

No Color
Documents
In File

2

Post-It[™] telephone message pad 7660
BRAND

To Cindy B.

Date 5/5/97 Time 11:41

WHILE YOU WERE OUT

M Diane

of Northern Region

Phone No. _____

TELEPHONED	☒	PLEASE CALL
WAS IN TO SEE YOU	☐	WILL CALL BACK
WANTS TO SEE YOU	☐	URGENT
RETURNED YOUR CALL	☐	

Message please mail a copy
of claim no. 98-04301 to
her.

Mailed Copy on
5.6.97

Operator C.B.

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
CLAIM TO A WATER RIGHT

Section 42-243, Idaho Code, authorizes the filing of a claim to a water right established by diversion and application of water to beneficial use for domestic uses as defined in Section 42-111, Idaho Code. The filing of this claim does not confirm the water right claimed.

Notice is hereby given that clifford R. Utter and Donna C. Utter, husband and wife
(Name of Claimant) 83816-0909
c/o Edwin Holmes, POB 909 Coeur d'Alene ID Telephone No: (208) 664-2351
(Mailing Address) (Zip Code)

claims a right to the diversion and beneficial use of the surface or ground water. The extent and nature of said claim is as follows:

1. Date of Priority: (When the water was first applied to beneficial use) January 1, 1963
A claim is not acceptable on a surface water source with a priority later than May 20, 1971.

2. Describe the source of water: (Name of stream, lake, spring, etc., or ground water)

Clark Creek tributary to Kootenai River

3. Describe the purpose for which the water has been used and the time during the year when you have used the right claimed:

(cfs, af)

(Domestic, Stock, Etc.)

(Both dates inclusive)
(Mo., Day) (Mo., Day)

Quantity	<u>.04cfs</u>	Use	<u>domestic</u>	Period of Use From	<u>01/01</u>	to	<u>12/31</u>
Quantity	<u>n/a</u>	Use		Period of Use From		to	
Quantity	<u>n/a</u>	Use		Period of Use From		to	

4. .04cfs - 1.2af TOTAL QUANTITY USED.
(cfs, af)

5. A) Location of point of diversion is SW $\frac{1}{4}$ of SW $\frac{1}{4}$ of --- $\frac{1}{4}$, Govt. Lot ---
Sec. 36 Township 63N Range 1W B.M. Boundary County; additional points of diversion
if any: n/a

B) Describe means of diversion of water: (Pump and pipeline, well, diversion dam, reservoir, length of ditch etc.). Give sizes and capacities: be as specific as possible. Describe any changes in the system and give the date of the change. gravity flow, nozzle and pipe

6. A) Describe place of use within each 40-acre tract in the appropriate box using the following symbols in the appropriate tract. D - domestic, S - stockwater, X - other

T	R	Sec	NE $\frac{1}{4}$				NW $\frac{1}{4}$				SW $\frac{1}{4}$				SE $\frac{1}{4}$				TOTAL
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SE	SW	
63N	1W	36											D						

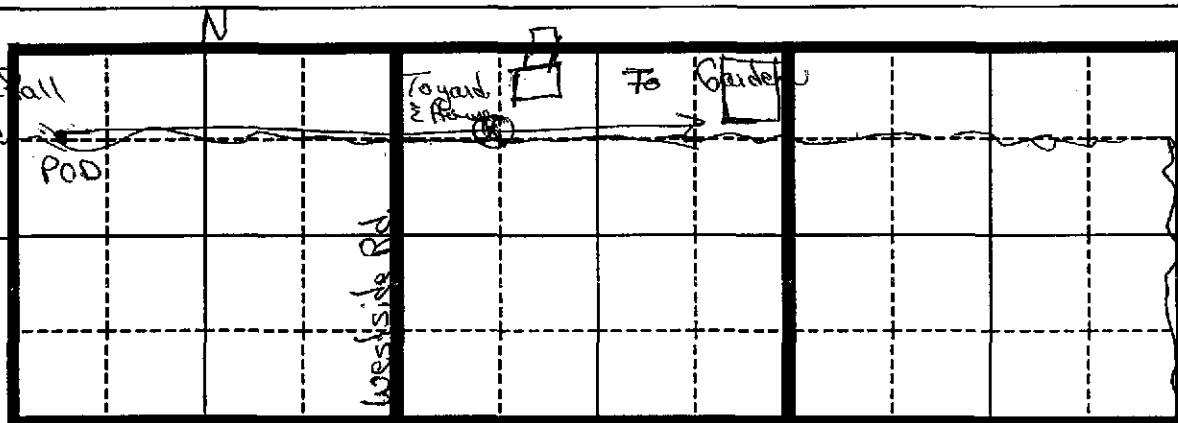
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B) Fully describe the use, being as specific as possible: domestic use - household drinking water,
some stockwatering

NOTE: Include here the type and number of stock watered: cattle - 5-25 head; fowl - 48 birds

7. Remarks: sole source of drinking water for property

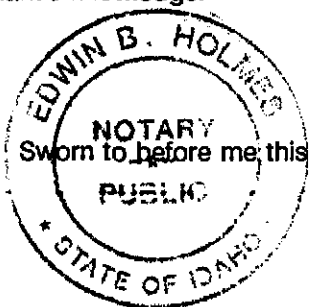


Map should show the location of the point of diversion and the place of use of the water by 40-acre subdivisions, section, township and range of the public land survey system. Attach an aerial photograph of the place of use if available.

State of Idaho)

County of Kootenai) ss.
boundary

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



Donna Utter
Claimant's Signature (and title if claim is for an organization)

4th day of October, 1996.

Edwin B. Holmes
Notary Public
Residing at: Coeur d'Alene

My commission expires: 3/18/2002

FOR DEPARTMENT USE ONLY

Received by JB
Prelim. check by JB
\$100.00 receipted by JB
Receipt # 12010731

Date 10/7/96
Date 10/7/96
Date 10/7/96

Published in Bonnie Terry Herald 10/16 & 23/96
OK 11/6/96

Exceptions filed by _____

Dates _____

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State of Idaho

DEPARTMENT OF WATER RESOURCES

1301 North Orchard Street, P.O. BOX 83720, Boise, Idaho 83720-0098

Phone: (208) 327-7900 FAX: (208) 327-7866

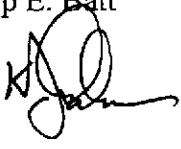
W.R. file
COPY

PHILIP E. BATT
GOVERNOR

KARL J. DREHER
DIRECTOR

MEMORANDUM

To: Governor Philip E. Batt Date: June 30, 1997

From: Karl J. Dreher 

Subject: Response to Follow-Up Letter from Clifford Utter to Congressman Chenoweth
Constituent Affairs Tracking Memo No. 19929

This memorandum is provided in response to your request for additional information concerning issues raised by Clifford Utter in a letter to Congressman Chenoweth. Mr. Utter wrote to Congressman Chenoweth on March 10, 1997, following his review of my prior memorandum to you dated February 18, 1997 (Constituent Affairs Tracking Memorandum No. 17529), which addressed various water rights and property ownership issues of concern to Mr. Utter and his wife, Donna Utter (the "Utters"), involving their neighbors, Thomas and Ingrid Gibbins (the "Gibbinses"). This response to the more recent letter from Mr. Utter has been delayed to provide my staff time to conduct additional field investigation of the development and use of a pond which the Utters have alleged is illegal. In my February 18 memorandum to you, I committed the Department of Water Resources (the "Department") to conduct the additional field investigation this summer. An earlier field investigation would not have been meaningful.

