

State of Idaho

License and Certificate of Water Right

Water License No. 25110

Amount 0.04 c.f.s.

Water District No.

Priority August 20, 1954

THIS IS TO CERTIFY that STATE LAND DEPARTMENT
of Boise, Idaho, made application for a permit to appropriate the
public waters of the State of Idaho, dated August 10, 1954; that Permit No. 25110
was issued under said application; that Certificate of Completion of works, with a carrying capacity of
0.1 second feet, was issued thereunder on June 16, 1955, showing that said works
were completed on the 8th day of June, 1955; and that on the 31st
day of August, 1956, ARTHUR WILSON, State Land Commissioner

of Boise, State of Idaho, made proof to the satisfaction of the
State Reclamation Engineer of Idaho, of the right to use the waters of Cougar Creek
, a tributary of Priest Lake - Priest R., for the purpose of domestic use
, under Use Permit No. 25110 of the Department of Reclamation
and that said right to the use of said waters has been perfected in accordance with the laws of Idaho,
and is hereby confirmed by the State Reclamation Engineer of Idaho and entered of record in Volume
10 of Licenses at page 6079, on the 26th day of August, 1957;
The right hereby confirmed dates from August 20, 1954;

The Point of Diversion is located
in the SE 1/4 SW 1/4, Sec. 23, Tp. 60 N., R. 4 W., B. M. County Bonner
That the amount of water to which such right is entitled and hereby confirmed, for the purposes
aforesaid, is limited to an amount actually needed and beneficially used for said purposes, and shall
not exceed 0.04 cubic feet per second.

Description and location of use:

Twp.	Range	Sec.	Forty-acre Tract	No. Acres Described in Permit	No. Acres Actually Irrigated
60 N.	4 W.	26	PUBLIC CAMP GROUNDS - In the old C.C. Camp area in - the NW 1/4		

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

WITNESS the seal and signature of the State Reclamation Engineer, affixed at Boise, Idaho, this
26th day of August, 1957.

/s/ Mark R. Kulp

State Reclamation Engineer.

(SEAL)

PRIEST LAKE

GAVANAUGH BAY

23

24

22

COUGAR CR.

Dam

R.D.

Pipe line 3" - 1 1/2"

outlet here 3/4" Forest

Park.

26

outlets here.

27

34

35

T. 60 N. - R. 4 W.
T. 59 N. - R. 4 W.

NI-COOLIN

Subdivisions = One
use = domestic
for Camp ground.

Q = ~~1 inch~~
2 inches

Leon Hoffine of Sandpoint, State Land Dept.
along on inspection.

AFFIDAVIT OF PUBLICATION

STATE OF IDAHO

County of Bonner,

ss.

P. K. Woods

being duly sworn, says that he is the Publisher of the PRIEST RIVER TIMES, a weekly newspaper printed and published at Priest River, Bonner County, Idaho, and has been continuously and uninterruptedly published in said County during a period of 78 consecutive weeks prior to the first publication of the annexed notice for publication, is a newspaper of general circulation made up of at least eight pages of at least seven columns each, printed from typematter or stereotyped forms of at least nineteen and three-fourths inches depth, has at least 650 bona fide subscribers living within said Bonner County, and is published at regular weekly intervals. That the annexed is a true copy of the notice for publication in the case of

NOTICE OF PROOF APPLICATION OF WATER TO BENEFICIAL USE

as it was published in the regular and entire issue of said paper for a period of four consecutive weeks, commencing on the 9th day of August, 195 6, and ending on the 30th day of August, 195 6, and that said notice was published in said newspaper proper, and not in supplement form.

P. K. Woods

Subscribed and sworn to before me this

6th day of September, 195 6

George C. Connolly
Notary Public for Idaho,
Residing at Priest River, Idaho.

Notice For Publication NOTICE OF PROOF APPLICATION OF WATER TO BENEFICIAL USE

Notice is hereby given that at 10:00 A. M. on the 31st day of August, 1956, at Boise, County of Ada, State of Idaho, before M. C. HAMBLIN, Notary Public, proof will be submitted of the application to beneficial use of 0.1 cubic foot per second of the waters of Cougar Creek point of diversion: SE $\frac{1}{4}$ SW $\frac{1}{4}$, Sec. 23, Township 60 North, Range 4 West, B. M., near SW Corner, in accordance with the terms and conditions of Per-

mit No. 25110 heretofore issued by the State Reclamation Engineer of the State of Idaho.

The name and postoffice address of the person or corporation holding said permit are Idaho State Land Department, Arthur Wilson, State Land Commissioner, Room 120, State House, Boise, Idaho.

The use to which said water has been applied is public picnic campground area.

The amount applied to beneficial use is 0.1 cubic foot per second.

The place where said water is used: Public picnic and camping ground located in the NW Cor. of NE $\frac{1}{4}$ NW $\frac{1}{4}$, Sec. 26, Twp. 60 N., Rge. 4 W., B. M.

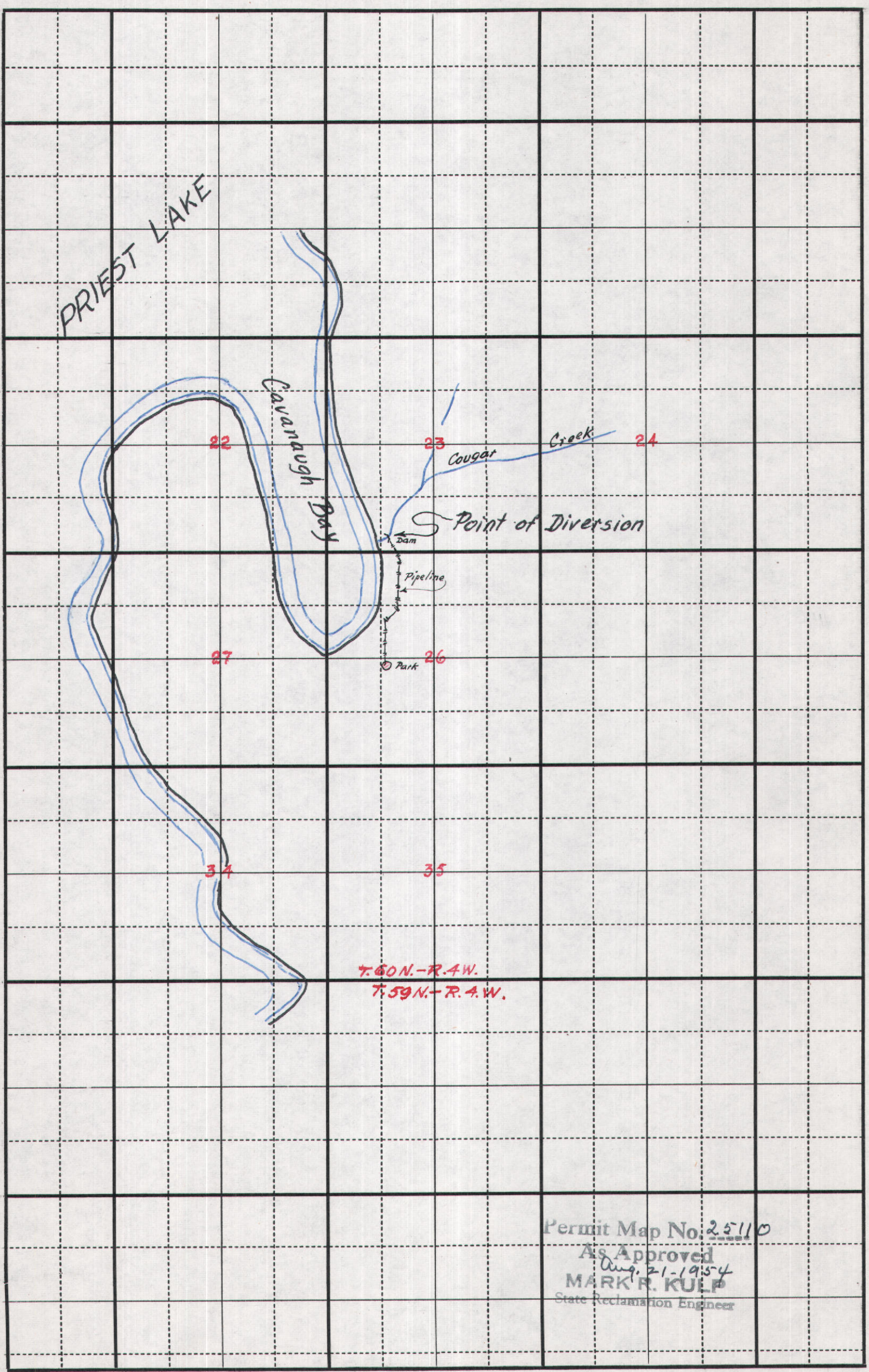
The right to take water from such works is based upon Permit No. 25110.

The source of supply from which such water is diverted is Cougar Creek, which flows into Cavanaugh Bay, in Priest Lake.

