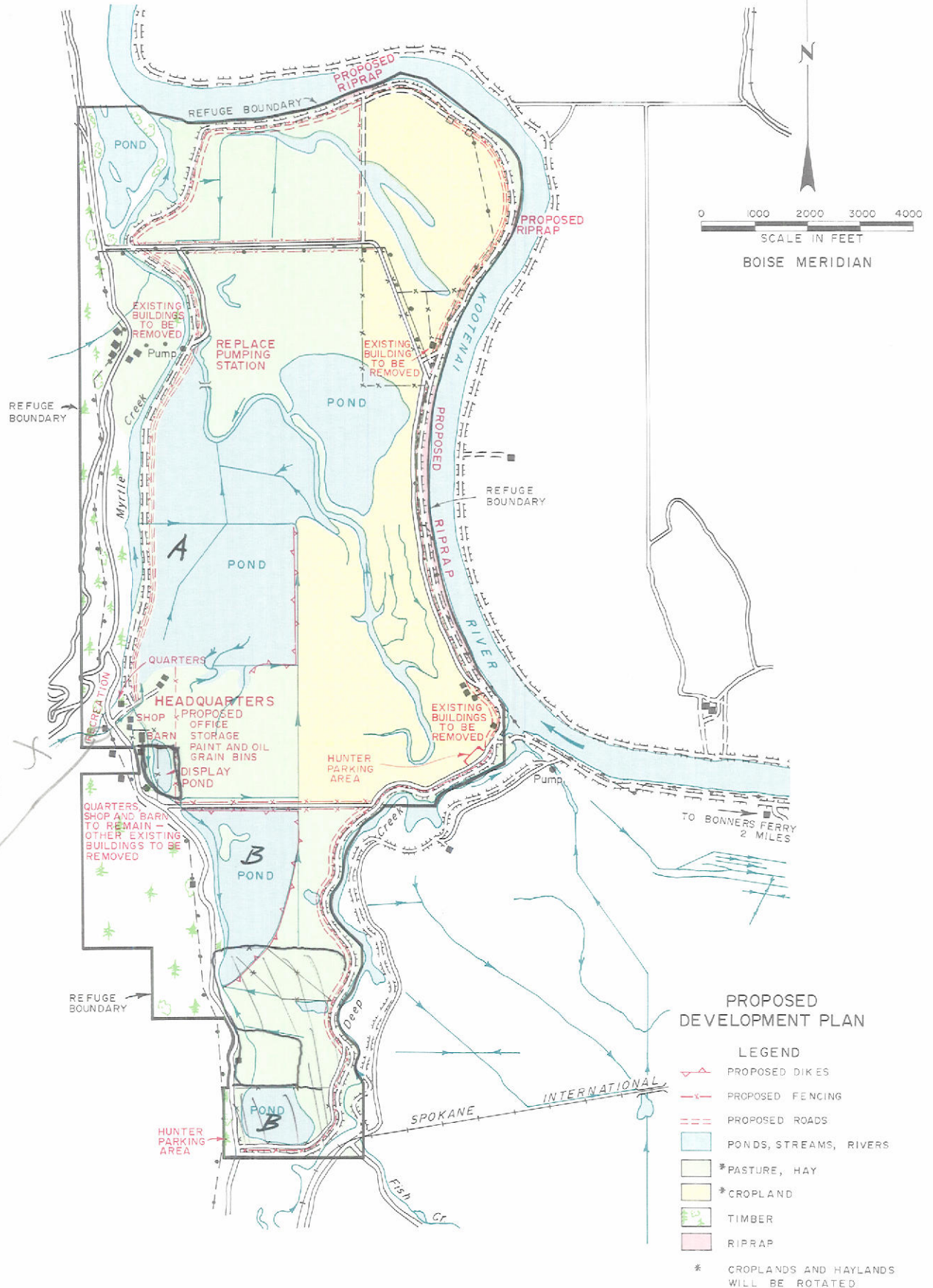
SCALE: 2 Inches Equal 1 Mile. Draw Pen In Ink.

T.
62
N



Applicants Exhibit 1

submitted
1-29-70 est



June 3, 1969

City of Bonners Ferry
Bonners Ferry, Idaho 83805

Refer to: Application No. 98-7006
City of Bonners Ferry
Myrtle Creek
Federal Fish and Wildlife

Dear Sirs:

In your letter to us dated May 12, 1969 sent by your City Attorney, Peter B. Wilson, you prevail upon us to change our point of diversion from Myrtle Creek to the Kootenai River because you fear we will pollute a stream that is now being used for human consumption. In response to this, we make the following comments:

1. Diversion of water from a stream does not necessarily pollute the water.
2. All the streambed between our point of diversion and the confluence of Myrtle Creek with the Kootenai River falls on refuge lands; therefore, no diversions of water for human consumption can be made without our consent.
3. The reservoir which supplies water to the City of Bonners Ferry lies upstream approximately one mile from our point of diversion and approximately $2\frac{1}{2}$ miles upstream from our point of return, and is approximately 310 feet higher in elevation. With this in mind, we do not feel it is possible that our use of the water will pollute your water supply.

In conclusion, we must state that our Bureau, as a conservation agency, is very concerned with the continuing problem of water pollution as it has a very detrimental effect on fish life in streams and on the wildlife that abounds in the watersheds that are dependent on unpolluted water for their existence.

Sincerely yours,

ORIGINAL SIGNED BY
JOHN D. FINDLAY

Regional Director

98-7006

February 12, 1968

Re: Application No. 98-7006 and 98-7003

The United States of America
Bureau of Sports Fisheries & Wildlife
P. O. Box 3737
Portland, Oregon 97208

Attention: Clay E. Crawford, Acting Regional Director

Gentlemen:

Please be advised that the Department of Reclamation is in receipt of a protest filed in connection with the above referenced applications. The protest was filed by the City of Bonners Ferry, Bonners Ferry, Idaho. The department will advise you at a later date as to the time and place of the conference and hearing.

Very truly yours,

Donald W. McElDowney
Appropriation Examiner

DAM:KS

Enclosure: Copy of protest

C
O
P
Y

98-7006

Bonnerr's Ferry Herald

Printers and Publishers

COMPLETE NEWSPAPER COVERAGE OF BOUNDARY COUNTY

IN SCENIC NORTHERN IDAHO • IN THE FERTILE KOOTENAI RIVER VALLEY

BONNERS FERRY, IDAHO

RECEIVED

JAN 22 1968

Department of Reclamation

Jan, 19, 1968

State of Idaho
Dept. of Reclamation
107 State House
Boise, Idaho 83701

Dear Sirs:

Herewith please find galley proof of
the four applications for water by the
bureau of Sport Fisheries and Wildlife
as per your request.

Yours very truly,

W. A. Chubb
W. A. Chubb, Publisher.

NOTICE OF APPLICATION FOR WATER

Notice is hereby given that the United States of America - Bureau of Sports Fisheries and Wildlife, Box 3787, Portland, Oregon has on December 4, 1967 applied for permit to divert 10 cubic feet per second of water from Martle Creek, tributary of Kootenai River under application No. 98-7006. Water will be diverted by culvert and ditches within the NW1/4SW1/4, sec. 24, T. 62N, R. 1W, B.M., Boundary County and is to be used from April 1 to November 30 for crop and pasture irrigation and from January 1 to December 31 for stockwater and wildlife in the SW1/4NW1/4, W1/2SW1/4, sec. 18; SW1/4NW1/4, W1/2SW1/4, sec. 19; T. 62N, R. 1W, B.M. and SE1/4NE1/4, SE1/4SW1/4, SE1/4, sec. 13; all of sec. 24; NE1/4, E1/4NW1/4, NE1/4SW1/4, SE1/4, sec. 25; N1/2NE1/4, sec. 36, T. 62N, R. 1W, B.M.

Any protest against this application must be filed with the Department of Reclamation within ten days from the last date of publication of this notice.

R. KEITH HIGGINSON

State Reclamation Engineer

Published in the Bonners Ferry Herald, Bonners Ferry, Idaho, on January 25 and February 1



98-7006

January 16, 1968

Re: Application No. 98-7006

The Bonners Ferry Herald
Bonners Ferry,
Idaho 83805

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 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 can not publish the notice on the proposed dates, please contact us immediately.

An affidavit of publication must be submitted to the Department of Reclamation, 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 same has been paid.

(Do not sign letter)
Signature of claimant

Very truly yours,

Donald W. McEldowney
Water Rights Clerk

DWM:ks

Enclosure: legal notice

98-7006
Form 3

NOTICE OF APPLICATION FOR WATER

Notice is hereby given that the United States of America, - Bureau of Sports Fisheries
and Wildlife, Box 3737, Portland, Oregon has on December 4, 1967
applied for permit to divert ~~store~~ 10 cubic feet per second ~~acre feet~~
of water from Myrtle Creek, tributary of Kootenai River
under application No. 98-7006. Water will be diverted by culvert
and ditches within the NW1/4SW1/4, sec. 24, T. 62 N, R. 1 E,
B.M., Boundary County
and is to be used from April 1 to November 30 for crop and pasture irrigation and
from January 1 to December 31 for stockwater and wildlife
in the SW1/4NW1/4, W1/4SW1/4, sec. 18; SW1/4NW1/4, W1/4SW1/4, sec. 19, T. 62 N, R. 1 E, B.M. and
S1/4NE1/4, W1/4E1/4SW1/4, SE1/4, sec. 13; all of sec. 24; NE1/4, E1/4NW1/4, NE1/4SW1/4, SE1/4, sec.
25; T1/4NE1/4, sec. 36, T. 62 N, R. 1 W, B.M.

Any protest against this application must be filed with the Department of Re-
clamation within ten days from the last date of publication of this notice.

R. KEITH HIGGINSON
State Reclamation Engineer

Published in the Bonniers Ferry Herald, Bonners Ferry, Idaho,
on January 25 and February 1.

98-7006
dj

State of Idaho
Department of Water Administration

LICENSE OF WATER RIGHT

License of Water Right No. 98-7006 Priority Dec. 4, 1967 Amount 10.0 cfs

THIS IS TO CERTIFY, that the U.S. Bureau of Sport Fisheries & Wildlife
of Portland, Oregon, has complied with the terms and conditions of Permit
No. 98-7006 issued pursuant to Application for Permit dated December 4, 1967,
and has submitted proof to the Department of Water Administration on March 20, 1972,
that he has applied water to a beneficial use; an examination by the Department indicates that the
works have a capacity of 10.0 cfs, and that the water has in fact been applied to a
beneficial use; a right to the use of water from Myrtle Creek
tributary of the Kootenai River, is hereby confirmed in the following amounts:

Amount 10.0 cfs for Irrigation from April 1 to Nov. 30 (both dates inclusive)

Amount 10.0 cfs for Stockwater from Jan. 1 to Dec. 31 (both dates inclusive)

Amount 10.0 cfs for Wildlife from Jan. 1 to Dec. 31 (both dates inclusive)

Subject, however, to the condition that no more than 10.0 cfs of water be diverted at
any one time, said waters to be diverted within the

NW¹/₄SW¹/₄ Sec. 24, Twp. 62 N, Rge. 1 W, B.M.

in the county of Boundary; and that the amount of water so diverted and to which such
right is entitled and confirmed is for the purposes aforesaid and is limited to the amount which can
actually be beneficially used and shall not exceed 2900 acre feet per year or
3.0 acre feet per acre.

Description and location of place of use:

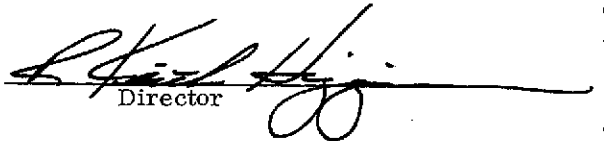
TWP.	RANGE	SEC.	NE¼				NW¼				SW¼				SE¼				TOTALS
			NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	
See	Land	List	Attachment																

Total number of acres irrigated _____

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

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 10 day of
September, 19 73.


Director

98 7006

LAND LIST ATTACHMENT

Description and location of place of use:

[illegible]

Total number of acres irrigated 962

98 7006

Identification No. 98-7006
Application No. 42237

LICENSE ISSUED FOR 10.0 SEC. FT.
LICENSE PAG 80

STATE OF IDAHO
DEPARTMENT OF RECLAMATION

APPLICATION FOR PERMIT

APPROVED

To appropriate the Public Waters of the State of Idaho

1. Name of applicant The United States of America
Clay E. Crawford, Acting Regional Director
post office address Bureau of Sport Fisheries & Wildlife
PO Box 3737, Portland, Oregon 97208
2. Source of water supply Myrtle Creek which is a tributary of Kootenai River
3. a. Location of point of diversion is NW $\frac{1}{4}$ of SW $\frac{1}{4}$ of Section 24 Township 62N
Range 1W B.M. Boundary County; additional points of diversion if any: _____
- b. If water is not consumed, it will be discharged into Myrtle Creek at a point in SE $\frac{1}{4}$
of NW $\frac{1}{4}$ of Section 13 Township 62N Range 1W B.M.
4. Quantity to be appropriated:
a. 10 cubic feet per second and/or
b. _____ acre feet per annum will be stored.
5. Water will be used for the following purposes:
crop & pasture irrigation purpose from April 1 to Nov. 30 (both dates inclusive)
stock water purpose from Jan. 1 to Dec. 31 (both dates inclusive)
wildlife purpose from Jan. 1 to Dec. 31 (both dates inclusive)
6. Proposed diverting works:
a. Description of ditches, flumes, pumps, headgates, etc. Culvert with screwgate used to take
water from Myrtle Creek. No structure across Myrtle Creek itself. Gravity
flow water through open ditches to irrigated areas. Culvert is 22' x 30"
- b. Height of storage dam _____ feet; active reservoir capacity _____ acre feet; total reservoir
capacity _____ acre feet; materials used in storage dam: _____
- c. Proposed well diameter is _____ inches; proposed depth of well is _____ feet.
7. a. Time required for the completion of the works and application of the water to the proposed beneficial use
is 2 years.
b. Estimated construction cost is \$ 7,700.00.
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: _____

98-7006

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

TWP.	RANGE	SEC.	NE¼				NW¼				SW¼				SE¼				TOTALS
			NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	
T62N	R1W	13			1	11					20			40	38	10	40	19	179
T62N	R1E	18							2			14	3						19
T62N	R1E	19							1			24	5						30
T62N	R1W	24	28	40	40	36	40	1	8	39	29	3	1	37	40	40	38	38	458
T62N	R1W	25	20	38	39	14	11			2	1				25	39	30	22	241
T62N	R1W	36	11	24															35

Total number of acres to be irrigated 962

c. Describe any other water rights used for the same purposes _____

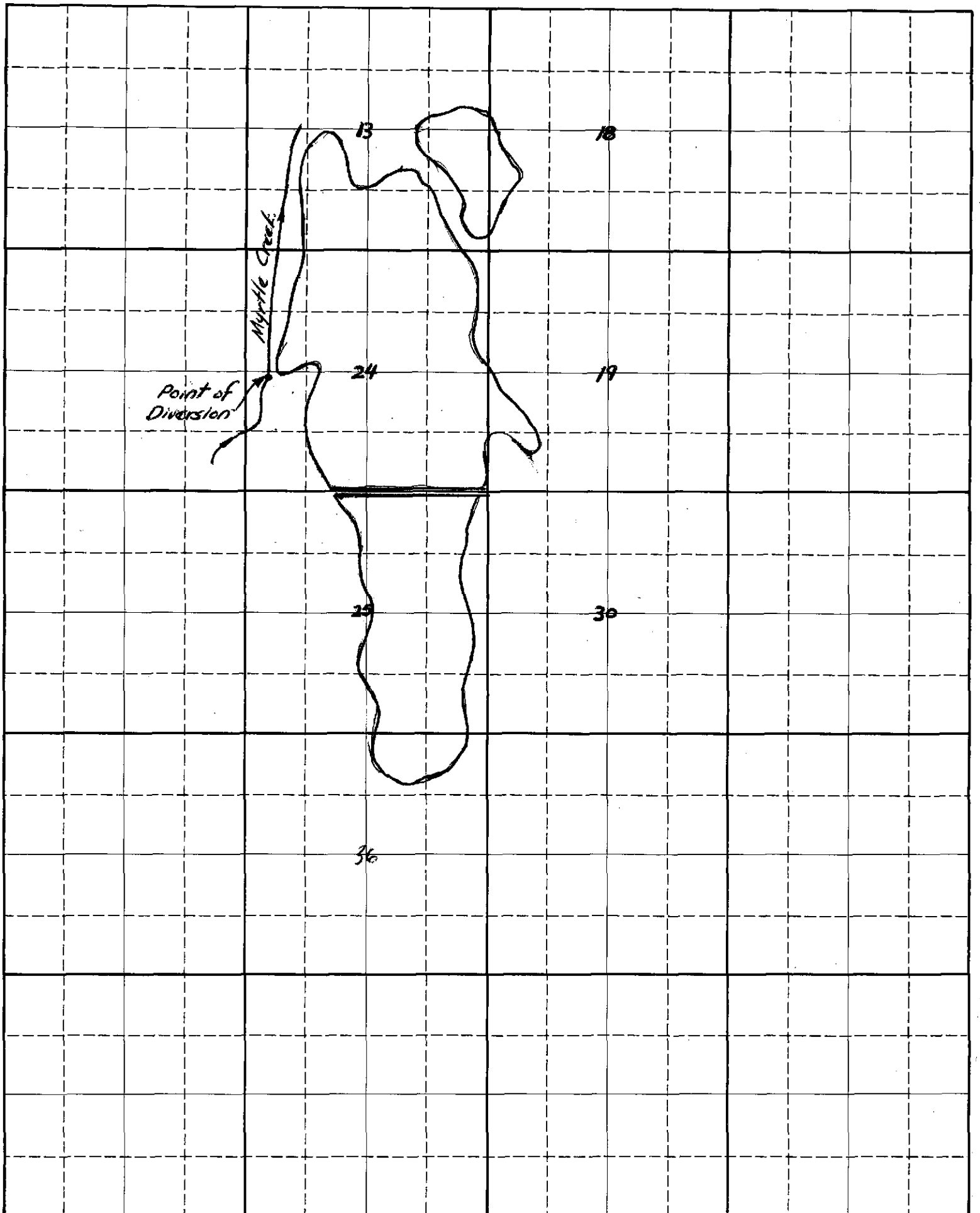
9. a. Who owns the property at the point of diversion U.S. Bureau of Sport Fisheries & Wildlife

b. Who owns the land to be irrigated or place of use U.S. Bureau of Sport Fisheries & Wildlife

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 Full 10 cfs will be used for crop and pasture irrigation with stock watering and wildlife use as supplemental benefits. During the non-irrigation season the 10 cfs will be used to maintain water areas for wildlife and stock watering.

11. Map of proposed project:



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.

Charles J. [Signature]
(Applicant)

98-7006

Received by ef Date 12-4-67 Time 8:00 am
Preliminary check by DM Fee \$ 65.00 12-4-67
Receipted by ef Date 1-10-68 Acct # 357
Publication prepared by BS Date 1-16-68
Published in Bonners Ferry Herald
Publication dates 1-25 and 2-1-68
Publication approved BS Date 1-22-68
Priority reduced to _____ Reason _____

Protests filed by: none City of Bonners Ferry

Copies of protests forwarded by BS 1-12-68

Hearing held by _____ Date _____

Recommended for approval denial by DM

ACTION OF STATE RECLAMATION ENGINEER

APPROVED

This is to certify that I have examined Application for Permit to appropriate the public waters of the State of Idaho No. 98-7006, and said application is hereby APPROVED.

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

- SUBJECT TO ALL PRIOR WATER RIGHTS.
- Proof of construction of works and application of water to beneficial use shall be submitted on or before April 1, 19 72.
- Other: The applicant shall permanently install and maintain a measuring device of a type approved by the department as part of the diverting works. This permit is supplemental to all prior rights.

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

Witness my hand this 11th day of March, 19 70.

R. Keith Higgs
State Reclamation Engineer

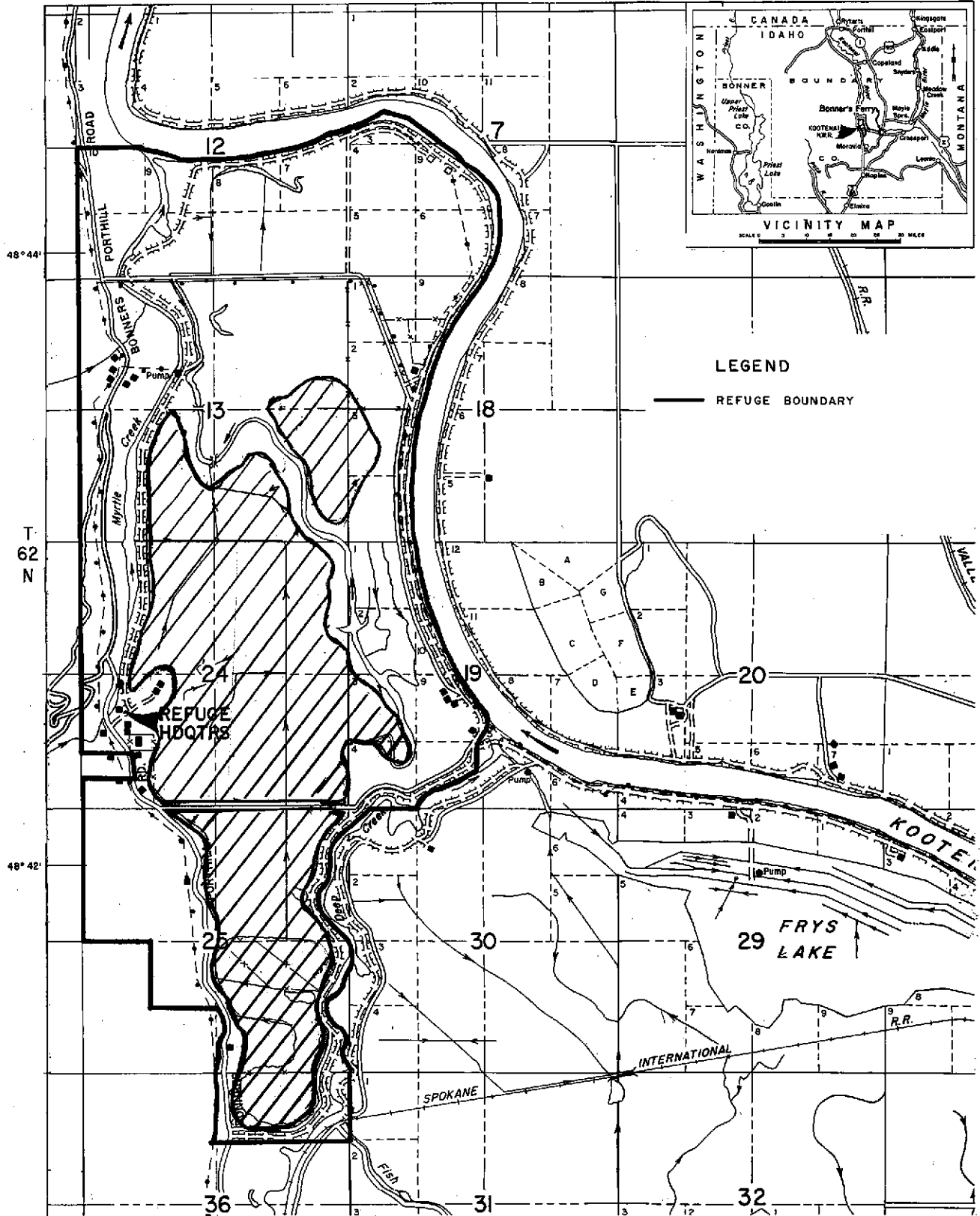
MYRTLE CREEK

UNITED STATES
DEPARTMENT OF THE INTERIOR

RIWRIE

116°23'

FISH AND WILDLIFE SERVICE
BUREAU OF SPORT FISHERIES AND WILDLIFE



KOOTENAI NATIONAL WILDLIFE REFUGE

BOUNDARY COUNTY, IDAHO

BOISE MERIDIAN

SCALE 0 20 40 80 120 160 CHAINS
0 1/4 1/2 1 1 1/2 2 MILES

082565

98-7006

WILSON & WALTER
ATTORNEYS AT LAW
P. O. BOX 749
BONNERS FERRY, IDAHO — 83805

RECEIVED
FEB 6 1968

Department of Reclamation

205 W. KOOTENAI
PHONE AN 7-3127
AN 7-3128

CERTIFIED MAIL - Return Receipt Requested

February 5, 1968

Mr. R. Keith Higginson
State Reclamation Engineer
Department of Reclamation
Statehouse
Boise, Idaho

Re: Applications No. 98-7006
and No. 98-7003

Dear Sir:

Comes now the City of Bonners Ferry, Idaho, and does protest the above applications on the following grounds:

1. That the City of Bonners Ferry has appropriated the water of Myrtle Creek to its own use by the following means:
 - a) Permit No. 16480; and — 98-2033
 - b) By appropriation.
2. That there is insufficient water in Myrtle Creek or its tributaries to supply the amount of water requested under the above applications.

It is not the intention of the City of Bonners Ferry to attempt to prevent the applicant from obtaining water; however, it is the desire of the City to have it clearly determined that the residents of the City of Bonners Ferry have a prior right to the water from Myrtle Creek than does applicant.

