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FILE**

WATER RIGHT SUMMARY

ACTION	RIGHT NO.	NAME	AMOUNT CFS
Original Application	47-07680	Royal Crest Inc.	14.60
~~Full Assignment~~	~~47-07680~~	~~Collins Brothers Corp.~~	~~14.60~~
Full Assignment	47-07680	Kanaka Rapids Ranch Homeowners Water System, Inc.	14.60

MICROFILMED

AUG 21 1991

APPROVEDSTATE OF IDAHO
DEPARTMENT OF WATER RESOURCES**RECEIVED****APPLICATION FOR AMENDMENT OF A PERMIT**MAY 10 1994
Department of Water ResourcesApplicant KANAKA RAPIDS RANCH HOMEOWNERS WATER SYSTEM, INC. Phone 208-543-6767Address 176 KANAKA RAPIDS RANCH BUHL ID 83316I am the owner and holder of Permit to appropriate the Public Waters of the State of Idaho No. 47-07680, and request that the permit and permit map be amended and/or changed as follows:Purpose of Amendment: Change point of diversion Add point of diversion
XX Change place of use Change nature of use Change period of use Other1. Point of diversion: SAME $\frac{1}{4}$ $\frac{1}{4}$ $\frac{1}{4}$, Section , Township , Range , B.M.,
County of . Other points of diversion 2. Period and nature of use: (irrigation, domestic, stockwatering, industrial, etc.) SAMEAmount for purposes from to (both dates inclusive)
(cfs or acre feet per annum) (water use) (Begin month) (End month)Amount for purposes from to (both dates inclusive)
(cfs or acre feet per annum) (water use) (Begin month) (End month)Amount for purposes from to (both dates inclusive)
(cfs or acre feet per annum) (water use) (Begin month) (End month)

3. Place of use or land to be irrigated:

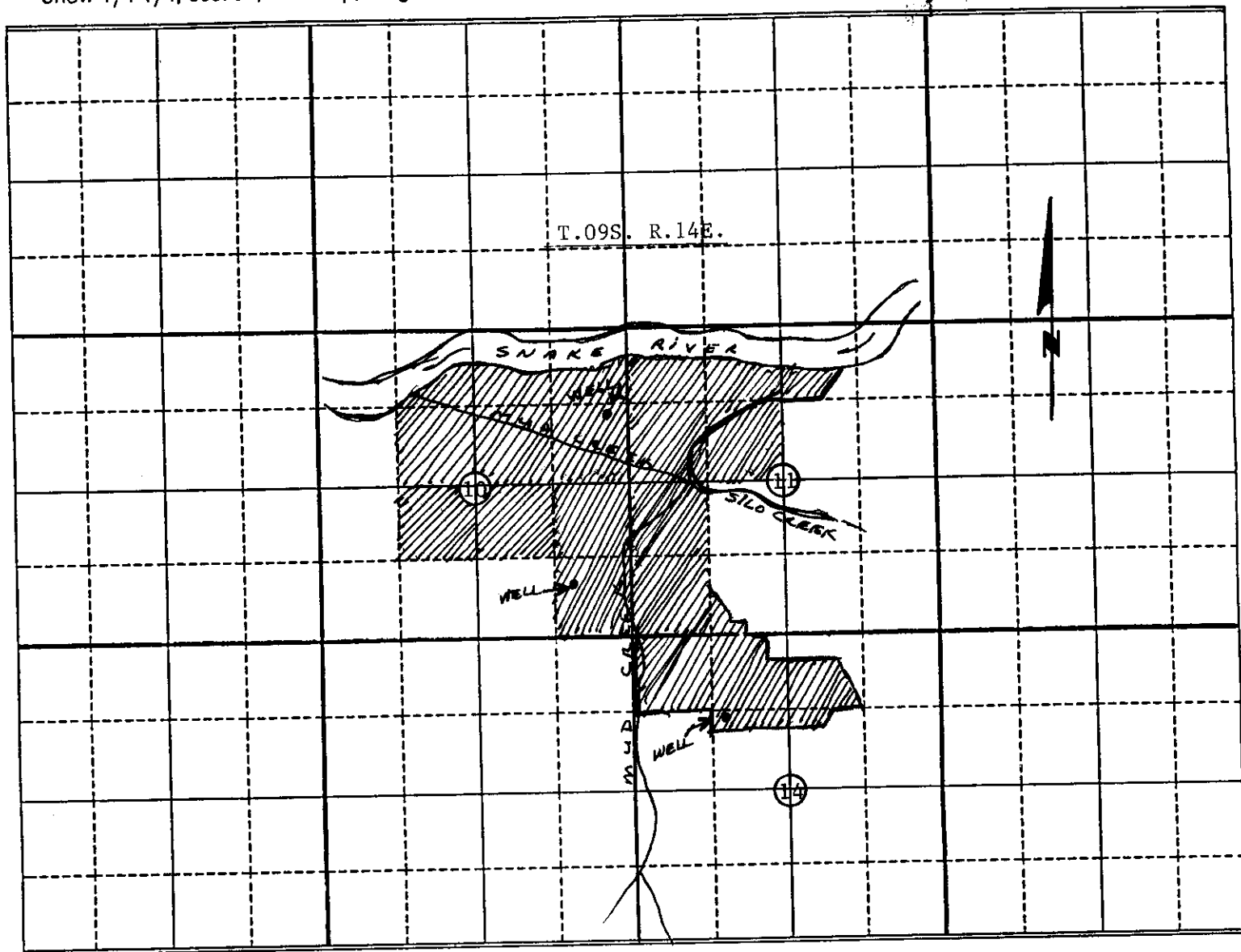
T w p	R g e	S e c	NE $\frac{1}{4}$				NW $\frac{1}{4}$				SW $\frac{1}{4}$				SE $\frac{1}{4}$				TOTALS
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
09S	14E	10	X	X	X	X	X			X	X				X	X		X	
		11		X			X	X	X	X		X	X	X					
		14		X	X		X	X		X									

Total number of acres to be irrigated =

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

JUN 13 1994

Complete the following map by showing land and point of diversion as proposed by this amendment.
 Show 1/4 1/4, section, township, range and ditches. (the smallest subdivision represents 40 acres)



Scale: 2 inches equal 1 mile

I hereby request approval of this change subject to the fact that no one will be injured by the change, and that the change will be made at my own risk.

Signed this 9th day of May, 19 94

Carlo Ferreira Permit Holder
 Attorney-in-fact

ACTION OF THE DEPARTMENT OF WATER RESOURCES

Preliminary check by _____ Publication prepared by _____ Date _____

Published in _____ Publication dates _____

I, Norman C. Young, of the Department of Water Resources hereby approve the above referenced application for amendment. See the attached sheet for the conditions of approval.

Witness my hand this _____ day of May, 19 94

JUN 13 1994

for Norman C. Young
 Director

APPROVED

CONDITIONS OF APPROVAL

Amendment of Permit No. 47-07680

1. Right holder must comply with conditions set forth in Order Adopting Proposed Memorandum Decision and Order issued at time of permit approval.
2. The amount of water diverted shall not exceed that necessary for domestic, commercial, and geothermal heating for 99 homes.
3. Approval of this amendment does not authorize any additional development for any purpose after August 1, 1991. This amendment authorizes 99 domestic uses to be allocated to 99 lots of the subdivision located within the amended place of use. This amendment is limited to the existing water distribution system providing water to lots which have been stubbed in, and, to water that had been made available for use during the permitted development period.

RECEIVED

JUN 13 1994

JUL 30 1991

STATE OF IDAHO

DEPARTMENT OF WATER RESOURCES

PROOF OF BENEFICIAL USE

For Office Use Only
Fee Received \$225.
Date 7-30-91
Receipt # 50/3573
Receipt by [Signature]
Reviewed by _____
Sent to region _____

The Idaho Department of Water Resources will consider this form as a statement that the permit holder(s) has completed all development that will occur under this permit and that water has been applied according to the provisions of the permit for the beneficial use(s) described below. This form must be accompanied by a license examination fee or a completed field examination report prepared by a certified water right examiner who has been appointed by the department.

Permit No. 47-07680

Name(s) of Permit Holder: Kanaka Rapids Ranch Homeowners Water System, Inc.

Post Office Address: 130 N. Broadway

Buhl, Idaho 83316

Telephone No. 208-543-8268

Source of Water: Groundwater (89° - Low Temp Geothermal)

Extent of Use:

Commercial: 7 RV Spaces .14 c/f/s

Domestic 99 1.98c/f/s (number of households)

Irrigation 2200 trees .08 (acres)

Stockwater .02 c/f/s 15 horses (number and type of stock)

Other/Remark heat/cool 99 @ 15.8 g/p/m 3.57 c/f/s

(hot tubs use effluent)

*Irrigation of 99½ lots and 1-acre RV included in commercial

Total rate and/or volume for which proof is submitted 5.79 cfs 3778 acre-feet

Show the date water was first diverted and beneficially used under this permit: 1981

Measuring Device: Required? ☒ Yes ☐ No
Installed? ☒ Yes ☐ No

Fee enclosed \$ 225.00
(See License Examination Fee Schedule)

Flow Measurement Port: Required? ☐ Yes ☐ No
Installed? ☐ Yes ☐ No

Person to contact to accompany the Department representative during the field examination:

Steve Foreman

(Name)

208-543-6199

(Telephone Number)

107 Kanaka Rapids Road, Buhl, Idaho 83316

(Address)

The above information is my true statement of the extent to which the above numbered permit has been developed and I relinquish any undeveloped portion of the permit to the state of Idaho.

7/30/91

Date

Signature of Permit Holder (and title, if appropriate)
Steve Foreman, Attorney-in-Fact

RECORDED
AUG 21 1991

State of Idaho
Department of Water Resources

ASSIGNMENT OF PERMIT

38861VPB

JUL 10 1991

I, Collins Brothers Corporation, hereby assign to Kanaka Rapids Ranch Homeowners
Water System, Inc.
of 130 N. Broadway, Buhl, Idaho 83316
Address

CHECK ONE

- ☒ All my right, title, and interest in and to Permit No. 47-07680
to appropriate the public waters of the State of Idaho.
- ☐ The following described portion of my right, title, and interest in and to Permit
No. _____ to appropriate the public waters of the State of Idaho.
(Describe that portion of the permit being assigned by listing the acreage within
each 40 acre subdivision, the point of diversion and the amount of water in cubic
feet per second for direct diversion, or acre feet for storage)

Made this 26th day of July, 1991.

Collins Brothers Corp.
E. L. Collins
Permit Holder President

Spouse of Permit Holder

State of Idaho)
County of Twin Falls) ss.

On this 26th day of July, 1991, personally
appeared before me the signer(s) of the above instrument, who duly acknowledged to me
that he (she) (they) executed the same.

seal

John A. Rossmo
Notary Public residing at
Twin Falls, Idaho

My commission expires:
1993

AUG 21 1991

4/86

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCESFor Office Use Only
\$15 FEE Received by K. Young
Date 6/22/89
Receipt # CD 7741

REQUEST FOR EXTENSION OF TIME

Department of Water Resources

To provide additional time in which to submit proof
of beneficial use for a water right permit

The Idaho Department of Water Resources will consider this form as a request that the permit holder(s) be granted an additional period of time in which to complete development of a water right under the provisions of Section 42-204, Idaho Code.

Permit No. 47-07680Name(s) of Permit Holder: COLLINS BROS CORPPost Office Address: 130 N. BROADWAYBuhl, ID. 83216 Telephone No. 543-8268Date Proof is Due: AUG 1, 1989

Describe what work has been completed toward the development of this water right: _____
(This must be filled out! If no work has been completed, show "none".)

WELLS DRILLED, DOMESTIC WATER LINES TAPPED INTO 99
HOUSESITES, IRRIGATION LINES AND SPRINKLER SYSTEM TO APPROX
75 ACRES OF COMMON AREA IN THE BANNED UNIT DEVELOP-
MENT Costing \$ 125,000

The permit holder(s) has been unable to complete the remainder of the work for the following reasons:

HAS BEEN INVOLVED IN LITIGATION WITH DEPT OF W.R.
UNTIL FALL '88 DECISION FROM IDAHO SUPREME
COURT

Permit holder(s) request an extension to AUGUST 1, 1992. [Signature]
(1 yr., minimum) (Signature)*

FEE: \$15.00

*IF OTHER THAN PERMIT HOLDER,
POWER OF ATTORNEY MUST BE SUPPLIED.

ACTION OF THE DEPARTMENT OF WATER RESOURCES

IT IS HEREBY ORDERED that the above request for extension of time be APPROVED and the time within which to submit proof of beneficial use is extended to August 1, 1991.

Signed this 8th day of February, 19 90.

[Signature]
Chief, Water Allocation Bureau

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MAR 08 1990

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES



JUN 22 1989

POWER OF ATTORNEY

Department of Water Resources

The undersigned holder(s) of Permit/Application No. 47-7680 of the
Department of Water Resources of the State of Idaho hereby nominates _____
Robert C. Weaver, whose address is 130 N. Broadway, Buhl, Id 83316
as attorney-in-fact, with full authority to act for and on behalf of the undersigned in all
matters pertaining to the above numbered permit or application. Such acts shall include,
but not be limited to, the filing of application, receiving of all notices, the signing and
filing of applications for extension of time and for amendments of said permits, and the
submission of proofs of completion of works and beneficial use of water.

Dated this 11 day of March, 19 89.

E. Collins

STATE OF IDAHO)
County of Twin Falls) ss.

On this 11th day of March, 19 89, personally
appeared before me the signer(s) of the above instrument, who duly acknowledged to me
that he (she) (they) executed the same.

seal

[Signature]
Notary Public

Residing at Buhl Idaho

My Commission expires:
Sept. 1992

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MAR 08 1990

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE
STATE OF IDAHO

IN THE MATTER OF PERMIT NO. 47-7680
IN THE NAME OF COLLINS BROTHERS CORP.

)
)
)
)
ORDER

WHEREAS, the Department has issued the above-captioned permit with the condition that proof of construction of works and application of water to beneficial use be submitted on or before August 1, 1988; and,

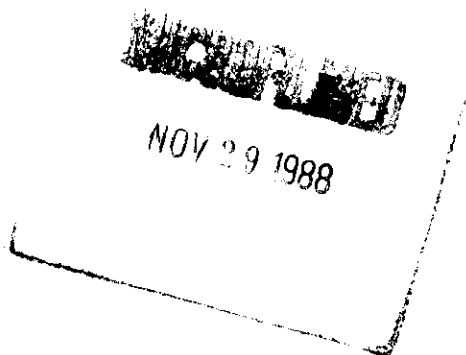
WHEREAS, the matter of permit approval has been involved in litigation since the issuance of the permit;

IT IS, THEREFORE, HEREBY ORDERED that the time within which to submit the statement of beneficial use of water under Permit No. 47-7680 is extended to August 1, 1989.

Dated this 11th day of October, 1988.

L. Glen Saxton

L. GLEN SAXTON
Chief, Operations Bureau



BEFORE THE DIRECTOR OF THE DEPARTMENT OF WATER RESOURCES
OF THE
STATE OF IDAHO

IN THE MATTER OF WATER RIGHT)
PERMIT NO. 47-7680 IN THE)
NAME OF COLLINS BROTHERS CORP.)

ORDER

On April 12, 1983, the Director of the Department of Water Resources created by order the Banbury Hot Springs Ground Water Management Area (BHSWGMA).

The pressure of the artesian wells in the BHSWGMA has continued to decline due to the present level of development.

There are several projects for which water right permits have been issued but for which the water has not been used. There are also many applications for water use which have not been permitted.

On December 4, 1985, the Director ordered that work on this and all other permits within the BHSWGMA be suspended and the proof of beneficial use be submitted on the completed portion of the project.

This application was filed on November 20, 1980; the permit was issued on August 31, 1983 following a conference and opportunity for hearing. The permit conditions concerning the use of the geothermal water for irrigation were appealed. On April 2, 1986, a decision of the district court ordered the permit issued without conditions. A petition for rehearing filed by the Director with the district court is still pending at the issuance of this order.

Section 42-204, Idaho Code states, in part:

Every holder of a permit which shall be issued under the terms and conditions for an application filed hereafter appropriating twenty-five (25) cubic feet or less per second must, within one (1) year from the date upon which the permit issues from the office of the department of water resources, commence the excavation or construction of the

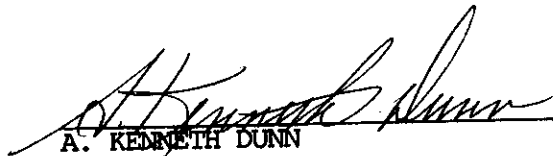
NOV 29 1988

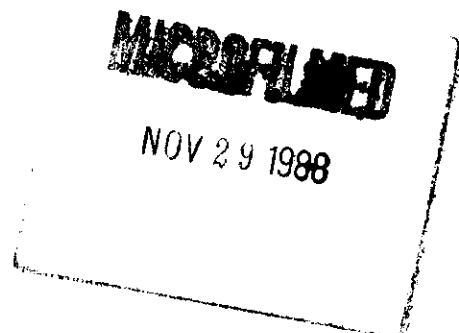
works by which he intends to divert the water, and must prosecute the work diligently and uninterruptedly to completion, unless temporarily interrupted through no fault of the holder of such permit by circumstances, over which he has no control.

Therefore, since less than one year has elapsed following the district court's decision on appeal and because the permit holder has drilled the wells proposed, he is proceeding with diligence toward the completion of the project, and is entitled to continue to develop the project.

IT IS FURTHER ORDERED that the permit holder shall submit proof of beneficial use on or before August 1, 1988.

Dated this 16th day of September, 1986.


A. KENNETH DUNN
Director



BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE
STATE OF IDAHO

IN THE MATTER OF GROUND WATER	)	
DEVELOPMENT IN THE BANBURY HOT	)	ORDER
SPRINGS GROUND WATER MANAGEMENT	)	
AREA, TWIN FALLS COUNTY.	)	
	)	

This matter having come before the Director of the Department of Water Resources following investigation by the Department staff, the Director finds as follows:

1. The Banbury Hot Springs Ground Water Management Area (Banbury Management Area) was created on April 12, 1983 by Order of the Director of the Department of Water Resources (Director) pursuant to the provisions of Section 42-233b, Idaho Code.

2. The Department has monitored wells in the Banbury Management Area, prior to and subsequent to designation of the area, and the wells continue to show a decline in pressure.

3. Department records show that there are numerous permitted but not yet developed water uses and projects within the Banbury Management Area.

CONCLUSIONS OF LAW

Based on the foregoing findings of fact, the Director makes the following conclusions of law:

1. Idaho Code § 42-237a(g) (1977 and Supp. 1985) empowers the Director of the Department of Water Resources, "To supervise and control the exercise and administration of all rights hereafter acquired to the use of ground waters under the exer-

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NOV 29 1980

cise of this power he may be [by] summary order, prohibit or limit the withdrawal of water from any well during any period that he determines that water to fill any water right in said well is not there available."

2. Idaho Code § 42-237a(g) further provides that, "Water in a well shall not be deemed available to fill a water right therein if withdrawal therefrom of the amount called for by such right would . . . result in the withdrawing [of] the ground water supply at a rate beyond the reasonably anticipated average rate of future natural recharge."

3. Idaho Code § 42-1805 (Supp. 1985) provides in part as follows:

In addition to other duties prescribed by law, the director of the department of water resources shall have the following powers and duties:

.

(7) After notice, to suspend the issuance or further action on permits or applications necessary to protect existing vested water rights or to ensure compliance with the provisions of chapter 2, title 42, Idaho Code, or to prevent violation of minimum flow provisions of the state water plan.

4. Based upon presently available data, the ground water supply within the Banbury Management Area is being withdrawn at a rate beyond the reasonably anticipated average rate of future natural recharge.

5. The Director has a duty, pursuant to Idaho Code §§ 42-237a(g) and 42-1805, to stay the approval of any pending applications for permit to appropriate ~~ground~~ water within the

NOV 29 1988

Banbury Management Area, and to order the suspension of any further development under existing permits to appropriate ground water within the Banbury Management Area which, as of the date of service of this order, are not fully developed.

ORDER

IT IS, THEREFORE, HEREBY ORDERED as follows:

1. As of the date of this order, approval of any pending applications for permit to appropriate ground water within the Banbury Hot Springs Ground Water Management Area shall be stayed until further order by the Director.

2. The owners of permits to appropriate ground water within the boundaries of the Banbury Hot Springs Ground Water Management Area shall cease and suspend any further development under those permits beyond the extent already developed as of the date of service of this order.

3. The owners of permits to appropriate ground water within the boundaries of the Banbury Hot Springs Ground Water Management Area, for which proof of beneficial use has not already been submitted to the Department of Water Resources, shall submit proof of beneficial use showing the extent of existing development if any, upon forms furnished by the Department, within thirty (30) days of the service of this order.

4. A copy of this order shall be served by certified mail upon the owners of all applications and permits to appropriate ground water within the Banbury Hot Springs Ground Water

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NOV 29 1988

Management Area, together with a letter identifying the record owner of the application or permit, the application or permit number, and a statement describing the legal recourse which may be taken by someone who objects to any provision of this order.

DATED this 4th day of December, 1985.


A. KENNETH DUNN
Director

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NOV 29 1988

BEFORE THE DIRECTOR OF THE DEPARTMENT
OF WATER RESOURCES OF THE
STATE OF IDAHO

IN THE MATTER OF APPLICATION FOR	)	
PERMIT NO. 47-7860 IN THE NAME OF	)	
ROYAL CREST INC. COLLINS BROS. CORP.,	)	ORDER ISSUING
ASSIGNEE	)	PROPOSED DECISION
	)	

A. Kenneth Dunn, Director of the Department of Water Resources, having reviewed the attached proposed decision prepared by his appointee, Bobby D. Fleenor, who conducted the hearing or who has read the record in this case, hereby approves the same as a proposal for decision pursuant to Idaho Code, § 67-5211 and orders that said proposed decision and a copy of this order be served upon each of the parties to these proceedings who appeared at the hearing on March 31, 1982, of this matter or upon their attorneys in accordance with Rule 7.3 of the Rules of Practice and Procedure of this Department.

Each party to these proceedings who appeared at the hearing is hereby afforded the opportunity, pursuant to Idaho Code §§ 42-1701A and 67-5211, to file exceptions to the attached proposed decision and to present briefs and oral arguments in accordance with the provisions of this order. Exceptions may not be filed and briefs and oral arguments may not be presented by parties who did not appear at the hearing of this case. If no timely and proper exceptions are received, an order by the Director will be entered adopting and issuing the proposed decision as his final decision.

I.
EXCEPTIONS

A. To be considered by the Director, exceptions must:

1. be received by the Director on or before the 15th day following the day of service of this Order and the proposed decision,
2. specifically identify the portions of the proposed decision to which exceptions are made and specifically state the grounds for those exceptions, and
3. be sent to each of the parties who appeared or their attorneys.

B. Exceptions not in compliance with the above stated requirements will not be considered and will be deemed an acceptance of the proposed decision.

II.
BRIEFS

A. Any briefs in support of exceptions to the proposed decision shall be filed with the Director at the same time that party's exceptions are filed with the Director.

B. Any party desiring to file a brief in response to any exceptions filed by any other party may do so by filing such brief with the Director on or before the 15th day following the last day any exceptions by any other party were served upon that party desiring to respond.

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III.
ORAL ARGUMENTS

A. No oral arguments before the Director on the proposed decision will be held unless specifically requested by a party filing exceptions to the proposed decision and unless that request is filed with the Director concurrently with the filing of that party's exceptions.

B. If oral arguments have been properly requested by a party filing exceptions, any other party, upon reasonable notice to the Director, shall have the right to present oral arguments in response to the exceptions filed.

C. Oral arguments before the Director on exceptions to the proposal for decision shall be heard at the discretion of the Director, pursuant to Idaho Code, § 42-1701A. After all exceptions, briefs and requests for oral arguments have been received, the Director will decide whether to hear oral arguments. If oral arguments are to be heard, the Director will, within a reasonable time, set the case for oral arguments and notify each party of the place, date and hour the oral arguments will take place and of the period of time allocated for the arguments of this case. Unless the Director orders otherwise, all oral arguments shall be heard in Boise, Idaho.

IV.
CERTIFICATION OF SERVICE

A. All exceptions, briefs, requests for oral arguments and other matters filed with the Director in connection with the proposed decision shall be served on all other parties to these proceedings in accordance with Rule 7.2.

V.
FINAL DECISION

A. Following the submission of all exceptions and briefs and oral arguments, if they are heard, the Director shall issue a final decision adopting, modifying or rejecting and replacing the proposed decision. Copies of the decision and order shall be served on all parties.

Dated this 4 day of August, 1983.


A. KENNETH DUNN
Director
Department of Water Resources

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BEFORE THE DIRECTOR OF THE DEPARTMENT OF WATER RESOURCES
OF THE
STATE OF IDAHO

IN THE MATTER OF PROTESTS AGAINST APPROVAL OF)
APPLICATION FOR PERMIT OF NO. 47-7680 IN THE NAME)
OF ROYAL CREST INC., COLLINS BROS. CORP., ASSIGNEE)

ORDER ADOPTING
PROPOSED MEMORANDUM
DECISION AND ORDER

WHEREAS, A. Kenneth Dunn, Director of the Department of Water Resources having issued and served a copy on the parties on August 4, 1983, a Proposed Memorandum Decision and Order in the above-captioned matter, pursuant to Idaho Code, Section 67-5211; and,

WHEREAS, more than fifteen days have passed since the service of the Proposed Memorandum Decision and Order; and,

WHEREAS, no exceptions to that Proposed Memorandum Decision and Order have been received;

IT IS, THEREFORE, HEREBY ORDERED that said Proposed Memorandum Decision and Order be adopted and issued as the Final Decision and Order and proof of construction of works and application of water to beneficial shall be submitted on or before August 1, 1988.

Dated this 31st day of August, 1983.



A. KENNETH DUNN
Director

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BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE
STATE OF IDAHO

IN THE MATTER OF APPLICATION FOR PERMIT	)	PROPOSED
	)	
NO. 47-7860 IN THE NAME OF ROYAL CREST	)	MEMORANDUM DECISION
	)	
INC. COLLINS BROS. CORP., ASSIGNEE	)	AND ORDER
	)	

On November 20, 1980, Royal Crest Inc. filed an application with the Department of Water Resources for a permit to appropriate 14.60 cubic feet per second of water from a groundwater source.

The applicant proposed the following amounts, uses, and periods of use:

<u>AMOUNT (cfs)</u>	<u>USE</u>	<u>PERIOD OF USE</u>
0.40	Domestic	1/1 Through 12/31
6.60	Irrigation	4/1 Through 10/31
2.70	Commercial	1/1 Through 12/31
4.90	Geothermal	1/1 Through 12/31

The applicant proposed to divert the water from three artesian wells located in the SE1/4NE1/4, SE1/4SE1/4, Section 10, SE1/4NW1/4, Section 14, Township 9 South, Range 14 East, Boise Meridian, Twin Falls County.

The water was proposed to be used for domestic supply to 110 homes, commercial and recreational uses, and irrigation of 430 acres within the S1/2NE1/4, E1/2NW1/4, NE1/4SW1/4, N1/2SE1/4, SE1/4SE1/4, Section 10, SW1/4NW1/4, W1/2SW1/4, Section 11, W1/2NE1/4, N1/2NW1/4, SE1/4NW1/4, Section 14, Township 9 South, Range 14 East.

Notice of the application was published in the Twin Falls Times News on December 18 and 25, 1980. In this notice, the geothermal use of water was identified as being for power. No protests were received against the application.

On July 24, 1981, the Department requested that the applicant submit an affidavit of residence in accordance with Idaho Code, Section 42-205. The completed affidavit was received by the Department on December 30, 1981. On December 10, 1981, the Department was advised by the applicant that the geothermal use was intended for the heating of 110 homes, and the application was amended to describe that geothermal use of the water.

On December 15, 1981, the application was assigned from Royal Crest

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Inc. to Collins Bros. Corp., 130 N. Broadway, Buhl, Idaho 83316.

A notice of the amended application was published in the Twin Falls Times News on December 24 and 31, 1981. This notice described the geothermal use as "Heating".

On January 1, 1982, protests were received from Fred and Frances Kambrich, Mr. and Mrs. Dale Durrant, Mr. and Mrs. G. W. Anderson, and Robert S. Luntley. On March 31, 1982, a conference in the matter was held in Twin Falls. The applicant was represented by Robert C. Weaver, Attorney. The protestants were present and represented themselves.

The protestants stated that pressures had dropped in their existing artesian wells since the completion of the applicant's wells. They expressed concern that the artesian aquifer would be depleted and called for a study and management of the area by the Department.

Protestant Luntley also objected to the year-round period of use for heating proposed by the applicant and to the proposed use of artesian geothermal water for irrigation.

Attorney Weaver stated that the applicant's intent was to create a hot water supply to 99 homesites in a planned unit subdivision, and that the year-round period of use for heating was intended to include not only space heating, but also other heating uses such as saunas which might be installed by homeowners. He also requested an opinion from the Department on whether the irrigation use was properly a matter for review since only the heating use of the water was changed on the amended application.

At the close of the conference, the parties agreed to allow the Department to reach a decision based upon the conference and upon the records of the Department.

Based upon his understanding of the law, and the following indicated records, the Hearing Officer proposes the following Findings of Fact, Conclusions of Law, and Order:

ITEMS CONSIDERED BY THE DEPARTMENT:

(1) Water Resources Investigations Open File Report 80-563, "Geothermal Resources in the Banbury Hot Springs Area, Twin Falls County, Idaho", U. S. Geological Survey, August, 1980.

(2) Log of a well completed for Robert Luntley by Boley and Henry Drilling, April 4, 1974.

(3) Log of a well completed for Edward Kerpa by Boley, Henry, and

Weech Drilling, March 15, 1871.

(4) Log of a well completed for Dick Kaster by Elsing Drilling, October 9, 1975.

(5) Log of a well completed for Al Collins by Elsing Drilling, October 10, 1979.

(6) Log of a well completed for Collins Bros. by Sherman Couch Well Drilling, July 10, 1980.

(7) Log of a well completed for Collins Bros. by Sherman Couch Well Drilling, August 11, 1980.

(8) Water License No. 47-7115

(9) Water Permit No. 47-7205

(10) Water Permit No. 47-7261

(11) Water Permit No. 47-7312

(12) Water Permit No. 47-7551

(13) Water Permit No. 47-7580

FINDINGS OF FACT

(1) The wells and groundwater rights of the parties, as shown by the records of the Department are as follows:

NAME OF USER	USGS WELL#	DWR WELL DESIG.	LEGAL DESCR.	WTR.RIGHT NUMBER	PRIORITY DATE	DATE WELL COMPLETED
Durrant & Kambrich	9S14E 4BDC1	Kaster#1	SENW 4 9S14E	47-7312	11/24/75	10/09/75
Lunten	9S14E 9ADC1	Kerpa#1	SENE 9 9S14E	47-7115	4/08/71	3/15/71
Lunten	9S14E 9ADC1	Lunten	SENE 9 9S14E	47-7205 47-7580	5/10/73 10/05/79	4/04/74
Anderson	9S14E 23ABD1	Anderson	NWNE 23 9S14E	47-7158	unknown	unknown
Royal Crest	--	Collins Bros #1	SENE 10 9S14E	47-7680	11/20/80	10/10/79
Royal Crest	--	Collins Bros #2	SESE 10 9S14E	47-7680	11/20/80	7/10/80
Royal Crest	--	Collins Bros #3	SENW 14 9S14E	47-7680	11/20/80	8/11/80

(2) The groundwater rights of the protestants are senior in priority to the filing of this application for permit except possibly that of Mr. Anderson.

(3) The only filing found for Mr. Anderson's well is lapsed permit No. 47-7158. That permit was for domestic, fish propagation, and stockwatering purposes, but it lapsed in December, 1975. The use of this well for domestic purposes, however, began prior to November 20, 1980, the date application No.

47-7680 was filed.

(4) Protestants have, since their wells were drilled, been able to obtain water under their rights by allowing it to flow from the wells under artesian pressure without the necessity of pumping.

(5) The wells of the parties to this matter are within the Banbury Hot Springs Groundwater Management Area created by the Director on April 12, 1983.

(6) The applicant holds water right permit No. 47-7261 for irrigation of some of the lands described in this application for permit, but from surface water sources. The Department has made a field examination and has found that 131 acres of land being irrigated are within the place of use proposed under permit No. 47-7680.

(7) The applicant holds water right permit No. 47-7551 for the irrigation of 83 acres of the same land as proposed as the place of use under permit No. 47-7680.

(8) The Director must consider according to Section 42-203, Idaho Code, the impact of the proposed appropriation, whether protested or unprotested, upon other water rights.

CONCLUSIONS OF LAW

(1) Reductions in artesian pressure in wells within the Banbury Hot Springs Groundwater Management Area is not considered as an injury to existing water rights since there remains ~~to be~~ sufficient water available in the source to satisfy the prior existing water rights.

(2) A plan for casing and sealing these wells shall be submitted to the Director for approval prior to the water being diverted under this permit.

(3) It is not in the local public interest to deplete an artesian hot water aquifer for a purpose that could be served using a cold water source.

(4) Applicant is entitled to use groundwater to supplement water from surface sources for irrigation.

(5) It is proper that the effect of the use of the water for irrigation purpose on other water rights be considered.

ORDER

IT IS THEREFORE, HEREBY ORDERED that Application for Permit No. 47-7680 be, and is APPROVED subject to the following conditions:

✓ (1) The permit holder shall either install a measuring device or provide a certified measurement by a professional engineer or install an access

port or other device as specified by the Department.

(2) The use of water solely for irrigation from this geothermal aquifer is not in the public interest and, therefore, only the water used for another purpose, that requires the heat from the water, can be disposed of by using it for irrigation.

(3) The use of water for irrigation under this permit is supplemental to all existing water rights with the same purpose and place of use and the other rights must be developed and used to the fullest extent possible for irrigation before this permit is used for irrigation purposes.

(4) The Director of the Department of Water Resources retains jurisdiction over this permit to assure that the water diverted is beneficially used and for the approval of the casing and sealing of the wells.

(5) The amount of water diverted shall not exceed that necessary for domestic, commercial, and geothermal heating for 99 homes.

✓(6) The rate of diversion of water for irrigation under this permit and all other water rights on the same land shall not exceed 0.02 cubic feet per second for each acre of land.

✓(7) Water used under this permit if discharged into a natural channel shall meet Idaho Water Quality Standards.

✓(8) Permit holder shall commence the excavation or construction of diverting works within one year of the date this permit is issued and shall proceed diligently until the project is complete.

✓(9) Proof of construction of works and application of water to beneficial use shall be submitted on or before the date indicated on the Final Decision and Order.

Dated this 4 day of August, 1983.


BOBBY D. FLEENOR
Hearing Officer

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE
STATE OF IDAHO

IN THE MATTER OF APPLICATION FOR PERMIT
NO. 47-7680 IN THE NAME OF ROYAL CREST
INC., COLLINS BROTHERS CORP., ASSIGNEE

CERTIFICATE OF MAILING

I HEREBY CERTIFY That on this 1st day of September, 1983, a true and correct copy of the foregoing ORDER ADOPTING PROPOSED MEMORANDUM DECISION AND ORDER was mailed, postage prepaid to:

Collins Brothers Corp.
Box 42427
Huntridge Station
Las Vegas, NV 89104

Robert S. Luntley
Rt. 3 Box 195
Buhl, ID 83316

Mr. and Mrs. Dale Durrant
Rt. 3
Buhl, ID 83316

Fred and Frances Kambrich
Rt. 3
Buhl, ID 83316

Mr. and Mrs. G. W. Anderson
Rt. 3 Box 172
Buhl, ID 83316

Robert C. Weaver
130 N. Broadway
Buhl, ID 83316



RITA I. FLECK
Secretary/Records Manager
Idaho Department of Water Resources

MICROFILMED

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE
STATE OF IDAHO

IN THE MATTER OF APPLICATION FOR PERMIT
NO. 47-7860 IN THE NAME OF ROYAL CREST
INC. COLLINS BROS. CORP., ASSIGNEE

CERTIFICATE OF MAILING

I HEREBY CERTIFY That on this 4th day of August, 1983, true and correct copies of the foregoing ORDER ISSUING PROPOSED DECISION and PROPOSED MEMORANDUM DECISION AND ORDER, were mailed, postage prepaid to:

Royal Crest Inc.
Collins Brothers Corp.
Box 42427 Huntridge Station
Las Vegas, NV 89104

Robert S. Luntney
Rt. 3, Box 195
Buhl, ID 83316

Mr. and Mrs. Dale Durrant
Rt. 3
Buhl, ID 83316

Fred & Frances Kambrich
Rt. 3
Buhl, ID 83316

Mr. and Mrs. G. W. Anderson
Rt. 3, Box 172
Buhl, ID 83316

Robert C. Weaver
130 N. Broadway
Buhl, ID 83316

Sharla Curtis
SHARLA CURTIS
Gen. Typist
Department of Water Resources

MICROFILMED

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
APPLICATION FOR PERMIT

APPROVED

12-15-81

Assigned to:-

Collins Brothers Corp.
Box 42427 Huntbridge Station
Las Vegas, Nevada 89104

To appropriate the public waters of the State of Idaho
(Kancika Rapids Ranch)

1. Name of applicant Royal Crest Intc. Phone 1-702-876-1724

Post office address Box 42427 Huntbridge Station, Las Vegas, Nevada 89104

2. Source of water supply Groundwater which is a tributary of _____

3. Location of point of diversion is _____ 1/4 of _____ 1/4 of Section _____ Township _____

Range _____ B.M. Twin Falls County, additional points of diversion if any: _____

SEE REMARKS

4. Water will be used for the following purposes: * Per conversation w/applicant 12-10-81 ga

Amount 0.40 for Multiple Domestic purposes from Jan 1 to Dec 31 (both dates inclusive)
(cfs or acre-feet per annum)

Amount 6.6 for Irrigation purposes from Apr 1 to Oct 31 (both dates inclusive)
(cfs or acre-feet per annum)

Amount 2.7 for Commercial purposes from Jan 1 to Dec 31 (both dates inclusive)
(cfs or acre-feet per annum)

Amount 4.90 for Heating * Geothermal purposes from Jan 1 to Dec 31 (both dates inclusive)
(cfs or acre-feet per annum)

5. Total quantity to be appropriated:

a. 14.60 cubic feet per second and/or b. _____ acre-feet per annum.

6. Proposed diverting works:

a. Description of ditches, flumes, pumps, headgates, etc. Artesian Wells -3; w/ 10" to 6" Main Line with possibly two inline booster pumps

b. Height of storage dam _____ feet, active reservoir capacity _____ acre-feet; total reservoir capacity _____ acre-feet, materials used in storage dam: _____

Period of year when water will be diverted to storage _____ to _____ inclusive.
(Month/Day) (Month/Day)

c. Proposed well diameter is 8" to 6" inches; proposed depth of well is 900 to 1200 feet.

7. Time required for the completion of the works and application of the water to the proposed beneficial use is 5 years (minimum 1 year - maximum 5 years).

8. Description of proposed uses:

a. If water is not for irrigation:

SEE REMARKS

(1) Give the place of use of water: _____ 1/4 of _____ 1/4 of Section _____ Township _____

Range _____ B.M. _____

(2) Amount of power to be generated: _____ horsepower under _____ feet of head.

(3) List number of each kind of livestock to be watered _____

15 head horses

(4) Name of municipality to be served _____, or number of families to be supplied with domestic water 110.

(5) If water is to be used for other purposes describe: Heating for 110 homes.

Commercial & Recreation. Commercial use in greenhouses.

MICROFILMED

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

TWP	RANGE	SEC.	NE¼				NW¼				SW¼				SE¼				TOTALS
			NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	
9S	14E	14		30	5		40	32		8									115
9S	14E	11							5			35	30						70
9S	14E	10			25	18	2			40	40				40	40		40	245

Total number of acres to be irrigated 430

c. Describe any other water rights used for the same purposes as described above.

(Mepon Valley Creek)
Mud Creek & Silver Creek to Irrigate 195 Acres
with completed works also approx. 800 trees

a. Who owns the property at the point of diversion

b. Who owns the land to be irrigated or place of use

Royal Crest Inc.

c. If the property is owned by a person other than the applicant, describe the arrangement enabling the applicant to make this filing officer of the Corp.

10. Remarks

Location of Wells: SE¼NE¼, Sec. 10, T9S, R14E, BM.

SE¼SE¼, Sec. 10, T9S, R14E, BM.

SE¼NW¼, Sec. 14, T9S, R14E, BM.

Location of Commercial Use:

S²NW¼; NW¼SW¼, Sec. 11, T9S, R14E, BM.

Location of Domestic & Geothermal Use:

(110 units)

E²NE¼, E²SE¼, Sec. 10

S²NW¼, NW¼SW¼, Sec. 11

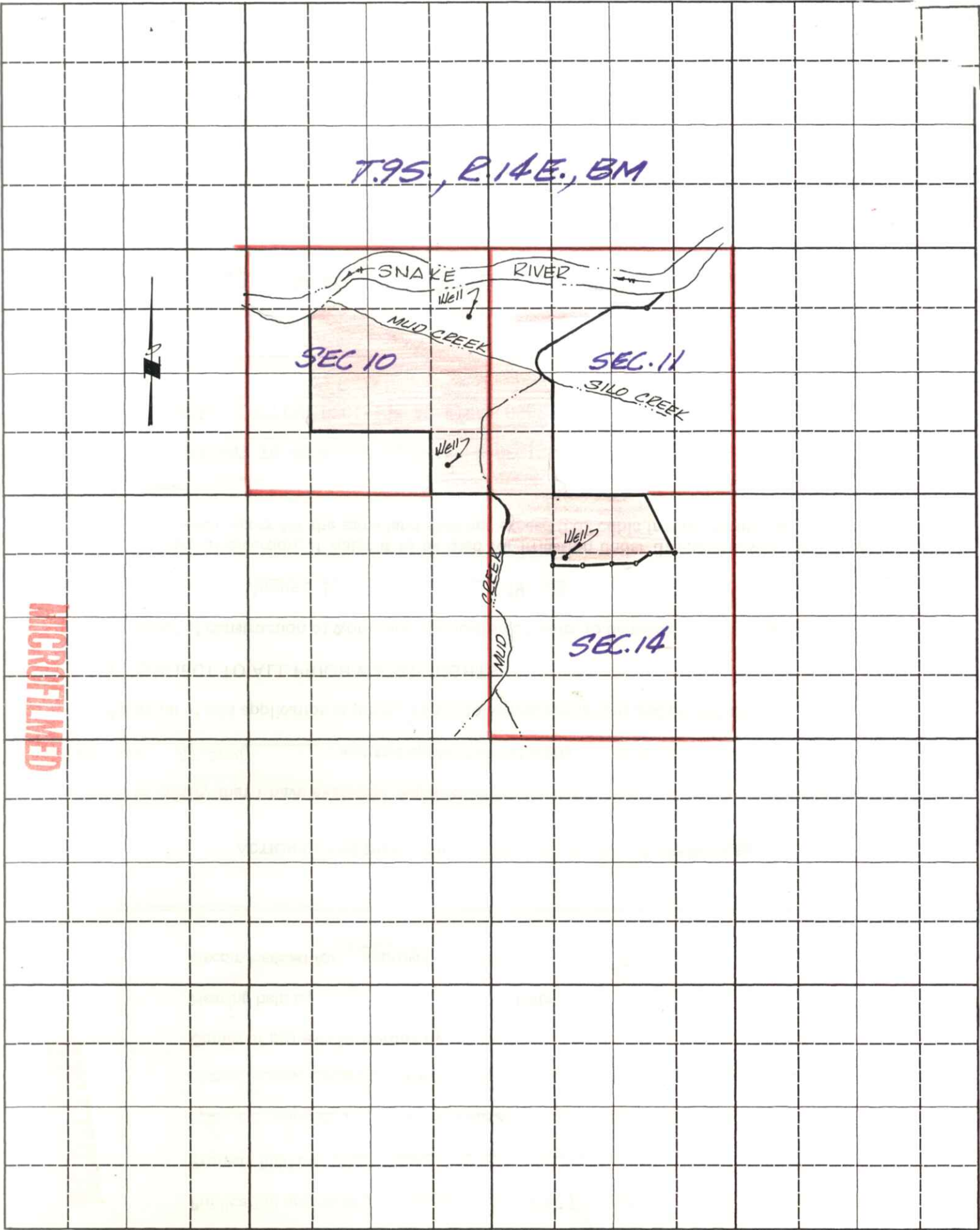
N²NW¼; NW¼NE¼, SE¼NW¼, Sec. 14: all in

T9S, R14E, BM.

Excess water after cooling willing be turned
into Mud Creek & unnamed stream tributary of
Silo Creek.

MICROFILMED

11. Map of proposed project: show clearly the proposed point of diversion, place of use, section number, township and range number.



Scale: 2 inches equal 1 mile.

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

J. H. [Signature]
(Applicant)

Proposed Priority: 11/20/80

Received by A.S. Date 11/20/80 Time 1:30 PM
Preliminary check by J Fee \$ 325.⁰⁰ / 16684
Received by marya Date 11/20/80
Publication prepared by marya Date 12/6/80
Published in Times news
Publication dates 12/18 + 12/25/80 12/24 + 12/31/81
Publication approved marya Date 12/17/80 12/21/80
Protests filed by: Mr./Mrs G.W. Anderson
feed/Louise Kembrich
Mr./Mrs Dale Dunart - Robert S. Luntz
Copies of protests forwarded by _____
Hearing held by _____ Date _____
Recommended for approval denial by AK

MICROFILMED

ACTION OF THE DIRECTOR, DEPARTMENT OF WATER RESOURCES

This is to certify that I have examined Application for Permit to appropriate the public waters of the State of Idaho No. 47-7680, and said application is hereby APPROVED.

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

- a. SUBJECT TO ALL PRIOR WATER RIGHTS.
- b. Proof of construction of works and application of water to beneficial use shall be submitted on or before August 1, 19 88.
- c. The rate of diversion, if water is to be used for irrigation under this permit, when combined with all other water rights for the same land shall not exceed 0.02 cubic feet per second for each acre of land.
- d. Other: _____

PURSUANT TO PROPOSED MEMORANDUM DECISION AND ORDER AND
ORDER ADOPTING DECISION AS FINAL ORDER.

Witness my hand this 31 day of August, 19 83.

A. Bennett Dunn
Director

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
AFFIDAVIT FOR WATER RIGHTS TO BE USED
FOR POWER PURPOSES

RECEIVED

DEC 30 1981

Ownership of Facilities: (To be completed for hydropower projects only) ^{Department of Water Resources}

The hydropower facility to be developed pursuant to the attached Application for

Permit:

☒ Will not utilize existing man-made irrigation facilities such as a dam or a canal.

☐ Will utilize existing man-made irrigation facilities such as a dam or a canal, and permission of the owner is documented in an affidavit attached hereto.

☐ Will utilize existing man-made irrigation facilities such as a dam or a canal and the owner of the facilities is the signee of this affidavit.

Collins Brothers Corp.
E. C. Collins, Pres.
Applicant

State of Idaho)
County of Twin Falls) ss.

On this 15th day of December, 1981, personally appeared before me the signer(s) of the above instrument, who duly acknowledged to me that he (she) (they) executed the same.

[Signature]
Notary Public residing at

seal

Buhl, Idaho

My commission expires:

Sept 1987

RECEIVED

State of Idaho
Department of Water Resources

DEC 30 1981

ASSIGNMENT OF PERMIT

Department of Water Resources

I, E.A. Collins, Pres., hereby assign to Collins Bros. Corp.
of Royal Crest, Inc.
130 N. Broadway, Buhl, Idaho 83316
Address

CHECK ONE

- ☒ All my right, title, and interest in and to Permit No. 47-7683, 47-7684
to appropriate the public waters of the State of Idaho. 47-7561, 47-7261
47-7680
- ☐ The following described portion of my right, title, and interest in and to Permit
No. _____ to appropriate the public waters of the State of Idaho.
(Describe that portion of the permit being assigned by listing the acreage within
each 40 acre subdivision, the point of diversion and the amount of water in cubic
feet per second for direct diversion, or acre feet for storage)

NOTE: ROYAL CREST, INC. has been changed in name to COLLINS BROS.
CORP. WHICH THE ABOVE PERMITS ARE TRANSFERRED TO. THERE
~~IS NO CHANGE OF OWNERSHIP, ONLY A CHANGE OF NAME.~~

Made this 15th day of December, 19 81.

E.A. Collins Pres., Royal Crest, Inc.
Permit Holder

Spouse of Permit Holder

State of Idaho)
County of Twin Falls) ss.

On this 15th day of December, 19 81, personally
appeared before me the signer(s) of the above instrument, who duly acknowledged to me
that he ~~(she)~~ ~~(they)~~ executed the same.

seal

[Signature]
Notary Public residing at

Buhl, Idaho

My commission expires:

Sept. 1984

MICROFILMED

State of Idaho
Department of Water Resources
ASSIGNMENT OF PERMIT

DEC 17 1981

State Resources
Office

I, Royal Crest Inc., hereby assign to Collins Brothers
of Box 42427 Huntridge Station, Las Vegas, Nevada 89104
Address

CHECK ONE

☒ All my right, title, and interest in and to Permit No. 47-7680
to appropriate the public waters of the State of Idaho.

☐ The following described portion of my right, title, and interest in and to Permit
No. _____ to appropriate the public waters of the State of Idaho.

(Describe that portion of the permit being assigned by listing the acreage within
each 40 acre subdivision, the point of diversion and the amount of water in cubic
feet per second for direct diversion, or acre feet for storage)

Made this 15th day of December, 1981.

Royal Crest, Inc.
E. H. Collins, Pres

Permit Holder

Spouse of Permit Holder

State of Idaho)
County of Twin Falls) ss.

On this 15th day of December, 1981, personally
appeared before me the signer(s) of the above instrument, who duly acknowledged to me
that he (she) (they) executed the same.

seal

Notary Public residing at

John L. Haycock
Box 4 Bull, Ida
83316

My commission expires:

9-28-85

MICROFILMED

NOTICE OF AMENDED
APPLICATION FOR
PERMIT NO. 47-7680

Notice is hereby given
that Application for
Permit NO. 47-7680 in the
name of Royal Crest,
Inc., Kanaka Rapids
Ranch, Las Vegas,
Nevada was filed as
follows:

47-7680
ROYAL CREST, INC.,
KANAKA RAPIDS
RANCH
BOX 42427 HUNTRIDGE
STATION, LAS VEGAS,
NV 89104

Source:
GROUNDWATER
Date Filed: 11/20/1980
Amount: 14.60 CFS
Diversion Point: SENE
SESE Sec 10 T 09S R 14E
SESW Sec 14 T 09S R
14E, TWIN FALLS Co.