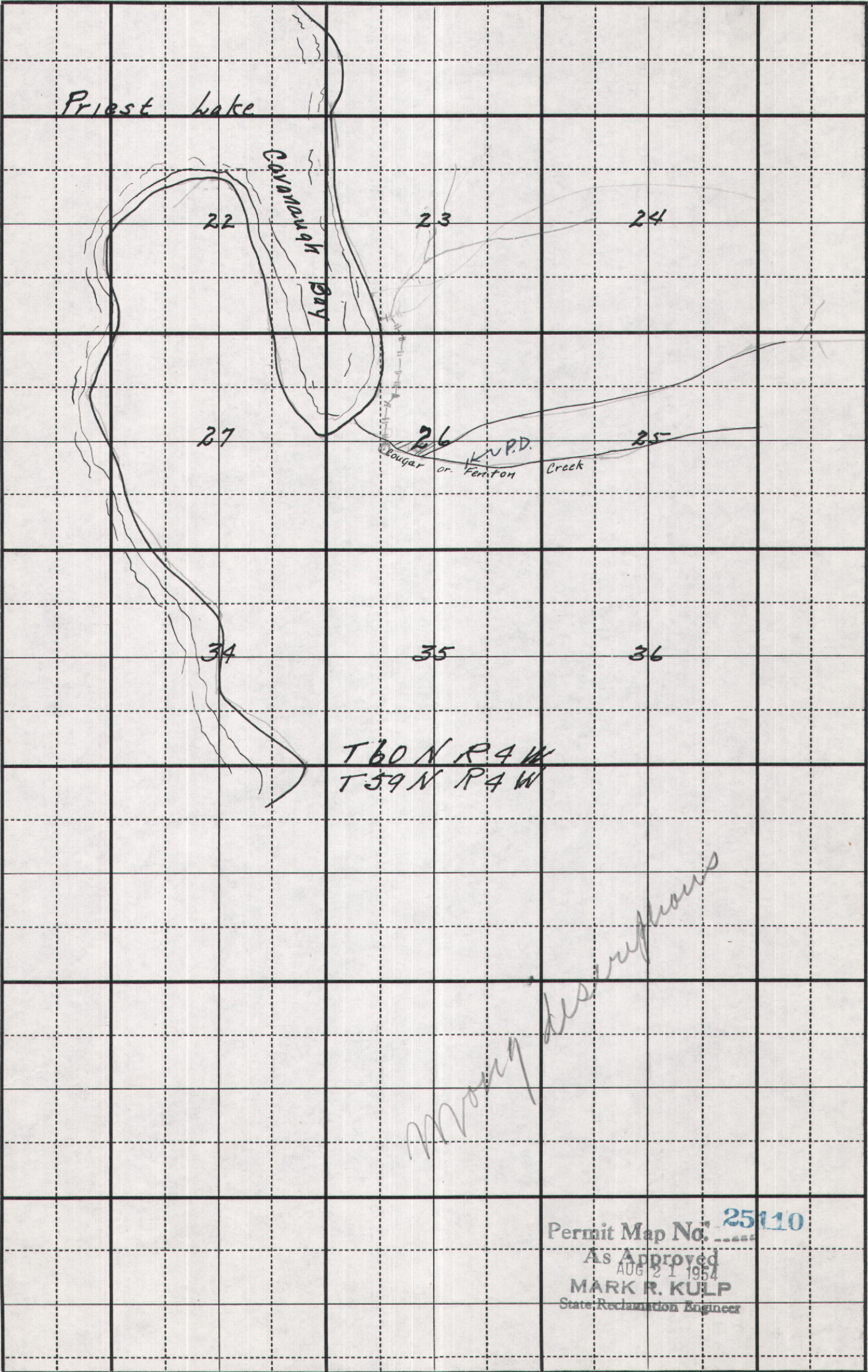
The date of priority which said user is prepared to establish is August 10, 1954.

MARK R. KULP
State Reclamation Engineer.
32-4t

25110



Permit Map No. 25110
As Approved
Aug. 21-1954
MARK R. KULP
State Reclamation Engineer



**Notice For Publication
NOTICE OF PROOF
APPLICATION OF WATER
TO BENEFICIAL USE**

Notice is hereby given that at 10:00 A. M. on the 31st day of August, 1956, at Boise, County of Ada, State of Idaho, before M. C. HAMBLIN, Notary Public, proof will be submitted of the application to beneficial use of 0.1 cubic foot per second of the waters of Cougar Creek point of diversion: SE $\frac{1}{4}$ SW $\frac{1}{4}$, Sec. 23, Township 60 North, Range 4 West, B. M., near SW Corner, in accordance with the terms and conditions of Permit No. 25110 heretofore issued by the State Reclamation Engineer of the State of Idaho.

The name and postoffice address of the person or corporation holding said permit are Idaho State Land Department, Arthur Wilson, State Land Commissioner, Room 120, State House, Boise, Idaho.

The use to which said water has been applied is public picnic campground area.

The amount applied to beneficial use is 0.1 cubic foot per second.

The place where said water is used: Public picnic and camping ground located in the NW Cor. of NE $\frac{1}{4}$ NW $\frac{1}{4}$, Sec. 26, Twp. 60 N., Rge. 4 W., B. M.

The right to take water from such works is based upon Permit No. 25110.

The source of supply from which such water is diverted is Cougar Creek, which flows into Cavanaugh Bay, in Priest Lake.

The date of priority which said user is prepared to establish is August 10, 1954.

MARK R. KULP
State Reclamation Engineer.

2-9-56 32-4t

State of Idaho
License and Certificate of Water Right

Water License No. 25110 Amount 0.04 c.f.s.
Water District No. Priority August 20, 1954

THIS IS TO CERTIFY that STATE LAND DEPARTMENT
of Boise, Idaho, made application for a permit to appropriate the
public waters of the State of Idaho, dated August 10, 1954; that Permit No. 25110
was issued under said application; that Certificate of Completion of works, with a carrying capacity of
0.1 second feet, was issued thereunder on June 16, 1955, showing that said works
were completed on the 8th day of June, 1955; and that on the 31st
day of August, 1956, ARTHUR WILSON, State Land Commissioner
of Boise, State of Idaho, made proof to the satisfaction of the
State Reclamation Engineer of Idaho, of the right to use the waters of Cougar Creek
, a tributary of Priest Lake - Priest R., for the purpose of domestic use
, under Use Permit No. 25110 of the Department of Reclamation
and that said right to the use of said waters has been perfected in accordance with the laws of Idaho,
and is hereby confirmed by the State Reclamation Engineer of Idaho and entered of record in Volume
10 of Licenses at page 6079, on the 26th day of August, 1957;
The right hereby confirmed dates from August 20, 1954;
The Point of Diversion is located
in the SE 1/4 SW 1/4, Sec. 23, Tp. 60 N., R. 4 W., B. M. County Bonner
That the amount of water to which such right is entitled and hereby confirmed, for the purposes
aforesaid, is limited to an amount actually needed and beneficially used for said purposes, and shall
not exceed 0.04 cubic feet per second.

Description and location of use:

Twp.	Range	Sec.	Forty-acre Tract	No. Acres Described in Permit	No. Acres Actually Irrigated
60 N.	4 W.	26	PUBLIC CAMP GROUNDS - In the old C.C. Camp area in - the NW 1/4		

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

WITNESS the seal and signature of the State Reclamation Engineer, affixed at Boise, Idaho, this
26th day of August, 1957.

/s/ Mark R. Kulp
State Reclamation Engineer.

(SEAL)

State of Idaho License and Certificate of Water Right

Water License No. 20173

Amount 2.34 c.f.s.

Water District No.

Priority October 12, 1947

THIS IS TO CERTIFY that HAROLD G. OMAN

of Yost, Utah, made application for a permit to appropriate the public waters of the State of Idaho, dated September 15, 1947; that Permit No. 20173 was issued under said application; that Certificate of Completion of works, with a carrying capacity of 3.20 second feet, was issued thereunder on February 22, 1950, showing that said works were completed on the 8th day of February, 1950; and that on the 5th day of March, 1956, HAROLD G. OMAN

of Yost, State of Utah, made proof to the satisfaction of the State Reclamation Engineer of Idaho, of the right to use the waters of 2 wells, a tributary of subterranean, for the purpose of Irrigation and domestic use, under Use Permit No. 20173 of the Department of Reclamation and that said right to the use of said waters has been perfected in accordance with the laws of Idaho, and is hereby confirmed by the State Reclamation Engineer of Idaho and entered of record in Volume 10 of Licenses at page 6080, on the 26th day of August, 1957; The right hereby confirmed dates from October 12, 1947;

The Point of Diversion^{are} located in the SW¹/₄ NW¹/₄ of Section 33 and in the SE ¹/₄ NE ¹/₄, Sec. 32, Tp. 14 S., R. 27 E., B. M. County Cassia

That the amount of water to which such right is entitled and hereby confirmed, for the purposes aforesaid, is limited to an amount actually needed and beneficially used for said purposes, and shall not exceed 2.34 cubic feet per second.

Description and location of use:

Twp.	Range	Sec.	Forty-acre Tract	No. Acres Described in Permit	No. Acres Actually Irrigated
14 S.	27 E.	33	NW $\frac{1}{4}$ NW $\frac{1}{4}$	40	20
			SW $\frac{1}{4}$ NW $\frac{1}{4}$	40	40
		32	NE $\frac{1}{4}$ NE $\frac{1}{4}$	40	20
			SE $\frac{1}{4}$ NE $\frac{1}{4}$	40	<u>40</u>
			Total number of acres irrigated - - -		

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

WITNESS the seal and signature of the State Reclamation Engineer, affixed at Boise, Idaho, this 26th day of August, 1957.

/s/ Mark R. Kulp
State Reclamation Engineer.

(SEAL)

97-2041

APPLICATION FOR PERMIT

To Appropriate the Public Waters of the State of Idaho

APPLICATION No. 32915
 PERMIT No. 25110
 DISTRICT No.

1. Name of Applicant: STATE LAND DEPARTMENT

Postoffice address: Boise

County: Ada

State: Idaho

I. If applicant is a corporation, give:

- (a) Date and place of incorporation:
- (b) Amount of capital stock:
- (c) Amount paid in:
- (d) Names and addresses of directors:

II. The financial resources of the applicant are:

- (a) Cash on hand:
- (b) Treasury stock:
- (c) Bonds to be issued:
- (d) Other resources:

2. Quantity of water claimed: 0.1 cubic feet per second.

Fenton Creek

3. Source of water supply: Cougar Creek, sometimes called / which is a tributary of Priest Lake- Priest River

4. Location of point of diversion: feet distant from the

corner of Section , T. , R. , B. M., and is in the SE $\frac{1}{4}$ SW $\frac{1}{4}$

of Section 23 , T. 60 N., R. 4 W.B.M., County of Bonner

5. Water is to be used for Public camp grounds

6. If for mining, milling, power or manufacturing purposes, give:

(a) Point of use of water: feet distant from corner of Section
 T. , R. , B.M., in the NE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 26 , T. 60 N. , R. 4 W. , B.M.

(b) Amount of power generated: H.P., under feet head.

(c) Water is to be returned to at a point feet
 distant from the corner of Section , T. , R. , B.M., in the
 of Section , T. , R. , B.M.

7. Estimated cost of works: \$ 1,000.00

8. Kind of works: Small dam and underground pipe line

9. Height of dam feet; length of dam at top feet; length of dam at bottom
 feet; material used in dam:

10. Size of headgate: Width feet; height feet.

11. Ditch: Width at bottom feet; width at water line feet; depth of water feet;
 dimensions of flume:

Diameter of pipe inches; length of conduit miles.

Average grade per mile feet.