Mr. Utter expressed his dissatisfaction with my previous response to you in several areas. First, Mr. Utter believes my statement that "Springett may have owned the property containing the proposed point of diversion, or reasonably believed he did, when he filed the application ..." can be proven to be false. Mr. Springett (the Gibbinses predecessor in ownership of whatever portion of the property in dispute is now owned by the Gibbinses) filed an application in 1983 to appropriate water proposing to use a point of diversion on Clark Creek located on land the Utters claimed they purchased in 1993. Unless the Springett quit claim deeds referred to by Mr. Utter in his March 10 letter predate 1983 and clearly delineate Springett's northern land boundary as being offset to the south of Clark Creek on the west side of the county road, Mr. Utter could not know what Springett reasonably believed regarding ownership of the land at the proposed point of diversion when he filed his water right application in 1983. Whatever access Springett did or did not have to land on the east side of the county road has no bearing on what he could have reasonably believed to be the property boundaries on the west side of the county road.

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Whether Springett did or did not own the land at the proposed point of diversion, or did or did not own or have access to the lands proposed for irrigation east of the county road, had no legal effect on the water right license the Department ultimately issued to Springett. Because the water right license did not provide for irrigation of lands not owned or otherwise legally accessible, the license is not now voidable simply because Springett may not have had access to irrigate other lands as he originally intended at the time he applied for the water right permit.

Land ownership and whether or not the use of lands not owned had been granted to Springett were not issues the Department should have investigated before issuing Springett a permit to appropriate water. However, Mr. Utter may believe that someone should not be issued a permit to appropriate water unless that person owns the land at the location the water is diverted. In the event you decide to forward this memorandum to Mr. Utter, I have enclosed a copy of sections from the Idaho Code which are pertinent to the water right permit and land ownership issues. Section 42-202, Idaho Code, lists the five elements that are required to be included in an application to appropriate water. The elements (a) through (e) are highlighted in yellow on enclosure 1. Evidence of land ownership or permission to use land at the proposed point of diversion or place of use is not one of the required elements.

Why, then, does the application form used by the Department for a water right permit require applicants to indicate whether they own or have access to lands at the proposed point of diversion and place of use? There are two primary reasons. First, the Department will not issue a permit to appropriate water when the applicant's proposed use of the water is clearly speculative. Based on specific facts in a situation where an applicant did not own or have access to lands at a proposed place of use, the Department may determine that such application is speculative and deny the issuance of a permit. In the case of Springett's application to appropriate water, the application was advertised as required by law. There were no protests filed. Had someone protested Springett's application on the basis of evidence showing Springett did not own or have access to lands proposed for irrigation, the Department would likely have denied that part of the permit. However, the Department would probably not have denied the part of the permit for domestic uses on land owned by Springett. Consequently, the result would have been the same as the current situation. Namely, Springett would have developed the water right for domestic uses and received a license for such uses. Enclosure 1 includes Idaho Code §42-219(6) which specifically allows the Department to issue a license for that portion of water use which was developed in accordance with the provisions of a prior permit when other provisions of the permit were not met.

The second reason the Department requires applicants for a permit to appropriate water to indicate whether they own or have access to lands at the proposed point of diversion and place of use is so that if a permit is issued, the permit can contain an explicit statement that issuance of the permit does not grant the permit holder rights to trespass on lands not owned or leased. However, this limitation or restriction always applies even when such a statement is not explicitly included in the permit, as in the case of Springett's permit.

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The fact that Idaho statutes do not require a showing of land ownership or access to land at a proposed point of diversion or place of use when a permit to appropriate water is granted and the fact that a permit to appropriate water does not grant rights to trespass on lands not owned or leased by the permit holder were both explained in the four paragraphs on page 2 of my February 18 memorandum to you. I also explained that if the Gibbinses did not own the disputed land at the point of diversion and could not secure a right from the Utters to use the minimum amount of land reasonably needed to divert and convey water to the Gibbinses' property, then the Gibbinses could "take" an ownership interest in the land required to use the water right by proceeding under the law of eminent domain. In enclosure 1 to this memorandum, I have also highlighted in yellow portions of the applicable law in Idaho Code §§42-1103 and 42-1106 which provide for obtaining rights-of-way through lands owned or occupied by entities other than the water right holder needing to use the lands.

The second area where Mr. Utter is dissatisfied with my response is in my description of the land where ownership or access is being disputed. In my February 18 memorandum to you, I described the land in dispute as being an "approximately 30-foot wide strip of land south of Clark Creek." I did not indicate that this strip of land was or was not a separate parcel. I believe it is appropriate to discuss the status of this strip of land separately from the remaining land owned by the Utters because it is apparently the only portion of land being disputed by the Utters and Gibbinses. Additionally, Clark Creek divides this 30-foot wide strip of land from the rest of the parcel it may be part of which lies on the north side of Clark Creek.

The third area where Mr. Utter is dissatisfied with my prior response involves his understanding that "Springett's application was denied in 1988 for failure to fulfil [sic] his application [sic] requirements, yet received his license 10 years after he originally applied." I have enclosed copies of correspondence in 1988 between the Department and Springett (enclosure 2). This correspondence shows that the Department never "denied" Springett's application, the permit, or the issuance of a license because Springett failed to develop the water right in accordance with the permit. Rather, Springett was given a lapse notice because he had not submitted proof of beneficial use or requested an extension of time to submit such proof by the date set by the permit (July 1, 1988). As set forth in Idaho Code §42-218a, which is also included in enclosure 1, the law provides for reinstating a lapsed permit within 60 days or more after the date set by the permit for filing proof of beneficial use.

The Department frequently reinstates lapsed permits in accordance with §42-218a, and reinstatement of Springett's permit upon his filing adequate proof of beneficial use was not unique. It was not routine, however, for the Department to take four years to conduct a field examination after receiving Springett's proof of beneficial use and another year to issue the license. This delay resulted from a backlog of approximately 6,000 permitted water rights awaiting field examinations and determinations of eligibility for licensure. This large backlog occurred following a large number of permit applications in the early to mid 1980s. The Department did not have sufficient staff to handle this large number of water rights until the legislature required the payment of fees for field examinations or the use of certified water rights examiners during the late 1980s. During the five

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year period between the lapse of Springett's water right permit in 1988 and the issuance of a water right license in 1993, the Department did conduct an investigation of the nature and extent of water use by Springett. The investigation consisted of a field examination that was conducted in July of 1992, as described on page 3 of my February 18 memorandum to you.