Use: IRRIGATION (6.60
CFS) from 04/01 to 10/31
COMMERCIAL (2.70 CFS)
from 01/01 to 12/31
POWER (4.90 CFS) from
01/01 to 12/31

DOMESTIC (0.40 CFS)
from 01/01 to 12/31
Place of Use: NWNE
SWNE NENW NWNW
SESW Sec 14 T 09S R 14E
SESW Sec 14 T 09S R 14E
SESW Sec 11 T 09S R 14E
SENE NENW SENW
SESW Sec 10 T 09S R 14E
FOR 430 ACRES

Diversion Means:
ARTESIAN WELLS,
PUMPS

Application for Permit
No. 47-7680 is hereby
amended to read as
follows:

ROYAL CREST, INC.,
KANAKA RAPIDS
RANCH
BOX 42427 HUNTRIDGE
STATION, LAS VEGAS,
NV 89104

Source:
GROUNDWATER
Date Filed: 11/20/80
Amount: 14.60 CFS
Diversion Point: SENE
SESE Sec 10 T 09S R 14E
SESW Sec 14 T 09S R
14E, TWIN FALLS Co.

Use: IRRIGATION (6.60
CFS) from 04/04 to 10/31
COMMERCIAL (2.70 CFS)
from 01/01 to 12/31

HEATING (4.90 CFS)
from 01/01 to 12/31
DOMESTIC (0.40 CFS)
from 01/01 to 12/31

Place of Use: NWNE
SWNE NENW NWNW
SESW Sec 14 T 09S R 14E
SESW Sec 14 T 09S R 14E
SESW Sec 11 T 09S R 14E
SENE NENW SENW
SESW Sec 10 T 09S R 14E
FOR 430 ACRES

Diversion Means:
ARTESIAN WELLS,
PUMPS

Any protest against
approval of the amend-
ing of Permit No. 47-7680
as set forth above must
be filed with the Idaho
Department of Water
Resources, 1041 Blue
Lakes Blvd. North, Twin
Falls, Idaho 83301, on or
before January 11, 1982.

A. KENNETH DUNN
Director

PUBLISH: Thursday,
December 24, and 31,
1981.

Affidavit of Publication

STATE OF IDAHO,
COUNTY OF TWIN FALLS } ss.

Nº 11004

I, H. Endeavor being first duly sworn up
oath, depose and say that I am print clerk of the TIMES-NEWS,
published daily, at Twin Falls, Idaho, and do solemnly swear that a copy of
the notice of advertisement, as per clipping attached, was published in the regular and
entire issue of said newspaper, and not in any supplement thereof, for two
consecutive weeks, commencing with the issue dated
December 24, 1981, and ending with the issue dated
December 31, 1981.

And I do further certify that said newspaper is a consolidation, effective February 16,
1942, of the Idaho Evening Times, published theretofore daily except Sunday, and the Twin
Falls News, published theretofore daily except Monday, both of which newspapers prior to
consolidation had been published under said names in said city and county continuously and
uninterruptedly during a period of more than twelve consecutive months, and said TIMES-
NEWS, since such consolidation, has been published as a daily newspaper except Saturday,
until July 31, 1978, at which time said newspaper began daily publication under said name
in said city and county continuously and uninterruptedly.

And I further certify that pursuant to Section 60-108 Idaho Code, Thursday of each week
has been designated as the day on which legal notice by law or by order of any court of com-
petent jurisdiction within the state of Idaho, to be published weekly, will be published; and
that at the head of the editorial column of said combined newspapers, and in each issue the-
of, Thursday is announced as the day on which said legal notices will be published.

Subscribed and sworn to before me on this 31st day of
December, 1981

Goldie J. Fairweather
Notary Public in and for the County of Twin Falls,
State of Idaho, residing at Twin Falls, Idaho

47-7680
ROYAL CREST, INC.,
KANAKA RAPIDS RANCH
BOX 42427 HUNTRIDGE
STATION, LAS VEGAS, NV
89104

Source: GROUNDWATER
Date Filed: 11/20/1980
Amount: 14.60 CFS
Diversion Point: SENE SESE

Sec 10 T 09S R 14E SENW
Sec 14 T 09S R 14E, TWIN
FALLS Co.

Use: IRRIGATION (6.60 CFS)
from 04/01 to 10/31
COMMERCIAL (2.70 CFS)
from 01/01 to 12/31
POWER (4.90 CFS) from
01/01 to 12/31
DOMESTIC (0.40 CFS)
from 01/01 to 12/31

Place of Use: NWNE SWNE
NENW NWNW SENW Sec
14 T 09S R 14E SWNW
NWSW SWSW Sec 11 T
09S R 14E SWNE SENE
NENW SENW NESW
NESE NWSE SESE Sec 10
T 09S R 14E FOR 430
ACRES

Diversion Means:
ARTESIAN WELLS,
PUMPS

Affidavit of Publication

N^o 9842

STATE OF IDAHO, }
COUNTY OF TWIN FALLS } ss.

I, Linda Capps McBaue being first duly sworn upon
oath, depose and say that I am Print Club of the TIMES-NEWS,
published daily, at Twin Falls, Idaho, and do solemnly swear that a copy of
the notice of advertisement, as per clipping attached, was published in the regular and
entire issue of said newspaper, and not in any supplement thereof, for Two
consecutive Weeks, commencing with the issue dated
December 18, 1980, and ending with the issue dated
December 25, 1980.

And I do further certify that said newspaper is a consolidation, effective February 16,
1942, of the Idaho Evening Times, published theretofore daily except Sunday, and the Twin
Falls News, published theretofore daily except Monday, both of which newspapers prior to
consolidation had been published under said names in said city and county continuously and
uninterruptedly during a period of more than twelve consecutive months, and said TIMES-
NEWS, since such consolidation, has been published as a daily newspaper except Saturday,
until July 31, 1978, at which time said newspaper began daily publication under said name
in said city and county continuously and uninterruptedly.

And I further certify that pursuant to Section 60-108 Idaho Code, Thursday of each week
has been designated as the day on which legal notice by law or by order of any court of com-
petent jurisdiction within the state of Idaho, to be published weekly, will be published; and
that at the head of the editorial column of said combined newspapers, and in each issue there-
of, Thursday is announced as the day on which said legal notices will be published.

Linda Capps McBaue
Subscribed and sworn to before me on this 30 day of

December, 1980.
Thelma Rowlett-Smith
Notary Public in and for the County of Twin Falls,
State of Idaho, residing at Twin Falls, Idaho

RECEIVED

JAN 6 1981

Department of Water Resources
Southwest District Office

MICROFILMED

**NOW
STARTING
RIGHT
SIDE OF
FILE**

RECEIVED

NOV 24 2000

Department of Water Resources

NORMAN M. SEMANKO

ATTORNEY AT LAW

410 S. ORCHARD, SUITE 144

BOISE, IDAHO 83705

November 22, 2000

Mr. Karl Dreher, Director
Idaho Department of Water Resources
1301 N. Orchard
Boise, ID 83706

RE: Kanaka Rapids Ranch - Permit No. 47-07680

Dear Karl:

This letter is meant to follow-up on the meeting that was held in your office on November 6 regarding the licensing of Permit No. 47-07680, held by Kanaka Rapids Ranch. We appreciate your willingness to meet with us.

Based on our meeting, we understand that you are willing to consider licensing heating and domestic uses (including lawns) for more than 99 residential lots, provided that proof can be provided to document that these additional lots were "stubbed-in" prior to the deadline for submitting proof of beneficial use in July, 1991. Following the meeting, Norm Young indicated that he would review the Department's files to determine whether such evidence already exists in your files. To date, he has not found anything. As a result, we will also review our records and provide any and all documentation that exists as soon as possible. In the meantime, we request that you refrain from issuing a final license. Our understanding is that approximately 141 lots, rather than 99, were stubbed-in prior to July, 1991. We are quite sure that such documentation exists, especially given that the Riverside portion of the water system (constituting the additional 42 lots) was replaced in 1994, as witnessed by Norm Young during his visit to Kanaka Rapids Ranch that year.

Once the total number of lots is established, we understand that up to one-half acre of "domestic" irrigation will be allowed per lot. We were encouraged that you seemed receptive to the idea of limiting Kanaka Rapids Ranch's irrigation (including lots, open space and trees) to the cumulative number of acres otherwise allowed for the lots. This would not increase the number of acres irrigated or the amount of water used for such purposes, but would provide flexibility to recognize the residential irrigation that already exists (i.e. trees, open space, and several lawns) even if it has to come at the expense of some of the lots that have not yet had homes built on them.

PHONE: 208-344-6690
FAX: 208-344-2744
E-MAIL: NORM@IWUA.ORG

MICROFILMED

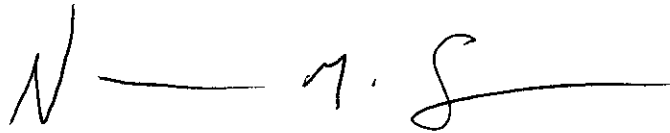
APR 22 2003

Mr. Karl Dreher
November 22, 2000
Page 2

Finally, with regard to the Bluffs portion of Kanaka Rapids Ranch, we understand that the Department would be willing to entertain a permit or transfer application to provide water to these additional lots after licensing is completed, provided that the total quantity of water uses is not increased. As discussed, this could be accomplished by agreeing to implement restrictive conservation measures for the use of water on the lots covered by the license.

We look forward to continuing to work with you to resolve this matter.

Sincerely,

A handwritten signature in dark ink, appearing to read 'N - M. S', with a long horizontal stroke extending to the right.

NORMAN M. SEMANKO

NMS:kje
cc:John Simpson
Collins Bros. Corp.

MICROFILMED
APR 22 2003

MEMORANDUM

To: Permit No. 47-07680 - Kanaka Rapids Ranch
From: L. Glen Saxton
RE: **MEETING ON DECEMBER 16, 1996**
Date: December 17, 1996

On December 16, 1996, department staff met with the permit holder and the permit holder's representatives in connection with the development at the Kanaka Rapids project as associated with Permit No. 47-07680.

The meeting was attended by the following parties:

Karl Dreher
Phil Rassier
L. Glen Saxton
Carlo Ferreira
John Rosholt
Mike Felton, Jr.
Norman Semanko
Dr. Charles Brockway

Development at the project and certain elements of the field examination conducted by Allen Merritt were generally discussed. Among other items, the following were noted from the discussion:

- Well No. 1 is the production well.
- Well No. 2 is a back-up well.
- Well No. 3 has not been pumped yet.

- The major issue appeared to be the rate for which a license would be issued.

- The developer is willing to self impose rate of flow limitations to each new home to be constructed in the development but water use for the existing 25 homes would have to be grandfathered in.

MICROFILMED

APR 22 2003

- One existing home uses as much as 25 gallons per minute for heating use. New technology would allow heating with a flow rate of about 5 or 6 gpm.
- The phase 1 development (Original) consists of 99 lots.
- The phase 2 development (Riverside) consists of 42 five acre lots.
- The phase 3 development (Bluffs) consists of 50 one-quarter acre size lots.
- The intended maximum lot sell out is 191 lots.
- 141 or 142 lots have water stubbed off to them.
- Ninety (90) lots have been sold.
- 25 homes have been constructed.
- 12 more applications to build homes have been approved.
- There was discussion about allowing the "commercial use" be licensed to provide domestic heat.
- The next homeowner's meeting is scheduled for about April 1, 1997.
- Semanko suggested the permit holder might file a future transfer on the license to allow a "new hole" to be drilled on the Phase 3 part of the development.
- Director Karl Dreher recommended that the department would review the matter and advise the permit holder of how the department intended to issue the license before the license is actually issued.

MICROFILMED

APR 22 2003

ROSHOLT, ROBERTSON & TUCKER

Chartered
ATTORNEYS AT LAW

JOHN A. ROSHOLT
J. EVAN ROBERTSON
JAMES C. TUCKER
GARY D. SLETTE
JERRY V. JENSEN
BRUCE M. SMITH
JOHN K. SIMPSON
PATRICK D. MADIGAN
TIMOTHY J. STOVER
NORMAN M. SEMANKO

Twin Falls Office
142 3rd Ave. North
P.O. BOX 1906
TWIN FALLS, IDAHO 83303-1906
TELEPHONE (208) 734-0700
FAX (208) 736-0041

Boise Office
1221 WEST IDAHO, SUITE 600
P.O. BOX 2139
BOISE, IDAHO 83701-2139
TELEPHONE (208) 336-0700
FAX (208) 344-6034

RECEIVED

NOV 20 1996

Department of Water Resources

November 19, 1996

Karl Dreher, Director
Idaho Dept. of Water Resources
1301 N. Orchard
Statehouse Mail
Boise, ID 83720

RE: Kanaka Rapids Ranch - Licensing of Permit No. 47-07680

Dear Karl:

After checking with our people, 10:00 a.m. on Monday, December 16 looks like the best time to meet to discuss the licensing of Permit No. 47-07680. Unless we hear otherwise, we will plan on meeting with you in your office at that time.

Thank you for your cooperation.

Respectfully submitted,


JOHN A. ROSHOLT

11199602.NMS

MICROFILMED

APR 22 2003

RECEIVED

JUL 26 1996

TWIN FALLS COUNTY
PLANNING & ZONING
246 3RD AVENUE EAST TWIN FALLS, IDAHO 83301
(208) 734-9490

Department of Water Resources
Southern Region

July 25, 1996

Mr. Norman M. Semanko
Rosholt, Robertson & Tucker
Attorney's at Law
PO Box 1906
Twin Falls, Idaho 83301-1906

RE: The Bluff/s Kanaka Rapids Ranch - Extension of Time

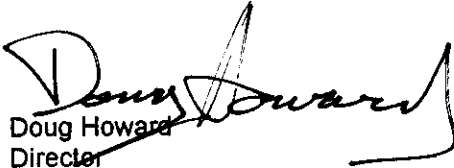
Dear Norman:

This is in reference to your letter, dated July 23, 1996, and our telephone conversation on July 24, 1996. After reviewing Twin Falls County Ordinance #21, Article 7-28 and Ordinance #23, Article 5.5 and Article 6.0, I agree with your assessment that the County Commissioners, under Ordinance #23, Article 6.0, can hear your request for an extension of time.

Therefore, I have scheduled a meeting for 10:00 a.m., Wednesday, July 31, 1996. The meeting will be at the Commissioners' office at the County Courthouse, 425 Shoshone, 4th Floor.

Because of Idaho Department of Water Resource's role in your request for an extension, I have invited Allen Merritt of IDWR to attend the hearing.

Respectfully,


Doug Howard
Director

DH/pjr

cc: County Commissioners
Ax Yewer with enclosure
Allen Merritt with enclosure ✓

MICRO
AUG 22 2000

RECEIVED

JUL 25 1996

ROSHOLT, ROBERTSON & TUCKER

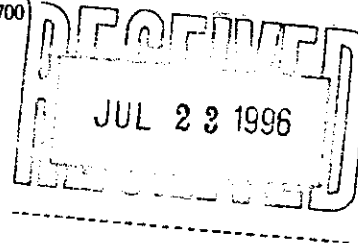
Chartered
ATTORNEYS AT LAW

JOHN A. ROSHOLT
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JERRY V. JENSEN
BRUCE M. SMITH
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NORMAN M. SEMANKO

Twin Falls Office
142 3rd Ave. North
P.O. BOX 1906
TWIN FALLS, IDAHO 83303-1906
TELEPHONE (208) 734-0700
FAX (208) 736-0041

Department of Water Resources

Southern Region
1221 WEST IDAHO, SUITE 600
P.O. BOX 2139
BOISE, IDAHO 83701-2139
TELEPHONE (208) 336-0700
FAX (208) 344-6034



July 23, 1996

Doug Howard
Twin Falls County Zoning Director
246 3rd Ave. E.
Twin Falls, ID 83301

HAND DELIVERED

Re: The Bluffs/Kanaka Rapids Ranch -- Extension of Time

Dear Doug:

This letter is meant to follow-up on your letter of July 17, 1996 and our telephone conversation yesterday.

In your letter, you state that the request for an extension of time for filing the final plan for the Bluffs will be heard at the August 8 public hearing of the Planning and Zoning Commission and that notice will be in accordance with Idaho Code Sec. 67-6512 and Twin Falls County Ordinance 21, Article 10-5.

Upon examination, it is apparent that the notice provisions cited in your letter generally apply only to special or conditional use permit applications (such as the Boulder Creek Gravel Pit). They also apply to preliminary plan approvals under Article 5.5 of the Twin Falls County Planned Unit Development Ordinance No. 23. However, they do not apply to a request for an extension of time for filing a final plat.

Extension requests are governed by Article 6.0 of Ordinance No. 23. That article provides that an extension request may be granted by the County Commission for good cause shown. Unlike Article 5.5 (preliminary plan hearings), there is no requirement that the request be heard at a public hearing or that notice be provided.

The requisite notices for the public hearings conducted on the Bluffs preliminary plan were provided as specifically required by Article 5.5 of Ordinance No. 23. No notice requirement exists in the Ordinance for extension requests. Indeed, no such notice was required by the County previous to granting the original extension under which we are currently operating. As a result, we do not believe any notice is required and do not plan to provide any. Please let us know if you differ with this conclusion.

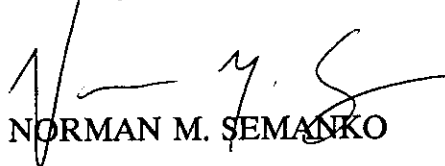
JUL 22 2003

Doug Howard
July 23, 1996
Page 2

If it would assist the County Commission in making a decision, we will of course be glad to make a presentation at the August 8 Planning and Zoning meeting or at some other convenient time. Frankly however, the "good cause" for our extension request was outlined comprehensively in our letter of July 11, 1996. There would be little to add at a public meeting. As a result, and because the current deadline is looming, we ask that the County Commission act forthwith on our request and grant it for good cause shown.

Thank you for your continued cooperation in this matter. Please call if you have any questions.

Sincerely,



NORMAN M. SEMANKO

07229603.NMS

cc: Carlo Ferreira
Dale Riedesel



REC'D

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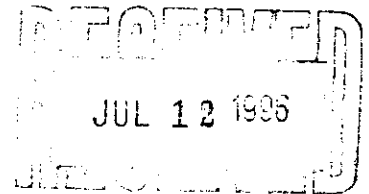
ROSHOLT, ROBERTSON & TUCKER
Chartered
ATTORNEYS AT LAW

Twin Falls Office
142 3rd Ave. North
P.O. BOX 1906
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1221 WEST IDAHO, SUITE 600
P.O. BOX 2139
BOISE, IDAHO 83701-2139
TELEPHONE (208) 336-0700
FAX (208) 344-6034

July 11, 1996

Doug Howard
Twin Falls County Zoning Director
246 3rd Ave. E.
Twin Falls, ID 83301



Re: The Bluffs/Kanaka Rapids Ranch -- Extension of Time

Dear Doug:

On behalf of our client, the Collins Brothers, we hereby request an additional extension of time for filing the final plat for the Bluffs at Kanaka Rapids Ranch. As we understand it, the final plat is currently due at the beginning of August, 1996.

During our telephone conversations, you confirmed that the developer needs to present evidence to the Commission indicating why an extension of time is necessary. Upon consideration of such evidence, the Commission may establish a new deadline. As a result, we present evidence below explaining why an extension of time is required and ask that the Commission set a new time limit for filing the final plat.

As you will recall, the Planning and Zoning Commission had concerns about the domestic water source for the Bluffs project at Kanaka Rapids Ranch. Delays in the licensing of the domestic water rights for Kanaka Rapids Ranch caused the Collins Brothers to request a six month extension for filing the final plat. See Exhibit "A". As explained below, additional delays and complications require that a one year extension be requested.

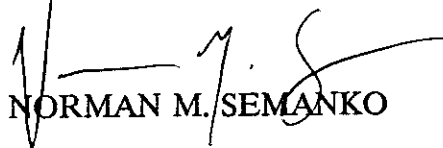
By an amendment approved during 1994, the Bluffs was included in the place of use for Idaho Department of Water Resources Permit No. 47-07680. See Exhibit "B". However, that permit is still in the process of being licensed by the Department. In addition, depending on the outcome of that process, a transfer application may need to be filed with the Department to facilitate the use of water on the Bluffs. Alternatively, a separate source may need to be pursued. See Exhibit "C". Therefore, the final configuration of the water system for the Bluffs is contingent upon decisions yet to be made by the Department. In order to allow the requisite time for these decisions to be made, we request that a one year extension of time be granted for filing the final plat for the Bluffs.

SEP 22 2003

Doug Howard
July 11, 1996
Page 2

Please let us know if you have any questions regarding this request and the evidence we have presented. We look forward to meeting with you and the Commission to discuss this matter further. If necessary, please place this matter on the Commission's next meeting agenda.

Sincerely,



NORMAN M. SEMANKO

07089601.NMS

Enclosures

cc: Carlo Ferreira
Dale Riedesel

MICROFILMED

APR 22 2001

MICRO

APR 22 2001

ROSHOLT, ROBERTSON & TUCKER

Chartered
ATTORNEYS AT LAW

JOHN A. ROSHOLT
J. EVAN ROBERTSON
JAMES C. TUCKER
GARY D. SLETTE
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BOISE, IDAHO 83701-2139
TELEPHONE (208) 336-0700
FAX (208) 344-6034

July 11, 1996

RECEIVED

JUL 12 1996

Doug Howard
Twin Falls County Zoning Director
246 3rd Ave. E.
Twin Falls, ID 83301

Department of Water Resources
Southern Region

Re: The Bluffs/Kanaka Rapids Ranch -- Extension of Time

Dear Doug:

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As you will recall, the Planning and Zoning Commission had concerns about the domestic water source for the Bluffs project at Kanaka Rapids Ranch. Delays in the licensing of the domestic water rights for Kanaka Rapids Ranch caused the Collins Brothers to request a six month extension for filing the final plat. See Exhibit "A". As explained below, additional delays and complications require that a one year extension be requested.

By an amendment approved during 1994, the Bluffs was included in the place of use for Idaho Department of Water Resources Permit No. 47-07680. See Exhibit "B". However, that permit is still in the process of being licensed by the Department. In addition, depending on the outcome of that process, a transfer application may need to be filed with the Department to facilitate the use of water on the Bluffs. Alternatively, a separate source may need to be pursued. See Exhibit "C". Therefore, the final configuration of the water system for the Bluffs is contingent upon decisions yet to be made by the Department. In order to allow the requisite time for these decisions to be made, we request that a one year extension of time be granted for filing the final plat for the Bluffs.

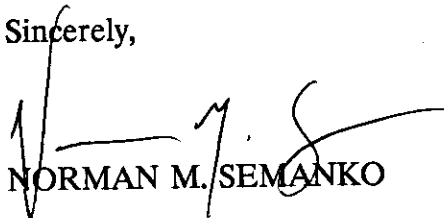
MICHAEL J. LEMMON

APR 22 2003

Doug Howard
July 11, 1996
Page 2

Please let us know if you have any questions regarding this request and the evidence we have presented. We look forward to meeting with you and the Commission to discuss this matter further. If necessary, please place this matter on the Commission's next meeting agenda.

Sincerely,



NORMAN M. SEMANKO

07089601.NMS

Enclosures

cc: Carlo Ferreira
Dale Riedesel

MICROFILMED

APR 22 2003

Exhibit A

DALE L. RIEDESEL P.E./L.S.

Engineer • Surveyor • Planner

488 BLUE LAKES BLVD. NO., SUITE 103

TWIN FALLS, IDAHO 83301

TELEPHONE (208) 733-2446

January 16, 1996

Mr. Doug Howard, P.E./L.S.
Twin Falls County Zoning Director
246 3rd Avenue East
Twin Falls, ID 83301

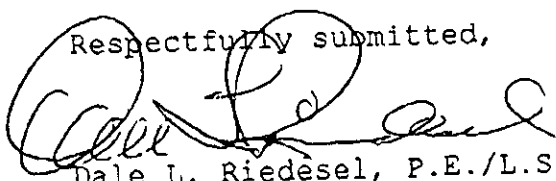
RE: Extension of Time
The Bluffs
Kanaka Rapids Ranch

Dear Mr. Howard:

We appreciate your informing us of the deadline for filing of the plats for the Bluffs at Kanaka Rapids Ranch. At this time Kanaka Rapids Ranch would like to request a 6 month extension of the deadline for final plan filing. The Collins Brothers have every intention of continuing the project. As you are aware, the source of domestic water was of concern to the Planning and Zoning Commission. Kanaka Rapids is still waiting for a determination on the water rights for the project from the Idaho Department of Water Resources. When a decision is made Kanaka Rapids Ranch will know which direction to take in completing the project.

I would appreciate the opportunity to discuss this with you and the County Commissioners.

Respectfully submitted,



Dale L. Riedesel, P.E./L.S.
Project Manager

DLR: CW

cc Carlo Ferreira

C:\FILES\212\KRB21219.WPD

MICROFILMED

APR 22 2003

Post-It* Fax Note	7671	Date	7/5/96	# of pages	1
To	NORM SEMANKO		From	DALE RIEDESEL	
Co./Dept.			Co.		
Phone #			Phone #		
Fax #			Fax #		

Exhibit B



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

CECIL D. ANDRUS
GOVERNOR

R. KEITH HIGGINSON
DIRECTOR

May 26, 1994

KANAKA RAPIDS RANCH HOMEOWNERS WATER SYSTEM INC
176 KANAKA RAPIDS RANCH RD
BUHL ID 83316

RE: Permit No. 47-07680

Dear Water Right Holder:

Enclosed is a copy of your approved Application for Amendment submitted in connection with the above referenced permit.

If you have any questions, please feel free to contact me directly at (208) 327-7947.

Sincerely,


JIM JOHNSON
Water Rights Supervisor

JJ:cz

Enclosure

MICROFILMED
APR 22 2003

APPROVEDSTATE OF IDAHO
DEPARTMENT OF WATER RESOURCESInspection by dlw
Date 5/10/94**RECEIVED****APPLICATION FOR AMENDMENT OF A PERMIT**MAY 10 1994
Department of Water ResourcesApplicant KANAKA RAPIDS RANCH HOMEOWNERS WATER SYSTEM, INC. Phone 208-543-6767Address 176 KANAKA RAPIDS RANCH BUILD. ID 83316I am the owner and holder of Permit to Appropriate the Public Waters of the State of Idaho No. 47-07680, and request that the permit and permit map be amended and/or changed as follows:Purpose of Amendment: Change point of diversion Add point of diversion
XX Change place of use Change nature of use Change period of use Other1. Point of diversion: SAME $\frac{1}{4}$ $\frac{1}{4}$ $\frac{1}{4}$, Section , Township , Range , B.M.,
County of . Other points of diversion 2. Period and nature of use: (Irrigation, domestic, stockwatering, industrial, etc.) SAMEAmount for purposes from to (both dates inclusive)
(cfs or acre feet per annum) (water use) (Begin month) (End month)Amount for purposes from to (both dates inclusive)
(cfs or acre feet per annum) (water use) (Begin month) (End month)Amount for purposes from to (both dates inclusive)
(cfs or acre feet per annum) (water use) (Begin month) (End month)

3. Place of use or land to be irrigated:

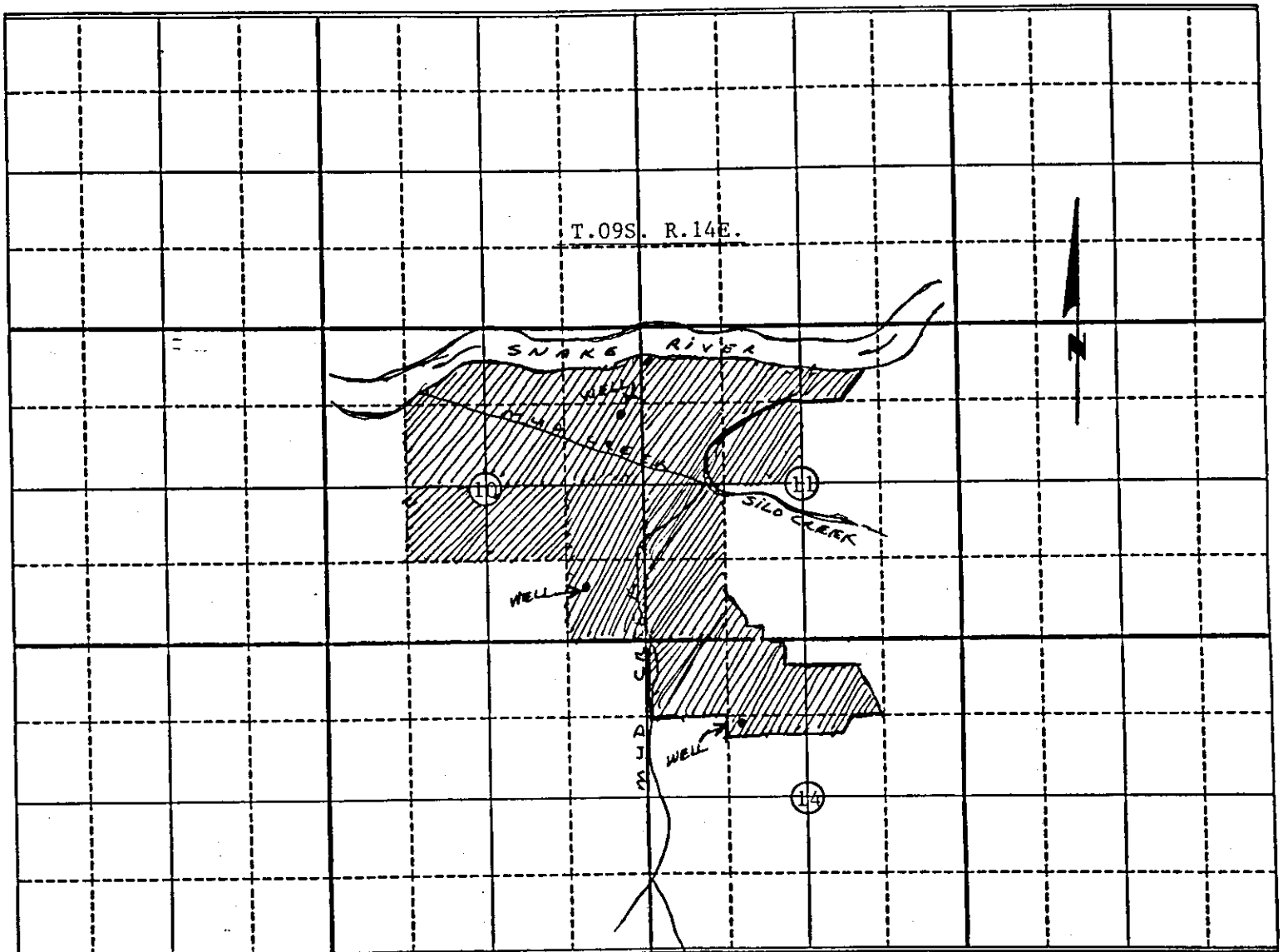
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		11		X			X	X	X	X		X	X	X					
		14		X	X		X	X		X									

Total number of acres to be irrigated =

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

MICROFILMED
APR 22 2003

Complete the following map by showing land and point of diversion as proposed by this amendment.
 Show 1/4 1/4, section, township, range and ditches. (the smallest subdivision represents 40 acres)



Scale: 2 inches equal 1 mile

I hereby request approval of this change subject to the fact that no one will be injured by the change, and that the change will be made at my own risk.

Signed this 9th day of May, 19 94

Carlo Ferreira
 Carlo Ferreira Permit Holder
 Attorney-in-fact

ACTION OF THE DEPARTMENT OF WATER RESOURCES

Preliminary check by _____ Publication prepared by _____ Date _____

Published in _____ Publication dates _____

I, _____, of the Department of Water Resources hereby

Witness my hand this _____ day of _____, 19 _____

MICRO
 APR 22 2003

SIGNATURE

CONDITIONS OF APPROVAL

Amendment of Permit No. 47-07680

1. Right holder must comply with conditions set forth in Order Adopting Proposed Memorandum Decision and Order issued at time of permit approval.
2. The amount of water diverted shall not exceed that necessary for domestic, commercial, and geothermal heating for 99 homes.
3. Approval of this amendment does not authorize any additional development for any purpose after August 1, 1991. This amendment authorizes 99 domestic uses to be allocated to 99 lots of the subdivision located within the amended place of use. This amendment is limited to the existing water distribution system providing water to lots which have been stubbed in, and, to water that had been made available for use during the permitted development period.

MICRO...

APR 22 2003

Exhibit C

Page 10 of 10

RECEIVED

NOV 03 1995

Department of Water Resources
Southern Region

4595 River Road
Buhl, Idaho 83316
November 2, 1995

Allen Merritt
Southern Regional Manager
Idaho Dept. of Water Resources
222 Shoshone St. East
Twin Falls, Idaho 83301-6105

Dear Mr. Merritt:

I and other people interested in Kanaka Rapids Ranch water matters have been awaiting a reply to my August 21, 1995 letter to you, a copy of which is attached for your ready reference. Can you advise me when I may receive a response to that letter?

Sincerely yours,

Robert S. Luntz
Robert S. Luntz

543- 8334

MICROFILMED

APR 22 2003

4595 River Road
Buhl, Idaho 83316
August 21, 1995

Allen Merritt
Southern Regional Manager
Idaho Dept. of Water Resources
222 Shoshone St. East
Twin Falls, Idaho 83301-6105

Dear Mr. Merritt:

I greatly appreciated your very prompt August 4 response to my July 26 letter concerning Kanaka Rapids Ranch water matters. It was most helpful to my understanding of the questions posed at the Twin Falls County Planning and Zoning Board hearing on August 10.

Many local residents observed the installation of water distribution facilities to lots in the Riverside section of the Ranch beginning in 1994 and continuing through the winter into 1995. Idaho Department of Environmental Quality files include a drawing entitled 1994 Water System Improvements - Kanaka Rapids Ranch- Phase II Riverside. DEQ notations on the drawing indicate it was received on February 2, 1995 and approved Feb. 14, 1995. If the Ranch was required to have approval for the development prior to beginning construction it appears they may be in violation of that requirement.

An attachment to your August 4 letter states the following:

"Many subdivisions are not fully developed at the time of the examination. When in this situation you should confirm that a water delivery system has been installed to provide water to each lot listed in the subdivision".

Did the Kanaka Rapids Ranch have an extension into 1995 to prove beneficial use on Phase II Riverside subdivision? If not it appears that they may not have complied with Department of Water Resources permit requirements.

It would be very helpful to me and others concerned with the Kanaka Rapids Ranch development to have the permit numbers for their geothermal wells, the dates when proof of beneficial use expired and any extensions that may have been granted. We are especially concerned with the date when proof of beneficial use expired for Riverside II.

Sincerely,



Robert S. Luntney

MAILED 100

SEP 22 2003

4595 River Road
2Buhl, Idaho 83316
August 21, 1995

Allen Merritt
Southern Regional Manager
Idaho Dept. of Water Resources
222 Shoshone St. East
Twin Falls, Idaho 83301-6105

RECEIVED

AUG 22 1995

Department of Water Resources
Southern Region

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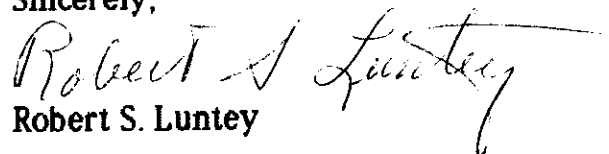
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Sincerely,


Robert S. Luntz

RECEIVED

AUG 22 2003



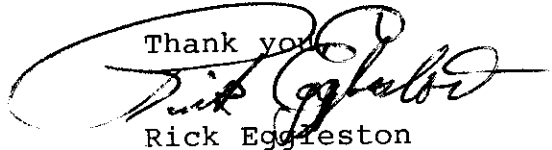
RECEIVED
AUG 16 1995
Department of Water Resources
Southern Region

Aug 10, 1995
Allen Merritt
Dept. of Water Resources

Dear Mr. Merritt;

This letter is in response to an article in the Times News on Aug 10, 1995 about the three wells that Kanaka Ranch uses for its geothermal water system. It has been brought to my attention that code on the geothermal water has not been met. I sincerely hope that Kanaka Rapids Ranch will be obligated, like everyone else, to meet these specifications. We have been told that one of these wells is in great need of repair. It is flushing great amounts of materials out of the well. This would indicate there is a problem that needs attention before there is unrepairable damage. We have done everything asked of us on our well and hope everything will be done to bring all others to code. Everyone should be expected to do the same thing as we have had to do. This valuable resource is very fragile and I am aware of a number of these wells that were drilled improperly or that are being misused. This is not tolerable as far as we are concerned. We don't want to start anything unnecessary but feel we must get the point across that we intend to set the record straight about the miss use and unfair status of the geothermal program that Idaho Dept. of Water Resources is over. Please advise on your plans on this issue.

Thank you


Rick Eggleston


President

cs
cc Director Water Resources
Boise Idaho

201 Warm Creek Road
Jerome, Idaho 83338
208-736-1684 or 736-1606
Fax: 208-736-1695

MICHAEL 1100

APR 22 2003



State of Idaho

DEPARTMENT OF WATER RESOURCES

Southern Region, 222 Shoshone St. East, Twin Falls, Idaho 83301-6105 (208) 736-3033
Fax (208) 736-3037

PHILIP E. BATT
Governor

KARL J. DREHER
Director

August 4, 1995

Robert S. Luntley
4595 River Road
Buhl, ID 83316

RE: Kanaka Rapids Ranch

Dear Robert:

In response to your July 26th letter please find enclosed copied portions of the department's "Water Rights Examiner Handbook". This is the direction that is provided examiners when reviewing permits which cover the water systems for subdivisions.

The department is faced with a unique problem when licensing subdivision developments. Experience has shown that developers in good faith apply for water right permits for their projects and then go about developing the systems to the extent that they have control. After the initial development subdivision lots can sit idle for years before they are sold and houses constructed. For practical reasons IDWR acknowledges development of the delivery system and reflects this in the licensing process. This is similar to the way cities are treated.

For your further reference please find a copy of a letter recently sent Kanaka Rapids Ranch's attorney. Please note that because the delivery pipeline network with hookups has never been installed on the "The Bluffs" portion of the development that permit 47-07680 will not be recommended to be licensed at that location.

Regarding the use of geothermal wells at Kanaka Rapids Ranch for the direct filling of a lake, this type of activity is not part of any water right permit or license and this type of activity is not authorized. However, Kanaka Rapids does have a permit which allows the use of water for heating and once used for this purpose may allow for discharge of these used waters which may eventually reach the ponds in the area. During the recent field investigation of Kanaka Rapids Ranch it was noted that there is a cold water irrigation delivery system that diverts water from Mud Creek and can discharge into the lake you reference. The discharge of the cold water is very near the well to the west of the lake. Permit 47-07551 for storage of 200 acre feet on the ranch is presently being licensed and in this process is proposed to be amended to cover the various lakes or ponds at the ranch to the extent possible.

MICHAEL J. BATT

And Celebrating Our Centennial Year of Service to Idaho 1895-1995 ~

Page 2

If you have further questions please feel free to contact our office.

Sincerely,

A handwritten signature in black ink, appearing to read "A. Merritt", is written over the word "Sincerely,".

Allen Merritt, PE
Southern Region Manager

CC: Norm Young IDWR
Norm Semanko

Enclosures

MICHAEL L. LEE

APR 22 2003



State of Idaho

DEPARTMENT OF WATER RESOURCES

Southern Region, 222 Shoshone St. East, Twin Falls, Idaho 83301-6105 (208) 736-3033

Fax (208) 736-3037

PHILIP E. BATT
Governor

KARL J. DREHER
Director

August 4, 1995

Norman M. Semanko
Attorney at Law
Rosholt, Robertson & Tucker
PO Box 1906
Twin Falls, ID 83303-1906

HAND DELIVERED

RE: Kanaka Rapids Ranch

Dear Norm:

In your July 18th letter you asked IDWR to clarify the source(s) of water that may ultimately serve "The Bluffs". I interpret your request to mean "what water rights presently exist for development of the project or what process is available in obtaining a water right to cover the development of the project". In responding I have categorized my response into the following four areas for your consideration:

I. EXISTING RIGHTS

It is my understanding that "The Bluffs" is the third stage of development of the larger Kanaka Rapids Ranch. I understand "The Bluffs" is located in portions of the SW $\frac{1}{4}$ NE $\frac{1}{4}$, SE $\frac{1}{4}$ NW $\frac{1}{4}$, NE $\frac{1}{4}$ SW $\frac{1}{4}$ and NW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 10, Twp. 09S, Rge. 14E, B.M. in Twin Falls County. A search of our water right records finds that permit 47-07680 covers this area. As you know permit 47-07680 is in the name of the Kanaka Rapids Ranch Homeowners Water System Inc. and is the subject of a recent water rights field examination to license this water right. The permit covers the water developed from three geothermal wells located on and servicing Kanaka Rapids Ranch. Although this permit has a place of use which covers "The Bluffs" our field investigation found that a delivery system has never been constructed on this portion of the ranch. Since development of a delivery system with plumbed hookups is a criteria for allowing the department to license a right on a platted subdivision even though the houses have not yet been built, the preliminary recommendation will be that the permit be licensed to other portions of the ranch. The recommended license will be specifically for those areas served by these wells prior to July 30, 1991. July 30, 1991 is the date which the permittee filed the statement of beneficial use with the department and is the time at which authorized development under the permit ended.

MICHAEL

No other water right records list the "The Bluffs" location as an authorized place of use.

II. DEVELOPMENT OF A NEW WATER RIGHT BY PERMIT PROCESS

The appropriation of a new water right would be through Title 42, Chapter 2, IDAHO CODE, and would be subject to the department's water appropriation rules (IDAPA 37, Title 03, Chapter 08).

The site is located in what is known as the "Banbury Hot Springs Ground Water Management Area" (BGMA) which was established by order dated April 12, 1983. On January 11, 1984 a much larger groundwater management area was established by order and known as the "Twin Falls Groundwater Management Area" (TFGMA). The TFGMA surrounds the BGMA. Both of these management areas were created pursuant to §42-233b, IDAHO CODE. The BGMA was created as a result of declines in artesian pressure of wells (mostly geothermal) in the Banbury area; however, the order establishing the area does not differentiate between hot and cold water wells. The TFGMA was created as a result of declines in artesian pressure of geothermal wells in the northern portion of Twin Falls county, but is specifically pointed toward hot water wells. After investigation by the department of the BGMA, an order dated December 4, 1985 was issued for the BGMA which stayed approval of pending applications. The BGMA order also required approved permit holders to cease development and submit proof of beneficial use for uses already established. On May 15th, 1992 the director of the department issued a moratorium order against approval of certain water right permits in the Snake River Basin (SRB) due to drought related concerns. This moratorium was amended January 6, 1993 and later superseded by another amendment order dated April 30, 1993. By legislative action this SRB moratorium is extended to December 31, 1997. The SRB moratorium did not supersede the BGMA and TFGMA but did affect the sources in the area other than the geothermal aquifer. I have enclosed copies of the orders and moratoriums described above that are presently valid.

In summary the BGMA and the TFGMA have been created to protect the geothermal aquifer in the area and have prevented issuing new water right permits for development of the geothermal groundwater; the SRB moratorium has been placed to stop development uses of other sources of water in the area except for those uses which qualify under the exceptions identified in the order.

Because of these orders and moratoriums, a new water

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permit for development of geothermal groundwater will not be issued unless a specific mitigation plan is developed to recharge or inject water back into the hot water aquifer. Such a plan would require that artesian pressures and temperatures be maintained in the hot water aquifer so that present users are not injured by any new use. The burden is on the applicant to provide the studies to develop such a plan.

Granting of a new water permit for development of cold water in the area for a subdivision is more likely, but the individual uses for each lot would be limited to the "domestic" definition found in §42-111, IDAHO CODE. I have looked at well logs in the area and find that a cold water aquifer appears to exist over the deeper geothermal aquifer, but I do not have adequate information to determine whether the cold water will be adequate or suitable for the project. If an application for cold groundwater is pursued the applicant will be required to provide a prospectus of the well(s) to assure that the geothermal aquifer is not tapped.

III. TRANSFER OF EXISTING RIGHTS

Another option may be to modify an existing water right by transfer pursuant to §42-222, IDAHO CODE, to cover "The Bluffs". This would involve transferring an existing right held by the ranch (47-07680 once licensed or others) or by transferring one obtained through purchase or condemnation. In the transfer process the department cannot allow an expansion in use of either the rate of diversion, annual diversion volume or consumptive use volume of the existing right. The department would not allow an increase in diversion from the geothermal aquifer beyond what presently exists by this transfer process. (You could not transfer a cold water right and divert it out of the geothermal aquifer.)

IV. DEVELOPMENT OF EXEMPT DOMESTIC RIGHTS

As you know §42-227, IDAHO CODE, provides an exception to the mandatory permit requirement. The exception is for developing groundwater for "domestic purposes" as defined in §42-111, IDAHO CODE. This exception has been uniformly applied to those areas of the BGMA, the TFGMA and the SRB moratorium area. Fortunately in the case of the BGMA and the TFGMA this exception has rarely if ever been used for developing hot water from the geothermal aquifer. I believe this is the case because it is not economical to develop a 1000' to 1600' well for domestic purposes for one house. On the other hand this exception is the common mechanism for development of small cold

APPROVED

APR 22 2003

4595 River Road
Buhl, Idaho 83316
July 26, 1995

RECEIVED

JUL 27 1995

Dept. of Water Resources
222 Shoshone Street
Twin Falls, Idaho 83301

Department of Water Resources
Southern Region

Gentlemen:

At a July 1995 meeting of the Twin Falls County Planning and Zoning Board the Kanaka Rapids Ranch requested approval of an additional subdivision of 50 houses on their property north of Buhl. A representative of the Ranch stated at the meeting that on July 7 the Department of Water Resources made a field examination needed to issue a water license to the Ranch. I am perplexed and greatly concerned that the Department of Water Resources is deviating from standard procedures in making field examinations.

Your office made a very thorough and detailed examination of our use of geothermal water prior to issuing us a license. Even though we had water piped to all of the eventual use areas on our property we were not issued a license. It took us more than five years to develop all of the use facilities and we asked for and were granted an extension to complete these facilities. Only after all facilities were constructed or in place (fish ponds, orchard, garden, trees, lawn, swimming pool and house) did the examiner measure our use of water in detail. Trees were counted, garden areas were measured, swimming pool volume was calculated and the flow into each of dozens of fish ponds was individually measured to determine our use of water. As I recall there was even measurement of rain bird nozzles to determine flow rates.

I cannot understand how an examination of water use at Kanaka Rapids Ranch can be undertaken when very few of the intended use facilities have been constructed! We were required to have all facilities in place and operating for an examination whereas the Kanaka Rapids Ranch is apparently not required to do so.

Can you provide me with a copy of the law, regulations or policy that has changed the Department of Water Resources procedures permitting licensing examinations **without structures in place** showing beneficial use as has apparently occurred at the Kanaka Rapids Ranch whereas we were **required to have structures in place** and to show beneficial use down to the size of the sprinkler nozzles?

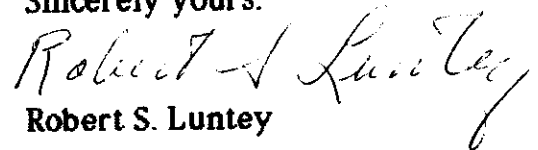
MICHAEL

APR 22 2003

For several years I have noted geothermal water being used by the Kanaka Rapids Ranch to fill a lake on their property between River Road and the Snake River. Is this a permitted or licensed use of geothermal water.

I would appreciate having a response as soon as possible as I may want to use the information at the next County Planning and Zoning Board meeting in August.

Sincerely yours.


Robert S. Luntley

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APR 22 2003

water wells which supply the domestic needs for individual homeowners in rural areas in Twin Falls county and other counties in the Snake River Basin. This process is available for individual lot owners in "The Bluffs" to develop their individual domestic wells as long as the use falls under the §42-111, IDAHO CODE, definition.

*Please note that any new well(s) drilled must comply with the drilling permit requirements of §42-235, IDAHO CODE, and are subject to the department's well construction standards (IDAPA 37, Title 03, Chapter 09).

In summary there are options for development of water at "The Bluffs". Some of these options involve approval of applications for permit or applications for transfer that are subject to public notice and protest. At this juncture the department cannot guarantee that these avenues will be successful but they are available for your exploration.

I apologize for the length of this letter but your inquiry of four pages warrants an adequate response. Please note that I have received inquiries from others and plan to provide copies of this letter as reference. If you have questions please feel free to contact our office.

Sincerely



Allen Merritt, PE
Southern Region Manager

CC: Norm Young IDWR

Enclosures

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APR 22 2003

ROSHOLT, ROBERTSON & TUCKER

Chartered
ATTORNEYS AT LAW

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JAMES C. TUCKER
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July 18, 1995

Allen Merritt
IDWR -- Southern Region
222 Shoshone Street East
Twin Falls, Idaho 83301 **HAND DELIVERED**

Re: Kanaka Rapids Ranch -- Planning and Zoning for The Bluffs

Dear Allen:

As you may know, our client, Kanaka Rapids Ranch, is currently seeking preliminary plat approval from the Twin Falls County Planning and Zoning Commission for "The Bluffs" portion of its development. While we do not believe the planning and zoning process should necessarily involve the Idaho Department of Water Resources (IDWR), the commission apparently feels otherwise. As a result, they tabled the matter until some clarification can be provided by IDWR regarding the source(s) of water that may ultimately serve The Bluffs. The purpose of this letter is to request such clarification.

It is important to note that the local planning and zoning process is separate and distinct from the ongoing licensing process for Permit No. 47-07680. By this request, we in no way seek to influence the outcome of the latter. We only seek clarification as to the source(s) of water that may ultimately serve The Bluffs. Toward that end, we ask you to provide a letter confirming the following:

With the extensive water rights that exist at Kanaka Rapids Ranch, and the domestic exemption that can be utilized for single-family dwellings and other small uses, the question is not whether water is available to serve The Bluffs. It certainly is. Rather, the question is which source or combination of sources will ultimately be used. Listed below is a hierarchy of possibilities.

I. Licensing of Permit No. 47-07680

The Kanaka Rapids Ranch Homeowners Association Water System Inc. is the owner of IDWR Water Right Permit No. 47-07680. This permit authorized the development

MICHAEL

SEP 22 1995

Allen Merritt
July 18, 1995
Page 2

of low temperature geothermal water from the Banbury Aquifer for domestic, home heating, and commercial purposes, so long as such development was completed by August 1, 1991.