12. The time required for the completion of such work is One years.

13. The time required for the complete application of the water to the proposed use is One additional years.

14. The land to be irrigated is described in the following tabulation: See remarks.

15. Existing water rights and/or valid permits appurtenant to the lands to be irrigated are:

16. (a) Is reservoir to be used? If so, fill in (b) and (c) below:
 (b) Name of Reservoir and number of Storage Permit:
 (c) Date of filing of Application for Storage Permit and Name of Applicant:

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

STATE FOARD OF LAND COMMISSIONERS *Applicant.*

By Arthur Wilson Agent.
State Land Commissioner

Date of first receipt at Department of Reclamation: 9:15 August 10, 1954

Returned to applicant for correction:

Corrected application received:

Approval of State Reclamation Engineer

The number of this permit is 25110

Recorded in Book 89 Page 25110 Approved August 21, 1954

This is to certify that I have examined the within application for a permit to appropriate the public waters of the State of Idaho, and hereby approve he same, subject to the following limitations and conditions:

Bond in the sum of \$ _____ to be filed on or before _____

Work to begin on or before October 21, 1954 and to continue diligently and uninterruptedly to completion, unless temporarily interrupted by circumstances over which permit holder has no control.

One-fifth of the work above specified to be completed on or before February 21, 1955

The whole of said work to be completed on or before August 21, 1955

Beneficial use of water appropriated in accordance herewith, to be made on or before August 21, 1956

WITNESS My hand this 21st day of August, 1954

MARK R. KULP
State Reclamation Engineer.

IN TESTIMONY WHEREOF, WE, LEN JORDAN, Governor of the State of Idaho,
and IRA H. MASTERS, Secretary of State of the State of Idaho, have caused this instrument to

be executed in the name of the State of Idaho, and caused the Great Seal of the State of Idaho to be hereunto affixed, this 21st

day of August, 1954.

STATE OF IDAHO

Countersigned:

(SEAL) By IRA H. MASTERS

By **LEN JORDAN**
Governor.

Secretary of State.

REMARKS: The water to be used for the development of State recreation lands and will be used on a public camp ground.

14.

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 $\frac{1}{4}$	
			Permit No. 25110																
			CERTIFICATE OF COMPLETION OF WORKS																
TO ALL WHOM IT MAY CONCERN:																			
This is to certify that THE STATE LAND DEPARTMENT of Boise, County of Ada, and State of Idaho, the holder of Permit No. 25110, issued upon Application No. 32915 bearing date of priority of August 10, 1954, authorizing the diversion of 0.1 second foot of the waters of Cougar Creek (sometimes called Fenton Creek), a tributary of Priest Lake-Priest River-County of Bonner, State of Idaho, for public camp ground purposes, has fully complied with the provisions of the laws of the State of Idaho relating to the proof of completion of the works of diversion set out and described in said Permit; that said works are adequate for diverting and conveying to the place of intended use 0.1 second foot of the waters of Cougar (or Fenton) Creek; that the point of diversion of said waters is in the SE $\frac{1}{4}$ SW $\frac{1}{4}$ Section 23, Township 60 North, Range 4 West, B. M., and that the place of use of said water is in the NE $\frac{1}{4}$ SW $\frac{1}{4}$ Sec. 26, Twp. 60 North, Range 4 West, B. M.																			
Witness my hand this 16th day of June, A. D. 1955.																			
Proof of Completion of Works was made June 8, 1955.																			
Certificate of Completion of Works was issued June 16, 1955.																			
MARK R. KULP State Reclamation Engineer																			
LICENSE ISSUED FOR 0.14 SEC. FT. Page 6079																			

March 6, 1973

Re: Water License 97-2041

Walter M. Knapp, Manager
Airport Resort, Inc.
Cabanaugh Bay
Boolin, Idaho 83821

Dear Mr. Knapp:

We have received your letter of March 1, 1973 concerning the waters of Cougar Creek. We are enclosing a copy of our January 16, 1973 correspondence to which you have referred. We have underlined several parts of our correspondence which we hope will assist you in clarifying this issue. A re-reading of this letter should illustrate that the Department did not commit to send out any of its employees, and further, that the Department has no control in this system.

The system in question was, at one time, part of the Public Lands Department. As we now understand, the Department of Public Lands has for some time been disassociated with this system. Apparently, the water rights originally covered by license 97-2041 have been assumed by the present users of the system. If this is the case, and the present users have a valid right to this water, then the maintenance of the system would probably be a requirement of the users.

We are enclosing a copy of a court decree concerning what is alleged to be the water system in question, it was furnished to us by the Public Lands Department since our last communication. One of the defendants listed, was, in fact with the State Land Department and the action was apparently against the State of Idaho. In reading through the decree, it appears that what had formerly been called "Sutton's Resort", which may be your resort at this time, is required to maintain the diversion works and pipeline by reason of the court action and the easement involved.

May we say again that you should contact the Public Land Department if you have any questions on this matter.

Sincerely,

Donald W. McEldowney
Water Rights Administrator

Enclosures

97 2041

AIRPORT RESORT, INC.
CAVANAUGH BAY
COOLIN, IDAHO 83821
PHONE: 443-2045

March 1, 1973

Donald W. McEldowney
Water Rights Administrator
Capitol Building
Boise, Idaho 83701

Dear Mr. McEldowney:

January 16, 1973 I received a letter from you concerning my letter of December 28, 1972 requesting information on who has the water rights and who is responsible for the upkeep of the water system here. In your letter I was told you would have someone from your office contact me.

This is to inform you that no one has been around, and that the water lines are still frozen and probably will be for a month or so yet.

I hope without any further delay you will have someone out here to survey the situation and advise me as to whether it is our responsibility to put a water line in this spring or is it yours.

I hate to sound like a crank, but this is a matter that must be taken care of.

Yours truly

Walter M. Knapp

Walter M. Knapp, Mgr.

hk/cc

January 16, 1973

Re: Water License 97-2041 State Land Department

Walter M. Knapp, Manager
Airport Resort, Inc.
Cabanaugh Bay
Coclin, Idaho 83821

Dear Mr. Knapp:

We have received and reviewed your letter of December 28, 1972. A search of our records found one water right for a domestic type system on file with the Department. The right is No. 25110/97-2041. The license was issued to the State Land Department on the 26th of August, 1957. The amount of water is .04 cubic feet per second with a priority of August 24, 1954; the source is Cougar Creek, tributary of Priest Lake. The point of Diversion is in the SE⁴SW⁴ Section 23, Township 60 North, Range 4 West B.M. The place of use is described as being in Township 60 North, Range 4 West, Section 26 part of the NW⁴ (Public Camp Grounds in the old C.C. Camp area.)

The State Department of Water Administration does not control the system nor the water rights to use same. This right was perfected in the name of the State of Idaho Public Land Department and they may or may not control the water system in question. We have contacted Mr. Jack Gillett, Deputy for the Department of Public Land, and he will have one of his personnel contact you concerning this matter. As his memory would indicate, there may be two systems involved. One of which supplies water to the Land Department Administration Headquarters near the Airport, and there may possibly be another system involved.

If you have any further questions, concerning the operation of the system, you may wish to contact the Public Lands if they do not contact you in the near future. If we can be of further assistance, please contact us.

Very truly yours,

Donald W. McEldowney
Water Rights Administrator

DWM:kss

97 2041

Routing Slip
Department of Water Administration

Routing Order	To	Initial
1	Director	EKA
	Deputy Director	
	Legal	
	Admin. Asst.	
2	FOR ANSWER Water Rights	
	Engineering	
	Investigations	
	Eastern Dist.	
	Western Dist.	
	Southern Dist.	
	Northern Dist.	
	File	
	Read and Discard	
	Return to	97 2041

25110 97-204

32799 - 95-2101

96-7053

RKA

AIRPORT RESORT, INC.
CAVANAUGH BAY
COOLIN, IDAHO 83821
PHONE: 443-2095

December 28, 1972

Mr. Keith Higginson
State Water Administration
Capitol Building
Boise, Idaho 83701

Dear Mr. Higginson:

Mr. Russ Bishop, the State Representative from this area has advised me to write to you concerning water rights on Cougar Creek at Priest Lake, Cavanaugh Bay, Coolin, Idaho.

I understand this water system was installed by the CCC in the 1930s, and that there has been much litigation concerning the water.

I would like to find out who holds the water rights, who is responsible for the upkeep of the system, and what can be done to assure all the users on the lines of an adequate supply of water. As of this date the main lines are frozen and most property owners on the system want to see what can be done to prevent this in the future.

Please let us hear from you on this matter as soon as possible. Thank you.

Yours truly

Walter M. Knapp

Walter M. Knapp, Mgr.
Airport Resort, Inc.
Cavanaugh Bay
Coolin, Idaho 83821

92 2341

August 26, 1957

Re: Permit No. 25110
State Land Department

Mr. Arthur Wilson
State Land Commissioner
State Land Department
BUILDING

Dear Mr. Wilson:

Enclosed is the License and Certificate of Water Right issued under Permit No. 25110, confirming the right with a priority of August 20, 1954, to the use of 0.04 second foot of water from Cougar Creek, with the point of diversion in the SE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 23, Township 60 North, Range 4 West, B.M., for domestic use at the public camp grounds in the NW $\frac{1}{4}$ of Section 26, Township 60 North, Range 4 West, B.M.

Very truly yours,

MARK R. KULP
State Reclamation Engineer
By

Chief Clerk

EPR:nls
Enc.

25110

August 19, 1957

Re: Permit No. 25110
Cougar Creek

Mr. Arthur Wilson
State Land Commissioner
State Land Department
BUILDING

Dear Mr. Wilson:

Our field engineer's report on the inspection of application of water to beneficial use shows the works under Permit No. 25110 are capable of conveying 2 minor's inches (0.04 c.f.s.) of water from Cougar Creek for domestic use at the camp grounds.

Upon receipt of the statutory fee of \$5.00, a License and Certificate of Water Right can be issued to the State Land Department, confirming the priority of August 20, 1954, for the use of 0.04 second foot of water from Cougar Creek, with the point of diversion in the SE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 23, Township 60 North, Range 4 West, S.A., for domestic use at the camp grounds.

Very truly yours,

MARK R. KULP
State Reclamation Engineer
By

Chief Clerk

EPR:nls

25110

August 16, 1957

Re: Permit No. 25110
State Land Department
Cougar Creek

Mr. Henry Felton
Lawyer
534 Fourth Avenue
Lewiston, Idaho

Dear Mr. Felton:

Herewith: I hand you the "Dismissal of Protest" of the protest by Rex Sutton filed with the Department of Reclamation, in connection with the issuance of a water right license, for 0.1 cubic foot per second from Cougar Creek, to the State Land Department, under Permit No. 25110. Also, there is a signed copy for Rex Sutton.

Very truly yours,

Mark R. Kulp
State Reclamation Engineer

MRK:nls

25110

August 16, 1957

Mr. Arthur Wilson
State Land Commissioner
BUILDING

Dear Mr. Wilson:

Herewith: "Dismissal of Protest" of the protest by Rex Sutton
filed with the Department of Reclamation, in connection with the
issuance of a water right license, for 0.1 cubic foot per second
from Cougar Creek, to the State Land Department, under Permit No.
25110.