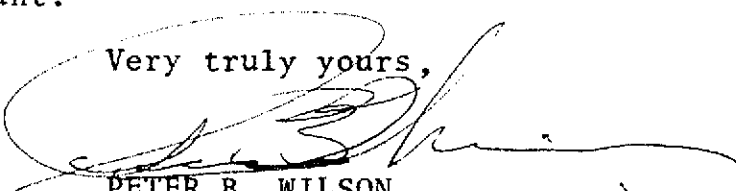
Any hearings held on this petition are requested to be held in Bonners Ferry upon the grounds that this is the nearest location to the stream in question and that most witnesses reside in or near Bonners Ferry.

98-7006

Mr. R. Keith Higginson
Page 2
February 5, 1968

It is to be hoped that the matter can be resolved amicably, and to that end the City has sent a copy of this protest to the applicant.

Very truly yours,



PETER B. WILSON
City Attorney

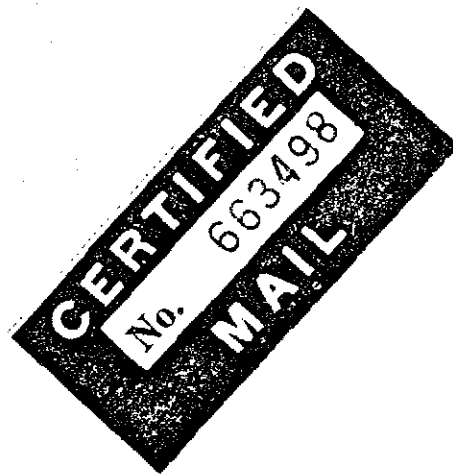
PBW/rb

cc: United States of America
Bureau of Sport Fisheries and Wildlife
Box 3737
Portland, Oregon

City of Bonners Ferry
Bonners Ferry, Idaho

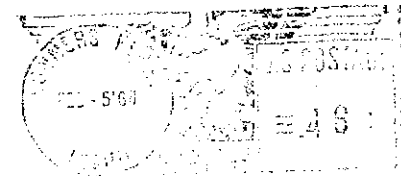
98-7006

WILSON & WALTER
ATTORNEYS AT LAW
P. O. BOX 749
BONNERS FERRY, IDAHO — 83805



CERTIFIED MAIL - return receipt

Mr. R. Keith Higginson
State Reclamation Engineer
Department of Reclamation
Statehouse
Boise, Idaho



98-7006

FOR WATER

Notice is hereby given that the United States of America - Bureau of Sports Fisheries and Wildlife, Box 3737, Portland, Oregon has on December 4, 1967 applied for permit to divert 10 cubic feet per second of water from Myrtle Creek, tributary of Kootenai River under application No. 98-7006. Water will be diverted by culvert and ditches within the NW $\frac{1}{4}$ SW $\frac{1}{4}$, sec. 24, T. 62 N, R. 1 W, B.M., Boundary County and is to be used from April 1 to November 30 for crop and pasture irrigation and from January 1 to December 31 for stockwater and wildlife in the SW $\frac{1}{4}$ NW $\frac{1}{4}$, W $\frac{1}{2}$ SW $\frac{1}{4}$, sec. 18, SW $\frac{1}{4}$ NW $\frac{1}{4}$, W $\frac{1}{2}$ SW $\frac{1}{4}$, sec. 19, T. 62 N, R. 1 E, B.M. and S $\frac{1}{2}$ NE $\frac{1}{4}$, E $\frac{1}{2}$ SW $\frac{1}{4}$, SE $\frac{1}{4}$, sec. 13; all of sec. 24; NE $\frac{1}{4}$, E $\frac{1}{2}$ NW $\frac{1}{4}$, NE $\frac{1}{4}$ SW $\frac{1}{4}$, SE $\frac{1}{4}$, sec. 25; N $\frac{1}{2}$ NE $\frac{1}{4}$, sec. 36, T. 62 N, R. 1 W, B.M.

Any protest against this application must be filed with the Department of Reclamation within ten days from the last date of publication of this notice.

R. KEITH HIGGINSON

State Reclamation Engineer

Published in the Bonners Ferry Herald, Bonners Ferry, Idaho, on January 25 and February 1.

STATEMENT

BONNERS FERRY HERALD

Complete Newspaper Coverage of Boundary County

P. O. Box 539

BONNERS FERRY, IDAHO — 83806

Department of Reclamation
107 State House—Water Rights Clerk
Boise, Idaho 83701

1968

Feb. 1 Notice of Application for water-
#98-7006-3A lines 2 times

\$ 9.16

"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 same has been paid.

SIGNED:

BY:

[Signature]
[Signature]

98-7006

September 12, 1973

Re: Permit Nos. 98-7003
98-7004
98-7006

Bureau of Sport Fisheries & Wildlife
P.O. Box 3737
Portland, Oregon 97208

ATTENTION: Regional Engineers

Gentlemen:

Enclosed are copies of the Water Licenses issued on the above referenced permits.

Sincerely,

BOBBY D. FLEENOR
Assistant Director

bjg

Enclosures

98 7006

STATE OF IDAHO
DEPARTMENT OF WATER ADMINISTRATION



Water Rights Administration
Water Resource Investigations
Dam and Reservoir Safety
Water Well Drilling
Waste Disposal Wells
Stream Channel Protection

Cecil D. Andrus
Governor
R. Keith Higginson
Director

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

August 27, 1973

Bureau of Sport Fisheries & Wildlife
P.O. Box 3737
Portland, Oregon 97208

Gentlemen: ATTENTION: Regional Engineer

A representative of this Department has made an examination of the works covered by your Permit No. 98-7006 and has found the following:

Quantity of water diverted: 10.0 cfs

Amount of water that can be recognized as beneficially used under Idaho law: 10.0 cfs

The maximum quantity diverted shall not exceed 2900 acre feet per year.

Beneficial use: Irrigation of 962 acres and stockwater and wildlife purposes within the S $\frac{1}{2}$ NE $\frac{1}{4}$, E $\frac{1}{2}$ SW $\frac{1}{4}$, SE $\frac{1}{4}$, Sec. 13; All Sec. 24; NE $\frac{1}{4}$, E $\frac{1}{2}$ NW $\frac{1}{4}$, NE $\frac{1}{4}$ SW $\frac{1}{4}$, SE $\frac{1}{4}$, Sec. 25; N $\frac{1}{2}$ NE $\frac{1}{4}$, Sec. 36; Twp. 62 N, Rge. 1 W, B.M. & SW $\frac{1}{4}$ NW $\frac{1}{4}$, W $\frac{1}{2}$ SW $\frac{1}{4}$, Sec. 18; SW $\frac{1}{4}$ NW $\frac{1}{4}$, W $\frac{1}{2}$ SW $\frac{1}{4}$ Sec. 19; Twp. 62 N, Rge. 1 E, B.M.

Point of diversion: NW $\frac{1}{4}$ SW $\frac{1}{4}$ Sec. 24, Twp. 62 N, Rge. 1 W, B.M.

Priority date established: December 4, 1967

Source: Myrtle Creek

If you do not concur with these findings, please advise us within 10 days; otherwise, a license will be issued as set forth in this letter.

Sincerely,

Bobby D. Fleenor

BOBBY D. FLEENOR
Assistant Director

BDF/bjg

98 7006

DEPARTMENT OF WATER ADMINISTRATION
FIELD REPORT

1. Name of permit holder U. S. Bureau of Sport Fisheries & Wildlife
Post office address P. O. Box 3737, Portland, Oregon Phone _____
Person to contact _____ Phone _____

2. Source of water supply: Groundwater ☐ Surface water ☒ Myrtle Creek
(name spring, stream, etc.)
Tributary to Kootenai River

3. Water will be used for the following purposes:

Amount 10.0 c.f.s. for Irrigation
_____ AF/Annum (nature of use)

Period of Use: from April 1 to Nov. 30
(mo.-day) inclusive (mo.-day)

Amount _____ c.f.s. for Stockwater
_____ AF/Annum (nature of use)

Period of Use: from Jan. 1 to Dec. 31
(mo.-day) inclusive (mo.-day)

Amount _____ c.f.s. for Wildlife
_____ AF/Annum (nature of use)

Period of Use: from Jan. 1 to Dec. 31
(mo.-day) inclusive (mo.-day)

Other uses: _____

Permit No. 98-7006
Examination for b/u

4. Total amount to be appropriated:

Max Rate of Diversion 10.0 cubic feet per second and annual volume _____ AF/Annum.

5. Location of Point(s) of Diversion:

Township 62N N/S, Range 1W E/W, B.M., Section 24, Subdivision NW $\frac{1}{4}$ SW $\frac{1}{4}$ Boundary
County _____
Township _____ N/S, Range _____ E/W, B.M., Section _____, Subdivision _____ $\frac{1}{4}$ _____ $\frac{1}{4}$ _____
County _____
Township _____ N/S, Range _____ E/W, B.M., Section _____, Subdivision _____ $\frac{1}{4}$ _____ $\frac{1}{4}$ _____
County _____

Other Points of Diversions: _____

Description of diverting works: 30" dia. culvert w/screwgate is used to take water from Myrtle Creek. Areas are irrigated by gravity flow through open ditches. Culvert is located at a natural control in Myrtle Creek.

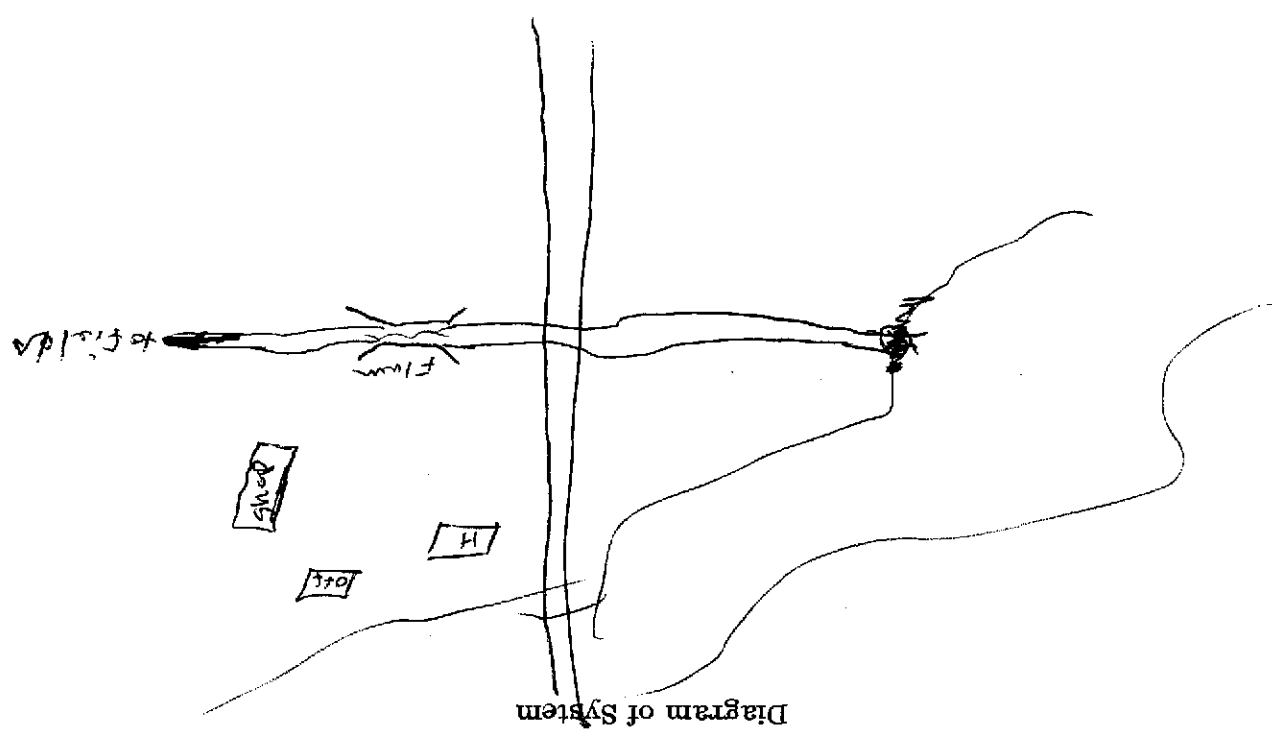
Measuring device required: yes ☒ no ☐

6. Lands to be irrigated or place of use.

TWP.	RANGE	SEC.	NE $\frac{1}{4}$				NW $\frac{1}{4}$				SW $\frac{1}{4}$				SE $\frac{1}{4}$				TOTALS
			NE $\frac{1}{4}$	NW $\frac{1}{4}$	SW $\frac{1}{4}$	SE $\frac{1}{4}$	NE $\frac{1}{4}$	NW $\frac{1}{4}$	SW $\frac{1}{4}$	SE $\frac{1}{4}$	NE $\frac{1}{4}$	NW $\frac{1}{4}$	SW $\frac{1}{4}$	SE $\frac{1}{4}$	NE $\frac{1}{4}$	NW $\frac{1}{4}$	SW $\frac{1}{4}$	SE $\frac{1}{4}$	
62 N	1 W	13			1	11					20			40	38	10	40	19	179
		24	28	40	40	36	40	1	8	39	29	3	1	37	40	40	38	38	458
		25	20	38	39	14	11			2	1				25	39	30	22	241
		36	11	24															35
62 N	1 E	18							2			14	3						19
		19							1			24	5						30

98 7006

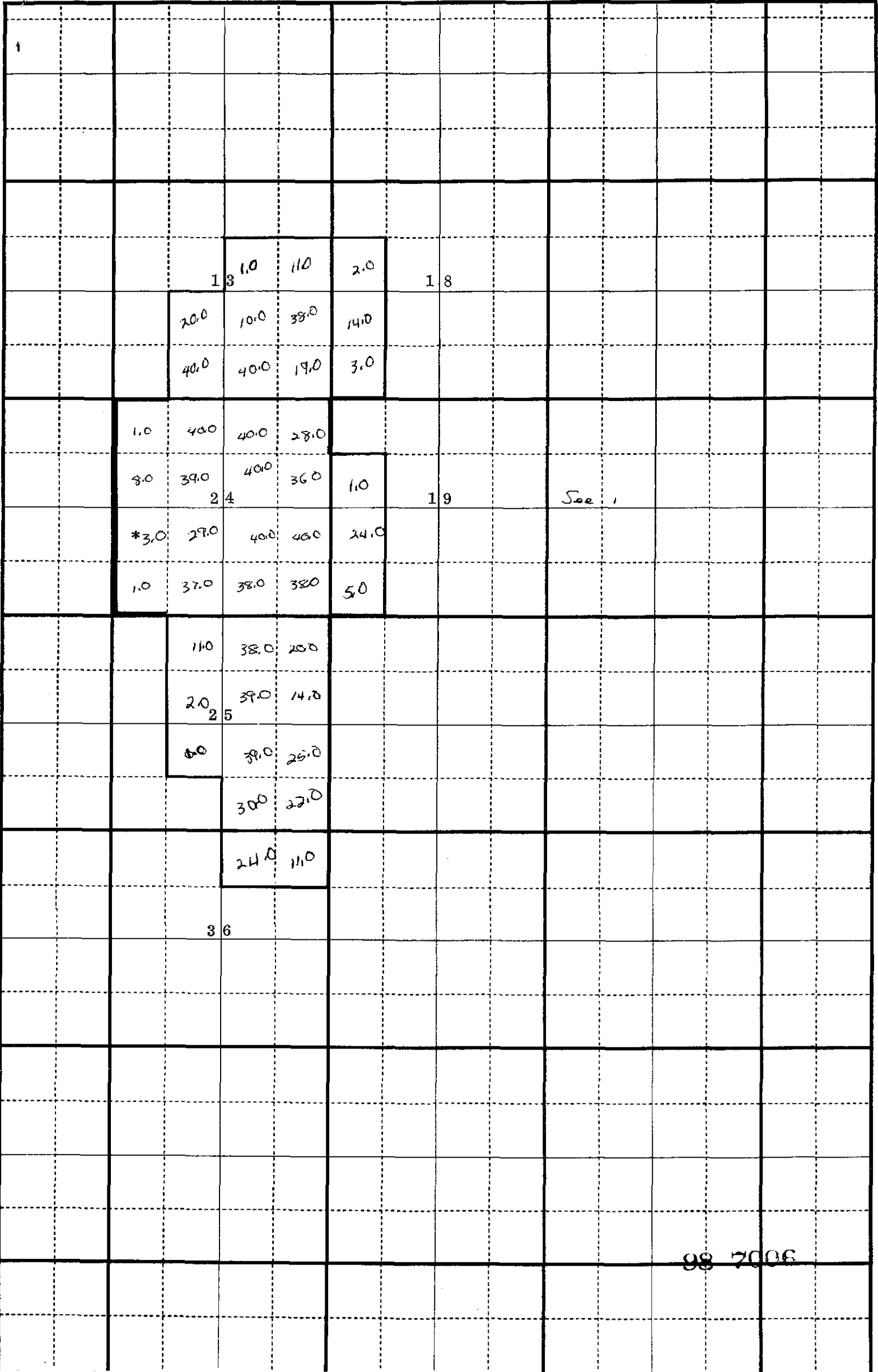
TOTAL ACREAGE 962



R. 1 W

R. 1 E

SCALE: 2 inches Equal 1 Mile. Draw in Ink.



DATE OF EXAM 8-30-1972

ACREAGE
Found 962
Recommended 962

Irrigation Requirement 3 Ac Ft/Ac

USE

Irrigation Q = 10.0 c.f.s. V = 2886.0 AF/Ann. from 4-1 to 11-1
Wildlife ~~Irrigation~~ Q = 10.0 c.f.s. V = 100.0 AF/Ann. from 1-1 to 12-31
Livestock Q = 10.0 c.f.s. V = 6.0 AF/Ann. from 1-1 to 12-31
stock & wildlife would not be in excess of the 10.0 cfs
for irrigation - they water from ditches ponds
etc. & otherwise.

Is water co-mingled? yes ☒ no ☐

Name source: Dump Creek
twp. 52N N/S, Rge. 1W E/W, B.M., Sec. 35, Sub. NE 1/4 NE 1/4 Boundary
County

Exchange? yes ☐ no ☒

Name source exchanged with: _____
twp. _____ N/S, Rge. _____ E/W, B.M., Sec. _____, Sub. _____ 1/4 _____ 1/4 _____
County

Point of injection:
twp. Q Q N/S, Rge. 1 E/W, B.M., Sec. 35, Sub. NE 1/4 NE 1/4 Boundary
County

Point of exchange:
twp. _____ N/S, Rge. _____ E/W, B.M., Sec. _____, Sub. _____ 1/4 _____ 1/4 _____
County

Total Q measured 10.0 cfs Method of measurement porshad flume

Total Q recommended 10.0 cfs Meter No. _____ Type _____ Condition good

Total V recommended ~~2886.0~~ AF/Ann
2992

Recommended Amendments:

P.D. _____
Place of Use _____
Other _____
None ☒

MEASUREMENT CALCULATION:

Taken from diversion records at area
office during past years 962 acres x 3 AF = 2886.0 AF
stock water and wildlife water from ponds etc.
from the irrigation water and would not constitute
additional diversion rates

SYSTEM DESCRIPTION:

30' dia culvert w/ screw gate & gravity flow
ditch w/ 1' porshad flume

REMARKS:

Water flow low at this time of year but
flow records show system capable of diverting 10.0 cfs
system operation at time of exam

Examiner's Signature James E. Ballou Date Aug 30, 1972

Checked by Fred E. Embert Jr. Date 11/28/72

Approved by Fred E. Embert Jr. Date 11/28/72

March 27, 1972

Re: Permit No. 98-7006

Bureau of Sport Fisheries & Wildlife
P.O. Box 3737
Portland, Oregon 97208

Attn: John V. Mack, Regional Engineer

Gentlemen:

We acknowledge receipt of the affidavit submitted as proof of beneficial use for the above referenced permit.

Before a license can be issued, a field examination must be made by a representative of this Department. We cannot tell just when this examination will be made, but our examiner will try to contact you at the time he makes the examination so that you may arrange to have someone show him the system.

Sincerely,

BOBBY D. FLEENOR
Assistant Director

BDF:DR

98 7006

98 7006



1 UNITED STATES 1
DEPARTMENT OF THE INTERIOR
FISH AND WILDLIFE SERVICE
BUREAU OF SPORT FISHERIES AND WILDLIFE

1500 N. E. IRVING STREET
P. O. BOX 3737
PORTLAND, OREGON 97208

Department

March 16, 1972

CERTIFIED MAIL

State of Idaho
Department of Water Administration
Statehouse - Annex 2
Boise, Idaho 83707

Re: Permit No. 98-7006
Kootenai N.W.R.
Myrtle Creek

Gentlemen:

As required by the Idaho Water Code, we are enclosing our "Proof of Application of Water to Beneficial Use" for permit No. 98-7006.

Please advise if there are any charges associated with the filing.

Very truly yours,

John V. Mack
Regional Engineer

Enclosure

98 7006

STATE OF IDAHO
DEPARTMENT OF RECLAMATION

PROOF OF APPLICATION OF WATER TO BENEFICIAL USE



- The United States of America, Department of Interior
1. a) Name of Permit Holder Bureau of Sport Fisheries and Wildlife
- b) Post Office Address P.O. Box 3737, Portland, Oregon 97208
2. Permit Number 98-7006
3. Date of Priority that you are prepared to establish December 4, 1967
4. a) Source from which water was appropriated Myrtle Creek
- b) Location of the point of diversion: NW 1/4 SW 1/4, Section 24
Township 62N, Range 1W, Boise Meridian, Other points of diversion: None
5. a) The amount of water and use to which the water has been applied:
irrigation, wildlife and
amount 10 cfs for stock watering purposes from April 1 to Nov. 30 incl.
(cfs and/or acre feet per annum) (Month-Day) (Month-Day)
wildlife and
amount 10 cfs for stock watering purposes from Dec. 1 to Mar. 31 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 10 cfs 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: measurements made through a permanently installed Parshall flume by refuge manager who has experience in using flow measurement devices of this type.
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) 30" dia. culvert w/screwgate is used to take water from Myrtle Creek. Areas are irrigated by gravity flow through open ditches. Culvert is located at a natural control in Myrtle Creek.
- b) Describe the type and size of measuring device which you have installed at your point of diversion: Standard metal Parshall flume with 1' throat.
- c) Give well drillers name and address and date the well was completed _____

8. If for other than irrigation, describe the beneficial use to which you have applied the water and the place of use _____

9. Irrigation uses: Describe the lands irrigated by giving the acreages irrigated within each 40 acre subdivision: _____

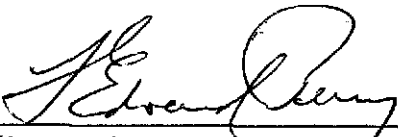
TWP.	RANGE	SEC.	NE¼				NW¼				SW¼				SE¼				TOTALS
			NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	
62N	1W	13			1	11					20			40	38	10	40	19	179
		24	28	40	40	36	40	1	8	39	29	3	1	37	40	40	38	38	458
		25	20	38	39	14	11			2	1				25	39	30	22	241
		36	11	24															35
	1E	18							2			14	3						19
		19							1			24	5						30

Total number of acres irrigated 962

10. Remarks: Water is used primarily for irrigation of crops for waterfowl
feeding and for providing waterfowl habitat. Supplemental use is
for pasture sub-irrigation and for livestock watering.

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

3/15/72
(Date)


(Signature) L. Edward Perry
Acting Regional Director

State of Oregon)
Multnomah ss.
County of)

On this 15th day of March, 19 72, personally appeared before me the
signer(s) of the above instrument, who duly acknowledged to me that he (she) (they) executed the same.


Notary Public residing at Portland, Oregon

My commission expires 3/31/74

PLEASE FURNISH SERVICE(S) INDICATED BY CHECKED BLOCK(S).
REQUIRED FEE(S) PAID.

☐ Show to whom, date and address
where delivered

☐ Deliver ONLY
to addressee

RECEIPT

Received the numbered article described below.

REGISTERED NO.

SIGNATURE OR NAME OF ADDRESSEE (*Must always be filled in*)

CERTIFIED NO.

23341

1

Stanley Case

2

SIGNATURE OF ADDRESSEE'S AGENT, IF ANY.

INSURED NO.

DATE DELIVERED

Fish & Wildlife

SHOW WHERE DELIVERED (*only if requested*)

JAN 31 1972

3

98 7006

POD Form 3011 Apr. 1969 US-16-71548-11

**POST OFFICE DEPARTMENT
OFFICIAL BUSINESS**



POSTMARK OF DELIVERING OFFICE



**PENALTY FOR PRIVATE USE TO AVOID
PAYMENT OF POSTAGE, \$300**

Print your name and address below. If you want to restrict delivery, or to have the address of delivery shown on this receipt, check block(s) on other side. Moisten gummed ends and attach this card to back of article.

**RETURN
TO**



**DEPARTMENT OF WATER ADMINISTRATION
STATEHOUSE - ANNEX #2
BOISE, IDAHO 83707**

98 7006

January 28, 1972

CERTIFIED MAIL

#23341

Re: Permit No. 98-7006

Bureau of Sport Fisheries & Wildlife
P.O. Box 3737
Portland, Oregon 97208

Gentlemen:

One of the conditions of approval of your water Permit No. 98-7006 (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 April 1, 1972. 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.