The fourth area where Mr. Utter expresses dissatisfaction with my prior response involves the Gibbinses construction of a pond and diversion of water which Mr. Utter alleges is illegal. During this past winter, when the Department first investigated this allegation, it was not possible to discern with certainty the purpose and use of the pond. Consequently, I committed to have an additional field investigation performed this summer. The investigation was conducted 10 days ago from which it was determined that the pond has been constructed for the purposes of aesthetics and recreation. The tear-drop shaped pond is approximately 20 feet wide, 40 feet long, and 9 feet deep at the deepest end. Contrary to Mr. Utter's allegation that the source of water for the pond is Clark Creek, the Department employee conducting the investigation determined that the source of water is a spring which rises near the Gibbinses' garage. The nonuse of water for the pond from Clark Creek was confirmed by closing the valve on the Gibbinses' diversion pipe from Clark Creek without any resulting reduction in the flow of water to the pond.

Although Clark Creek is not the source of water for the pond, the Gibbinses have not applied for a water right permit to appropriate the spring water for the pond. Before initiating legal action against the Gibbinses, the Department has advised them to apply for a water right permit for the pond. Assuming such application is made, notice of the application will be published in a newspaper and a courtesy individual notice will be provided to the Uppers. This will allow the Uppers to protest the application and provide a process for the Department to resolve the Gibbinses use of the pond in the context of a contested matter. Mr. Utter also indicated that the pond had been illegally constructed since a permit for the construction had not been obtained from the Corps of Engineers. However, no permit from the Corps of Engineers was required unless the construction involved the disturbance of wetlands or construction below the ordinary high water level of waters of the United States.

Mr. Utter concludes his March 10 letter by indicating that he believes the conflict with the Gibbinses is not primarily a dispute over land ownership but rather the result of the Department's actions or lack of action. In the last paragraph of my February 18 memorandum to you, I referenced a telephone conversation between a deputy attorney general for the Department and the attorney who was representing the Uppers at that time. The Uppers' attorney agreed with the Department that the dispute between the Uppers and the Gibbinses was not a water rights issue. Mr. Utter is correct in stating that this matter will have to be resolved through court action. It is, however, extremely unfortunate that disputes between neighbors sometimes have to be resolved in this manner. If a court confirms that the Uppers own the disputed 30-foot wide strip of land, that the Gibbinses have trespassed, and that the nature of the trespass was egregious, the court may possibly award costs and attorney fees to the Uppers if their attorney so moves.

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(4) The application shall be accompanied by a plan and map of the proposed works for the diversion and application of the water to a beneficial use, showing the character, location and dimensions of the proposed reservoirs, dams, canals, ditches, pipelines, wells and all other works proposed to be used by them in the diversion of the water, and the area and location of the lands proposed to be irrigated, or location of place of other use.

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DO NOT WRITE IN THESE SPACES

(10) Provided further, that rights initiated prior to the enactment of this amendment, so far as it pertains to flood and winterflow waters, shall not be affected thereby.

ENCLOSURE 1

5. The source of the water used.

6. Such other information as shall be required by the blank form furnished by the department.

Such written proof as may be required to be submitted by such user shall be upon forms furnished by the department of water resources and shall include fees as provided in subsection K. of section 42-221, Idaho Code, or a field examination report prepared by a certified water right examiner.

Upon receipt of such proof and the fee as required in section 42-221, Idaho Code, by the department of water resources the department shall examine, or cause to be examined:

1. The place where such water is diverted and used, and, if the use is for irrigation, he shall ascertain the area and location of the land irrigated and the nature of all the improvements which have been made as a direct result of such use.

2. The capacities of the ditches or canals or other means by which such water is conducted to such place of use, and the quantity of water which has been beneficially applied for irrigation or other purposes.

The department or the person making such examination under the direction of the department shall prepare and file a report of the investigation: provided, that whenever irrigation systems cover more than twenty-five thousand (25,000) acres, proof of beneficial use may be made by the persons, company or corporation constructing the irrigation works on behalf of the project, and in such cases, the lands upon which the water has been used need not be described by legal subdivisions, but may be described generally as the lands under the irrigation system, and it shall only be necessary to show in such cases that the quantity of water beneficially applied for irrigation has been applied within the limits of the project.

Holders of permits who have submitted proof of beneficial use but have not had their project examined for beneficial use shall submit the fee required in section 42-221, Idaho Code, within sixty (60) days of notification by the director of the department of water resources that a license examination fee is required. Failure to submit the fee in the time allowed shall be cause for the director to advance the date of priority of the permit one (1) day for each day that the fee is late; provided that if the fee is not fully paid within one (1) year of the time it is due, the director of the department of water resources may consider the proof of beneficial use for the permit to be incomplete and lapse the permit, as provided in section 42-218a, Idaho Code. [1903, p. 223, § 7; reen. R.C., § 3260; am. 1913, ch. 36, § 1, p. 134; am. 1915, ch. 94, § 1, p. 216; reen. C.L., § 3260; C.S., § 5577; I.C.A., § 41-211; am. 1967, ch. 374, § 8, p. 1079; am. 1979, ch. 138, § 1, p. 434; am. 1986, ch. 242, § 1, p. 657; am. 1996, ch. 297, § 3, p. 967.]

Compiler's notes. Section 2 of S.L. 1986, ch. 242 is compiled as § 42-221.

Sections 2 and 4 of S.L. 1996, ch. 297 are compiled as §§ 42-202B and 42-219, respectively.

Cited in: Vineyard Land & Stock Co. v. Twin Falls Salmon River Land & Water Co., 245 F. 9 (9th Cir. 1917); Vineyard Land &

Stock Co. v. Twin Falls Oakley Land & Water Co., 245 F. 30 (9th Cir. 1917); Idaho Power & Transp. Co. v. Stephenson, 16 Idaho 418, 101 P. 821 (1909).

Proof of Use Inadmissible.

Where it appeared that an irrigation district failed to prove the issuance of a permit by the state engineer (department of water

resources), or a compliance with the terms of such a permit, as it has alleged in its pleading, it was not permitted to prove the beneficial use of an additional amount of water. *Bachman v. Reynolds Irrigation Dist.*, 56

Idaho 507, 55 P.2d 1314 (1936).

Collateral References. 78 Am. Jur. 2d, Waters, §§ 330-332.

93 C.J.S., Waters, § 178.

42-217a. Certified water right examiner. — The director shall adopt all necessary rules and regulations setting forth the procedures and requirements for qualification of licensed professional engineers or geologists to become certified water right examiners.