Very truly yours,

Mark R. Kulp
State Reclamation Engineer

MRK:nls
Enc.

25110

August 16, 1957

Honorable Graydon W. Smith
Attorney General
State of Idaho
BUILDING

Dear Mr. Smith:

Herewith: "Dismissal of Protest" of the protest by Rex Sutton
filed with the Department of Reclamation, in connection with the
issuance of a water right license, for 0.1 cubic foot per second
from Cougar Creek, to the State Land Department, under Permit No.
25110.

Very truly yours,

Mark R. Kulp
State Reclamation Engineer

MRK:nls
Enc.

25110

S T A T E O F I D A H O
D E P A R T M E N T O F R E C L A M A T I O N

Permit No. 25110

STATE LAND DEPARTMENT

PROTEST of

Rex Sutton

DISMISSAL
OF
PROTEST

On August 10, 1954, Arthur Wilson, State Land Commissioner, State Land Department, made application for permit to appropriate 0.1 cubic feet per second of the waters of Cougar Creek with the point of diversion in the SE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 23, Township 60 North, Range 4 West, B.M., to be used on a Public Picnic and Camp Ground in the NE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 26, Township 60 North, Range 4 West, B.M.

Notice of proof of application to Beneficial Use was published and protest was filed by Rex Sutton, alleging that the applicant - State Board of Land Commissioners, by Arthur Wilson, State Land Commissioner - has done no work at the said location, except to illegally tap and tie into a private water system belonging to the protestant; and,

"That this matter has been taken to the District Court in Bonner County, Idaho, and has been referred by the Department of Reclamation to the Attorney General of the State of Idaho, which Attorney General has promised to answer a suit filed by Rex Sutton".

THE STATE RECLAMATION ENGINEER finds: That works capable of carrying 0.04 cubic feet per second of water from the point of diversion to the place of use exist

and

That 0.04 cubic feet per second of public water have been appropriated and applied to beneficial use

and

That the question of the ownership of the works cannot be determined by an administrative official.

25110

THEREFORE, the protest of Rex Sutton is DISMISSED as not applicable for an administrative determination. License and Certificate of Water Right will be issued to the State Land Department for 0.04 cubic feet per second of water from Cougar Creek for public use at a public picnic and camp ground -- with a priority of AUGUST 10, 1952.

GIVEN UNDER MY HAND AND THE OFFICIAL SEAL OF THE DEPARTMENT OF RECLAMATION, at Boise, Idaho, this 15th day of August, 1957.

Mark R. Kulp

MARK R. KULP
State Reclamation Engineer

work:- I put campgrounds a little closer to the creek but I doubt if it makes any difference.

There were no legal land markers found. Map is made in relation to creek.

I found no evidence of irrigation. In fact does it need it? It would take more help to irrigate it.

STATE OF IDAHO
DEPARTMENT OF RECLAMATION
BOISE, IDAHO
REPORT OF ENGINEER

Permit No. 25110

This proof is for Beneficial Use

In Water District No. _____

1. Name of applicant Arthur Wilson, State Land Commissioner, State Land Dep't.

2. Source of water supply: Cougar Creek, sometimes called Fenton Creek

3. Location of point of diversion: Is in the SW $\frac{1}{4}$ SE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 23.,

T. 60 N R. 4 W., B.M. County of Bonner

4. Describe works as they exist, giving dimensions and capacities of same: There is a concrete wall extends part way across the stream. Tank (concrete) just above wall. Pipe line leads from there to the camp grounds. There is one $\frac{3}{4}$ " outlet at the camp ground and $\frac{3}{4}$ " outlet at the CCC camp. Water in both tanks. Tank appears to be about 6' x 6' x 6' inside.

5. Water is used for: Public camp grounds

6. State whether or not water has been turned into works of diversion: yes.

7. List legal subdivisions of lands to be irrigated. If proof is for beneficial use, give exact number of acres under cultivation in each forty-acre tract. (Describe manner and place of use, if other than irrigation):

NW corner of NE $\frac{1}{4}$ NW $\frac{1}{4}$ of Sec. 26., Twp. 60 N., Rge. 4 W., B.M.

There is a protest, not against the use of the water, but due to a controversy over the ownership of tank and pipe line. Mr. Rex Sutton of Sutton's Resort says camp was abandoned (CCC) and pipes being torn out. Then a Mr. Mallory, I believe it was, he says told him to take possession of it which he did. Now he claims a prescriptive right to use of the whole. He also complains bitterly

(Submit map on attached plat, showing location and details of above description.)

8. What large stream would the water here appropriated finally reach? _____

Remarks: Leon HoFFine along

re establishment of a public camp ground.

The whole thing is unfortunate. Stanton Ready, former administrator sold and/or leased all the frontage along the bay. Now when people use the camp ground they trespass on the property along the lake to get to the beaches. There is a first class "rump" going between Sutton and the State Land Dept.

This examination was made on the 30 day of July, 1957.

(Signed) E. H. Thompson Examiner.

25110

Int = leave to farmer.

1000 leave to

Wroughton

Bringing

James

Brittain

Belles

3" to 1 1/2" line

in Antons

He Meyer has - cabin with water fr. this area

He Meyer has 6 units (houses)

INSTRUCTIONS TO EXAMINERS

1. Always carefully note the location of the point of diversion and accurately plat same.
2. When proof is for beneficial use, carefully check up the number of acres actually irrigated in each forty and accurately plat same.
3. Make a map showing the correct location of streams and ditches, and the irrigated lands, and any adjacent permanent landmarks, such as towns, lakes, large streams and public roads.
4. If any unusual conditions are discovered, make plain statement of them under remarks.
5. Always see the holder, if possible, and go over the whole ground with him and make your report only upon actual existing facts and conditions.
6. Give general characteristics of soils, topography, and crops raised.

Antons has

RECEIVED

AUG 15 1957

Department of Reclamation

Arthur Wilson, State Land Commissioner, State Land Dep't.
Room 120, State House, Boise, Idaho

P. No. 25110

Beneficial Use

County: Bonner

23-60N.-4W.

Q. 0.1 c.f.s.

S. Tongue Creek (Antons Cr.)

Pl. 2 SW. 25. SW. Sec. 23, T. 60N. - R. 4W.

Leon Hoffline along.

Pl. 2 Public Camp Grants.

1/4 mi. to front cabin

1-3/4 outlets

1/4 mi. further = camp.

Filed - Aug. 10, 1954

Due - Aug. 21, 1956

approx. 100 yds upstream
fr. road there is a

10" x 8' h. x 1 1/2' d. with
bank on S. end 3 1/2' h on

N. end 6" W.

bank above well.

approx. 6' x 6' x 6' h. at.

water flows from stream
over top and over a

screen 22" d. in top of
tank

2" steel line (pipe)

leads fr. bottom of
tank thru wall

out 80' drop to road

9/11 - 6-16-55

STATE OF IDAHO
DEPARTMENT OF RECLAMATION
BOISE

REPORT OF ENGINEER

PERMIT NO. 25110

REPORT ON PROOF OF Beneficial Use

Arthur Wilson, State Land Commissioner, State Land Dep't
Room 120, State House, Boise, Idaho

app. 0.1 cfs
Cyn 0.1 cfs

Sub. 1
Camp Grounds

0.04 cfs
mark

FRIEST LAKE

CARNAUGH TRAY

23

COUGAR CR.

CR.

R.D.

Pipe line (3" 1 1/2")

outlet here

Park.

9/4" Forest

outlets here.

22

24

27

34

35

T. 60N. - R. 4W.

T. 59N. - R. 4W.

1100 ft

Subdivisions = One
Use = domestic
for Camp ground.

Q = ~~1 inch~~
2 inches

Leon Hoffine of Sandpoint, State Land Dept.
along on inspection.

September 19, 1956

Re: Permit No. 25110

Mr. Arthur Wilson
State Land Commissioner
Room 120, State House

Dear Mr. Wilson:

We acknowledge receipt of the depositions of yourself and two witnesses, also affidavit of publication in the Priest River Times, all submitted in proof of beneficial use on Permit No. 25110.

Before final action is taken in the matter, the law requires that a field examination be made by an engineer from this department.

We cannot tell just when this examination will be made, but our field engineer will try and contact you at the time he makes the examination so that arrangements may be made to show him over the grounds.

Very truly yours,

MARK R. KULP
State Reclamation Engineer
By

Chief Clerk

EPR

25110

HENRY FELTON
LAWYER
LEWISTON, IDAHO
534 FOURTH AVENUE

POST OFFICE BOX 365
TELEPHONE SH 3-1521

August 28, 1956.

RECEIVED
AUG 29 1956
Department of Reclamation

Mr. Mark R. Kulp,
State Reclamation Engineer,
Department of Reclamation,
Boise, Idaho.

Re: Permit No. 25110, State Land Department
Cougar Creek

Dear Mark:

Mr. Sutton's protest is based upon the fact that the State has done nothing to divert the water. The State has erected no diversion dam, nor has it done anything more to divert the water than tapping Mr. Sutton's pipes. We consider it would be improper for your approval to be voiced to such a proceeding.

When you make the examination of the works at Cavanaugh Bay, Mr. Sutton will be glad to show you the exact extent of the State's diversion.

We believe that this protest is applicable to the administrative determination on Permit No. 25110, in that no proper diversion of water has yet been made.

Sincerely yours,


Henry Felton

hf mm
cc Mr. Rex Sutton

25110

AFFIDAVIT OF PUBLICATION

STATE OF IDAHO

County of Bonner,

ss.

P. K. Woods

being duly sworn, says that he is the Publisher
of the PRIEST RIVER TIMES, a weekly newspaper printed and
published at Priest River, Bonner County, Idaho, and has been
continuously and uninterruptedly published in said County during
a period of 78 consecutive weeks prior to the first publication of
the annexed notice for publication, is a newspaper of general cir-
culation made up of at least eight pages of at least seven columns
each, printed from typematter or stereotyped forms of at least
nineteen and three-fourths inches depth, has at least 650 bona fide
subscribers living within said Bonner County, and is published at
regular weekly intervals. That the annexed is a true copy of the
notice for publication in the case of

NOTICE OF PROOF APPLICATION OF WATER TO BENEFICIAL USE

as it was published in the regular and entire issue of said paper
for a period of four consecutive weeks, commencing on
the 9th day of August, 1956,
and
ending on the 30th day of August, 1956,
and that said notice was published in said newspaper proper, and
not in supplement form.