R. KEITH HIGGINSON
Director

Enc: Proof affidavit
dr

98 7006

INSTRUCTIONS TO DELIVERING EMPLOYEE

☐ Show to whom, date, and
address where delivered

☐ Deliver ONLY
to addressee

(Additional charges required for these services)

RECEIPT

Received the numbered article described below.

REGISTERED NO.

SIGNATURE OR NAME OF ADDRESSEE *(Must always be filled in)*

CERTIFIED NO.

21732

INSURED NO.

1

Peter B. Wilson

2

SIGNATURE OF ADDRESSEE'S AGENT, IF ANY

Garrie Dubu

DATE DELIVERED

SHOW WHERE DELIVERED *(only if requested)*

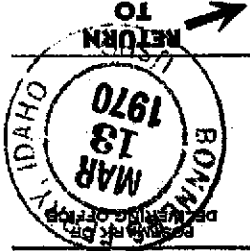
3

MAR 13 1970

98-7006

**POST OFFICE DEPARTMENT
OFFICIAL BUSINESS**

**PENALTY FOR PRIVATE USE TO AVOID
PAYMENT OF POSTAGE, \$300**



INSTRUCTIONS: Show name and address below and complete instructions on other side, where applicable. Moisteen gummed ends, attach and hold firmly to back of article. Print on front of article **RETURN RECEIPT REQUESTED.**

NAME OF SENDER

STREET AND NO. OR P.O. BOX

Department of Reclamation
Anner # 2 Stationhouse

POST OFFICE, STATE, AND ZIP CODE

Boise, Idaho 83707

INSTRUCTIONS TO DELIVERING EMPLOYEE

☐ Show to whom, date, and
address where delivered

☐ Deliver ONLY
to addressee

(Additional charges required for these services)

RECEIPT

Received the numbered article described below.

REGISTERED NO.

SIGNATURE OR NAME OF ADDRESSEE *(Must always be filled in)*

CERTIFIED NO.

1

21738

INSURED NO.

2

SIGNATURE OF ADDRESSEE'S AGENT, IF ANY

Weldon Smith

DATE DELIVERED

SHOW WHERE DELIVERED *(only if requested)*

3

MAR 13 1970

055-10-71648-10

GPO

98-7006

98-7006

**POST OFFICE DEPARTMENT
OFFICIAL BUSINESS**

**PENALTY FOR PRIVATE USE TO VOID
PAYMENT OF POSTAGE**



**RETURN
TO**

INSTRUCTIONS: Show name and address below and complete instructions on other side, where applicable. Moistened gummed ends, attach and hold firmly to back of article. Print on front of article **RETURN**

RECEIPT REQUESTED.

NAME OF SENDER

STREET AND NO. OR P.O. BOX

POST OFFICE, STATE, AND ZIP CODE

Annex # 2 Station

Boise, Idaho 83707

Department of Reclamation

NAME AND
ADDRESS
OF SENDER

Dept. of Reclamation

Indicate type of mail

☐ INSURED☐ C. O. D.☒ CERTIFIEDAffix stamp here if issued as
certificate of mailing or for
additional copies of this bill.

98-7006

POSTMARK AND DATE OF RECEIPT

NUMBER OF ARTICLE	NAME OF ADDRESSEE, STREET, AND POST-OFFICE ADDRESS	POSTAGE	FEE	DUE SENDER IF C. O. D.	ENDORSE- MENT ¹	R. R. FEE	S. D. FEE	S. H. FEE ²	RESTRICTED DELIVERY FEE REMARKS
✓ 21737	Peter B. Wilson, P.O. Box 749, Bonners Ferry,	12	30			15			
✓ 21738	Thomas A. Roberts, Acting Regional Director, U.S.								
3	Bureau of Sport Fisheries & Wildlife,								
4	P.O. Box 3737, Portland, Oregon 97208	12	30			15			
5									
6									
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10									
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20									
TOTAL NUMBER OF PIECES LISTED BY SENDER	TOTAL NUMBER OF PIECES RECEIVED AT POST OFFICE	POSTMASTER, PER (Name of receiving employee)		¹ Mark "F" if "Fragile," "P" if "Perishable," "E" if "Eggs," "EH" if "Eggs for Hatching," "B" if "Butter," "FL" if "Fragile-Liquid," and "FLU" if "Fragile-Liquid-This Side Up." ² Special-handling charges apply only to fourth-class parcels. Special-delivery service also includes special-handling service.					

2

March 11, 1970

Re: Permit No. 98-7006

Mr. Travis S. Roberts
Acting Regional Director
U. S. Bureau of Sport Fisheries & Wildlife
P.O. Box 3737
Portland, Oregon 97208

Dear Mr. Roberts:

We enclose a copy of your approved application for permit 98-7006 in which we direct your attention to the limitations and conditions as given on the fourth page under approval of the State Reclamation Engineer.

Very truly yours,

C. Stephen Allred, ~~Assistant~~ Deputy
State Reclamation Engineer

CSA:kh

Enclosures: Copy of permit
1 informational letter

P.S. Be sure to note that a special condition requiring you to install and maintain a measuring device at your point of diversion has been placed on your permit. We are enclosing a letter describing different types of measuring devices accepted by this office.

98-7006

BEFORE THE STATE RECLAMATION ENGINEER
OF THE
STATE OF IDAHO

In the Matter of Application for Permit)
No. 98-7006 in the name of the U. S.)
BUREAU OF SPORT FISHERIES AND WILDLIFE)

MEMORANDUM DECISION

The matter having been regularly called for hearing on January 29, 1970, at 10:00 a.m. at the Boundary County Court House, Bonners Ferry, Idaho, and testimony and evidence having been taken under advisement, the State Reclamation Engineer enters the following Findings and Decision.

The United States of America, Bureau of Sport Fisheries and Wildlife, submitted Application for Permit No. 98-7006 on December 4, 1967, requesting that they be authorized to divert 10 cubic feet per second of water from Myrtle Creek, tributary of Kootenai River in Boundary County, Idaho. Water is to be diverted in the NW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 24, Township 62 N., Range 1 W., for irrigation of 962 acres of land from April 1st to November 30th, and for stockwatering and wildlife purposes from January 1st to December 31st. Notice of the Application was published in the Bonners Ferry Herald on January 25th and February 1st of 1968. On February 5, 1968, a protest was received against the approval of the Application from the City of Bonners Ferry. At the hearing, the applicant was represented by Mr. Robert McVein of the Bureau of Sport Fisheries and Wildlife, Portland, Oregon, and the protestant was represented by Mr. Peter B. Wilson, Attorney at Law, Bonners Ferry, Idaho. At a pre-hearing conference, the parties agreed that the following points would be considered: (1) Is the water supply sufficient for the purpose for which the Application was filed? (2) Would the proposed diversion decrease the quantity of water available under established rights? (3) Was the Application filed for delay or speculation purposes? (4) Does the applicant have the financial resources with which to complete the project? (5) Is the United States a proper applicant? and (6) Is the proposed use of water "beneficial"?

At the hearing, both parties presented evidence as to the water supply and the proposed use. The applicant indicated that water would be used for cultivation of

98-7006

crops and habitat to enhance wildlife management, and for stockwatering and wildlife purposes within the boundaries of the refuge, and presented evidence that some water had previously been diverted as proposed during 1968 and 1969. The applicant was directed to submit records of these diversions to the Department as evidence of the amount of water available for the appropriation. The protestant contended that the flows of Myrtle Creek were as high as 365 cubic feet per second and as low as 3 cubic feet per second. The protestant also submitted testimony to the effect that they have installed and used a pipeline comprised of 12- and 16-inch pipe to supply the needs of the City of Bonners Ferry, and had diverted water under Permits Nos. 98-2033 and 98-2002. These Permits provide for the diversion of 5.0 c.f.s. with a priority of May 21, 1926, and 20.0 c.f.s. with a priority of October 1, 1906. The points of diversion are in the NE $\frac{1}{4}$ SW $\frac{1}{4}$ and NW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 23, Township 62 N., Range 1 W., some 1/2 mile above the applicant's proposed diversion. Permit No. 98-2002 is an old right which provided water for mining and power purposes and is of questionable status. The protestant's witness, Mr. Jones, Superintendent of Public Works of Bonners Ferry, testified that the pipeline, when fully reconstructed with 16-inch pipe, was designed to convey 4.8 cubic feet per second. Mr. Jones also indicated that the present capacity of the pipeline was 3.23 cubic feet per second and that the old pipeline comprised of 12-inch pipe carried 1.5 cubic feet per second. Mr. Jones also testified that the city utilized the Kootenai River as an alternative source of supply for the City of Bonners Ferry.

During the course of the hearing, the protestant moved to dismiss the Application on grounds that the applicant had failed to submit a prima facie showing as to the points brought forth during the pre-hearing conference. That motion was denied. The applicant submitted Exhibit A-1, which was marked and admitted. Exhibit A-1 was a schematic map of the proposed development plan of the refuge. At the conclusion of the hearing, the applicant and protestant were requested to submit briefs on the following points: (1) Whether the proposed use was a beneficial use; and (2) Whether the U. S. Government is a proper applicant. The examiner also took notice of the published records of the U. S. Geological Survey pertaining to the flow of Myrtle Creek, and the Department submitted copies of those records to both parties.

The records of the U. S. Geological Survey indicate that many months during the year, the flows of Myrtle Creek greatly exceed that presently being diverted by the City. It is evident from those records that there exists water over and above that needed for prior rights a sufficient amount of the time, to be beneficial to the applicant.

Prior to the filing of the applicant's brief, the protestant submitted a motion in writing, requesting that the Application be dismissed, contending that the Application was not filed in good faith and that the applicant had attempted to falsely represent the proposed development. Included with the brief of the applicant was a motion to strike the motion to dismiss as being false, scandalous and not responsive to any issues of the Application.

Both parties having filed the required briefs and the above matters being taken under advisement, the State Reclamation Engineer enters the following Decision:

A. The applicant is a proper applicant within the statutes of the State of Idaho and thereby has a right to apply for a Permit to appropriate the public water of the state.

B. The uses proposed, irrigation and wildlife propagation, are beneficial uses within the laws and Constitution of the State of Idaho, and Article 15, Section 3, of the Idaho Constitution does not prohibit such uses of water but in fact merely specifies the priority among those listed, which view is supported by the Attorney General's opinion to the State Reclamation Engineer dated January 12, 1970, a copy of which is attached hereto.

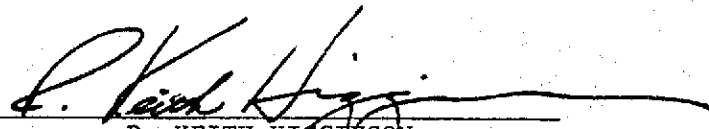
C. There is a sufficient water supply over and above that developed by the City of Bonners Ferry.

D. The Application was not filed for delay or speculation purposes and the applicant has sufficient financial resources with which to complete the proposed project.

E. The motion to dismiss and the motion to strike shall be and the same are hereby denied.

F. The protest against the issuance of the Application for Permit is set aside, and Application for Permit No. 98-7006 is hereby approved subject to the exercise of prior rights as may have been developed by others, including specifically the City of Bonners Ferry under Permits Nos. 98-2033 and 98-2002, and subject to the condition that the applicant install and maintain a measuring device at its diversion point as part of the diversion works constructed under this Permit.

Dated this 10TH day of March 1970.


R. KEITH HIGGINSON
State Reclamation Engineer

98-7006



RECEIVED

JAN 12 1970

STATE OF IDAHO

Department of Reclamation

OFFICE OF THE ATTORNEY GENERAL

BOISE 83707

ROBERT M. ROBSON
ATTORNEY GENERAL

January 12, 1970

Mr. R. Keith Higginson
State Reclamation Engineer
B U I L D I N G

Dear Mr. Higginson:

This letter is in response to your request of December 11, 1969, questioning whether Article XV, Section 3, of the Idaho Constitution limits the types of uses for which an appropriation of water may be made to those listed therein, Article XV, Section 3 of the Idaho Constitution provides as follows:

"WATER OF NATURAL STREAM--RIGHT TO APPROPRIATE--
STATE'S REGULATORY POWER--PRIORITIES.--The right to divert and appropriate the unappropriated waters of any natural stream to beneficial uses, shall never be denied, except that the state may regulate and limit the use thereof for power purposes. Priority of appropriation shall give the better right as between those using the water; but when the waters of any natural stream are not sufficient for the service of all those desiring the use of the same, those using the water for domestic purposes shall (subject to such limitations as may be prescribed by law) have the preference over those claiming for any other purpose; and those using the water for agricultural purposes shall have preference over those using the same for manufacturing purposes. And in any organized mining district those using the water for mining purposes or milling purposes connected with mining, shall have preference over those using the same for manufacturing or agricultural purposes. But the usage by such subsequent appropriators shall be subject to such provisions of law regulating the taking of private property for public and private use, as referred to in section 14 of article I of this Constitution."

98-7006

Mr. R. Keith Higginson

January 12, 1970

It is the opinion of this office that Article XV, Section 3, of the Idaho Constitution does not limit the uses to which water may be appropriated to those named for the following reasons:

First, the language of the above section of the Constitution is not restrictive in its reference to the various uses named. The section provides that the right to divert the unappropriated waters of any natural stream to beneficial uses shall never be denied, provided, however, that the State may regulate and limit the use of unappropriated waters for power purposes. The language which follows provides a designation of preference between four uses: domestic, agricultural, manufacturing, and mining. The preference in one use over another enables the holder of a more preferred use to condemn a lesser preferred use.

This writer knows of no decision by the Idaho Supreme Court construing this section of the Constitution as a limitation upon the various uses to which water may be applied. It is also important to note that Idaho Code, Section 42-101, in declaring the waters of the State to be public waters, provides that they may be appropriated for "any beneficial purpose". Hutchins, in his work on the Idaho Law of Water Rights, states as follows:

"The water-rights statute provides that the appropriation must be for some useful or beneficial purpose, without placing any limitation upon purposes that would be considered useful or beneficial; and the so-called 'constitutional' or non-statutory appropriations likewise may be made, apparently, for any useful or beneficial purpose." (Hutchins, The Idaho Law of Water Rights, p. 38 (1956)).

Second, the framers of the Constitution during the discussions in reference to Article XV, Section 3 of the Constitution, did not infer that this section was to be a limitation upon the particular uses to which water could be applied, and if any intention can be gleaned from the discussions of the Constitutional Convention, it is to the contrary. Mr. Claggett, in summation of the discussions, stated as follows:

"It seems to me if the members of this convention, instead of indulging in criticisms, would sit down and study each one of these

Mr. R. Keith Higginson

January 12, 1970

sections, they would find the whole thing as plain as a man's nose on his face. There ought not to be any misunderstanding as to the terms, conditions or meaning of any section in this bill. The committee, as it reported Section 3, which is the only one up for consideration, recognized the right of priority as between different locators or appropriators of water for any useful or beneficial purpose, whatever the purpose might have been. But to that they have made two exceptions. The first one was where there was not enough water to go around for all the appropriators, that those who used the water for domestic purposes, should have preference over all others; and those who used it for agricultural purposes should have preference over those using it for manufacturing purposes. In other words, when Section 3 was originally reported by the committee there were two preferred uses, and in times of scarcity one had to yield to the other, or in times when there was no thought of scarcity, because it is not limited, as stated by my friend from Ada, to cases of scarcity. Then upon that proposition coming in, an amendment was made by me, and adopted by the convention, making a third preferred use with regard to organized mining districts; and in those cases a man who had taken up water for mining purposes has the preference over those who have taken it up for agriculture. Now, bear in mind, those preferences are violations of the law of priority. There is no provision in this bill as it was originally, until amended the other day on the motion of the gentleman from Boise, for any compensation whatever. And the more of those preferences you put in there, the more you take away the right of prior appropriation. Now, I think, and I think everybody else thinks, that so far as domestic uses are concerned, they should have the preference over all uses; but so far as the constitution is concerned I think we should stop there. If any preferences are to be made hereafter, they

January 12, 1970

must be made pursuant to law, by the condemnation of the prior right which is devoted to another use. That is the substance of the whole thing. I am afraid of the practical operation of putting in this constitution, where we cannot change or amend it in any way by the action of the legislature, so many of these preferred uses, where when you come to work them out practically they will do injustice to a great many men. So far as Section 3 is concerned, the amendment reported by the committee is word for word taken from the constitution of the state of Colorado. And the effect of the amendment now offered by Mr. Heyburn is simply to recognize the right of priority, no matter what the use was for, provided that it is a beneficial and useful purpose; except, that in the matter of domestic use it has the preference over all others. And I think that is as far as we ought to go in the constitution. The legislature will not be left powerless on these subjects. . . ." (Idaho Constitutional Convention, Proceedings and Debates, 1889, Vol. II, pp. 1351, 1352 (1912)).

Third, Mr. Claggett in the quote above stated that the section as originally proposed by the committee was taken word for word from the Colorado Constitution. The Colorado Constitution provided as follows:

"The right to divert the unappropriated waters of any natural stream to beneficial uses shall never be denied. Priority of appropriation shall give the better right as between those using the water for the same purpose; but when the waters of any natural stream are not sufficient for the service of all those desiring the use of the same, those using the water for domestic purposes shall have the preference over those claiming for any other purpose, and those using water for agricultural purposes shall have the preference over those using the same for manufacturing purposes."
(Art. XVI, Sec. 6, Colo. Constitution).

Mr. R. Keith Higginson

January 12, 1970

This section of the Colorado Constitution has not been interpreted by its state Supreme Court as limiting the uses to which water may be appropriated. See Fadden v. Hubbell, 93 Colo. 358, 20 P.2d 247 (1933); Empire Water & Power Co. v. Cascade Town Co., 205 Fed. 123 (8 Cir. 1913).

No attempt is made to list the various uses which have sustained an appropriation as decided by the state courts following the appropriation doctrine; but, it is sufficient to state that the question will largely depend upon the particular use involved. A general discussion of the uses which have been held to sustain an appropriation may be found in Hutchins, Law of Water Rights in the West, page 314, Miscellaneous Publication 418, U. S. Department of Agriculture (1942); Kinney, Irrigation and Water Rights, 2d Ed., Chapter 37 (1912). Kinney, in his work on Irrigation and Water Rights, makes the following statement:

" . . . And, in general, we will say that any purpose which is useful or beneficial may be the object of such appropriations. In some States, however, certain uses are given preference right by statute, but where this is not the case as a general thing any use which is beneficial may claim its right in the order of its priority with the other rights claimed from the same stream. As we stated in the first edition of this work: 'The purpose contemplated for the use of the water may be irrigation for agricultural or horticultural purposes, mining, milling, manufacturing, domestic, or any other purpose for which water is needed to supply the natural and artificial wants of man, provided it be for a beneficial use.' And, as was said in a recent Federal case: 'The courts have not defined, because as yet they are unable to define, the exact boundaries of the territory known as "beneficial use." ' Therefore, as to what is a beneficial use must depend upon the facts and circumstances surrounding any particular use, until that use has been defined by the courts as beneficial." (Kinney, Irrigation and Water Rights, 2d Ed., § 690 (1912)).

Very truly yours,

FOR THE ATTORNEY GENERAL



WILLIAM D. COLLINS

Assistant Attorney General

WDC:R

March 10, 1970

C
O
P
Y

Re: Application for Permit No. 98-7006

Mr. Travis S. Roberts
Acting Regional Director
U. S. Bureau of Sport Fisheries & Wildlife
P. O. Box 3737
Portland, Oregon 97208

Dear Mr. Roberts:

Enclosed is a Memorandum Decision issued on March 10, 1970, in the matter of Application for Permit No. 98-7006.

Very truly yours,

R. KEITH HIGGINSON
State Reclamation Engineer

RKH/j1b

Enclosure

Certified Mail #21738

cc: Mr. Robert McVein

98-7006

March 10, 1970

Re: Application for Permit No. 98-7006
U. S. Bureau of Sport Fisheries & Wildlife

Mr. Peter B. Wilson
Wilson & Walter
P. O. Box 749
Bonners Ferry, Idaho 83805

Dear Mr. Wilson:

Enclosed is a copy of a Memorandum Decision issued on March 10,
1970, in the matter of Application for Permit No. 98-7006.

Very truly yours,

R. KEITH HIGGINSON
State Reclamation Engineer

RKH/jlb

Enclosure

Certified Mail #21737

98-7006



UNITED STATES
DEPARTMENT OF THE INTERIOR
OFFICE OF THE SOLICITOR

IN REPLY REFER TO:

PORTLAND REGION
1002 N.E. HOLLADAY ST.
P.O. BOX 3621
PORTLAND, OREGON, 97208

February 11, 1970

Mr. R. Keith Higginson
State Reclamation Engineer
Department of Reclamation
Statehouse - Annex 2
Boise, Idaho 83707

Re: Application Nos. 98-7003 and 98-7006
United States Bureau of Sport Fisheries and Wildlife
Myrtle Creek

Dear Mr. Higginson:

This office has been requested to assist in the above matters on behalf of the Bureau of Sport Fisheries and Wildlife. We have been advised of the proceedings at Bonners Ferry, Idaho on the 29th of January, 1970, relating to application No. 98-7006, and the request of the hearing examiner that further information be submitted to your office in support of that application showing:

1. That the United States is a proper applicant.
2. That the use of the water on the refuge will be a beneficial use.
3. A record of use of water.

The Bureau of Sport Fisheries and Wildlife understood from your letter of August 6, 1970, and the notice of hearing dated January 16, 1970, that the hearing would relate only to:

1. Is the water supply sufficient for the purpose for which the application was filed?
2. Would the proposed diversion decrease the quantity of water available under established rights?
3. Was the application filed for delay or speculative purposes?
4. Does the applicant have the financial resources with which to complete the project?

98-7006

We understand that at the hearing there was an adequate showing of available water below the diversion of the City of Bonners Ferry, and that it is not physically possible to interfere with the upstream diversion by the City. The erection of the headgate and culvert as the means of diversion also were shown which should have been sufficient to cover all of the matters indicated in the August 6 letter and notice.

The additional matters requested appear to be entirely outside of the scope of the hearing and have no relation to an application for a permit. We submit, however, the following information:

1. The United States has long been recognized as a proper permittee and licensee of water rights by the State of Idaho, and for the purposes of the Bureau of Sport Fisheries and Wildlife. The policy of that Bureau is to comply with State water right laws--but if the State does not wish to recognize the United States for this purpose, we cannot cite any specific statute of the State of Idaho or decision of Idaho courts in support of the applicant.

2. The question of whether water is or is not being put to a beneficial use is not a proper subject of question on the application for a permit. However, the application filed does list as uses: Crop and pasture irrigation with stock watering and wildlife uses as supplemental benefits. The proposed uses for crop and pasture irrigation certainly are within the Idaho statutory provisions. The other uses are stated as required by the statute. The planning for the refuge includes development of lands for irrigated crops and pasture.

3. A record of water use has no relation to an application for permit and is not required by the Statutes of Idaho. It is provided by the attached schedule to the extent of past uses, but not as a limitation on future uses.

The Bureau of Sport Fisheries and Wildlife has upon many occasions advised you and the City of Bonners Ferry that there is no desire or intention to impair the prior water rights of the City of Bonners Ferry from Myrtle Creek. It is not possible for that agency or this office to make any commitments binding the United States, however, and we have advised the City of Bonners Ferry that it should obtain both federal and state legislative withdrawals of the Myrtle Creek water for its future needs. This apparently has not been attempted by the City.

Because of the problems created by the City of Bonners Ferry in regard to the processing of the application for permit, we have advised the Bureau of Sport Fisheries and Wildlife to give notice to you pursuant to Idaho Code 42-225a (Ch. 338, Sec. 2, Id.L. 1967) of existing water rights to Myrtle Creek. Will you please send the forms required for this notice. This filing, however, is not intended as a waiver of the pending application for permit, nor is the pending application for permit a waiver of the right acquired by use.

We have been furnished a copy of the motion by Mr. Wilson to dismiss the application No. 98-7006 and also No. 98-7003, which already has been permitted. The applications referred to in his motions each disclose an intended use for "crop & pasture irrigation", for "stock water", and for "wildlife"; and under "Remarks" on the second page, it is stated the use of water is for the purpose of maintaining "water areas for wildlife and stock-watering" as a part of the intended uses during the non-irrigating season. All of the uses of the water, including wildlife uses, are included in the application. Whether they are listed in the order which Mr. Wilson considers applicable is not material. His motion also refers to statements at the Bonners Ferry hearing indicating that use of water had been made the past two years for wildlife use. Development of the refuge for crop irrigation and pasture is incomplete. When that is done, the major use of water may be for the other uses as stated in the application.

We are particularly concerned about the false accusations of misconduct by employees of the Bureau of Sport Fisheries and Wildlife made by Mr. Wilson in his motion. It is not supported by affidavit and should not remain in the files. We, therefore, enclose a motion to strike the Wilson motion from the record as false and scandalous.

If further information is needed on this matter, will you please advise us.

Very truly yours,


Omar W. Halvorson
Acting Regional Solicitor

Enclosures

98-7006

BEFORE THE STATE RECLAMATION ENGINEER
OF THE STATE OF IDAHO

IN THE MATTER OF THE APPLICATION FOR PERMIT)
No. 98-7003 and No. 98-7006 in the name of)
U. S. BUREAU OF SPORT FISHERIES AND WILDLIFE) MOTION

The Bureau of Sport Fisheries and Wildlife, through the Office of the Regional Solicitor, Portland, Oregon, moves to strike the motion of Peter B. Wilson, dated February 3, 1970, from the files as false, scandalous and not responsive to any issues in this application.