The original permit application contemplated 110 lots of more than 5 acres each, along with the growing of certain crops, on 600 acres. Kanaka Rapids Ranch is, and always has been, a 600 acre ranch. However, the place of use listed in the permit application erroneously included only portions of the 600 acres. As a result of this oversight by the original applicant, IDWR amended the place of use in 1994 to officially cover the 600 acres, including the Bluffs. The current plan for the 600 acre ranch includes 191 much smaller homesites with fewer appurtenant structures, using the same amount of water as authorized and developed under the permit.

Although proposed in the original application, the geothermal water is not allowed for use in growing crops. Initially proposing the diversion of 14.6 cfs, the reduction for irrigating crops, proposed to be 6.6 cfs, left a maximum of 8.0 cfs that could have been developed for domestic, heating and commercial purposes. Within this 8.0 cfs limitation, it is Kanaka Rapids Ranch's contention that the 191 home development is covered, using the same amount of water that was originally permitted.

An additional condition placed on the permit is that "[t]he amount of water diverted shall not exceed that necessary for domestic, commercial, and geothermal heating for 99 homes." There is no historical reason available to Kanaka Rapids Ranch which would suggest where the number "99" came from. In addition, it is an oversimplification to suggest that this limitation allows only "99 homes" and nothing else. Perhaps it is the erroneous legal description of the place of use which was not corrected until 1994 that is responsible. Within this place of use, 99 homesites currently exist. However, this represents only the first of three phases of the 600-acre development. As a result, Kanaka Rapids Ranch believes that the 8.0 cfs limitation discussed above is a more accurate description of the permitted right than "99" homes.

Using the "99 homes" limitation and constrained by the inaccurate place of use, however, Kanaka Rapids Ranch submitted proof of beneficial use in 1991 indicating that 5.79 cfs had been developed to heat and provide domestic water for 99 homes, along with some watering of trees and lawns and commercial use. Since that time, the Kanaka Rapids Ranch has met and corresponded with IDWR, expressing concern that the 1991 proof of beneficial use was not accurate and seeking express approval to provide water to 191 lots which it contends were developed during the authorized permit period.

In exchange for such recognition, and as a condition of its water use under either the permit or a license, Kanaka Rapids Ranch has proposed the self-imposition of

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JUL 22 2003

Allen Merritt
July 18, 1995
Page 3

high efficiency heat pumps in future homes to reduce the amount of water needed to heat each home. They represent that this technology will provide water for domestic use and heating of up to 191 homes, along with the related subdivision development, using the same amount currently developed under the permit. In essence, they contend that "[t]he amount of water. . . necessary for domestic, commercial, and geothermal heating for 99 homes", as authorized and developed under the permit, is, with the right conditions imposed, sufficient to include the homes to be built in The Bluffs.

In response to these communications, IDWR advised that the permit should proceed through the licensing process before any such decision can be made. As a result, a beneficial use examination was conducted by IDWR on July 7, 1995 and a licensing recommendation is forthcoming. One of the issues to be considered during the licensing process is whether, and to what extent, water was developed in The Bluffs. It was, as mentioned above, included in the approved permit.

II. Transfer of License for Water Right No. 47-07680

If not included, or only partially covered, in the license granted for Permit No. 47-07680, Kanaka Rapids Ranch has the alternative of seeking a transfer to cover The Bluffs, pursuant to section 42-222, Idaho Code.

In any event, the total amount of low temperature geothermal water diverted from the Banbury aquifer would be limited to that authorized by the license. This use is already monitored and measured by flow and cumulative meters under the terms of the permit. This regulatory approach will no doubt continue when the right is licensed and/or transferred. As a result, no increase in such water use can result from granting a zoning approval for The Bluffs.

III. Multiple Domestic Permit

If the license or transfer for Water Right No. 47-07680 does not completely cover The Bluffs, the opportunity exists to apply for a new water right permit for a multiple domestic system to serve The Bluffs, under the terms of both the Eastern Snake Plain Aquifer Moratorium and the Banbury Ground Water Management Area. It is the preference of IDWR that in subdivisions, where possible, a common source system be utilized, rather than individual wells.

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APR 22 2003

Allen Merritt
July 18, 1995
Page 4

IV. Domestic Exemption

Alternatively, individual lot owners in The Bluffs can, after obtaining a drilling permit, drill individual domestic wells, each authorized to divert up to 13,000 gallons per day for domestic purposes, pursuant to section 42-111, Idaho Code. Under this so-called "domestic exemption", no water right permit is necessary. Each such well is adequate to serve the needs of an average home. This is not a preferred alternative, but is certainly a matter of right under state law which cannot be denied.

V. Irrigation Rights

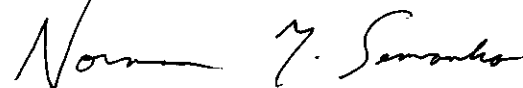
Finally, additional water rights exist to irrigate Kanaka Rapids Ranch. These rights can be used and/or transferred to serve The Bluffs in whatever capacity is necessary.

In conclusion, no matter what the scenario, there undeniably exists a source, or combination of sources, of water that will be available to serve The Bluffs.

The next planning and zoning meeting is scheduled for early August. As a result, we would appreciate your expedited consideration of this matter and a letter confirming the above.

As always, thank you for your cooperation in this matter.

Sincerely,



NORMAN M. SEMANKO

07189503.NMS

cc: Carlo Ferreira, Kanaka Rapids Ranch
Mike Felton, Jr.
Dr. Charles Brockway
Dale Riedesel

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APR 22 2001

Vault —
WR File —
PATTI C. BELDEN

RECEIVED

JUL 13 1995

Department of Water Resources

4501 BELDEN ROAD *** BUHL *** IDAHO *** 83316

(208) 543-8313 *** FAX (208) 543-8313

July 12, 1995

Mr. Michael H. Felton, Jr.
C/O Felton & Felton
1020 Main
Buhl, Idaho 83316

47-7686

RE: Your letter dated July 5, 1995

Dear Mr. Felton:

I am in receipt of your letter dated July 5, 1995. However, I wonder whom you represent in this matter, The Kanaka Rapids Ranch Homeowners Water System, Inc. or the Developers?

As to the matter of what you refer to as my "stonewalling" of the proposed meeting of the water board, you are both mistaken and misinformed. On May 23, 1995, Mr. Carla Ferrera, the developer's on-site representative, telephoned me from Las Vegas and requested that a board meeting be called for the following day without notice or agenda. He said it was for the purpose of setting up a bank account and to discuss the proposal of hookup fees. I asked why these matters were not presented at our April 22, 1995 meeting and his response was that "I forgot." I informed him that I had to be in Boise on business that day and would therefore not be available. I further informed him that I was leaving on June 7, 1995 for a wedding in California.

I heard nothing more concerning this matter until June 20, 1995 when I received a phone call from Ms. Jennifer Guinn, the Association Manager, at my Las Vegas residence. At that time she informed me that she had been trying to contact me and had sent notice of a meeting for June 21, 1995 to my Idaho residence. I never received that notice because I was in Las Vegas. I informed her that on June 17, 1995 I had been admitted to the hospital for major surgery and because of the prescribed pain killers I was taking I was in no condition to attend a meeting four days after surgery.

On July 3, 1995, Ms. Guinn phoned me, again attempting to set a meeting for July 6, 1995. I informed her that I would be en route back to Idaho on that day after having been gone for a month and asked that we do a conference call on Friday, July 7, 1995. After checking with the other board members, Ms. Guinn called me back to say that July 7, 1995 was out of the question and the other board members would have the meeting without me. Upon my return to Idaho I found a fax from Ms. Guinn dated 2:05 p.m., July 3, 1995 setting the board meeting for 3:00 p.m. (Las Vegas time) on July 6, 1995.

Frankly, I did not and still do not see the urgency in setting up a bank account for an entity that had been in existence for almost 15 years without one. I also do not feel that Mr. Ferrera's *forgetfulness* in bringing up these matters at the April meeting justifies the board's request that I jeopardize my health. Furthermore, there is no reason why I would not want to meet with the board. I have nothing to hide.

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APR 22 2003

Page # 2

Mr. Michael H. Felton Jr.

RE: Your letter of July 5, 1995

July 13, 1995

As concerns your allegation that "*during the above time period you were in fact attempting to illegally interfere with the licencing process,*" you are once again mistaken. As you can see by the above scenario, I was not even in the state of Idaho for most of this time period. Secondly, I wrote the letter of June 5, 1995 to Mr. Norm Young as a concerned homeowner. If you had read the letter carefully, you would have noted that I never represented myself as a member of the Board of Directors of the Kanaka Rapids Ranch Homeowners Water System, Inc. I believe that I have a right to express my opinions as a homeowner separate from my duties as a member of the board just as the Brothers Collins have the right to do business as both homeowners and developers. What you are failing to comprehend here is that **what is good for the developer is not always necessarily good for the homeowners.**

Furthermore, I fail to see how the presentation of facts to a public entity can be considered illegal interference nor a conflict of interest, quite the contrary. As a member of the Board of Directors, I believe it is my duty to protect the rights of **all** the homeowners **not** the interests of the developers, ie. E.A. Collins and M.M. Collins. We have little enough water in the permit now to sustain 99 families and my concern has always been to protect what we have. Additional building sites only serve to dilute individual homeowner rights and make money for the developer. In short, Mr. Felton, if there is nothing out of the ordinary about these negotiations that the Brothers Collins are conducting with the Idaho Department of Water Resources I fail to see why they should not be conducted in the open and with **all** the information available to **all** parties concerned.

As for your threat of legal action in this matter, if the Homeowners Association or the Collins Brothers feel the need to bring such action, I would welcome the opportunity to have these and other matters thoroughly aired in public. However, I doubt the Collins Brothers would also welcome such negative publicity.

In the future, Mr. Felton, I suggest that you check out the facts completely before you allow others to use you in the promotion of unfounded accusations.

I look forward to your *close review and cataloging*, as you so aptly put it, *of my future conduct.*

Sincerely,



Patti C. Belden

pc: Mr. Norm Young - IDWR

Mr. Alan Merritt - IDWR

Ms. Jennifer Guinn, Kanaka Rapids Ranch Homeowners Assoc. Mgr.

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APR 22 2003

FELTON & FELTON
Attorneys at Law

Professional Center
1020 Main

Michael Hoyt Felton
Michael Harland Felton (Jr.)

Mailing Address:
Post Office Box 589
Buhl, ID 83316-0589
(208) 543-4368 (telephone)
(208) 543-4360 (telecopier)

July 5, 1995

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JUL 07 1995

Department of Water Resources

Ms. Patti Belden
4501 Belden Road
Buhl, ID 83316

Dear Ms. Belden:

RE: Kanaka Rapids Ranch Homeowners Water System, Inc.
Our File No. 2517

As you are no doubt aware, E. A. and M. M. Collins, the other two board members of the Kanaka Rapids Ranch Homeowners Water System, Inc., formerly requested the opportunity to meet with you on or about May 24th, 1995, to discuss items regarding the corporations fiscal responsibility to its stockholders. You refused to meet with them on this date claiming that the meeting had not been properly noticed and that you would not voluntarily waive notice. Thereafter, a meeting was properly noticed for June 21st, 1995. Immediately prior to this properly noticed meeting you requested that said meeting be rescheduled due to an illness. Once again, you have requested that a third meeting properly noticed for July 6th, 1995, be rescheduled due to a "conflict" in your calendar. For reasons discussed below your request is denied.

Apparently you were only stonewalling and had no intention of meeting with the other two directors. It has now come to the directors attention that during the above noted period you were in fact attempting to illegally interfere with the licensing process currently underway between the water system corporation and the Idaho Department of Water Resources.

Your interference to date has been highlighted by your letter dated June 5th, 1995, to Norm Young, the Administrator of Water Management for the Idaho Department of Water Resources. As you are aware, the corporation has been attempting to finalize a water license which conforms in substantial part to the original permit number 47-07680 for approximately 16 cubic feet per second. The original permit was intended to allow the corporation to supply the necessary water to any and all development of the entire 600 plus acre project.

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APR 22 2003

Page # 2

Ms. Patti Belden

RE: Kanaka Rapids Ranch
Homeowners Water Systems, Inc.

Our File No. 2517

July 5, 1995

Your actions are a direct conflict of interest with the goals of the corporation and in addition your request to Idaho Department of Water Resources is not in the best interest of the water system corporation. The purpose of the corporation is to provide, at the lowest marginal cost, safe, reliable and economically priced water to the ranch residents who are the stockholders of the corporation. Under Idaho Code Sections 30-3-80 and 30-3-81, your letter and recent activities are a direct violation of your duties as an officer and director to act in the best interest of the corporation. Your actions are therefore officially being censured by the remaining two directors of the corporation, that is, E. A. Collins and M. M. Collins. In addition, your resignation as both the secretary and director for the corporation is hereby formally requested.

If you fail to tender your resignation within seven days of the date of this letter the Board of Directors will hold a special meeting, the purpose of which will be to officially remove you as secretary of the corporation. At that time you will once again be given seven days to tender your resignation as a director. If you do not tender your resignation as a director then a special meeting will be called to obtain the necessary two-thirds vote to remove you as a director.

The Kanaka Rapids Ranch Homeowners Water System, Inc. reserves the right to file an action against you for the above noted ultra virus activities that you have conducted during your tenure as an officer and director. These activities are actionable in both tort and contract since they are a malicious interference with the operation and objecting of the corporation and are directly adverse to the best interest of the stockholders.

In addition, your slanderous and libelous statements will support a claim by the developer for damages against you. In summary, your conduct will be closely reviewed and cataloged for future legal action if necessary.

MICROFILMED
APR 22 2003

Page # 3

Ms. Patti Belden

RE: Kanaka Rapids Ranch

Homeowners Water Systems, Inc.

Our File No. 2517

July 5, 1995

Your resignation as an officer and director should be delivered to the ranch office immediately.

Very truly yours,

Mike Felton

MICHAEL HARLAND FELTON

MHF:jms

pc: Dr. Charles Brockway

Norm Young - IDWR

Alan Merritt

Norm Semanko - Rosholt, Robertson and
Tucker

E. A. Collins

M. M. Collins

Carlo Ferreira

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APR 22 2003



State of Idaho
DEPARTMENT OF WATER RESOURCES

Southern Region, 222 Shoshone St. East, Twin Falls, Idaho 83301-6105 (208) 736-3033
Fax (208) 736-3037

PHILIP E. BATT
Governor

KARL J. DREHER
Director

June 15, 1995

Patti C. Belden
4501 Belden Rd
Buhl ID 83316

RECEIVED

JUN 16 1995

RE: Permit #47-07680

Department of Water Resources

Dear Ms. Belden:

Norm Young has asked that I respond to your letter to him dated June 5th, 1995. Thank you for sending me a copy of this letter with the attached photos and colored map.

Your understanding that our office is about to conduct an investigation of permit 47-07680 is correct. On June 13th I met with Dr. Chuck Brockway who has been hired by the permit holder to represent them during the investigation process. We went over the items the department would like to look at or review and then we scheduled a field exam for July 7th.

As you may know the purpose of the field exam is to determine the extent of authorized development which has occurred under permit #47-07680. During the field exam we will attempt to quantify or describe all the elements of the water uses. The department will then use this information to issue a "license" which will define the extent of the water right. In the licensing process we are only able to recognize development which occurred during the authorized development period of the permit. For permit 47-07680 this period ended July 30, 1991. We will also consider the approved amendment of the permit dated in May of 1994 which authorizes the use of the water on the site of the original 99 lot development, the 42 lot Riverside site and the 50 lot Bluffs site. This is not to say the license will absolutely cover a total development of 191 lots. It will cover as much or to the extent that is demonstrated to have been developed prior to July 30, 1991 and which is within the limits of the diversion rate and volumes of the original permit.

For example: If we determined 99 homes or hookups were developed prior July 30, 1991, we will issue a license for 99 homes and would likely allow the permit holder to specify which 99 lots out of the potential 191 lots were to be covered as long as waterworks existed to the 99 lots specified. One unique consideration the department makes in determining development for subdivisions is how the water distribution system actually exists and where the existing hookups

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Page 2

are located. We will give credit for established hookups to lots and count such lots developed even though no house has been built. We will not give credit for lots just platted and no water distribution system installed. The resulting license may then be limited to the diversion rate and annual volume necessary to supply the domestic and heat reasonably required for the 99 homes and to the other commercial and irrigation uses which the department finds developed.

I do not know if this letter fully addresses all of your concerns but if you have further questions regarding this matter I invite your further questions. Please feel free to contact me at this office.

Sincerely,



Allen Merritt, PE
Southern Region Manager

CC: Norm Young - IDWR
Norm Semanko (Rosholt, Robertson & Tucker)

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APR 22 2003

RECEIVED

JUN 07 1995

PATTI C. BELDEN

Department of Water Resources

4501 BELDEN ROAD *** BUHL *** IDAHO *** 83316

(208) 543-8313 *** FAX (208) 543-8313

*Allen will respond
NY*

June 5, 1995

Idaho State Department of Water Resources
1301 North Orchard
Boise, Idaho 83706

Attn: Mr. Norm Young, Administrator of Water Management

Re: Permit # 47-7680 (Collins Bros. Corp. and/or Kanaka Rapids Ranch Water Users Association) Kanaka Rapids Ranch, Buhl, Idaho

Dear Mr. Young:

I am writing to you because it is my understanding that your agency is about to conduct an investigation into the above mentioned permit. I believe this permit allows the Collins Bros. Corp. and/or Kanaka Rapids Ranch Water Users Association to remove geothermal ground water for domestic use to 99 home sites. What you may not be aware of is that the original development (99 home sites on approximately 267 acres) on the South side of River Road has recently been expanded to include an additional 42 home sites on approximately 290 acres on the North side of River Road. These 42 new home sites (known as the Riverside) are being advertised and sold with domestic geothermal water, please see enclosed photos. This brings the total home sites to 141 that have either been sold or are being offered for sale with geothermal hot water availability. I might add that there are two homes on the Riverside that are about to be occupied and are connected to the geothermal water system that was installed last year under the direct supervision of the Idaho Department of Environmental Quality. Apparently, DEQ was not concerned with the details of the permit or what water rights were involved since they allowed the connection of this system to a geothermal hot water well on the Riverside knowing full well that it was to service 42 new home sites.

In April of 1994 the Kanaka Rapids Ranch Homeowners Association was literally forced to annex the Riverside. I say forced because the Collins Bros. Corp holds an absolute majority vote in the Homeowners Association and the Kanaka Rapids Ranch Water Users Association, therefore, what the developer wants, the developer gets.

To make matters even more confusing the Collins Bros. Corp. has recently presented a request to the Twin Falls County Planning And Zoning for approval to develop an additional 114 acres located immediately to the West of the original development and to the South of

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APR 22 2003

Idaho State Department of Water Resources
June 5, 1995
Page Two

River Road, please see enclosed map. Known as "The Bluffs", this newest expansion is proposed to include yet another 50 home sites on 114 acres. The Developer informed the Homeowners Association that he *"is working on the acquisition of an additional water source for these home sites."* In speaking with Planning and Zoning I have found that the developer has made no mention of a water source for this development thereby allowing Planning and Zoning to assume that individual cold water wells would be drilled on each lot. I believe this is the same tactic employed when the Riverside development was proposed.

It is obvious that the Collins Bros. Corp. will develop the Bluffs (just as they did the Riverside), after all the water lines are in (as they are on the Riverside), lots are actively being sold (as they are now on the Riverside) and homes are under construction (as they are now on the Riverside) the Collins Bros. Corp. will then attempt to twist the arm of Water Resources into amending the existing permit to include the additional 92 home sites.

In other words, Mr. Young, it is clear that the Collins Bros. Corp. is taking advantage of the fact that there is little, if any, communication between government agencies. That fact is being used to manipulate the system in such a way that the existing water permit will end twice the size it is now. And all this will be accomplished without having to adhere to the ethical practices of playing by the rules.

Personally, I find these tactics reprehensible. It is my hope that by informing you and the Twin Falls County Planning and Zoning of all the facts you will find some way to stop this before it goes any further.

If I can be of any assistance please feel free to contact me.

Sincerely,



Patti C. Belden

enclosures

cc: Mr. Allen Merritt
Southern Regional Manager

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APR 22 2003



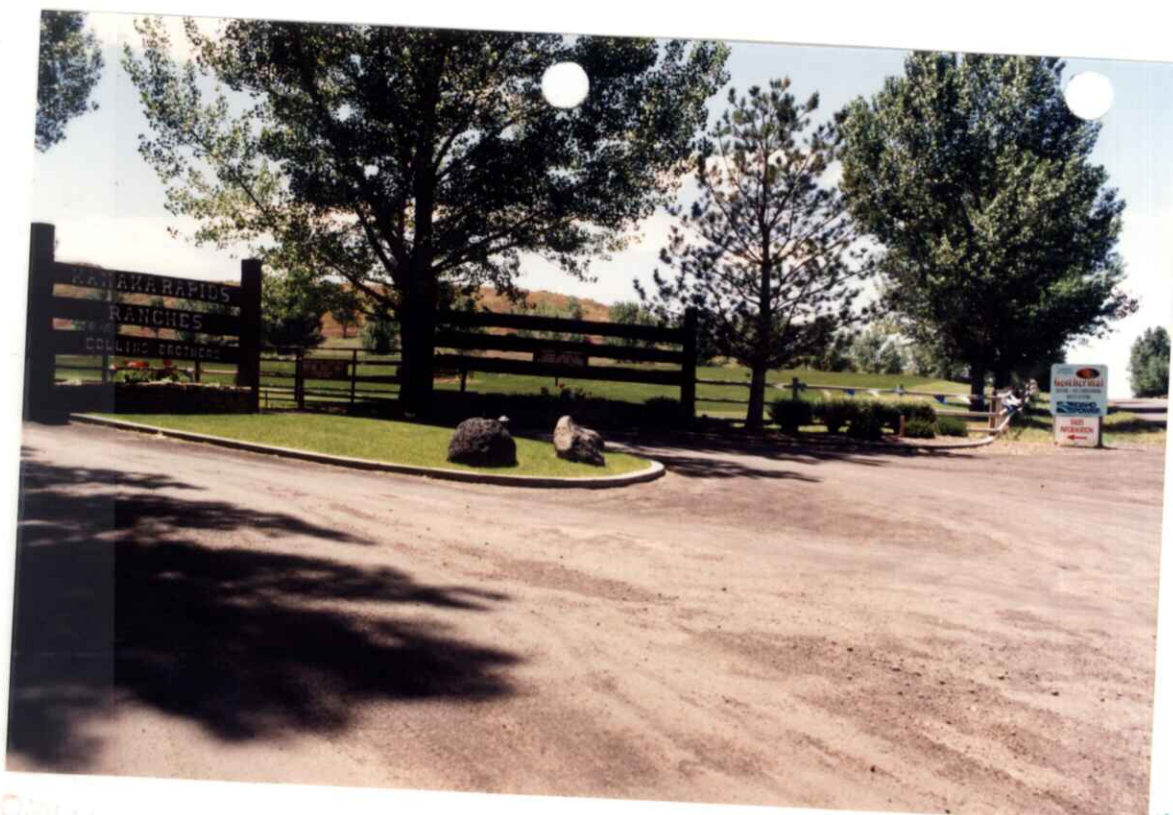
Corner of Clear Lakes & River Roads.
Notice the # of home sites.

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SCANNED
JUL 11 2006



On back: West entrance of original Ranch.



On Back: East entrance of original Ranch.

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JUL 11 2006



On back: East entrance of Riverside.



On back: West entrance of Riverside.

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APR 22 2003

SCANNED
JUL 11 2006



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

May 12, 1995

Leo Ray
Route 3 Box 234
Buhl, Idaho 83316

Dear Mr. Ray:

Thank you for taking the time to show us your geothermal wells. As per our discussion, I am sending to you some information regarding fluoride, measurement devices and the water rights for the Kanaka Rapids development.

The fluoride data (recorded in the Geothermal Resource Analysis in Twin Falls County, Idaho, report) indicates that concentrations are highest in the wells to the north and west of your wells (Ring, Depew and Archibald). Concentrations are much lower in the Luntley and Kanaka Rapids wells. Therefore, it is not possible to predict the fluoride concentrations in your wells without a laboratory test. If you are interested in a fluoride test, please let me know and I will find out how much a test will cost. I will be glad to collect the sample(s) and deliver it to a laboratory in Boise, if you wish. Several of the other water quality parameters also indicate that the water chemistry varies between locations.

The information about water measurement comes from the Water Measurement Manual, published in 1984 by the Bureau of Reclamation. The options available to you for water measuring devices include: 1) weirs, 2) Parshall flumes, 3) orifice plates and 4) current meters. I have experience installing a V-notch weir at a geothermal location in Boise. The advantages of weirs are the low cost (\$40-80) and the relatively easy installation (the weir is positioned in a channel downstream of the well and the well does not have to be modified). I also have experience with orifice plates and current meters. Both of these are more expensive than weirs and require some modification to the well head. I do not have any experience with Parshall flumes, but my supervisor (Paul Castelin) said that they are very good measuring devices that tend to have low maintenance (because debris (branches, etc.) flows through them easily).

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APR 22 2003

Mr. Leo Ray
page 2

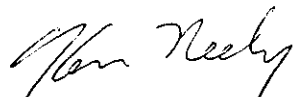
The most important measurement for determining whether a trend in pressure (i.e. water level) is occurring is the shutin pressure. I believe Well #3 is the well that empties into a pond. Would it be possible to shutin that well for 10 minutes on a once-a-month basis? If so, a pressure gauge could be installed fairly easily and shutin pressures could be recorded. This data is the same type of data that we record at the Ring, Archibald, Kaster and Luntley wells.

I have also enclosed water rights information for the Kanaka Rapids Ranch development. In October, 1994, Kanaka Rapids Ranch filed for an amendment to their permit which, if approved, would reduce their total use to: Heating (3.57 cfs), Domestic (1.98 cfs), Irrigation (.24 cfs) and Stock (.02 cfs). It appears that irrigation would be limited to about 12 acres of common ground. Moreover, the Domestic use would be for in-house use only, and could not be used for irrigation. The department has not ruled on this amendment yet. If you want to file a grievance regarding their current usage, you can write to Alan Merritt, IDWR-Southern Region, 222 Shoshone St. East, Twin Falls, Idaho 83301, or Jim Johnson, IDWR, 1301 N. Orchard, Boise, Idaho 83706.

I have also enclosed photocopies of all of the well logs that we have filed under your name at our State Office. Would you please send to me the one well log that I am missing? Thanks.

I hope to be back in Hagerman Valley on June 7 and 8. If you want me to stop by to talk about any of these items, please call me at 327-5455.

Sincerely,


Kenneth Neely, Hydrogeologist
Ground Water Monitoring Section

enclosures

cc Jim Johnson
Alan Merritt (Southern)
Gary Funderberg (Southern)

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APR 22 2003

ROSHOLT, ROBERTSON & TUCKER

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NOV 15 1994

November 9, 1994

Department of Water Resources

Keith Higginson, Director
Idaho Department of Water Resources
1301 N. Orchard St.
Statehouse Mail
Boise, ID 83720-9000

Re: Permit No. 47-07680

Dear Keith:

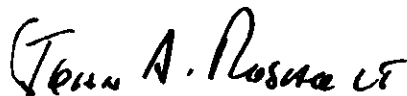
Thank you for your letter of October 19, 1994, responding to our letter and application to amend Permit No. 47-07680, submitted on October 12, 1994. We appreciate your continued cooperation in this matter.

Pursuant to the first paragraph of your letter, suggesting that the department needs "more information" than it presently has to consider approving the amendment, we are presently preparing additional materials to support our amendment and the arguments contained in our letter of October 12, 1994. Once this additional information is finalized, we will again contact the department to set up an additional meeting.

As a result of our continued efforts to pursue an amendment of the permit, a field examination is not requested at this time. We ask that you refrain from scheduling such an examination until we have been given an opportunity to finalize and present our additional information to the department for consideration.

Again, thank you for your cooperation in this matter.

Respectfully submitted,


JOHN A. ROSHOLT

11099401.NMS

APR 22 2003



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

CECIL D. ANDRUS
GOVERNOR

R. KEITH HIGGINSON
DIRECTOR

October 19, 1994

John A. Rosholt
Rosholt, Robertson, & Tucker
P.O. Box 1906
Twin Falls, Idaho 83303-1906

RE: Application for Amendment of Permit No. 47-07680

Dear John:

This letter is a response to your letter of October 12, 1994 which accompanied an application to amend Permit No. 47-07680. I appreciated the opportunity to meet and discuss this matter with you, Norm, Chuck, Mike and Carlo earlier this month. While the meeting allowed a candid exchange of information and views on this matter, we were not able to fully agree on the applicability of approving the amendment without more information than we presently have.

Approval of an amendment cannot reopen the development period under a permit. The period for development of the uses authorized under Permit No. 47-07680 has expired and proof of beneficial use has been filed. IDWR needs to examine and confirm the use that was accomplished in accordance with the approved permit during the authorized development period. This likely will result in the need for an amendment to conform the permit to the development that has been made. We offered to conduct a field examine immediately to expedite the issuance of a license on the permit. The amendment would be processed in accordance with Section 42-211, Idaho Code.

Once a license has been issued confirming the use to date, a transfer can be filed to seek approval to change some of the development that occurred under the permit to a different use. Notice of such application for transfer would have to be given and the change would be reviewed in accordance with Section 42-222, Idaho Code.

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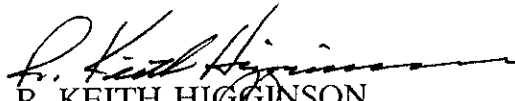
APR 22 2003

John A. Rosholt
Page 2
October 19, 1994

Anticipating that an amendment will be needed to license the existing uses, I propose to hold the present application until an expedited field examination is completed. The amendment can then be revised if necessary and processed. I am unable to agree with you that I must find a specific affected water user before giving notice. This would render the notice provision unworkable and unnecessary. The purpose of the notice is to allow persons who may be affected, an opportunity to raise their concerns. If I know of an affected user, I would be in a position to deny an application without giving notice. The Idaho courts have agreed that the local public interest can be considered as amendment applications are evaluated (*Hardy v. Higginson*, 1993), therefore a published notice is usually appropriate unless de facto notice has been given by the development having been in place and operated for a period of years.

Please advise me of the earliest date that the system will be available for a field examination and I will arrange for an expedited exam. It will be important to have the pumping facilities at full capacity during the exam and for the examiner to be able to fully inspect all uses developed during the permit period prior to filing the proof of beneficial use, including evidence of stub-ins to presently undeveloped lots.

Sincerely,


R. KEITH HIGGINSON
Director

c: Allen Merritt

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APR 22 2003

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OCT 12 1994

ROSHOLT, ROBERTSON & TUCKER

Chartered
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TIMOTHY J. STOVER
NORMAN M. SEMANKO
ERIK P. SMITH

October 12, 1994

R. Keith Higginson, Director
Idaho Department of Water Resources
1301 N. Orchard
Statehouse Mail
Boise, ID 83720

HAND DELIVERED

Re: Amendment of Permit No. 47-07680

Dear Keith:

Please find enclosed a completed Application for Amendment of Permit No. 47-07680. The substance of the Amendment is identical to that of the draft we discussed during our meeting on October 6, 1994.

We appreciate having had the opportunity to meet with you and discuss the background and purpose behind our Amendment. We believe a number of the issues involved with the Amendment were clarified and that some understanding and agreement was reached. As a result, we have decided to go forward with the process.

Presented below is: 1) Background on the Permit to Date; and 2) Argument in Favor of Approving the Amendment.

I. BACKGROUND ON PERMIT NO. 47-07680 TO DATE

As originally submitted to the Idaho Department of Water Resources (IDWR), Application for Permit No. 47-07680 contemplated the use of 14.6 cfs of geothermal water from the Banbury Aquifer, including irrigation of more than 400 acres of alfalfa crops. In "this fact-specific case[,] [t]he department. . .found that. . .it was 'not in the public interest' to use the water from this geothermal aquifer to irrigate crops." Collins Bros. Corp. v. Dunn, 114 Idaho 600, 606, 759 P.2d 891, 897 (1988). Subsequently, the irrigation of alfalfa was eliminated from further consideration.

As a result of the 1988 Supreme Court case, Permit No. 47-07680 has been fundamentally changed from its original submission. No longer are we speaking of the irrigation of more than 400 acres of alfalfa crops, but rather of a residential subdivision which has utilized the geothermal aquifer primarily to heat homes. A secondary use of the water is for in-home domestic purposes, out-of-home domestic lawn and yard watering, and irrigation of residential common-area trees and pastures.

A Proof of Beneficial Use was submitted by the Applicant on July 30, 1991, reflecting some of the changes from the original Permit Application. It states that 5.79 cfs has been developed under the Permit for commercial, domestic, non-crop irrigation, stockwater, and home heating uses.

In order to further clarify the current status of the Permit, the Applicant has chosen to submit the Amendment of Permit. The arguments in favor of approval of the Amendment are presented below.

II. ARGUMENT IN FAVOR OF APPROVING THE AMENDMENT OF PERMIT

Pursuant to section 42-211, Idaho Code, the director, "shall approve" an Application for Amendment if it "would not result in the diversion and use of more water than originally permitted and if the rights of others will not be adversely affected." For the reasons set forth below, the enclosed Application for Amendment meets these criteria and should be approved. In addition, it should be approved without notice or publication, consistent with the director's authority and discretion.

A. There Will Be No Additional Diversion and Use of Geothermal Water

In sum, the current Amendment would allow the limited resources of the Banbury Ground Water Management Area to be utilized to serve additional homes, within the amended place of use, and within the limits of the geothermal water that had been made available for use during the permitted development period.

The original permit provides that "[t]he amount of water diverted shall not exceed that necessary for domestic, commercial, and geothermal heating for 99 homes." The development of geothermal water for home heating was conducted within the confines of the department's guidelines entitled "Method for Estimating Residential Space Heating Load" and "Method for Estimating Rates of Flow for Geothermal Heating Systems" (IDWR Memorandum, Application Processing No. 23 (Amended), Re: Rate of Flow for Heating Use (May 9, 1984)). Charles E. Brockway, PE, Ph.D., using fairly conservative assumptions, utilized these formulas to arrive at an estimate of 15.8 gallons per minute for each of 99 homes (approximately 1600 gpm or 3.57 cfs) at Kanaka Rapids.

The 3.57 cfs for home heating has been beneficially used by stubbing in lots and making the geothermal water available for immediate household use. In addition, water has been made available for in-house domestic use, residential lawns, yards and trees (i.e.,

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APR 22 2003

R. Keith Higginson
October 12, 1994
Page 3

landscaping)¹, and for stock watering purposes, in the amount of 2.08 cfs. Finally, approximately .14 cfs has been used for commercial purposes. Therefore, the total "amount of water diverted. . .for domestic, commercial, and geothermal heating" under the permit is 5.79 cfs.

In the interest of minimizing depletions from the Banbury Aquifer, the applicant is willing to employ the best available technology to heat homes at Kanaka Rapids, subject to the few homes that have already been built using the older technology. By using high efficiency heat pumps, rather than other heating systems for which permission has been obtained, the geothermal resource will be conserved and made available to heat additional homes within the amended place of use. This is consistent with section 42-233, Idaho Code, requiring that the geothermal resource be used primarily for its heat value.

While none of these measures are mandatory, we are willing to have them imposed by the department as further conditions on Permit No. 47-07680. By so doing, the 5.79 cfs diversion amount that has been approved to serve 99 homes could allow us to serve 191 homes.

Our only alternatives to this self-imposed conservation of the resource would be the drilling of up to 92 individual domestic wells or the pursuit of cold water rights to serve the domestic needs of the additional homes. Both of these alternatives would result, within applicable law, in the drafting of more water, either from the Banbury Aquifer or the Eastern Snake River Plain Aquifer. Our proposed Application for Amendment is the only means by which to achieve our goals without diverting more water than the presently

¹ Landscaping, or the residential irrigation of lawns, yards and trees, is consistent with the department's determination, confirmed by the Idaho Supreme Court in Collins Bros. Corp. v. Dunn, 114 Idaho 600, 759 P.2d 891 (1988), that it is not in the public interest to use water from the geothermal aquifer to irrigate crops. "Crops" are products that are grown and harvested by severing them from the ground once a year. While once proposing the irrigation of hundreds of acres of alfalfa crops, the applicant has made water available only for small-scale residential irrigation (i.e., landscaping) under the permit. No irrigation of "crops" exists. In addition, consistent with section 42-233, Idaho Code, the geothermal water is being used "primarily" for its heat value. "Primarily" means the first in rank or importance; the first or chief or principal activity. Therefore, the statute does not require that every drop of geothermal water be used for its heat value. Of the 5.79 cfs developed at Kanaka Rapids, 3.57 cfs, or 62 percent, is for home heating. This percentage will only increase under the Amendment. Use of the water for its heat value is therefore first in importance and meets the requirement that it be used, "primarily" for its heat value.

APR 22 2003

R. Keith Higginson
October 12, 1994
Page 4

approved diversion rate. It is therefore consistent with the requirements of section 42-211, Idaho Code, and should be approved.

Our understanding from the October 6, 1994 meeting is that there is basic agreement that our proposal would not result in the additional diversion and use of geothermal water.

B. There Will be No Injury to Other Water Users

Approval of our Application for Amendment would not adversely affect the rights of others. No more water would be taken from the Banbury aquifer than what has been made available and beneficially used under the original permit.

On the other hand, our alternatives, while lawful, could result in some injury. Drilling additional domestic wells could reduce the pressure and amounts available to other wells in the Banbury Ground Water Management Area. In addition, Brockway advises us that drilling additional wells would increase the likelihood of polluting the aquifer. He also informs us that, in drilling for cold water, there is a chance of hitting geothermal water.

Therefore, approval of the Application for Amendment is the only way to assure that the additional homesites do not result in injury to other water users or the aquifer itself.

Again, our understanding from the October 6, 1994 meeting is that there is basic agreement that our proposal would not injure other water users.

C. The Amendment Should be Approved Without Notice or Publication

Section 42-211, Idaho Code, provides that the director "shall give such notice to other affected water users as he deems appropriate". While this lies within the discretion of the director, there must first be a finding that "affected water users" exist. As explained above, there would be no injury and, subsequently, no water users would be affected. In reality, the only affect of approving the Application for Amendment is that the negative consequences of the other alternatives, such as drilling up to 92 additional domestic wells, will have been avoided. Without the existence of "affected water users," there should be no notice or publication.

This explanation was offered during our October 6, 1994 meeting. Short of a reasonable, contrary interpretation by the department, we request that you adopt our interpretation of the notice provisions of section 42-211.

MICHAEL
AND 2 2 2007

R. Keith Higginson
October 12, 1994
Page 5

III. CONCLUSION

For the benefit of the Banbury Aquifer and its water users, as well as the Applicant, and because it would not result in the diversion of more water or injury to others, we request that you approve the enclosed Application for Amendment of Permit No. 47-07680, without notice or publication, consistent with section 42-211, Idaho Code.

We look forward to your decision.

Respectfully submitted,


JOHN A. ROSHOLT

10119402.NMS

Enclosure

cc: Carlo Ferreira
Charles E. Brockway
Mike Felton, Jr.

MICHAEL
OCT 22 2003

LIMITED POWER OF ATTORNEY

KNOW ALL MEN BY THESE PRESENTS:

Kanaka Rapids Ranch Homeowners Water System, Inc., ("Kanaka") hereby nominates and appoints Carlo Ferreira of 176 Kanaka Rapids Road, Buhl, Idaho, 83316, as attorney-in-fact with the full authority to act for and on behalf of Kanaka to execute any and all documents necessary to facilitate the amendment or perfection of Permit No. 47-07680 with the Idaho Department of Water Resources.

Kanaka's agent is hereby authorized to sign, seal, and deliver, as Kanaka's act and deed, those instruments of writing that may be necessary or proper to carry into execution the aforementioned. Further, we hereby declare that each and every application, agreement, receipt, or payment which shall be by our said agent given, made or done for the aforesaid purposes shall be as good, valid, and effectual as if they had been signed, sealed, and delivered by us in our own proper persons; and we hereby undertake at all times to ratify whatsoever our said agent shall lawfully do or cause to be done in or concerning the said promises by virtue of these presents.

04 IN WITNESS WHEREOF, we have hereunto executed the foregoing on this 04 day of May, 1994.

KANAKA RAPIDS RANCH HOMEOWNERS
WATER SYSTEM, INC.

By: E.A. Collins
E.A. Collins, President

STATE OF IDAHO)
~~NEVADA~~)
County of Twin Falls) ss.
~~Clark~~)

On this 04 day of MAY, 1994, before me, a Notary Public, in and for said County and State, personally appeared E.A. Collins, known or identified to me to be the President of Kanaka Rapids Ranch Homeowners Water System, Inc., the corporation that executed the foregoing instrument, and acknowledged to me that such corporation executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.



John A. Rosset
NOTARY PUBLIC FOR ~~NEVADA~~ IDAHO
Residing at: Twin Falls
My commission expires: 1998

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APR 27 2003

ROSHOLT, ROBERTSON & TUCKER
Chartered
ATTORNEYS AT LAW

JOHN A. ROSHOLT
J. EVAN ROBERTSON
JAMES C. TUCKER
GARY D. SLETTE
JERRY V. JENSEN
BRUCE M. SMITH
THOMAS J. RYAN
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RECEIVED
AUG 24 1994
Department of Water Resources

August 23, 1994

R. Keith Higginson, Director
Idaho Department of Water Resources
1301 N. Orchard
Statehouse Mail
Boise, ID 83720

Re: Proposed Amendment of Permit No. 47-07680

Dear Keith:

Please find enclosed a draft of our proposed second Application for Amendment of Permit No. 47-07680. By letter dated May 26, 1994, we were informed that the first Application for Amendment, regarding the place of use, had been approved by the department, following our meeting of May 5, 1994. We appreciate your willingness to expedite its consideration.

We believe an additional meeting to discuss our second Amendment and the contents of this letter would be useful. As a result, we will contact you and Norm Young within the week to set up a meeting at your convenience.

Pursuant to section 42-211, Idaho Code, the director, "shall approve" an Application for Amendment if it "would not result in the diversion and use of more water than originally permitted and if the rights of others will not be adversely affected." For the reasons set forth below, the enclosed Application for Amendment meets these criteria and should be approved. In addition, it should be approved without notice or publication, consistent with the director's authority and discretion.

I. There Will Be No Additional Diversion and Use of Geothermal Water

In sum, the current Amendment would allow the limited resources of the Banbury Ground Water Management Area to be utilized to serve additional homes, within the amended place of use, and within the limits of the geothermal water that had been made available for use during the permitted development period.

The original permit provides that "[t]he amount of water diverted shall not exceed that necessary for domestic, commercial, and geothermal heating for 99 homes." The development of geothermal water for home heating was conducted within the confines of the department's guidelines entitled "Method for Estimating Residential Space Heating

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AUG 22 2003

Load" and "Method for Estimating Rates of Flow for Geothermal Heating Systems" (IDWR Memorandum, Application Processing No. 23 (Amended), Re: Rate of Flow for Heating Use (May 9, 1984)). Charles E. Brockway, PE, Ph.D., using fairly conservative assumptions, utilized these formulas to arrive at an estimate of 15.8 gallons per minute for each of 99 homes (approximately 1600 gpm or 3.57 cfs) at Kanaka Rapids.

The 3.57 cfs for home heating has been beneficially used by stubbing in lots and making the geothermal water available for immediate household use. In addition, water has been made available for in-house domestic use, irrigation of residential lawns, yards and trees (i.e., landscaping)¹, and for stock watering purposes, in the amount of 2.08 cfs. Finally, approximately .14 cfs has been used for commercial purposes. Therefore, the total "amount of water diverted. . .for domestic, commercial, and geothermal heating" under the permit is 5.79 cfs.

In the interest of minimizing depletions from the Banbury Aquifer, the applicant is willing to employ the best available technology to heat homes at Kanaka Rapids, subject to the few homes that have already been built using the older technology. By using high efficiency heat pumps, rather than other heating systems for which permission has been obtained, the geothermal resource will be conserved and made available to heat additional homes within the amended place of use. This is consistent with section 42-233, Idaho Code, requiring that the geothermal resource be used primarily for its heat value.

¹ Landscaping, or the residential irrigation of lawns, yards and trees, is consistent with the department's determination, confirmed by the Idaho Supreme Court in Collins Bros. Corp. v. Dunn, 114 Idaho 600, 759 P.2d 891 (1988), that it is not in the public interest to use water from the geothermal aquifer to irrigate crops. "Crops" are products that are grown and harvested by severing them from the ground once a year. While once proposing the irrigation of hundreds of acres of alfalfa crops, the applicant has made water available only for small-scale residential irrigation (i.e., landscaping) under the permit. No irrigation of "crops" exists. In addition, consistent with section 42-233, Idaho Code, the geothermal water is being used "primarily" for its heat value. "Primarily" means the first in rank or importance; the first or chief or principal activity. Therefore, the statute does not require that every drop of geothermal water be used for its heat value. Of the 5.79 cfs developed at Kanaka Rapids, 3.57 cfs, or 62 percent, is for home heating. This percentage will only increase under the Amendment. Use of the water for its heat value is therefore first in importance and meets the requirement that it be used "primarily" for its heat value.

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APR 22 2003

While none of these measures are mandatory, we are willing to have them imposed by the department as further conditions on Permit No. 47-07680. By so doing, the 5.79 cfs diversion amount that has been approved to serve 99 homes could allow us to serve 191 homes.

Our only alternatives to this self-imposed conservation of the resource would be the drilling of up to 92 individual domestic wells or the pursuit of cold water rights to serve the domestic needs of the additional homes. Both of these alternatives would result, within applicable law, in the drafting of more water, either from the Banbury aquifer or the Snake River Plain aquifer. Our proposed Application for Amendment is the only means by which to achieve our goals without diverting more water than the presently approved diversion rate. It is therefore consistent with the requirements of section 42-211, Idaho Code, and should be approved.

II. There Will be No Injury to Other Water Users

Approval of our Application for Amendment would not adversely affect the rights of others. No more water would be taken from the Banbury aquifer than what has been made available and beneficially used under the original permit.

On the other hand, our alternatives, while lawful, could result in some injury. Drilling additional domestic wells could reduce the pressure and amounts available to other wells in the Banbury Ground Water Management Area. In addition, Brockway advises us that drilling additional wells would increase the likelihood of polluting the aquifer. He also informs us that, in drilling for cold water, there is a chance of hitting geothermal water.

Therefore, approval of the Application for Amendment is the only way to assure that the additional homesites do not result in injury to other water users or the aquifer itself.

III. The Amendment Should be Approved Without Notice or Publication

Section 42-211, Idaho Code, provides that the director "shall give such notice to other affected water users as he deems appropriate". While this lies within the discretion of the director, there must first be a finding that "affected water users" exist. As explained above, there would be no injury and, subsequently, no water users would be affected. In reality, the only affect of approving the Application for Amendment is that the negative consequences of the other alternatives, such as drilling up to 92 additional domestic wells, will have been avoided. Without the existence of "affected water users," there should be no notice or publication.

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APR 22 2003

R. Keith Higginson
August 23, 1994
Page 4

For the benefit of the Banbury aquifer and its water users, as well as the applicant, and because it would not result in the diversion of more water or injury to other water users, we hope that you will be able to approve our Application for Amendment, without notice or publication, when it is finalized. We are willing to negotiate further adjustments to our proposal, if necessary to meet the statutory criteria of section 42-211, Idaho Code. Short of this, it may be necessary to exercise one of our other options.

We look forward to meeting with you to discuss this matter further.

Respectfully submitted,


JOHN A. ROSHOLT

06209402.NMS

Enclosure

cc: Carlo Ferreira
Charles E. Brockway
Mike Felton, Jr.

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APR 22 2003

DRAFTReceipt No. _____
Received By _____
Date _____STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
APPLICATION FOR AMENDMENT OF A PERMITApplicant KANAKA RAPIDS RANCH HOMEOWNERS WATER SYSTEM, INC. Phone 208-543-6767Address 176 KANAKA RAPIDS RANCH ROAD BUHL, IDAHO 83316I am the owner and holder of Permit to appropriate the Public Waters of the State of Idaho No. 47-07680, and request that the permit and permit map be amended and/or changed as follows:Purpose of Amendment: _____ Change point of diversion _____ Add point of diversion
_____ Change place of use _____ Change nature of use _____ Change period of use ☒ Other1. Point of diversion: SAME $\frac{1}{4}$ $\frac{1}{4}$ $\frac{1}{4}$, Section _____, Township _____, Range _____, B.M.,
County of _____ Other points of diversion _____2. Period and nature of use: (irrigation, domestic, stockwatering, industrial, etc.) TOTAL CFS = 5.79Amount 3.57 for HOME HEATING purposes from 01/01 to 12/31 (both dates inclusive)
(cfs or acre feet per annum) (water use) (Begin month) (End month)Amount 1.98 for DOMESTIC purposes from 01/01 to 12/31 (both dates inclusive)
(cfs or acre feet per annum) (water use) (Begin month) (End month)Amount 0.24 for IRRIGATION purposes from 04/01 to 10/31 (both dates inclusive)
(cfs or acre feet per annum) (water use) (Begin month) (End month)3. Place of use or land to be irrigated: 0.02 STOCKWATER/HORSES
SAME AS AMENDMENT OF PERMIT 47-07680, APPROVED 5/26/1994

T w p	R g e	S e c	NE $\frac{1}{4}$				NW $\frac{1}{4}$				SW $\frac{1}{4}$				SE $\frac{1}{4}$				TOTALS
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
			SEE ATTACHMENT																

Total number of acres to be irrigated = _____

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

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APR 22 2003

DRAFT

Show 1/4 1/4, section, township, range and ditches. (the smallest subdivision represents 40 acres)

[illegible]

SEE ATTACHMENT

Scale: 2 inches equal 1 mile

DRAFT FOR DISCUSSION PURPOSES ONLY

Signed this _____ day of _____, 19____.