P. K. Woods

Subscribed and sworn to before me this

6th day of September, 1956

George C. Connolly
Notary Public for Idaho,
Residing at Priest River, Idaho.

Notice For Publication NOTICE OF PROOF APPLICATION OF WATER TO BENEFICIAL USE

Notice is hereby given that at
10:00 A. M. on the 31st day of
August, 1956, at Boise, County of
Ada, State of Idaho, before M. C.
HAMBLIN, Notary Public, proof
will be submitted of the applica-
tion to beneficial use of 0.1 cubic
foot per second of the waters of
Cougar Creek point of diversion;
SE 1/4 SW 1/4, Sec. 23, Township 60
North, Range 4 West, B. M., near
SW Corner, in accordance with
the terms and conditions of Per-

mit No. 25110 heretofore issued
by the State Reclamation Engi-
neer of the State of Idaho.

The name and postoffice address
of the person or corporation hold-
ing said permit are Idaho State
Land Department, Arthur Wilson,
State Land Commissioner, Room
120, State House, Boise, Idaho.

The use to which said water
has been applied is public picnic
campground area.

The amount applied to benefi-
cial use is 0.1 cubic foot per second.

The place where said water is
used: Public picnic and camping
ground located in the NW Cor. of
NE 1/4 NW 1/4, Sec. 26, Twp. 60 N.,
Rge. 4 W., B. M.

The right to take water from
such works is based upon Permit
No. 25110.

The source of supply from
which such water is diverted is
Cougar Creek, which flows into
Cavanaugh Bay, in Priest Lake.

The date of priority which said
user is prepared to establish is
August 10, 1954.

MARK R. KULP
State Reclamation Engineer.

25110

**STATE OF IDAHO
DEPARTMENT OF RECLAMATION
BOISE, IDAHO**

Permit No. 25110 ✓

Proof of Application of Water to Beneficial Use

Deposition of Holder

Ques. 1. State your name, residence, occupation and postoffice address.

Ans. Arthur Wilson, State Land Commissioner, State Land Department,
120, State House, Boise, Idaho

Ques. 2. If acting in behalf of corporation, state its name, principal place of business (if a foreign corporation, give name of postoffice of statutory agent), your position with reference to same, and your authority for appearing in its behalf.

Ans. _____

Ques. 3. State number and date of permit, and date of priority you propose to establish under the permit.

Ans. Permit No. 25110, August 21, 1954

8-21-54

Ques. 4. State source of water supply and give exact location of point of diversion.

Ans. Cougar Creek, sometimes called Penton Creek, near SW corner of SE¹-SW¹ Sec. 23,
Twp. 60 N., Rge. 4 W., B.M.

Ques. 5. Describe your works of diversion, and state amount of water they are capable of conveying from point of diversion to place of use, and give name of canal or ditch or other works by which water is conducted to such place of use. If a well, state depth of well, depth and size of casing and depth to water. If pump is used, state discharge of pump and tell how it was measured or determined. If sprinkler irrigation, give number and size of nozzles and operating pressure.

Ans. dam in the creek, and 2" water pipe to campground area,

Ques. 6. State for what purpose water is used and describe place of use. (If for irrigation, name each subdivision in which used, and number of acres in each subdivision that have actually been irrigated with said water.) State whether cultivated or natural meadow land and the nature of all improvements which have been made as a direct result of said use.

Ans. public picnic and campground area, natural meadow land, some timber,

water is used for drinking and for irrigation of some grass. NW Cor. of

NE NW. Sec. 26 T. 60 N. - R. 4 W. B.M.

25110

mt

Ques. 7. If for other than irrigation purposes; state how applied, amount of horse power generated, etc.

Ans. _____

Ques. 8. What is the minimum amount of water required for the purpose specified above?

Ans. 0.1 cubic feet per second

Ques. 9. If you are not the person or representative of the corporation to whom above mentioned permit was originally issued, please state how ownership was acquired by present holder.

Ans. _____

Ques. 10. State when, how, in what amount and to what extent the water diverted under above mentioned permit has been used.

Ans. 0.1 cu. ft. per second has been used during the camping season during the summer of 1955, and of 1956.

Ques. 11. State when, how, in what amount and to what extent waters other than those diverted under the above mentioned permit have been diverted and applied to beneficial use upon the lands herein described. Give full particulars regarding such other appropriations and rights claimed thereunder.

Ans. _____

State Land Department

By

(Sign)

Arthur Wilson
State Land Commissioner

I hereby certify that the foregoing testimony was read to the above subscribed before its signing, that I believe him to be the person he represents himself to be, and that said testimony was subscribed and sworn to before me, at my office in Boise, County of Ada,

State of Idaho, on this 31 day of August, A. D. 1956.

W. L. Hamblin
Notary Public

My commission expires 3/5/59

25110

STATE OF IDAHO
DEPARTMENT OF RECLAMATION
BOISE, IDAHO

PERMIT NO. 25110

Proof of Application of Water to Beneficial Use

Deposition of Witness

The deposition of two witnesses, on this form, taken separately, required in each case.

Ques. 1. State your name, age, residence, occupation and postoffice address.

Ans. Lester M. Tovey age 54 R. 1. Plummer, Idaho
Parks and Recreation Director for North Idaho

Ques. 2. Are you acquainted with Arthur Wilson, State Land Commissioner, the holder of Permit No. 25110? How long have you known him and where does he reside?

Ans. I have known him since 1953

He resides at 2805 N. 28th St., Boise, Idaho

Ques. 3. Have you read or heard read said Permit No. 25110, and are you familiar with its provisions and conditions?

Ans. Yes

Ques. 4. State source of water supply, place of diversion, and describe works for conveying water from point of diversion to place of use.

Ans. Source of water supply is Cougar Creek, diversion is by a small dam near
the southwest corner of SE 1/4 Sec. 25, T. 60 N., R. 4 W., B.M., with pipe
running underground to the Cavanaugh Bay State Park & Campground.

Ques. 5. How many second feet of water do you estimate said works will safely conduct to place of use, and how much water have you seen being so conveyed?

Ans. 0.1 cubic feet per second (45 gal.) a full flow of 1 1/2 pipe at the picnic grounds located where the old CCC was formerly in operation.

Ques. 6. State for what purpose water is used and at what place. (If for irrigation, give each subdivision in which water has been used and number of acres irrigated in each subdivision.) State whether cultivated or natural meadow land and the nature of all improvements which have been made as a direct result of said use.

Ans. drinking and cooking purposes, and keeping grass green.

25110

Ques. 7. If for power or other purposes than irrigation, state how water has been applied and to what extent.

Ans. _____

Ques. 8. (If for irrigation) state character of land that has been reclaimed, and give your estimate of the amount of water required for its profitable cultivation.

Ans. Land is not cultivated. It is meadow used for camping and picnicking.

Ques. 9. Have you any interest in the works, water or lands above mentioned? If so, in what way and to what extent?

Ans. None, except I am parks supervisor and have seen to it that the water supply is used in developing and maintaining the campground and picnic area.

Ques. 10. State when, how, in what amount and to what extent you have witnessed the application to beneficial use of water diverted under said permit.

Ans. Have visited this park several times during 1955 and 1956. and have cleaned the screens on the reservoir, and diverted more water from the main Cougar Creek channel into the reservoir channel by using large rock to dam the Cougar Creek channel.

(Signed) Lester M. Tovey
Lester M. Tovey

I hereby certify that the foregoing testimony was read to the above subscriber before its signing, that I believe him to be the person he represents himself to be, and that said testimony was subscribed and sworn to before me in Boise,
County of Ada, State of Idaho, on this 31 day of August,
A. D. 1956.

W. H. Hamilton
Notary Public.

My commission expires 3/5/59.

25110

STATE OF IDAHO
DEPARTMENT OF RECLAMATION
BOISE, IDAHO

PERMIT NO. 25110

Proof of Application of Water to Beneficial Use

Deposition of Witness

The deposition of two witnesses, on this form, taken separately, required in each case.

Ques. 1. State your name, age, residence, occupation and postoffice address.

Ans. J. E. Beaudoin; age, 67; residence, 407 Military Drive, Coeur d'Alene, Idaho;
occupation, State Land & Timber Agent; postoffice address, Box 671, Coeur d'Alene.

Ques. 2. Are you acquainted with Arthur Wilson, State Land Commissioner, the holder of Permit No. 25110? How long have you known him and where does he reside?

Ans. I have known him three years.

He resides at 2805 N. 28th St., Boise, Idaho

Ques. 3. Have you read or heard read said Permit No. 25110, and are you familiar with its provisions and conditions?

Ans. Yes

Ques. 4. State source of water supply, place of diversion, and describe works for conveying water from point of diversion to place of use.

Ans. Source of water supply is Cougar Creek, diversion is by a small dam near
the southwest corner of SE 1/4 SW 1/4 Sec. 23, T. 60 N., R. 4 W., E.M., with pipe
running underground to the Cavanaugh Bay State Park & Campground.

Ques. 5. How many second feet of water do you estimate said works will safely conduct to place of use, and how much water have you seen being so conveyed?

Ans. 0.1 cubic feet per second

Ques. 6. State for what purpose water is used and at what place. (If for irrigation, give each subdivision in which water has been used and number of acres irrigated in each subdivision.) State whether cultivated or natural meadow land and the nature of all improvements which have been made as a direct result of said use.

Ans. drinking and cooking purposes, and keeping grass green.

25110

Ques. 7. If for power or other purposes than irrigation, state how water has been applied and to what extent.

Ans. _____

Ques. 8. (If for irrigation) state character of land that has been reclaimed, and give your estimate of the amount of water required for its profitable cultivation.

Ans. Land is not cultivated. It is meadow used for camping and picnicking.

Ques. 9. Have you any interest in the works, water or lands above mentioned? If so, in what way and to what extent?

Ans. None

Ques. 10. State when, how, in what amount and to what extent you have witnessed the application to beneficial use of water diverted under said permit.

Ans. Have visited this park several times during 1955 and 1956.

(Signed) _____

J. E. Beaudoin

I hereby certify that the foregoing testimony was read to the above subscriber before its signing, that I believe him to be the person he represents himself to be, and that said testimony was subscribed and sworn to before me in Coeur d'Alene,
County of Kootenai, State of Idaho, on this 31 day of August,
A. D. 1956.

My commission expires May 1, 1959

Gene Robins
Notary Public.

25110

August 23, 1956

Henry Felton
Lawyer
534 Fourth Avenue
Lewiston, Idaho

RE: Permit No. 25110
State Land Department
Cougar Creek

Dear Hank:

I have your letter of August 20th enclosing Protest of Rex Sutton.