DATED this 12th day of February, 1970.

Oliver W. Halverson

DIVERSION OF MYRTLE CREEK WATER
UNDER APPLICATION FOR PERMIT 98-7006
FOR USE ON THE KOOTENAI NATIONAL WILDLIFE REFUGE

DATES OF DIVERSION			RATE OF DIVERSION (c.f.s.)	DATES OF DIVERSION			RATE OF DIVERSION (c.f.s.)
YEAR	BEGAN	ENDED		YEAR	BEGAN	ENDED	
1966	Sept. 5	Sept. 8	1.0	1968	Apr. 15	May 1	0.2
	Sept. 9	Sept. 16	1.5		May 2	May 28	1.0
	Sept. 17	Sept. 29	1.0		May 29	Jun. 18	0.6
	Sept. 30	Oct. 8	2.0		Jun. 19	Jul. 2	1.8
	Oct. 9	Oct. 12	4.0		Jul. 3	Jul. 17	2.25
	Oct. 13	Oct. 30	4.5		Jul. 8	Aug. 15	1.5
1967	Apr. 22	May 3	1.2		Aug. 16	Sept. 27	4.0
	May 4	May 8	2.6		Sept. 28	Oct. 3	5.05
	Jun. 14	Jul. 5	1.5		Oct. 4	Oct. 8	5.35
	Jul. 6	Jul. 20	2.5		Oct. 9	Nov. 4	3.0
	Jul. 21	Jul. 30	6.6	1969	May 22	Jul. 20	0.8
	Jul. 31	Aug. 15	3.4		Jul. 21	Jul. 31	2.8
	Aug. 16	Sept. 11	1.1		Aug. 1	Sept. 20	4.0
	Sept. 12	Oct. 2	1.5		Sept. 21	Sept. 25	9.7
	Oct. 3	Oct. 10	5.6		Sept. 26	Sept. 30	4.9
	Oct. 11	Oct. 17	3.5		Oct. 1	Oct. 31	4.6
	Oct. 18	Oct. 27	2.3		Nov. 1	Nov. 30	0.6
	Oct. 28	Nov. 6	3.5				
	Nov. 7	Nov. 31	2.3				
1968	Jan. 1	Feb. 29	1.5				
	Mar. 1	Mar. 22	0.25				
	Mar. 23	Apr. 8	0.4				
	Apr. 8	Apr. 15	1.2				

98-7006

DIVERSION OF MYRTLE CREEK WATER
UNDER APPLICATION FOR PERMIT 98-7006
FOR USE ON THE KOOTENAI NATIONAL WILDLIFE REFUGE

DATES OF DIVERSION			RATE OF DIVERSION (c.f.s.)	DATES OF DIVERSION			RATE OF DIVERSION (c.f.s.)
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	Nov. 7	Nov. 31	2.3				
1968	Jan. 1	Feb. 29	1.5				
	Mar. 1	Mar. 22	0.25				
	Mar. 23	Apr. 8	0.4				
	Apr. 8	Apr. 15	1.2				

98-7006

WILSON & WALTER
ATTORNEYS AT LAW

PETER B. WILSON
NEIL O. WALTER

RECEIVED

1970
Department of Reclamation

205 W. KOOTENAI
PHONE AN 7-3127
AN 7-3128
P. O. BOX 749
BONNERS FERRY, IDAHO — 83805
117 SOUTH FOURTH STREET
PHONE MO 4-9185
MO 4-9186
P. O. BOX 1148
COBUR D'ALENE, IDAHO — 83814

PLEASE REPLY TO Bonnors Ferry OFFICE.

March 2, 1970

Mr. R. Keith Higginson
State Reclamation Engineer
Department of Reclamation
State House Annex 2
Boise, Idaho 83707

Re: Application for Permits
#98-7003 and #98-7006

Dear Mr. Higginson:

Enclosed please find the brief of the City of Bonners Ferry, a copy thereof having been deposited in the mail this date directed to each the Bureau of Sports Fisheries and Wildlife and their counsel, the Office of the Solicitor of the Department of the Interior.

Very truly yours

WILSON & WALTER

Peter B. Wilson
City Attorney

PBW/bas

cc: Bureau of Sports Fisheries and Wildlife
P. O. Box 3737
Portland, Oregon

Office of the Solicitor of the United
States Department of the Interior
P. O. Box 3621
Portland, Oregon 97208
Attn: Mr. Omar W. Halvorson, Acting Regional Solicitor
In care of Carl H. Coad, attorney

98-7006

BEFORE THE STATE RECLAMATION ENGINEER
OF THE STATE OF IDAHO

In the Matter of the Application for Permit)
No. 98-7003 and No. 98-7006 in the name) BRIEF OF PROTESTANT
of U. S. BUREAU OF SPORTS FISHERIES AND WILDLIFE)

At the conclusion of the hearing held on the above matter on January 29th, 1970, the court instructed counsel to submit a Brief on two points:

1. Was this a beneficial use; and,
2. Does the United States government have the right to apply as a person under the laws of the State of Idaho.

Subsequent to the filing of this, the protestant filed the Motion to Dismiss the application on the ground that a wilfully fraudulent application was made. As to this latter matter, the applicant has chosen to refer to it in his brief, and therefore, we will reply to the comments.

I.

BENEFICIAL USE.

A. Any appropriation of Idaho water must be for a "useful or beneficial purpose". (I.C. 42-104). This statute was a lawful act of the legislature arising from Article 15, Section 3, of the Idaho Constitution which states in part "the right to divert and appropriate the unappropriated waters of any natural stream to beneficial uses shall never be denied . . . ". (Emphasis supplied.)

A reading of I.C. 42-201 and in conjunction therewith, the first sentence of I.C. 42-202 makes it abundantly clear that all waters of the State of Idaho are to be controlled by Idaho statute and that they are to be diverted and used only for beneficial purposes. Nowhere can it be found, in either the Constitution of Idaho or of its statutes that the use for protection and propagation of wildlife is a beneficial use. In fact, Article 15, section 3

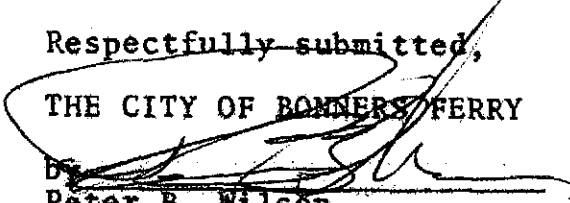
92-7006
10-10010

testimony of its employees under oath, clearly show that the use for crop and pasture irrigation was merely a minor use, and in fact, the irrigation part could not even be put into force without establishing a pumping system. It hardly seems conceivable that an agency which is not in the farming business, but is in a wildlife propagation business which requires great amounts of water would seriously want the water for its refuge for crop and pasture irrigation purposes. It is suggested by the applicant that the motion of the city of Bonners Ferry should be stricken for several reasons, one being that it is not supported by affidavit. It hardly seems that an affidavit is necessary if the application in print says one thing and the witness under oath says another.

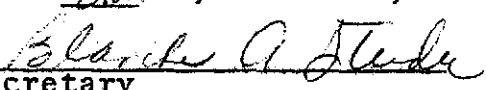
The state not requesting a brief on all matters other than those mentioned above, a detailed brief is not submitted. The city of Bonners Ferry, does urge that the right to a permit be denied on the basis of the foregoing contentions and on the evidence supplied at the hearing.

Respectfully submitted,

THE CITY OF BONNERS FERRY


Peter B. Wilson
City Attorney
Residence and P. O. Address:
Bonners Ferry, Idaho

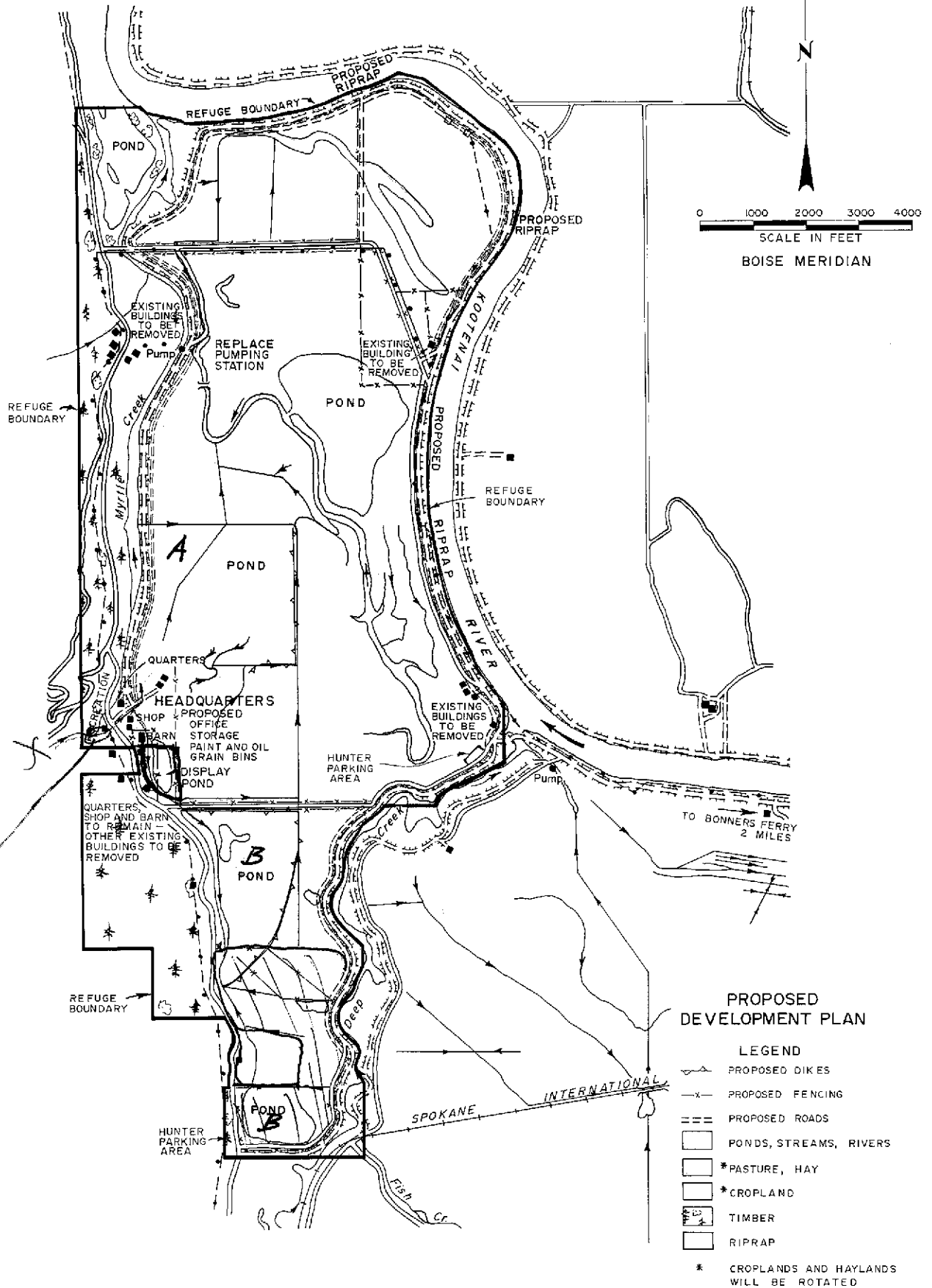
I hereby certify that a true and correct copy of the foregoing Brief was mailed, postage prepaid, to the Bureau of Sports Fisheries and Wildlife, P. O. Box 3737, Portland, Oregon, and to the office of the Solicitor of the United States Department of the Interior, P. O. Box 3621, Portland, Oregon 97208, to the attention of Mr. Omar W. Halvorson, Acting Regional Solicitor, in care of Carl H. Coad, attorney. this 2nd day of March, 1970.


Secretary

92-7006

Applicants Exhibit 1

submitted
1-29-70 est



98-7006

Hearing Application 98-7006
Boundary County Court House
January 29, 1978 10: AM

98-2002

98-2033

Fee Hearing

Not Authorized to Appropriate
Not a Beverage Use
Not sufficient water for years appropriation

Hearing

MEBAVE

Calculated 6.0 cfs for oily pipeline.

Specified that Applicant may be Corporation
under laws of Iowa
Specified that use would be Agricultural use

Barney - cattle grazing in leased to individuals
note given for benefit of U.S. only individuals
to rejection changes suitable for Wildlife Changes.

98-7006

Development funds from Congress

	1968	1968
Highland Duck Grant	11,100	11,000
Deer	1800	350

Deer to about 1000 acre. It from Merkle Creek.
April thru December.

Does not dry up creek -

Farmers have not actually applied water for
irrigation

McBANE - have diverted 100 cfs from Merkle Creek.

Wilson - None to dismiss there not potential of deer.
no water avail, beneficial use, improve city rights.

Requested Brief (1) Beneficial Use

(2) Proper Applicant

Applicant March 1, Probable March 15th

10/1/68 Home

Chairman Reclamation Can.

7 to 800 loss last year due to Ducks.

Some adjacent to preserve.

feel that irrigation may actually decrease production

BARNEY - Ordered to submit to the Department
records of measurements of flow of
Merkle Creek & U.S. W.S. Dimensions

Notes

Super Public Works - Bonner Ferry.
Employed by City since 1958

Mentle Creek. May 305 cfs +
Min ~~305~~ 37 Aug.

U.S.G.S. 3 cfs. mire.

1 mile 16" pipe included
as part of Mentle Creek pipeline
Original pipe 12".

16" from Div. Dam to East Side
Deep Creek & Spokane tracks to
Storage tank. 3 miles to be
yet completed.

\$25,000/year for rehab of line
for last 9 years.

When completed will produce 4.8 cfs

Ultimate source of water would have to be
Kootenai River.

Kootenai River now used
Capacity of present line. 3.23 cfs.

~~Capacity of~~

Old line 1956. 1.5 cfs.

take official Notice of U.S.G.S.
Records on Mentley Creek - Supply
City with copy of measurements

MYRTLE CREEK NEAR BONNERS FERRY, IDAHO

LOCATION.—Staff gage in sec. 23, T. 62 N., R. 1 W., 80 feet upstream from power plant of Bonners Ferry Light & Water Co. and 5½ miles west of Bonners Ferry.

DRAINAGE AREA.—37 square miles.

RECORDS AVAILABLE.—May, 1928, to September, 1929 (chiefly summer records).

EXTREMES.—Maximum discharge during year, 725 second-feet May 21 and 23 (gage height, 3.85 feet); minimum, 0.4 second-foot Sept. 6-22 and 30.

1928-29: Maximum discharge, 830 second-feet May 21 and 24-27, 1928 (gage height, 4.0 feet); minimum, that of Sept. 1929.

REMARKS.—Records good. No records obtained Oct. 1 to Mar. 16. Flow diverted above gage at diversion dam of Bonners Ferry Light & Water Co. for power-plant use not included in tables of discharge. (See footnote.)

Daily and monthly discharge, in second-feet, 1929

Day	Mar.	Apr.	May	June	July	Aug.	Sept.
1		29	86	265	51	11	5.4
2		32	88	229	48	11	4.4
3		22	100	179	43	11	1.6
4		21	97	179	42	10	2.3
5		20	95	206	39	9.5	1.4
6		18	90	192	35	9.5	.4
7		17	97	220	34	8.9	.4
8		17	93	206	33	9.2	.4
9		17	86	282	32	9.5	.4
10		16	90	250	31	8.9	.4
11		16	118	220	29	6.9	.4
12		16	179	147	27	8.1	.4
13		16	235	166	23	7.3	.4
14		22	266	373	25	4.8	.4
15		23	220	268	23	4.4	.4
16		25	266	235	21	6.7	.4
17	6.7	27	266	192	20	6.7	.4
18	7.3	29	299	156	20	6.7	.4
19	8.4	32	334	152	19	6.3	.4
20	10	35	353	138	18	6.5	.4
21	12	40	525	124	16	6.7	.4
22	10	46	525	120	16	6.3	.4
23	10	48	548	108	15	6.3	2.8
24	12	45	480	97	15	6.3	2.8
25	11	52	250	88	14	3.5	2.2
26	12	71	250	80	14	6.3	.9
27	12	92	250	76	13	6.3	.7
28	55	138	220	71	13	5.8	.6
29	70	144	220	60	13	5.8	.5
30	37	90	250	58	12	5.4	.4
31	33		282		11	5.4	

Month	Maximum	Minimum	Mean	Per square mile	Run-off	
					Inches	Acre-feet
March 17-31	70	6.7	20.4	0.551	0.31	607
April	144	18	40.6	1.10	1.23	2,420
May	548	86	234	6.32	7.29	14,400
June	373	58	171	4.62	5.16	10,200
July	51	11	24.8	.670	.772	1,520
August	11	4.4	7.32			450
September	5.4	.4	1.09			64.9
The period						29,700

NOTE.—There was a discharge through power plant and around gage on Aug. 11, 14, 15, 25, and Sept. 2-30, amounting to 18 acre-feet in August and 263 acre-feet in September.

MYRTLE CREEK NEAR BONNERS FERRY, IDAHO

LOCATION.—Staff gage in sec. 23, T. 62 N., R. 1 W., 80 feet upstream from power plant of Bonners Ferry Light & Water Co. and 5½ miles west of Bonners Ferry.

DRAINAGE AREA.—37 square miles.

RECORDS AVAILABLE.—May, 1928, to September, 1930 (except winters).

EXTREMES.—Maximum discharge during year, 393 second-feet Apr. 24, 25 (gage height, 3.1 feet); minimum, 2.6 second-feet Aug. 13 (gage height, 0.96 foot). 1928-1930: Maximum discharge, 820 second-feet May 21, 24-27, 1928 (gage height, 4.0 feet); minimum, 0.4 second-foot Sept. 6-22, 30, 1929.

REMARKS.—Records good Mar. 31 to June 13; others fair. No flow diverted above station during year for power purposes; a negligible amount is diverted for Bonners Ferry water supply. Gage not read Oct. 1 to Mar. 30.

Daily and monthly discharge, in second-feet, 1930

Day	Mar.	Apr.	May	June	July	Aug.	Sept.
1		51	206	220	46	10	4.4
2		55	220	206	48	8.8	4.6
3		60	235	179	46	11	4.2
4		64	206	164	41	7.4	4.2
5		65	206	147	36	7.1	4.2
6		71	206	154	34	7.4	3.8
7		92	179	166	32	7.1	5.0
8		122	152	154	28	6.5	4.2
9		116	166	138	26	5.9	3.6
10		97	164	142	26	7.7	4.8
11		112	192	124	25	7.4	8.8
12		122	166	104	25	8.4	9.6
13		144	179	103	25	3.6	7.4
14		299	192	84	21	5.9	12
15		206	250	72	18	4.4	11
16		166	225	68	16	12	7.4
17		156	206	70	15	6.8	4.6
18		131	179	66	14	7.4	4.2
19		140	166	59	22	8.4	4.6
20		164	353	114	18	18	4.8
21		206	206	125	16	10	7.7
22		250	166	92	14	9.2	5.6
23		266	147	86	12	5.9	9.2
24		353	156	81	12	5.3	6.8
25		373	152	73	11	6.2	7.1
26		299	135	64	11	5.0	8.4
27		334	135	64	10	4.0	5.0
28		282	142	59	9.6	5.0	6.2
29		250	166	50	9.2	5.0	10
30		192	206	44	9.2	5.0	10
31	46		220		8.4	5.9	

Month	Maximum	Minimum	Mean	Per square mile	Run-off	
					Inches	Acres-feet
April	373	51	175	4.73	5.28	10,400
May	353	135	190	5.14	5.93	11,700
June	220	44	109	2.95	3.29	6,400
July	48	8.4	22.1	.697	.69	1,360
August	18	3.6	7.35	.199	.23	452
September	12	3.6	6.45	.174	.19	384
The period						30,800

LOCATION: above
DRAINAGE: 37 square miles
RECORDS: May, 1928, to September, 1930 (except winters)
EXTREMES: Maximum discharge during year, 393 second-feet Apr. 24, 25 (gage height, 3.1 feet); minimum, 2.6 second-feet Aug. 13 (gage height, 0.96 foot).
1928-1930: Maximum discharge, 820 second-feet May 21, 24-27, 1928 (gage height, 4.0 feet); minimum, 0.4 second-foot Sept. 6-22, 30, 1929.
REMARKS: Records good Mar. 31 to June 13; others fair. No flow diverted above station during year for power purposes; a negligible amount is diverted for Bonners Ferry water supply. Gage not read Oct. 1 to Mar. 30.

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• Estimate

98-7006

UPPER COLUMBIA RIVER BASIN

105

MYRTLE CREEK NEAR BONNERS FERRY, IDAHO

LOCATION.—Staff gage in sec. 23, T. 62 N., R. 1 W., 80 feet upstream from power plant of Bonners Ferry Light & Water Co. and $5\frac{1}{2}$ miles west of Bonners Ferry.

DRAINAGE AREA.—37 square miles.

RECORDS AVAILABLE.—May, 1928, to September, 1931 (except winters).

EXTREMES.—Maximum discharge during year, 713 second-feet May 14 (gage height, 3.86 feet); minimum, 3 second-feet Aug. 24, 25, Aug. 28 to Sept. 5.

1928-1931: Maximum discharge, 830 second-feet May 21, 24-27, 1928 (gage height, 4.0 feet); minimum, 0.4 second-foot Sept. 6-22, 30, 1929.

REMARKS.—Records good Apr. 8 to Sept. 30; others fair. No records Oct. 1 to Mar. 10. No flow diverted above station during year for power purposes.

Daily and monthly discharge, in second-feet, 1931

Day	Mar.	Apr.	May	June	July	Aug.	Sept.
1		37	436	196	32	6	3
2		32	377	167	31	6	3
3		29	240	143	30	6	3
4		30	263	128	28	6	3
5		35	280	115	27	5	3
6							
7		38	287	109	23	5	5
8		49	290	111	19	5	6
9		63	231	97	18	5	6
10		51	204	89	18	5	10
11		51	219	82	17	5	10
12	16	53	230	69	16	5	8
13	19	53	381	59	15	5	6
14	19	58	606	53	22	5	6
15	17	63	566	54	15	4	6
16	16	59	510	44	14	4	6
17							
18	19	53	482	65	14	4	6
19	22	53	345	102	12	4	5
20	29	53	256	69	12	4	5
21	46	53	210	71	11	4	5
22	39	53	180	54	10	4	5
23							
24	54	50	160	53	9	4	4
25	58	48	188	53	8	4	4
26	43	45	210	48	8	4	4
27	40	49	266	43	8	3	4
28	35	50	308	42	8	3	4
29							
30	32	57	247	40	8	4	4
31	31	75	204	40	7	4	4
32	32	109	199	40	6	3	4
33	28	237	193	38	6	3	4
34	24	373	213	38	6	3	4
35	34		210		6	3	

Month	Maximum	Minimum	Mean	Per square mile	Run-off	
					Inches	Acre-feet
March 11-31	58	16	31.1	0.841	0.66	1,300
April	373	29	68.6	1.85	2.06	4,080
May	566	160	238	7.78	8.97	17,700
June	196	38	77.2	2.09	2.33	4,590
July	32	6	15.0	.405	.47	922
August	6	3	4.4	.119	.14	271
September	10	3	5.0	.135	.15	288
The period						29,200

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MYRTLE CREEK NEAR BONNERS FERRY, IDAHO

LOCATION.—Staff gage in sec. 23, T. 62 N., R. 1 W., 80 feet upstream from power plant of Bonners Ferry Light & Water Co. and 5½ miles west of Bonners Ferry.

DRAINAGE AREA.—37 square miles.

RECORDS AVAILABLE.—May 1928 to September 1932 (except winters).

EXTREMES.—Maximum discharge during year, 615 second-feet June 13 (gage height, 3.90 feet); minimum discharge, 4 second-feet Sept. 9-11, 13-17; minimum gage height, 1.10 feet Sept. 14-16.

1928-32: Maximum discharge, 830 second-feet May 21, 24-27, 1928 (gage height, 4.0 feet); minimum discharge, 0.4 second-foot Sept. 6-22, 30, 1929; minimum gage height, 0.50 foot Sept. 8-22, 30, 1929.

REMARKS.—Records good except those for April, May, and June, which are fair. No records Oct. 1, Oct. 3 to Feb. 10, Feb. 12-26. No flow diverted above station during current year for power purposes.