Permit Holder

ACTION OF THE DEPARTMENT OF WATER RESOURCES

Preliminary check by _____ Publication prepared by _____ Date _____

Published in	Publication dates
Journal of Management Studies	1978-1980
Journal of Management Education	1981-1983
Journal of Management Inquiry	1984-1986
Journal of Management Research	1987-1989
Journal of Management Science	1990-1992
Journal of Management Information Systems	1993-1995
Journal of Management Development	1996-1998
Journal of Management Learning	1999-2001
Journal of Management Practice	2002-2004
Journal of Management Education Review	2005-2007
Journal of Management Inquiry Review	2008-2010
Journal of Management Research Review	2011-2013
Journal of Management Science Review	2014-2016
Journal of Management Information Systems Review	2017-2019
Journal of Management Development Review	2020-2022
Journal of Management Learning Review	2023-2025
Journal of Management Practice Review	2026-2028
Journal of Management Education Review	2029-2031
Journal of Management Inquiry Review	2032-2034
Journal of Management Research Review	2035-2037
Journal of Management Science Review	2038-2040
Journal of Management Information Systems Review	2041-2043
Journal of Management Development Review	2044-2046
Journal of Management Learning Review	2047-2049
Journal of Management Practice Review	2050-2052
Journal of Management Education Review	2053-2055
Journal of Management Inquiry Review	2056-2058
Journal of Management Research Review	2059-2061
Journal of Management Science Review	2062-2064
Journal of Management Information Systems Review	2065-2067
Journal of Management Development Review	2068-2070
Journal of Management Learning Review	2071-2073
Journal of Management Practice Review	2074-2076
Journal of Management Education Review	2077-2079
Journal of Management Inquiry Review	2080-2082
Journal of Management Research Review	2083-2085
Journal of Management Science Review	2086-2088
Journal of Management Information Systems Review	2089-2091
Journal of Management Development Review	2092-2094
Journal of Management Learning Review	2095-2097
Journal of Management Practice Review	2098-2100

I, _____, of the Department of Water Resources hereby

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Witness my hand this _____ day of _____, 19 APR 22 2003

SIGNATURE

PROPOSED
CONDITIONS OF APPROVAL

DRAFT

Amendment of Permit No. 47-07680

1. The right holder must comply with conditions set forth in Order Adopting Proposed Memorandum Decision and Order issued at time of permit approval, as modified by this amendment.
2. The amount of water diverted shall not exceed 5.79 cfs.
3. Approval of this amendment does not authorize any additional development of water for any beneficial purpose, the diversion facilities for which had not been constructed on or before August 1, 1994. This amendment authorizes up to 191 domestic and geothermal heating uses, irrigation of trees and common areas, and stock watering, to be allocated to the subdivision located within the place of use, as amended.
4. The right holder must install the best available technology (i.e., high efficiency heat pumps) to heat homes using the water available under the permit, as amended. This requirement shall not apply to homes constructed before the date of approval of this amendment.

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APR 22 2003



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

CECIL D. ANDRUS
GOVERNOR

R. KEITH HIGGINSON
DIRECTOR

May 26, 1994

KANAKA RAPIDS RANCH HOMEOWNERS WATER SYSTEM INC
176 KANAKA RAPIDS RANCH RD
BUHL ID 83316

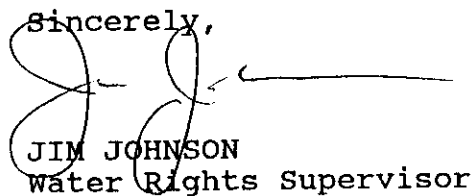
RE: Permit No. 47-07680

Dear Water Right Holder:

Enclosed is a copy of your approved Application for Amendment submitted in connection with the above referenced permit.

If you have any questions, please feel free to contact me directly at (208) 327-7947.

Sincerely,



JIM JOHNSON
Water Rights Supervisor

JJ:cz

Enclosure

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JUN 13 1994

APPROVED

DRAFT

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

RECEIVED

APPLICATION FOR AMENDMENT OF A PERMIT MAY 10 1994

Department of Water Resources

Applicant KANAKA RAPIDS RANCH HOMEOWNERS WATER SYSTEM, INC. Phone 208-543-6767Address 176 KANAKA RAPIDS RANCH BUNNY, ID 83316I am the owner and holder of Permit to Appropriate the Public Waters of the State of Idaho No. 47-07680, and request that the permit and permit map be amended and/or changed as follows:Purpose of Amendment: Change point of diversion Add point of diversionXX Change place of use Change nature of use Change period of use Other1. Point of diversion: SAME $\frac{1}{4}$ $\frac{1}{4}$ $\frac{1}{4}$, Section , Township , Range , B.M.,
County of . Other points of diversion 2. Period and nature of use: (Irrigation, domestic, stockwatering, industrial, etc.) SAMEAmount for purposes from to (both dates inclusive)
(cfs or acre feet per annum) (water use) (Begin month) (End month)Amount for purposes from to (both dates inclusive)
(cfs or acre feet per annum) (water use) (Begin month) (End month)Amount for purposes from to (both dates inclusive)
(cfs or acre feet per annum) (water use) (Begin month) (End month)

3. Place of use or land to be irrigated:

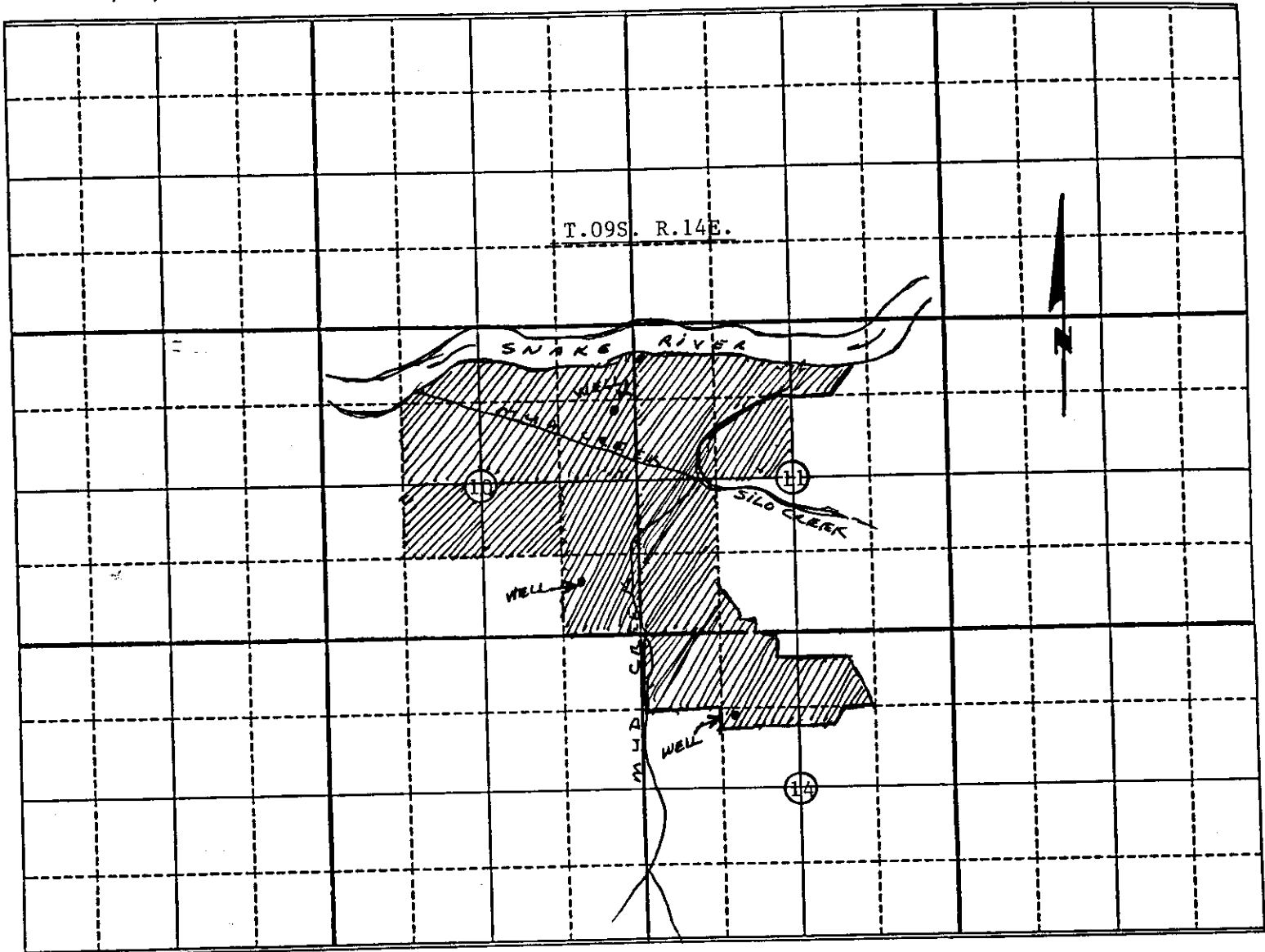
T w p	R g e	S e c	NE¼				NW¼				SW¼				SE¼				TOTALS
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
09S	14E	10	X	X	X	X	X			X	X				X	X		X	
		11		X			X	X	X	X		X	X	X					
		14		X	X		X	X		X									

Total number of acres to be irrigated =

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

DRAFT

Complete the following map by showing land and point of diversion as proposed by this amendment.
Show 1/4 1/4, section, township, range and ditches. (the smallest subdivision represents 40 acres)



Scale: 2 inches equal 1 mile

I hereby request approval of this change subject to the fact that no one will be injured by the change, and that the change will be made at my own risk.

Signed this 9th day of May, 19 94.

Carlo Ferreira
Carlo Ferreira Permit Holder
Attorney-in-fact

ACTION OF THE DEPARTMENT OF WATER RESOURCES

Preliminary check by _____ Publication prepared by _____ Date _____

Published in _____ Publication dates _____

I, _____, of the Department of Water Resources hereby

Witness my hand this _____ day of _____, 19 _____.

SIGNATURE

DRAFT

LIMITED POWER OF ATTORNEY

KNOW ALL MEN BY THESE PRESENTS:

Kanaka Rapids Ranch Homeowners Water System, Inc., ("Kanaka") hereby nominates and appoints Carlo Ferreira of 176 Kanaka Rapids Road, Buhl, Idaho, 83316, as attorney-in-fact with the full authority to act for and on behalf of Kanaka to execute any and all documents necessary to facilitate the amendment or perfection of Permit No. 47-07680 with the Idaho Department of Water Resources.

Kanaka's agent is hereby authorized to sign, seal, and deliver, as Kanaka's act and deed, those instruments of writing that may be necessary or proper to carry into execution the aforementioned. Further, we hereby declare that each and every application, agreement, receipt, or payment which shall be by our said agent given, made or done for the aforesaid purposes shall be as good, valid, and effectual as if they had been signed, sealed, and delivered by us in our own proper persons; and we hereby undertake at all times to ratify whatsoever our said agent shall lawfully do or cause to be done in or concerning the said promises by virtue of these presents.

04 IN WITNESS WHEREOF, we have hereunto executed the foregoing on this 04 day of May, 1994.

KANAKA RAPIDS RANCH HOMEOWNERS
WATER SYSTEM, INC.

By: E.A. Collins
E.A. Collins, President

Idaho
STATE OF ~~NEVADA~~)
Twin Falls) ss.
County of ~~Clark~~)

On this 04 day of May, 1994, before me, a Notary Public, in and for said County and State, personally appeared E.A. Collins, known or identified to me to be the President of Kanaka Rapids Ranch Homeowners Water System, Inc., the corporation that executed the foregoing instrument, and acknowledged to me that such corporation executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.



John A. Rosencr
NOTARY PUBLIC FOR ~~NEVADA~~ Idaho
Residing at: Twin Falls
My commission expires: 1998

ROSHOLT, ROBERTSON & TUCKER

Chartered
ATTORNEYS AT LAW

JOHN A. ROSHOLT
J. EVAN ROBERTSON
JAMES C. TUCKER
GARY D. SLETTE
JERRY V. JENSEN
BRUCE M. SMITH
THOMAS J. RYAN
GARY L. QUIGLEY
JOHN K. SIMPSON
PATRICK D. MADIGAN
PAUL W. SAMUELSON
TIMOTHY J. STOVER
NORMAN M. SEMANKO

Twin Falls Office
142 3rd Ave. North
P.O. BOX 1906
TWIN FALLS, IDAHO 83303-1906
TELEPHONE (208) 734-0700
FAX (208) 736-0041

Boise Office
1221 WEST IDAHO, SUITE 600
P.O. BOX 2139
BOISE, IDAHO 83701-2139
TELEPHONE (208) 336-0700
FAX (208) 344-6034

May 10, 1994

RECEIVED
MAY 10 1994
Department of Water Resources

Norm Young
Idaho Department of Water Resources
1301 N. Orchard
Statehouse Mail
Boise, ID 83720

Hand Delivered

Re: Amendment of Place of Use for Permit No. 47-07680

Dear Norm:

Enclosed is an "Application for Amendment of a Permit," proposing to change the place of use for Permit No. 47-07680.

As we discussed at our meeting on May 5, this amendment is intended to correct the place of use to reflect the actual areas of beneficial use under the permit. An oversight occurred in the filing of the original permit, leaving out several areas of the intended place of use. No other changes to the permit are proposed in this amendment.

The amendment would not result in the diversion and use of more water than originally permitted and would not adversely affect the rights of others. Therefore, pursuant to the director's authority under Section 42-211, Idaho Code, we ask that the director grant the application for amendment in whole, without notice or publication, as was discussed during our May 5 meeting with the director, yourself and Phil Rassier.

Due to time constraints placed upon our client, we ask that you expedite the consideration and approval of this amendment. Thank you for continued cooperation.

Sincerely,


NORMAN M. SEMANKO

05109402.NMS

Enclosures

cc: Carlo Ferreira
Mike Felton, Jr.
Charles Brockway

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JUN 13 1994

LIMITED POWER OF ATTORNEY

KNOW ALL MEN BY THESE PRESENTS:

Kanaka Rapids Ranch Homeowners Water System, Inc., ("Kanaka") hereby nominates and appoints Carlo Ferreira of 176 Kanaka Rapids Road, Buhl, Idaho, 83316, as attorney-in-fact with the full authority to act for and on behalf of Kanaka to execute any and all documents necessary to facilitate the amendment or perfection of Permit No. 47-07680 with the Idaho Department of Water Resources.

Kanaka's agent is hereby authorized to sign, seal, and deliver, as Kanaka's act and deed, those instruments of writing that may be necessary or proper to carry into execution the aforementioned. Further, we hereby declare that each and every application, agreement, receipt, or payment which shall be by our said agent given, made or done for the aforesaid purposes shall be as good, valid, and effectual as if they had been signed, sealed, and delivered by us in our own proper persons; and we hereby undertake at all times to ratify whatsoever our said agent shall lawfully do or cause to be done in or concerning the said promises by virtue of these presents.

04 IN WITNESS WHEREOF, we have hereunto executed the foregoing on this day of May, 1994.

KANAKA RAPIDS RANCH HOMEOWNERS
WATER SYSTEM, INC.

By: E.A. Collins
E.A. Collins, President

IDaho
STATE OF ~~NEVADA~~)
Twin Falls) ss.
County of ~~Clark~~)

On this 04 day of May, 1994, before me, a Notary Public, in and for said County and State, personally appeared E.A. Collins, known or identified to me to be the President of Kanaka Rapids Ranch Homeowners Water System, Inc., the corporation that executed the foregoing instrument, and acknowledged to me that such corporation executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

John A. Rosencr
NOTARY PUBLIC FOR ~~NEVADA~~ IDaho
Residing at: Twin Falls
My commission expires 11/1/95

05069401.NMS

JUN 13 1994

SAXTON *ZZA*
'ault -

TO: FILE 47-07680 (COLLINS BROTHERS)
FROM: NORM *NY*
RE: MEETING WITH ROSHOLT AND SEMANKO
DATE: MAY 5, 1994

Phil, Keith and I met with Rosholt and Semanko at their request to discuss how subdivision lots not now covered by the above referenced permit could obtain a valid water right. Drilling of separate wells under the domestic exemption was not a preference of either the agency or the attorneys. After a discussion that indicated that water from one of the wells authorized under the permit had been stubbed into the lots in question, Rosholt indicated he would file an amendment to add the lots to the authorized place of use without an increase in domestic units and a separate amendment to seek additional domestic units under the permit as a change in nature of use.

He will also evaluate the proof of beneficial use that has been filed to determine if it correctly described the development that occurred during the permit period and seek to file an amended proof if it does not.

MAILED

JUN 13 1994

CENTRAL TWIN FALLS COUNTY

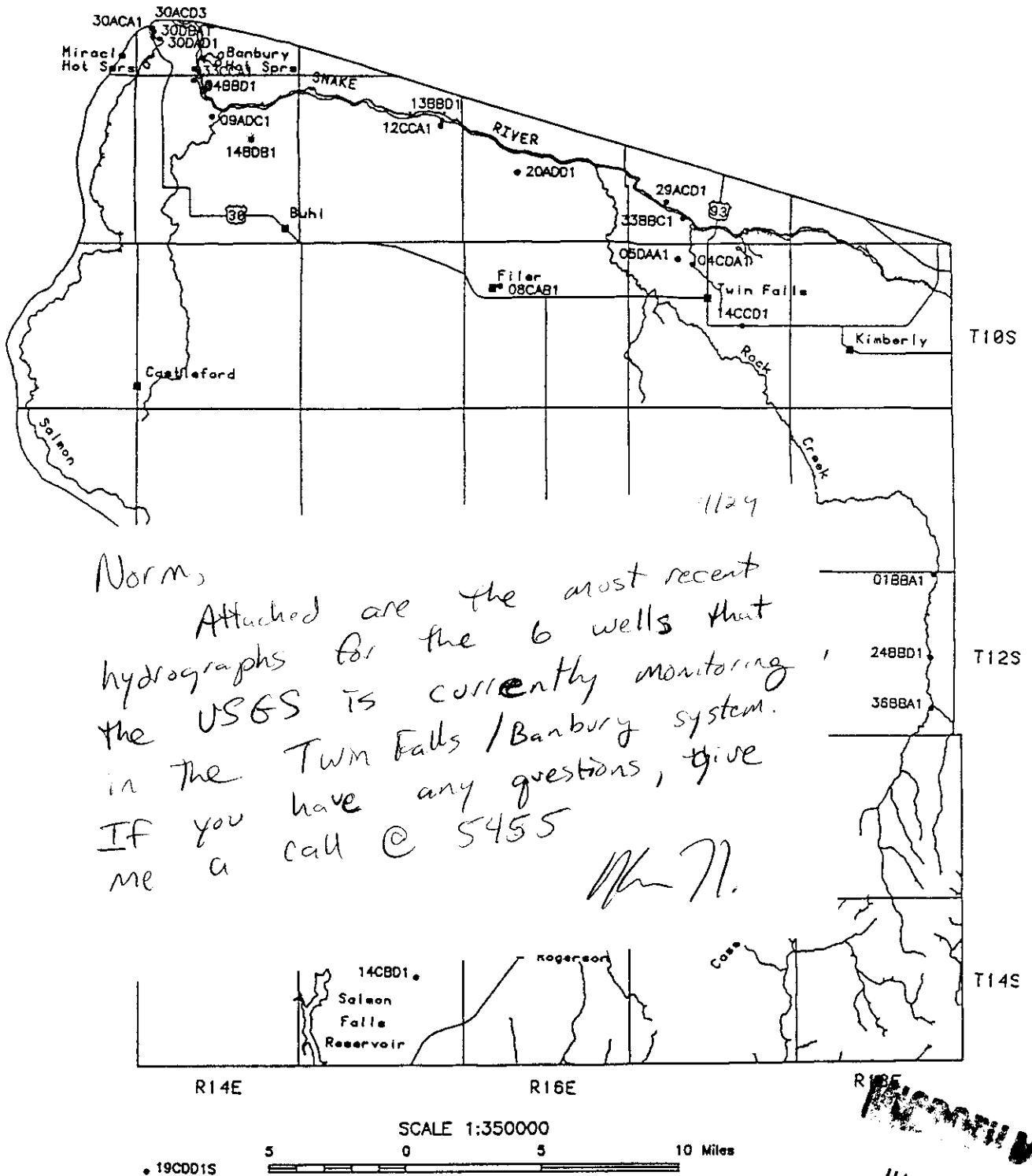


Figure 6. MAP SHOWING LOCATIONS OF SELECTED WELLS AND SPRINGS

CENTRAL TWIN FALLS COUNTY

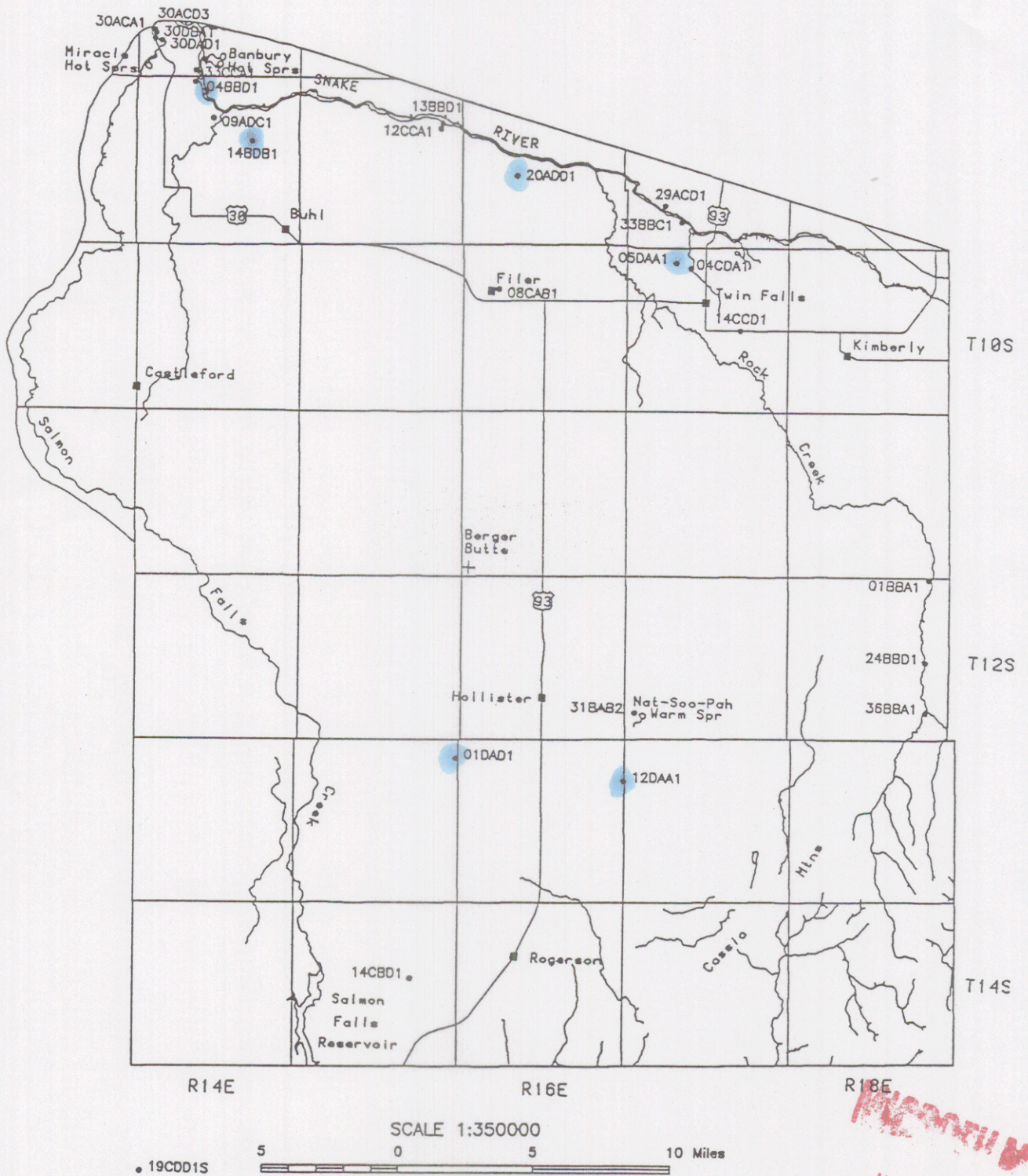
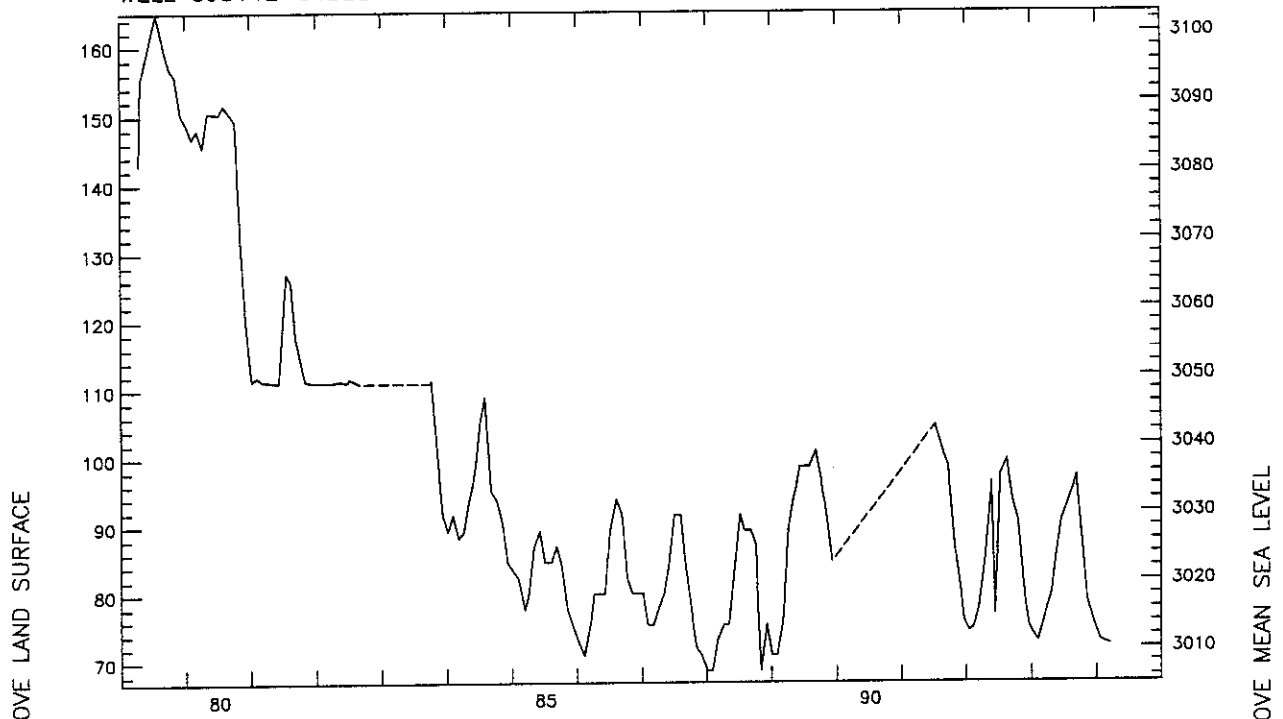


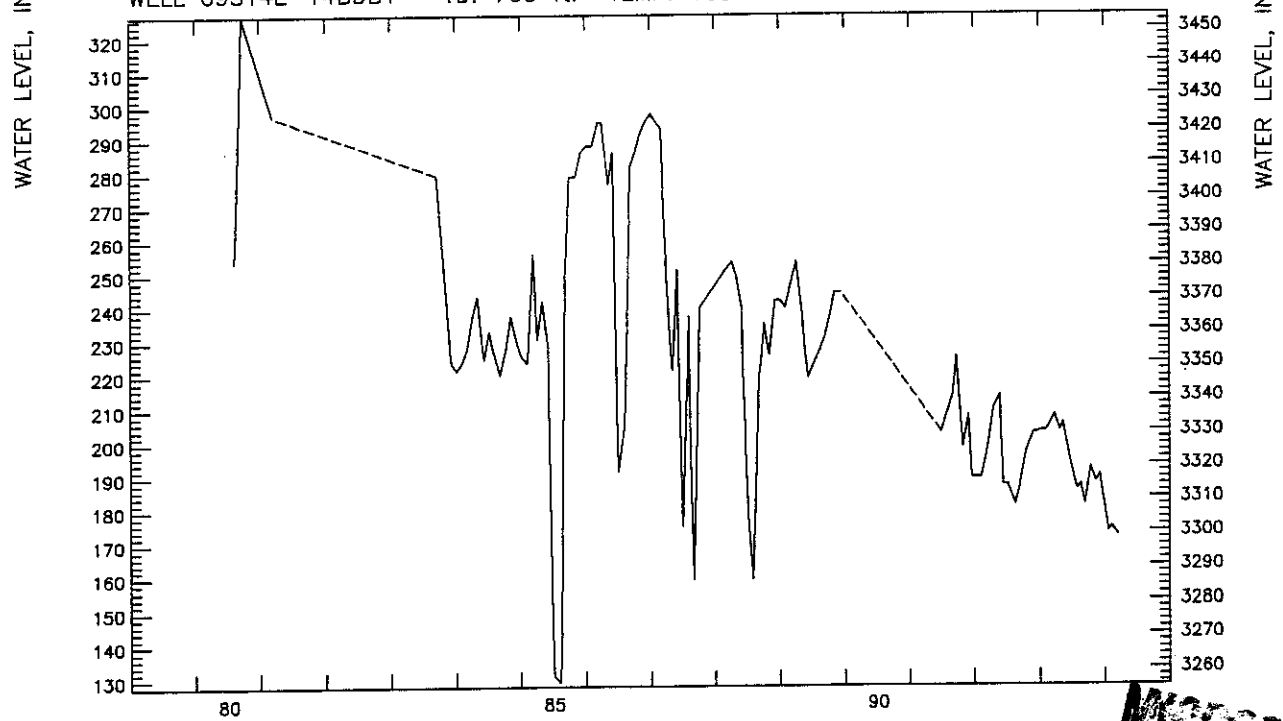
Figure 6. MAP SHOWING LOCATIONS OF SELECTED WELLS AND SPRINGS

IDWR

WELL 09S14E-04BBD1 TD: 700 ft. TEMP: 106 F



WELL 09S14E-14BDB1 TD: 700 ft. TEMP: 105 F



MAINTAINED
JUN 13 1994

IDWR

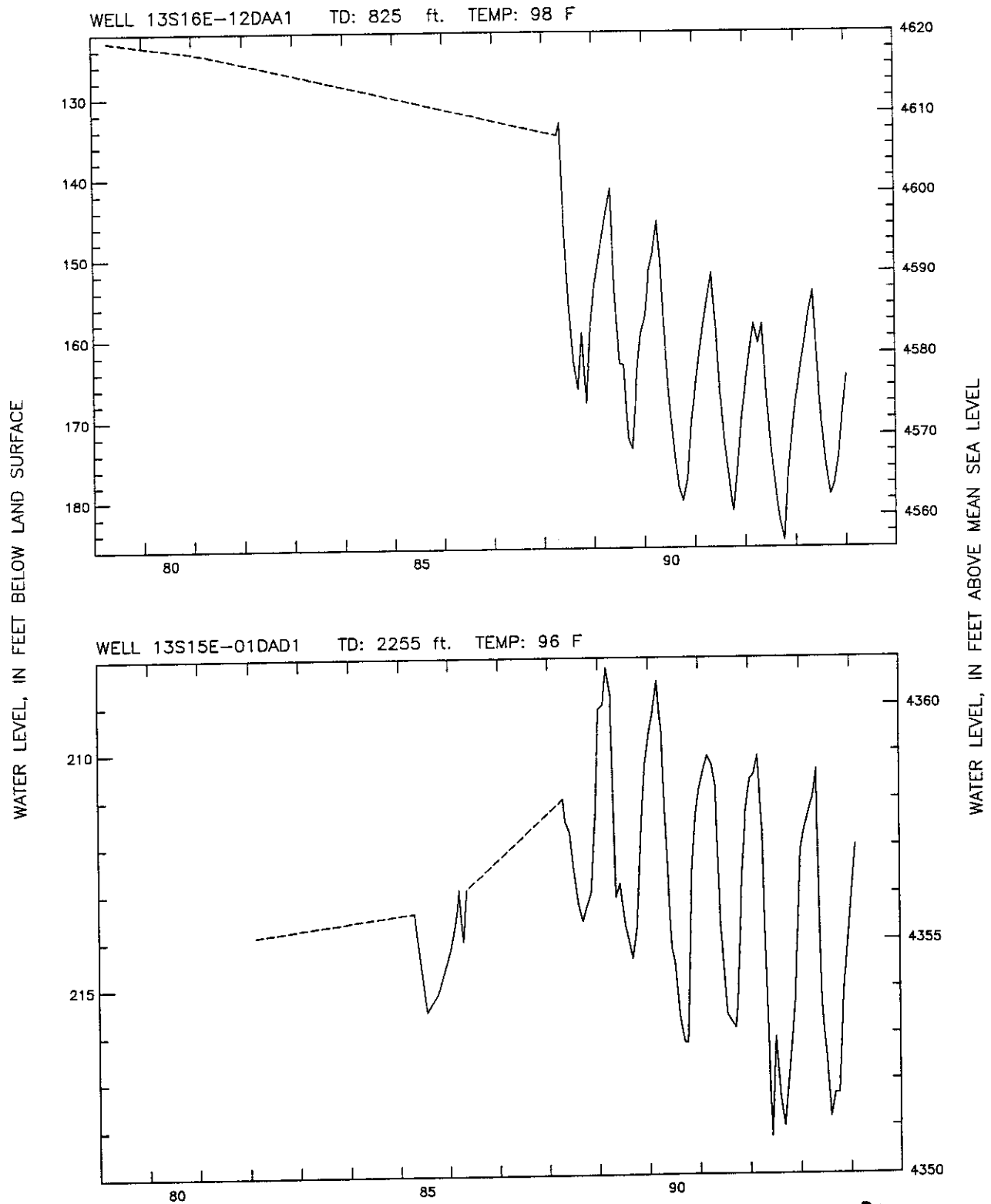


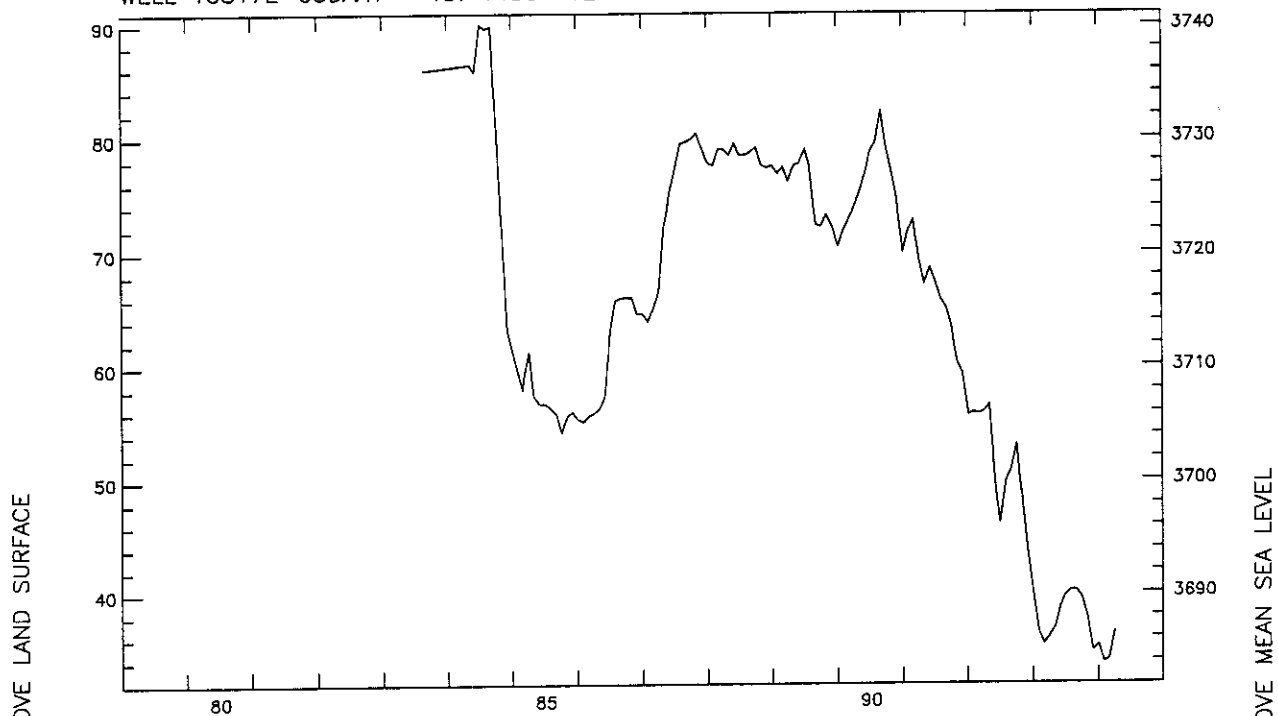
Figure 3. HYDROGRAPHS OF WELLS 13S16E-12DAA1 AND 13S15E-01DAD1

JUN 13 1994

Nazarene Church

IDWR

WELL 10S17E-05DAA1 TD: 1450 TEMP: 91 F



Filer Test well

WELL 09S16E-20ADD1 TD: 1247 TEMP: 87 F

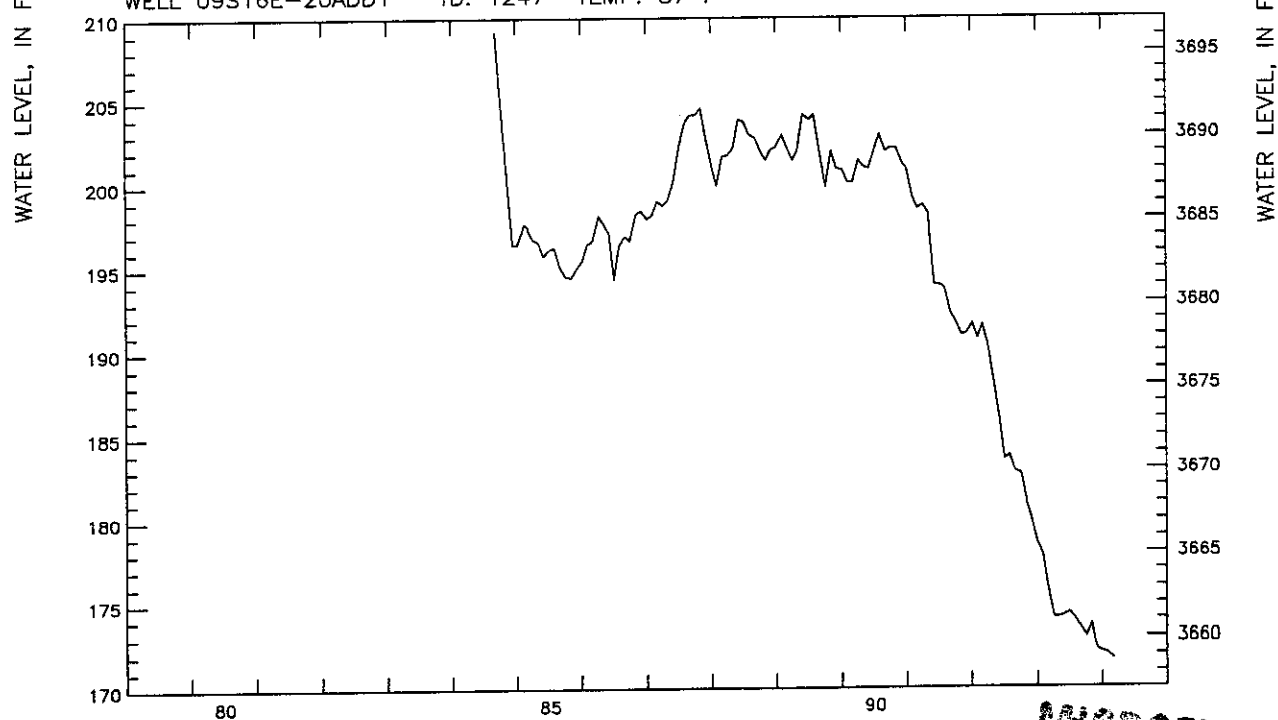


Figure 2. HYDROGRAPHS OF WELLS 10S17E-05DAA1 AND 09S16E-20ADD1

RECEIVED
JUN 13 1994

BEFORE THE DIRECTOR OF THE DEPARTMENT OF WATER RESOURCES
OF THE
STATE OF IDAHO

IN THE MATTER OF THE BANBURY	)	
	)	ORDER ESTABLISHING GROUND
HOT SPRINGS GROUND WATER	)	
	)	WATER MANAGEMENT AREA
MANAGEMENT AREA	)	

WHEREAS, data collected during the past four (4) years by the Idaho Department of Water Resources and the United States Geological Survey indicate a decline in artesian pressure for many of the wells in the Banbury Hot Springs Area near Buhl; and,

WHEREAS, lacking sufficient data to estimate the recharge to the system, these declines may be evidence that withdrawals from the system are approaching or exceeding the amount of recharge to the system; and,

WHEREAS, there are existing permits for the area which if developed would increase the amount of withdrawal from the thermal system by a factor of three (3) or more; and,

WHEREAS, pursuant to Section 42-233a, Idaho Code, and related statutes, a Critical Ground Water Area has been interpreted to be any ground water basin, or designated part thereof, from which the discharge exceeds the recharge; and,

WHEREAS, Section 42-233b, Idaho Code, authorizes the Director of the Department to establish a Ground Water Management Area in any ground water basin or designated part thereof where a determination is made that conditions of a Critical Ground Water Area are approached;

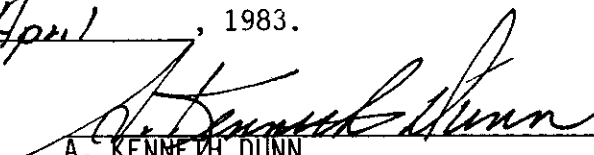
NOW, THEREFORE, IT IS HEREBY ORDERED, that the following area be included within and designated as the Banbury Hot Springs Ground Water Management Area, pursuant to Section 42-233b, Idaho Code:

From the point of beginning at the intersection of the west bank of the Snake River and the section line common to Sections 17 and 20, Twp. 8S, Rge. 14E, southeasterly along the bank of the Snake River approximately 6.5 miles to the section line common to Sections 10 and 11, Twp. 9S, Rge. 14E; thence south approximately .5 miles to the northwest corner of the southwest quarter, Section 11, Twp. 9S, Rge. 14E; thence east approximately .5 miles to the center of Section 11, Twp. 9S, Rge. 14E; thence south approximately .5 miles to the northwest corner of the northeast quarter, Section 14, Twp. 9S, Rge. 14E; thence east approximately .5 miles to the northwest corner of Section 13, Twp. 9S, Rge. 14E; thence south approximately .5 miles to the northwest corner of the southwest quarter, Section 13, Twp. 9S, Rge. 14E; thence east to the center of Section 13, Twp. 9S, Rge. 14E; thence

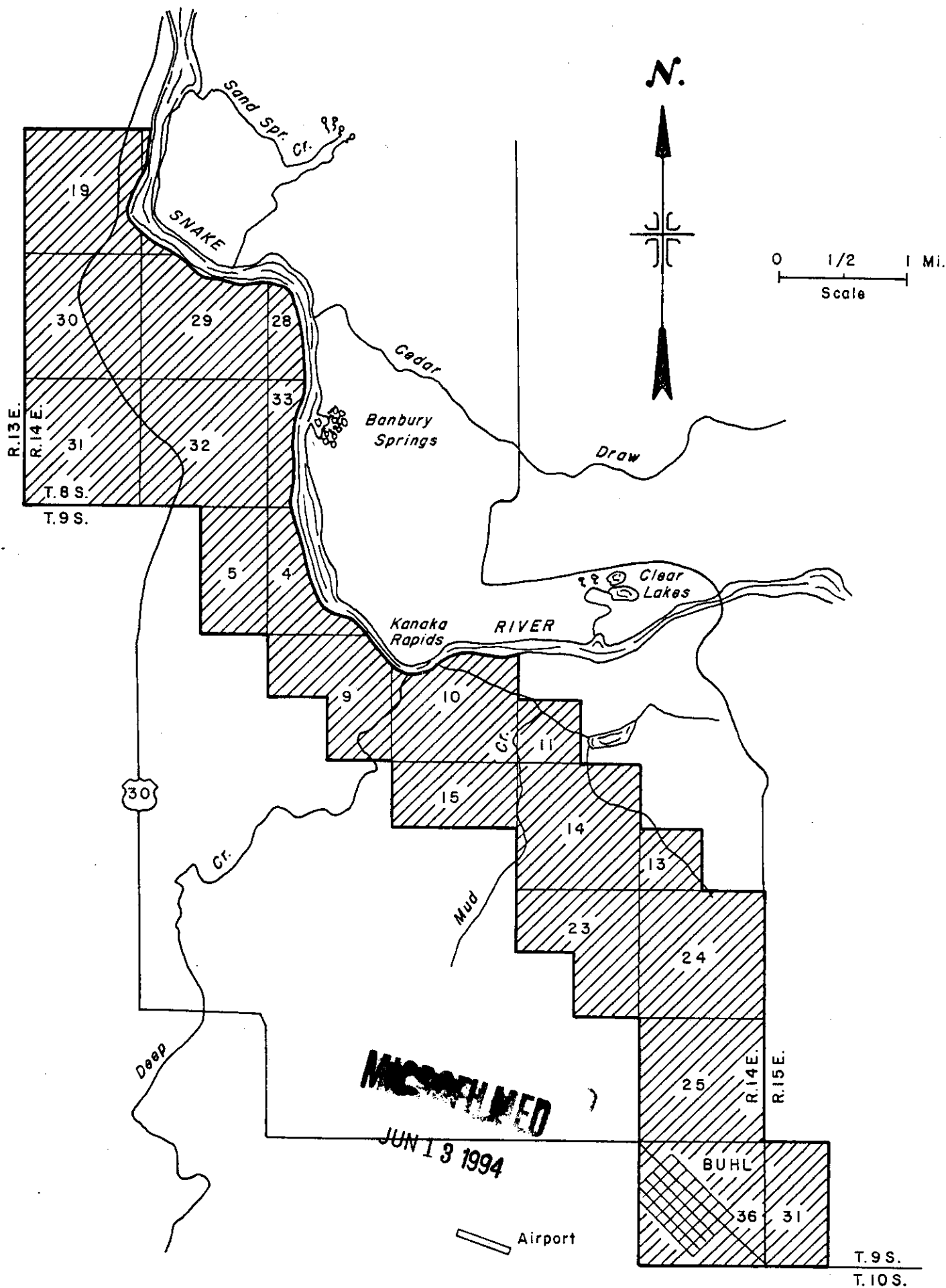
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JUN 13 1994

south approximately .5 miles to the northwest corner of the northeast quarter, Section 24, Twp. 9S, Rge. 14E; thence east approximately .5 miles to the northeast corner of Section 24, Twp. 9S, Rge. 14E; thence south approximately 2 miles to the northwest corner of Section 31, Twp. 9S, Rge. 15E, thence east approximately .5 miles to the northwest corner of the northeast quarter, Section 31, Twp. 9S, Rge. 15E; thence south approximately 1 mile to the southwest corner of the southeast quarter, Section 31, Twp. 9S, Rge. 15E; thence west approximately 1.5 miles to the southwest corner of Section 36, Twp. 9S, Rge. 14E; thence north approximately 2 miles to the northwest corner of Section 25, Twp. 9S, Rge. 14E; thence west approximately .5 miles to the southwest corner of the southeast quarter, Section 23, Twp. 9S, Rge. 14E; thence north approximately .5 miles to the center of Section 23, Twp. 9S, Rge. 14E; thence west approximately .5 miles to the southwest corner of the northwest quarter, Section 23, Twp. 9S, Rge. 14E; thence north approximately 1 mile to the southwest corner of the northwest quarter, Section 14, Twp. 9S, Rge. 14E; thence west approximately 1 mile to the southwest corner of the northwest quarter, Section 15, Twp. 9S, Rge. 14E; thence north approximately .5 miles to the southwest corner of Section 10, Twp. 9S, Rge. 14E; thence west approximately .5 miles to the southwest corner of the southeast quarter, Section 9, Twp. 9S, Rge. 14E; thence north approximately .5 miles to the center of Section 9, Twp. 9S, Rge. 14E; thence west approximately .5 miles to the southwest corner of the northwest quarter, Section 9, Twp. 9S, Rge. 14E; thence north approximately .5 miles to the southwest corner of Section 4, Twp. 9S, Rge. 14E, thence west approximately .5 miles to the southwest corner of the southeast quarter, Section 5, Twp. 9S, Rge. 14E; thence north approximately 1 mile to the northwest corner of the northeast quarter, Section 5, Twp. 9S, Rge. 14E; thence west approximately 1.5 miles to the southwest corner of Section 31, Twp. 8S, Rge. 14E; thence north approximately 3 miles to the northwest corner of Section 19, Twp. 8S, Rge. 14E; thence east approximately 1.1 miles to the point of beginning.

Dated this 12th day of April, 1983.


A. KENNETH DUNN
DIRECTOR

MAINTAINED
JUN 13 1994



BANBURY HOT SPRINGS GROUNDWATER MANAGEMENT AREA

From: DWR01::DWR60::MERRITT 4-MAY-1994 09:46 14.55
To: DWR01::WRYOUNG, HOLMES, JONES
CC: MERRITT
Subj: KANAKA RAPIDS 47-07680

ON MONDAY AFTERNOON 5/2/94 I MET NORM YOUNG AND THE LAWYERS FOR THE RANCH WHICH INCLUDED: JOHN ROSHOLT, NORM SEMANKO & MIKE FELTON, JR. AND ALSO CARLOS (FARRARI ?) WHO WAS ONE OF THE DEVELOPERS OF THE RANCH.

AFTER MUCH CONFUSION AS TO WHERE THE MEETING WAS GOING TO BE WE ALL GOT TOGETHER AT THE RANCH. IT WAS EXPLAINED THAT THE RECENT 63 DRILLING APPLICATIONS WERE INTENDED TO COVER LOTS PRESENTLY UNDER DEVELOPMENT OR PROJECTED IN THE FUTURE THAT ARE IN ADDITION TO THE 99 LOTS COVERED UNDER THE INITIAL DEVELOPMENT COVERED UNDER 47-07680.

THERE EXISTS THREE HOT WELLS ON THE PROPERTY. BASED ON MAPS AND NAPP PHOTOS I BELIEVE THESE WELLS ARE LOCATED AS FOLLOWS:

SOUTH WELL.... T09S, R14E, SEC 14 NWSENE

WEST WELL T09S, R14E, SEC 10 NWSESE

NORTH WELL.... T09S, R14E, SEC 10 NESENE

ALL WELLS ARE WITHIN THE BOUNDARY OF THE BANBURY HOT SPRINGS GROUNDWATER MANAGEMENT AREA ESTABLISHED 4/12/1983.