An initial application fee of two hundred dollars (\$200) shall be paid by those applying for certification with an annual renewal fee of fifty dollars (\$50.00). All certificates of appointment shall expire on March 31 of each year and thereafter are void unless renewed. The fees collected shall be transmitted to the state treasurer for deposit in the water administration account.

Employees of the department shall be exempt from the requirements of this section. [I.C., § 42-217a, as added by 1987, ch. 97, § 1, p. 192.]

42-218. Proof of application to beneficial use — Extension of time. — Whenever a less period of time than the maximum prescribed in section 42-204 has been granted by the department of water resources for making proof of beneficial use, upon a satisfactory showing being made by the permit holder, the department can extend the time for making such proof of beneficial use, but in no case shall such extension or extensions, including the original time granted, exceed the maximum prescribed in section 42-204. The department shall grant no extension unless the application therefor be filed with it prior to the date upon which the proof of beneficial use was required to be made under the original terms of the permit. [1913, ch. 47, § 1, p. 154; am. by implication, 1915, ch. 94, § 1, p. 216; adding a proviso extending the maximum period of ten years in some cases; compiled and reen. C.L., § 3260a; C.S., § 5578; I.C.A., § 41-212; am. 1967, ch. 374, § 9, p. 1079.]

Compiler's notes. The name of the department of water administration (formerly the department of reclamation) has been

changed to the department of water resources on the authority of S.L. 1974, ch. 286, § 1 and S.L. 1974, ch. 20, § 28 (§ 42-1801a).

42-218a. Lapse of application for failure to request extension or submit proof of application to beneficial use — Notice of lapsing. — A permit upon which the proof of beneficial use has not been submitted, or a request for extension of time has not been received on or before the date set for such proof, shall lapse and be of no further force nor effect. Notice of said lapsing shall be sent by the department to the applicant at the address of record by regular mail provided:

1. That within sixty (60) days after such notice of lapsing the department may, upon a showing of reasonable cause, reinstate the permit with the priority date advanced a time equal to the number of days that said showing is subsequent to the date set for proof;

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2. That upon receipt of proof of beneficial use after sixty (60) days after such notice of lapsing, the director shall require sufficient evidence to be submitted by the permit holder to clearly establish the extent of beneficial use made during the time authorized by the permit and any extensions of time previously approved. Upon finding that beneficial use had occurred during the authorized period and upon a showing of reasonable cause for filing a late proof of beneficial use, the director may reinstate the permit with the priority date advanced to the day that proof of beneficial use was received;

3. The original priority date of a lapsed permit shall not be reinstated except upon a showing of error or mistake of the department. [I.C., § 42-218a, as added by 1967, ch. 374, § 10, p. 1079; am. 1983, ch. 157, § 1, p. 435.]

Compiler's notes. Section 2 of S.L. 1983, ch. 167 declared an emergency. Approved April 8, 1983. Sec. to sec. ref. This section is referred to in § 42-217.

42-219. Issuance of license — Priority. — (1) Upon receipt by the department of water resources of all the evidence in relation to such final proof, it shall be the duty of the department to carefully examine the same, and if the department is satisfied that the law has been fully complied with and that the water is being used at the place claimed and for the purpose for which it was originally intended, the department shall issue to such user or users a license confirming such use. Such license shall be issued under the seal of the office of the department of water resources, and shall state the name and post-office address of such user, the purpose for which such water is used, the quantity of water which may be used, which in no case shall be an amount in excess of the amount that has been beneficially applied. A license may be issued to a municipal provider for an amount up to the full capacity of the system constructed or used in accordance with the original permit provided that the director determines that the amount is reasonably necessary to provide for the existing uses and reasonably anticipated future needs within the service area and otherwise satisfies the definitions and requirements specified in this chapter for such use. The director shall condition the license to prohibit any transfer of the place of use outside the service area, as defined in section 42-202B, Idaho Code, or to a new nature of use of amounts held for reasonably anticipated future needs together with such other conditions as the director may deem appropriate.

(2) If such use is for irrigation, such license shall give a description, by legal subdivisions, of the land which is irrigated by such water. If the use is for municipal purposes, the license shall describe the service area and shall state the planning horizon for that portion of the right, if any, to be used for reasonably anticipated future needs.

(3) Such license shall bear the date of the application for, and the number of, the permit under which the works from which such water is taken were constructed; the capacity of such works; the date when proof of beneficial use of such water was made, and also the date of the priority of the right confirmed by such license.

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(4) The date of priority confirmed by the license shall be the date of the application for the permit for the construction of the works from which the water is taken, and to which the right relates, provided there has been no loss of priority under the provisions of this chapter. Whenever proof of the beneficial application of water shall be offered subsequent to the date stated in the permit, or in any authorized extension thereof, when such beneficial application shall be made, the proof shall be taken, if received by the department within the sixty (60) days prescribed in the preceding section. If the proof taken is satisfactory to the department of water resources, a license shall be issued by the department the same as though proof had been made before the date fixed for such beneficial application. The priority of the right established by the proof shall not date back to the date of the application for the permit to which the right would relate under the provisions of this chapter, but shall bear a date which shall be subsequent to the date of the application, a time equal to the difference between the date set in the permit, or extension thereof, for such beneficial application of water and the date of proof.

(5) For irrigation projects where the canals constructed cover an area of twenty-five thousand (25,000) acres or more, or within irrigation districts organized and existing as such under the laws of the state of Idaho, the license issued shall be issued to the persons, association, company or corporation or irrigation district owning the project, and final proof may be made by such owners for the benefit of the entire project. It shall not be necessary to give a description of the land by legal subdivisions but a general description of the entire area under the canal system shall be sufficient. The water diverted and the water right acquired thereby shall relate to the entire project and the diversion of the water for the beneficial use under the project shall be sufficient proof of beneficial use without regard as to whether each and every acre under the project is irrigated or not.

(6) In the event that the department shall find that the applicant has not fully complied with the law and the conditions of permit, it may issue a license for that portion of the use which is in accordance with the permit, or may refuse issuance of a license and void the permit. Notice of such shall be forwarded to the permit holder by certified mail. The applicant may contest such action by the department pursuant to section 42-1701A(3), Idaho Code. [1903, p. 233, § 8; reen. R. C., § 3261; modified by 1913, ch. 47, § 1, p. 154, and 1915, ch. 94, § 2, p. 216; compiled and reen. C. L., § 3261; C. S., § 5579; am. 1925, ch. 44, § 1, p. 61; I. C. A., § 41-213; am. 1967, ch. 374, § 11, p. 1079; am. 1980, ch. 238, § 5, p. 526; am. 1996, ch. 297, § 4, p. 967.]

Compiler's notes. Sections 4 and 6 of S.L. 1980, ch. 238 are compiled as §§ 42-211 and 42-222, respectively.