The Protest will be considered after our statutory examination of the diversion works and evidence of the application of the water to beneficial use. The Statutes call for an examination before the proofs are made, but of necessity are more often made after the proofs, then if there are Protests that require more information a further hearing is held. Protests are always considered at the time the examination is made and in the final determination. In arriving at a decision the department is interested only in whether the Statutory requirements have been complied with. Matters of trespass and conflicting claims of ownership are judicial matter, beyond the authority of an administrative agency to determine and while not ignored are not adjudicated by the department.

In our examination of Permit No. 25110, we will examine the physical evidence of the existence of diversion and transmission works without concern as to their ownership.

Since the Protest of Rex Sutton does not involve the actual appropriation of the water, it is unlikely that a local hearing will be required by the Department, as the proper place to determine conflicting claims is in the District Court, where action on the same conflicting claim has already been initiated.

The Protest of Rex Sutton will be considered as far as applicable in administrative determination on Permit No. 25110.

Very truly yours,

MARK R. KULP
State Reclamation Engineer

MRK:vem
CC: State Land Department

25110

HENRY FELTON
LAWYER
LEWISTON, IDAHO
534 FOURTH AVENUE

RECEIVED
AUG 22 1956
Department of Reclamation

POST OFFICE BOX 365
TELEPHONE SH 3-1521

August 20, 1956.

Department of Reclamation,
State of Idaho,
Boise, Idaho.

Attention: Mr. Mark R. Kulp
or
Mr. Roy W. Thompson

Dear Sirs:

This is to confirm a telephone conversation
which I had with Roy W. Thompson this morning.

In accordance with such conversation, I am
forwarding a protest to the State Land Department
upon its application for use of water on Cougar Creek,
Cavanaugh Bay, Priest Lake, Idaho.

It is my understanding that this will
cause a hearing to be had and will stop any final
determination of the State Land Department's right.

Any hearing should be had in Bonner County,
where the water use exists.

There is plenty of water in Cougar Creek for
both users. However, when the State Land Department
attempts to divert water through works which are the
private property of an individual, their use should
not be confirmed until they have constructed their
own diversion dams and pipes.

Sincerely yours,


Henry Felton

hf mm
encl
cc Mr. Wynne Blake
Attorney at Law
Lewiston, Idaho

25116

RECEIVED
AUG 22 1956

Department of Reclamation

BEFORE THE DEPARTMENT OF RECLAMATION, STATE OF IDAHO

RE: APPLICATION }
STATE LAND DEPARTMENT }
NO. 32915 }
PERMIT NO. 25110 }

Comes now Rex Sutton, having received notice of proof of application of water to beneficial use, published in the Priest River Times on August 9, 1956, to the effect that certain water from Cougar Creek, near Cavanaugh Bay, on Priest Lake, Idaho, has been applied to beneficial use by the State Land Department, and protests the confirmation of such permit for the following reasons:

I.

That the applicant, the State Board of Land Commissioners, by Arthur Wilson, State Land Commissioner, has done no work at said location, except to illegally tap and tie into a private water system belonging to this protestant;

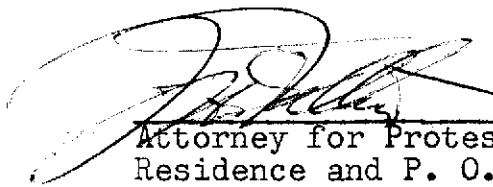
II.

That the State Land Department has erected no dam and caused no pipe to be laid from Cougar Creek, and the only pipes placed upon the grounds by the State Land Department were illegal pipes attached to a private water system belonging to this protestant, Rex Sutton;

25110

III.

That this matter has been taken to the District Court in Bonner County, Idaho, and has been referred by the Department of Reclamation to the Attorney General of the State of Idaho, which Attorney General has promised to answer a suit filed by Rex Sutton.


Attorney for Protestant,
Residence and P. O. Address,
Lewiston, Idaho.

STATE OF I D A H O)
 (ss.
County of Nez Perce)

J. H. FELTON, being first duly sworn, on oath deposes and says:

That he is attorney for Rex Sutton, the protestant herein; that he is familiar with the facts and is making this verification for and on behalf of such Rex Sutton; that he has read the foregoing protest, knows the contents thereof, and that the allegations therein made are true, as he verily believes.



Subscribed and sworn to before me this 20th day of August, 1956.


Notary Public in and for
the State of Idaho, residing
at Lewiston therein.

25110

August 15, 1956

RE: Permit No. 25110

Mr. Henry Felton
Attorney At law
534 Fourth Avenue
Lewiston, Idaho

Dear Mr. Felton:

We wish to acknowledge receipt of your letter of August 14,
relative to the above numbered Permit.

We wish to state that Mr. Kulp is out of the Office and will
be for the next week, however, your letter will be called to his
attention upon his return.

As per your request we are enclosing a copy of Permit No.
25110 issued to the State Land Department for 0.1 cubic foot per second
of the waters of Cougar Creek. This is a correct copy of the Permit
on file in this Department. Our statutory fee for a copy of this kind
is \$1.00 which you may remit to this Department.

Very truly yours,

MARK R. KULP
State Reclamation Engineer
By

Roy W. Thompson
Supervisor of Water Distribution

T:cu
Enc.

25110

HENRY FELTON

LAWYER
LEWISTON, IDAHO

534 FOURTH AVENUE

POST OFFICE BOX 365
TELEPHONE SH 3-1521

August 14, 1956.

Mr. Mark R. Kulp,
State Reclamation Engineer,
State House,
Boise, Idaho.

RECEIVED
AUG 15 1956
Department of Reclamation

Dear Mark:

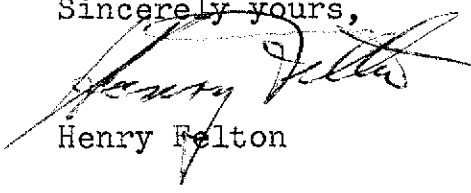
You have given a notice for publication in the Priest River Times of an application by the State Land Board for a permit to use waters of Cougar Creek near Cavanaugh Bay on Priest Lake.

There is a suit pending which the State was supposed to answer in reference to the waters of this Creek, and you were asked as State Reclamation Engineer to come North and make an examination of the properties in accordance with the law.

Will you send me a copy of the application, as it is likely that the State Land Board has designated by the method of appropriation equipment which belongs to my client, Rex Sutton. An examination would disclose that there is plenty of water for both the State Land Board and Mr. Sutton, but the question involved is the equipment for the transportation of the water, which the State Land Board is trying to take from Mr. Sutton.

Let me hear from you by return mail.

Sincerely yours,


Henry Felton

hf mm
cc Mr. Wynne Blake
Attorney at Law
Lewiston, Idaho
cc Mr. Rex Sutton

25116

IDAHO

DEPARTMENT OF PUBLIC LANDS
BOISE, IDAHO



ARTHUR WILSON
COMMISSIONER

August 2, 1956

STATE BOARD OF LAND COMMISSIONERS

ROBERT E. SMYLIE
GOVERNOR AND CHAIRMAN

~~JOHN W. SMITH~~ JAS. H. YOUNG
SECRETARY OF STATE

GRAYDON W. SMITH
ATTORNEY GENERAL

N. P. NIELSON
STATE AUDITOR

ALTON B. JONES
SUPT. OF PUBLIC INSTRUCTION

MILLERS FALLS

RECEIVED
AUG 3 1956
Department of Reclamation

Mr. Mark Kulp
State Reclamation Engineer
BUILDING

Attention: Mr. Petrie:

Dear Sir:

Enclosed herewith is "Notice of Proof of Completion of Works and Application of Water to Beneficial Use", in connection with Permit No. 25110. This form is in duplicate. Also enclosed is the official Notice authorizing publication thereof.

I find in the file a copy of a letter dated June 15, 1955, from this office to you, saying "Enclosed herewith is Proof of Completion of Works in connection with Permit to Appropriation the Public Waters, No. 25110". However, I presume that even if said Proof of Completion of Works should later put in an appearance, there would be no harm in our having included proof of completion of works in the same form with proof of application of water to beneficial use.

If this form is not properly filled out, let us know and we will come and get it for correction.

Sincerely,

A handwritten signature in cursive script, reading "M.C. Hamblin".

M.C. HAMBLIN
Chief Clerk

encl

25110

August 3, 1956

RE: Permit No. 25110

Mr. Arthur Wilson, State Land Commissioner
Idaho State Land Department
Room 120 State House
Boise, Idaho

Dear Mr. Wilson:

We have sent to the Priest River Times Notice of Beneficial Use proof to be made on August 31, 1956, on Permit No. 25110, with instructions to publish it once a week for four weeks prior to that date and to send you the Affidavit of Publication, together with statement of costs.

At the time set, you should appear before Mr. M. C. Hamblin, Notary Public, together with two disinterested witnesses who are familiar with the terms of the Permit and the work done thereunder for the purpose of executing the enclosed depositions.

Very truly yours,

MARK R. KULP
State Reclamation Engineer
By

Chief Clerk

R:cu
Enc.
CC: Mr. M. C. Hamblin

25110

STATE OF IDAHO
DEPARTMENT OF RECLAMATION
BOISE, IDAHO

RE: Permit No. 25110

Date:

Priest River Times
Priest River
Idaho

August 3, 1956

Gentlemen:

Enclosed you will find notice for publication once a week for four consecutive weeks prior to **August 31, 1956,** the date set for proof, the expense of the publication to be paid by the applicant, **Idaho State Land Department of Arthur Wilson, State Land Commissioner 120 State House, Boise, Idaho**, to whom you should furnish proof of publication on or prior to the date set for proof.

Please acknowledge receipt of this notice, and furnish this office with a copy of the first publication, in order that we may check same.

Very truly yours,

MARK R. KULP
State Reclamation Engineer
By

Chief Clerk

25110

NOTICE FOR PUBLICATION
NOTICE OF PROOF APPLICATION OF WATER
TO BENEFICIAL USE

Notice is hereby given that at 10:00 A. M. on the 31st day of August, 19 56,
at Boise, County of Ada, State of Idaho, before
M. C. HAMBLIN, Notary Public, proof will be submitted of the
application to beneficial use of 0.1 cubic ~~foot~~ per second of the waters of Cougar Creek
point of diversion: SE $\frac{1}{4}$ SW $\frac{1}{4}$, Sec. 23, Township 60 North, Range 4 West, B. M., near SW Corner.
in accordance with the terms and conditions of Permit No. 25110
heretofore issued by the State Reclamation Engineer of the State of Idaho.