Discharge, in second-feet, 1931-32

Day	Oct.	Feb.	Mar.	Apr.	May	June	July	Aug.	Sept.
1			140	107	140	405	107	15	8
2		* 5	117	121	140	435	97	14	8
3			98	130	150	405	114	12	7
4			84	117	172	352	117	12	7
5			77	105	210	318	110	12	6
6			70	90	270	285	90	12	6
7			68	88	318	318	79	11	5
8			64	79	370	352	70	10	5
9			56	78	388	370	63	9	4
10			53	76	425	405	58	8	4
11		* 7	49	84	425	445	53	11	4
12			48	103	425	505	48	15	5
13			48	140	485	525	44	11	4
14			47	172	485	525	43	8	4
15			44	161	370	445	36	7	4
16			39	161	335	388	36	8	4
17			40	161	370	352	36	7	4
18			64	161	405	318	32	7	5
19			70	161	425	285	30	7	5
20			63	150	525	285	29	7	6
21			68	130	570	300	27	8	7
22			63	140	485	285	24	7	6
23			59	161	525	270	22	7	5
24			60	150	445	240	22	7	5
25			60	140	335	210	22	6	5
26			60	140	270	161	20	7	5
27			445	59	130	255	13	6	6
28			270	65	130	225	18	6	6
29			197	68	130	240	16	6	5
30			68	140	225	119	16	7	5
31			103		285		15	7	

Month	Maximum	Minimum	Mean	Per square mile	Run-off	
					Inches	Acre-feet
February 27-29	445	197	304	8.22	0.92	1,810
March	140	39	67.3	1.82	2.10	4,140
April	172	76	128	3.46	3.86	7,620
May	570	140	344	9.20	10.7	21,200
June	525	119	326	8.81	9.83	19,400
July	117	15	48.7	1.32	1.52	2,980
August	15	6	8.9	.241	.28	547
September	8	4	5.3	.143	.16	315
The period						58,000

* Result of discharge measurement.

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MISCELLANEOUS DISCHARGE MEASUREMENTS

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Miscellaneous discharge measurements in Pacific slope basins in Washington and upper Columbia River Basin during the year ending Sept. 30, 1932—Contd.

Date	Stream	Tributary to or diverting from—	Locality	Gage height	Discharge
May 14	Kootenai River	Columbia River	Grohman Narrows, 2 miles below Nelson, British Columbia. Measurements referred to Gage 10 at Nelson. Gage is station 8NJ9 of the Dominion Water Power and Hydrometric Bureau, Department of the Interior, Canada.	<i>Feet</i> 6.43	<i>Sec.-ft.</i> 53,700
19	do	do	do	12.42	77,300
28	do	do	do	13.88	90,200
June 7	do	do	do	14.03	89,300
11	do	do	do	14.48	92,700
16	do	do	do	15.69	105,000
18	do	do	do	16.11	108,000
21	do	do	do	16.11	111,000
25	do	do	do	15.88	104,000
28	do	do	do	15.51	101,000
July 2	do	do	do	14.71	92,900
5	do	do	do	13.98	88,100
8	do	do	do	12.98	78,300
9	do	do	do	12.68	77,500
12	do	do	Grohman Narrows, 2 miles below Nelson, British Columbia. Measurements referred to Gage 10 at Nelson. Gage is station 8NJ9 of the Dominion Water Power and Hydrometric Bureau, Department of the Interior, Canada.	11.53	69,100
Aug. 19	do	do	do	4.92	25,900
Sept. 20	do	do	do	2.81	14,900
May 5	do	do	Glade, British Columbia (station of Dominion Water Power and Hydrometric Bureau, Department of the Interior, Canada).	8.66	42,900
18	do	do	do	13.61	85,200
30	do	do	do	14.46	91,200
June 9	do	do	do	15.42	102,000
17	do	do	do	16.97	121,000
29	do	do	do	16.18	108,000
July 7	do	do	do	13.93	85,800
13	do	do	do	12.22	70,600
Aug. 18	do	do	do	6.52	28,100
Sept. 21	do	do	do	4.09	16,300
Oct. 2	Deep Creek	Kootenai River	In NW¼ sec. 30, T. 62 N., R. 1 E., 3,000 feet from mouth and 3¼ miles north west of Bonners Ferry, Idaho.		21.4
Feb. 10	do	do	In SE¼ sec. 19, T. 62 N., R. 1 E., 500 feet from mouth, 30 feet below drainage district no. 1 drain outlet, and 3¼ miles west of Bonners Ferry, Idaho.		56.8
10	do	do	In NE¼ sec. 36, T. 62 N., R. 1 W., 100 feet above old mouth of Fish Creek slough and 4¼ miles southwest of Bonners Ferry, Idaho.		51.2
Oct. 2	Snow Creek	Deep Creek	In SE¼ sec. 1, T. 61 N., R. 1 W., 300 feet below mouth of Caribou Creek and 4¼ miles southwest of Bonners Ferry, Idaho.		2.02
2	Myrtle Creek	Kootenai River	In NW¼ sec. 24, T. 62 N., R. 1 W., 2,200 feet south of section line and 5 miles northwest of Bonners Ferry, Idaho.		3.69
Feb. 11	do	do	In SW¼ sec. 12, T. 62 N., R. 1 W., 200 feet above mouth and 5¼ miles northwest of Bonners Ferry, Idaho.		8.15

98-7006

MYRTLE CREEK NEAR BONNERS FERRY, IDAHO

LOCATION.—Staff gage in sec. 23, T. 62 N., R. 1 W., 80 feet upstream from power plant of Bonners Ferry Light & Water Co. and $5\frac{1}{2}$ miles west of Bonners Ferry.

DRAINAGE AREA.—37 square miles.

RECORDS AVAILABLE.—May 1928 to September 1933 (except winters).

DISCHARGE.—Maximum during year, 1,260 second-feet June 15 (gage height, 4.90 feet); minimum, 4 second-feet Oct. 8 (gage height, 1.14 feet).

1928-33: Maximum discharge and gage height, those of June 15, 1933; minimum discharge, 0.4 second-foot Sept. 6-22, 30, 1929; minimum gage height, 0.50 foot Sept. 8-22, 30, 1929.

REMARKS.—Records good except those for June, which are fair. Discharge estimated Oct. 2-7, Mar. 1, 3, 4. No records Oct. 9 to Feb. 28. No flow diverted above station during current year for power purposes.

Discharge, in second-feet, 1932-33

Day	Oct.	Mar.	Apr.	May	June	July	Aug.	Sept.
1	5	14	42	172	465	352	41	16
2		14	46	184	465	318	33	16
3		14	70	172	525	309	38	16
4		15	60	172	680	300	36	16
5	5	15	54	161	570	255	40	15
6		14	53	150	505	270	38	13
7		15	50	140	465	255	36	14
8	5	16	42	140	548	255	32	14
9		18	40	140	680	225	30	22
10		18	36	130	505	210	29	24
11		16	32	130	425	172	27	21
12		19	32	130	505	161	24	18
13		22	30	140	710	161	26	17
14		21	35	172	970	150	24	24
15		21	46	210	1,080	130	22	26
16		22	47	197	1,020	130	23	32
17		22	42	172	810	114	23	29
18		23	45	172	615	100	21	35
19		24	50	172	485	87	20	26
20		28	59	197	570	80	19	22
21		26	68	172	582	73	21	21
22		25	112	210	525	69	19	21
23		22	121	210	505	68	18	29
24		21	140	210	445	63	18	30
25		21	161	255	425	59	20	26
26		22	172	388	405	56	19	23
27		23	210	352	405	52	17	26
28		30	270	335	370	49	16	24
29		34	240	388	388	46	14	26
30		36	197	505	405	45	14	23
31		39		485		42	18	

Month	Maximum	Minimum	Mean	Per square mile	Run-off	
					Inches	Acre-feet
October 1-8			5.0	0.135	0.04	79
March	39	14	21.6	.584	.67	1,330
April	270	30	86.7	2.31	2.61	5,160
May	505	130	218	5.89	6.79	13,400
June	1,080	370	567	15.3	17.07	33,700
July	352	42	150	4.05	4.67	9,220
August	41	14	25.0	.878	.78	1,540
September	35	13	22.2	.600	.67	1,320

Myrtle Creek near Bonners Ferry, Idaho

Location.— Staff gage in sec. 23, T. 62 N., R. 1 W., 80 feet upstream from power plant of Bonners Ferry Light & Water Co., and 5½ miles west of Bonners Ferry.

Drainage area.— 37 square miles.

Records available.— May 1928 to September 1934 (except winters).

Extremes.— Maximum discharge recorded during year, 875 second-feet Apr. 28 (gage height, 4.30 feet); minimum recorded, 4 second-feet Aug. 27-31, Sept. 1, 8, 9, 30; minimum gage height recorded, 0.91 foot Aug. 30, 31.
1928-34: Maximum discharge recorded, 1,260 second-feet June 15, 1933 (gage height, 4.90 feet); minimum recorded, 0.4 second-foot Sept. 8-22, 30, 1929; minimum gage height, 0.50 foot Sept. 8-22, 30, 1929.

Remarks.— Records good. Discharge estimated Mar. 1-4. No records Oct. 1 to Feb. 28. Water supply for village of Bonners Ferry diverted above station, probably not exceeding 1 second-foot.

Discharge, in second-feet, 1934

Day	Oct.	Nov.	Dec.	Jan.	Feb.	Mar.	Apr.	May	June	July	Aug.	Sept.
1												
2							128	358	214	37	2	4
3						36	117	310	191	34	7	5
4							107	325	180	30	2	5
5						36	107	280	180	26	8	5
6							113	392	180	24	8	5
7						39	123	358	180	22	8	5
8						35	180	340	191	21	8	5
9						35	191	340	202	20	8	4
10						35	202	325	190	19	8	4
11						35	191	293	176	19	7	7
12						37	191	430	168	18	7	10
13						42	214	392	152	17	7	9
14						46	266	358	134	16	7	8
15						49	280	410	127	15	7	8
16						51	251	470	113	14	8	7
17						60	238	490	110	13	6	7
18						56	226	392	106	13	6	4
19						55	251	340	94	13	5	6
20						62	251	340	83	12	5	5
21						67	310	310	74	12	5	5
22						73	358	280	69	12	5	7
23						69	450	280	60	11	5	9
24						66	450	310	55	11	5	8
25						58	552	392	53	11	5	7
26						63	530	490	48	11	5	6
27						63	490	410	63	10	5	6
28						59	490	470	63	10	4	6
29						84	820	410	51	9	4	5
30						78	530	450	44	9	4	5
31						112	410	392	39	9	4	4
						121		266		8	4	
Month	Maximum		Minimum		Mean		Per square mile		Run-off			
									Inches		Acres-feet	
October												
November												
December												
January												
February												
March						121	35	56.1	1.52	1.75	3,450	
April						850	107	300	8.11	9.05	17,830	
May						490	266	368	9.95	11.47	22,620	
June						214	39	119	3.22	3.59	7,090	
July						37	8	16.3	.441	.51	1,000	
August						8	4	6.1	.165	.19	375	
September						10	4	6.1	.165	.18	363	
The period											52,730	

98-7006

UPPER COLUMBIA RIVER BASIN

63

MYRTLE CREEK NEAR BONNERS FERRY, IDAHO

LOCATION.—Staff gage in sec. 23, T. 62 N., R. 1 W., 80 feet upstream from power plant of Bonners Ferry Light & Water Co. and 5½ miles west of Bonners Ferry.

DRAINAGE AREA.—37 square miles.

RECORDS AVAILABLE.—May to September, 1928.

EXTREMES.—Maximum discharge during period, 830 second-feet May 21 and 24-27 (gage height, 4.0 feet); minimum, 8 second-feet September 11-13 and 19-29.

REMARKS.—Records good except those for May and June, which were affected by diurnal fluctuations and are fair. Flow diverted above gage at diversion dam of Bonners Ferry Light & Water Co. for power-plant use not included in table of discharge.

Daily and monthly discharge, in second-feet, 1928

Day	May	June	July	Aug.	Sept.	Day	May	June	July	Aug.	Sept.
1		266	98	18	10	16	580	145	28	12	9
2		286	95	18	10	17	630	129	37	12	9
3		283	91	20	10	18	680	118	36	12	9
4		266	98	17	10	19	680	102	37	12	8
5		249	84	17	10	20	689	95	34	11	8
6		218	78	17	9	21	730	98	32	11	8
7		190	69	17	9	22	730	122	31	11	8
8	249	164	63	15	9	23	680	108	28	11	8
9	340	164	56	14	9	24	730	108	26	12	8
10	381	177	51	13	9	25	730	98	26	15	8
11		402	152	50	13	26	730	90	24	15	8
12		468	190	46	13	27	780	98	23	13	8
13		490	140	42	13	28	512	106	22	12	8
14		490	114	39	13	29	468	95	20	12	8
15		490	118	36	13	30	360	98	19	11	8
						31	266		18	11	

Month	Maximum	Minimum	Mean	Run-off in acre-feet
May 8-31	780	249	551	26,200
June	283	90	152	9,040
July	98	18	46.7	2,870
August	20	11	13.7	842
September	10	8	8.7	518
The period				39,500

NOTE.—Discharge diverted around gage for power use estimated at 200 acre-feet in May, 200 acre-feet in June, 50 acre-feet in July; no diversion during August and September.

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JAN 29, 1970
DANIELS FERRY

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TAPE INDICATORSPEAKERSUBJECT~~RECORDED~~

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AIIRED

Introduction.

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WILSON + ALLRED

QUESTIONS

015

AIIRED

INTRODUCTION

027

WILSON

CONTENTIONS

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AIIRED

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AIIRED + MC BAINÉ

QUESTIONS + CONTENTIONS.

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(QUESTIONS OF MC BAINÉ
TESTIMONY)

- WILSON - interjections

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WILSON

X EXAM McBaine.

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COLLINS

Answer Yes to Wilson Q

113

WILSON

X EXAM MC BAINÉ

130?

COLLINS

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160

AIIRED: Engen Barney

~~DEATH & EXAM SWEAR~~

WILSON

X EXAM BARNEY

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WILSON

X ~~MC BAINÉ~~

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172	AIRED - WILSON	MCBAINÉ - interchange
~~174~~	(not important)	
174	WILSON	X EXAM BARNEY
201	AIRED	REFERRING TO EXHIBIT
202	WILSON	X EXAM BARNEY
206	BARNEY	DRAWS ON EXHIBIT IN BLUE INK
209	NEW EXHIBIT #	Applicants #1 COLLINS
214	MARK ON EXHIBIT 1	BARNEY (in ^{Block} ~~blue~~ ink)
215	WILSON	X EXAM BARNEY
245	~~MCBAINÉ~~ WILSON	MCBAINÉ
248		
247	WILSON	BARNEY
250	COLLINS	BARNEY
304	AIRED	BARNEY
	admit Alex	
307	WILSON	BARNEY
320	MCBAINÉ	
321	WILSON	X EXAM BARNEY
332	AIRED	(ANSWERS YES)
353	MCBAINÉ	"NO OBJECTION TO PER-
333	WILSON	X EXAM BARNEY
341	~~MCBAINÉ~~ WILSON	MCBAINÉ
357	~~#~~ WILSON	COMMENTS
355	- WILSON	

356 -

ALL RED

DENY MOTION TO DISMISS

365

~~DON HOWE WILSON~~ D. EXAM DON HOWE
~~WILSON~~ X EXAM MC ~~BARNEY~~ ^{BARNEY}

~~400~~ 379

COLLINS

Q of DON HOWE

409

WILSON

D. EXAM ~~BARNEY~~ BARNEY

~~416~~

416

ALL RED

ORDER

420

COLLINS

EXPLAIN A.P.A.

421

WILSON

D. EXAM BARNEY

~~428~~

428

ALL RED

Refer to Order.

WILSON

Swear in Jones

430

WILSON

D. EXAM JONES

Sept. of public wks. Jones

457

COLLINS

EXAM JONES.

462

WILSON

EXAM JONES

463

COLLINS

EXAM JONES.

470

ALL RED

February 9, 1970

Re: Application for Permit No. 98-7006

Mr. Bob McVane
U. S. Bureau of Sport Fisheries & Wildlife
P. O. Box 3737
Portland, Oregon 97208

Dear Mr. McVane:

Enclosed are the official published records of the U. S. Geological Survey, of which this Department has taken notice.

Very truly yours,

C. STEPHEN ALLRED
Deputy State Reclamation Engineer

CSA/jib

Encl.

98-7006

February 9, 1970

Re: Application for Permit No. 98-7006

Mr. Peter B. Wilson
Wilson & Walter
P. O. Box 749
Bonners Ferry, Idaho 83805

Dear Mr. Wilson:

Enclosed are the official published records of the U. S. Geological
Survey, of which this Department has taken notice.

Very truly yours,

C. STEPHEN ALLRED
Deputy State Reclamation Engineer

CSA/jib

Encl.

98-7006

February 17, 1970

Re: Application for Permit No. 98-7006
United States Bureau of Sport Fisheries and Wildlife

Mr. Omar W. Halvorson,
Acting Regional Solicitor
UNITED STATES DEPT. OF THE INTERIOR
Office of the Solicitor
Portland Region
1002 N.E. Holladay St.
P.O. Box 3621
Portland, Oregon 97208

Dear Mr. Halvorson:

Pursuant to your request in correspondence of February 11, 1970, please find enclosed three Claim to a Water Right forms. Instructions for filing can be found on the back side of the form.

If we may be of any assistance, please contact us.

Very truly yours,

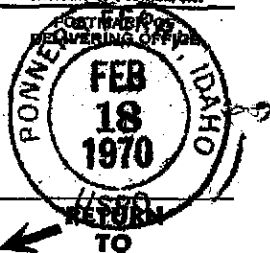
Donald W. McEldowney
Appropriation Examiner

DWM:DR
Enclosures (3)

98-7006

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STREET AND NO. OR P.O. BOX

Department of Reclamation
Annex # 2 Statehouse
Boise, Idaho 83707

POST OFFICE, STATE, AND ZIP CODE

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①

Wilson & Walter

21611

INSURED NO.

②

SIGNATURE OF ADDRESSEE'S AGENT, IF ANY

Lorrie Baker

DATE DELIVERED

SHOW WHERE DELIVERED *(only if requested)*

FEB 18 1978

98-7006

February 17, 1970

Re: Application for Permit No. 98-7006
The United States of America,
Bureau of Sport Fisheries & Wildlife

Mr. Peter B. Wilson
WILSON & WALTER
P.O. Box 749
Bonners Ferry, Idaho 83805

Dear Mr. Wilson:

Enclosed please find copies of the correspondence received in response to the previous protest hearing in connection with the above referenced application for permit.

Very truly yours,

Donald W. McEldowney
Appropriation Examiner

DWM:DR
Enclosures

CERTIFIED MAIL # 21611

98-7006

County Commissioners Room, Boundary County, Bonners Ferry

January 29, 1970 at 10:00 a.m.

ROSTER OF ATTENDANCE

Name	Address	Representing
Robert McVein	c/o Regional Director Bureau of Sport Fisheries & Wildlife Portland, Ore. 97208	BSFW
Eugene Barney	Kootenai N.W. Refuge	BSFW
Wayton Douglas	City Councilman	Bonnors Ferry, Idaho
Charles Harnish	U.S. Forest Service Sandpoint, Idaho Box 490	USFS
Don Howe	Pres. Kootenai Valley Cementation Assoc. Bonnors Ferry, Idaho	
Grumell Docherty	City Councilman	Bonnors Ferry
Roy A. Jones	Supt. Public Works City of Bonnors Ferry	Bonnors Ferry
A. J. Baylson, Mayor, City of Bonnors Ferry, Ida.	City Atty	BSFW

WILSON & WALTER

ATTORNEYS AT LAW

PETER B. WILSON
NEIL O. WALTER

RECEIVED
FEB 3 1970
BONNERS FERRY, IDAHO

205 W. KOOTENAI
PHONE AN 7-3127
AN 7-3126
P. O. BOX 749
BONNERS FERRY, IDAHO — 83805

117 SOUTH FOURTH STREET
PHONE MO 4-9185
MO 4-9186
P. O. BOX 1148
COEUR D'ALENE, IDAHO — 83814

PLEASE REPLY TO Bonnors Ferry OFFICE.

February 2, 1970

State Reclamation Engineer
Department of Reclamation
State house - Annex 2
Boise, Idaho 83707

Attn: Mr. Allred

Re: Myrtle Creek
Application No. 98-7006

Dear Mr. Allred:

We are enclosing a Motion for dismissal of the application on the ground in addition to those discussed at the hearing. A copy of the Motion has been sent to the Bureau of Sport Fisheries. The reason that this ground was not raised before was simply because not until the testimony was given could it be determined that the fraud was, in fact, perpetrated.

Could you provide us with a copy of the application submitted by the applicant for Myrtle Creek and for Deep Creek?

Thank you.

Very truly yours,

WILSON & WALTER

Peter B. Wilson

PBW/bas

98-7006

RECEIVED

BEFORE THE STATE RECLAMATION ENGINEER

OF THE STATE OF IDAHO

IN THE MATTER OF THE APPLICATION FOR PERMIT)
No. 98-7003 and No. 98-7006 in the name)
of U. S. BUREAU OF SPORTS FISHERIES AND WILDLIFE)

M O T I O N

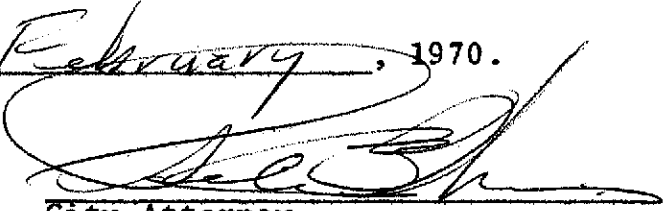
COMES NOW the City of Bonners Ferry, by and through its duly authorized representative, PETER B. WILSON, of the firm of WILSON & WALTER, attorneys at law, Bonners Ferry, Idaho, and respectfully move the agency to deny and dismiss the application of the United States of America, acting through the Bureau of Sport Fisheries and Wildlife Agency of the Interior Department, on the special ground that said applicant has wilfully filed a fraudulent application before this agency in the following respects:

1. Well knowing that its purpose of existence was for the protection and propagation of wildlife; nevertheless said applicant did file an application stating that the water was to be used for irrigating crops, irrigating pasture land, and supplying water for livestock, with a supplemental use for wildlife purposes;
2. That officials of said applicant testified before the hearings examiner of the Bureau of Reclamation of the State of Idaho that the purpose of the use was for wildlife and incidentally, for irrigation of crop and pasture land and stock watering;
3. That at the time of making said application said applicant was cognizant of his principal intended use;
4. That at the time of making said application, said applicant was cognizant and well aware of the priorities of use for which water could be used in the state of Idaho and for which the State of Idaho could issue permits of priority;
5. And that at the time of making said application, said applicant was well aware of and cognizant of the fact that the aforesaid priorities did not provide for a use of water for the purposes to which applicant intended to principally apply the water;
6. That whether use for wildlife refuges is or is not a

98-7006

beneficial use of water under the laws and Constitution of the State of Idaho, applicant attempted to evade this issue by presenting an application which falsely depicted the intended use of said water.

DATED this 3rd day of February, 1970.


City Attorney
City of Bonners Ferry
Bonners Ferry, Idaho

I certify that a true copy of the foregoing Motion was mailed by regular mail, postage prepaid, to the Bureau of Sport fisheries and Wildlife, 730 N.E. Pacific Street, P. O. Box 3737, Portland, Oregon 97208, this day of _____, 1970.

Secretary

98-7006

**POST OFFICE DEPARTMENT
OFFICIAL BUSINESS**

**PENALTY FOR PRIVATE USE TO AVOID
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Apr. 1967

POB Form 3811

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CERTIFIED NO.

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INSURED NO.

SIGNATURE OF ADDRESSEE'S AGENT, IF ANY

DATE DELIVERED JAN 31 1970

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98-7006

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Department of Reclamation

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Annex # 2 Stateh use

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855-18-71543-10

Apr. 1967

POD Form 3811

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to addressee

(Additional charges required for these services)

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CERTIFIED NO.

21541

INSURED NO.

1

2

SIGNATURE OF ADDRESSEE'S AGENT, IF ANY

DATE DELIVERED

SHOW WHERE DELIVERED *(only if requested)*

JAN 20 1978

98-7006

INSTRUCTIONS TO DELIVERING EMPLOYEE



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address where delivered



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to addressee

(Additional charges required for these services)

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CERTIFIED NO.

1

Wilson & Walter

21542

2

SIGNATURE OF ADDRESSEE'S AGENT, IF ANY

INSURED NO.

by Lorraine Baker

DATE DELIVERED

SHOW WHERE DELIVERED *(only if requested)*

JAN 20 1970

98-7006

POST OFFICE DEPARTMENT
OFFICIAL BUSINESS

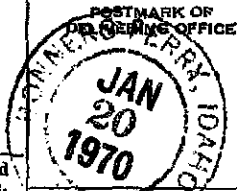
PENALTY FOR PRIVATE USE TO AVOID
PAYMENT OF POSTAGE, \$300

Q55-16-71548-30

11 Apr. 1967

POD Form

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~~Department of Reclamation~~
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Boise, Idaho 83702

NAME AND
ADDRESS
OF SENDER

Department of Reclamation

Indicate type of mail

☐ INSURED☐ C. O. D.☒ CERTIFIEDAffix stamp here if issued as
certificate of mailing or for
additional copies of this bill.

POSTMARK AND DATE OF RECEIPT

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✓ 1 21540	The United States of America, Mr. Clay E.	.06	.30			.15			98-7006
2	Crawford, Acting Regional Director, Bureau								
3	of Sport Fisheries & Wildlife, P.O. Box 3737,								
	Portland, Oregon								
✓ 5 21541	City of Bonners Ferry, City Hall,	.06	.30			.15			98-7006
6	Bonnies Ferry, Idaho								
✓ 7 21542	Wilson & Walter, Attorneys-at-Law,	.06	.30			.15			98-7006
8	P.O. Box 749, Attn: Peter B. Wilson,								
9	Bonnies Ferry, Idaho								
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TOTAL NUMBER OF PIECES LISTED BY SENDER		TOTAL NUMBER OF PIECES RECEIVED AT POST OFFICE		POSTMASTER, PER (Name of receiving employee)		¹ Mark "F" if "Fragile," "P" if "Perishable," "E" if "Eggs," "EH" if "Eggs for Hatching," "B" if "Butter," "FL" if "Fragile-Liquid," and "FLU" if "Fragile-Liquid-This Side Up." ² Special-handling charges apply only to fourth-class parcels. Special-delivery service also includes special-handling service.			