Sections 3 and 5 of S.L. 1996, ch. 297 are compiled as §§ 42-217 and 42-222, respectively.

Sec. to sec. ref. This section is referred to in §§ 42-1409 and 42-1411.

Cited in: Vineyard Land & Stock Co. v. Twin Falls Salmon River Land & Water Co., 245 F. 9 (9th Cir. 1917); Vineyard Land & Stock Co. v. Twin Falls Oakley Land & Water Co., 245 F. 30 (9th Cir. 1917); Idaho Power & Transp. Co. v. Stephenson, 16 Idaho 418, 101 P. 821 (1909); Speer v. Stephenson, 16 Idaho

competent evidence that any consumer or consumers of water distributed through any ditch or canal, is entitled to the distribution or use of any water therefrom, at not to exceed a proportionate amount of the actual cost of maintenance and operation of said ditch or canal, they shall, upon request of such person or persons so entitled, fix the rate per cubic foot per second to be charged to such consumer or consumers for the current year. [1899, p. 380, § 30; reen. R.C. & C.L., § 3298; C.S., § 5645; I.C.A., § 41-905.]

CHAPTER 11

RIGHTS OF WAY

SECTION.

- 42-1101. Rights of landowners to water.
42-1102. Owners of land — Right to right-of-way.
42-1103. Owners of springs and streams — Right to right of way.
42-1104. Right of way over state lands.

SECTION.

- 42-1105. Right of way for riparian proprietors.
42-1106. Right of eminent domain.
42-1107. Right of way for drains.
42-1108. Right to cross ditches.

42-1101. Rights of landowners to water. — All persons, companies and corporations owning or claiming any lands situated on the banks or in the vicinity of any stream, are entitled to the use of the waters of such stream for the purpose of irrigating the land so held or claimed. [R.S., § 3180; reen. R.C. & C.L., § 3299; C.S., § 5646; I.C.A., § 41-1001.]

Riparian Rights.

In the dissenting opinion this section was cited in support of the application of the doctrine of riparian rights to the irrigation law, but the majority of the court, without citing this section, declared, in effect, that the doctrine of riparian rights has no place in the jurisprudence of this state. *Drake v. Earhart*, 2 Idaho 750, 23 P. 541 (1890).

Riparian rights are substantial property rights which may not be arbitrarily destroyed, but they are subject to the police power of the

state and, within reasonable limits, may be modified by legislation passed in the interest of the general welfare. *California-Oregon Power Co. v. Beaver Portland Cement Co.*, 73 F.2d 555 (9th Cir. 1934), aff'd, 295 U.S. 142, 55 S. Ct. 725, 79 L. Ed. 1356 (1935).

Collateral References. Constitutionality of statutes affecting riparian rights. 56 A.L.R. 277.

Prescriptive right of riparian owners to continuance of an artificial channel or ditches. 88 A.L.R. 134.

42-1102. Owners of land — Right to right-of-way. — When any such owners or claimants to land have not sufficient length of frontage on a stream to afford the requisite fall for a ditch, canal or other conduit on their own premises for the proper irrigation thereof, or where the land proposed to be irrigated is back from the banks of such stream, and convenient facilities otherwise for the watering of said lands cannot be had, such owners or claimants are entitled to a right-of-way through the lands of others, for the purposes of irrigation. The right-of-way shall include, but is not limited to, the right to enter the land across which the right-of-way extends, for the purposes of cleaning, maintaining and repairing the ditch, canal or conduit, and to occupy such width of the land along the banks of the ditch, canal or conduit as is necessary to properly do the work of cleaning, maintaining and repairing the ditch, canal or conduit with personnel and with such equipment as is commonly used, or is reasonably adapted, to that work. The right-of-way also includes the right to deposit on the banks of the

ditch or canal the debris and other matter necessarily required to be taken from the ditch or canal to properly clean and maintain it, but no greater width of land along the banks of the canal or ditch than is absolutely necessary for such deposits shall be occupied by the removed debris or other matter. Provided, that in the making, constructing, keeping up and maintenance of such ditch, canal or conduit, through the lands of others, the person, company or corporation, proceeding under this section, and those succeeding to the interests of such person, company or corporation, must keep such ditch, canal or other conduit in good repair, and are liable to the owners or claimants of the lands crossed by such work or aqueduct for all damages occasioned by the overflow thereof, or resulting from any neglect or accident (unless the same be unavoidable) to such ditch or aqueduct.

The existence of a visible ditch, canal or conduit shall constitute notice to the owner, or any subsequent purchaser, of the underlying servient estate, that the owner of the ditch, canal or conduit has the right-of-way and incidental rights confirmed or granted by this section.

This section shall apply to ditches, canals or other conduits existing on effective date [March 12, 1996] of this act, as well as to ditches, canals or other conduits constructed after such effective date. [1881, p. 269; R.S., § 3181; reen. R.C. & C.L., § 3300; C.S., § 5647; I.C.A., § 42-1002; am. 1996, ch. 187, § 1, p. 594.]

Compiler's notes. The words in parentheses so appeared in the law as enacted.

Section 2 of S.L. 1996, ch. 187 is compiled as § 42-1204.

Section 3 of S.L. 1996, ch. 187 declared an emergency. Approved March 12, 1996.

ANALYSIS

Condemnation for right of way.

Repair and maintenance costs.

Use of existing canal.

Condemnation for Right of Way.

Where an owner of land was denied access for irrigation water across the lands of an adjacent landowner, the owner could condemn a right of way to supply the water under the law of eminent domain. *White v. Marty*, 97 Idaho 85, 540 P.2d 270 (1975), overruled on other grounds, *Carr v. Magistrate Court*, 108 Idaho 546, 700 P.2d 949 (1985).

Landlocked individuals may condemn a right of way through the lands of others for purposes of irrigation. *Canyon View Irrigation Co. v. Twin Falls Canal Co.*, 101 Idaho 604, 619 P.2d 122 (1980), cert. denied, 451 U.S. 912, 101 S. Ct. 1983, 68 L. Ed. 2d 301 (1981).

Repair and Maintenance Costs.

If the servient estate landowner's use of irrigation ditch had increased the cost of repairs and maintenance he would have been responsible for the additional costs, but since his use did not increase those costs, he had no

obligation to pay for any portion of those costs. *Sellers v. Powell*, 120 Idaho 250, 815 P.2d 448 (1991).

Use of Existing Canal.

Where an irrigation company had purchased approximately 300 cfs of Snake River water and sought to put that water to beneficial use on land located west of an existing canal system, but where the irrigation company had no canal and there existed no natural waterway by which its water could be transported by gravity to its stockholders' lands, the irrigation company could condemn the right to enlarge and use the existing canal in common with the canal company and thus the irrigation company could divert its water from the Snake River into the canal company's canal system and then reclaim a like amount, with due allowance for seepage and evaporation, at a headgate closer to its irrigation project site. *Canyon View Irrigation Co. v. Twin Falls Canal Co.*, 101 Idaho 604, 619 P.2d 122 (1980), cert. denied, 451 U.S. 912, 101 S. Ct. 1983, 68 L. Ed. 2d 301 (1981).