THE SOUTH AND WEST WELLS SUPPLY THE 99 LOTS ON THE SOUTH SIDE OF THE COUNTY RIVER ROAD. THE SOUTH WELL IS THE ONE WE MONITOR AND FLOWS WITH ARTESIAN PRESSURE AND SUPPLIES THE MAJORITY OF THE USE FOR THE PRESENT DEVELOPMENT OF THE 99 LOTS. THE WEST WELL IS LOCATED ON TOP OF THE HILL AND WAS REPORTED TO HAVE A 25 HP PUMP AND IS THE BACKUP FOR THIS SYSTEM.

THE NORTH WELL IS THE ONE WHICH HAS IN THE PAST BEEN USED FOR IRRIGATION AND ALLOWED TO FLOW FREELY TO FILL THE PONDS IN THE AREA. IT WAS REPORTED THAT IT ALSO HAD SUPPLIED WATER TO TWO TRAILERS ON THE PROPERTY ON THE NORTH SIDE OF THE RIVER ROAD. THESE TRAILERS HAVE BEEN REMOVED. THIS IS THE WELL WHICH WAS IDENTIFIED AS BEING THE WELL ASSOCIATED WITH ALL THE 63 DRILLING APPLICATIONS. CARLOS INDICATED THIS WELL WAS ~~SERVED~~ PLUMBED TO SERVE THE 40 SOME NEW LOTS ON THE NORTH SIDE OF THE COUNTY ROAD. HE INDICATED THE DISTRIBUTION SYSTEM WAS NOT ADEQUATE AND WE OBSERVED A NEW DISTRIBUTION SYSTEM BEING INSTALLED. HE INDICATED THAT THE OLD IS GOING TO BE UTILIZED BY THE SURFACE WATER IRRIGATION RIGHTS TO IRRIGATE THESE LANDS. (I BELIEVE THE SYSTEM HAS ALWAYS BEEN AN IRRIGATION DISTRIBUTION SYSTEM AND WAS NEVER INTENDED TO SUPPLY POTABLE WATER TO LOTS.)

OUR DISCUSSION FIRST REVOLVED AROUND THE 63 DRILLING APPLICATIONS AND WHAT WAS BEING ATTEMPTED TO BE ACCOMPLISHED. SIMPLY THEY NEED WATER RIGHTS OR COVERAGE FOR THE 63 NEW LOTS. WE DISCUSSED THAT THE DRILLING APPLICATION APPROACH WAS NOT THE PROPER APPROACH IN THAT IT WAS A PROCESS TO DRILL OR CONSTRUCT WELLS AND NOT INTENDED TO PROVIDE WATER RIGHTS. WE DISCUSSED THAT THEY COULD DRILL 63 NEW WELLS BUT WOULD RATHER UTILIZE 1 WELL AND BETTER YET THE EXISTING WELL; HOWEVER IT WAS MENTIONED THE NORTH WELL MAY NEED TO BE RE-DRILLED. NORM YOUNG AGREED THAT IT WAS PROBABLY BETTER FOR THE AQUIFER ONLY USE 1 WELL THUS DECREASING THE POSSIBILITY OF LEAKING WELLS IN THE AQUIFER. NORM AGREED THAT 63 INDIVIDUAL WELLS MAY BE AN OPTION. NORM INDICATE THE PROPERT COARSE INVOLVED APPLYING FOR A WR PERMIT BUT BECAUSE OF THE GWMA THIS MAY NOT BE POSSIBLE. THE CONVERSATION THEN FOCUSED ON AMENDING 47-07680 TO COVER THE NEW DEVELOPMENT BUT NOTHING CONCLUSIVE WAS DISCUSSED. MENTION WAS MADE THAT THE DEPT WOULD LIKE TO SEE EFFORTS TO RE-INJECT USED WATER BACK INTO THE AQUIFER AND THAT MAYBE THERE SUCH EFFORTS WOULD BE CONSIDERED IF AN AMENDMENT WAS FILED. NORM YOUNG AND JOHN ROSHOLT AGREED TO HAVE FURTHER DISCUSSIONS IN BOISE NEXT WEEK.

JUN 13 1994

ONE THING MENTIONED IN THE CONVERSATIONS WAS CARLOS INDICATING THEY COULD WORK WITHIN THE CONFINES OF 13,000 GAL/DAY DOMESTIC DEFINITION FOR EACH LOT ASSUMING IT WAS A CUMULATIVE TOTAL. MEANING IF THEY USED 7000 GAL ONE DAY THEY COULD USE 19,000 GAL THE NEXT DAY. ??? I THINK THERE MAY BE SOME MISUNDERSTANDING HERE.

WHATEVER HAPPENS REGARDING THE FINAL POSITION THE DEPT TAKES IT SHOULD BE NOTED THAT IN PREVIOUS CONVERSATIONS WITH NORM SEMANKO REGARDING OTHER CLIENTS FOR OTHER HOT WATER WELLS IN THE BANBURY HOT SPRINGS GWMA AROUND SALMON FALLS CREEK; THERE SEEMS TO BE A PUSH NOW TO DEVELOPE THESE EXISTING HOT WATER WELLS FOR SUBDIVISIONS THRU THE SINGLE HOUSEHOLD DEFINITION. THIS SEEMS TO ME CONTRARY TO THE ORDER WHICH FORCED PEOPLE TO CEASE DEVELOPMENT OF THE HOT WATER AQUIFER BACK IN THE MID 1980'S. WHATEVER IS DECIDED HERE WILL PROBABLY BE APPLIED AGAIN AND AGAIN AT THESE OTHER DEVELOPMENTS.

ALLEN

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JUN 13 1994

MEMORANDUM

TO: JAR
FROM: NMS
DATE: May 5, 1994
RE: E.M.B. Hailey -- Municipal Well Addition in Hailey

JER asked us to explore this with Norm Young this afternoon.

The City of Hailey will be applying with IDWR to place a municipal well at the north end of town. It will be connected to the existing Hailey municipal supply. The water will be used for: (1) developing 110 acres; (2) developing 20 acres for a new middle school; and (3) supplementing the current inadequate municipal water supply. The school district and our client will foot the bill. They will deed the well over to the city once it is completed.

The "public interest" in favor of this municipal well is that the new school cannot go in without it. Also, the city needs the additional water supply. The 110 acre development is just part of the equation.

Questions:

1. Can this be done in this area (Big Wood River Ground Water Management Area & Trust Water Area)?
2. If so, what application or other process must be followed?

05059402.NMS

cc: JER

RECEIVED

JUN 13 1994

August 14, 1991

KANAKA RAPIDS RANCH HOMEOWNERS WATER SYS
130 N. BROADWAY
BUHL, ID 83316

PROOF ACKNOWLEDGMENT LETTER

RE: PERMIT NO. 47-07680

Dear Permit Holder:

The department acknowledges receipt of the proof of beneficial use form submitted for the above referenced permit. The next step in the process of developing a water right is for the department to conduct a field examination to determine and confirm the use being made of the water.

If you have questions concerning this matter, please feel free to contact the SOUTHERN Regional Office in Twin Falls at (208)736-3033.

Sincerely,

Rita Fleck
Secretary/Records Manager

c: IDWR - Region

RECEIVED

AUG 21 1991

LIMITED POWER OF ATTORNEY

KNOW ALL MEN BY THESE PRESENTS:

Kanaka Rapids Ranch Homeowners Water System, Inc., (hereinafter "Kanaka") hereby nominates and appoints Steve Foreman of 107 Kanaka Rapids Road, Buhl, Idaho, 83316, as attorney-in-fact with full authority to act for and on behalf of Kanaka to execute any and all documents required or necessary to facilitate the filing of proof of beneficial use for Permit #A47-7680 with the Idaho Department of Water Resources.

Kanaka's agent is hereby authorized to sign, seal, and deliver, as Kanaka's act and deed, those instruments of writing that may be necessary or proper to carry into execution and effect the aforementioned. Further, we hereby declare that each and every application, agreement, receipt, or payment which shall be by our said agent given, made or done for the aforesaid purposes shall be as good, valid, and effectual as if they had been signed, sealed, and delivered by us in our own proper persons; and we hereby undertake at all times to ratify whatsoever our said agent shall lawfully do or cause to be done in or concerning the said premises by virtue of these presents.

IN WITNESS WHEREOF, we have hereunto executed the foregoing on this 29th day of July, 1991.

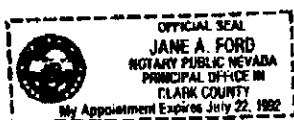
KANAKA RAPIDS RANCH HOMEOWNERS
WATER SYSTEM, INC.

By: E. A. Collins
E. A. Collins, President

NEVADA)
STATE OF ~~NEVADA~~) ss.
CLARK)
County of ~~CLARK~~)

On this 29th day of July, 1991, before me, a Notary Public, in and for said County and State, personally appeared AL COLLINS, known or identified to me to be the individual whose name is subscribed to the within instrument, and acknowledged to me that he executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.



Jane A. Ford
NOTARY PUBLIC FOR NEVADA
Residing at: Las Vegas
My commission expires: 7-22-92

LIMITED POWER OF ATTORNEY - 1

** TOTAL PAGE.004 **

07-29-91 03:58PM P02 04

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JUL 31 1991

Deputy of the...
Southern...

RECEIVED

AUG 21 1991

1
COLLINS BROTHERS CORP
C/O ROBERT C WEAVER
130 N BROADWAY
BUHL ID 83316

138653
May 31, 1991

PROOF DUE NOTICE

RE: PERMIT NO. 47-07680

Dear Permit Holder:

One of the conditions of approval of the above referenced water permit was that proof of the extent of your beneficial use must be submitted to this office on or before August 1, 1991. (See last page of your approved permit or your last approved extension request.) Enclosed is a form which when accompanied by the license examination fee or a complete field examination report prepared by a certified water right examiner may be used to submit the required proof.

If you have not fully completed your project, and you or a previous owner of this permit have not received a prior extension of time, you may request an extension of time if the delay is for reasonable cause as provided in Section 42-204, Idaho Code. If you have been prevented from proceeding by a governmental agency or by litigation which might bring title to the water in question, more than one extension of time can be granted. An extension of time request form is enclosed for your convenience.

Either an acceptable proof of beneficial use submittal or an acceptable request for an extension of time must be received by this department on or before the above described proof due date. If neither is received, the department will send you a lapse notice. Within sixty (60) days of the mailing of the lapse notice, the permit will no longer be of any force nor effect.

SINCERELY,

Rita Fleck
Secretary/Records Manager

Enclosures

AUG 21 1991

February 9, 1990

Collins Brothers Corp.
c/o Robert C. Weaver
130 N. Broadway
Buhl, ID 83316

Gentlemen:

Re: Water Permit No. 84-7251

Enclosed is a copy of the approved request for extension of time. The time within which to submit proof of beneficial use is extended to August 1, 1991.

It is important that you work diligently toward the completion of this project during the construction period allowed. The department may not be able to grant additional requests.

If you have questions, please contact me.

Sincerely,

RITA I. FLECK
Secretary/Records Manager

Enclosure

MICROFILMED

MAR 08 1990

WEAVER & MELANSON

Attorneys at Law

130 N. BROADWAY

BUHL, IDAHO 83316

ROBERT C. WEAVER
JOHN M. MELANSON

PHONE (208) 543-8288

EIN# 81-0330674

January 30, 1990

Ms. Rita Fleck
Secretary, Records Manager
Department of Water Resources
1301 North Orchard Street
Statehouse Mail
Boise, Idaho 83720

RECEIVED
JAN 31 1990

Department of Water Resources

Re: Permit No. 47-7680

Dear Rita:

I apologize for not having this information to you. When I received it I forwarded it on to my client and, apparently, it was not transferred back to your office. The activity my client has done on the project was included in my previous letter. The activity that remains are the completion of the greenhouse portion of the permit which will include approximately 2.7 second feet of water from the filing.

The completion of that facility should be completed by September, 1990, and will be completed by the applicant who is a contractor. He is not anticipating that he will let any contracts on the job at this time but will complete the job himself.

There is also an application to amend this permit and a motion to clarify the previous department's decision which I am in the process of completing which, if the amendment is allowed, may eliminate the necessity of the construction of the greenhouse facilities.

Thank you for your attention to this matter.

Sincerely yours,


ROBERT C. WEAVER
Attorney for permit
holder

MICROFILMED

MAR 08 1990

RCW:sh

January 10, 1990

Robert C. Weaver
130 N. Broadway
Buhl, ID 83316

Dear Mr. Weaver:

Re: Permit No. 47-7680 - Collins Brothers

On August 11, 1989, I wrote regarding the pending request for extension of time. Additional information was needed for the department to adequately consider the request. I did not receive a response.

Enclosed is a copy of my letter and the extension request. Please supply the information within 20 days. If no response is received, the department will act on the request with the information presently available.

If you have any questions concerning this matter, please feel free to contact this office.

Sincerely,

RITA I. FLECK
Secretary/Records Manager

Enclosures

MICROFILMED

MAR 08 1990

August 11, 1989

Collins Brothers Corp.
c/o Robert C. Weaver
130 N. Broadway
Buhl, ID 83316

Dear Mr. Weaver:

Re: Permit No. 47-7680

The department has reviewed the above-referenced request submitted to the department on June 22, 1989. Additional information is requested to allow the department to further consider the request.

Please specifically describe the nature and amount of work yet to be accomplished under the terms of the permit. The extension request just refers to the past litigation with the department and does not provide this information.

In order for the department to be able to adequately evaluate the duration of time requested in the extension, please submit a time line of work activity which shows specific activities, anticipated completion of the activities, contracts which have been let or will be let and other appropriation justification.

If you have any questions, please feel free to contact the department.

Sincerely,

RITA I. FLECK
Secretary/Records Manager

c: Southern Region

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MAR 08 1990

WEAVER & MELANSON

Attorneys at Law

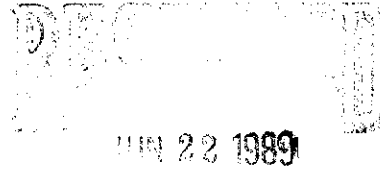
130 N. BROADWAY
BUHL, IDAHO 83316

ROBERT C. WEAVER
JOHN M. MELANSON

PHONE (208) 543-8288

EIN#81-0330674

June 20, 1989



Department of Water Resources
State Office
450 West State
Boise, Idaho 83720

Department of Water Resources

RE: Collins Brothers Corp.

Gentlemen:

Enclosed please find completed and signed
Request for Extension of Time in Permit No. 47-07680,
Collins Brothers Corp. Also enclosed is our
check in the amount of \$ 15.00 for filing fee.

Sincerely yours,

Robert C. Weaver

RCW/jms

Enclosures (2)

MICROFILMED

MAR 08 1990

MEMORANDUM

TO: GLEN

FROM: TIM LUKE

RE: PERMIT NO. 47-7860 IN NAME OF COLLINS BROS.

DATE: 6-14-89

=====

Glen,

I would like you to review this file. The attorney for the permit holder called Loren Holmes the other day and requested some information from the file to help him respond to my letter and trust water questionnaire of April 6, 1989. This permit has involved considerable litigation, including the Idaho Supreme Court. You will also see that Keith and Norm recently met with the permit holder's attorney concerning the use of thermal water for irrigation.

In my review of the file, I stumbled upon a letter from John Rosholt for Idaho Power which essentially dismissed the filing from the Swan Falls suit. However, the permit was never listed on any dismissal lists which we received from IPCO.

OK
1/18 { I think perhaps it might be better to treat this one as a dismissed filing and see what the permittee will submit in terms of proof this year. This drawn out controversy about using thermal water directly for irrigation might be put to rest quicker if they fail to prove that they have irrigated under the terms of the permit. It appears to me that they have not complied with the terms of the permit.

I understand that IPCO will be coming out with a new dismissal list within the next 30 to 60 days. Perhaps we could send a copy of Rosholt's letter to Tom Nelson and have this one formally dismissed.

Please provide your thoughts.

MICROFILMED

MAR 08 1990

138262
May 31, 1989

COLLINS BROTHERS CORP.
BOX 42427 HUNTRIDGE STATION
LAS VEGAS,, NV 89104

PROOF DUE NOTICE

RE: PERMIT NO. 47-07680

Dear Permit Holder:

One of the conditions of approval of the above referenced water permit was that proof of the extent of your beneficial use must be submitted to this office on or before August 1, 1989. (See last page of your approved permit or your last approved extension request.) Enclosed is a form which when accompanied by the license examination fee or a complete field examination report prepared by a certified water right examiner may be used to submit the required proof.

If you have not fully completed your project, and you or a previous owner of this permit have not received a prior extension of time, you may request an extension of time if the delay is for reasonable cause as provided in Section 42-204, Idaho Code. If you have been prevented from proceeding by a governmental agency or by litigation which might bring title to the water in question, more than one extension of time can be granted. An extension of time request form is enclosed for your convenience.

Either an acceptable proof of beneficial use submittal or an acceptable request for an extension of time must be received by this department on or before the above described proof due date. If neither is received, the department will send you a lapse notice. Within sixty (60) days of the mailing of the lapse notice, the permit will no longer be of any force nor effect.

SINCERELY,

Rita Fleck
Secretary/Records Manager

Enclosures

MICROFILMED

MAR 08 1990



State of Idaho

DEPARTMENT OF WATER RESOURCES

1301 North Orchard Street, Statehouse Mail, Boise, Idaho 83720 - (208) 327-7900

CECIL D. ANDRUS

GOVERNOR

R. KEITH HIGGINSON

DIRECTOR

May 15, 1989

Robert C. Weaver
Attorney at Law
130 North Broadway
Buhl, Idaho 83316

Re: Collins Brothers Corp. Permit No. 47-7680

Dear Mr. Weaver:

I have reviewed your letter of April 21, 1989 which requests approval to use water developed under Permit No. 47-7680 directly for irrigation purposes in an amount not to exceed that required for heating of the 99 homes planned for the subdivision. Your letter indicates that encouragement for pursuing this concept resulted from discussions we had in this office.

Considerable time has passed since our discussions, so the opportunity for misunderstandings has increased. If what is contained in this letter differs from what you thought was the conclusion of our prior discussion, I can only apologize for any misunderstanding you may have received at that time.

As you know, this department has been taking actions to limit the development of the low temperature geothermal aquifer in the Banbury area. The aquifer has been designated as a Ground Water Management Area pursuant to Section 42-233b, Idaho Code, applications for new uses are not being approved, and further development under existing permits has been limited. These actions have been taken because of continuing declines noted in the ground water levels in the area and other information indicating that the aquifer is being stressed by current development.

Development under filing 47-7680 has been delayed by administrative hearings before this department and by litigation, and for this reason development is still being allowed under this filing while most other permits have had further development curtailed. Your request to liberalize the conditions of approval for Permit 47-7680 must be evaluated consistently with this prevailing policy of controlling and limiting further development of the warm water resource in the Banbury area.

MICROFILMED

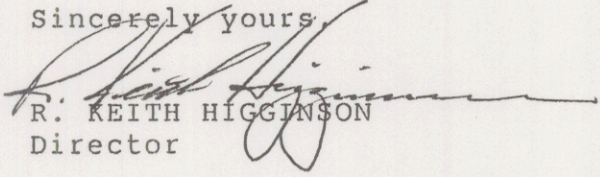
MAR 08 1990

Robert C. Weaver
Page 2
May 15, 1989

During our discussions in the office I did not intend, and could not legally, remove or revise any of these permit conditions. In fact any substantive change to the use of the water as authorized by the permit would require notice to all the parties involved in the protest hearing using the statutory procedure for amending a permit (Section 42-211, Idaho Code). It is unlikely that approval would be granted for a change which would result in more water being diverted or which would not use the heat value of the resource. Direct diversion of the water for irrigation would also require information to show compliance with Condition No. 3 of Permit 47-7680 requiring full use of other water sources for the irrigation project.

I understand your contention that the applicant has made a substantial investment in the system which may require modification to comply with the permit conditions. This is one of the motivations for Idaho's mandatory permit statute in effect for appropriating ground water since 1963. Full compliance with the intent of this statute by your client would have resulted in having a permit in hand before development started and large amounts had been expended. Misunderstandings over development requirements would have been avoided.

Sincerely yours,


R. KEITH HIGGINSON
Director

RKH:dc

MICROFILMED

MAR 08 1990

different times, and correctly notes that the relief sought was injunctive. He correctly points to the same in *O'Connor*. As mentioned earlier, however, no governmental authority was involved in *Robison*, and, as to *O'Connor*, inverse condemnation did not become a remedy in Idaho until *Renninger v. State*, 70 Idaho 170, 213 P.2d 911 (1950). The best conclusion which I am able to draw is that the Chief Justice adheres to the view that real property, or interests therein are subject to condemnation and inverse condemnation, but that an established business is not. That I do not understand.



759 P.2d 891

In the MATTER OF Application For
PERMIT NO. 47-7680 In the Name of
Royal Crest, Inc., Collins Bros. Corp.,
Assignee.

COLLINS BROS. CORP., an Idaho cor-
poration, Appellant-Respondent
on appeal,

v.

A. Kenneth DUNN, Director, Idaho
Department of Water Resources,
Respondent-Appellant on appeal.

No. 16844.

Supreme Court of Idaho.

July 21, 1988.

Department of Water Resources granted company's application for permit to appropriate water from geothermal source, subject to nine conditions, and company appealed. The District Court, Fifth Judicial District, Twin Falls County, Daniel C. Hurlbutt, J., reversed the Department and granted the company's application for a permit without conditions attached. Department appealed. The Supreme Court, Bakes, J., held that: (1) the company had not been denied procedural due process in

the permit process; (2) the Department did not err in conducting a postconference examination of the premises in question; (3) the proposed decision and order was not rendered invalid by mention of post-hearing creation of groundwater unit; and (4) Department's determination that it was not in the public interest to use water from the geothermal aquifer to irrigate crops was not clearly erroneous.

Reversed.

1. Administrative Law and Procedure ⇐506

Constitutional Law ⇐318(2)

Waters and Water Courses ⇐146

Company which sought permit to appropriate water from geothermal groundwater source was not denied procedural due process in permit process on ground that Department of Water Resources considered matters outside record in drafting proposed order, as company was provided with adequate notice of its statutory opportunity to make exceptions and have hearing before proposed order became final, and company was in fact given hearing on merits after order became final pursuant to its motion to modify order. I.C. § 42-1701A; U.S.C.A. Const.Amends. 5, 14.

2. Waters and Water Courses ⇐133

After conference on company's application for permit to appropriate water from geothermal groundwater source, Department of Water Resources did not err by conducting field examination of premises in question, as Department was entitled by statute to conduct field examinations on water permits, and agreement between company and those protesting its application, which provided that director could decide case based in part "upon the records of department," contained no limitation on director's statutory authority to examine premises. I.C. § 42-1805(3).

3. Waters and Water Courses ⇐146

Fact that proposed decision and order of Department of Water Resources, concerning company's application for permit to appropriate geothermal water, mentioned

MICROFILMED

MAR 08 1990

Cite as 114 Idaho 600

posthearing creation of groundwater unit did not taint opinion, as creation of unit was cognizable fact which Department was statutorily entitled to take notice of and proposed decision and order provided parties with notice that existence of unit was included in Department's deliberations, and parties made no objection or request for additional hearing. I.C. § 67-5210.

4. Waters and Water Courses ⇐133

Director of Department of Water Resources is granted considerable authority and discretion to determine and protect "local public interest" when issuing or rejecting water permits and has specific authority to grant permit upon conditions. I.C. § 42-203A(5).

5. Waters and Water Courses ⇐146

Department of Water Resources' decision that it was not in public interest to use water from geothermal aquifer to irrigate crops was not clearly erroneous. I.C. § 67-5215(g)(5).

Jim Jones, Atty. Gen., Phillip J. Rassier (argued), Deputy Atty. Gen., Boise, for appellant-respondent on appeal.

Weaver & Melanson, Robert C. Weaver (argued), Buhl, for respondent-appellant on appeal.

BAKES, Justice.

The appellant, A. Kenneth Dunn, Director of the Idaho Department of Water Resources (the department), appeals a district court order regarding the department's granting of a water permit with nine conditions to the respondent, Collins Brothers Corp. The district court (acting as an appellate court) found that the department's action was defective on procedural due process grounds. Without remanding the case to the department for correction of the procedural errors, the dis-

trict court affirmed the granting of the permit, but eliminated the conditions.

The record reflects that Collins Brothers is the successor to Royal Crest, Inc., which filed the original application with the department for a permit to appropriate water from a geothermal ground water source. Notice of the original application was published indicating that the water would be used for power purposes. No protests were received. Later the application was amended indicating that the water would be used to heat 110 homes. A new notice was published and this time protests were received from several parties.

The department scheduled a hearing and/or conference for the parties. Evidently, after the second notice was published and before the conference Collins Brothers announced its intention to additionally use the geothermal water for irrigation purposes. At the hearing the protesters alleged that pressure drops had occurred in their existing artesian wells since the completion of Collins Brothers' wells, and they feared that the artesian aquifer would be depleted if the water was used to heat 110 homes and to irrigate crops. At this point the parties agreed to allow the department to reach a decision based upon the conference *and upon the records of the department*.¹

Subsequently, the department issued a *proposed* memorandum decision and order giving the parties fifteen days to respond thereto. The proposed decision listed thirteen items which were considered by the department in reaching the decision. These included a scientific report on the geothermal aquifer prepared by the United States Geological Survey, the logs of six wells which pump water from the aquifer and the water permits for use of the aquifer waters. All of these items *predated* the conference between the parties. The decision carried proposed findings of fact which concluded that the ground water

1. The handwritten stipulation of the parties is contained in the agency's record on appeal to the district court at page 39. It reads:

"We the undersigned agree to allow the Department of Water Resources to reach a decision in the matter of protests against the above referred application based upon the

conference held in Twin Falls March 31, 1982, and upon information in the record of the department."

The stipulation or agreement is signed by six parties, including a representative for Collins Brothers.

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MAR 08 1990

rights of the protesters were in fact artesian and senior in priority. The department's proposed conclusions of law provided that (1) reduction in the artesian pressure was not considered an injury; (2) it was not, however, in the local public interest to deplete an artesian hot water aquifer for the purposes that could be served by using cold water; (3) Collins Brothers could use ground water to supplement water from the surface sources for irrigation; and (4) it is proper that the effect of the use of water for irrigation purposes on other rights be considered.

The department then approved the application subject to nine conditions. The conditions at issue are, in relevant part, that (1) a method for measuring the water be installed, (2) geothermal water could not be used for irrigation purposes "based on it not being in the public interest," (3) "the use of the water for irrigation under this permit is supplemental to all existing water rights with the same purpose and place of use as the other rights with the same purpose and place of use as the other rights must be developed and used to the fullest extent possible for irrigation before this permit is used for irrigation purposes," (4) the department retained jurisdiction to assure that the water was to be put to beneficial use, (5) the amount of water was not to exceed that necessary for domestic, commercial and geothermal heating of 99 homes.

The proposed decision and order gave notice to all who took part in the hearing that, pursuant to I.C. §§ 42-1701A and 67-5211, they had the opportunity to file exceptions to the proposed order and to present briefs and request a hearing and present oral arguments in response to the proposed order. After the fifteen-day period for response had passed, without any objections to the proposed order or any requests for a hearing having been received, the department issued an order which adopted its proposed decision as final.

Collins Brothers subsequently moved to modify the final decision in part, and the department denied it. The motion to modify was based on Collins Brothers' argument that it had already expended approxi-

mately \$95,000 developing the irrigation system, and the department was aware of this expenditure. The department's denial was based on the need to protect the artesian hot water source and the availability of cold water to serve Collins Brothers' irrigation needs.

Collins Brothers appealed to the district court alleging that the conditions imposed on the permit (specifically the condition that the water not be used for irrigation) were (1) in violation of the applicant's constitutional rights, (2) in excess of the department's statutory authority, and (3) affected by error of law. Collins Brothers also moved for sanctions against the department and for dismissal on appeal, but these motions were denied by the district court.

The district court issued a memorandum decision and order which found that the Administrative Procedures Act (APA), I.C. §§ 67-5201 *et seq.*, was applicable and that the review of an administrative decision is limited to a determination of (1) legal questions and (2) whether there was substantial competent evidence to support the department's decision. Based on its APA review the district court framed the issue as whether it was error for the department to base its findings and conclusions upon evidence outside the record. The district court then found that the department had based its decision on evidence outside the record and that the department's memorandum decision was internally inconsistent. The district court found that the department's actions constituted a procedural due process violation and struck all findings of fact and conclusions of law which were premised upon the evidence which it believed was outside the record. The district court summarized its disposition as follows:

"Given that the department considered material which was outside of the record in this matter, and that the substantial rights of the petitioner have been prejudiced, this court concludes that the final decision rendered by the department was made in excess of its statutory authority, made upon unlawful procedure, and constituted an unwarranted exercise of the department's discretion. I.C. § 67-5211(2)(b).

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Cite as 114 Idaho 600

"It is hereby ordered that the final decision of the Department of Water Resources be reversed, and that the petitioners be granted their permit without conditions thereon."

The district court's reversal of the department's order has raised two primary issues on appeal—one procedural and one substantive. First, we must determine whether the Department of Water Resources' procedural steps in the permit process were adequate to sufficiently protect Collins Brothers' constitutional due process rights, and second, whether the district court erred as a matter of law when it ordered the permit issued without the contested public interest conditions which prohibited Collins Brothers from appropriating geothermal ground water for irrigation purposes. Collins Brothers has additionally asked for attorney fees on appeal. Because we find that the district court erred in both its procedural and substantive analysis, we reverse and reinstate the decision and order of the department.

I

THE ALLEGED
PROCEDURAL ERRORS

The district court found a procedural due process violation based on its belief that

2. I.C. § 42-1701A states in part that:

"(2) The director, in his discretion, may direct that a hearing be conducted by a hearing officer appointed by the director. In such event, the hearing officer shall have the duty to make a complete record of the evidence presented and duly received at the hearing and to prepare a proposal for decision in accordance with section 67-5211, Idaho Code, and rules of practice and procedure promulgated by the director.

"(3) Unless the right to a hearing before the director or the water resource board is otherwise provided by statute, any applicant for any permit, license, certificate, approval registration, or similar form of permission required by law to be issued by the director, who is aggrieved by a denial or conditional approval ordered by the director, and who has not previously been afforded an opportunity for a hearing on the matter shall be entitled to a hearing before the director to contest the denial or conditional approval upon filing with the director, within fifteen (15) days after receipt of the denial or conditional approval, a written petition stating the grounds for contesting the action by the

the department considered matters outside the record, thus depriving Collins Brothers of notice and an opportunity to be heard. The record reflects, and the district court recognized, that the parties had agreed at the conference to allow the department to reach a decision based upon the matters submitted or agreed upon at the conference and upon the records of the department. The district court's findings identified three matters which, according to that court, arose after the conference and were therefore outside the record and unfairly considered by the department. These three items are (1) that the commission's conclusions and findings failed to identify relevant dates that were attributed to water licenses and permits; (2) that the department relied on a field examination which took place after the conference; and (3) that the department's finding of fact number 5, which dealt with the Banbury Hot Springs Ground Water Management Area, was clearly not part of the department's record and should not have been considered.

The district court correctly concluded that I.C. §§ 42-1701A² and 67-5210³ were controlling with regard to the procedure and evidentiary rules governing the permit process. These statutes are designed to

director and requesting a hearing. The hearing shall be held and conducted in accordance with the provisions of subsections (1) and (2) of this section. Judicial review of any final order of the director issued following the hearing may be had pursuant to subsection (4) of this section. "(4) Any person who is aggrieved by a final decision or order of the director is entitled to judicial review. The judicial review shall be had in accordance with the provisions and standards set forth in sections 67-5215 and 67-5216, Idaho Code."

3. "67-5210. Rules of evidence—Official notice.—In contested cases:

"(1) irrelevant, immaterial, or unduly repetitious evidence shall be excluded. The rules of evidence as applied in non-jury civil cases in the district courts of this state shall be followed. When necessary to ascertain facts not reasonably susceptible of proof under those rules, evidence not admissible thereunder may be admitted, except where precluded by statute, if it is of a type commonly relied upon by prudent men in the conduct of their affairs."

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ensure procedural due process protection to parties involved in administrative actions in Idaho.

Preliminarily we note that (1) Collins Brothers agreed to the procedural steps that allowed the department to reach a decision "based upon the conference and upon the record of the department," and that there was nothing within this stipulation preventing the department from considering relevant subsequent matters; and (2) the department provided (on two occasions) notice of the statutorily required procedural steps in the permit process. Nevertheless, at the oral argument, counsel for Collins Brothers argued that the department had denied Collins Brothers the opportunity to respond.

[1] First, Collins Brothers' argument and the district court's decision do not consider the procedural steps set forth in I.C. § 42-1701A which were properly followed by the department throughout the permit process. The department's August 4, 1983, decision was only a "proposed decision," and allowed Collins Brothers fifteen days following receipt of the proposed order to make exceptions thereto and to request a hearing to point out any erroneous findings or procedures. See I.C. § 42-1701A(3). Collins Brothers was given clear notice of the hearing procedures that would be followed. Attached to the original notice of hearing and/or conference was a sheet entitled "conference and hearing information," which highlighted the procedural steps that would be taken in the hearing and/or conference. It notified the applicant that the hearing officer's decision would only be a proposed decision, and that the applicant would have fifteen days to

give effect to the rules of privilege recognized by law. Objections to evidentiary offers may be made and shall be noted in the record. Subject to these requirements, when a hearing will be expedited and the interests of the parties will not be prejudiced substantially, any part of the evidence may be received in written form; "(2) documentary evidence may be received in the form of copies of excerpts, if the original is not readily available. Upon request, parties shall be given an opportunity to compare the copy with the original; "(3) a party may conduct cross-examinations required for a full and true disclosure of the facts;

file exceptions thereto and request a hearing before the director before the decision on the application would be finally decided. The "conference and hearing information" sheet reads in part:

"If the hearing is conducted by a hearing officer appointed by the director, rather than the director himself, a proposed decision will be submitted to the parties and the parties may be afforded an opportunity to file exceptions to the proposed decision and present briefs and oral arguments to the director prior to the issuance of a final decision by the director. This procedure is required by IDAHO CODE Section 42-1701A."

Despite the clear and unambiguous notice provided both by the statute and by the notice of hearing, Collins Brothers failed to take exception to the proposed decision and order or request a hearing within the fifteen-day period. Fifteen days is more than sufficient time for a party to request "a hearing before the director to contest the ... conditional approval ..." which the hearing officer had issued.

While Collins Brothers did not take advantage of the statutory procedure to file exceptions and request a hearing on the proposed decision of the hearing officer, when the fifteen-day period expired and the proposed order became final Collins Brothers did file a motion to modify the department's order on much the same grounds as those raised before the district court. Even though the motion was not timely filed, the department nevertheless responded and addressed the substance of the grounds set out in the motion to modify, rather than merely dismissing it for failure

"(4) notice may be taken of judicially cognizable facts. In addition, notice may be taken of generally recognized technical or scientific facts within the agency's specialized knowledge. Parties shall be notified either before or during the hearing, or by reference in preliminary reports or otherwise, of the material noticed, including any staff memoranda or data, and they shall be afforded an opportunity to contest the material so noticed. The agency's experience, technical competence, and specialized knowledge may be utilized in the evaluation of the evidence."

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to comply with the procedural requirements. Therefore, there is no merit to Collins Brothers' claim that it was denied an opportunity to respond to those items which were purportedly outside the record before the department. Given the fact that Collins Brothers was provided with notice of its statutory opportunity to make exceptions and have a hearing before the proposed order became final, and given the fact that after the order did become final Collins Brothers was given a hearing on the merits pursuant to their motion to modify the order, we conclude that there was no lack of procedural due process in this case.

We now examine the district court's substantive holdings.

(1) The primary basis for the district court's decision reversing the director's order was that the department had considered evidence outside the record. This was based on the district court's statement that "items (8) through (13) which include a water license and various water permits carry no identifiable significant dates." However, contrary to the district court's assertion, the alleged missing dates in the department's proposed memorandum decision and order were listed on page 3 of the proposed memorandum decision and order in finding of fact number 1. Finding number 1 contains all the relevant dates the district court stated were missing. All essential dates were present and all were finalized prior to the conference. The district court erred in concluding that the dates of the water licenses and permits were not in the record.

[2] (2) With regard to the field examination conducted by the department, the department is entitled by statute, *see* I.C. § 42-1805(3), to conduct field examinations on water permits; therefore, the fact that the department went out, after the conference, and examined the premises to be irri-

gated does not constitute legal error. The agreement that the director could decide the case based in part "upon the records of the department" contained no limitation on the director's statutory authority to examine the premises, nor was there any time limitation regarding when "the records of the department" would be considered. A view of the proposed project is essential to allow the department (in this case also the trier of fact) to evaluate the evidence. The Department of Water Resources is primarily an administrative agency and secondarily a quasi-judicial body. "The agency's experience, technical competence, and specialized knowledge may be utilized in the evaluation of the evidence." I.C. § 67-5210(4). The department did not err by conducting a post conference examination of the premises in this case.

[3] (3) Finally, the fact that the proposed decision and order mentioned the post hearing creation of the Banbury Ground Water Unit did not taint the opinion. Creation of the Banbury Unit is a cognizable fact which the department was entitled to take notice of under I.C. § 67-5210(4).⁴ The proposed decision and order provided Collins Brothers with notice that the existence of the Banbury Unit was included in the department's deliberations, and Collins Brothers made no objection or request for an additional hearing, pursuant to I.C. § 42-1701A(3), to meet the new information concerning the Banbury Unit.

II

THE CONCLUSIONS OF LAW AND CONDITIONS OF USE

In reviewing the department's proposed memorandum decision and order, we have not discovered the numerous inconsistencies alluded to by the district court in its memorandum decision. The department made five conclusions of law in the proposed memorandum decision. All five con-

hearing, or by reference in preliminary reports or otherwise, of the material noticed, including any staff memoranda or data, and they shall be afforded an opportunity to contest the material so noticed. The agency's experience, technical competence, and specialized knowledge may be utilized in the evaluation of the evidence."

4. "67-5210. Rules of evidence—Official notice.—In contested cases ...

"(4) notice may be taken of judicially cognizable facts. In addition, notice may be taken of generally recognized technical or scientific facts within the agency's specialized knowledge. Parties shall be notified either before or during the

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clusions are supported by appropriate statutory and case law. The conclusions of law set the foundation for the nine conditions imposed on the Collins Brothers permit.

[4] The nine conditions which were attached to the approved Collins Brothers permit are as follows:

"(1) The permit holder shall either install a measuring device or provide a certified measurement by a professional engineer or install an access port or other device as specified by the Department.

"(2) The use of water solely for irrigation from this geothermal aquifer is not in the public interest and, therefore, only the water used for another purpose, that requires the heat from the water, can be disposed of by using it for irrigation.

"(3) The use of water for irrigation under this permit is supplemental to all existing water rights with the same purpose and place of use and the other rights must be developed and used to the fullest extent possible for irrigation before this permit is used for irrigation purposes.

"(4) The Director of the Department of Water Resources retains jurisdiction over this permit to assure that the water diverted is beneficially used and for the approval of the casing and sealing of the wells.

"(5) The amount of water diverted shall not exceed that necessary for domestic, commercial, and geothermal heating for 99 homes.

"(6) The rate of diversion of water for irrigation under this permit and all other water rights on the same land shall not

exceed 0.02 cubic feet per second for each acre of land.

"(7) Water used under this permit if discharged into a natural channel shall meet Idaho Water Quality Standards.

"(8) Permit holder shall commence the excavation or construction of diverting works within one year of the date this permit is issued and shall proceed diligently until the project is complete.

"(9) Proof of construction of works and application of water to beneficial use shall be submitted on or before the date indicated on the Final Decision and Order."

Each of these conditions are within the authority granted the department by the legislature. When the legislature enacted I.C. § 42-203A(5) ⁵ it clearly vested, in the director of the Department of Water Resources, considerable authority and discretion to determine and protect the "local public interest" when issuing or rejecting water permits. I.C. § 42-203A(5) specifically gives the director authority to "grant a permit upon conditions." As this Court previously stated in *Shokal v. Dunn*, 109 Idaho 330, 339, 707 P.2d 441, 450 (1985), "The determination of what elements of the public interest are impacted, and what the public interest requires, is committed to [the department's] sound discretion."

[5] In this case the department was required to resolve conflicting facts and local interests and apply its statutory authority in deciding this fact-specific case. The department did this and found that the applicants had not met their burden of proof and that it was "not in the public interest" to use the water from this geothermal aquifer to irrigate crops. As this Court stated

5. I.C. § 42-203A provides in part:

"(5) Such hearing shall be conducted in accordance with the provisions of section 42-1701A(1) and (2), Idaho Code. *The director of the department of water resources shall find and determine from the evidence presented to what use or uses the water sought to be appropriated can be and are intended to be applied.* In all applications whether protested or not protested, *where the proposed use is such* (a) that it will reduce the quantity of water under existing water rights, or (b) that the water supply itself is insufficient for the purpose for which it is sought to be appropriated, or (c) where it appears to the satisfaction of the

department that such application is not made in good faith, is made for delay or speculative purposes, or (d) that the applicant has not sufficient financial resources with which to complete the work involved therein, or (e) *that it will conflict with the local public interest, where the local public interest is defined as the affairs of the people in the area directly affected by the proposed use; the director of the department of water resources may reject such application and refuse issuance of a permit therefor, or may partially approve and grant a permit for a smaller quantity of water than applied for, or may grant a permit upon conditions....*" (Emphasis added.)

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in *Shokal v. Dunn*, *supra* at 339, 707 P.2d at 450 (1985):

"[I]t is not [the] protestant's burden of proof to establish that the project is not in the local public interest. The burden of proof is upon the applicant to show that the project is either in the local public interest or that there are factors that outweigh the local public interest in favor of the project."

"The determination of what elements of the public interest are impacted, and what the public interest requires, is committed to Water Resources' sound discretion." See 1 R. Clark, ed., *Waters and Water Rights* § 29.3, 170 (1967).

In this case the department's determination that it was not in the public interest to use the water from this geothermal aquifer to irrigate crops is not "clearly erroneous in view of the reliable, probative and substantial evidence on the whole record." I.C. § 67-5215(g)(5). Therefore the district court erred in reversing the director's decision.

The district court's order is reversed and the department's decision and order are reinstated. Costs to appellants.

SHEPARD, C.J., and BISTLINE,
HUNTLEY and JOHNSON, JJ., concur.



759 P.2d 898

Linda SWANSON, SSA 329-48-1681,
Claimant-Appellant.

v.

STATE of Idaho, DHW Child Support,
Employer-Respondent,

and

State of Idaho, Department of
Employment, Respondent.

No. 16567.

Supreme Court of Idaho.

Aug. 9, 1988.

Appeal was taken from order of the
Industrial Commission which denied unem-

ployment compensation benefits. The Supreme Court, Bistline, J., held that: (1) claimant's intent was relevant for purpose of determining whether she voluntarily quit when she submitted her resignation which she withdrew only two hours later; (2) employer did not detrimentally rely upon claimant's resignation; (3) claimant was eligible for unemployment benefits; and (4) evidence of claimant's misconduct as reason for discharge was not supported by record.

Reversed and remanded.

Bakes, J., concurred in part and dissented in part and filed opinion.

Johnson, J., concurred specially and filed opinion.

Shepard, C.J., dissented.

1. Social Security and Public Welfare §571

In proceeding on claim for unemployment compensation, claimant's intent was relevant for purpose of determining whether she voluntarily quit, where claimant submitted resignation to employer which she withdrew only two hours later. I.C. § 72-1366(e).

2. Social Security and Public Welfare §401

Absent prejudice to employer as might take place where resignation, later attempted to be withdrawn, sets in motion steps for hiring a replacement, a denial of unemployment compensation is improper.

3. Social Security and Public Welfare §401

Claimant, who submitted her resignation to employer as a result of dispute revolving around who was going to pick up the office mail, after eight years of employment, and who attempted to withdraw the resignation only two hours later, was not ineligible for unemployment compensation on ground that she voluntarily left her employment without good cause. I.C. §§ 72-1301 et seq., 72-1366(e).

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MAR 08 1990

WEAVER & MELANSON

Attorneys at Law

130 N. BROADWAY

BUHL, IDAHO 83316

**ROBERT C. WEAVER
JOHN M. MELANSON**

PHONE (208) 543-8268

EIN# 81-0330674

April 21, 1989

RECEIVED
APR 24 1989

**Mr. Keith Higginson, Director
Department of Water Resources
1301 North Orchard Street
Statehouse Mail
Boise, Idaho 83720**

Department of Water Resources

**Re: Collins Brothers Corp.
Permit No. 47-7680**

Dear Mr. Higginson:

This letter is a follow-up on our conversation concerning the Collins Brothers' permit and the litigation that has surrounded it.

As I told you the day I visited with you and Norm Young in your office concerning the water right, I feel it is inequitable for Collins Brothers to be denied the right to use some of this water for irrigation purposes. Initially, when Collins Brothers made the application they went into the Department's office, the district office in Twin Falls, and requested assistance in drafting the application for the permit. The application was made up in the District Office in Twin Falls for the purposes shown in the application. The original problem was that the 4.9 second feet was shown for geothermal as opposed to heating. The Department later decided when it was changed to "heating" it would be necessary to readvertise the permit and it was then protested for the first time.

I don't want to get into whether or not the Department made errors in their previous decision because the Supreme Court has not found sufficient error to uphold the District Court's decision. I do feel, though, that Collins Brothers should be able to utilize some of these waters through their system. It is uncontroverted that Collins Brothers Corp. spent approximately \$96,000.00 in putting in the irrigation system and domestic system to the homesites. In order to undo that they would have to put in a complete new irrigation system or a complete new domestic system. To do that would be approximately twice that expense today. This work was done and completed in approximately 198

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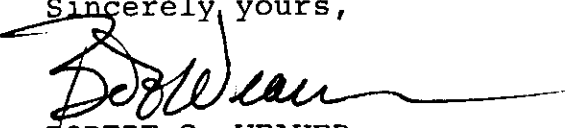
MAR 08 1990

You had indicated that perhaps the Department would allow the issuance of an irrigation right to this water in the event that it did not exceed the amount used for the heating of 99 homesites in the subdivision. In that regard, I visited with Alan Merritt of the Twin Falls District office and had him go through the formulation tabulations with me on what the amount of water flow would be to 99 homesites. I am enclosing a copy of his workup on the amount of water he felt would be necessary for the homesites. It totals 2.501 cfs of water.

2.501 cfs of water would be more than sufficient to irrigate the Collins Brothers properties. It is going to take less than 2 second feet for the irrigation. There are approximately 75 to 85 acres being irrigated under the existing system and at an inch to the acre would be somewhat less than 2 second feet.

If Collins Brothers Corp. were allowed the irrigation use as discussed as well as the domestic use and the use for heating, they would not use any water for commercial purposes because they are concerned that no more water be taken from the aquifer than is absolutely necessary. That would bring their total approved permit down to approximately 3 second feet of water, rather than the 14.60 feet of water filed on. A substantial portion of that would be approved through the approved permit even if the irrigation water was not used. The water is approximately 92 degree water. While it is warm it is certainly not geothermal water. I would appreciate your considering our request for this use. I feel it is justified under the circumstances. Collins Brothers Corp. has approximately a \$1½ million invested in their planned unit development. They would like to complete the development but have hesitated to do anything further because of this controversy over the water right. Anything the department could do in regards to helping alleviate that situation would be greatly appreciated. Thank you very much for your attention to this matter.

Sincerely yours,


ROBERT C. WEAVER

RCW:sh
cc: Mr. Norm Young

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$$W = \frac{Q}{(500) (\Delta T_s)}$$

2200 sq. ft.
31 BTU/ft²

92°F

$$\Delta T_s = (.6) (5 - t)$$

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$$Q = 31 \times 2200 = 68,200 \text{ BTUs/sq.ft}$$

$$W = \frac{68,200}{(500) (12)} \approx 11.36 \text{ gpm/house}$$

$$\approx 0.025 \text{ cfs/house}$$

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99 houses

$$\approx 2.501 \text{ cfs}$$

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Attorneys at Law

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Sincerely yours,



ROBERT C. WEAVER

RCW:sh

cc: Mr. Norm Young

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2200 sq. ft.
31 BTU/ft²

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$$\Delta T_s = (.6) (S - t)$$

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$$\approx 0.025 \text{ cfs/house}$$

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99 houses

MAR 08 1990

$$\approx 2.501 \text{ cfs}$$



State of Idaho

DEPARTMENT OF WATER RESOURCES

(208) 327-7900

1301 North Orchard Street, Statehouse Mail, Boise, Idaho 83720 - [REDACTED]

CECIL D. ANDRUS

GOVERNOR

R. KEITH HIGGINSON

DIRECTOR

April 6, 1989

RE: PERMIT NO. 47-7680

Dear PERMIT HOLDER:

Due to the Swan Falls litigation, development proposed by the enclosed permit may have been delayed. The Department is presently reviewing the permit and may authorize completion of development proposed under the permit.

The purpose of this letter is to determine: (1) the extent of development under the permit, and (2) your continued interest in developing or completing development under the permit.

Enclosed are two forms which will help the Department expedite the reprocessing of the permit.

Please complete and return the enclosed questionnaire if you wish to continue with your plans of development or have completed all or a portion of your development before July 1, 1985.

Please complete the enclosed relinquishment form and return it to the Department if you have abandoned or have no interest in continuing with your plans for development of the project.

If the entire project was not completed prior to July 1, 1985, and you still wish to proceed with your plans of development, then you must submit a \$20.00 re-advertisement fee to the Department as required by Water Appropriation Rule 4,2,3. and Section 42-221F, Idaho Code.

Failure to return the questionnaire and pay any required re-advertisement fee within thirty (30) days of the date of this letter is cause for the Department to cancel the permit.

If the incomplete portion of your project is for irrigation of more than 200 acres, the Department will issue a notice requesting additional information as required by Water Appropriation Rule 4,2,3. and Section 42-221F, Idaho Code.

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MAR 08 1990

Page 2

If you have questions concerning the content of this letter or about completing the forms, please contact Tim Luke at the address below or by calling directly at 327-7864. The enclosed forms and all other relative information must be returned within thirty (30) days to:

Idaho Department of Water Resources
Statehouse Mail
Boise, Idaho 83720
Attn: Tim Luke - Water Allocation/Trust Water

Please note that a copy of your permit is enclosed. The permit number is shown on the enclosed questionnaire.

Sincerely,

TIM LUKE
Sr. Water Resource Agent

Enclosures

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MAR 08 1990

DATE 10-20-88

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OCT 24 1988

Department of Water Resources

FROM Leah Street

TO Rita Fleck

SUBJECT Collins Brothers

During the past two visits to the Collins Brothers well to measure the pressure, 9/7/88 & 10/5/88, the well was not being used for irrigation. If you need additional information or confirmation, please let me know.