POD Form 3677-A—July 1958

98-7006

AFTER FIVE DAYS RETURN TO
~~DEPARTMENT~~ DEPARTMENT OF RECLAMATION
STATEHOUSE — ANNEX 2
BOISE, IDAHO 83707



January 19, 1970

Re: Application for Permit No. 98-7006

C
O
P
Y

County Clerk & Recorder
Boundary County
Bonners Ferry, Idaho 83805

Dear Sir:

This letter is to confirm the use of the county commissioners room,
on January 29, 1970 at 10:00 a.m., for a conference to be held by this
office on the above numbered application. Thank you for your co-operation.

Very truly yours,

Donald W. McEldowney
Appropriation Examiner

DWM:kh

98-7006

BEFORE THE STATE RECLAMATION ENGINEER
OF THE
STATE OF IDAHO

IN THE MATTER OF APPLICATION FOR)
PERMIT NO. 98-7006 in the name of U. S. of)
AMERICA, BUREAU OF SPORT FISHERIES)
AND WILDLIFE)

NOTICE OF CONFERENCE
AND/OR HEARING ON PROTEST

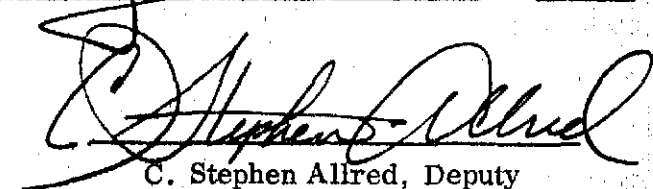
On December 4, 1967, the United States of America, Clay E. Crawford, Acting Regional Director, Bureau of Sport Fisheries & Wildlife, P.O. Box 3737, Portland, Oregon, filed with the Department of Reclamation an application to appropriate the public waters of the State of Idaho. On February 6, 1968, the Department of Reclamation received a protest filed by Peter B. Wilson in behalf of City of Bonners Ferry, Idaho.

The Department of Reclamation has set the matter of protest for conference and/or a hearing on January 29, 1970 at 10:00 a.m. in the County Commissioners Room, Boundary County, Bonners Ferry, Idaho. Any hearing will be held in accordance with the Rules and Regulations of the Idaho Code and adopted Rules of Practice and Procedure of the Department of Reclamation. Opportunity shall be afforded all parties to respond and present evidence and argument on all issues involved.

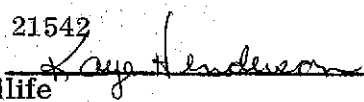
Any party may request in writing five (5) days before any hearing that the oral proceedings thereof be taken in the form of stenographic notes. Any party may have such stenographic notes of the oral proceedings, or part thereof, transcribed at his own expense. A taped record of the proceedings will be maintained for the appeal period.

Failure to appear at the time and place set for hearing by the applicant or protestant may allow the Department without prejudice to dismiss the protest or the application. Any and all cost incurred by reason of such nonappearance may be assessed against such nonappearing parties.

Dated this 16th day of January, 19 70.


C. Stephen Allred, Deputy
State Reclamation Engineer

Mailed this 19th day of January, 1970, to The United States of America, Mr. Clay E. Crawford, Acting Regional Director, Bureau of Sport Fisheries & Wildlife, P.O. Box 3737, Portland, Oregon, certified No. 21540; City of Bonners Ferry, City Hall, Bonners Ferry, Idaho, certified No. 21541; Wilson & Walter, Attorneys at law, P.O. Box 749, Attn: Peter B. Wilson, Bonners Ferry, Idaho, certified No. 21542

Copy of protest sent to Bureau of Fisheries and Wildlife 

98-7006

WILSON & WALTER

ATTORNEYS AT LAW

PETER B. WILSON
NEIL O. WALTER

GARY HAMAN, ASSOCIATE

205 W. KOOTENAI
PHONE AN 7-3127
AN 7-3128
P. O. BOX 749
BONNERS FERRY, IDAHO — 83805

117 SOUTH FOURTH STREET
PHONE MO 4-9185
MO 4-9186
P. O. BOX 1148
COEUR D'ALENE, IDAHO — 83814

PLEASE REPLY TO Bonnors Ferry OFFICE.

September 25, 1969

Department of Reclamation
Statehouse
Boise, Idaho

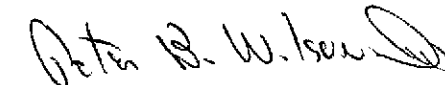
Re: Kootenai National Wildlife Refuge

Gentlemen:

The United States Fish and Wildlife Service advises that by separate letter to you (of which it did not provide us a copy), it has requested the Department of Reclamation to act upon its application for water from Myrtle Creek.

At the regular council meeting the City of Bonners Ferry held on September 16, 1969, the City of Bonners Ferry instructed the City Attorney to continue to oppose this application on its behalf.

Very truly yours,



Peter B. Wilson
City Attorney

PBW/bas

cc: U. S. Fish and Wildlife Service
Portland, Oregon

98-7006



UNITED STATES
DEPARTMENT OF THE INTERIOR
FISH AND WILDLIFE SERVICE
BUREAU OF SPORT FISHERIES AND WILDLIFE

730 N. E. PACIFIC STREET
P. O. BOX 3737
PORTLAND, OREGON 97208

RECEIVED
OCT 5 1969
Department of Reclamation

R. Keith Higginson
State Reclamation Engineer
107 State House
Boise, Idaho 83701

October 1, 1969

Dear Mr. Higginson:

Enclosed for your files is a copy of Permit No. 32554 (85-2134)
as requested in your letter of September 29, 1969.

Also enclosed is a letter to the editor of the Bonners Ferry
Herald regarding our taking water from Myrtle Creek. As you
can see from the content of the letter, Mr. Wilson doesn't
regard our organization too highly. We are not going to attempt
to answer this letter as it would only add fuel to the fire
and give Wilson more to "comment" on.

Sincerely yours,


Arthur G. Huey
Regional Engineer

Enclosures

98-7006

Bonnors Ferry Herald

Established in 1891

WILLIAM H. CHUBB — Publisher
WARREN PETTIT — Editor

Published every Thursday at Bonners Ferry, Idaho, in the interests of Boundary County, Idaho.

Second class postage paid at Bonners Ferry, Idaho—83805.

Subscription rates: \$4.50 per year in Boundary county; \$5.00 per year elsewhere in the United States and possessions; \$6.00 per year in Canada and foreign countries—payable in advance. Single copies 10 cents.

Letters to the Editor

Communications from the readers of The Herald are welcomed. They should be written on one side of the paper only, be on subjects of current local interest and as brief as possible, and signed by the writer.

September 12, 1969

Editor
Bonners Ferry Herald
Bonners Ferry, Idaho
Dear Editor:

It might be of interest to note that, due to the action of one of our federal agencies, the people of Bonners Ferry may well be limited in the amount of water they can take from Myrtle Creek. Heretofore, with but one exception, all agencies have recognized the right of human beings to have for consumption the best water available, and have protected the Myrtle Creek watershed under that theory.

As Bonners Ferry grew, it increased its consumption from that remarkable source, and contemplated continuing the increase in the future. Now, due to action by the U. S. Fish and Wildlife group, the future increase may well be stopped.

It seems incredible, in a time when there is a growing shortage of unpolluted water for human consumption, that a federal agency, of all things, would drive people away from a source of pure water for future needs. Yet, that is just what we have here.

It is under the guise of conservation that they are making this move. They say they need it for the Koot-

enai Refuge. Yet, they utterly fail to explain why they don't pump from the Kootenai instead. They mutter something about the cost of pumping as against gravity flow, but they fail to show the courtesy of outlining how much an increase in expense this is. Nor do they explain how much more it will cost the citizenry to increase the purification of the future increase in use of Kootenai River water. Nor do they explain how the citizenry recoups the heavy expense of modernizing the line from Bonners Ferry to Myrtle Creek. Autocrats don't have to explain these things - so the U. S. Fish and Wildlife Agency doesn't.

I suggest that most of these servants of the Eastern establishment did not know the difference between "conservation" and "conversation" until they came West. What they still don't realize is that everyone here is far more interested in conservation than they are. That is why we live here at a sacrifice of economic gain. We like the good water and the pure air. But human welfare comes ahead of animal welfare. Certainly it is more important that the pure water of Myrtle Creek be reserved for the children of a growing Bonners Ferry than for ducks. There is no doubt in my mind that if we here in the Kootenai Valley were an ethnic minority rather than a rural minority, then this travesty on human welfare would have stopped some time ago. But it now seems clear that this minority of citizens is to be sacrificed to the fancied dreams of the ivory towered purists. How can they have a wilderness for the barons of the eastern establishment to enjoy on jet-set weekends if there are a bunch of people living here?

When the people of Boundary County first objected to the removal of economic valuable land for a refuge (without first replacing the lost gross county product), these autocrats said "We will take care of you." We told them that statement could be read two ways. What has happened?:

1. When they came to open their Refuge, they said they didn't contemplate a bigger area than Drainage District No. 7; but they failed to admit:
 - a). There was already a plan in existence to acquire more of the Kootenai Valley,
 - b). There was already a plan to create a sister refuge in the

Kootenai Valley north of the border,
c). These autocrats even demanded the Corps of Engineers acquire land for them in Kootenai Valley to replace public land put under water behind Libby Dam.

2. These autocrats now start their attempt to limit area growth by limiting use of the good water.

It is woefully clear now what they meant when they said, "We will take care of you."

If you think that ducks are just as capable of swimming in Kootenai River water as in Myrtle Creek water, why not mention it to a couple of your Congressmen?

Very truly yours,
Peter B. Wilson ✓

Supervisor ☒
Associate ☒
Asst. Mgr. ☒
Asst. Wash. ☒
Asst. Col. ☒
Reg. Biol. ☒
Planner ☒
Wilderness ☒
Recreation ☒
Ngt. Asst. ☒
Secretary ☒

x Reply o Review
— Handle / Comment
V Discuss VV File

Wings Plan



UNITED STATES
DEPARTMENT OF THE INTERIOR
FISH AND WILDLIFE SERVICE
BUREAU OF SPORT FISHERIES AND WILDLIFE

730 N. E. PACIFIC STREET
P. O. BOX 3737
PORTLAND, OREGON 97208

Department of Reclamation

September 16, 1969

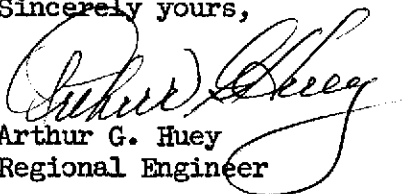
Mr. R. Keith Higginson
State Reclamation Engineer
Department of Reclamation
107 State House
Boise, Idaho 83701

Re: Application No. 98-7006
Myrtle Creek
Kootenai Creek NWR

Dear Mr. Higginson:

Enclosed find a copy of our letter to the Bonners Ferry City
Attorney which was inadvertently omitted from our letter to
you of August 27, 1969.

Sincerely yours,


Arthur G. Huey
Regional Engineer

Enclosure

98-7006

August 29, 1969

Mr. Peter B. Wilson, City Attorney
P.O. Box 749
Bonners Ferry, Idaho 83805

Re: Application No. 98-7006
Myrtle Creek
Kootenai NWR

Dear Mr. Wilson:

Pursuant to the meeting between yourself, Mr. Higginson, the State Reclamation Engineer and representatives of our Bureau in Coeur d'Alene on July 30, 1969 and in reply to your letter of August 4, 1969, we make the following comments.

First, we can find no Bureau correspondence that indicates our Bureau "promised" to assist the City of Bonners Ferry in seeking a Congressional enactment to preserve the City's water supply for future use. Our letter of December 13, 1968 did suggest that ". . . the City probably also should have the State Legislature approve such reservation for future use, and also obtain a Congressional recognition of the right and an assurance of watershed protection."

Second, the Bureau has applied for water in accordance with the Idaho State Code and believes it is the prerogative of the State Reclamation Engineer to determine the eligibility of an applicant and as to whether or not the water is being put to beneficial use.

Under separate letter, we are asking the State Reclamation Engineer to favorably act on the Bureau's application for water from Myrtle Creek.

Sincerely yours,

Original signed by
Travis S. Roberts

~~Acting~~ Regional Director

98-7006



UNITED STATES
DEPARTMENT OF THE INTERIOR
FISH AND WILDLIFE SERVICE
BUREAU OF SPORT FISHERIES AND WILDLIFE

RECEIVED

SEP 4 1969

730 N. E. PACIFIC STREET
P. O. BOX 3737
PORTLAND, OREGON 97208

Department of Reclamation

August 29, 1969

Mr. Peter B. Wilson, City Attorney
P.O. Box 749
Bonners Ferry, Idaho 83805

Re: Application No. 98-7006
Myrtle Creek
Kootenai NWR

Dear Mr. Wilson:

Pursuant to the meeting between yourself, Mr. Higginson, the State Reclamation Engineer and representatives of our Bureau in Coeur d'Alene on July 30, 1969 and in reply to your letter of August 4, 1969, we make the following comments.

First, we can find no Bureau correspondence that indicates our Bureau "promised" to assist the City of Bonners Ferry in seeking a Congressional enactment to preserve the City's water supply for future use. Our letter of December 13, 1968 did suggest that ". . . the City probably also should have the State Legislature approve such reservation for future use, and also obtain a Congressional recognition of the right and an assurance of watershed protection."

Second, the Bureau has applied for water in accordance with the Idaho State Code and believes it is the prerogative of the State Reclamation Engineer to determine the eligibility of an applicant and as to whether or not the water is being put to beneficial use.

Under separate letter, we are asking the State Reclamation Engineer to favorably act on the Bureau's application for water from Myrtle Creek.

Sincerely yours,

Original signed by
Travis S. Roberts

Acting Regional Director

IDAHO STATE RECLAMATION ENGINEER

98-7006

September 8, 1969

C
O
P
Y
Mr. Travis S. Roberts, Regional Director
Bureau of Sport Fisheries and Wildlife
730 N. E. Pacific Street
P. O. Box 3737
Portland, Oregon 97208

Dear Mr. Roberts:

We have received your certified letter of August 27, 1969, with which you apparently intended to enclose a copy of your letter to the Bonners Ferry City Attorney. This is to advise you that we did not receive the enclosure.

Very truly yours,

R. KEITH HIGGINSON
State Reclamation Engineer

RKH/jlb

98-7006



UNITED STATES
DEPARTMENT OF THE INTERIOR
FISH AND WILDLIFE SERVICE
BUREAU OF SPORT FISHERIES AND WILDLIFE

RECEIVED

SEP 5 1969

Department of Reclamation

730 N. E. PACIFIC STREET
P. O. BOX 3737
PORTLAND, OREGON 97208

Certified Mail - Mail Receipt Requested

August 27, 1969

Mr. R. Keith Higginson
State Reclamation Engineer
Department of Reclamation
107 State House
Boise, Idaho 83701

Re: Application No. 98-7006
Myrtle Creek
Kootenai Creek NWR

Dear Mr. Higginson:

As promised at the meeting of July 30, 1969 in Coeur d'Alene, we are enclosing for your files a copy of our letter to the Bonners Ferry City Attorney. This letter is in reply to the City Attorney's letter of August 4, 1969 of which you have a copy.

With this letter, we hereby request that you take favorable action on our application to appropriate water under Permit No. 98-7006, with any further meetings or hearings.

Sincerely yours,

James S. Roberts
Acting Regional Director

Enclosure

98-7006

Copy of letter
was not
enclosed
if

98-9006

To _____

Date _____ Time _____

WHILE YOU WERE OUT

M _____

of _____

Phone _____

Area Code _____ Number _____ Extension _____

TELEPHONED		PLEASE CALL	
CALLED TO SEE YOU		WILL CALL AGAIN	
WANTS TO SEE YOU		URGENT	
	RETURNED YOUR CALL		

Message _____

_____ Operator _____

UNITED STATES
DEPARTMENT OF THE INTERIOR
FISH AND WILDLIFE SERVICE
BUREAU OF SPORT FISHERIES & WILDLIFE
730 N. E. PACIFIC STREET
P. O. BOX 3737
PORTLAND, OREGON 97208
OFFICIAL BUSINESS

CERTIFIED

No 840101

MAIL

Mr. R. Keith Higginson
State Reclamation Engineer
Department of Reclamation
107 State House
Boise, Idaho 83701

POSTAGE AND FEES PAID
U. S. DEPARTMENT OF THE INTERIOR

92-7006

August 6, 1969

Re: Application No. 98-7006

Mr. John D. Findlay, Regional Director
Bureau of Sport Fisheries and Wildlife
U. S. Department of the Interior
730 N. E. Pacific Street
P. O. Box 3737
Portland, Oregon 97208

Dear Mr. Findlay:

This letter is to confirm my understanding following the informal conference held in Coeur d'Alene last week. Our discussion indicated that the City is desirous of obtaining a commitment from the federal government that it will recognize the City's needs if it should be necessary to expand the water system in the future.

Mr. Wilson apparently wishes to pursue the possibility of obtaining an act of Congress which would guarantee the City's future use of Myrtle Creek. He has agreed to outline the City's proposal in a letter. When this has been received by the Bureau of Sport Fisheries and Wildlife, it will be determined whether they can support the City's interest before Congress. If this cannot be done, we will be so advised and this office will set the matter for formal hearing. I attempted to point out that the only matters which can be considered by this office are contained in Section 42-203, Idaho Code. Testimony would therefore be related to the questions of:

1. Is the water supply sufficient for the purpose for which the Application was filed?
2. Would the proposed diversion decrease the quantity of water available under established rights?
3. Was the Application filed for delay or speculation purposes?
4. Does the applicant have the financial resources with which to complete the project?

98-7006

8/6/69

Other matters related to the past actions of federal agencies within the watershed or to the feelings of the City with regard to its future would not appear to be pertinent to the issue.

I will appreciate being kept advised of any further developments concerning this matter.

Very truly yours,

R. KEITH HIGGINSON
State Reclamation Engineer

RKH/jib

cc: City of Bonners Ferry
c/o Peter B. Wilson, City Attorney

C
O
P
Y

98-7006

RECEIVED

AUG 2 1969

File
Appl: 98-7006

Bonnars Ferry

Department of Reclamation

August 4, 1969

Mr. John D. Findlay, Regional Director
Bureau of Sport Fisheries and Wildlife
U. S. Department of Interior
P. O. Box 3737
Portland, Oregon 97208

Re: Myrtle Creek

Dear Mr. Findlay:

Pursuant to the conference held in Coeur d'Alene, Idaho, whereat I, as City Attorney, represented the City of Bonners Ferry, a representative from your Portland office and your representative from your Boundary County refuge appeared on behalf of the U. S. Sport Fisheries and Wildlife Bureau; and the Director and one representative of the Department of Reclamation of the State of Idaho appeared on behalf of the State of Idaho, this letter is drafted. The culmination of the meeting was for us to again state the desires of the City of Bonners Ferry in order to determine what, if any, assistance your agency would give to implement those desires.

First, we again state that the primary wish is for you to abandon all efforts to claim water from Myrtle Creek, and instead to pump from the Kootenai River. We feel this is feasible and reasonable. All other agencies and departments of government have always shown deep consideration for the City of Bonners Ferry's interest and concern about Myrtle Creek and the Myrtle Creek drainage (except for one prior experience with a federal agency, which experience even emphasizes the concern we all should now show). To help you understand this care and concern given by some of these other agencies, we are enclosing a copy of Idaho Code 36-4301 et seq. This shows how the governmental units have cooperated to protect this water system. Obviously this was done to protect the water of the stream for consumption use.

98-7006

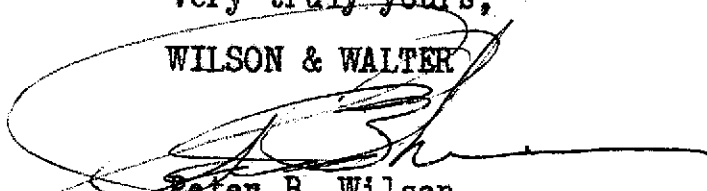
Page 2
Mr. John D. Findlay
August 4, 1969

Department of Reclamation

If, after further review, your agency finds itself unable to defer to the foregoing wishes, then we request that before having further water permit hearings that you join with us (as your agency has promised to do) and go with us to our Congressman to seek congressional enactment that will direct that your agency will release to the City of Bonners Ferry so much as necessary of any water right it obtains when such necessity arises from growth and/or increased use by the City of Bonners Ferry.

Very truly yours,

WILSON & WALTER


Peter B. Wilson

PBW/bas

cc: City of Bonners Ferry
Department of Reclamation, State of Idaho
Hon. James McClure ✓

92-7006

CHAPTER 43

MYRTLE CREEK PRESERVE

SECTION.	SECTION.
36-4301. Boundaries.	36-4304. Predatory animals.
36-4302. Fish, game birds and game animals protected.	36-4305. Penalties—Disposition of fines.
36-4303. Possession of fish, protected birds or animals unlawful.	36-4306. Permanent nature of preserve.

36-4301. Boundaries.—There is hereby created within the boundaries of Boundary county, within the state of Idaho, a game preserve, to be known as Myrtle Creek Preserve, the boundaries of which are as follows:

Beginning at the southwest corner of section twenty-three (23) township sixty-two (62) north, range one (1) west of the Boise meridian; thence north along the west line of section twenty-three (23) to the summit of the ridge between Myrtle creek and Cascade creek, thence northwesterly along this ridge to Burton peak, then westerly along the summit of the ridge between Myrtle creek and Ball creek to Myrtle peak, then southerly around the head of Myrtle creek following the summit of the ridge between Myrtle creek and Two Mouth creek, to Harrison peak, then following the summit of the ridge between Myrtle creek and Snow creek in an easterly direction to a point approximately one mile east of Kootenai Point where this ridge intersects the east line of section twenty-eight (28), township sixty-two (62) north, range one (1) west of the Boise meridian; thence in a northeasterly direction to the point of beginning. [1937, ch. 126, § 1, p. 191; am. 1941, ch. 35, § 1, p. 82.]

36-4302. Fish, game birds and game animals protected.—It shall be unlawful for any person or persons at any time to fish, or to hunt, trap, kill, capture or chase any game birds or game animal or animals, of whatsoever kind or description, within the boundaries of the aforesaid mentioned Myrtle Creek game preserve. [1937, ch. 126, § 2, p. 191.]

Cross ref. Game animals enumerated, § 36-301.	Protection of fish generally, § 36-901 et seq.
Game birds enumerated, § 36-302.	Protection of game animals generally, § 36-1401 et seq.
Game fish enumerated, § 36-303; non-game fish, § 36-304.	Special hunts to thin out animals, § 36-2703.
Protection of birds generally, § 36-1301 et seq.	

36-4303. Possession of fish, protected birds or animals unlawful.—It shall be unlawful for any person or persons to have in his or their possession at any time, upon the aforesaid Myrtle Creek game preserve, any fish, or any of the birds or animals, dead or alive, which are protected by this act, while upon said Myrtle Creek game preserve. [1937, ch. 126, § 3, p. 191.]

Cross ref. Permits to sell or ship big game, birds or fish generally, § 36-601 et seq.	Restrictions on shipment, possession and use of big game generally, § 36-801 et seq.
Permits to ship and sell fish generally, § 36-501 et seq.	

36-4304. Predatory animals.—Mountain lion, lynx, timber, or prairie wolf, coyote, wild cat or other predatory animals may be destroyed or

CHAPTER 43—MYRTLE CREEK PRESERVE

SEC. 43017

36-4302. Fish, game birds and game animals protected.

SECTION.

36-4303. Possession of fish, protected birds or animals unlawful.

36-4302. Fish, game birds and game animals protected.—It shall be unlawful for any person or persons at any time to fish, or to hunt, trap, kill, capture or chase any game birds or game animal or animals, of whatsoever kind of [or] description, within the boundaries of the afore-

FISH AND GAME

24

said mentioned Myrtle Creek game preserve. Provided that the Idaho fish and game commission may, after receiving concurrent written approval from the Idaho department of health and the Bonners Ferry Village board of trustees, open certain waters and lands lying within the Myrtle Creek game preserve to hunting, fishing or trapping during prescribed seasons. Provided further that any fish eradication treatment of waters in the Myrtle Creek game preserve by the Idaho fish and game department shall be undertaken only with the concurrent written permission of the Idaho department of health and Bonners Ferry Village board of trustees and under the direct supervision of the Idaho department of health. [1937, ch. 126, § 2, p. 191; am. 1965, ch. 168, § 1, p. 329.]

Compiler's note. The bracketed word "or" was inserted by the compiler. Sec. to sec. ref. This section is referred to in § 36-4303.