Collateral References. 26 Am. Jur. 2d, Eminent Domain, §§ 1-9, 189-198.

29A C.J.S., Eminent Domain, §§ 1-5, 38.

Constitutionality of statutes affecting riparian rights. 56 A.L.R. 277.

Liability of irrigation district for failure to supply water, and for negligent construction or operation of ditches or canals. 69 A.L.R. 1232; 160 A.L.R. 1165; 169 A.L.R. 536.

Prescriptive right of riparian owners to

continuance of an artificial channel or ditches. 88 A.L.R. 134.
 Right of owner to alter his easement in such a way as to deprive servient estate of incidental benefits. 172 A.L.R. 193.

42-1103. Owners of springs and streams — Right to right of way. — Where the owners of any spring, or the appropriators thereof, or of any stream, desire to conduct the waters thereof to any lands for the purposes of irrigation, or to any city or town for the use of the inhabitants thereof, or to any factory, or to any distant place, with the intent to apply the same to a beneficial use, and to accomplish such object it is necessary to cross with ditches, flumes or other conduit, the lands owned or occupied by others than the owners or appropriators of such spring or stream, the right of way over and across the lands of others for conducting said water may be acquired in the manner above provided. [1881, p. 271; R.S., § 3185; reen. R.C. & C.L., § 3301; C.S., § 5648; I.C.A., § 41-1003.]

Collateral References. 26 Am. Jur. 2d, Eminent Domain, §§ 1-9, 189-198.
 29A C.J.S., Eminent Domain, §§ 1-5, 38.
 Constitutionality of statutes affecting riparian rights. 56 A.L.R. 277.
 Liability of irrigation district for failure to supply water, and for negligent construction or operation of ditches or canals. 69 A.L.R.

1232; 160 A.L.R. 1165; 169 A.L.R. 536.
 Prescriptive right of riparian owners to continuance of an artificial channel or ditches. 88 A.L.R. 134.
 Right of owner to alter his easement in such a way as to deprive servient estate of incidental benefits. 172 A.L.R. 193.

42-1104. Right of way over state lands. — The right of way over and upon any and all lands owned or controlled by the state of Idaho is hereby granted to any and all persons for the purpose of constructing and maintaining any ditch, canal, conduit or other works for the diversion or carrying of water for any beneficial use; provided, that no property shall be taken under the provisions of this section until a just compensation shall be paid therefor, to be ascertained in the manner prescribed by law for the taking of private property for a public use. [1899, p. 380, § 13; reen. R.C. & C.L., § 3302; C.S., § 5649; I.C.A., § 41-1004.]

Cross ref. Procurement of right of way over state lands, § 58-601.
 Right of eminent domain, §§ 7-701 — 7-721.

Running water across public highway, construction of bridges and culverts, § 40-910.
 Cited in: Dayley v. Burley, 96 Idaho 101, 524 P.2d 1073 (1974).

ANALYSIS

Compensation.
 Condemnation of state lands.
 Easements.
 Federal authority to condemn lands.

Compensation.

Right of way over state land can be acquired only after just compensation is paid therefor, to be ascertained in the manner prescribed by law. Tobey v. Bridgewood, 22 Idaho 566, 127 P. 178 (1912), overruled on

other grounds, Idaho-Iowa Lateral & Reservoir Co. v. Fisher, 27 Idaho 695, 151 P. 1002 (1915).

Condemnation of State Lands.

This section, taken in conjunction with R. S., § 5212 (§ 7-703 herein), authorizes action in district court to condemn state lands for public use. Hollister v. State, 9 Idaho 8, 71 P. 541 (1903).

Easements.

Where irrigation ditch extended in part across school section, and owners had not acquired easement therefor in the statutory manner, private party could not question such owners' right to the easement. Swan v. Sproat, 36 Idaho 75, 209 P. 1070 (1922).

Federal Authority to Condemn Lands.

The state of Idaho has consented to be sued in condemnation proceedings involving lands belonging to the state, and the federal govern-

ment has the authority to condemn and acquire endowed school lands belonging to the state for purposes of an irrigation canal right of way for a migratory waterfowl refuge. United States v. Forty Acres, More or Less, of Land, 24 F. Supp. 390 (D. Idaho 1938).

Collateral References. 26 Am. Jur. 2d, Eminent Domain, §§ 1-9, 189-198.

29A C.J.S., Eminent Domain, §§ 1-5, 38.
 Constitutionality of statutes affecting riparian rights. 56 A.L.R. 277.

Liability of irrigation district for failure to supply water, and for negligent construction of operation of ditches or canals. 69 A.L.R. 1232; 160 A.L.R. 1165; 169 A.L.R. 536.

Prescriptive right of riparian owners to continuance of an artificial channel or ditches. 88 A.L.R. 134.

Right of owner to alter his easement in such a way as to deprive servient estate of incidental benefits. 172 A.L.R. 193.

42-1105. Right of way for riparian proprietors. — All persons, companies and corporations owning or having the possessory title or right to lands adjacent to any stream, have the right to place in the channel or upon the banks or margin of the same, rams or other machines for the purpose of raising the waters thereof to a level above the banks, requisite for the flow thereof to and upon such adjacent lands; and the right of way over and across the lands of others, for conducting said waters, may be acquired in the manner prescribed in the following section. [1881, p. 271; R.S., § 31 am. R.C. & C.L., § 3303; C.S., § 5650; I.C.A., § 41-1005.]

Nature of Right.

License given by this section does not confer any power to appropriate, without reference to beneficial use, the entire volume of a river or its current, to the destruction of the rights of others to make appropriations of the unused water. Schodde v. Twin Falls Land & Water Co., 224 U.S. 107, 32 S. Ct. 470, 56 L. Ed. 686 (1912).

This section gives mere license to use an appropriate method for raising water, but the method or means adopted does not attach as an appurtenance to the appropriation of the water as against other appropriators. Schodde v. Twin Falls Land & Water Co., 161 F. 43 (9th Cir. 1908), aff'd, 224 U.S. 107, 32 S.

Ct. 470, 56 L. Ed. 686 (1912).

Collateral References. 26 Am. Jur. 2d, Eminent Domain, §§ 1-9, 189-198.

29A C.J.S., Eminent Domain, §§ 1-5, 38.
 Constitutionality of statutes affecting riparian rights. 56 A.L.R. 277.

Liability of irrigation district for failure to supply water, and for negligent construction of operation of ditches or canals. 69 A.L.R. 1232; 160 A.L.R. 1165; 169 A.L.R. 536.