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SIGNATURE

October 25, 1988

Collins Brothers Corp.
Box 42427 Huntridge Station
Las Vegas, NV 89104

Gentlemen:

Re: Permit No. 47-7680

Enclosed is a copy of the approved request for extension of time. The time within which to submit proof of beneficial use is extended to August 1, 1989. The has been extended due to the involvement of the permit in litigation.

If you have any questions concerning this matter, please feel free to contact this office.

Sincerely,

RITA I. FLECK
Secretary/Records Manager

Enclosure

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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

August 24, 1988

Collins Bros. Corp
Box 42427 Huntridge Station
Las Vegas, Nevada 89104

CERTIFIED MAIL
138318

RE: PERMIT 47-7680 (COLLINS BROS. CORP.) - ORDER

Gentlemen:

In compliance with the decision of the Idaho Supreme Court filed July 21, 1988 in Case No. 16844 entitled Collins Bros Corp. v. A. Kenneth Dunn, you are hereby ORDERED that the use of water from the well(s) constructed under terms of the above referenced water right permit shall comply with the conditions of approval in the department's Memorandum Decision and Order issued on August 31, 1983.

While you are required to comply with all of the conditions of permit approval, the specific condition of approval with which you are directed to immediately comply is Condition 2) which states:

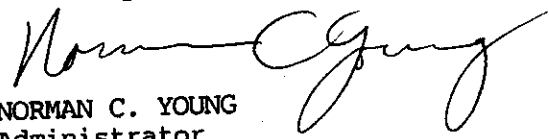
"The use of water solely for irrigation from this geothermal aquifer is not in the public interest and, therefore, only the water used for another purpose, that requires the heat from the water, can be disposed of by using it for irrigation".

Recent field investigation by the department's Twin Falls office relative to the use of water from the well(s) showed that water was being directly diverted from the well(s) for irrigation purposes. You are hereby directed to immediately terminate this practice. The department will conduct follow up field investigation to determine compliance with this order.

By separate notice, the department will advise you when proof of beneficial use of the water is due.

Please feel free to contact the department if you have questions.

Sincerely,


NORMAN C. YOUNG
Administrator

c: S. Region
Robert C. Weaver

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NAME AND
ADDRESS
OF SENDER

DEPARTMENT OF WATER RESOURCES

STATEHOUSE
BOISE, IDAHO 83720Indicate type of mail
☐ Registered
☐ Insured
☐ COD
☒ Certified ☐ Express MailCheck appropriate block for
Registered Mail:
☐ With Postal Insurance
☐ Without Postal InsuranceAffix stamp here if issued as
certificate of mailing or for
additional copies of this bill.

POSTMARK AND DATE OF RECEIPT

Line	Number of Article	Name of Addressee, Street, and Post-Office Address	Postage	Fee	Handling Charge	Act. Value (If Regis.)	Insured Value	Due Sender If C.O.D.	R. R. Fee	S. D. Fee	S. H. Fee	Rest. Del. Fee Remarks
1	138318	Collins Bros. Corp Box 4247 Huntridge Station Las Vegas, NV 89104	25	ST				90				Permit No. 47-7680
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Total Number of Pieces Listed by Sender		Total Number of Pieces Received at Post Office	POSTMASTER, PER (Name of receiving employee)		The full declaration of value is required on all domestic and international registered mail. The maximum indemnity payable for nonnegotiable documents under Express Mail document reconstruction insurance is \$50,000 per piece subject to a limit of \$500,000 per occurrence. The maximum indemnity payable on Express Mail merchandise insurance is \$500. The maximum indemnity payable is \$25,000 for Registered Mail, \$500 for COD and \$500 for Insured Mail. Special handling charges apply only to Third- and Fourth-Class parcels. Special delivery service also includes special handling service.							
1		1	RET									

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AUG 29 1988

Department of Water Resources

NOV 22 1988

SENDER: Complete items 1, 2, 3 and 4.

Put your address in the "RETURN TO" space on the reverse side. Failure to do this will prevent this card from being returned to you. The return receipt fee will provide you the name of the person delivered to and the date of delivery. For additional fees the following services are available. Consult postmaster for fees and check box(es) for service(s) requested.

1. ☒ Show to whom, date and address of delivery.
2. ☐ Restricted Delivery.

3. Article Addressed to:

Collins Bros. Corp
Box 42427 Huntridge Station
Las Vegas, NV 89104

4. Type of Service:

Article Number

- ☐ Registered
☒ Certified
☐ Express Mail

- ☐ Insured
☒ COD

138318

Always obtain signature of addressee, agent and
DATE DELIVERED.

5. Signature - Addressee

X

6. Signature - Agent

X

7. Date of Delivery

AUG 30 1988

8. Addressee's Address (ONLY if requested and fee paid)

Permit No. 47-7680

Box 42427

L.V. 89116

UNITED STATES POSTAL SERVICE
OFFICIAL BUSINESS

SENDER INSTRUCTIONS

Print your name, address, and ZIP Code in the space below.

- Complete Items 1, 2, 3, and 4 on the reverse.
- Attach to front of article if space permits, otherwise affix to back of article.
- Endorse article "Return Receipt Requested" adjacent to number.

RETURN
TO

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Department of Water Resources
DEPARTMENT OF WATER RESOURCES

(Name of addressee)

BOISE, IDAHO 83720

(No. and Street, Apt., Suite, P.O. Box or R.D. No.)

(City, State, and ZIP Code)

MAR 08 1990



SEP 02 1988



PENALTY FOR PRIVATE
USE \$300



INTER-DEPARTMENT MEMO — 1

FROM Leah

DATE 8-3-88

TO Loren

SUBJECT Collins Brothers — File 47-7680

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When I stopped today at Collins Brothers to take the monthly pressure reading, I talked with John Gomez, the foreman. During our conversation, I mentioned the Supreme Court decision about not being able to use the hot water for irrigation. He had not been told anything about it. He thought that Al Collins probably didn't know about it either. Anyway, the water was being used for irrigating when I was there. I'm sure we'll be hearing something about it soon.



SIGNATURE

In the Supreme Court of the State of Idaho

IN THE MATTER OF: APPLICATION FOR
PERMIT NO. 47-7680 IN THE NAME OF
ROYAL CREST, INC., COLLINS BROS.
CORP., ASSIGNEE.

COLLINS BROS. CORP., an Idaho
corporation,

Appellant-Respondent on Appeal

v.

A. KEITH DUNN, Director, Idaho
Department of Water Resources,

Respondent-Appellant on Appeal.

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Department of Water Resources

NO. 16844

REMITTITUR

TO: FIFTH JUDICIAL DISTRICT COURT, COUNTY OF TWIN FALLS.

The Court having announced its Opinion in this cause
July 21, 1988, which has now become final; therefore,

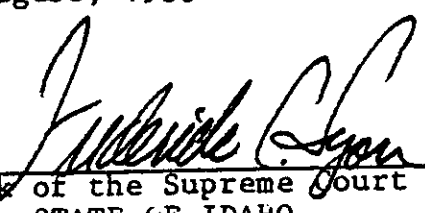
IT IS HEREBY ORDERED that the District Court shall forth-
with comply with the directive of the Opinion, if any action is
required; and

IT IS FURTHER ORDERED that costs in the amount of \$165.00
are allowed to Appellant.

DATED this 12th day of August, 1988.

I, Frederick C. Lyon, Clerk of the Supreme Court
of the State of Idaho, do hereby certify that the
above is a true and correct copy of the Remittitur
entered in the above entitled cause and now on
record in my office.

WITNESS my hand and the Seal of this Court 8-12-88


Clerk of the Supreme Court
STATE OF IDAHO

FREDRICK C. LYON

Clerk

By:



Deputy

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Department of Water Resources
1988 Opinion No. 68

IN THE SUPREME COURT OF THE STATE OF IDAHO
No. 16844

IN THE MATTER OF: APPLICATION FOR)
PERMIT NO. 47-7680 IN THE NAME OF)
ROYAL CREST, INC., COLLINS BROS.)
CORP., Assignee.)

COLLINS BROS. CORP., an Idaho)
corporation,)

Appellant-respondent on appeal,)

v.)

A. KENNETH DUNN, Director, Idaho)
Department of Water Resources,)

Respondent-appellant on appeal.)

Twin Falls term, May 1988

Filed: July 21, 1988

Frederick C. Lyon, Clerk

Appeal from the District Court of the Fifth Judicial District of
the State of Idaho, Twin Falls County. Hon. Daniel C. Hurlbutt,
District Judge.

Appeal from a district court order affirming in part and revers-
ing in part the granting of a water permit with conditions. The
district court order is reversed.

Hon. Jim Jones, Attorney General; Phillip J. Rassier,
Deputy Attorney General, Boise, Idaho, for appellant.
Phillip J. Rassier argued.

Weaver & Melanson, Buhl, Idaho, for respondent.
Robert C. Weaver argued.

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BAKES, J.

The appellant, A. Kenneth Dunn, Director of the Idaho Department
of Water Resources (the department), appeals a district court order
regarding the department's granting of a water permit with nine
conditions to the respondent, Collins Brothers Corp. The district
court (acting as an appellate court) found that the department's
action was defective on procedural due process grounds. Without

remanding the case to the department for correction of the procedural errors, the district court affirmed the granting of the permit, but eliminated the conditions.

The record reflects that Collins Brothers is the successor to Royal Crest, Inc., which filed the original application with the department for a permit to appropriate water from a geothermal ground water source. Notice of the original application was published indicating that the water would be used for power purposes. No protests were received. Later the application was amended indicating that the water would be used to heat 110 homes. A new notice was published and this time protests were received from several parties.

The department scheduled a hearing and/or conference for the parties. Evidently, after the second notice was published and before the conference Collins Brothers announced its intention to additionally use the geothermal water for irrigation purposes. At the hearing the protesters alleged that pressure drops had occurred in their existing artesian wells since the completion of Collins Brothers' wells, and they feared that the artesian aquifer would be depleted if the water was used to heat 110 homes and to irrigate crops. At this point the parties agreed to allow the department to reach a decision based upon the conference and upon the records of the department.¹

Subsequently, the department issued a proposed memorandum decision and order giving the parties fifteen days to respond thereto.

¹The handwritten stipulation of the parties is contained in the agency's record on appeal to the district court at page 39. It reads:

"We the undersigned agree to allow the Department of Water Resources to reach a decision in the matter of protests against the above referred application based upon the conference held in Twin Falls March 29 1982, and upon information in the record of the department."

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NOV 29 1988

The stipulation or agreement is signed by six parties, including a representative for Collins Brothers.

The proposed decision listed thirteen items which were considered by the department in reaching the decision. These included a scientific report on the geothermal aquifer prepared by the United States Geological Survey, the logs of six wells which pump water from the aquifer and the water permits for use of the aquifer waters. All of these items predated the conference between the parties. The decision carried proposed findings of fact which concluded that the ground water rights of the protesters were in fact artesian and senior in priority. The department's proposed conclusions of law provided that (1) reduction in the artesian pressure was not considered an injury; (2) it was not, however, in the local public interest to deplete an artesian hot water aquifer for the purposes that could be served by using cold water; (3) Collins Brothers could use ground water to supplement water from the surface sources for irrigation; and (4) it is proper that the effect of the use of water for irrigation purposes on other rights be considered.

The department then approved the application subject to nine conditions. The conditions at issue are, in relevant part, that (1) a method for measuring the water be installed, (2) geothermal water could not be used for irrigation purposes "based on it not being in the public interest," (3) "the use of the water for irrigation under this permit is supplemental to all existing water rights with the same purpose and place of use as the other rights with the same purpose and place of use and the other rights must be developed and used to the fullest extent possible for irrigation before this permit is used for irrigation purposes," (4) the department retained jurisdiction to assure that the water was to be put to beneficial use, (5) the amount of water was not to exceed that necessary for domestic, commercial and geothermal heating of 99 homes.

The proposed decision and order gave notice to all who took part in the hearing that, pursuant to I.C. §§ 42-1701A and 67-5211, they had the opportunity to file exceptions to the proposed order and to present briefs and request a hearing and present oral arguments in response to the proposed order. After the fifteen-day period for response had passed, without any objections to the proposed order or

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any requests for a hearing having been received, the department issued an order which adopted its proposed decision as final.

Collins Brothers subsequently moved to modify the final decision in part, and the department denied it. The motion to modify was based on Collins Brothers' argument that it had already expended approximately \$95,000 developing the irrigation system, and the department was aware of this expenditure. The department's denial was based on the need to protect the artesian hot water source and the availability of cold water to serve Collins Brothers' irrigation needs.

Collins Brothers appealed to the district court alleging that the conditions imposed on the permit (specifically the condition that the water not be used for irrigation) were (1) in violation of the applicant's constitutional rights, (2) in excess of the department's statutory authority, and (3) affected by error of law. Collins Brothers also moved for sanctions against the department and for dismissal on appeal, but these motions were denied by the district court.

The district court issued a memorandum decision and order which found that the Administrative Procedures Act (APA), I.C. §§ 67-5201 et seq., was applicable and that the review of an administrative decision is limited to a determination of (1) legal questions and (2) whether there was substantial competent evidence to support the department's decision. Based on its APA review the district court framed the issue as whether it was error for the department to base its findings and conclusions upon evidence outside the record. The district court then found that the department had based its decision on evidence outside the record and that the department's memorandum decision was internally inconsistent. The district court found that the department's actions constituted a procedural due process violation and struck all findings of fact and conclusions of law which were premised upon the evidence which it believed was outside the record. The district court summarized its decision as follows:

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NOV 29 1988

"Given that the department considered material which was outside of the record in this matter, and that the substantial rights of the petitioner have been prejudiced, this court concludes that the final decision rendered by the department was made in excess of its statutory authority, made upon unlawful procedure, and constituted an unwarranted exercise of the department's discretion. I.C. § 67-5215(g)(2), (3) and (6).

"It is hereby ordered that the final decision of the Department of Water Resources be reversed, and that the petitioners be granted their permit without conditions thereon."

The district court's reversal of the department's order has raised two primary issues on appeal - one procedural and one substantive. First, we must determine whether the Department of Water Resources' procedural steps in the permit process were adequate to sufficiently protect Collins Brothers' constitutional due process rights, and second, whether the district court erred as a matter of law when it ordered the permit issued without the contested public interest conditions which prohibited Collins Brothers from appropriating geothermal ground water for irrigation purposes. Collins Brothers has additionally asked for attorney fees on appeal. Because we find that the district court erred in both its procedural and substantive analysis, we reverse and reinstate the decision and order of the department.

I

THE ALLEGED PROCEDURAL ERRORS

The district court found a procedural due process violation based on its belief that the department considered matters outside the record, thus depriving Collins Brothers of notice and an opportunity to be heard. The record reflects, and the district court recognized, that the parties had agreed at the conference to allow the department to reach a decision based upon the matters submitted or agreed upon at the conference and upon the records of the department. The district court's findings identified three matters which, according to that court, arose after the conference and were there-

NOV 29 1988

fore outside the record and unfairly considered by the department. These three items are (1) that the commission's conclusions and findings failed to identify relevant dates that were attributed to water licenses and permits; (2) that the department relied on a field examination which took place after the conference; and (3) that the department's finding of fact number 5, which dealt with the Banbury Hot Springs Ground Water Management Area, was clearly not part of the department's record and should not have been considered.

The district court correctly concluded that I.C. §§ 42-1701A²

²I.C. § 42-1701A states in part that:

"(2) The director, in his discretion, may direct that a hearing be conducted by a hearing officer appointed by the director. In such event, the hearing officer shall have the duty to make a complete record of the evidence presented and duly received at the hearing and to prepare a proposal for decision in accordance with section 67-5211, Idaho Code, and rules of practice and procedure promulgated by the director.

"(3) Unless the right to a hearing before the director or the water resource board is otherwise provided by statute, any applicant for any permit, license, certificate, approval registration, or similar form of permission required by law to be issued by the director, who is aggrieved by a denial or conditional approval ordered by the director, and who has not previously been afforded an opportunity for a hearing on the matter shall be entitled to a hearing before the director to contest the denial or conditional approval upon filing with the director, within fifteen (15) days after receipt of the denial or conditional approval, a written petition stating the grounds for contesting the action by the director and requesting a hearing. The hearing shall be held and conducted in accordance with the provisions of subsections (1) and (2) of this section. Judicial review of any final order of the director issued following the hearing may be had pursuant to subsection (4) of this section.

"(4) Any person who is aggrieved by a final decision of the director is entitled to judicial review. The judicial review shall be had in accordance with the provisions and standards set forth in sections 67-5215 and 67-5216, Idaho Code."

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NOV 29 1988

and 67-5210³ were controlling with regard to the procedure and evidentiary rules governing the permit process. These statutes are designed to ensure procedural due process protection to parties involved in administrative actions in Idaho.

Preliminarily we note that (1) Collins Brothers agreed to the procedural steps that allowed the department to reach a decision "based upon the conference and upon the record of the department," and that there was nothing within this stipulation preventing the department from considering relevant subsequent matters; and (2) the department provided (on two occasions) notice of the statutorily required procedural steps in the permit process. Nevertheless, at

3"67-5210. Rules of evidence--Official notice.--In contested cases:

"(1) irrelevant, immaterial, or unduly repetitious evidence shall be excluded. The rules of evidence as applied in non-jury civil cases in the district courts of this state shall be followed. When necessary to ascertain facts not reasonably susceptible of proof under those rules, evidence not admissible thereunder may be admitted, except where precluded by statute, if it is of a type commonly relied upon by prudent men in the conduct of their affairs. Agencies shall give effect to the rules of privilege recognized by law. Objections to evidentiary offers may be made and shall be noted in the record. Subject to these requirements, when a hearing will be expedited and the interests of the parties will not be prejudiced substantially, any part of the evidence may be received in written form;

"(2) documentary evidence may be received in the form of copies of excerpts, if the original is not readily available. Upon request, parties shall be given an opportunity to compare the copy with the original;

"(3) a party may conduct cross-examinations required for a full and true disclosure of the facts;

"(4) notice may be taken of judicially cognizable facts. In addition, notice may be taken of generally recognized technical or scientific facts within the agency's specialized knowledge. Parties shall be notified either before or during the hearing, or by reference in preliminary reports or otherwise, of the material noticed, including any staff memoranda or data, and they shall be afforded an opportunity to contest the material so noticed. The agency's experience, technical competence, and specialized knowledge may be utilized in the evaluation of the evidence."

NOV 29 1988

the oral argument, counsel for Collins Brothers argued that the department had denied Collins Brothers the opportunity to respond.

First, Collins Brothers' argument and the district court's decision do not consider the procedural steps set forth in I.C. § 42-1701A which were properly followed by the department throughout the permit process. The department's August 4, 1983, decision was only a "proposed decision," and allowed Collins Brothers fifteen days following receipt of the proposed order to make exceptions thereto and to request a hearing to point out any erroneous findings or procedures. See I.C. § 42-1701A(3). Collins Brothers was given clear notice of the hearing procedures that would be followed. Attached to the original notice of hearing and/or conference was a sheet entitled "conference and hearing information," which highlighted the procedural steps that would be taken in the hearing and/or conference. It notified the applicant that the hearing officer's decision would only be a proposed decision, and that the applicant would have fifteen days to file exceptions thereto and request a hearing before the director before the decision on the application would be finally decided. The "conference and hearing information" sheet reads in part:

"If the hearing is conducted by a hearing officer appointed by the director, rather than the director himself, a proposed decision will be submitted to the parties and the parties may be afforded an opportunity to file exceptions to the proposed decision and present briefs and oral arguments to the director prior to the issuance of a final decision by the director. This procedure is required by IDAHO CODE Section 42-1701A."

Despite the clear and unambiguous notice provided both by the statute and by the notice of hearing, Collins Brothers failed to take exception to the proposed decision and order or request a hearing within the fifteen-day period. Fifteen days is more than sufficient time for a party to request "a hearing before the director to contest the ... conditional approval ..." which the hearing officer had issued.

NOV 29 1988

While Collins Brothers did not take advantage of the statutory procedure to file exceptions and request a hearing on the proposed decision of the hearing officer, when the fifteen-day period expired and the proposed order became final Collins Brothers did file a motion to modify the department's order on much the same grounds as those raised before the district court. Even though the motion was not timely filed, the department nevertheless responded and addressed the substance of the grounds set out in the motion to modify, rather than merely dismissing it for failure to comply with the procedural requirements. Therefore, there is no merit to Collins Brothers' claim that it was denied an opportunity to respond to those items which were purportedly outside the record before the department. Given the fact that Collins Brothers was provided with notice of its statutory opportunity to make exceptions and have a hearing before the proposed order became final, and given the fact that after the order did become final Collins Brothers was given a hearing on the merits pursuant to their motion to modify the order, we conclude that there was no lack of procedural due process in this case.

We now examine the district court's substantive holdings.

(1) The primary basis for the district court's decision reversing the director's order was that the department had considered evidence outside the record. This was based on the district court's statement that "items (8) through (13) which include a water license and various water permits carry no identifiable significant dates." However, contrary to the district court's assertion, the alleged missing dates in the department's proposed memorandum decision and order were listed on page 3 of the proposed memorandum decision and order in finding of fact number 1. Finding number 1 contains all the relevant dates the district court stated were missing. All essential dates were present and all were finalized prior to the conference. The district court erred in concluding that the dates of the water licenses and permits were not in the record.

(2) With regard to the field examination conducted by the department, the department is entitled by statute, see I.C. § 42-

1805(3), to conduct field examinations on water permits; therefore, the fact that the department went out, after the conference, and examined the premises to be irrigated does not constitute legal error. The agreement that the director could decide the case based in part "upon the records of the department" contained no limitation on the director's statutory authority to examine the premises, nor was there any time limitation regarding when "the records of the department" would be considered. A view of the proposed project is essential to allow the department (in this case also the trier of fact) to evaluate the evidence. The Department of Water Resources is primarily an administrative agency and secondarily a quasi-judicial body. "The agency's experience, technical competence, and specialized knowledge may be utilized in the evaluation of the evidence." I.C. § 67-5210(4). The department did not err by conducting a post conference examination of the premises in this case.

(3) Finally, the fact that the proposed decision and order mentioned the post hearing creation of the Banbury Ground Water Unit did not taint the opinion. Creation of the Banbury Unit is a cognizable fact which the department was entitled to take notice of under I.C. § 67-5210(4).⁴ The proposed decision and order provided Collins Brothers with notice that the existence of the Banbury Unit was included in the department's deliberations, and Collins Brothers made no objection or request for an additional hearing, pursuant to

⁴"67-5210. Rules of evidence--Official notice.--In contested cases ...

....

"(4) notice may be taken of judicially cognizable facts. In addition, notice may be taken of generally recognized technical or scientific facts within the agency's specialized knowledge. Parties shall be notified either before or during the hearing, or by reference in preliminary reports or otherwise, of the material noticed, including any staff memoranda or data, and they shall be afforded an opportunity to contest the material so noticed. The agency's experience, technical competence, and specialized knowledge may be utilized in the evaluation of the evidence."

NOV 29 1988

I.C. § 42-1701A(3), to meet the new information concerning the Banbury Unit. .

II

THE CONCLUSIONS OF LAW AND CONDITIONS OF USE

In reviewing the department's proposed memorandum decision and order, we have not discovered the numerous inconsistencies alluded to by the district court in its memorandum decision. The department made five conclusions of law in the proposed memorandum decision. All five conclusions are supported by appropriate statutory and case law. The conclusions of law set the foundation for the nine conditions imposed on the Collins Brothers permit.

The nine conditions which were attached to the approved Collins Brothers permit are as follows:

"(1) The permit holder shall either install a measuring device or provide a certified measurement by a professional engineer or install an access port or other device as specified by the Department.

"(2) The use of water solely for irrigation from this geothermal aquifer is not in the public interest and, therefore, only the water used for another purpose, that requires the heat from the water, can be disposed of by using it for irrigation.

"(3) The use of water for irrigation under this permit is supplemental to all existing water rights with the same purpose and place of use and the other rights must be developed and used to the fullest extent possible for irrigation before this permit is used for irrigation purposes.

"(4) The Director of the Department of Water Resources retains jurisdiction over this permit to assure that the water diverted is beneficially used and for the approval of the casing and sealing of the wells.

"(5) The amount of water diverted shall not exceed that necessary for domestic, commercial, and geothermal heating for 99 homes.

"(6) The rate of diversion of water for irrigation under this permit and all other water rights on the

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NOV 29 1988

same land shall not exceed 0.02 cubic feet per second for each acre of land.

"(7) Water used under this permit if discharged into a natural channel shall meet Idaho Water Quality Standards.

"(8) Permit holder shall commence the excavation or construction of diverting works within one year of the date this permit is issued and shall proceed diligently until the project is complete.

"(9) Proof of construction of works and application of water to beneficial use shall be submitted on or before the date indicated on the Final Decision and Order."

Each of these conditions are within the authority granted the department by the legislature. When the legislature enacted I.C. § 42-203A(5)⁵ it clearly vested, in the director of the Department of Water Resources, considerable authority and discretion to determine

⁵I.C. § 42-203A provides in part:

"(5) Such hearing shall be conducted in accordance with the provisions of section 42-1701A(1) and (2), Idaho Code. The director of the department of water resources shall find and determine from the evidence presented to what use or uses the water sought to be appropriated can be and are intended to be applied. In all applications whether protested or not protested, where the proposed use is such (a) that it will reduce the quantity of water under existing water rights, or (b) that the water supply itself is insufficient for the purpose for which it is sought to be appropriated, or (c) where it appears to the satisfaction of the department that such application is not made in good faith, is made for delay or speculative purposes, or (d) that the applicant has not sufficient financial resources with which to complete the work involved therein, or (e) that it will conflict with the local public interest, where the local public interest is defined as the affairs of the people in the area directly affected by the proposed use; the director of the department of water resources may reject such application, may refuse issuance of a permit therefor, or may partially grant and grant a permit for a smaller quantity of water than applied for, or may grant a permit upon conditions." (Emphasis added.)

NOV 29 1988

and protect the "local public interest" when issuing or rejecting water permits. I.C. § 42-203A(5) specifically gives the director authority to "grant a permit upon conditions." As this Court previously stated in *Shokal v. Dunn*, 109 Idaho 330, 339, 707 P.2d 441, 450 (1985), "The determination of what elements of the public interest are impacted, and what the public interest requires, is committed to [the department's] sound discretion."

In this case the department was required to resolve conflicting facts and local interests and apply its statutory authority in deciding this fact-specific case. The department did this and found that the applicants had not met their burden of proof and that it was "not in the public interest" to use the water from this geothermal aquifer to irrigate crops. As this Court stated in *Shokal v. Dunn*, supra at 339, 707 P.2d at 450 (1985):

"[I]t is not [the] protestant's burden of proof to establish that the project is not in the local public interest. The burden of proof is upon the applicant to show that the project is either in the local public interest or that there are factors that outweigh the local public interest in favor of the project."

"The determination of what elements of the public interest are impacted, and what the public interest requires, is committed to Water Resources' sound discretion. See 1 R.Clark, ed., Waters and Water Rights § 29.3, 170 (1967).

In this case the department's determination that it was not in the public interest to use the water from this geothermal aquifer to irrigate crops is not "clearly erroneous in view of the reliable, probative and substantial evidence on the whole record." I.C. § 67-5215(g)(5). Therefore the district court erred in reversing the director's decision.

The district court's order is reversed and the department's decision and order are reinstated. Costs to appellants.

SHEPARD, CJ., BISTLINE, H. and JOHNSON, JJ., concur.

NOV 29 1983

MEMORANDUM

May 24, 1988

TO: FILE 47-7680

FROM: RITA FLECK *RF*

RE: PROOF OF BENEFICIAL USE DUE DATE

When the department approved this permit, the permit was issued with a proof due date of August 1, 1988. Future action ~~the~~ permit included an appeal to the Supreme Court. Now the time has come for the department to request a proof of beneficial use, yet the water right is still pending a judicial decision by the Idaho Supreme Court.

I suggest the department remove the proof due date from the database until such time as a Supreme Court decision is reached. At that time, the department will probably want to issue an order amending/modifying the proof due date in accordance with the court's action.

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NOV 29 1988

MEMORANDUM

TO: Gary

THRU: Jim

FROM: Sharla

DATE: May 25, 1988

RE: Adabase Modification

Attached is a file for which an appeal to the Supreme Court is ongoing. Rita suggests that because of this, the proof due date be removed from Adabase and inclusion of a remark explaining the situation.

Jim has asked that your approval be given before this action is taken. If you concur, the data entry can be made immediately.

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NOV 5 1986

Department of Water Resources

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

IN THE MATTER OF: APPLICATION)
FOR PERMIT NO. 47-7680 IN THE)
NAME OF ROYAL CREST, INC.,)
COLLINS BROS. CORP.,)
Assignee.)

COLLINS BROS. CORP., an Idaho)
corporation,)

Appellant,)

vs.)

A. KENNETH DUNN, Director,)
Idaho Department of Water)
Resources,)

Respondent.)

Case No. 36030

MEMORANDUM AND ORDER
DENYING APPELLANT'S COSTS
AND ATTORNEY'S FEES

THIS MATTER is before the court as a result of a memorandum of costs and attorney fees which was filed by appellant on October 15, 1986. Respondent, Director of Idaho Department of Water Resources, argues that appellant's request for attorney's fees is not timely or, in the alternative, that the appeal was not brought, pursued or defended frivolously, unreasonably or without foundation. This court agrees and denies appellant's request for costs and attorney's fees.

NOV 29 1988

MEMORANDUM AND ORDER DENYING APPELLANT'S
COSTS AND ATTORNEY'S FEES - 1

Rule 41 of the Idaho Appellate Rules provides:

(a) Application for Attorney Fees -- Waiver. Any party seeking attorney fees on appeal must assert such a claim as an issue presented on appeal in the first appellate brief filed by such party as provided by rules 35(a)(5) and 35(b)(5); provided, however, the supreme court may permit a later claim for attorney fees under such conditions as it deems appropriate.

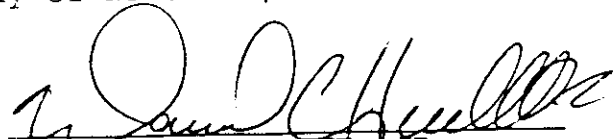
I.A.R. 41(a) (Supp. 1986).

On appeal, a party claiming attorney fees must in his brief so indicate in the section which states the issues on appeal. I.A.R. 35(a)(5). It seems that appellant has failed to comply with these requirements.

Respondent also argues that its defense on appeal was not frivolous, unreasonable or without foundation, because the appeal raised important legal issues of first impression in Idaho. See Minich v. Gem State Developers, Inc., 99 Idaho 911, 591 P.2d 1078 (1979). This court agrees and finds that the respondent's defense of this appeal was not unreasonable or frivolous.

For the foregoing reasons, it is hereby ordered that appellant's request for attorney's fees and costs is denied.

DATED this 4 day of November, 1986.


DANIEL C. HURLBUTT, JR.
District Judge



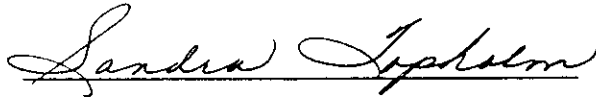
NOV 29 1986

CERTIFICATE OF MAILING

The undersigned certifies that on the 4 day
of November, 1986, she caused to be mailed a copy of the
foregoing memorandum and order denying appellant's costs and
attorney's fees to:

Robert C. Weaver
Attorney at Law
130 North Broadway
Buhl, Idaho 83316

Phillip J. Rassier
Kenneth R. Arment
Deputy Attorneys General
Department of Water Resources
Statehouse
Boise, Idaho 83720



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OCT 14 1986

Department of Water Resources

WEAVER and DYKAS, P.A.
Attorneys at Law
130 North Broadway
Buhl, Idaho 83316
Telephone (208) 543-8268

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR TWIN FALLS COUNTY

* * * * *

In the Matter of:) Case No. 36030
APPLICATION FOR PERMIT NO.)
47-7680 IN THE NAME OF)
ROYAL CREST, INC., COLLINS)
BROS. CORP, ASSIGNEE)

COLLINS BROS. CORP., an Idaho
Corporation,

Appellant,

vs.

ORDER DENYING
MOTION ON REHEARING

A. KENNETH DUNN, Director,
Idaho Department of Water
Resources,

Respondent.

NOV 29 1986

This matter having come before the Court the 25th day
of August, 1986, at 1:30 p.m. at the Twin Falls County
Courthouse, Twin Falls, Idaho, the Idaho Department of Water
Resources, respondent, being represented by Phillip J.
Rassier, Deputy Attorney General, Collins Bros. Corp.,
appellant, being represented by Robert C. Weaver of the firm
Weaver and Melanson, the Court having heard argument by the

WEAVER and MELANSON
Attorneys at Law
130 N. Broadway
Buhl, Idaho 83316
Phone (208) 543-8268

1 parties and being duly advised in the premises,

2 IT IS HEREBY ORDERED, ADJUDGED and DECREED that the
3 motions brought before this Court on petition for rehearing
4 are in all respects denied.

5 That the Court further finds that the parties having
6 stipulated to modification of the decision on the original
7 petition as it respects the conditions on the permit shall
8 be modified to read as follows:

9 It is hereby ordered that the final decision of the
10 Department of Water Resources be reversed, and that the
11 petitioners be granted its permit with the following
12 conditions thereon:

13 (1) The permit holder shall either install a
14 measuring device or provide a certified measurement by a
15 professional engineer or install an access port device as
16 specified by the Department.

17 (2) The amount of water diverted for domestic,
18 commercial and geothermal heating shall not exceed that
19 necessary for 99 homes.

20 (3) The rate of diversion of water for irrigation
21 under this permit and all other water rights on the same
22 land shall not exceed 0.02 cubic feet per second for each
23 acre of land irrigated.

24 (4) Water under this permit, if discharged into a
25 natural channel shall meet Idaho water quality standards.

26 (5) Permit holder shall commence the excavation
or construction of diverting works within one year of the

1 date this permit is issued and shall proceed diligently
2 until the project is complete.

3 (6) Proof of construction of works and
4 application of water to beneficial use shall be submitted on
5 or before June 1, 1989.

6 DATED This _____ day of October, 1986.

7 _____
8 DANIEL HURLBUTT

9 District Judge

10 CERTIFICATE OF MAILING

11 I, do hereby certify that I served a copy of the
12 foregoing, to-wit:

13 ORDER DENYING MOTION ON REHEARING
14 upon the following named persons by depositing a copy of
15 said document in a postage paid sealed envelope, addressed
16 to:

17 Mr. Phillip J. Rassier
18 Deputy Attorney General
19 Department of Water Resources
20 450 West State Street
Boise, ID 83720

21 DATED this 10 day of October, 1986.

22 WEAVER and MELANSON

23 By


24 Robert C. Weaver
25 Attorneys for appellant

26 **RECEIVED**

NOV 29 1988

September 16, 1986

Collins Brothers, Corp.
Box 42427, Huntridge Station
Las Vegas, NV 89104

Gentlemen:

Re: Permit No. 47-7680

Enclosed is a copy of the order which allows the permit holder to continue developing the project proposed by this permit. Note that proof will be due on or before August 1, 1988.

If you have any questions concerning this matter, please feel free to contact this office.

Sincerely,

BOBBY D. FLEENOR
Chief, Regional Offices Bureau

BDF:rf

Enclosure

cc/enc: Robert Weaver

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NOV 29 1988



DEPARTMENT OF WATER RESOURCES
STATE OFFICE, 450 W. State Street, Boise, Idaho

JOHN V. EVANS
Governor

A. KENNETH DUNN
Director

Mailing address:
Statehouse
Boise, Idaho 83720
(208) 334-4440

April 28, 1986

Collins Brothers, Corp.
Box 42427, Huntridge Station
Las Vegas, NV 89104

Gentlemen:

Re: Permit No. 47-7680

You were sent an order dated December 4, 1985 to suspend further project development under your water right permit and to submit proof of beneficial use for the extent of your use of water.

Several protests and requests for hearing on the order were received from the permit holders and a pre-hearing conference was held in Twin Falls on March 26, 1986. The parties requested that the department reconsider the December 4th order.

In response to the request for reconsideration, the department will field examine, within the next two weeks, each project being developed under a water right permit and consider whether to rescind the order on an individual basis depending on the diligence that has been shown toward the completion of the project. Permit holders that have demonstrated diligence to complete their projects in accordance with the permit and statutory requirements will be allowed to continue development under the permit.

The department will contact you prior to the field examination to give you an opportunity to accompany the examiner.

Sincerely,


NORMAN C. YOUNG, Administrator
Resources Administration Division

NCY:BDF:rf

cc: Robert Weaver

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NOV 29 1988

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Department of Water Resources

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

In the Matter of:	)	Case No. 36030
	)	
APPLICATION FOR PERMIT NO.	)	DECISION ON PETITION
	)	APPEALING MEMORANDUM
46-7680 IN THE NAME OF	)	DECISION AND ORDER OF THE
	)	DEPARTMENT OF WATER
ROYAL CREST, INC., COLLINS	)	RESOURCES
	)	
BROS. CORP., ASSIGNEE.	)	

THIS MATTER came before the court on appeal from
an order of the Department of Water Resources (hereinafter
"department") dated August 4, 1983, modifying its own prior
order.

Collins Bros., as assignees of the original
applicants, Royal Crest, Inc., (hereinafter "petitioners")
were represented by Robert Weaver of Weaver and Melanson,
Buhl, Idaho. The department was represented by Phillip
Rassier, Deputy Attorney General, Boise, Idaho. Terry
Uhling of Nelson, Rosholt, Robertson, Tolman & Tucker, Twin
Falls, Idaho, appeared and argued as amicus curiae on behalf
of the College of Southern Idaho.

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NOV 29 1988

I.

On November 20, 1980, Royal Crest, Inc. filed an application with the department for a permit to appropriate water from a ground water source. Notice of the application was duly published. The notice indicated that the geothermal use of the water was for power purposes. There were no protests received.

On December 30, 1981, at the request of the department, the applicant filed an affidavit of residence which also advised that there had been an amendment of proposed use of the geothermal water involved. The use was now noted as being for heating 110 homes.

The application was assigned from Royal Crest, Inc. to Collins Bros. on December 15, 1981. Notice of the amended application was duly published. The notice described the intended geothermal use of the water as one for "heating."

On January 1, 1982, protests were received on the amended application from Fred and Francis Kambrich, Mr. and Mrs. Dale Durrant, Mr. and Mrs. G. W. Anderson and Robert S. Luntley.

A conference was held in Twin Falls on March 31, 1982. Mr. Weaver represented the petitioner, and the protestants represented themselves. The protestants voiced concerns that pressures had dropped in the

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NOV 29 1988

Artesian wells since the completion of petitioner wells, and that they feared the depletion of the Artesian aquifer.

The parties agreed to allow the department to reach a decision based upon the conference and upon the records of the department.

On August 4, 1983, without any explanation for the delay of one year and five months, the department issued a proposed memorandum decision and order. The proposed memorandum decision listed those items considered by the department in reaching their decision. Items (1) through (7) bear dates which predate the March 31, 1982, conference. Items (8) through (13) which include a water license and various water permits carry no identifiable significant dates.

The department issued findings of fact which included wells and ground water rights of the protestants and the petitioner. The department concluded that the ground water rights of the protestants, except for Andersons' lapsed permit (permit lapsed December, 1975), were senior in priority. The department further found that the protestants' wells have flowed under Artesian pressure.

Finding of fact no. 5 refers to the creation of the Banbury Hot Springs Ground Water Management Area on April 12, 1983. And, finding of fact no. 6 makes reference to a field examination of 131 acres as being irrigated and within the proposed use under the requested permit.

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NOV 29 1988

field examination was allegedly conducted by the department, but lacks any date in regard to whether the examination predated the March 31, 1982, conference. Finding of fact no. 7 refers to a permit held by the petitioner for irrigation of 83 acres of the same land as the proposed place of use under the requested permit.

The conclusions of law reached by the department provided that (1) reduction in Artesian pressure wells within the Banbury Hot Springs Ground Water Management Area is not considered an injury; (2) the department required the petitioners submit a plan for casing and sealing the proposed wells; (3) it was not in the local public interest to deplete an Artesian hot water aquifer for a purpose that could be served using cold water; (4) petitioner could use ground water to supplement water from surface sources for irrigation; and, (5) it is proper that the effect of the use of the water for irrigation purposes on other rights be considered.

Finally, the department approved the petitioner's application, subject to conditions. Said conditions included: (1) installation of a method for measurement of water; (2) denying the use of geothermal water for irrigation purposes based on it not being in the public interest and, "therefore, on the water used for another purpose, that requires the heat from the water, can be disposed of by using it for irrigation."; (3) use of geothermal water for irrigation purposes based on it not being in the public interest and, "therefore, on the water used for another purpose, that requires the heat from the water, can be disposed of by using it for irrigation.";

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NOV 29 1988

water for irrigation is supplemental and all other rights must be fully utilized for irrigation before this permit is used for irrigation purposes; (4) the department retained jurisdiction to assure water is put to beneficial use, and, also, to approve the casings and sealings of the wells; (5) amount of water not to exceed that necessary for domestic, commercial and geothermal heating for 99 homes; (6) rate of diversions specified; (7) discharge requirements; (8) time to commence work; and, (9) proof of construction and application of water to beneficial use.

The department requested the parties to file exceptions, if any, to the proposed decisions and to present briefs and oral arguments. The department reserved the right to deny hearing of oral arguments as an exercise of their statutorily provided discretionary right.

On December 5, 1983, one year and nine months following the conference on petitioner's application, the department denied a motion to reconsider the department's final decision which was issued August 31, 1983. The record does not include the final decision or order, however, petitioner's appellate brief notes that on August 31, 1983, the director of the department issued an order adopting the proposed memorandum decision and order. This has not been challenged by the department.

Petitioners based their motion to reconsider on the fact that the petitioner had expended approxi

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NOV 29 1983

\$95,000.00 developing an irrigation system. The director of the department acknowledged that he was aware of the development of the irrigation system, but that he "felt the protection of the Artesian hot water source was of upmost importance and that the applicant should not deplete that source of irrigation when a cold water source would suffice."

The department denied the motion to modify the decision and order and also denied a request to hear the motion. On January 4, 1984, Collins Bros. initiated a petition appealing the memorandum decision and order. Petitioners contend that the conditions imposed on the permit, specifically the condition that the water not be used for irrigation as originally requested, were (1) in violation of the applicant's constitutional rights; (2) in excess of statutory authority of the department; and, (3) affected by error of law.

The department, on February 16, 1984, in response to this court's order directing preparation of agency transcript, informed the court that "at the conference held March 31, 1983 (sic), the parties signed an agreement authorizing the department to reach a decision in the matter based upon the conference and upon information in the records of the department."

Petitioners moved this court to allow them to augment the record on appeal. On April 30, 1984, based upon

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NOV 29 1988

petitioners' failure to comply with time limitations pursuant to I.R.C.P. 83(q), the court denied the motion to augment the record.

On September 17, 1984, this court heard a motion for sanctions against the department and a motion for dismissal on appeal. Both motions were denied, and the court granted the department an opportunity to file an extension of time. On May 24, 1985, arguments were heard, and the court took the matter under advisement.

On January 21, 1985, the court ordered further briefing on two issues. The court requested briefing on the applicability and/or effect of the Idaho Geothermal Resources Act, I.C. Sec. 42-4001, et seq, and briefing on the alleged conflict between Idaho Constitution art. 15, sec. 3, and the public interest standard in the amendments to I.C. Sec. 42-203. The court, also, invited amicus briefs from the College of Southern Idaho and the Twin Falls School District.

II.

On appeal, petitioners argue that the department's findings of fact and conclusions of law must be supported by the evidence. Further, petitioners contend that the agency's conclusions of law must be consistent with Idaho law, and that the agency's order must be supported by and consistent with the findings of fact and conclusions of law. Finally, petitioners take the position that the

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NOV 29 1988

failure to approve the application is an unconstitutional denial of the petitioners' right to appropriate water, and that the "local public interest" standard is unconstitutionally vague.

The department frames the issue on appeal of their administrative decision as being whether their department can issue a permit with a condition prohibiting use of geothermal water for irrigation purposes and rely on I.C. Sec. 42-203's "local public interest" criterion as grounds for their conditional permit.

III.

At the time petitioner made application to the department (November, 1980) I.C. Sec. 42-203, with the "local public interest" criterion was governing law. More importantly, I.C. Sec. 42-1701A was also controlling law.

I.C. Sec. 42-1701A in pertinent part provides:

(2) The director in his discretion, may direct that a hearing be conducted by a hearing officer appointed by the director. In such event, the hearing officer shall have the duty to make a complete record of the evidence presented and duly received at the hearing and to prepare a proposal for decision and procedure promulgated by the director.

(4) Any person who is aggrieved by a final decision or order of the director is entitled to judicial review. The judicial review shall be had in accordance with the provisions and standards set forth in Secs. I.C. 67-5215 and 67-5216.

Both parties concur that the APA is applicable and that review of this administrative decision is limited to a determination of whether there was substantial compliance.

NOV 29 1988

evidence to support the department's decision. Hubbard v. Canyon County Com'rs., 106 Idaho 436, 437, 680 P.2d 537 (1984).

The standard of review by this court of the decision rendered by the department is controlled by I.C. Sec. 67-5215(f) and (g). I.C. Sec. 67-5215(f): "The review shall be conducted by the court without a jury and shall be confined to the record. . . ." I.C. Sec. 67-5215(g):

The court shall not substitute its judgment for that of the agency as to the weight of the evidence on questions of fact. The court may affirm the decision of the agency or remand the case for further proceedings. The court may reverse or modify the decision if substantial rights of the appellant have been prejudiced because the administrative findings, inferences, conclusions, or decisions are: (1) in violation of constitutional or statutory provisions; (2) in excess of the statutory authority of the agency; (3) made upon unlawful procedures; (4) effected by other error of law; (5) clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record; or (6) arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.

The evidence must be viewed in a light most favorable to the decision of the lower fact-finding body. Hubbard at 437.

I.C. Sec. 42-1701A makes clear reference to what evidence can be considered by the hearing officer in reaching a decision. That evidence is limited to the evidence presented and duly received at the hearing.

Further, I.C. Sec. 67-5210 provides additional statutory guidelines for what evidence can be considered in

NOV 29 1988

a contested case. In pertinent part, I. C. Sec. 67-5210 provides:

(1) . . . when a hearing will be expedited and the interests of the parties will not be prejudiced substantially, any part of the evidence may be received in written form; (4) Notice may be taken of judicially cognizable facts. In addition, notice may be taken of generally recognized technical or scientific facts within the agency's specialized knowledge. Parties shall be notified either before or during the hearing, or by reference in preliminary reports or otherwise, of the material noticed, including any staff memorandum or data, and they shall be afforded an opportunity to contest the materials so noticed. . . . (Emphasis added.)

IV.

Whether the evidentiary requirements of the statutes are viewed as a matter of constitutional due process or as a matter of statutory right, makes no difference inasmuch as the underlying principle of providing a fair hearing and a fair disposition of the matter controls. There is no doubt the parties involved in this water permit application were statutorily entitled to a hearing. The issue is whether it is error for an administrative authority, in the exercise of its adjudicatory function to base findings and conclusions upon evidence outside the record. The critical issue in this matter is not whether the agency based its decision upon incompetent evidence nor is it the ability of the agency to take judicial notice of those facts or knowledge within the agency. The question here is whether it is proper for the

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NOV 29 1988

agency to base its decision upon evidence obtained outside the presence of, and without notice to, interested parties.

Statutorily, an agency is allowed to take judicial notice of certain matters pursuant to I.C. Sec. 67-5210. The statute sets forth the requirement of notice to the parties either before or during the hearing, or by reference in preliminary reports or otherwise of any material so noticed. The statute mandates an opportunity to contest the material so noticed.

Reviewing the statutes involved in the department's decision-making process, it is clear that they refer to evidence introduced at, or prior, to the hearing. I.C. Sec. 42-203(a) speaks of the need to conduct the hearing in accordance with the provisions of I.C. Sec. 42-1701A(1) and (2). The statute directs that the "director shall make findings and determine from the evidence presented what use(s) can be or are intended to be applied." I.C. Sec. 42-1701A(2) states that the hearing officer has a duty to make a complete record of the evidence presented and duly received at the hearing. I.C. Sec. 42-1701A(4) directs that judicial review standards are controlled by I.C. Sec. 67-5215 and I.C. Sec. 67-5216. I.C. Sec. 67-5215(f) mandates that review be confined to the record.

Therefore, in order for the department to take judicial notice of specific material, ~~the parties must be~~

NOV 29 1988

notified and afforded an opportunity to contest the same.
This was not done.

This court has been unable to find any statutory time limit within which the department is required to decide the merits of an application; however, the language in all of the statutes heretofore cited speak in terms of relying solely upon evidence presented at, or during, the hearing. If the department must delay the processing of an application and the rendering of a decision for nearly three years, as was done in this case, they are nonetheless confined to consider only that evidence which was presented in the hearing. In regard to matters which could be judicially noticed, it is clear that notice and an opportunity to contest and meet that material which the agency will consider in reaching their decision must also be afforded the parties. Where this court's review is confined to the record, such a defect in the proceedings clearly is not harmless and, therefore, reversible. To allow the department to delay making a decision, and thereafter to rely on any evidence, including that which is not properly a part of the record, would result in an unwarranted exercise of discretion.

V.

Applying these statutes to the questions here presented, there appear to be internal inconsistencies in the department's findings of fact and conclusions of law.

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NOV 29 1988

The record is unclear as to what relevant dates are to be attributed to numerous items considered by the department in reaching their decision. On one hand, the department recognizes the correct rule of law that reduction in Artesian pressure is not considered an injury. (Conclusion of law no. 1). On the other hand, the department states that it is not in the local public interest to "deplete an Artesian aquifer for a purpose that could be served using cold water." (Conclusion of law no. 3). This conclusion summarily concludes that there is, in fact, a "depletion" of an Artesian hot water aquifer without any corresponding competent evidence in the record to sustain it. Finding of fact no. 5, dealing with the boundaries of the Banbury Hot Springs Ground Water Management Area was clearly not part of the department's record at the time of the hearing and, therefore, could not have been considered by the department. Further, finding of fact no. 6 refers to a field examination. The date such examination was conducted is not clear, nor in any way provided.

The department has an affirmative duty to make a complete record of the evidence presented and duly received at the hearing. I.C. Sec.42-1701A(2). Given that the department has failed to make a complete record, finding of fact nos. 5 and 6 are hereby stricken.