The name and postoffice address of the person or corporation holding said permit are

Idaho State Land Department, Arthur Wilson, State Land Commissioner
Room 120, State House, Boise, Idaho.

The use to which said water has been applied is public picnic campground area.

The amount applied to beneficial use is 0.1 cubic foot per second.

The place where said water is used (~~at the location of the project as shown on the map attached hereto~~)

Public picnic and camping ground located in the NW Cor. of NE $\frac{1}{4}$ NW $\frac{1}{4}$, Sec. 26,
Twp. 60 N., Rge. 4 W., B. M.

The ~~name of the canal or ditch or other works by which said water is conducted to such place of use is~~

The right to take water from such works is based upon Permit No. 25110

The source of supply from which such water is diverted is Cougar Creek, which flows into
Cavanaugh Bay, in Priest Lake.

The date of priority which said user is prepared to establish is August 10, 1954.

MARK R. KULP

State Reclamation Engineer.

25110

RECEIVED
AUG 1 1956
Department of Reclamation

NOTICE TO ACCOMPANY THIS LETTER MUST BE MADE IN DUPLICATE

(Date) August 1, 1956

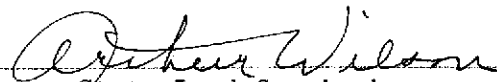
(P. O.) Boise, Idaho

TO THE STATE RECLAMATION ENGINEER:

Boise, Idaho

Dear Sir:

You are hereby authorized to have the attached notice published at my expense in the
Priest River Times of Priest River, Idaho published in
the county in which the works are situated.


State Land Commissioner

(In case of canals or other works designed to divert and carry more than 50 cubic feet of water per second, the following certificate must be signed by a well-known and competent engineer.)

I hereby certify that the facts set forth in the attached notice are true.

Engineer.

25110

STATE OF IDAHO

DEPARTMENT OF RECLAMATION

Boise, Idaho

June 27, 1956

Mr. Bob Dunlap
State Land Department
BUILDING

Dear Sir:

We enclose herewith blank notice for proof of application of water to beneficial use under your Permit No. 25110. This notice should be filled out in duplicate and returned to this office at least 40 days before the date upon which you wish to make this proof, in order to allow time for the four weeks' publication required by law.

This proof must be submitted before a Notary Public or other officer authorized by law to administer oaths.

The date for proof, as set out in your permit, is not later than August 21, 1956, and if proof is submitted later than said date, your priority will be brought down a length of time equal to the time elapsing between the date the proof is due and the date proof is actually made.

Very truly yours,

MARK R. KULP
State Reclamation Engineer

25110



GRAYDON W. SMITH
ATTORNEY GENERAL
STATE OF IDAHO
BOISE

RECEIVED
JUL 5 1955
Department of Reclamation

June 30, 1955

Mr. Mark R. Kulp
State Reclamation Engineer
B U I L D I N G

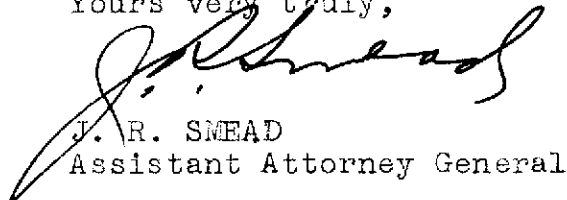
Dear Sir:

Answering your letter of June 27th, we received copies of the Summons and other papers in the Rex Sutton case, on June 22nd. I am writing J. H. Felton about the matter, and expect to hear from him within a few days, concerning the right of his client to bring action against the State of Idaho. I do not believe such jurisdiction exists in any Court, and have suggested that probably the action should be brought against the officers or employees of the State. I will let you know what he has to say about that when I hear from him.

As to an examination of the physical conditions which Mr. Felton has requested, I agree with you that there is no money available for that purpose, also that there is no necessity for any such because the controversy is between two users only.

I am returning your file herewith.

Yours very truly,


J. R. SMEAD
Assistant Attorney General

JRS:dm

encl.

25110

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

REX SUTTON,	)	No. _____
Plaintiff,	)	
vs.	)	
THE STATE OF IDAHO,	)	
Defendant.	)	

O R D E R

It appearing to the Court that a suit has been filed in the above entitled District Court for the purpose of adjudicating the priority of rights to the use of water from Cougar Creek on Cavanaugh Bay, Priest Lake, Idaho,

Comes now, the undersigned, a Judge of the Eighth Judicial District of the State of Idaho, and requests the Department of Reclamation to make an examination of such stream and the canals and ditches diverting water therefrom, in accordance with Chapter 14 of Title 42 of the Idaho Code.

DATED this 20 day of June, 1955.

C. V. Dean
District Judge

25110

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

REX SUTTON,	)	No. _____
Plaintiff,	)	
vs.	)	
THE STATE OF IDAHO,	)	
Defendant.	)	

S U M M O N S

THE STATE OF IDAHO SENDS GREETING TO THE ABOVE NAMED
DEFENDANT:

YOU ARE HEREBY NOTIFIED that a complaint has been
filed against you in the District Court of the Eighth Judi-
cial District of the State of Idaho, in and for the County
of Bonner, by the above named plaintiff, and you are hereby
directed to appear and plead to said complaint within twenty
days from the service of this summons upon you; and you are
further notified that unless you so appear and plead to said
complaint within the time herein specified the plaintiff will
take judgment against you as prayed in said complaint.

WITNESS, my hand and the seal of the said District
Court this 20 day of June, 1955.

STANLEY L. WOLFE-
STANLEY L. WOLFE, Clerk

(SEAL)

By _____ Deputy

J. H. FELTON,
WILLIAM J. JONES,
Attorneys for Plaintiff,
Residence and P. O. Address,
LEWISTON, IDAHO.

25116

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

REX SUTTON,

Plaintiff,

vs.

THE STATE OF IDAHO,

Defendant.

No. _____

COMPLAINT

Comes now the plaintiff and for cause of action
alleges:

I.

That he owns a resort property at the end of
Cavanaugh Bay, a part of Priest Lake, in the County of
Bonner, State of Idaho; that in about 1942 he appropriated
by beneficial use from Cougar Creek, at a point where the
public road crosses such creek, the point being about
2000 feet distance from the Sutton Resort and in a north-
easterly direction from the Sutton Resort, an amount of
water which would flow through an inch-and-a-half pipe,
and caused such water to be piped to his Resort, and since
that time he has made beneficial use of such water and has
claimed such water adversely to all persons;

II.

That prior to his location upon Cavanaugh Bay,
a CCC Camp had occupied a position near there and had for
a time used such water, but had abandoned the water and the
water line in which such water was conducted to the CCC Camp;

that such pipe had become filled with debris and had become unusable, but that he, the said Rex Sutton, did reclaim such pipe, did open it up, and added his own pipe to it and created a water system, appropriating the waters of such Cougar Creek to the extent of his needs;

III.

That approximately a year ago the State of Idaho began to create a park near such pipe line; that, although he protested, the State of Idaho has attached various hydrants and connections to his pipe line and has commenced to use water from his pipe line, to the extent where the flow of such pipe line has become insufficient for his needs;

IV.

That such State of Idaho has no right, title or interest in or to the water which plaintiff is using, nor the pipe line in which it is being conveyed to his premises, but wrongfully asserts such right, to the detriment of plaintiff.

WHEREFORE, plaintiff prays that the title to such water and the use of the pipe line for the conveyance thereof be determined by this Court; that plaintiff's water right be determined and fixed, and that the State of Idaho be enjoined from interfering therewith and be required to detach from his pipe line all the connections made thereto, and for his costs and disbursements in this action.

J. H. FELTON

WILLIAM J. JONES
Attorneys for Plaintiff,
Residence and P. O. Address,
Lewiston, Idaho.

25110

STATE OF I D A H O }
County of Bonner } ss.

REX SUTTON, being first duly sworn, on oath, deposes and says:

That he is the plaintiff herein; that he has read the foregoing complaint, knows the contents thereof, and that the allegations therein made are true, as he verily believes.

REX SUTTON

Subscribed and sworn to before me this 20
day of June, 1955.

(SEAL)

J. H. FELTON
Notary Public in and for the
State of Idaho, residing at
Lewiston, Idaho.

25110

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

REX SUTTON,

Plaintiff,

vs.

THE STATE OF IDAHO,

Defendant.

No. _____

P E T I T I O N

Plaintiff having filed a suit in the above entitled District Court for the purpose of adjudicating the priority of the rights of the use of water forming a stream of this State,

Comes now the plaintiff and petitions that the Court request the Department of Reclamation in accordance with Chapter 14 of Title 42 to make an examination of such streams and the canals and ditches diverting water therefrom.

DATED this 20 day of June, 1955.

J. H. FELTON

WILLIAM J. JONES
Attorneys for Plaintiff,
Residence and P. O. Address,
Lewiston, Idaho.

25116

June 27, 1955

Honorable Graydon W. Smith
Attorney General
B U I L D I N G

9-25110

Dear Mr. Smith:

Enclosed is a letter from Felton and Jones, Lawyers, of Lewiston, Idaho, attached to a copy of an Order from Judge Spear requesting an examination of Cougar Creek under Chapter 14 of Title 42 of the Idaho Code and a complaint of Rex Sutton, Plaintiff, vs. The State of Idaho, Defendant.

The Department of Reclamation has no budget appropriation for such examinations. Blaine County Investment Co. vs. Gallet, 35 Idaho 102, 204 Pac. 1066.

This complaint is not necessarily for an overall adjudication of Cougar Creek but merely an adjudication between two appropriators using the same diversion facilities and unless other appropriators are involved there would be no occasion for an overall examination. There are no active Permits on Cougar Creek except a recent one by the State Land Department, although there have been other Permits issued which were later cancelled.

Please take such action as you consider proper as you probably will have the case for the Land Department.

Please inform Hank Felton as to the obligations of the Department of Reclamation under Sec. 42-1401, Idaho Code.

Very truly yours,

MARK R. KULP
State Reclamation Engineer

K:hll
Enc.

25116

June 16, 1955

RE: Permit No. 25110

Mr. Arthur Wilson
State Land Commissioner
Building

Dear Mr. Wilson:

We enclose Certificate of Completion of Works issued on Permit No. 25110 for the diversion of 0.1 second foot of water from Cougar Creek with point of diversion in the SE $\frac{1}{4}$ SW $\frac{1}{4}$ Section 23, Township 60 North, Range 4 West, B. M., for publiccamp ground purposes in the NE $\frac{1}{4}$ SW $\frac{1}{4}$ Section 26, same Township and Range.