Prescriptive right of riparian owners to continuance of an artificial channel or ditches. 88 A.L.R. 134.

Right of owner to alter his easement in such a way as to deprive servient estate of incidental benefits. 172 A.L.R. 193.

42-1106. Right of eminent domain. — In case of the refusal of the owners or claimants of any lands, through which any ditch, canal or conduit is proposed to be made or constructed, to allow passage thereof, the person or persons desiring the right of way may proceed as in the law of eminent domain. [1899, p. 380, § 14; reen. R.C. & C.L., § 3304; C.S., § 5651; I.C.A., § 41-1006.]

Cross ref. Law of eminent domain, §§ 7-701 — 7-721.

Cited in: Branson v. Miracle, 107 Idaho 221, 687 P.2d 1348 (1984); Branson v. Miracle, 111 Idaho 933, 729 P.2d 408 (Ct. App. 1986).

ANALYSIS

Injunction to prevent trespass.
 Right to condemn right of way.
 Use of existing canal.

Injunction to Prevent Trespass.

An injunction will issue against trespass on

owner's land by reservoir company for maintenance purposes of ditches, etc., where reservoir company had not used water for period of 12 years. Condie v. Swainston, 62 Idaho 473, 112 P.2d 787 (1941).

Right to Condemn Right of Way.

Where an owner of land was denied access for irrigation water across the lands of an adjacent landowner, the owner could condemn a right of way to supply the water under the law of eminent domain. White v. Marty, 97 Idaho 85, 540 P.2d 270 (1975), overruled on

ENCLOSURE 2

July 11, 1988

GREGORY K. SPRINGETT
STAR RT. 1 BOX 154
BONNERS FERRY, ID 83805

LAPSE NOTICE

RE: PERMIT NO. 98-07514

Dear Permit Holder:

You are hereby notified that under the provisions of Section 42-218A, Idaho Code, the above referenced water permit has lapsed. This office did not receive either an acceptable proof of beneficial use submittal or an acceptable request for an extension of time. You were provided the proper form in our proof due notice to you dated April 30, 1988.

Your permit cannot be reinstated unless you submit proof of beneficial use or submit an extension of time request showing reasonable cause for delay. Either the completed proof of beneficial use submittal (including the examination fee or a completed field examination report) or the extension request form together with the \$15 fee must be received by this lapse notice or the permit will no longer be of any force of effect.

A proof of beneficial use form and a request for extension of time form are again enclosed for your use. Please note that only one extension of time can be granted unless the project has not been completed because of lack of a necessary approval by a governmental agency or by litigation which might bring title to the water in question.

MICROFILMED

OCT 19 2001

L. Glen Saxton
Chief, Operations Bureau

Enclosures

LGS:RF

MICROFILMED

FEB 22 1989

CERTIFICATION OF MAILING

I hereby certify that on 7/15/88
a certain copy of this document was
deposited in the United States mail
postage prepaid addressed to the
individual(s) named above.

Heidi Miller



State of Idaho
DEPARTMENT OF WATER RESOURCES

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

CECIL D. ANDRUS
GOVERNOR
R. KEITH HIGGINSON
DIRECTOR

October 21, 1988

Gregory K. Springett
HCR 60 Box 279
Bonners Ferry, ID 83805

RE: Permit No. 98-7514

Dear Mr. Springett:

The Department received both your proof of beneficial use statement and the request for extension of time for the above referenced permit on September 16, 1988. The fees you submitted to the Department for these forms were \$50.00 and \$15.00 respectively.

Based on the information you submitted, it appears that the proof statement is the proper form to send since you have completed some or all of your development and do not wish to proceed further. I am returning the extension request along with your check no. 2380 (92-55/1231) in the amount of \$15. If you feel that I am in error, please contact me in order to clarify your intentions. You have the option of requesting an extension, but you cannot submit both an extension and a proof statement.

I would like to remind you that this permit lapsed on July 1, 1988. The Department sent you a lapse notice with a certified mailing date of July 15, 1988. The Department provides a sixty day grace period from the date of the lapse notice for the permit holder to submit the proof statement or extension of time request. The Department received your proof on September 16, 1988, which was actually sixty-three days after the date of lapse notice. In reviewing your file, I noticed that the original lapse notice which we sent you on July 15 did not specify that the proof was due within sixty days of the certified mailing date. As a result, we consider your submittal of the proof statement to have been received within the sixty (60) day grace period. The Department will reinstate the permit with a priority advancement equal to the number of days the proof statement was submitted late.

You should receive a copy of the reinstatement order following reinstatement, a field examiner from our Northern Region Office will contact you to schedule a field exam.

MICROFILMED

OCT 19 2001

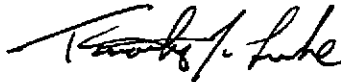
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FEB 22 1989

Page 2
Gregory K. Springett
October 21, 1988

Please feel free to contact me if you have additional questions.

Sincerely,



TIM LUKE
Sr. Water Rights Agent

TL:hm
Enclosure

MICROFILMED
OCT 13 2001

RECEIVED
FEB 22 1989



State of Idaho

DEPARTMENT OF WATER RESOURCES

1301 North Orchard Street, Statehouse Mail, Boise, Idaho 83720-9000

Phone: (208) 327-7900 FAX: (208) 327-7866

PHILIP E. BATT
GOVERNOR

KARL J. DREHER
DIRECTOR

November 25, 1996

Clifford & Donna Utter
C/O Edwin Holmes
P.O. Box 909
Coeur d'Alene, ID 83816-0909

RE: Claim No. 98-04301

Dear Claimants:

The Department of Water Resources has completed the advertising of your claim to a water right, and no further action is authorized under Section 42-243 and 42-244, Idaho Code. Your claim will be retained in our files and will be available at any time for use by you or the court.

The filing and advertising of the claim does not confirm the water right claimed, but will serve to record and preserve the information and the evidence which you included in your claim.

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

I am enclosing a copy of your claim for your records. If you have any questions regarding the claim, please contact the **NORTHERN** Regional Office in Coeur d'Alene at (208)769-1450.

Sincerely,

A handwritten signature in cursive script that reads "Julie L. Yarbrough".

JULIE L. YARBROUGH
Senior Secretary

Enclosure

MICROFILMED

OCT 13 2001

State of Idaho
Department of Water Resources

CLAIM ANALYSIS SHEET

INITIAL REVIEW BY: AB

Right Number 98-04301 Applicant UTTER

NOTE: IF ANY OF THE ITEMS BELOW ARE MISSING, THE CLAIM IS INCOMPLETE AND MUST BE RETURNED IMMEDIATELY TO THE CLAIMANT ALONG WITH THE APPROPRIATE COVER LETTER.

CHECK:

- ☒ Name and address.
- ☒ Date of priority. (Check for a date past the mandatory filing dates.) (One date only.)
- ☒ Source.
- ☒ Quantity, use, period.
- ☒ Point(s) of diversion.
- ☒ Location of use.
- ☒ Signature/notarization/fee.