36-4303. Possession of fish, protected birds or animals unlawful.—Except as provided otherwise by section 36-4302, as amended, it shall be unlawful for any person or persons to have in his or their possession at any time, upon the aforesaid Myrtle Creek game preserve, any fish, or any of the birds or animals, dead or alive, which are protected by this act, while upon said Myrtle Creek game preserve. [1937, ch. 126, § 3, p. 191; am. 1965, ch. 168, § 2, p. 329.]

36-4305

FISH AND GAME

128

exterminated within said Myrtle Creek game preserve by game wardens or persons authorized by such game wardens to destroy such predatory animals. [1937, ch. 126, § 4, p. 191.]

Cross ref. Conservation officers, § 36-106.

Fish and game commission may exercise control measures over undesirable species, § 36-104, subd. (b), par. 8.

State fish and game warden supervised by director of the department of fish and game, §§ 36-105, 36-110.

36-4305. Penalties—Disposition of fines.—Any person or persons violating the provisions of this chapter shall be deemed guilty of a misdemeanor and shall, upon conviction thereof, be fined not less than \$25.00 nor more than \$300, or imprisoned in the county jail for a period of not less than thirty days or more than one year, or both such fine and imprisonment in the discretion of the court; all such fines to be turned into the fish and game fund of the state of Idaho. [1937, ch. 126, § 5, p. 191.]

Cross ref. General penal provision applicable to various preserves, § 36-2704.

State fish and game fund, §§ 36-109, 36-123.

36-4306. Permanent nature of preserve.—The preserve herein created is for a permanent game preserve. [1937, ch. 126, § 6, p. 191.]

98-7006

CORR D'ARNE - July 29, 1969

BOB McVEIN
EUGENE BRUNY
PETER WILSON
STEVE ALLRED
R. L. HIGGINS

CITY WANTS GUARANTEED THAT IT MAY USE ADDITIONAL
WATER IF NEEDED.

HAS RIGHT TO 5 (?) CFS WHICH IS DIVERTED
ABOUT FEW SEVERAL MILES.

962 ACRES

98-7006

July 17, 1969

Re: Application No. 98-7006

Mr. John D. Findlay, Regional Director
Bureau of Sport Fisheries and Wildlife
U. S. Department of the Interior
730 N. E. Pacific Street
P. O. Box 3737
Portland, Oregon 97208

Dear Mr. Findlay:

Reference is made to the Application of the Bureau of Sport Fisheries and Wildlife for a Permit to appropriate 10 second feet of water from Myrtle Creek in Boundary County, Idaho, and the protest filed by the City of Bonners Ferry.

This matter has remained unresolved for more than a year due to some apparent misunderstandings concerning the intent of the applicant and the objection of the protestant. I would very much like to see this resolved.

Since I plan to be in Coeur d'Alene during the week of July 28 through August 1, 1969, I am wondering if there would be an opportunity to meet and discuss this matter informally in a conference during the late afternoon or evening about the middle of that week. If the parties feel that this would assist in resolving the matter, I will appreciate hearing from you.

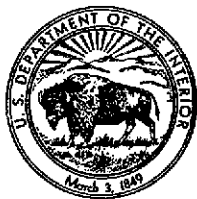
Very truly yours,

R. KEITH HIGGINSON
State Reclamation Engineer

RKH/jib

cc: Peter B. Wilson, City Attorney
Bonners Ferry, Idaho

98-7006



1E

UNITED STATES
DEPARTMENT OF THE INTERIOR
FISH AND WILDLIFE SERVICE
BUREAU OF SPORT FISHERIES AND WILDLIFE

730 N. E. PACIFIC STREET
P. O. BOX 3737
PORTLAND, OREGON 97208

RECEIVED

JUN 4 1969

Department of Reclamation

May 28, 1969

In Re: Application
No. 98-7006
Myrtle Creek,
Kootenai NWR

Mr. R. Keith Higginson
State Reclamation Engineer
Department of Reclamation
107 State House
Boise, Idaho 83701

Dear Mr. Higginson:

Enclosed for your files is a copy of our reply to the Bonners Ferry City Attorneys' letter of May 12 1969. Mr. Wilson indicated that a copy of this letter was transmitted to your office.

Since we have not heard from you since your letter of April 18, 1969, we assume no decision has been made on your part as to whether or not a formal hearing will be necessary on the matter of the City of Bonners Ferry protest to our application for water from Myrtle Creek.

We sincerely hope that this matter can be settled in the near future and that our application for water will be approved.

A copy of Mr. Wilson's letter and our reply have been forwarded to the Honorable James A. McClure for his information.

Sincerely yours,


JOHN D. FINDLAY
Regional Director

Enc.

98-7006

June 3, 1969

City of Bonners Ferry
Bonners Ferry, Idaho 83805

Refer to: Application No. 98-7006
City of Bonners Ferry
Myrtle Creek
Federal Fish and Wildlife

Dear Sirs:

In your letter to us dated May 12, 1969 sent by your City Attorney, Peter B. Wilson, you prevail upon us to change our point of diversion from Myrtle Creek to the Kootenai River because you fear we will pollute a stream that is now being used for human consumption. In response to this, we make the following comments:

1. Diversion of water from a stream does not necessarily pollute the water.
2. All the streambed between our point of diversion and the confluence of Myrtle Creek with the Kootenai River falls on refuge lands; therefore, no diversions of water for human consumption can be made without our consent.
3. The reservoir which supplies water to the City of Bonners Ferry lies upstream approximately one mile from our point of diversion and approximately $2\frac{1}{2}$ miles upstream from our point of return, and is approximately 30 feet higher in elevation. With this in mind, we do not feel it is possible that our use of the water will pollute your water supply.

In conclusion, we must state that our Bureau, as a conservation agency, is very concerned with the continuing problem of water pollution as it has a very detrimental effect on fish life in streams and on the wild-life that abounds in the watersheds that are dependent on unpolluted water for their existence.

Sincerely yours,

ORIGINAL SIGNED BY
JOHN D. FINDLAY

Regional Director

IDAHO STATE RECLAMATION ENGINEER

98-7006

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FIRST

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United States Department of the Interior
Fish and Wildlife Service
Bureau of Sport Fisheries and Wildlife
P.O. Box 3737
Portland, Oregon 97208

Attn: Mr. John D. Findlay
Regional Director

May 12, 1969

RECEIVED

MAY 18 1969

Department of Reclamation

In Re: Application No. 98-7006
Our File: City of Bonners Ferry -
Myrtle Creek -
Federal Fish and Wildlife

Dear Mr. Findlay:

This will acknowledge receipt of your letter of April 29, 1969, together with a copy of your April 29th letter to Mr. Higginson, and to advise that I have received a letter from Congressman McClure in which he provided me with a copy of your letter to him.

As I mentioned to Congressman McClure, I assumed that everyone would accept your explanation that there must be "a misunderstanding" as to the fear that you people were bringing in the reservation doctrine. However, I am certain you can understand that there must have been some real concern since both Mr. Higginson and Congressman McClure at separate times and from separate exchanges somehow got this idea from your people. Nevertheless you do leave us in the unique position of applying your statement in paragraph two page one of your letter to Mr. Higginson and the first full paragraph on the last page of your letter to me of December 13 (of which Mr. Higginson and Congressman McClure have copies) to the general legal principal that the United States Government cannot be bound by any statement of any United States Government Employee.

Be that as it may we have been in contact with our Congressman under your statement in your letter to me of December 13, which reads "... the city probably also should obtain a congressional recognition of the right (use of unused water) and an assurance of water shed protection". (The portion between parenthesis is an insertion.) We assume that your agency is more than willing to cooperate and assist in this, and hopefully further state action can be forestalled while this is proceeding.

98-7006

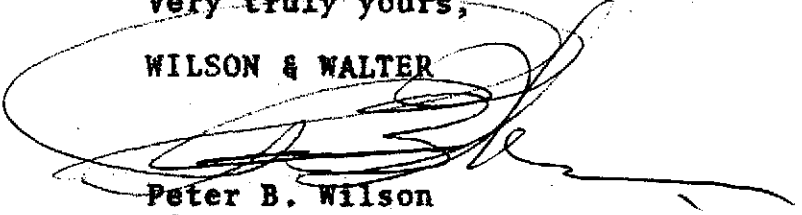
United States Department of the Interior
Page 2
May 12, 1969

As you will recall, initially we were taking approaches along this line since the State Reclamation Department was not certain of its right and authority to talk about water priorities in a permit.

It is certainly true that it has always been our desire that you could be prevailed upon to change your point of use from Myrtle Creek to the Kootenai River since Myrtle Creek is a good stream healthwise for human consumption, and there is becoming a dearth of such streams in the United States today. However, a perusal of our correspondence will also remind you that if consideration of the residents of this area could not be given to this extent that we Nevertheless were interested in working with you along the lines above quoted from your December 13 letter. We hope that you can at least continue to work with us along this latter line since we find it extremely disappointing that a federal agency in this day and age seems rather unconcerned with public health via restricting use of unpolluted waters.

Very truly yours,

WILSON & WALTER


Peter B. Wilson
City of Bonners Ferry Attorney

PBW/rb

cc: Mr. Keith Higginson
State Reclamation Engineer
Department of Reclamation
107 State House
Boise, Idaho 83701

City of Bonners Ferry
Bonners Ferry, Idaho

98-7006



UNITED STATES
DEPARTMENT OF THE INTERIOR
FISH AND WILDLIFE SERVICE
BUREAU OF SPORT FISHERIES AND WILDLIFE

730 N. E. PACIFIC STREET
P. O. BOX 3737
PORTLAND, OREGON 97208

RECEIVED
MAY 5 1969
Department of Reclamation
PICK

April 29, 1969

R. Keith Higginson
State Reclamation Engineer
Department of Reclamation
107 State House
Boise, Idaho 83701

In reply refer to: Application
No. 98-7006
Myrtle Cr., Kootenai
National Wildlife Refuge

Dear Mr. Higginson:

This is in reply to your letter of April 18, 1969 and to recent telephone conversation between yourself and Mr. McVein of the Division of Engineering, our Bureau, regarding the use of the "federal reservation" concept for appropriation of water by our Bureau.

We regret that an apparent misunderstanding has taken place concerning our use of this doctrine. If we had intended to use the reservation doctrine, we would not have filed an application to appropriate water in accordance with State law with your office. With this letter, we disclaim use of the federal reservation doctrine to appropriate waters of Myrtle Creek.

The following letter was sent to Congressman McClure in which we also deny the use of the federal reservation doctrine.

" This is in further reply to your communication of March 7, 1969, relating to objections by the City of Bonners Ferry, Idaho to an application for the right to use water from Myrtle Creek for the Kootenai National Wildlife Refuge.

Extensive negotiations have taken place between members of our Regional Office staff in Portland, Oregon and officials of the City of Bonners Ferry in an effort to come to a satisfactory solution regarding the use of the water of Myrtle Creek.

The Regional Office applied to the Idaho State Department of Reclamation for permission to use the surplus water of Myrtle Creek on the refuge in accordance with Idaho State Law. At no time during the negotiations either by oral or written correspondence did our Bureau lay claim to all the waters of Myrtle Creek through the use of the Federal reservation doctrine. We regret that an apparent misunderstanding has taken place

92-7006

concerning our use of this doctrine. The filing of an application to appropriate water in accordance with State law certainly is proof enough that this Bureau had no intention of claiming water under the principles of the Federal reservation doctrine.

During negotiations our Regional Office staff made several suggestions as to how the City of Bonners Ferry might itself take steps to reserving water for future supplies. The enclosed copy of a letter dated December 13, 1968, from the Regional Director of our Portland office to the City Attorney of Bonners Ferry outlines the position taken by our Bureau regarding our use of the water and includes the suggestions mentioned previously.

We have been optimistic that a reasonable solution could be reached. We recognize the City of Bonners Ferry's prior right to 5.0 cubic feet per second from Myrtle Creek for municipal use. At no time has the Kootenai National Wildlife Refuge laid claim to all of the waters of Myrtle Creek. The refuge's proposed point of diversion is downstream from the City's diversion point and it would, therefore, be impossible for us to physically interfere with the City's present or future use. There is no question that the Bureau of Sport Fisheries and Wildlife is as interested in the protection of the watershed of Myrtle Creek as the City could possibly be. We have been urged to provide the supplemental water supply by pumping from the Kootenai River. This is entirely possible; however, water can be provided from Myrtle Creek by gravity to areas of use on the refuge through a simple diversion structure and a system of ditches. Obviously, this would be much less expensive than a pumping plant. Since unappropriated water is physically available in Myrtle Creek, it would be much more feasible and economical at this time to provide water to the refuge from the Creek.

As of the end of January, 1969, our Regional Office was of the opinion that the position of the Bureau had been clearly outlined to the City of Bonners Ferry and that the application for water could be approved by the Department of Reclamation without the requirement of a formal hearing. However, it appears the City of Bonners Ferry will be satisfied only with a complete withdrawal of our application for water. Flow records compiled by the U.S. Geological Survey show there is water available for appropriation over that amount now being used and/or claimed by the City under their present water right. See paragraphs 2 and 4 of the enclosure.

We believe that our Regional Office staff has reasonably tried to negotiate a settlement with City officials. Therefore, it

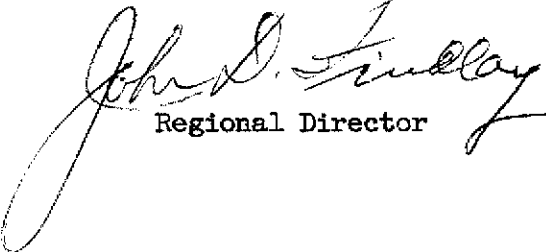
92-7006

would appear the next step will be a formal hearing by the Idaho State Reclamation Engineer. At that time, our application for water will be approved or disapproved according to State law."

We feel that we have tried to deal fairly in our negotiations with the City of Bonners Ferry regarding their protest to our application for water from Myrtle Creek, and although our letter to Congressman McClure indicates that a formal hearing may be necessary, we are hopeful that this letter will clarify the situation and preclude the necessity for a formal hearing.

We sincerely hope that the City of Bonners Ferry will be satisfied with the intent of this letter and will withdraw their protest to our application for water from Myrtle Creek.

Sincerely yours,


Regional Director

92-7006

April 18, 1969

U. S. Bureau of Sport Fisheries and Wildlife
P. O. Box 3737
Portland, Oregon 97208
Attn: Mr. McVein

Dear Mr. McVein:

This is in reply to our recent telephone conversation concerning the application of the Bureau of Sport Fisheries and Wildlife for appropriation of 10 second feet of water from Myrtle Creek. You asked that I identify any communication from your office in which you had implied a claim of right under the "reservation" concept.

I wish to call your attention to the next to last paragraph of Mr. Robert's December 13, 1968, letter from which I quote: "To the extent that it is possible for this agency to do so, the city's requirements will be recognized, but we cannot convey or release any of the rights of the United States. Some interpretation of the water law would establish a claim of unused waters of Myrtle Creek for the refuge. Because of this, the city probably also should have the State Legislature approve such reservation for future use, and also obtain a Congressional recognition of the right and an assurance of watershed protection."

Maybe that doesn't claim any right under the "reservation" concept but it certainly does include the veiled threat of such a claim. For example, the first sentence could be taken to mean that it is possible for you to claim a superior right to the City of Bonners Ferry right of 1926. If you are not claiming under reservation you would have had to have established the refuge before 1926. You recommend or suggest that the city should also have the State Legislature approve a reservation for its future use. My English may be rather poor

98-7006

page 2 of 2

U. S. Bureau of Sport Fisheries
& Wildlife
Attn: Mr. McVein

but that gives me the impression that you claim such a reservation and suggest that the city should also obtain such reservation.

When this is combined with the comments made by Congressman McClure in his letter we definitely have the impression that it is the Bureau's policy to claim rights under the "reservation" principal. If this is not the case a letter from you denouncing such a claim will be appreciated.

Very truly yours,

R. KEITH HIGGINSON
State Reclamation Engineer

RKH:ejw

cc: Peter B. Wilson
City Attorney
Bonners Ferry, Idaho 83805

C
O
P
Y

April 11, 1969

C
O
P
Y

Henry Barclay
Action Regional Director
Bureau of Sport Fisheries & Wildlife
Box 3737
Portland, Oregon 97208

Dear Mr. Barclay:

This office would like very much to complete action concerning the application made by the Bureau of Sport Fisheries and Wildlife to appropriate 10 second feet of water from Myrtle Creek for irrigation and other purposes. We have reviewed copies of correspondence between your office and the City of Bonners Ferry. Some of the comments in this correspondence are rather confusing to us. For example, you infer that you are claiming a reservation right to any and all waters of Myrtle Creek necessary to operation of the wildlife refuge. If this is the case, why did you file the application with this office? It is our understanding of the so-called reservation doctrine that it encompasses water arising upon or crossing reserved public lands. Will you please advise this office of the boundaries of the wildlife reservation and the date such lands were reserved from the public domain? If in fact the lands were not reserved from the public domain but were acquired by purchase or grant from other previous owners the reservation doctrine could not be argued.

Your information concerning this matter at an early date will be appreciated. In any event we will appreciate being advised by return mail whether the parties have reached a satisfactory settlement of the protest and whether you wish us to proceed with the necessary hearing so that the application may be acted upon by this office. If we haven't heard from you within 30 days we will set the matter for formal hearing.

Very truly yours,

R. KEITH HIGGINSON
State Reclamation Engineer

RKH:mr

cc. Peter B. Wilson
City Attorney, Bonners Ferry

98-7006

WILSON & WALTER
ATTORNEYS AT LAW
P. O. BOX 749
BONNERS FERRY, IDAHO — 83805

RECEIVED

MAR 19 1969

205 W. KOOTENAI
PHONE AN 7-3127
AN 7-3128

Department of Reclamation

March 14, 1969

State of Idaho
Department of Reclamation
Statehouse
Boise, Idaho 83707

Attn: Mr. C. Stephen Allred
Assistant State Reclamation Engineer

Re: Permit No. 98-7006
Myrtle Creek

Dear Sir:

I am enclosing herewith a copy of a letter we have received dated March 7, 1969, from our Congressman, the Honorable James A. McClure. You will note from the letter that the Bureau of Sport Fisheries and Wildlife is of the opinion that the State of Idaho has no jurisdiction whatsoever and that the water rights on Myrtle Creek are held by the Bureau of Sport Fisheries and Wildlife.

In view of this, we must again renew and continue our objection to the granting of the permit. Since the Bureau of Sport Fisheries and Wildlife maintains the State of Idaho has no jurisdiction over it (which it must have in order to come to the conclusion it sent to the good congressman), then, from the viewpoint of the Bureau of Sport Fisheries and Wildlife, it is a redundant and unnecessary act for them to apply to the State of Idaho for the permit. This being the case, then it would seem that the State of Idaho should not waste its time in the issuance of a permit which the recipient thereof feels is unnecessary.

We especially say this since it is obvious that the Bureau of Sport fisheries and Wildlife does not intend to honor the rights in Myrtle Creek as established under Idaho law.

We, therefore, respectfully move that the request for a permit

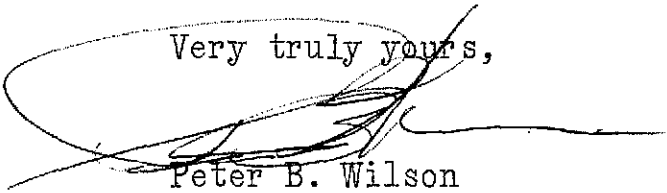
98-7006

Page 2
March 14, 1969
Department of Reclamation

by the Bureau of Sport Fisheries and Wildlife be summarily rejected, or in lieu thereof, that we be given a formal hearing in Bonners Ferry so that water rights can be completely established as to Myrtle Creek.

I am shocked to learn of the official Washington, D.C. position since you have in your file a letter from the Regional Director disclaiming interest to the water under such a doctrine. We have here a situation in which a federal agency is showing a complete lack of good faith.

Very truly yours,


Peter B. Wilson
City Attorney

PBW/bas
Enc.

cc: Hon. James A. McClure
U.S. Representative - Idaho
House Office Bldg.
Washington, D.C. 20515

City Council
Bonners Ferry, Idaho

U. S. Department of Interior
Bureau of Sport Fisheries and Wildlife
P. O. Box 3737
Portland, Oregon
Attn: Henry Baetkey
Acting Regional Director

Marion Davidson
State Representative
Statehouse
Boise, Idaho

Bonners Ferry Chamber of Commerce
Bonners Ferry, Idaho
Attn: Max Hill, President

98-7006

K.L. to file

WILSON & WALTER
ATTORNEYS AT LAW
P. O. BOX 749
BONNERS FERRY, IDAHO — 83805

RECEIVED

FEB 10 1969

Department of Reclamation

205 W. KOOTENAI
PHONE AN 7-3127
AN 7-3128

February 6, 1969

State Reclamation Engineer
State of Idaho
Department of Reclamation
Statehouse
Boise, Idaho 83707

Attn: Mr. C. Stephen Allred
Assistant State Reclamation Engineer

Re: Permit No. 98-7006
Myrtle Creek

Dear Mr. Allred:

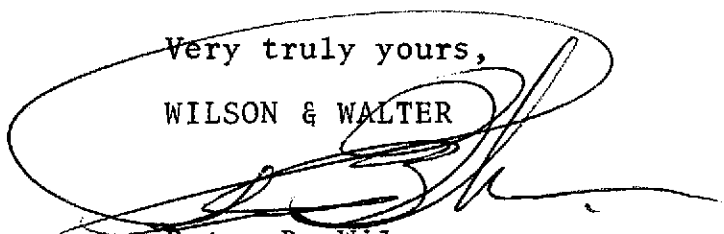
The City of Bonners Ferry discussed this matter at more length at its regular meeting held on February 4, 1969. At this time they request that further hearings and final decision be withheld pending action at the present by the State Legislature on two bills. Both of these bills have originated in the house and deal directly with the nature of water rights that are under question in the present matter.)?

The City of Bonners Ferry feels that it will clarify the positions of both the City of Bonners Ferry and the Bureau of Sport Fisheries and wildlife if we can determine what the State Legislature finally intends to do.

Thank you.

Very truly yours,

WILSON & WALTER


Peter B. Wilson
City Attorney

PBW/rb

cc: U.S. Department of the Interior
Bureau of Sport Fisheries and Wildlife
P.O. Box 3737
Portland, Oregon 97208
Attn: Mr. Henry Baetkey, Acting Regional Director
City Council, City of Bonners Ferry, Idaho

98-7006

JAMES A. McCLURE
1ST DISTRICT, IDAHO

Congress of the United States
House of Representatives
Washington, D.C. 20515

March 7, 1969

Mr. Peter B. Wilson
Attorney -- City of Bonners Ferry
P. O. Box 749
Bonners Ferry, Idaho 83805

Dear Pete:

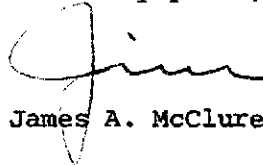
I have discussed the problem concerning the water usage at Myrtle Creek with the Bureau of Sport Fisheries and Wildlife. The Bureau is of the opinion that the water rights on Myrtle Creek are held by that agency, and that the Bureau is allowing the City of Bonners Ferry to use the water. I was told that there is no immediate danger of a water shortage, but that such a shortage could possibly occur in the future.

I have asked to have this opinion in writing, and I will forward that report to you upon receipt.

In the meantime, I would appreciate having your comments pertaining to the authority under which the City of Bonners Ferry is entitled to use of the water. It seems possible to me that a conflict has developed under the relatively new Federal policy that the government holds the rights to water originating on Federal lands -- a policy with which I have often strongly disagreed.

I will be anxious to hear from you further on this matter.

Sincerely yours,



James A. McClure, M. C.

McC:sh

98-7006

February 5, 1969

Re: Permit Application No. 98-7006
Myrtle Creek
Kootenai NWR, Idaho

U. S. Department of the Interior
Fish and Wildlife Service
P.O. Box 3737
Portland, Oregon 97208

Dear Sirs:

Thank you for your letter of January 30, 1969. This letter is to inform you that this office will withhold further action on this permit for 30 days, in order that you may complete your negotiations with the city.

If we can be of further assistance, please feel free to call on us.

Very truly yours,

C. Stephen Allred, Assistant
State Reclamation Engineer

CSA:kh

cc. City of Bonners Ferry
A. J. Baylon, Mayor
Bonners Ferry, Idaho 83805

98-7006



UNITED STATES
DEPARTMENT OF THE INTERIOR
FISH AND WILDLIFE SERVICE
BUREAU OF SPORT FISHERIES AND WILDLIFE

RECEIVED

JAN 31 1969

Department of Reclamation

ADDRESS ONLY THE
REGIONAL DIRECTOR

LE

CERTIFIED MAIL

RETURN RECEIPT REQUESTED

730 N. E. PACIFIC STREET
P. O. BOX 3737
PORTLAND, OREGON 97208

January 30, 1969

In reply refer to:
Permit No. 98-7006
Myrtle Creek
Kootenai NWR, Idaho

State Reclamation Engineer
State of Idaho
Department of Reclamation
Statehouse - Annex 2
Boise, Idaho 83707

ATTN: Mr. C. Stephen Allred
Assistant State Reclamation Engineer

Dear Sir:

In answer to your letter of December 18, 1968, we have the following comments to make.

First, we feel there is no need for further negotiations, since our letter to Mr. Peter Wilson, City Attorney for Bonners Ferry, of December 13, 1968, clearly outlines the position of our Bureau in the matter of priorities of water rights with the City of Bonners Ferry.