Very truly yours,

MARK R. KULP
State Reclamation Engineer
By

Chief Clerk

A:cu
Enc.

25110

IDAHO

DEPARTMENT OF PUBLIC LANDS
BOISE, IDAHO



COMMISSIONER
ARTHUR WILSON

June 15, 1955

STATE BOARD OF LAND COMMISSIONERS

~~ROBERT E. SMYTH~~
GOVERNOR AND CHAIRMAN

IRA H. MASTERS
SECRETARY OF STATE

~~GRAYDON W. SMITH~~
ATTORNEY GENERAL

H. P. HIELSON
STATE AUDITOR

ALTON B. JOHNS
SUPT. OF PUBLIC INSTRUCTION

RECEIVED
JUN 16 1955
Department of Reclamation

Mr. Mark Kulp
State Reclamation Engineer
State House

Dear Mr. Kulp:

Enclosed herewith is Proof of Completion of Works in
connection with Permit to appropriate the Public Waters,
No. 25110.

Hope this will be found to be properly completed.

Sincerely,

A handwritten signature in cursive script that reads "Arthur Wilson".

ARTHUR WILSON
State Land Commissioner

mh

25110

Permit No.

STATE OF IDAHO
Department of Reclamation

Proof of Completion of Works

AFFIDAVIT OF HOLDER

STATE OF IDAHO

County of Ada

ss.

Arthur Wilson
State Land Commissioner
Arthur Wilson, being first duly sworn, upon his oath deposes and says:

First: That he is the holder and owner of Permit to appropriate the Public Waters of the State of Idaho, No. 25110, and that his postoffice address is Rm 120, State House, Boise, State of Idaho

Second: That the name of the stream from which said water is to be diverted is Cougar Creek

Third: That the point of diversion of said water is in SE¹SW¹ Sec. 23, T. 60 N., R. 4 W.

Fourth: That under the terms and conditions of said permit, construction thereunder was required to be completed by August 31, 1955

Fifth: That the use for which said water is intended is public park

Sixth: That on the date above mentioned, the works constructed under said permit were (or were not) fully completed and consisted of the following:

I. Kind of works: pipeline
(Reservoir, dam, ditch, flume, pipe or otherwise)

II. Dimensions of work:

(a) Height of dam feet, length of dam at top feet, length of dam at bottom feet. Material used in construction

(State whether wood, earth, stone or concrete)

(b) Capacity of reservoir acre feet.

(c) Size of headgate: Width feet, height feet.

(d) Conduit width at bottom feet, width at water line
(State whether ditch, flume or pipe) Length of pipe, about 3000 feet.
feet, depth of water feet; diameter of pipe 3 inches, average grade per mile is feet. Length of conduit is miles.

Seventh: That said works are capable of conducting to the place of intended use 0.1 second feet of water.

Eighth: That water appropriated under said permit is available for five acres of land described as follows:

public park in NE¹SW¹ Sec. 26, T. 60 N., R. 4 W.B.M.

Ninth: Remarks: That water is now being used in said park.

Arthur Wilson
(Sign Here)

Subscribed and sworn to before me this 8th day of June, 1955

My commission expires 3/5/59

Wb Lambdin

Notary Public.
Boise, Idaho

State of Idaho
DEPARTMENT OF RECLAMATION
BOISE

June 1, 1955

RE: Permit No. 25110

INSTRUCTIONS
PROOF OF COMPLETION OF WORKS

State Land Department

Boise, Idaho

B U I L D I N G

Dear Sir:-

Under the terms of your permit No. 25110 you are required to complete your diversion works on or before August 31, 1955. I enclose herewith blank affidavit to be filled out, sworn to by you before a Notary Public or a Justice of the Peace, and returned to this office on or before the above date, or within ten days thereafter, for the purpose of making proof of completion under the permit. Upon receipt of this affidavit in this office, provided the same satisfactorily shows the completion of the works substantially in accordance with the terms of the permit, together with a fee of \$5.00, a Certificate of Completion will be issued to you.

The certificate to be issued under this proof will not give a perpetual right to the use of water for which application was made, as it only confirms the completion of works of a capacity to divert and convey to the place of intended use a certain amount of water. The law requires that another proof be submitted when the water has been fully applied to a beneficial use, at which time license is issued for the amount of water actually in use. Information in regard to this last proof will be furnished on request.

Yours truly,

MARK R. KULP

State Reclamation Engineer

25110

August 28, 1954

RE: Permit No. 25110

Mr. Arthur Wilson
State Land Commissioner
BUILDING

Dear Mr. Wilson:

We enclose Permit No. 25110 and direct attention to the limitations and conditions as given on the fourth page under approval of the State Reclamation Engineer.

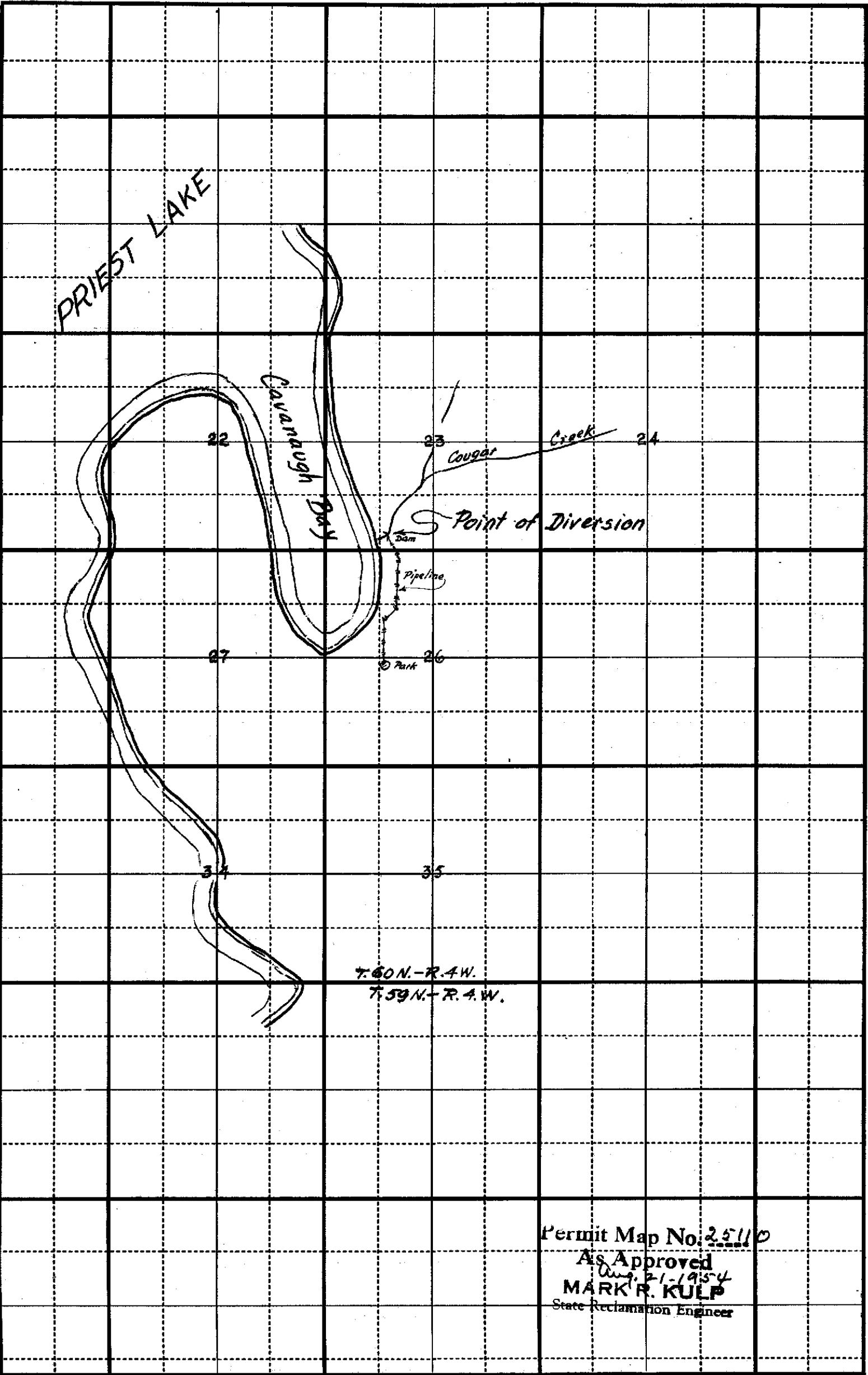
Very truly yours,

MARK R. KULP
State Reclamation Engineer
By

Chief Clerk

A:br
Enc.

25110



Permit Map No. 25110
As Approved
Aug. 21-1954
MARK R. KULP
State Reclamation Engineer

NAME OF APPLICANT State Land Dept

Form No. 2

Priest Lake

Cavanough Bay

22

23

24

27

26

25

Bay or Van P. D. Creek

34

35

36

T60 N R4 W
T59 N R4 W

Moong Lake

Permit Map No. 25110
As Approved
AUG 21 1954
MARK R. KULP
State Reclamation Engineer

SCALE: 2 Inches Equal 1 Mile. Draw Plan in Ink.

25110

**Notice For Publication
NOTICE OF PROOF
APPLICATION OF WATER
TO BENEFICIAL USE**

Notice is hereby given that at 10:00 A. M. on the 31st day of August, 1956, at Boise, County of Ada, State of Idaho, before M. C. HAMBLIN, Notary Public, proof will be submitted of the application to beneficial use of 0.1 cubic foot per second of the waters of Cougar Creek point of diversion: SE $\frac{1}{4}$ SW $\frac{1}{4}$, Sec. 23, Township 60 North, Range 4 West, B. M., near SW Corner, in accordance with the terms and conditions of Permit No. 25110 heretofore issued by the State Reclamation Engineer of the State of Idaho.

The name and postoffice address of the person or corporation holding said permit are Idaho State Land Department, Arthur Wilson, State Land Commissioner, Room 120, State House, Boise, Idaho.

The use to which said water has been applied is public picnic campground area.

The amount applied to beneficial use is 0.1 cubic foot per second.

The place where said water is used: Public picnic and camping ground located in the NW Cor. of NE $\frac{1}{4}$ NW $\frac{1}{4}$, Sec. 26, Twp. 60 N., Rge. 4 W., B. M.

The right to take water from such works is based upon Permit No. 25110.

The source of supply from which such water is derived is Cougar Creek, which flows into Clearwater Bay, in Priest Lake.

The date of priority which said user is prepared to establish is August 10, 1954.

MARK R. KULP
State Reclamation Engineer.