Finding of fact no. 4 states the fortunate position the "protestants" have enjoyed. It states they are

NOV 29 1983

able to have their wells flow without aid of pumping devices. Finding of fact no. 4 is irrelevant given that the conclusion of law that reduction in Artesian pressure is not considered injury. Given the state of the record, it is impossible to know what weight, if any, the department gave finding of fact no. 4 in reaching its decision to "condition" applicants' permit.

Therefore, the department's reliance on findings of fact no. 4 through no. 6 have prejudiced the petitioners in this matter. This court finds that the petitioners have met the burden of showing prejudicial error on appeal. Guillard v. Dept. of Employment, 100 Idaho 647, 651, 603 P.2d 981 (1979).

In conclusion, those findings of fact and conclusions of law which were premised upon evidence not introduced pursuant to I.C. Sec. 67-5210 and which the agency could not take judicial notice, due to a lack of notice and ability to contest, have prejudiced the petitioner. Therefore, it was procedural error for the department to rely on evidence not properly received into evidence in reaching their final decision on the petitioner's application.

VI.

Due process, as well as the statutory requisites mandate, that only evidence presented at, or during, the hearing can be considered by the Department. Or, if the

NOV 29 1988

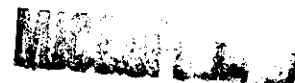
evidence is that which can, in fact, be judicially noticed and the parties have received notice and an opportunity to counter the evidence, then due process is not denied. Going outside the record is a denial of due process and, therefore, is prejudicial to the petitioners.

Given that the department considered material which was outside of the record in this matter, and that the substantial rights of the petitioners have been prejudiced, this court concludes that the final decision rendered by the department was made in excess of its statutory authority, made upon unlawful procedure, and constituted an unwarranted exercise of the department's discretion. I.C. Sec. 67-5215(g)(2)(3) and (6).

It is hereby ordered that the final decision of the Department of Water Resources be reversed, and that the petitioners be granted their permit without conditions thereon.

DATED this 2 day of April, 1986.


DANIEL C. HURLBUTT, JR.
District Judge



NOV 29 1988

CERTIFICATE OF MAILING

The undersigned certifies that on the 2 day
of April, 1986, she caused to be mailed a copy of the
foregoing decision to:

Jim Jones
Attorney General
State of Idaho
Statehouse, Room 210
Boise, Idaho 83720

Benoit, Alexander, Sinclair, Harwood & High
Attorneys at Law
P. O. Box 366
Twin Falls, Idaho 83303-0366

Weaver & Melanson
Attorneys at Law
130 North Broadway
Buhl, Idaho 83316

Phillip J. Rassier
Deputy Attorney General
Department of Water Resources
Statehouse
Boise, Idaho 83720

Landra Tophel

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NOV 29 1988

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE
STATE OF IDAHO

IN MATTER OF WATER RIGHT PERMIT NOS.	)
47-7414A E. LeGRANDE NELSON	)
47-7425 ROBERT &/OR ALVA J. RING	)
47-7426 ROBERT &/OR ALVA J. RING	)
47-7435 ROBERT &/OR ALVA J. RING	)
47-7451 GARY N. NELSON	)
47-7520 RAY &/OR GLEN DEPEW	)
47-7680 COLLINS BROTHERS, CORP.	)
47-7721 WAYNE R. MARSHALL	)
47-7792 WAYNE R. MARSHALL	)
47-7829 LARRY D. OLSEN	)
	)
PETITIONERS.	)

NOTICE OF HEARING
AND/OR CONFERENCE

On December 4, 1986, A. Kenneth Dunn, the Director of the Department of Water Resources issued an order under Sec. 42-237a through Sec. 42-237g, Idaho Code staying the approval of pending applications; suspending any further development under existing water right permits; and ordering submission of proof of beneficial use on the existing development. The above-referenced parties have petitioned the Department for a hearing on the order under Sec. 42-1701A, Idaho Code.

All of the parties have essentially the same concerns and, therefore, the consideration of their petitions are combined into one hearing.

The Department has set the matter for hearing for Wednesday, March 26, 1986 at 10:00 A.M. in the Twin Falls City Council Room, City Hall, 1407 Second Avenue East, Twin Falls, ID 83301.

The hearing will be held in accordance with the provisions of Chapters 2 and 17, Title 42, and Chapter 67, Idaho Code and adopted Rules of Practice and Procedure of the Department of Water Resources. All parties shall have an opportunity to respond and present evidence and argument on all issues involved. A pre-hearing conference may be held beginning at the above set time.

Dated this 10 day of March, 1986.


BOBBY D. FLEENOR
HEARING OFFICER



NOV 29 1988



State of Idaho

DEPARTMENT OF WATER RESOURCES

STATE OFFICE, 450 W. State Street, Boise, Idaho

JOHN V. EVANS
Governor

A. KENNETH DUNN
Director

Mailing address:
Statehouse
Boise, Idaho 83720
(208) 334-4440

January 13, 1986

Robert C. Weaver
Weaver and Melanson
130 North Broadway
Buhl, ID 83316

RE: 47-7680 (Collins Bros. Corp.)

Dear Mr. Weaver:

The Department acknowledges receipt of the petition for hearing filed on behalf of the Collins Bros. Corp. in connection with the Department's order dated December 4, 1985 relative to applications and permits in the Banbury GWMA.

The Department will schedule a hearing in the matter and will advise you of the time and place for the hearing.

Sincerely,

L. Glen Saxton
L. GLEN SAXTON, Chief
Operations Bureau

LGS:ldt(Pl-1.78)

CC: IDWR - Southern Region
Collins Brothers

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DEC 23 1985

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE
STATE OF IDAHO

Department of Water Resources

IN THE MATTER OF GROUND WATER)
DEVELOPMENT IN THE BANBURY HOT) PETITION FOR HEARING
SPRINGS GROUND WATER MANAGE-)
MENT AREA, TWIN FALLS COUNTY)

* * * * *

COMES NOW COLLINS BROTHERS CORPORATION by and through
their respective attorney, Robert C. Weaver of the law firm
of Weaver and Melanson and pursuant to the provisions of
§42-1701A(3) request a hearing before the Department
contesting the validity and requirements of the order issued
by the Department the 4th of December, 1985.

The reasons for contesting said order are as follows:

(1) Idaho Code 42-237a(g) would first have to provide
for reasonable pumping levels from which to determine the
anticipated average rate of future natural recharge.

(2) That an approved permit for the use of the waters
of the State of Idaho for beneficial purposes having been
substantially completed is a vested right against which the
director of the Department of Water Resources is without the
power to condemn and the order allowing the taking is an
unconstitutional taking of a water right.

(3) That to the extent Idaho Code §42-1805 provides
for the suspension of an approved permit, the same is
unconstitutional in that it is an authorized taking of a
vested right.

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WEAVER and MELANSON
Attorneys at Law
130 N. Broadway
Buhl, Idaho 83316
Phone (208) 543-8268

1 (4) That the ground water supply within the area in
2 question is not being withdrawn beyond a reasonable
3 anticipated average rate of future natural recharge and
4 further, would be far below the rate of anticipated average
5 recharge if many of the water rights within said management
6 area were not being wasted presently.

7 (5) This petition is made for the further purpose of
8 determining the intent of the order as it affects the extent
9 of the use of the ground water and the development thereof
10 by the above applicant in its planned unit development.

11 (6) That the Director, before making such an order,
12 must first determine the extent to which present
13 appropriators are wasting the resource.

14 DATED This 20th day of December, 1985.

WEAVER and MELANSON

15
16 
17 ROBERT C. WEAVER

18 Attorneys for Collins
19 Brothers Corporation
20
21
22

23
24
25
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PS F
J811, July 1982

- SENDER: Complete items 1, 2, 3, and 4.
Add your address in the "RETURN TO" space on reverse.

(CONSULT POSTMASTER FOR FEES)

1. The following service is requested (check one).
- ☐ Show to whom and date delivered \$
- ☐ Show to whom, date, and address of delivery .. \$
2. ☐ RESTRICTED DELIVERY \$
(The restricted delivery fee is charged in addition to the return receipt fee.)

TOTAL \$

3. ARTICLE ADDRESSED TO:

Robert C. Weaver, Weaver &
Melanson, 130 N. Broadway

Publ ID 83316

4. TYPE OF SERVICE:

- ☐ REGISTERED ☐ INSURED
☐ CERTIFIED ☐ COD
☐ EXPRESS MAIL

ARTICLE NUMBER

138018

(Always obtain signature of addressee or agent)

I have received the article described above.

SIGNATURE ☐ Addressee ☐ Authorized agent

5. DATE OF DELIVERY

POSTMARK
(may be on reverse side)

6. ADDRESSEE'S ADDRESS (Only if requested)

7. UNABLE TO DELIVER BECAUSE:

7a. EMPLOYEE'S
INITIALS

★ GPO: 1982-379-593

rf 47-7680

RETURN RECEIPT

PS F
J811, July 1982

- SENDER: Complete items 1, 2, 3, and 4.
Add your address in the "RETURN TO" space on reverse.

(CONSULT POSTMASTER FOR FEES)

1. The following service is requested (check one).
- ☐ Show to whom and date delivered \$
- ☐ Show to whom, date, and address of delivery .. \$
2. ☐ RESTRICTED DELIVERY \$
(The restricted delivery fee is charged in addition to the return receipt fee.)

TOTAL \$

3. ARTICLE ADDRESSED TO:

Collins Brothers Corp.
Box 42427, Huntbridge
Station, Las Vegas, NV 89104

4. TYPE OF SERVICE:

- ☐ REGISTERED ☐ INSURED
☒ CERTIFIED ☐ COD
☐ EXPRESS MAIL

ARTICLE NUMBER

138997

(Always obtain signature of addressee or agent)

I have received the article described above.

SIGNATURE ☐ Addressee ☐ Authorized agent

5. DATE OF DELIVERY

POSTMARK
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6. ADDRESSEE'S ADDRESS (Only if requested)

7. UNABLE TO DELIVER BECAUSE:

7a. EMPLOYEE'S
INITIALS

★ GPO: 1982-379-593

47-7680

RETURN RECEIPT

PS F
J811, July 1982

- SENDER: Complete items 1, 2, 3, and 4.
Add your address in the "RETURN TO" space on reverse.

(CONSULT POSTMASTER FOR FEES)

1. The following service is requested (check one).
- ☐ Show to whom and date delivered \$
- ☐ Show to whom, date, and address of delivery .. \$
2. ☐ RESTRICTED DELIVERY \$
(The restricted delivery fee is charged in addition to the return receipt fee.)

TOTAL \$

3. ARTICLE ADDRESSED TO:

Collins Brothers Corp
Box 42427, Huntbridge
Station, Las Vegas, NV 89104

4. TYPE OF SERVICE:

- ☐ REGISTERED ☐ INSURED
☐ CERTIFIED ☐ COD
☐ EXPRESS MAIL

ARTICLE NUMBER

138024

(Always obtain signature of addressee or agent)

I have received the article described above.

SIGNATURE ☐ Addressee ☐ Authorized agent

5. DATE OF DELIVERY

POSTMARK
(may be on reverse side)

6. ADDRESSEE'S ADDRESS (Only if requested)

7. UNABLE TO DELIVER BECAUSE:

7a. EMPLOYEE'S
INITIALS

★ GPO: 1982-379-593

127922-47-7722

RETURN RECEIPT

PS Form 3811, July 1982

- SENDER: Complete items 1, 2, 3, and 4.
Add your address in the "RETURN TO" space on reverse.

(CONSULT POSTMASTER FOR FEES)

1. The following service is requested (check one).
- ☐ Show to whom and date delivered \$
- ☐ Show to whom, date, and address of delivery .. \$
2. ☐ RESTRICTED DELIVERY \$
(The restricted delivery fee is charged in addition to the return receipt fee.)

TOTAL \$

3. ARTICLE ADDRESSED TO:

Collins Brothers Corp.

4. TYPE OF SERVICE:

- ☐ REGISTERED ☐ INSURED
☒ CERTIFIED ☐ COD
☐ EXPRESS MAIL

ARTICLE NUMBER

138609

(Always obtain signature of addressee or agent)

I have received the article described above.

SIGNATURE ☐ Addressee ☐ Authorized agent

5. DATE OF DELIVERY

POSTMARK
(may be on reverse side)

6. ADDRESSEE'S ADDRESS (Only if requested)

7. UNABLE TO DELIVER BECAUSE:

7a. EMPLOYEE'S
INITIALS

★ GPO: 1982-

47-7680 (1dt)

RETURN RECEIPT

Line	Number of Article	Name of Addressee, Street, and Post Office Address	Indicate type of mail		Check appropriate block for Registered Mail:		POSTMARK AND DATE OF RECEIPT					
			☐ Registered	☐ Insured	☐ COD	☐ Certified	☐ Express Mail	☐ Registered Mail	☐ With Postal Insurance	☐ Without Postal Insurance	Affix stamp here if issued as certificate of mailing or for additional copies of this bill.	
			Postage	Fee	Handling Charge	Act. Value (If Regis.)	Insured Value	Due Sender If C.O.D.	R. R. Fee	S. D. Fee	S. H. Fee	Rest. Del. Fee
1												
2	138608	Von R. Stauffer Irene Stauffer Route 3 Box 188 Buhl, ID 83316	39	75					70			
3												
4												
5	138609	Collins Brothers Corp. Box 42427 Huntbridge Station Las Vegas, NV 89104	29	75					70			
6												
7	138610	Ray Depew Glen Depew Route 2 Box 115A Wendell, ID 83355	39	75					70			
8												
9												
10												
11												
12												
13												
14												
15												
Total Number of Pieces Listed by Sender		22	Total Number of Pieces Received at Post Office		22		POSTMASTER, PER (Name of receiving employee)		The full declaration of value is required on all domestic and international registered mail. The maximum indemnity payable for nonnegotiable documents under Express Mail does not exceed \$50,000 per piece subject to a limit of \$500,000 per occurrence. The maximum indemnity payable on Registered Mail merchandise insurance is \$500. The maximum indemnity payable is \$25,000 for Registered Mail, \$400 for COD and parcels. Special delivery service also includes special handling service.			

FORM MUST BE COMPLETED BY TYPEWRITER, INK OR BALL POINT PEN

NOV 1988



State of Idaho

DEPARTMENT OF WATER RESOURCES

STATE OFFICE, 450 W. State Street, Boise, Idaho

JOHN V. EVANS
Governor

A. KENNETH DUNN
Director

Mailing address:
Statehouse
Boise, Idaho 83720
(208) 334-4440

December 12, 1985

CERTIFIED MAIL

Collins Brothers Corp.
Box 42427 Huntridge Station
Las Vegas, NV 89104

RE: Water Right Permit No. 47-7680

Gentlemen:

Enclosed is an Order issued by the Director of the Department of Water Resources affecting pending applications for permit to appropriate the public waters of the State of Idaho and existing permits for which proof of beneficial use has not been submitted to the Department.

Also enclosed is a proof of beneficial use form which must be filled out and returned by permit holders in order to comply with the enclosed order.

As a permit holder, you should be aware that provisions of section 42-237e, Idaho Code, provide you may contest such requirements pursuant to section 42-1701A(3) and request a hearing on the matter, provided that the request is received by the Department within fifteen (15) days after the receipt of the Order. The request for hearing must be in writing and must state the reasons for contesting the requirements of the Order.

If you have any questions or need assistance, contact either the Regional Office in Twin Falls (phone 734-3578) or the State Office in Boise.

Sincerely,

L. Glen Saxton
L. GLEN SAXTON, Chief
Operations Bureau

LGS:ldt (P1-1.53)

Enclosures

CC: IDWR - Southern Region
Bob Weaver

NOV 29 1985



State of Idaho
DEPARTMENT OF WATER RESOURCES
STATE OFFICE, 450 W. State Street, Boise, Idaho

JOHN V. EVANS
Governor

A. KENNETH DUNN
Director

Mailing address:
Statehouse
Boise, Idaho 83720
(208) 334-4440

SEPTEMBER 1, 1985

DEAR PERMIT HOLDER:

ACCORDING TO OUR RECORDS, YOU ARE THE HOLDER OF A WATER PERMIT ON WHICH PROOF OF BENEFICIAL USE OF WATER WAS NOT SUBMITTED BEFORE JULY 1, 1985, WHICH INDICATES YOUR PROJECT IS NOT COMPLETE. THEREFORE, YOU NEED TO BE AWARE OF CHANGES IN IDAHO LAW, EFFECTIVE JULY 1, 1985, WHICH IMPACT ALL WATER PERMITS ISSUED BY THIS DEPARTMENT.

SPECIFICALLY, PURSUANT TO SECTION 42-203D, IDAHO CODE, THE DEPARTMENT MUST REVIEW ALL PERMITS FOR WHICH DEVELOPMENT OF WATER USE WAS NO COMPLETED ON OR BEFORE JULY 1, 1985, TO DETERMINE IF THEY MEET THE NEW REQUIREMENTS OF CHAPTER 2, TITLE 42, IDAHO CODE. RULES AND REGULATIONS GOVERNING THE RE-EVALUATION OF PERMITS ARE NOT YET FINALIZED. HOWEVER, IF YOU COMPLETED THE DEVELOPMENT UNDER YOUR PERMIT BEFORE JULY 1, 1985, YOU SHOULD SUBMIT A PROOF OF BENEFICIAL USE STATEMENT, STATING THAT THE PROJECT WAS COMPLETED BEFORE JULY 1, 1985 SO THAT YOUR PERMIT WILL NOT BE SUBJECT TO THE REVIEW REQUIREMENTS OF SECTION 42-203D, WHICH READS AS FOLLOWS:

42-203D. REVIEW OF PERMITS - OPPORTUNITY FOR HEARING. - (1)THE DEPARTMENT SHALL REVIEW ALL PERMITS ISSUED PRIOR TO THE EFFECTIVE DATE [JULY 1, 1985] OF THIS SECTION, EXCEPT TO THE EXTENT A PERMIT HAS BEEN PUT TO BENEFICIAL USE PRIOR TO JULY 1, 1985, TO DETERMINE WHETHER THEY COMPLY WITH THE PROVISIONS OF CHAPTER 2, TITLE 42, IDAHO CODE. IF THE DEPARTMENT FINDS THAT THE PROPOSED USE DOES NOT SATISFY THE CRITERIA OF CHAPTER 2, TITLE 42, IDAHO CODE, THEN THE DEPARTMENT SHALL EITHER CANCEL THE PERMIT OR IMPOSE THE CONDITIONS REQUIRED TO BRING THE PERMIT INTO COMPLIANCE WITH CHAPTER 2, TITLE 42, IDAHO CODE. IF THE DEPARTMENT FINDS THAT THE PERMIT SATISFIES THE CRITERIA ESTABLISHED IN CHAPTER 2, TITLE 42, IDAHO CODE, THEN THE DEPARTMENT SHALL ENTER AN ORDER CONTINUING THE PERMIT.
(2)THE DEPARTMENT SHALL PROVIDE AN OPPORTUNITY FOR HEARING IN ACCORDANCE WITH SECTION 42-1701A, IDAHO CODE, AND SECTIONS 67-5209 THROUGH 67-5215, IDAHO CODE, FOR EACH HOLDER OF A PERMIT THAT IS PROPOSED EITHER TO BE CANCELLED OR MADE SUBJECT TO NEW CONDITIONS.

YOU MAY OBTAIN PROOF OF BENEFICIAL USE FORMS FROM THE DEPARTMENT. IF YOU HAVE ANY QUESTIONS, PLEASE LET US KNOW.

SINCERELY,

L. Glen Saxton
L. GLEN SAXTON
CHIEF, OPERATIONS BUREAU

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NOV 29 1988

1 **JIM JONES**
2 Attorney General
3 State of Idaho
4 Statehouse, Room 210
5 Boise, Idaho 83720
6 Telephone: (208) 334-2400

7 **PATRICK J. KOLE**
8 Deputy Attorney General
9 Chief, Natural Resources Division

10 **PHILLIP J. RASSIER**
11 **DAVID J. BARBER**
12 Deputy Attorneys General
13 Department of Water Resources
14 Statehouse
15 Boise, Idaho 83720
16 Telephone: (208) 334-4448

17 IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
18 STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

19 IN THE MATTER OF: APPLICATION FOR)
20 PERMIT NO. 47-7680 IN THE NAME OF)
21 ROYAL CREST, INC., COLLINS BROS.)
22 CORP., Assignee.)

23 COLLINS BROS. CORP., an Idaho)
24 Corporation,)

25 Appellant)

26 vs.)

27 A. KENNETH DUNN, Director, Idaho)
28 Department of Water Resources,)

29 Respondent.)

Case No. 36030

BRIEF IN SUPPORT OF MOTION
FOR INVOLUNTARY DISMISSAL
OF APPEAL

30 STATEMENT OF THE CASE AND OF THE FACTS

31 Nature of the Case

32 This case involves an appeal of an administrative deci-
33 sion by the Idaho Department of Water Resources (Department)
34 approving appellant's application to appropriate water upon a

NOV 25 1968

1 condition prohibiting the use of geothermal water solely for
2 irrigation purposes under the local public interest criterion of
3 I.C. § 42-203.

4 Course of the Proceedings

5 1. On November 20, 1980, application for permit no.
6 47-7680 was filed with the Department to appropriate 14.60 c.f.s.
7 of ground water. The proposed uses of the water are to supply
8 space heating for 110 homes (reduced to 99 at conference), com-
9 mercial and recreation use, and irrigation of 430 acres of land.
10 (R. pp. 1, 17).

11 2. On March 31, 1982, a conference was held before the
12 Department at which the applicant-appellant and several pro-
13 testants to the application were represented. At the close of
14 the conference, the parties agreed to allow the Department to
15 reach a decision based upon the conference and upon the records
16 of the Department. (R. p. 39).

17 3. On August 4, 1983, the Department issued a Proposed
18 Memorandum Decision and Order approving the application for per-
19 mit subject to the following pertinent condition:

20 (2) The use of water solely for irrigation
21 from this geothermal aquifer is not in the
22 public interest and, therefore, only the water
23 used for another purpose, that requires the
heat from the water, can be disposed of by
using it for irrigation.

24 (R. pp. 54, 60).

25 4. On August 31, 1983, the Department issued an Order
26 Adopting Proposed Memorandum Decision and Order. Exceptions
27 having been filed within the 15 day period provided. (R. p. 110).

NOV 29 1988

1 5. The Department's Order Adopting Proposed Memorandum
2 Decision and Order was sent to the applicant-appellant and other
3 interested parties on September 7, 1983. (R. pp. 5, 53).

4 6. On October 6, 1983, the Department received from
5 applicant-appellant a Motion To Modify In Part The Memorandum
6 Decision, asking for a reconsideration of the decision based upon
7 the fact that the applicant had previously expended approximately
8 \$95,000 in developing and installing an irrigation system for use
9 in conjunction with the permit. (R. p. 141).

10 7. On December 5, 1983, the Department issued an order
11 denying the motion to modify the decision. (R. p. 142).

12 8. On January 5, 1984, the appellant filed its peti-
13 tion of appeal with the District Court appealing from the
14 Department's Memorandum Decision and Order dated August 4, 1983.

15 9. On February 16, 1984, the Department filed with the
16 District Court the Agency's Record on Appeal.

17 10. On or about March 23, 1984, appellant filed its
18 Motion to Augment Record with a copy of water right permit no.
19 47-7705 in the name of Dan C. Skeem and/or Wayne B. Skeem. The
20 motion was denied April 27, 1984 because of appellant's failure
21 to meet the 20-day time limitaion of I.R.C.P. 83(q).

22 11. Appellant's appeal brief refers to and makes a
23 local public interest argument based upon the Department's appro-
24 val of water right permit no. 47-7705. (Appellant's Brief at
25 16-17)).
26

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1 ARGUMENT

2 I.

3 THE APPELLANT DID NOT FILE A TIMELY PETITION OF
4 APPEAL.

5 A. The thirty-day statute of limitations con-
6 tained in I.C. § 67-5215(b) applies to this
7 proceeding and the Appellant did not file its
8 Petition of Appeal within thirty days of ser-
9 vice of the decision.

10 The appellants applied to the Department for a permit to
11 appropriate the public waters of the State. I.C. § 42-203 and
12 42-1701A (Supp. 1984) specify the administrative procedure
13 required under such an application and I.C. § 67-5215 (Supp.
14 1984) specifies the procedure for judicial review.

15 I.C. § 42-203 (Supp. 1984) states in pertinent part:

16 Any person or corporation who has formally
17 appeared at hearing, feeling aggrieved by the
18 judgment of the director of the department of
19 water resources may seek judicial review there-
20 of in accordance with section 42-1701A(4),
21 Idaho Code.

22 I.C. § 42-1701A states in part:

23 (4) Any person who is aggrieved by a final
24 decision or order of the director is entitled
25 to judicial review. The judicial review shall
26 be had in accordance with the provisions and
27 standards set forth in sections 67-5215 and
67-5216, Idaho Code.

I.C. § 67-5215(b) (Supp. 1984) states:

Except when otherwise provided by law, pro-
ceedings for review are instituted by filing a
petition in the district court of either the
county in which the hearing was had or the
county in which the final decision of the
agency was made, within 30 days after the ser-
vice of the final decision of **RECEIVED** or,
if a rehearing is requested **RECEIVED** after
after the decision thereon. (emphasis added).

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1 Accordingly, I.C. §§ 42-203, 42-1701A, and 67-5215
2 (Supp. 1984) provide that review of determinations of the Depart-
3 ment regarding applications for water rights are governed by the
4 provisions of the Administrative Procedure Act and a petition
5 must be filed in district court within thirty days of the service
6 of the decision.

7 Here, the Department issued its Order Adopting Proposed
8 Memorandum Decision And Order on August 31, 1983. Interested
9 parties were served by mail with a copy of said order on September
10 7, 1983. Thirty days from that date is the date of October 7,
11 1983. I.R.C.P. 6(a). Accordingly, unless extended by the filing
12 of a timely petition for rehearing before the Department, the
13 last day when the present Petition of Appeal could have been
14 filed with the district court was October 7, 1983. The appeal
15 petition was filed January 5, 1984.

16 Rule 11 of the Practice and Procedure Rules and
17 Regulations for the Department of Water Resources then in effect
18 provided as follows with respect to the timely filing of peti-
19 tions for rehearing from Department decisions:

20 11. Rehearings

21 11.1 Time for Filing. Any party to a pro-
22 ceeding and affected by the order of the
23 Director or Board may apply for a
24 rehearing within twenty (20) days after
25 service of the order. Petitions for
26 rehearing shall, as to form and content,
27 conform to the requirements of Rule 3.5
and filing and service thereof shall con-
form to the requirements set forth in
Rule 7.

. . .

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1 11.3 Effect of Filing. The filing of a peti-
2 tion for rehearing shall not excuse com-
3 pliance with the order nor suspend the
4 effectiveness of such order unless other-
5 wise ordered, but it shall toll the run-
6 ning of any statutory time for appeal and
7 such appeal time shall commence upon
8 entry of an order denying the motion or
9 upon entry of an amended ruling.

10 The Department's letter of September 7, 1983 to the
11 appellant transmitting the approved application for permit no.
12 47-7680 along with a copy of the Proposed Memorandum Decision and
13 Order and Order Adopting Proposed Memorandum Decision and Order
14 contained the following instruction to the appellant concerning
15 further available administrative and judicial remedies:

16 Any person who does not agree with the deci-
17 sion of the department may request a rehearing
18 before the director within 20 days or may
19 appeal directly to the district court within
20 30 days of the date the decision is mailed.

21 R. p. 53)). This instruction correctly reflects the legal require-
22 ment of Rule 11 of the Department's Practice and Procedure Rules
23 and Regulations regarding the timely filing of a request for re-
24 hearing. It also correctly reflects the time allowed for appeal
25 to district court by I.C. § 67-5215(b). Just as the district
26 court has held in Wheeler v. McIntyre, 100 Idaho 286, 289 (1979)
27 (discussed infra), to lack the authority to enlarge the time for
filing a motion to alter or amend a judgment under I.R.C.P. 59(e),
so too is the Department bound by its own rules regarding the
time allowed for filing a timely petition for rehearing.

It is a general principal that rules prescribing the
methods of procedure within an agency have the force of law, and

NOV 29 1988

1 are binding on both the agency and on the parties. See, Cooper,
2 1 State Administrative Law 266 (1965. See also, e.g., Williams
3 v. Joyce, 479 P.2d 513, 524 (Or. App. 1971) (commissioner of
4 labor bound by own procedural rule not allowing hearsay evidence
5 over an objection); and George v. Arizona Corporation Commission,
6 322 P.2d 369, 371 (Ariz. 1958) (commission held to lack authority
7 to waive its rule that aggrieved party must file for rehearing
8 within twenty days).

9 For the convenience of the Court, copies of the Depart-
10 ment's published Practice and Procedure Rules and Regulations in
11 effect prior to October 31, 1983, and those in effect on and
12 after October 31, 1983 are appended hereto as Attachments A and
13 B, respectively, and are incorporated by this reference. I.C. §
14 67-5205(d) (Supp. 1984) provides that judicial notice shall be
15 taken of agency rules filed and published pursuant to section
16 67-5205. The Idaho Supreme Court has held that a rule or regula-
17 tion of a public administrative body has the force and effect of
18 law. See, Higginson v. Westergard, 100 Idaho 687, 690, 604 P.2d
19 51 (1979).

20 The appellant was served with a copy of the Department's
21 Order Adopting Proposed Memorandum Decision and Order on September
22 7, 1983. A timely petition for rehearing under the Department's
23 rules would had to have been filed within 20 days or by September
24 27, 1983. Since appellant's Motion to Modify the decision was
25 not filed with the Department until October 6, 1983, it was not
26 timely and it did not serve to toll the 30 day
27

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1 statutory time for filing an appeal to district court. Thus, the
2 last day when the present petition of appeal could have been
3 filed with the district court was October 7, 1983. Since the
4 petition of appeal was not filed with the district court until
5 January 5, 1984, it was untimely and should be dismissed.

6 B. The determination that appellant's untimely
7 motion to modify the agency decision did not
8 toll the running of the 30 day appeal time
under I.C. § 67-5215(b) is supported by Idaho
case law.

9 The conclusion that the appeal is untimely and should be
10 dismissed is supported by Idaho case law interpreting I.R.C.P.
11 59(e) which is analgous to the Department's Rule 11 on petitions
12 for rehearing except that only 10 days are allowed for filing a
13 motion to alter or amend a judgment under Rule 59(e) whereas 20
14 days are allowed to file a petition for rehearing under the
15 Department's Rule 11. I.R.C.P. 59(e) provides:

16 Motion to alter or amend a judgment. -- A
17 motion to alter or amend the judgment shall be
18 served not later than ten (10) days after
entry of the judgment.

19 The Idaho Supreme Court has decided several cases
20 holding that an untimely filing of a motion under Rule 59(e) does
21 not toll the running of the time in which to file an appeal. In
22 Puphal v. Puphal, 105 Idaho 302, 669 P.2d 191 (1983), the Court
23 considered the effect of a motion for modification or clarifica-
24 tion of judgment in a divorce and property settlement case which
25 was filed approximately three months after entry of judgment. In
26 concluding that the motion was not timely **MAILED** the Court stated:

27
NOV 29 1988

1 Appellant also alleges that the trial court
2 erred in denying his motion for relief from,
3 modification or clarification of the judgment
4 and order dated August 26, 1981, citing I.R.C.P.
5 59 and 60(b). Appellant's motion for "modifi-
6 cation or clarification of [the] judgment and
7 [the court's] order dated August 26, 1981," is
8 essentially a motion to alter or amend the
9 judgment under I.R.C.P. 59(e), which must be
10 served "not later than ten (10) days after
11 entry of the judgment." The appellant, how-
12 ever, did not file his motion for modification
13 until November 25, 1981, far in excess of the
14 ten days permitted by I.R.C.P. 59(e) for a
15 motion to modify either the memorandum deci-
16 sion or the decree of property distribution.

17 105 Idaho at 305-06.

18 The Idaho Supreme Court reached a similar result in
19 Johnston v. Pascoe, 100 Idaho 414, 599 P.2d 985 (1979), in which
20 a motion under I.R.C.P. 59(e) had been filed 28 days after entry
21 of summary judgment. The discussion of the Court is as follows:

22 Appellant has shown no case and research has
23 failed to reveal any case where the clerk's
24 failure to provide notice under either Fed.
25 Rule 77(d) or I.R.C.P. 77(d) affects the time
26 within which to file a post-judgment motion
27 under I.R.C.P. 59 with the district court.
Therefore, even assuming that the motion's
denial was timely appealed, it must be con-
cluded that the district court properly denied
the motion because more than ten days elapsed
from entry of judgment and filing of appel-
lant's motion for an amendment of the judgment
under I.R.C.P. 59. I.R.C.P. 59(e) specific-
ally provides "Motion to alter or amend a
judgment.--A motion to alter or amend the
judgment shall be served not later than ten
(10) days after entry of the judgment." In
this case the record shows that the motion was
filed on April 21, 1975, having been served by
mail on April 18, 1975, which was some 28 days
subsequent to entry of the summary judgment on
March 21, 1975. I.R.C.P. 6(b) in specific
terms prohibits any extension of time "for
taking any action under Rule 59(b), 59(b),
59(b), (d), (e), and 60(b), except to the

NOV 29 1988

1 extent and under the conditions stated in
2 them." Insofar as the provisions of 59(b),
3 (d) and (e) are concerned, there appear to be
4 no conditions stated in them allowing any
5 extension of time. We therefore hold that the
6 trial court properly denied appellant's
7 I.R.C.P. 59 motion because more than 10 days
8 had elapsed from the entry of the judgment and
9 filing of the motion.

10 100 Idaho at 419.

11 It is important to note as pointed out by Justice
12 Bistline in dissent, that the trial court in the Pascoe case had
13 not stated that it was denying the motions for untimeliness and
14 that the record was clear that the motions were heard and deter-
15 mined on the court's view of their merit or lack thereof. 100
16 Idaho at 422. It is also true in the present case that the
17 Department's Denial of Motion to Modify in Part the Decision does
18 not state that the motion is being denied because of its untimeli-
19 ness. (R. p. 142).

20 In Wheeler v. McIntyre, 100 Idaho 286, 596 P.2d 798
21 (1979), involving a judgment of unreasonable forfeiture under an
22 installment real estate contract the Court determined a motion to
23 alter judgment filed 12 days after entry of judgment to be un-
24 timely. More importantly, however, the Court held that since the
25 motion was not filed within the 10 day period authorized under
26 I.R.C.P. 59(e) the trial court had no power to grant the
27 requested relief. The Court stated:

The "Motion to Alter Judgment" was a motion brought under Rule 59(e), and was likewise subject to the strict 10 day requirement of Rule 59. Since the motion was not filed within 10 days of entry of judgment, the court had no power to grant the requested relief. [citing

NOV 29 1988

1 6A Moore's Federal Practice § 59.12[2] (2d ed.
2 1974)]. The motion was properly denied.

3 100 Idaho at 289.

4 Finally, in the case of Williamsen Idaho Equipment v.
5 Western Casualty & Surety Company, 95 Idaho 652, 516 P.2d 1166
6 (1973), the Court held that a motion for reconsideration filed 13
7 days after entry of judgment in a case involving recovery of
8 costs of repairs to a truck was not timely under I.R.C.P. 59(e).
9 Further the court held that I.R.C.P. 6(e) allowing three addi-
10 tional days where service has been by mail did not apply to a
11 motion under Rule 59(e).

12 It may be readily concluded from a review of the above
13 cases that the 10 day period to file a motion to alter or amend a
14 judgment under I.R.C.P. 59(e) has been very strictly enforced by
15 the Idaho Supreme Court. Rule 11 of the Department's Practice
16 and Procedure Rules and Regulations allowing 20 days to file a
17 petition for rehearing serves the same purpose as I.R.C.P. 59(e).
18 The Department's Rule 11 should be enforced in the same manner as
19 I.R.C.P. 59(e). Since the appellant's petition for rehearing was
20 filed with the Department 29 days after service of Order Adopting
21 Proposed Memorandum Decision and Order rather than within the 20
22 day period allowed it was untimely and did not toll the running
23 of the 30 day appeal time provided by I.C. § 67-5215(b).

24 II.

25 THE APPELLANT'S FAILURE TO FILE A TIMELY NOTICE OF
26 APPEAL IS A JURISDICTIONAL DEFECT AND THE DISTRICT
27 COURT SHOULD DISMISS THIS APPEAL.

I.R.C.P. 83(s) states the court does not have a party's

NOV 29 1988

1 providing when a motion to dismiss an appeal may be filed, but
2 I.A.R. 32(a) does contain such a limitation. I.A.R. 32(a) states:

3 A motion for involuntary dismissal of an
4 appeal with prejudice for failure to comply
5 with these rules must be filed at least 21
6 days before oral argument on the merits; pro-
7 vided, a motion to dismiss an appeal for fail-
8 ure to timely physically file a notice of appeal
9 or to dismiss a petition for rehearing for
10 failure to timely physically file a petition
11 for rehearing may be made at any time.
12 (emphasis added).

13 Since the present motion is for involuntary dismissal because of
14 an untimely appeal, the motion is proper at this time.

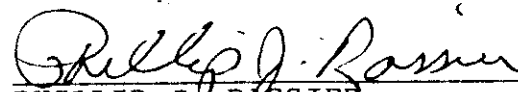
15 CONCLUSION

16 The present record provides the district court all the
17 information necessary to resolve this appeal. The evidence is
18 undisputed that the appellant failed to file a timely petition of
19 appeal and therefore this district court should automatically
20 dismiss this appeal.

21 DATED this 30th day of August, 1984.

22 RESPECTFULLY SUBMITTED

23 JIM JONES
24 Attorney General
25 State of Idaho

26 
27 PHILLIP J. RASSIER
Deputy Attorney General
Department of Water Resources

28 **RECEIVED**

29 NOV 29 1984

1 **JIM JONES**
2 Attorney General
3 State of Idaho
4 Statehouse, Room 210
5 Boise, Idaho 83720
6 Telephone: (208) 334-2400

7 **PATRICK J. KOLE**
8 Deputy Attorney General
9 Chief, Natural Resources Division

10 **PHILLIP J. RASSIER**
11 **DAVID J. BARBER**
12 Deputy Attorneys General
13 Department of Water Resources
14 Statehouse
15 Boise, Idaho 83720
16 Telephone: (208) 334-4448

17 IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
18 STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

19 IN THE MATTER OF: APPLICATION FOR)
20 PERMIT NO. 47-7680 IN THE NAME OF)
21 ROYAL CREST, INC., COLLINS BROS.)
22 CORP., Assignee.)

23 _____
24 COLLINS BROS. CORP., an Idaho
25 Corporation,)

26 Appellant)

27 vs.)

28 A. KENNETH DUNN, Director, Idaho)
29 Department of Water Resources,)

30 Respondent.)
31 _____)

Case No. 36030

MEMORANDUM IN OPPOSITION
TO MOTION TO AUGMENT
RECORD

32 COMES NOW, the respondent, A. Kenneth Dunn, Director,
33 Idaho Department of Water Resources, by and through the under-
34 signed deputy attorney general, and opposes the Motion To Augment
35 Record filed by the appellant herein and served **MICROFILMED** Respond-

NOV 29 1988

1 ent on March 23, 1984.

2 Nature of the Case

3 This case involves an appeal of an administrative deci-
4 sion by the Idaho Department of Water Resources approving appel-
5 lant's application to appropriate water upon conditions restrict-
6 ing the use of geothermal water solely for irrigation purposes.
7 Pursuant to the agreement of the parties no hearing was conducted
8 before the Department prior to issuance of the decision.

9 Course of the Proceedings

10 The appellant's petition appealing the agency decision
11 was filed with the District Court on January 4, 1984. On January
12 5, 1984 the District Court entered an order directing that the
13 case proceed as provided in I.R.C.P. 83(u) and ordering prepara-
14 tion of a transcript of the agency proceedings.

15 On February 16, 1984 the Department filed with the Dis-
16 trict Court the Agency's Record on Appeal pursuant to I.R.C.P.
17 83(p) and I.C. § 67-5215(d) (Supp. 1983).

18 On or about March 23, 1984 appellant filed its Motion to
19 Augment Record in this proceeding.

20 ARGUMENT

21 I. APPELLANT'S MOTION TO AUGMENT RECORD WAS
22 NOT TIMELY FILED AND SHOULD THEREFORE BE
23 DENIED.

24 The administrative decision appealed from in this case
25 was issued pursuant to I.C. § 42-203 (Supp. 1983). As authorized
26 by I.C. § 42-1701A(4) (Supp. 1983) judicial review shall be upon
27 the record in accordance with the provisions and standards of

NOV 29 1988

1 I.C. § 67-5215 (Supp. 1983) and I.C. § 67-5216 (1980). In addi-
2 tion, the District Court has properly ordered that the case will
3 be reviewed as provided in I.R.C.P. 83(u) which merely states
4 that court review shall be under the standards set forth in the
5 statutes of the state.

6 I.R.C.P. 83(q) which addresses the procedure to be
7 followed for augmentation of the record in this appeal reads as
8 follows:

9 Rule 83(q). Augmentation of the Record. -
10 Any party desiring to augment the transcript
11 and record may file a motion with the district
12 court within 20 days of the filing of the
13 transcript and record in the same manner and
pursuant to the same procedure provided for
augmentation of the record in appeals to the
Supreme Court.

14 I.A.R. 30 which addresses the procedure for augmentation
15 of the record in appeals to the Supreme Court referred to in
16 I.R.C.P. 83(q) reads as follows:

17 Rule 30. Augmentation or deletions from
18 transcript or record. - Any party may move the
19 Supreme Court to augment or delete from the
settled reporter's transcript or clerk's or
agency's record. Such a motion shall be
20 accompanied by a statement setting forth the
specific grounds for the request and, whenever
21 practicable, attaching a copy of the document
sought to be augmented or deleted. The motion
and statement shall be served upon all parties.
22 Any party may within fourteen (14) days after
service of the motion, file a brief or memor-
23 andum in opposition thereto. Unless otherwise
expressly ordered by the Supreme Court such
24 motion shall be determined without oral argu-
emnt [argument]. The recorder's transcript
25 and clerk's or agency's record may also be
augmented or portions deleted by stipulation
26 of the parties and order of the Supreme Court.
Any motion for augmentation and response
27 thereto shall be filed with the Clerk of the

NOV 29 1988

1 Supreme Court with the number of copies spe-
2 cified in Rule 32(e).

3 Since the agency record in this case was filed with the
4 District Court on February 16, 1984 a timely motion to augment is
5 required by I.R.C.P. 83(q) to have been filed by March 7, 1984.
6 Appellant's motion to augment should be denied because it was not
7 timely filed within the 20 day period provided by the rule.

8 II. THE AGENCY RECORD ON APPEAL MAY NOT BE AUGMENTED
9 BEFORE THE DISTRICT COURT WITH EVIDENCE NOT CON-
10 sidered BY THE AGENCY BELOW.

11 Appellant's motion to augment requests that the agency
12 record on appeal be augmented with a copy of water right permit
13 no. 47-7705 in the name of Dan S. Skeem and/or Wayne B. Skeem for
14 the appropriation of 25 cfs of water for hydropower. The agency
15 record does not indicate that permit no. 47-7705 was considered
16 by the Department in making its decision on appellant's applica-
17 tion for permit no. 47-7680. It would be inappropriate for the
18 District Court to allow the agency record on appeal to be
19 augmented with evidence that was not considered by the Department
20 in making its decision.

21 The appropriate procedure to be followed in this cir-
22 cumstance is provided by I.C. § 67-5215(e) (Supp. 1983) which
23 states:

24 (e) If, before the date set for hearing,
25 application is made to the court for leave to
26 present additional evidence, and it is shown
27 to the satisfaction of the court that the
additional evidence is material and that there
were good reasons for failure to present it in
the proceeding before the agency, the court
may order that the additional evidence be
taken before the agency upon conditions set

NOV 29 1988

1 mined by the court. The agency may modify its
2 findings and decisions by reason of the addi-
3 tional evidence and shall file that evidence
4 and any modifications, new findings, or deci-
5 sions with the reviewing court.

6 The Idaho Supreme Court dealt with a similar motion to
7 augment in Jensen v. United States Fidelity And Guaranty Company,
8 76 Idaho 351, 354, 355, 283 P.2d 185 (1955) and disposed of it as
9 follows:

10 A motion by respondent to augment the record
11 on appeal to include exhibits not in evidence
12 when the matter was determined below was here
13 made. Such exhibits are not a part of the
14 record on appeal. Hence the motion is denied.

15 CONCLUSION

16 For the reasons stated herein appellant's motion to
17 augment should be denied.

18 Respectfully submitted this 5th day of April, 1984.

19 

20 PHILLIP J. RASSIER
21 Deputy Attorney General
22 Department of Water Resources

23 

24 NOV 29 1988

CERTIFICATE OF SERVICE

I HEREBY CERTIFY That on this 5th day of April, 1984, a true and correct copy of the foregoing MEMORANDUM IN OPPOSITION TO MOTION TO AUGMENT RECORD was mailed, postage prepaid, addressed to: Robert C. Weaver, WEAVER and DYKAS, P.A., Attorneys at Law, 130 North Broadway, Buhl, Idaho 83316.

Phillip J. Rasser

PHILLIP J. RASSIER
Deputy Attorney General
Department of Water Resources

Attorney General
State of Idaho
Statehouse, Room 210
Boise, Idaho 83720
Telephone: (208) 334-2400

MAILED
NOV 29 1988

47-7680 Royal Crest

PS Form 3811, Dec. 1980

● **SENDER:** Complete items 1, 2, 3, and 4.
Add your address in the "RETURN TO" space on reverse.

(CONSULT POSTMASTER FOR FEES)

1. The following service is requested (check one).
☒ Show to whom and date delivered
☐ Show to whom, date, and address of delivery..
 2. ☐ **RESTRICTED DELIVERY**
 (The restricted delivery fee is charged in addition to the return receipt fee.)

TOTAL \$

3. **ARTICLE ADDRESSED TO:**
 Royal Crest, Inc.
 Box 42427 Huntridge Station
 Las Vegas, Nevada 89104

4. **TYPE OF SERVICE:** **ARTICLE NUMBER**
☐ REGISTERED ☐ INSURED
☐ CERTIFIED ☐ COD
☐ EXPRESS MAIL
 197

(Always obtain signature of addressee or agent)
 I have received the article described above.
SIGNATURE ☐ Addressee ☒ Authorized agent
S. Luntley

5. **DATE OF DELIVERY** **POSTMARK**
 3-11-82

6. **ADDRESSEE'S ADDRESS (Only if requested)**

7. **UNABLE TO DELIVER BECAUSE:** 7a. **EMPLOYEE'S INITIALS**

RETURN RECEIPT, REGISTERED, INSURED AND CERTIFIED MAIL

47-7680 Royal Crest

PS Form 3811, Dec. 1980

● **SENDER:** Complete items 1, 2, 3, and 4.
Add your address in the "RETURN TO" space on reverse.

(CONSULT POSTMASTER FOR FEES)

1. The following service is requested (check one).
☐ Show to whom and date delivered
☐ Show to whom, date, and address of delivery..
 2. ☐ **RESTRICTED DELIVERY**
 (The restricted delivery fee is charged in addition to the return receipt fee.)

TOTAL \$

3. **ARTICLE ADDRESSED TO:**
 Mr. & Mrs. Dale Durrant
 Rt. 3
 Buhl, Idaho 83316

4. **TYPE OF SERVICE:** **ARTICLE NUMBER**
☐ REGISTERED ☐ INSURED
☐ CERTIFIED ☐ COD
☐ EXPRESS MAIL
 199

(Always obtain signature of addressee or agent)
 I have received the article described above.
SIGNATURE ☐ Addressee ☐ Authorized agent
B. Durrant

5. **DATE OF DELIVERY** **POSTMARK**
 3-11-82

6. **ADDRESSEE'S ADDRESS (Only if requested)**

7. **UNABLE TO DELIVER BECAUSE:** 7a. **EMPLOYEE'S INITIALS**

RETURN RECEIPT, REGISTERED, INSURED AND CERTIFIED MAIL

47-7680 Royal Crest

PS Form 3811, Dec. 1980

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(CONSULT POSTMASTER FOR FEES)

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☐ Show to whom and date delivered
☐ Show to whom, date, and address of delivery..
 2. ☐ **RESTRICTED DELIVERY**
 (The restricted delivery fee is charged in addition to the return receipt fee.)

TOTAL \$

3. **ARTICLE ADDRESSED TO:**
 Fred & Frances Kambrich
 Rt. 3
 Buhl, Idaho 83316

4. **TYPE OF SERVICE:** **ARTICLE NUMBER**
☐ REGISTERED ☐ INSURED
☐ CERTIFIED ☐ COD
☐ EXPRESS MAIL
 200

(Always obtain signature of addressee or agent)
 I have received the article described above.
SIGNATURE ☐ Addressee ☐ Authorized agent
J. Gelusinski

5. **DATE OF DELIVERY** **POSTMARK**
 3-11-82

6. **ADDRESSEE'S ADDRESS (Only if requested)**

7. **UNABLE TO DELIVER BECAUSE:** 7a. **EMPLOYEE'S INITIALS**

RETURN RECEIPT, REGISTERED, INSURED AND CERTIFIED MAIL

47-7680 Royal Crest

PS Form 3811, Dec. 1980

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(CONSULT POSTMASTER FOR FEES)

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☒ Show to whom and date delivered
☐ Show to whom, date, and address of delivery..
 2. ☐ **RESTRICTED DELIVERY**
 (The restricted delivery fee is charged in addition to the return receipt fee.)

TOTAL \$

3. **ARTICLE ADDRESSED TO:**
 Robert D. Luntley
 Rt. 3 Box 195
 Buhl, ID 83316

4. **TYPE OF SERVICE:** **ARTICLE NUMBER**
☐ REGISTERED ☐ INSURED
☐ CERTIFIED ☐ COD
☐ EXPRESS MAIL
 198

(Always obtain signature of addressee or agent)
 I have received the article described above.
SIGNATURE ☐ Addressee ☐ Authorized agent
R. Luntley

5. **DATE OF DELIVERY** **POSTMARK**
 3-11-82

6. **ADDRESSEE'S ADDRESS (Only if requested)**

7. **UNABLE TO DELIVER BECAUSE:** 7a. **EMPLOYEE'S INITIALS**

RETURN RECEIPT, REGISTERED, INSURED AND CERTIFIED MAIL

47-7680 Royal Crest

PS Form 3811, Dec. 1980

● **SENDER:** Complete items 1, 2, 3, and 4.
Add your address in the "RETURN TO" space on reverse.

(CONSULT POSTMASTER FOR FEES)

1. The following service is requested (check one).
☐ Show to whom and date delivered
☐ Show to whom, date, and address of delivery..
 2. ☐ **RESTRICTED DELIVERY**
 (The restricted delivery fee is charged in addition to the return receipt fee.)