*Admitted in
Bonners Ferry Herald
10/16+23/96*

FINAL REGIONAL PROCESSING REVIEW:

- ☒ Affidavit of publication received. 11/5/96
- ☒ Claim published correctly. 11/6/96
- ☐ Exceptions processed.

By AB Date 11/6/96

STATE OFFICE PROCESSING:

- ☐ Claim review complete.

By _____ Date _____

AFFIDAVIT OF PUBLICATION

State of Idaho

ss.

County of Boundary,

David Keyes being first duly sworn on oath
deposes and says that he/she is publisher
of the Bonners Ferry Herald, a newspaper printed and
published at Bonners Ferry, Boundary County, Idaho; that
the said newspaper has been continuously and
uninterruptedly published in said Boundary County during
a period of 12 months prior to the first publication of the
hereto attached notice of publication in the case of:

#3413 Water Right Application

as it was published in the regular and entire issue of the
said paper for a period of 2 consecutive weeks,
commencing on 16 day of October, 1996
and ending on the 23 day of October, 1996
and that said notice was published in said newspaper.

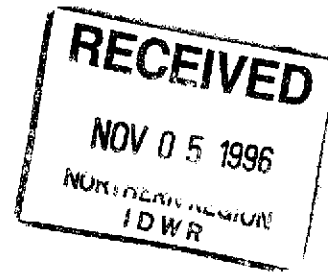
Dated: Oct 23, 1996
David Keyes

Subscribed and sworn to before me this 24 day
of October, 1996.

Jean E. Diel
Notary Public for Idaho

Residing at Bonners Ferry

My Commission expires: 7/22/2002



NOTICE OF CLAIMS TO
WATER RIGHT

The Following claim(s) have been
filed on water rights created by
diversion and beneficial use:
98-04301

UTTER, CLIFFORD R
UTTER, DONNA C
C/O EDWIN HOLMES
P O BOX 909
COEUR D'ALENE, ID 83816-0909
Source: CLARK CREEK
Tributary: KOOTENAI RIVER
Diversion Pt: SWSW
Sec 36 T 63N R 01W
in BOUNDARY County.
Use: DOMESTIC (0.040 CFS)
Total Diversion: (0.040 CFS)
Date Filed: 1/1/1963
In: BOUNDARY County
T63N R01W S36 SWSW

For additional information
concerning the property location,
call the Northern Regional Office at
(208) 769-1450.

Exceptions to a claim may be filed
with the Director, Dept. of Water
Resources, Northern Region, 1910
Northwest Blvd., Suite 210, Coeur
d'Alene, Idaho 83814.

KARL J. DREHER, Director
BFH#3413 October 16, 23, 1996

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OCT 19 2001

98-04301

UTTER, CLIFFORD R
UTTER, DONNA C
C/O EDWIN HOLMES
P O BOX 909
COEUR D ALENE, ID 838160909

Source: CLARK CREEK

Tributary: KOOTENAI RIVER

Diversion Pt: SWSW Sec 36 T 63N R 01W in BOUNDARY County.

Use: DOMESTIC (0.040 CFS)
Total Diversion: (0.040 CFS)

Date Filed: 1/ 1/1963

In: BOUNDARY County
T63N R01W S36 SWSW

MICROFILMED
OCT 19 2001

Water Right Number - 98-04301

Prefix Translation: WATER RIGHT

Old (D) Number -

+ - - - - Last Name - - - - + + - First Name - - + + - - - - - Address - - - - - +

*** C - CURRENT OWNER ***

UTTER

CLIFFORD R

1 - C/O EDWIN HOLMES

2 - P O BOX 909

3 -

City- COEUR D ALENE

State- ID Zip- 838160909

Phone - 208-664-2351

UTTER

DONNA C

1 - C/O EDWIN HOLMES

2 - P O BOX 909

3 -

City- COEUR D ALENE

State- ID Zip- 838160909

Phone - 208-664-2351

+ - - Priority Date - - + + - - - Region - - - + + - - - Stage - - - + + - - - Status - - - +
01/01/1963 18 NORTHERN S - STATUTORY CLAIM

+ - - - - Source - - - - + + - - - - - Tributary - - - - - +
CLARK CREEK KOOTENAI RIVER

+ - - - - - - - - - - - - - Point of Diversion - - - - - +
Twn Rng Sec Tract Lot RFlg County Diversion Name Diversion Rate Diversion No.
63N 01W 36 SW SW (21) BOUNDARY

+ - - - - - - - - - - - - - Water Use - - - - - +
Code Description Period From Period To Diversion Rate Diversion Volume
43 - DOMESTIC 01/01 12/31 0.040

+ - Total Div. Rate - + + - Total Div. Volume - + + - Total Div. Capacity - +
0.040

+ - - - - - - - - - - - - - Place of Use - - - - - +
Twn Rng Sec Tract Lot Acres Code Description County
63N 01W 36 SW SW 43 DOMESTIC (21) BOUNDARY

+ - - Diversion Means -

+ - - Non-Irrigation Use -

+ - - Other Rights for Same Use -

+ - - - - - - - - - - - - - Remarks - - - - - +
Domestic use is for one home and some stockwatering (5-25 head;
fowl - 48 birds.

+ - - - - - - - - - - - - - Old Water Right Numbers - - - - - +
No Old Water Right Numbers found.

Water right number - 98-04301

Prefix Translation: WATER RIGHT

+ - - - - Conditions of Approval - - - - - +
No Conditions of Approval found.

+ - - - - Decree Plaintiff - - - + + - - - - Decree Defendant - - - + + - Decree Date - +
00/00/0000

+ - - - - Comments - - - - - +
Date: 10/08/1996 User Id: DBALL Subject: Diversion works.
Gravity flow, nozzel and pipe.

+ - - Audit Fields - 10/08/96 DBALL 10/08/96 PHARRELL

+ - - - - Water Rights Dates and Flags Area - - - - - +

| | | |
|-------------------------------|------------------------------|-----------------------|
| Proof Due Date - 00/00/0000 | Field Exam Made - 00/00/0000 | Field Exam Fee - |
| Approved/Denied - 00/00/0000 | Protested Date - 00/00/0000 | Swan Falls - |
| Proof Made Date - 00/00/0000 | Hearing Date - 00/00/0000 | Temporary Right - P |
| Exam to S.O. Date- 00/00/0000 | Verified Date - 00/00/0000 | DLE/Carey Act - |
| Order Show Cause - 00/00/0000 | Receipt Number - N010731 | Water District - |
| Licensed Date - 00/00/0000 | Appl Received - 10/07/1996 | Transfer/Amended - |
| Decree Date - 00/00/0000 | Name Connector - AND | POU Ownership Flag- Y |
| Presumption Flag - | | |