Secondly, I can find no reference in our letter of December 13, 1968, which would infer that we are claiming water rights under the reservation doctrine. The only reservation policy mentioned in the letter was in the next to last paragraph and was in reference to a move the city might make in reserving future water supplies.

We again stress that our applications be accepted by the Department of Reclamation and sincerely hope that it can be accepted without benefit of a formal hearing.

Sincerely yours,


Acting Regional Director

98-7006

UNITED STATES
DEPARTMENT OF THE INTERIOR
FISH AND WILDLIFE SERVICE
BUREAU OF SPORT FISHERIES & WILDLIFE
730 N. E. PACIFIC STREET
P. O. BOX 3737
PORTLAND, OREGON 97208

OFFICIAL BUSINESS

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Attn: Mr. C. Stephen Allred
Assistant State Reclamation Engineer

21

AIR MAIL
PAR AVION

POSTAGE AND FEES PAID
U. S. DEPARTMENT OF THE INTERIOR

State Reclamation Engineer
State of Idaho
Department of Reclamation
Statehouse - Annex 2
Boise, Idaho 83707

98-7004

CERTIFIED
No. 570840
MAIL

RECEIVED

JAN 22 1969

Department of Reclamation

January 15, 1969

United States Department of Interior
Bureau of Sport Fisheries and Wildlife
P.O. Box 3737
Portland, Oregon 97208

Attn: Mr. Francis S. Roberts
Acting Regional Director

Re: Your file: Application #98-7006
Myrtle Creek

Dear Mr. Roberts:

Please excuse the delay in replying to yours of December 13, 1968. Now that year-end activities have subsided, I hope to be able to have a reply for you in the very near future. In the meantime, would you provide us with a copy of the information requested by Mr. Allred in his letter of December 18, 1968? Thank you.

Very truly yours,

Wilson & Walter

Peter B. Wilson
City Attorney

PBW/rb

cc: Mr. C. Stephen Allred
Department of Reclamation
Statehouse
Boise, Idaho

98-7006

WILSON & WALTER
ATTORNEYS AT LAW
P. O. BOX 749
BONNERS FERRY, IDAHO — 83805

RECEIVED

FEB 3 1969

Department of Reclamation

205 W. KOOTENAI
PHONE AN 7-3127
AN 7-3128

January 30, 1969

Bureau of Reclamation
State of Idaho
Statehouse
Boise, Idaho

Re: City of Bonners Ferry -
U.S. Fish and Wildlife

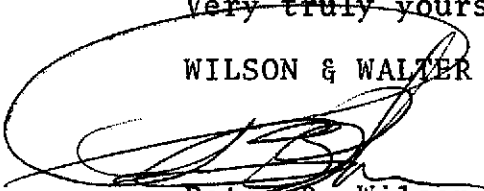
Gentlemen:

In order to update your file this is to advise that the City of Bonners Ferry will be meeting on Tuesday, February 4, 1969, to make its final determination relative to the correspondence between the City and the Bureau of Reclamation. At that time they will also discuss the letter from the Bureau of Fish and Wildlife to you that is dated this date. Shortly thereafter we hope to be able to advise you if the City desires further hearings or if it appears that a satisfactory compromise has been reached.

We appreciate your continued consideration of this problem.

Very truly yours,

WILSON & WALTER


Peter B. Wilson
City Attorney

PBW/rb

cc: City of Bonners Ferry
Mayor A. J. Baylon
Councilmen:
Robert M. Pace
Russell Docherty
Dayton Douglas
Mike Foust

Bureau of Fish & Wildlife
Portland, Oregon

98-7006

December 18, 1968

Re: Permit No. 98-7006

C
O
P
Y

U. S. Department of the Interior
Fish and Wildlife Service
P. O. Box 3737
Portland, Oregon 97208

Attn: Mr. Travis S. Roberts, Acting Regional Director

Dear Mr. Roberts:

This office is in receipt of a copy of your letter to Mr. Peter B. Wilson, attorney for the City of Bonners Ferry, regarding negotiations on water permit 98-7006. From your letter it still appears that negotiations are continuing, and because of such this office will not schedule a hearing on the matter prior to February 1, 1969. However, by February 1st I would appreciate a letter from you advising me as to the progress made in your negotiations, and as to whether additional time is needed.

In your letter you indicated that the wildlife refuge may be claiming some type of a right under the reservation doctrine. I would appreciate being advised as to the date that the wildlife refuge was reserved by the federal government, and as to what quantity of water you might claim under this right.

If this office can be of any assistance in reaching a settlement, please call upon us. I feel that in cases where there is controversy over a permit the best possible settlement is a negotiated agreement between the two parties; however, you should be aware that in any event you still have the right of a formal hearing and decision from this office.

Very truly yours,

C. Stephen Allred, Assistant
State Reclamation Engineer

CSA:kh

cc. Mr. Peter B. Wilson, City Attorney
207 W. Kootenai
Bonners Ferry, Idaho 83805

98-7006

✓
RCA
RECEIVED

DEC 13 1968

Department of Fish and Game

Mr. Peter B. Wilson
City Attorney
207 W. Kootenai
Bonners Ferry, Idaho 83805

December 13, 1968

Re: Application No. 98-7006, Myrtle Creek
Kootenai NWR

Dear Mr. Wilson:

In accordance with the informal agreement between officials of the City of Bonners Ferry and members of my staff, on July 25, 1968, further study has been given to the water requirements for the Kootenai National Wildlife Refuge and the present and future water requirements of the City of Bonners Ferry from Myrtle Creek. From this review, it does not appear that any serious conflict in the demands for water from Myrtle Creek exist now or will exist in the foreseeable future.

The City has a filing for 5.0 cfs from Myrtle Creek with a priority of May 21, 1926. The watershed has been withdrawn for protection of this water right. It is my understanding that at the present time the 3.3 cfs diversion by the City is required only at intervals and that when the city reservoirs are full, the flow is stopped. Only during exceptionally heavy demand periods would this full flow be constant.

The refuge requirements are primarily for irrigation purposes. The probable maximum use would be 5 cfs for a total of 6 weeks from June 1 to Sept. 15, each year. A flow of 2 cfs probably would be adequate for the remainder of the year.

The available flow records of the U.S. Geological Survey for a 7 year term show an average minimum flow of not less than 8.0 cfs during June through September. There should be adequate water for both requirements if properly utilized. If the City system draws only the water required for use, then the surplus should be adequate for the refuge needs.

The Idaho Constitution, Art. 15, Section 3, gives a priority of right to domestic use in case of shortages. We believe this includes a municipal diversion for domestic use, and would allow the City of Bonners Ferry to take water to the full extent of its appropriations if needed even if not of the highest priority.

We would suggest that the City of Bonners Ferry increase the amount of water to cover all reasonable anticipated future requirements, with the

98-7006

express understanding that only such amounts as are required for use in the City will be drawn. This would leave the remainder of the flow, varying from time to time, for use of the refuge.

To the extent that it is possible for this agency to do so, the City's requirements will be recognized, but we cannot convey or release any of the rights of the United States. Some interpretation of the water law would establish a claim to unused waters of Myrtle Creek for the refuge. Because of this, the city probably also should have the State Legislature approve such reservation for future use, and also obtain a Congressional recognition of the right and an assurance of watershed protection.

Should the City find it desirable to file for additional water, as suggested above, and agree to release water to the refuge surplus to your needs, our applications could be considered together by the Department of Reclamation.

Sincerely yours,

Original signed by
Travis S. Roberts

Acting Regional Director

cc:

Hon. A.J. Baylon
Mayor, Bonners Ferry
P.O. Box 688
Bonners Ferry, Idaho 83805

Department of Reclamation
State of Idaho
Statehouse, Annex 2
Boise, Idaho 87707

98-7006

UNITED STATES
DEPARTMENT OF THE INTERIOR
FISH AND WILDLIFE SERVICE
BUREAU OF SPORT FISHERIES & WILDLIFE
730 N. E. PACIFIC STREET
P. O. BOX 3737
PORTLAND, OREGON 97208

OFFICIAL BUSINESS

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U. S. DEPARTMENT OF THE INTERIOR

Department of Reclamation
State of Idaho
Statehouse Annex 2
Boise, Idaho 87707

98-7006



UNITED STATES
DEPARTMENT OF THE INTERIOR
FISH AND WILDLIFE SERVICE
BUREAU OF SPORT FISHERIES AND WILDLIFE

ADDRESS ONLY THE
REGIONAL DIRECTOR
1E

730 N. E. PACIFIC STREET
P. O. BOX 3737
PORTLAND, OREGON 97208

July 29, 1968

RECEIVED

In reply refer to:
Application No. 98-7006

Mr. R. Keith Higginson
State Reclamation Engineer
Department of Reclamation
107 Statehouse
Boise, Idaho 83701
Department of Reclamation

AUG 1 1968

Attention: Mr. Jack Barnett

Dear Sir:

Reference is made to the above numbered application filed by the Bureau of Sport Fisheries and Wildlife for 10 cubic feet of water per second from Myrtle Creek to be used on the Kootenai National Wildlife Refuge in Boundary County, Idaho. This application, protested by the City of Bonners Ferry, Idaho, is being held in abeyance by your office until August 9, 1968, pending negotiations by the parties to resolve certain differences.

Staff members from this office met with city officials in Bonners Ferry on July 25, 1968, and questions raised during discussions revealed that further studies are desirable in order to reach an understanding acceptable to all parties.

We, therefore, request that action on this application be delayed another 30 days or until after November 9, 1968.

Sincerely yours,

John D. Findlay
JOHN D. FINDLAY
Regional Director

98-7006

M E M O

From: Jack Barnett

Re: United States Fish and Wildlife Service - Application No. 98-7006

Date: July 30, 1968

On Monday, July 29, 1968, Mr. Bill Garner of the Fish and Wildlife Service called and requested that additional time be allowed before action is taken on Application No. 98-7006. He indicated that letters concerning this request would be received from both the City of Bonners Ferry and the Federal Government interests.

98-7006

WILSON & WALTER
ATTORNEYS AT LAW
P. O. BOX 749
BONNERS FERRY, IDAHO — 83805

RECEIVED

JUL 30 1968

205 W. KOOTENAI
PHONE AN 7-3127
AN 7-3128

Department of Reclamation, July 26, 1968

Department of Reclamation
State of Idaho
Statehouse
Boise, Idaho

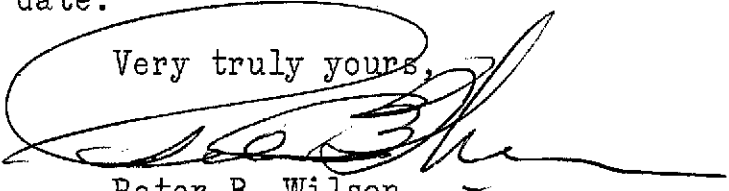
Re: Filings on Myrtle Creek

Gentlemen:

This is to advise that the City of Bonners Ferry and the United States government, through the Bureau of Sports Fisheries and Wildlife are continuing negotiations toward settlement of the matter, and jointly request that the hearing date be extended another 120 days so that further negotiations can be had without the pressure of a time limit.

As I recall, the hearing date was scheduled for August 9th or thereabouts, and we request that the hearing be extended 120 days from such date.

Very truly yours,


Peter B. Wilson
City Attorney

PBW/bas

cc: Regional Director
Bureau of Sport Fisheries and Wildlife
730 N. E. Pacific Street
P. O. Box 3737
Portland, Oregon 97208

98-7006

MEMORANDUM

FROM: JACK

TO: STEVE

RE: FISH AND WILDLIFE APPLICATIONS

All the applications except 98-7006 should be approved from what we were able to determine in the field and in the hearing. I can see no reason for delaying action on the other applications.

98-7006 should be held until August 9, 1968. The application should be brought up on that date and, barring any unforeseen developments, I feel we can approve it, recognizing prior rights to the water, but without designating what the extent of those prior rights might be.

98-7006

MEMORANDUM

SUBJECT: HEARING NOTES

RE: PERMIT NOS. 98-7003, 987006

A hearing was held on the above numbered applications at the County Court House of Boundary County in Bonners Ferry on April 29, 1968. In attendance were:

Willie L. Garner, Hydraulic Engineer, BSF&W, Portland, Ore
Eugene C. Barney, Refuge Mgr., Kootenai Nat'l Wildlife Refuge
A.J. Baylor, Mayor, City of Bonners Ferry, Idaho
Peter B. Wilson, City Attorney, City of Bonners Ferry
Roy A. Jones, Supt. of Public Works, City of Bonners Ferry
Harold M. Buroker, Resident, Bonners Ferry
Quenton L. Brewer, City Engineer, Bonners Ferry
Jack A. Barnett, Deputy State Reclamation Engineer, Boise
Loy H. Johnson, Well Construction Supervisor, Boise

Mr. Garner, representing the applicant, indicated that the water would be used primarily for irrigation and wild life production including water foul flood areas. These two applications would be used in connection with 98-7004 and a well under 98-7005. There are approximately 962 acres in the refuge of which 200 would be permanently flooded, and 762 acres would be cropped, strip harvested, and then flooded in the fall. The Wild Life Service has every intention of recognizing prior rights. They feel that they are down stream from the city diversions and therefore can only physically get the water the city now allows to by pass.

Peter Wilson, City Attorney, stated that the city bought the rights to the use of this stream in 1921 from A. H. Featherstone. This is recorded in Book 13 of Deeds, Page 106 in the county records. They also hold a rights under License Numbers 16480 and 2365. The rights purchased from Featherstone was one used to both generate power and provide domestic water to the City of Bonners Ferry. Since the date of purchase the city has taken over the system operated by Featherstone, the power plant where most of the water was used and then returned to Myrtle Creek and the distribution system. Since the city's acquisition of the property water has been conveyed several miles through the 12 inch pipeline installed by Firestone. For municipal use the pipe line originally had a capacity of about 2.5 cfs. In recent years the city has an improvement program costing them about \$25,000 a year. A significant

98-7006

portion of this has gone to enlarging the pipe line and now all but 1600 feet of the pipe line is 16 inch raising the capacity of the pipe line to approximately 3.0 cfs. Originally the city had on the pipe line 410 feet of head. With 8,298 feet of 16 inch pipe and 24,935 feet of 12 inch pipe the city contends that although they are only presently using about 3.0 cfs of the 25 cfs they claim a right to, they still have a right to the total flow and that their projected population increase will demand ever enlarging the capacity of the facilities. Therefore they want the federal government to recognize their right to increase their facilities to whatever is necessary in the future with a water right senior to the installation at the wild life refuge. In 1960 the population of Bonners Ferry was 1,921 while in 1950 the population was 1,776. They are presently considering annexing additional residential areas which would significantly increase their population.

Mr. Garner stated that the applicant would be willing to recognize all present use of the water by the city as a senior right to that of the applicant. However, they would object to language that will in effect give the city a senior right for any future development. The applicant feels that the city either never has had, or has since abandoned the right to use any more than has been physically conveyed through the pipe line.

Jack Barnett stated that the department has been advised by the attorney general's office that they cannot consider abandonment of a right once recognized by the department or the courts. The question of abandonment can only be determined by the district court. The department has made a hurried field examination of what is involved and could now consider the application on statements made at this conference, or could schedule a formal hearing if testimony is needed.

Peter Wilson stated that the city does not have a desire to hold a formal hearing and would allow the department to rule on the information presented. The city does not have any objections to the approval of any of the applications for the wild life refuge with the exception of 98-7006. The protests on 98-7003 can be considered withdrawn. The city would appreciate action on 98-7006 being withheld for 90 days allowing the city and the applicant time to get together and see if they can't reach an agreement as to the future use and development of the water of Myrtle Creek as the 2 parties seem to be the only parties with rights on this source.

98-7006

Mr. Garner said that this arrangement of waiving the formal hearing and allowing the two parties to get together is entirely satisfactory with the Bureau of Sport Fisheries and Wild Life.

Jack Barnett said that the department will withhold action on the application for 90 days, until August 9, 1968. If agreements have been reached, or additional statements are to be made, they should be mailed to the department before that date.

98-7006

May 20, 1968

RE: Application Nos. 98-7003, 98-7006

City Council
Bonners Ferry, Idaho 83805

Gentlemen:

Pursuant to the agreement that was made at the hearing scheduled on the above numbered water applications on April 29, 1968 in Bonners Ferry the Department of Reclamation has noted that the protest on No. 98-7003 has been withdrawn and is presently considering the application for further action.

Application No. 98-7006 will be held in abeyance for 90 days allowing opportunity for the two parties to discuss their uses. Following that date we will consider any statements or agreements that might be submitted to the department prior to that date, and the department will then take action on the application. A formal hearing on the application was waived by both parties at the recent meeting.

Very truly yours,

Jack A. Barnett
Deputy State Reclamation Engineer

JAB:mr

98-7006

May 20, 1968

C
Clay E. Crawford
Acting Regional Director
Bureau of Sport Fisheries and Wildlife
Box 3737
Portland, Oregon 97208

Dear Mr. Crawford:

O
Pursuant to the agreement that was made at the hearing scheduled on the above numbered water applications on April 29, 1968 in Bonners Ferry the Department of Reclamation has noted that the protest on No. 98-7003 has been withdrawn and is presently considering the application for further action.

P
Y
Application No. 98-7006 will be held in abeyance for 90 days allowing opportunity for the two parties to discuss their uses. Following that date we will consider any statements or agreements that might be submitted to the department prior to that date, and the department will then take action on the application. A formal hearing on the application was waived by both parties at the recent meeting.

Very truly yours,

Jack A. Barnett
Deputy State Reclamation Engineer

JAB:mr

98-7006

May 20, 1968

C
Clay E. Crawford
Acting Regional Director
Bureau of Sport Fisheries and Wildlife
Box 3737
Portland, Oregon 97208

Dear Mr. Crawford:

O
Pursuant to the agreement that was made at the hearing scheduled on the above numbered water applications on April 29, 1968 in Bonners Ferry the Department of Reclamation has noted that the protest on No. 98-7003 has been withdrawn and is presently considering the application for further action.

P
Y
Application No. 98-7006 will be held in abeyance for 90 days allowing opportunity for the two parties to discuss their uses. Following that date we will consider any statements or agreements that might be submitted to the department prior to that date, and the department will then take action on the application. A formal hearing on the application was waived by both parties at the recent meeting.

Very truly yours,

Jack A. Barnett
Deputy State Reclamation Engineer

JAB:mr

98-7006

98-7006

BEFORE THE STATE RECLAMATION ENGINEER

of the

STATE OF IDAHO

IN THE MATTER OF APPLICATION FOR PERMIT
No. 98-7003 and No. 98-7006 in the name
of U.S. BUREAU OF SPORTS FISHERIES AND WILDLIFE)

) NOTICE OF CONFERENCE
) AND HEARING FOR PROTEST

On December 4, 1967, the United States of America, Bureau of Sports Fisheries and Wildlife filed with the Department of Reclamation, application to appropriate the public waters of the State of Idaho. On February 6, 1968 the Department of Reclamation received a protest filed by the City of Bonners Ferry.

Please be advised that the Department of Reclamation has set the matter of protest for conference and possibly a hearing for May 9, 1968 at 2:00 p.m. in the Boundary County Court House, Bonners Ferry, Idaho.

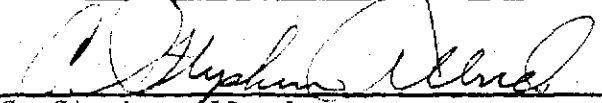
Any hearing will be held in accordance with the rules and regulations of the Idaho Code and Adopted rules of practice and procedure of the Department of Reclamation.

Opportunity shall be afforded all parties to respond and present evidence and argument on all issues involved. The burden of proof is with the protestant.

Any party may request in writing five (5) days before any hearing that the oral proceedings thereof be taken in the form of stenographic notes. Any party may have such stenographic notes of the oral proceedings, or part thereof, transcribed at his own expense. A taped record of the proceedings will be maintained for the appeal period.

Failure to appear at the time and place set for hearing by the applicant or protestant, may allow the Department of Reclamation without prejudice to dismiss the protest or application. Any and all cost incurred by reason of such non-appearance may be assessed against such non-appearing parties.

Dated this 29 th day of April, 1968.


C. Stephen Allred
Assistant State Reclamation Engineer

Mailed this 30 th day of April, 1968 to _____

_____ by Certified Mail No. _____.

98-7006

M E M O

Re: Application No. 98-7003 and 98-7006

The matter of the protest filed by the City of Bonners Ferry in opposition to the approval of Applications 98-7003 and 98-7006 was brought to the attention of the staff of the Department of Reclamation on March 4, 1968 and March 11, 1968. The staff was advised that the matter of the protest required a conference and or hearing be set to hear the protest matter.

Both dates for hearing the issues in a conference or hearing were set aside for a later date when it would be more economical for the department to have someone in the area.


Donald W. McEldowney
Appropriation Examiner

DWM:ks

3-18-68 No Action

3-25-68 No Action

4-1-68 No Action

98-7006

February 12, 1968

Re: Application No. 98-7006 and 98-7003

The United States of America
Bureau of Sports Fisheries & Wildlife
P. O. Box 3737
Portland, Oregon 97208

Attention: Clay E. Crawford, Acting Regional Director

Gentlemen:

Please be advised that the Department of Reclamation is in receipt of a protest filed in connection with the above referenced applications. The protest was filed by the City of Bonners Ferry, Bonners Ferry, Idaho. The department will advise you at a later date as to the time and place of the conference and hearing.

Very truly yours,

Donald W. McElldowney
Appropriation Examiner

DAM:KS

Enclosure: Copy of protest

C
O
P
Y

98-7006

Bonniers Ferry Herald • Printers and Publishers

COMPLETE NEWSPAPER COVERAGE OF BOUNDARY COUNTY

IN SCENIC NORTHERN IDAHO • IN THE FERTILE KOOTENAI RIVER VALLEY

BONNERS FERRY, IDAHO

Jan, 19, 1968

RECEIVED

JAN 22 1968

Department of Reclamation

State of Idaho
Dept. of Reclamation
107 State House
Boise, Idaho 83701

Dear Sirs:

Herewith please find galley proof of the four applications for water by the bureau of Sport Fisheries and Wildlife as per your request.

Yours very truly,

W. A. Chubb
W. A. Chubb, Publisher.

Notice is hereby given that the United States of America - Bureau of Sports Fisheries and Wildlife, Box 3767, Portland, Oregon has on December 4, 1967 applied for permit to divert 10 cubic feet per second of water from Mottle Creek, tributary of Kootenai River under application No. 98-7006. Water will be diverted by culvert and ditches within the NW1/4SW1/4, sec. 24, T. 62 N, R. 1 W, B.M., Boundary County and is to be used from April 1 to November 30 for crop and pasture irrigation and from January 1 to December 31 for stockwater and wildlife in the SW1/4NW1/4, W1/4SW1/4, sec. 18; SW1/4NW1/4, W1/4SW1/4, sec. 19; T. 62 N, R. 1 E, B.M. and S1/4NE1/4, E1/4SW1/4, SE1/4, sec. 13; all of sec. 24, NE1/4, E1/4NW1/4, NE1/4SW1/4, SE1/4, sec. 25; N1/4NE1/4, sec. 26, T. 62 N, R. 1 W, B.M.

Any protest against this application must be filed with the Department of Reclamation within ten days from the last date of publication of this notice.

R. KEITH HIGGINSON
State Reclamation Engineer
Published in the Bonners Ferry Herald, Bonners Ferry, Idaho, on January 25 and February 1, 1968.



98-7006

January 16, 1968

Re: Application No. 98-7006

The Bonners Ferry Herald
Bonners Ferry,
Idaho 83805

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 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 can not publish the notice on the proposed dates, please contact us immediately.

An affidavit of publication must be submitted to the Department of Reclamation, 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 same has been paid.

(Do not sign letter)
Signature of claimant

Very truly yours,

Donald W. McElldowney
Water Rights Clerk

DWM:ks

Enclosure: legal notice

98-7006
Form 3

NOTICE OF APPLICATION FOR WATER

Notice is hereby given that the United States of America, - Bureau of Sports Fisheries and Wildlife, Box 3737, Portland, Oregon has on December 4, 1967 applied for permit to divert ~~store~~ 10 cubic feet per second ~~acre feet~~ of water from Myrtle Creek, tributary of Kootenai River under application No. 98-7006. Water will be diverted by culvert and ditches within the NW1/4SW1/4, sec. 24, T. 62 N., R. 1 E., B.M., Boundary County and is to be used from April 1 to November 30 for crop and pasture irrigation and from January 1 to December 31 for stockwater and wildlife in the SW1/4NW1/4, W1/2SW1/4, sec. 18; SW1/4NE1/4, W1/2SW1/4, sec. 19, T. 62 N., R. 1 E., B.M. and S1/2NE1/4, NW1/4E1/2SW1/4, SE1/4, sec. 13; all of sec. 24; NE1/4, E1/2NW1/4, NE1/4SW1/4, SE1/4, sec. 25; W1/2NE1/4, sec. 36, T. 62 N., R. 1 W., B.M.

Any protest against this application must be filed with the Department of Reclamation within ten days from the last date of publication of this notice.

R. KEITH HIGGINSON
State Reclamation Engineer

Published in the Bonnars Ferry Herald, Bonners Ferry, Idaho on January 25 and February 1.

98-7006
dj