TOTAL \$

3. **ARTICLE ADDRESSED TO:**
 Mr. & Mrs. G. W. Anderson
 Rt. 3 Box 172
 Buhl, Idaho 83316

4. **TYPE OF SERVICE:** **ARTICLE NUMBER**
☐ REGISTERED ☐ INSURED
☐ CERTIFIED ☐ COD
☐ EXPRESS MAIL
 201

(Always obtain signature of addressee or agent)
 I have received the article described above.
SIGNATURE ☐ Addressee ☐ Authorized agent
G. W. Anderson

5. **DATE OF DELIVERY** **POSTMARK**
 3-11-82

6. **ADDRESSEE'S ADDRESS (Only if requested)**

7. **UNABLE TO DELIVER BECAUSE:** 7a. **EMPLOYEE'S INITIALS**

RETURN RECEIPT, REGISTERED, INSURED AND CERTIFIED MAIL

UNITED STATES POSTAL SERVICE
OFFICIAL BUSINESS

SENDER INSTRUCTIONS

Print your name, address, and ZIP Code in the space below.

- Complete Items 1, 2, 3, and 4 on the reverse.
- Attach to front of article if space permits, otherwise affix to back of article.
- Endorse article "Return Receipt Requested" adjacent to number.

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



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**RETURN
TO**



RECEIVED

**IDAHO DEPARTMENT OF WATER RESOURCES
SOUTHERN DISTRICT OFFICE
1041 BLUE LAKES BLVD. NORTH
TWIN FALLS, IDAHO 83301**
(Name of Sender)

MAR 12 1982

(Street or P.O. Box)

Water Resources

Southern District Office

(City, State, and ZIP Code)

RECEIVED

JAN 9 1984

DISTRICT COURT
TWIN FALLS CO. IDAHO

Department of Water Resources

84 JAN 6 PM 3 29

BY *[Signature]*

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

IN THE MATTER OF: Application for)

Permit No. 46-7680 in the Name of)

ROYAL CREST, INC., COLLINS BROS)

CORP, Assignee, Plaintiff_ and)

Case Number 36030

ORDER ON APPEAL FROM THE
DEPARTMENT OF WATER RE-
SOURCES TO DISTRICT COURT

Defendant_ and)

The above-captioned matter having been appealed to the District Court from Department of Water Resources, and being placed on the the calendar of the undersigned, IT IS ORDERED:

1. That this case will be reviewed on appeal as provided in I.R.C.P. 83(u);

2. That a transcript of the proceedings before the Department of Water Resources will be required;

3. That the appellant, within 14 days of the date of this order, pay to the trial transcriber the estimated transcript fee computed in accordance with Rule 83(k) and shall order the transcriber to prepare a transcript in accordance with that rule;

4. If the transcript is to be prepared by a privately retained transcriber or reporter, it shall be prepared in accordance with Rule 83(k) (1) (3);

5. Copies of this order shall be served by mail by the Clerk of the District Court upon the following parties or their attorneys:

(a) Appellant(s) (Date of Service: 1-6-84)

(b) Respondent(s) (Date of Service: 1-6-84)

(c) Transcriber (Date of Service: _____)

DATED this 5th day of January, 1984.

[Signature]
District Judge

RECORDED

NOV 29 1988

APPLICABLE RULES FOR APPEAL TO DISTRICT COURT

On all appeals (Civil & Criminal) from Magistrate Division to District Court, attention is directed to the contents of the following rules as applicable to the particular case:

Rule 83, Idaho Rules of Civil Procedure.

Rules 13(b), 14, 16 and 34, Idaho Appellate Rules.

Pursuant to Rule 83(v) the time allowed for filing appeal briefs in Rule 34(c), Idaho Appellate Rules, is reduced to the following in appeals to District Court:

Appellant's brief - 15 days

Respondent's brief - 10 days

Reply brief - only upon special leave to file.

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NOV 29 1988

WEAVER and DYKAS, P.A.
Attorneys at Law
130 North Broadway
Buhl, Idaho 83316
Telephone (208) 543 8268

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR TWIN FALLS COUNTY

* * * * *

In the Matter of:	)	Case No. _____
APPLICATION FOR PERMIT NO.	)	PETITION APPEALING
46-7680 IN THE NAME OF	)	MEMORANDUM DECISION AND
ROYAL CREST, INC., COLLINS	)	ORDER OF DEPARTMENT OF
BROS. CORP, ASSIGNEE	)	WATER RESOURCES

* * * * *

COMES NOW, the petitioner, COLLINS BROS. CORP., an Idaho Corporation, by and through its attorneys, Weaver and Dykas, P.A., and pursuant to Title 42, Idaho Code, Chapter 2, respectfully petitions and appeals to this Court of an Order modifying the Memorandum Decision and Order, dated the 4th day of August, 1983, handed down by the Director of the Department of Water Resources for the State of Idaho, by striking paragraph 2, 3, 5 and 6 of said Order and allowing for use for irrigation according to application.

Petitioner alleges that the point of diversion of water set forth in petitioner's Application for Permit is situated in Twin Falls County, Idaho.

Herewith submitted are certified copies of petitioners' Application, as Exhibit "A", and the Department of Water Resources Memorandum Decision and Order in this matter, as

NOV 29 1988

Exhibit "B".

The reason for petitioners appeal is that the Department of Water Resources has ordered that petitioners' application for water permit is approved subject to the condition it not used for irrigation as requested which is:

1. In violation of applicants constitutional rights,
2. In excess of statutory authority of the Department,
3. Effected by error of law as to ground water rights.

Petitioner herewith certifies that he has served upon the following persons claiming to be adversely affected who appeared at the protest hearing, by mailing to them, certified return receipt requested copies of this petition and exhibits:

Department of Water Resources
450 West State
Boise, Idaho

Collins Bros. Corp.
Box 42427
Huntridge Station
Las Vegas, Nv. 89104

Robert S. Luntley
Route # 3, Box 195
Buhl, Idaho 83316

Mr. and Mrs. Dale Durrant
Route # 3
Buhl, Idaho 83316

Fred and Frances Kambrich
Route # 3
Buhl, Idaho 83316

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NOV 1966

1 Mr. and Mrs. G. W. Anderson
2 Route # 3 Box 172
3 Buhl, Idaho 83316

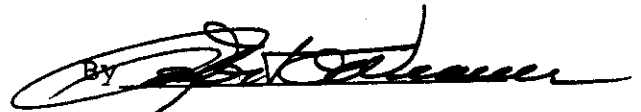
4 WHEREFORE, Petition prays for an Order of the Court:

5 1. Setting a time and place for hearing of this
6 appeal; and

7 2. For an Order modifying the Memorandum Decision and
8 Order by striking paragraph 2, 3, 5 and 6 of said Order.

9 DATED this 4th day of January, 1984.

10 WEAVER and DYKAS, P.A.

11 By 

12 ROBERT C. WEAVER

13 Attorney for Petitioner
14
15
16
17
18
19
20
21
22
23
24
25
26

MICROFILMED

NOV 29 1988

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 4th day of January, 1984, a true and correct copy of the foregoing PETITION APPEALING MEMORANDUM DECISION AND ORDER OF DEPARTMENT OF WATER RESOURCES was mailed, postage prepaid to:

Department of Water Resources
450 West State
Boise, Idaho

Collins Bros. Corp.
Box 42427
Huntridge Station
Las Vegas, Nv. 89104

Robert S. Luntley
Route # 3, Box 195
Buhl, Idaho 83316

Mr. and Mrs. Dale Durrant
Route # 3
Buhl, Idaho 83316

Fred and Frances Kambrich
Route # 3
Buhl, Idaho 83316

Mr. and Mrs. G. W. Anderson
Route # 3 Box 172
Buhl, Idaho 83316


ROBERT C. WEAVER

NOV 29 1983

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
APPLICATION FOR PERMIT

To appropriate the public waters of the State of Idaho

(Kancika Rapids Ranch)

1. Name of applicant Royal Crest Inc. Phone 1-702-876-1724
- Post office address Box 42427 Huntbridge Station, Las Vegas, Nevada 89104
2. Source of water supply Groundwater which is a tributary of _____
3. Location of point of diversion is _____ % of _____ % of Section _____ Township _____
- Range _____ B.M. Twitt Falls County, additional points of diversion if any: _____
- SEE REMARKS

4. Water will be used for the following purposes:

- Amount 0.40 for Multiple Domestic purposes from Jan 1 to Dec 31 (both dates inclusive)
(cfs or acre-feet per annum)
- Amount 6.6 for Irrigation purposes from Apr 1 to Oct 31 (both dates inclusive)
(cfs or acre-feet per annum)
- Amount 2.7 for Commercial purposes from Jan 1 to Dec 31 (both dates inclusive)
(cfs or acre-feet per annum)
- Amount 4.90 for Heating purposes from Jan 1 to Dec 31 (both dates inclusive)
(cfs or acre-feet per annum)

5. Total quantity to be appropriated:

- a. 14.60 cubic feet per second and/or b. _____ acre-feet per annum.

6. Proposed diverting works:

- a. Description of ditches, flumes, pumps, headgates, etc. Artesian Wells - 3; w/ 10" to 6" Main Line with possibly two inline booster pumps
- b. Height of storage dam _____ feet, active reservoir capacity _____ acre-feet; total reservoir capacity _____ acre-feet, materials used in storage dam: _____
- Period of year when water will be diverted to storage _____ to _____ inclusive.
(Month/Day) (Month/Day)
- c. Proposed well diameter is 8" to 6" inches; proposed depth of well is 200 to 200 feet.

7. Time required for the completion of the works and application of the water to the proposed beneficial use is 5 years (minimum 1 year - maximum 5 years).

8. Description of proposed uses:

- a. If water is not for irrigation: See Remarks
- (1) Give the place of use of water: _____ % of _____ % of Section _____ Township _____
- Range _____ B.M. _____
- (2) Amount of power to be generated: _____ horsepower under _____ feet of head.
- (3) List number of each kind of livestock to be watered _____
- 15 head horses
- (4) Name of municipality to be served _____, of _____ families to be supplied with domestic water 110
- (5) If water is to be used for other purposes describe: Heating for 110 homes.
Commercial & Recreation Commercial use in greenhouses.

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

TWP	RANGE	SEC.	NE¼				NW¼				SW¼				SE¼				TOTALS
			NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	
95	14E	14		30	5		40	32		8									115
95	14E	11							5			35	30						70
95	14E	10			25	18	2			40	40				40	40		40	245

Total number of acres to be irrigated 430

c. Describe any other water rights used for the same purposes as described above.

(Mojon Valley Creek)
Mud Creek & Silver Creek to Irrigate 195 Acres
with completed works also approx. 800 trees

9. a. Who owns the property at the point of diversion

b. Who owns the land to be irrigated or place of use Royal Crest Trc.

c. If the property is owned by a person other than the applicant, describe the arrangement enabling the applicant to make this filing officer of the Corp.

10. Remarks Location of Wells: SE¼NE¼, Sec. 10, T95, R14E, BM.

SE¼SE¼, Sec. 10, T95, R14E, BM

SE¼NW¼, Sec. 14, T95, R14E, BM.

Location of Commercial Use:

S²NW¼; NW¼SW¼, Sec. 11, T95, R14E, BM.

Location of Domestic & Geothermal Use:

(110 units)

E²NE¼, E²SE¼, Sec. 10

S²NW¼; NW¼SW¼, Sec. 11

N²NW¼; NW¼NE¼, SE¼NW¼, Sec. 14: all in

T95, R14E, BM.

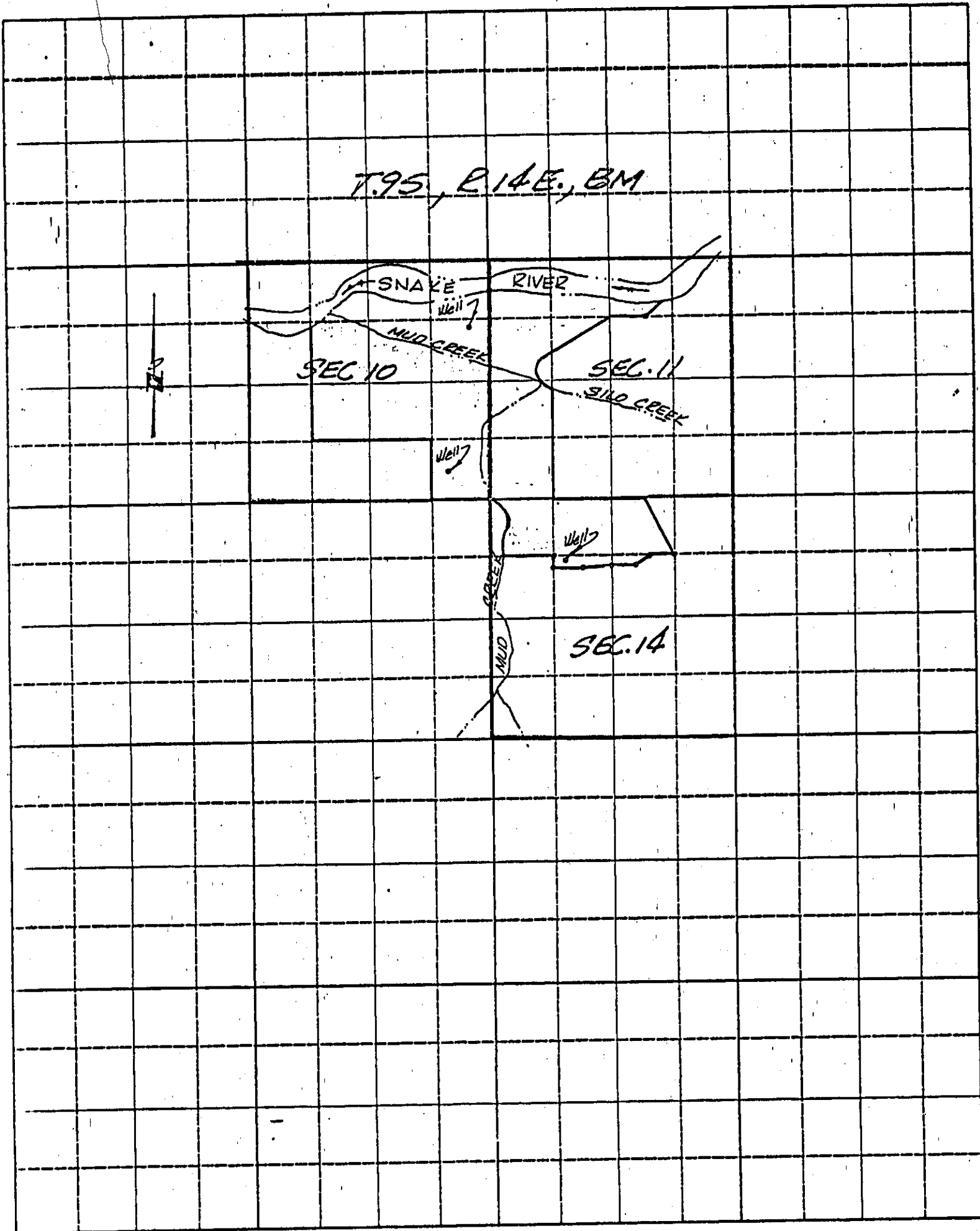
Excess water after cooling will be turned

into Mud Creek & unnamed stream

Silo Creek.

NOV 29 1988

11. Map of proposed project: show clearly the proposed point of diversion, place of use, section number, township and range number.



Scale: 2 inches equal 1 mile.

MACROFILMED

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

NOV 29 1988

[Signature]
(Applicant)

Received by A.S. Date 11/20/80 Time 1:30 P.M.
Preliminary check by J Fee \$ 325.⁰⁰ 16684
Receipted by maye Date 11/20/80
Publication prepared by maye Date 12/6/80
Published in Times news
Publication dates 12/18 + 12/25/80
Publication approved maye Date 12/17/80
Protests filed by: _____

Copies of protests forwarded by _____
Hearing held by _____ Date _____
Recommended for approval denial by _____

ACTION OF THE DIRECTOR, DEPARTMENT OF WATER RESOURCES

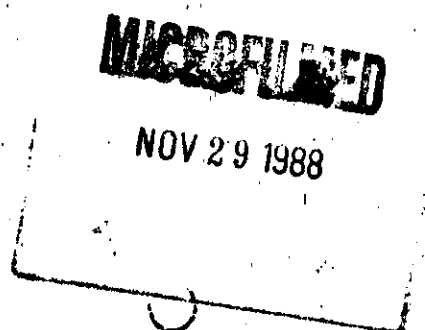
This is to certify that I have examined Application for Permit to appropriate the public waters of the State of Idaho No. _____, and said application is hereby _____.

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

- a. SUBJECT TO ALL PRIOR WATER RIGHTS.
- b. Proof of construction of works and application of water to beneficial use shall be submitted on or before _____, 19 ____.
- c. The rate of diversion, if water is to be used for irrigation under this permit, when combined with all other water rights for the same land shall not exceed 0.02 cubic feet per second for each acre of land.
- d. Other: _____

Witness my hand this _____ day of _____, 19 ____.

Director



BEFORE THE DIRECTOR OF THE DEPARTMENT OF WATER RESOURCES
OF THE
STATE OF IDAHO

IN THE MATTER OF PROTESTS AGAINST APPROVAL OF)
APPLICATION FOR PERMIT NO. 47-7680 IN THE NAME OF)
ROYAL CREST, INC., COLLINS BROS. CORP., ASSIGNEE)

DENIAL OF MOTION
TO MODIFY IN PART
THE DECISION

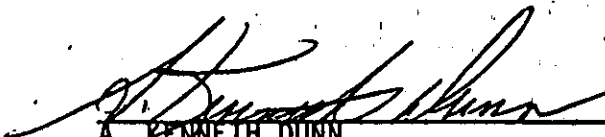
On August 31, 1983, A. Kenneth Dunn, Director of the Idaho Department of Water Resources issued his final decision and order in the above captioned matter.

Robert C. Weaver, attorney for the applicant Collins Bros. Corp., filed on October 6, 1983 a motion for the Director to reconsider his August 31, 1983 decision based upon the fact that the applicant had expended approximately \$95,000.00 developing an irrigation system.

The Director was aware when he reached his decision that the applicant had developed his irrigation system, but he felt that the protection of the artesian hot water source was of utmost importance and that the applicant should not deplete that source for irrigation when a cold water source would suffice.

THEREFORE, the motion to modify the decision and order is denied along with the request to hold a hearing on the motion.

Dated this 5th day of December, 1983.


A. KENNETH DUNN
Director

MICROFILMED

NOV 29 1988

EXHIBIT "B"

BEFORE THE DIRECTOR OF THE DEPARTMENT
OF WATER RESOURCES OF THE
STATE OF IDAHO

IN THE MATTER OF APPLICATION FOR)
PERMIT NO. 47-7860 IN THE NAME OF)
ROYAL CREST INC. COLLINS BROS. CORP.,)
ASSIGNEE)

ORDER ISSUING
PROPOSED DECISION

A. Kenneth Dunn, Director of the Department of Water Resources, having reviewed the attached proposed decision prepared by his appointee, Bobby D. Fleenor, who conducted the hearing or who has read the record in this case, hereby approves the same as a proposal for decision pursuant to Idaho Code, § 67-5211 and orders that said proposed decision and a copy of this order be served upon each of the parties to these proceedings who appeared at the hearing on March 31, 1982, of this matter or upon their attorneys in accordance with Rule 7.3 of the Rules of Practice and Procedure of this Department.

Each party to these proceedings who appeared at the hearing is hereby afforded the opportunity, pursuant to Idaho Code §§ 42-1701A and 67-5211, to file exceptions to the attached proposed decision and to present briefs and oral arguments in accordance with the provisions of this order. Exceptions may not be filed and briefs and oral arguments may not be presented by parties who did not appear at the hearing of this case. If no timely and proper exceptions are received, an order by the Director will be entered adopting and issuing the proposed decision as his final decision.

I.
EXCEPTIONS

A. To be considered by the Director, exceptions must:

1. be received by the Director on or before the 15th day following the day of service of this Order and the proposed decision,
2. specifically identify the portions of the proposed decision to which exceptions are made and specifically state the grounds for those exceptions, and
3. be sent to each of the parties who appeared or their attorneys.

B. Exceptions not in compliance with the above stated requirements will not be considered and will be deemed an acceptance of the proposed decision.

II.
BRIEFS

A. Any briefs in support of exceptions to the proposed decision shall be filed with the Director at the same time that party's exceptions are filed with the Director.

B. Any party desiring to file a brief in response to any exceptions filed by any other party may do so by filing such brief with the Director on or before the 15th day following the last day any exceptions by any other party were served upon that party desiring to respond.

NOV 29 1988

III.
ORAL ARGUMENTS

A. No oral arguments before the Director on the proposed decision will be held unless specifically requested by a party filing exceptions to the proposed decision and unless that request is filed with the Director concurrently with the filing of that party's exceptions.

B. If oral arguments have been properly requested by a party filing exceptions, any other party, upon reasonable notice to the Director, shall have the right to present oral arguments in response to the exceptions filed.

C. Oral arguments before the Director on exceptions to the proposal for decision shall be heard at the discretion of the Director, pursuant to Idaho Code, § 42-1701A. After all exceptions, briefs and requests for oral arguments have been received, the Director will decide whether to hear oral arguments. If oral arguments are to be heard, the Director will, within a reasonable time, set the case for oral arguments and notify each party of the place, date and hour the oral arguments will take place and of the period of time allocated for the arguments of this case. Unless the Director orders otherwise, all oral arguments shall be heard in Boise, Idaho.

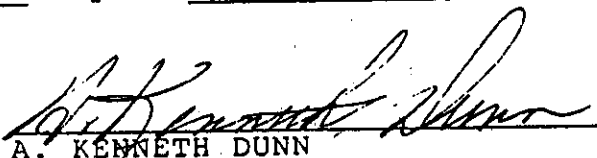
IV.
CERTIFICATION OF SERVICE

A. All exceptions, briefs, requests for oral arguments and other matters filed with the Director in connection with the proposed decision shall be served on all other parties to these proceedings in accordance with Rule 7.2.

V.
FINAL DECISION

A. Following the submission of all exceptions and briefs and oral arguments, if they are heard, the Director shall issue a final decision adopting, modifying or rejecting and replacing the proposed decision. Copies of the decision and order shall be served on all parties.

Dated this 4 day of August, 1983.


A. KENNETH DUNN
Director
Department of Water Resources

RECEIVED

NOV 29 1988

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE
STATE OF IDAHO

IN THE MATTER OF APPLICATION FOR PERMIT
NO. 47-7860 IN THE NAME OF ROYAL CREST
INC. COLLINS BROS. CORP., ASSIGNEE

PROPOSED
MEMORANDUM DECISION
AND ORDER

On November 20, 1980, Royal Crest Inc. filed an application with the Department of Water Resources for a permit to appropriate 14.60 cubic feet per second of water from a groundwater source.

The applicant proposed the following amounts, uses, and periods of use:

<u>AMOUNT (cfs)</u>	<u>USE</u>	<u>PERIOD OF USE</u>
0.40	Domestic	1/1 Through 12/31
6.60	Irrigation	4/1 Through 10/31
2.70	Commercial	1/1 Through 12/31
4.90	Geothermal	1/1 Through 12/31

The applicant proposed to divert the water from three artesian wells located in the SE1/4NE1/4, SE1/4SE1/4, Section 10, SE1/4NW1/4, Section 14, Township 9 South, Range 14 East, Boise Meridian, Twin Falls County.

The water was proposed to be used for domestic supply to 110 homes, commercial and recreational uses, and irrigation of 430 acres within the S1/2NE1/4, E1/2NW1/4, NE1/4SW1/4, N1/2SE1/4, SE1/4SE1/4, Section 10, SW1/4NW1/4, W1/2SW1/4, Section 11, W1/2NE1/4, N1/2NW1/4, SE1/4NW1/4, Section 14, Township 9 South, Range 14 East.

Notice of the application was published in the Twin Falls Times News on December 18 and 25, 1980. In this notice, the geothermal use of water was identified as being for power. No protests were received against the application.

On July 24, 1981, the Department requested that the applicant submit an affidavit of residence in accordance with Idaho Code, Section 42-205. The completed affidavit was received by the Department on December 30, 1981. On December 10, 1981, the Department was advised by the applicant that the geothermal use was intended for the heating of 110 homes, and the application was amended to describe that geothermal use of the water.

On December 15, 1981, the application was assigned from Royal Crest

NOV 29 1981

Inc. to Collins Bros. Corp., 130 N. Broadway, Buhl, Idaho 83316.

A notice of the amended application was published in the Twin Falls Times News on December 24 and 31, 1981. This notice described the geothermal use as "Heating".

On January 1, 1982, protests were received from Fred and Frances Kambrich, Mr. and Mrs. Dale Durrant, Mr. and Mrs. G. W. Anderson, and Robert S. Luntley. On March 31, 1982, a conference in the matter was held in Twin Falls. The applicant was represented by Robert C. Weaver, Attorney. The protestants were present and represented themselves.

The protestants stated that pressures had dropped in their existing artesian wells since the completion of the applicant's wells. They expressed concern that the artesian aquifer would be depleted and called for a study and management of the area by the Department.

Protestant Luntley also objected to the year-round period of use for heating proposed by the applicant and to the proposed use of artesian geothermal water for irrigation.

Attorney Weaver stated that the applicant's intent was to create a hot water supply to 99 homesites in a planned unit subdivision, and that the year-round period of use for heating was intended to include not only space heating, but also other heating uses such as saunas which might be installed by homeowners. He also requested an opinion from the Department on whether the irrigation use was properly a matter for review since only the heating use of the water was changed on the amended application.

At the close of the conference, the parties agreed to allow the Department to reach a decision based upon the conference and upon the records of the Department.

Based upon his understanding of the law, and the following indicated records, the Hearing Officer proposes the following Findings of Fact, Conclusions of Law, and Order:

ITEMS CONSIDERED BY THE DEPARTMENT:

(1) Water Resources Investigations Open File Report 80-563, "Geothermal Resources in the Banbury Hot Springs Area, Twin Falls County, Idaho", U. S. Geological Survey, August, 1980.

(2) Log of a well completed for Robert Luntley by Boley and Henry Drilling, April 4, 1974.

(3) Log of a well completed for Edward Kerpa by Boley, Henry, and

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NOV 29 1988

Weech Drilling, March 15, 1871.

(4) Log of a well completed for Dick Kaster by Elsing Drilling, October 9, 1975.

(5) Log of a well completed for Al Collins by Elsing Drilling, October 10, 1979.

(6) Log of a well completed for Collins Bros. by Sherman Couch Well Drilling, July 10, 1980.

(7) Log of a well completed for Collins Bros. by Sherman Couch Well Drilling, August 11, 1980.

(8) Water License No. 47-7115

(9) Water Permit No. 47-7205

(10) Water Permit No. 47-7261

(11) Water Permit No. 47-7312

(12) Water Permit No. 47-7551

(13) Water Permit No. 47-7580

FINDINGS OF FACT

(1) The wells and groundwater rights of the parties, as shown by the records of the Department are as follows:

NAME OF USER	USGS WELL#	DWR WELL DESIG.	LEGAL DESCR.	WTR.RIGHT NUMBER	PRIORITY DATE	DATE WELL COMPLETED
Durrant & Kambrich	9S14E 4BDC1	Kaster#1	SENE 4 9S14E	47-7312	11/24/75	10/09/75
Luntay	9S14E 9ADC1	Kerpa#1	SENE 9 9S14E	47-7115	4/08/71	3/15/71
Luntay	9S14E 9ADC1	Luntay	SENE 9 9S14E	47-7205 47-7580	5/10/73 10/05/79	4/04/74
Anderson	9S14E 23ABD1	Anderson	NWNE 23 9S14E	47-7158	unknown	unknown
Royal Crest	--	Collins Bros #1	SENE 10 9S14E	47-7680	11/20/80	10/10/79
Royal Crest	--	Collins Bros #2	SESE 10 9S14E	47-7680	11/20/80	7/10/80
Royal Crest	--	Collins Bros #3	SENE 14 9S14E	47-7680	11/20/80	8/11/80

(2) The groundwater rights of the protestants are senior in priority to the filing of this application for permit except possibly that of Mr. Anderson.

(3) The only filing found for Mr. Anderson's well is lapsed permit No. 47-7158. That permit was for domestic, fish propagation, **MICROFILMED** purposes, but it lapsed in December, 1975. The use of this well for domestic purposes, however, began prior to November 20, 1980, the date application No. **NOV 29 1988**

47-7680 was filed.

(4) Protestants have, since their wells were drilled, been able to obtain water under their rights by allowing it to flow from the wells under artesian pressure without the necessity of pumping.

(5) The wells of the parties to this matter are within the Banbury Hot Springs Groundwater Management Area created by the Director on April 12, 1983.

(6) The applicant holds water right permit No. 47-7261 for irrigation of some of the lands described in this application for permit, but from surface water sources. The Department has made a field examination and has found that 131 acres of land being irrigated are within the place of use proposed under permit No. 47-7680.

(7) The applicant holds water right permit No. 47-7551 for the irrigation of 83 acres of the same land as proposed as the place of use under permit No. 47-7680.

(8) The Director must consider according to Section 42-203, Idaho Code, the impact of the proposed appropriation, whether protested or unprotested, upon other water rights.

CONCLUSIONS OF LAW

(1) Reductions in artesian pressure in wells within the Banbury Hot Springs Groundwater Management Area is not considered as an injury to existing water rights since there remains to be sufficient water available in the source to satisfy the prior existing water rights.

(2) A plan for casing and sealing these wells shall be submitted to the Director for approval prior to the water being diverted under this permit.

(3) It is not in the local public interest to deplete an artesian hot water aquifer for a purpose that could be served using a cold water source.

(4) Applicant is entitled to use groundwater to supplement water from surface sources for irrigation.

(5) It is proper that the effect of the use of the water for irrigation purpose on other water rights be considered.

ORDER

IT IS THEREFORE, HEREBY ORDERED that Application for Permit No. 47-7680 be, and is APPROVED subject to the following conditions:

(1) The permit holder shall either install a measuring device or provide a certified measurement by a professional engineer or install an access

NOV 29 1988

port or other device as specified by the Department.

(2) The use of water solely for irrigation from this geothermal aquifer is not in the public interest and, therefore, only the water used for another purpose, that requires the heat from the water, can be disposed of by using it for irrigation.

(3) The use of water for irrigation under this permit is supplemental to all existing water rights with the same purpose and place of use and the other rights must be developed and used to the fullest extent possible for irrigation before this permit is used for irrigation purposes.

(4) The Director of the Department of Water Resources retains jurisdiction over this permit to assure that the water diverted is beneficially used and for the approval of the casing and sealing of the wells.

(5) The amount of water diverted shall not exceed that necessary for domestic, commercial, and geothermal heating for 99 homes.

(6) The rate of diversion of water for irrigation under this permit and all other water rights on the same land shall not exceed 0.02 cubic feet per second for each acre of land.

(7) Water used under this permit if discharged into a natural channel shall meet Idaho Water Quality Standards.

(8) Permit holder shall commence the excavation or construction of diverting works within one year of the date this permit is issued and shall proceed diligently until the project is complete.

(9) Proof of construction of works and application of water to beneficial use shall be submitted on or before the date indicated on the Final Decision and Order.

Dated this 4 day of August, 1983.


BOBBY D. FLEENOR
Hearing Officer

MICROFILMED

NOV 29 1988

BEFORE THE DIRECTOR OF THE DEPARTMENT OF WATER RESOURCES
OF THE
STATE OF IDAHO

IN THE MATTER OF PROTESTS AGAINST APPROVAL OF	)	
APPLICATION FOR PERMIT NO. 47-7680 IN THE NAME OF	)	DENIAL OF MOTION
ROYAL CREST, INC., COLLINS BROS. CORP., ASSIGNEE	)	TO MODIFY IN PART
	)	THE DECISION
	)	

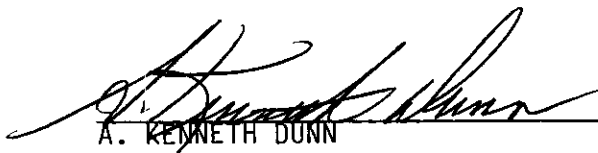
On August 31, 1983, A. Kenneth Dunn, Director of the Idaho Department of Water Resources issued his final decision and order in the above captioned matter.

Robert C. Weaver, attorney for the applicant Collins Bros. Corp., filed on October 6, 1983 a motion for the Director to reconsider his August 31, 1983 decision based upon the fact that the applicant had expended approximately \$95,000.00 developing an irrigation system.

The Director was aware when he reached his decision that the applicant had developed his irrigation system, but he felt that the protection of the artesian hot water source was of utmost importance and that the applicant should not deplete that source for irrigation when a cold water source would suffice.

THEREFORE, the motion to modify the decision and order is denied along with the request to hold a hearing on the motion.

Dated this 5th day of December, 1983.


A. KENNETH DUNN
Director

MICROFILMED

BEFORE THE DIRECTOR OF THE DEPARTMENT OF WATER RESOURCES
OF THE
STATE OF IDAHO

RECEIVED

OCT 6 1983

Department of Water Resources
Salem District Office

IN THE MATTER OF PROTESTS AGAINST)
APPROVAL OF APPLICATION FOR PERMIT) MOTION TO MODIFY IN
OF NO. 47-7680 IN THE NAME OF) PART THE MEMORANDUM
ROYAL CREST, INC., COLLINS BROS.) DECISION
CORP., ASSIGNEE)

COMES NOW Robert C. Weaver, attorney for the applicant,
Collins Bros. Corp., and moves the Court to reconsider the
decision based on said Memorandum Decision not to allow the
applicant to use said system for the irrigation of the
existing facilities.

This motion is based upon the fact that the applicant
had previously felt that the application was valid, had
expended the sums of approximately \$95,000.00 in developing
and placing upon the said lands and irrigation system which
is attached to the well under permit No. 47-7680.

WHEREFORE, the moveant requests the Department set a
time for hearing said motion at their next setting in Twin
Falls.

DATED THIS 5th day of October, 1983.

WEAVER and DYKAS, P.A.

By Joel C. Weaver
FOR ROBERT C. WEAVER
Attorneys for applicant
Collins Bros. Corp.

MICROFILMED

WEAVER and DYKAS
Attorneys at Law
130 N. Broadway
Buhl, Idaho 83316
Phone (208) 543-8268



State of Idaho

DEPARTMENT OF WATER RESOURCES

STATE OFFICE, 450 W. State Street, Boise, Idaho

JOHN V. EVANS

Governor

A. KENNETH DUNN

Director

Mailing address:
Statehouse
Boise, Idaho 83720
(208) 334-4440

September 7, 1983

Collins Brother Corp.
Box 42427
Huntridge Station
Las Vegas, NV 89104

Gentlemen:

Re: Application for Permit No. 47-7680

Enclosed is a copy of the approved application for permit No. 47-7680 along with a copy of the Proposed Memorandum Decision and Order and Order Adopting Proposed Memorandum Decision and Order. We direct your attention to the conditions of approval set forth in the proposed order.

Be sure to note the special condition requiring you to install a measuring device, or an access port to provide for the installation of measuring equipment by the department. Enclosed please find a list of measuring device options and specifications for the installation of the access port.

The 1982 Idaho Legislature added a requirement that as a permit holder you must commence the excavation or construction of diverting works within one year of the date the permit was issued, and must proceed diligently until the project is completed. The enclosed blue card must be completed and returned to this office as soon as you commence construction, no later than one year from the date the permit was approved.

Any person who does not agree with the decision of the department may request a rehearing before the director within 20 days or may appeal directly to the district court within 30 days of the date the decision is mailed.

Sincerely,

L. Glen Saxton

L. GLEN SAXTON
Chief, Operations Bureau

LGS:rf

cc w/ final order to protestants

RECEIVED

August 4, 1983

Royal Crest Inc.
Collins Brothers Corp.
Box 42427 Huntridge Station
Las Vegas, NV 89104

RE: Application for Permit No. 47-7860

Gentlemen:

Enclosed is a copy of the Proposed Memorandum Decision and Order and a copy of the Order Issuing the Proposed Decision.

If you wish to file exceptions to the proposed decision, please notice the requirements and procedure for doing so in the Order Issuing Proposed Decision.

Please let us know if you have any questions.

Sincerely,

L. GLEN SAXTON
Chief, Operations Bureau

LGS:sc

Enclosures

cc: Robert S. Luntz
Mr. and Mrs. Dale Durgant
Fred & Frances Kambrich
Mr. and Mrs. G. W. Anderson
Robert C. Weaver

|
NELSON, ROSHOLT, ROBERTSON, TOLMAN & TUCKER
Chartered
ATTORNEYS AT LAW

P.O. Box 1906
TWIN FALLS, IDAHO 83301
TELEPHONE (208) 734-0700

THOMAS G. NELSON
JOHN A. ROSHOLT
J. EVAN ROBERTSON
STEVEN K. TOLMAN
JAMES C. TUCKER

TIMOTHY M. WALTON

SUN VALLEY-KETCHUM OFFICE
P.O. BOX 2399
SUN VALLEY, IDAHO 83353
TELEPHONE (208) 726-4491

June 28, 1983

RECEIVED

JUN 28 1983
Department of Water Resources
Southern Division Office

Mr. Lorin Holmes
Southern Division
Department of Water Resources
1041 Blue Lakes Blvd. North
Twin Falls, Idaho 83301

RE: Application No. 47-7680

Dear Lorin:

Our client, Idaho Power Company, has reviewed the information submitted by Robert Weaver on behalf of his client, Royal Crest, Inc. (Kanaka Rapids Ranch).

Based on the opinion of the Company's geologists, the water to be used by the applicant is not tributary to the Snake River system, and consequently it does not fall within the blanket protest of the Company or within the Department's moratorium which resulted from the Idaho Power Company v. State of Idaho lawsuit.

As far as the Idaho Power Company is concerned, this permit may be issued.

Respectfully submitted,


JOHN A. ROSHOLT

JAR/mac

cc: Mr. Thomas A. Spofford
Vice-President
Idaho Power Company
Box 70
Boise, Idaho 83707

Mr. Robert C. Weaver
130 N. Broadway
Buhl, Idaho 83316

INTER-DEPARTMENT MEMO — 1

FROM

NCH

DATE

6/1/83

TO

47-7680

SUBJECT

Telecon / Bob Weaver 543-8268

Bob Weaver called Ken Dunn asking that the application be processed. I followed up with Loren Holmes and advised weaver that the decision was being drafted and should be in draft form and mailed to this office next week. Advised him that

SIGNATURE

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IpcO protest involving Seaman Falls
would prevent issuing a decision.
He told me he would get a written
release from IpcO.

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WEAVER & DYKAS, P.A.

Attorneys at Law

130 N. BROADWAY
BUHL, IDAHO 83316

ROBERT C. WEAVER

FRANK J. DYKAS
REGISTERED PATENT
TRADEMARK ATTORNEY

PHONE (208) 543-8266

April 15, 1983

JOHN M. MELANSON

RECEIVED

APR 20 1983

Department of Water Resources
Southern District Office

Mr. Loren O. Holmes
Southern Regional Supervisor
Idaho Department of Water Resources
1041 Blue Lakes Blvd. North
Twin Falls, Idaho 83301

RE: Permit No. 47-7680
Royal Crest Inc. (Kanaka Rapids Ranch)

Dear Mr. Holmes:

I thank you for the receipt of the letter and information submitted by Mr. Robert Luntley, a protest of Kanaka Rapids Ranch filing. In specific response to the letter and welldrillers report by Mr. Luntley, I should only attempt to point out that there is a significant difference in relationship to the aquifers that these waters are coming out of. According to the information I have received there is also a significant difference in the temperatures of the waters of the wells to which Mr. Luntley is referring and also the wells on the Kanaka Rapids Ranch which have been drilled.

Also, I might add that during the time when the flows were tested against the wells of Mr. Luntley, the wells were not being utilized on the Kanaka Rapids Ranch and during this period of time there remained a static pressure of the 93 pounds of continuous pressure on the well.

Because of these extenuating circumstances I feel that the question regarding the flows of water from Mr. Luntley's well and the pressure from Mr. Luntley's well and the pressure from the Kanaka Rapids Ranch well are seperate aquifers or in the event they are not have such little influence on one another that it seems Mr. Luntley's situation would not affected by the utilization of the Kanaka Rapids wells.

Page # 2
Mr. Loren O. Holmes
Southern Regional Supervisor
Idaho Department of Water Resources
April 15, 1983

My next concern has to do with the manner in which the water permit initially was handled by the Department. As you are aware, from the previous filing made by Kanaka Rapids, the original application by Kanaka Rapids was approved, there were no protests. On the strength of the filing Kanaka Rapids drilled the hot water wells, hooked the hot water wells up to 99 individual lots as well as an irrigation system and is, presently in the position to utilize those wells. I haven't the exact figures but I would imagine an expense in excess of \$ 60,000.00 to \$ 80,000.00 has been expended in the delivery of said water on the Kanaka Rapids Ranches Planned Unit Development. Thereafter, because of a question of the intended use of Kanaka Rapids Ranch it became necessary (in your opinion) to amend the application to show heating of the homes as opposed to geothermal.

My concern, at this time, is the permit in jeopardy because of circumstances subsequent to the drilling of the wells and the placing of the water system upon the Planned Unit Development. If the application were denied or modified by the Department, Kanaka Rapids Ranch could not live up to any of their agreements with the homeowners in the Planned Unit Development which presently numbers in excess of 60 homeowners. Such a result would be disastrous to Collins Brothers Corp.

With that in mind, I would very much appreciate your immediate attention to the application approval by the department so the agents of Kanaka Rapids Ranch (now Collins Brothers Corp.) may continue their project.

Thank you for your attention in this matter.

Sincerely yours,



ROBERT C. WEAVER

RCW/jms



STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
SOUTHERN REGION

John V. Evans
Governor

1041 Blue Lakes Blvd. North
Twin Falls, Idaho 83301
(208) 734-3578

C. Stephen Allred
Director

April 7, 1983

Robert C. Weaver
Attorney at Law
130 Broadway No.
Buhl, Idaho 83316

Re: Application for Permit No. 47-7680

Dear Mr. Weaver:

Enclosed for your review and response is a copy of additional information submitted after the conference on application 47-7680 by Mr. Robert Luntley.

If you have any questions, please feel free to contact me.

Very truly yours,


Loren O. Holmes
Southern Region Supervisor

LOH:marya

Encl:

Route 3
Buhl, Idaho 83316
April 6, 1982

RECEIVED

APR 7 1982

Department of Water Resources
Southern District Office

Loren O. Holmes
Southern Region Supervisor
Idaho Department of Water Resources
1041 Blue Lakes Blvd. North
Twin Falls, Idaho 83301

Dear Mr. Holmes:

This letter supplies additional information requested by Mr. Bobby D. Fleenor who conducted the hearing March 31, 1982, "In the matter of protests against approval of application for permit No. 47-7680 in the name of Royal Crest, Inc., Kanaka Rapids Ranch".

Enclosed is one copy each of the Well Driller's Report for well # 47-7115 (owner-Ed Kerpa) in which we have a part interest and # 47-7205 in which we have full ownership. The first well had 145 psi closed in pressure when completed and I do not know whether the Department of Water Resources has checked its pressure recently. The second well had 85 psi closed in pressure when completed. Mr. Terry Blau of your office has checked its pressure twice in March and can provide you with the dates and pressures, the last one being about 47 psi, a significant drop from his reading earlier in March, probably due to a new well drilled nearby which still runs uncapped into Snake River.

Kanaka Rapids Ranch has filed for 14.6 CFS of artesian water. However, their representative who accompanied their attorney, Mr. Robert Weaver, to the hearing stated that one well was flowing 2200 GPM and another 1000 GPM. The two wells together total 3200 GPM or about 7.13 CFS. This volume is less than one-half the amount applied for under permit # 47-7680. It appears that Kanaka Rapids Ranch would have to pump from either or both of these two wells or pump from a third well (now flowing little or no water) to obtain the 14.6 CFS requested. It's quite likely that pumping will further lower the aquifer, a matter of extreme interest to all users of artesian water.

A point not brought up at the hearing but I think of great importance is Kanaka Rapids Ranch's intent to use 0.6 CFS (92% of their entire flow) for irrigation of some 180 acres. I cannot believe it is in the public's or State's interest to allow anyone to use highly valuable warm geothermal water to irrigate large acreages when cold water will suffice. All of the heat in the warm water is wasted in the air and on the ground when that heat could instead be used for heating houses, greenhouses, raising warm water fish, etc. In my opinion Idaho should severely limit or prohibit use of geothermal water for uses that can be accommodated with cold water.

Thank you for the opportunity to supply this additional information.

Sincerely yours,

Robert S. Luntz
Robert S. Luntz

RECEIVED

State law requires that this report be filed with the Director, Department of Water Administration within 30 days after the completion or abandonment of the well.

7. WATER LEVEL

APR 7 1982

Name Robert Lusty
Address 10130 W. Sistrup
Littleton, Colorado 80123
Owner's Permit No. 47-7205

Static water level _____
Flowing? ☒ Yes ☐ No
Temperature 90 ° F. Quality Good
Artesian closed-in pressure 85 p.s.i.
Controlled by ☒ Valve ☐ Cap ☐ Plug

B. WELL TEST DATA

☒ New well ☐ Deepened ☐ Replacement
☐ Abandoned (describe method of abandoning)

☐ Pump ☐ Bailer ☐ Other

Discharge G.P.M.	Draw Down	Hours Pumped
------------------	-----------	--------------

400

Draw Down

Hours of Service

9. LITHOLOGIC LOG

☒ Domestic ☒ Irrigation ☐ Test
☐ Municipal ☐ Industrial ☐ Stock

Hole drilled in 0-41' 8" casing completed
" " 8' 41'-350 6" inside

Hole Diam.	Depth		Material	We Yes
	From	To		

☒ Cable ☐ Rotory ☐ Dug ☐ Other

6	0	6	Dir. + rock	
	6	20	Brown basalt	
	20	90	Grey basalt	
	90	95	Black basalt & clay	
	95	120	Black basalt	
	120	131	Brown clay	
	131	173	Grey silt	
	173	175	Hard grey shale rock	
	175	225	Grey sandy clay	
	225	248	Grey clay	✓
	248	251	Hard grey shale	
	251	270	Grey clay	
	270	380	Grey shale	
	380	401	Brown shale rock	
	401	498	Grey shale	
	498	602	Black & hyalite	✓
	602	820	Grey & hyalite	✓

Diameter of hole 6 inches Total depth 850 feet

Casing schedule: ☒ Steel ☐ Concrete

Thickness		Diameter		From		To	
<u>2.50</u>	Inches	<u>5 7/8</u>	inches	+	<u>1</u>	feet	<u>4 1</u> feet
<u>2.50</u>	inches	<u>6 5/8</u>	inches		<u>1</u>	feet	<u>3 80</u> feet
	inches		inches			feet	
	inches		inches			feet	
	inches		inches			feet	

Steel plate welded from 6" & 8"

Was a packer or seal used? ☒ Yes ☐ No

Perforated? ☐ Yes ☒ No

How perforated? ☐ Factory ☐ Knife ☐ Torch

Size of perforation _____ inches by _____ inches

Number	From	To
_____ perforations	_____ feet	_____ feet
_____ perforations	_____ feet	_____ feet
_____ perforations	_____ feet	_____ feet

Well screen installed? ☐ Yes ☒ No

Manufacturer's name _____

Type _____ Model No. _____

Diameter ____ Slot size ____ Set from ____ feet to ____ feet

Diameter ____ Slot size ____ Set from ____ feet to ____ feet

Gravel packed? ☐ Yes ☒ No Size of gravel _____

Placed from _____ feet to _____ feet

Surface seal? ☒ Yes ☐ No To what depth 4 / 1 feet

Material used in seal ☒ Cement grout ☐ Puddling clay

10.

Sketch map location must agree with written location.

Work started 29 Nov 1975 finished 1 April 1974

11. DRILLER'S CERTIFICATION

This well was drilled under my supervision and this report is true to the best of my knowledge.

Boley & Henry 86
Driller's or Firm's Name Number

Rt1 Mustang H Tube

Address 3608

W. L. R. S. 12-1-1911

County Twin Falls

51 0 0

SE ¼ N ¼ Sec. 9, T. 9 N/S, R. 14 E/N

NOT A REPORT

Table 1. Records of wells

Well No.	Altitude of land surface (feet above National Geodetic Vertical datum of 1929)	Reported depth of well (feet below land surface)	Casing		Well finish	Water level		Discharge (gal/min) flowing unless otherwise indicated	Temperature of water (°C)	Use of water	Remarks
			Diameter (in.)	Feet below land surface to first perforation		Feet above (+) or below land surface	Date measured				
8S-12E-24CCD1	3,480	500	12	46	X	240.08	3- 6-79	--	--	I	DL
8S-13E-23CCD1	3,390	--	--	--	--	69.28	2-22-79	--	--	H	DL
35ACD1	3,479	700	16	170	X	182.43	3- 8-79	--	--	U	DL
8S-14E-19DAD1	2,900	700	8	216	X	--	10-22-79	1	30.0	U	DL
Slipgate 2 30ACD2	2,894	420	8	75	X	--	8-15-79	120	72.0	U	DL WQ
Commonwealth 30DAD1	2,900	700	6	501	X	247+ F	3-26-79	9	62.0	A	DL WQ
De Pauw 30DBA1	2,896	450	8	90	X	262+	8-16-79	650	71.5	U	DL WQ
Eastman, Wilson 30DBD1	2,900	450	8	147	X	262+	8-16-79	590	67.0	U	DL
Buller 32DAAL	2,960	545	6	449	X	180+	8-15-79	10	45.5	A	DL WQ
Kuest 32DDC1	2,950	553	8	230	X	71+ F	4- 4-79	170	42.5	A	DL WQ
Bell 33BCA1	2,910	653	10	--	--	5+ R	10-28-79	5	29.5 R	U	DL
Banbury 1 33BCD1	2,895	270	10	--	--	--	4- 4-79	60 P	49.0 R	R	DL
Banbury 2 33CBAL	2,902	110	6	--	--	--	2- 8-78	60	59.0	R	WQ
Banbury 3 33CBA2	2,902	342	8	122	X	47+ F	4- 5-79	--	59.0	R	DL WQ
Banbury 4 33CBA3	2,902	243	6	--	--	--	--	--	59.0	R	DL
Onlier 33CBD1	2,890	540	6	52	X	193+	3-15-79	4	42.0	A	DL WQ
Archibald 33CCAL	2,908	510	6	210	X	82+ F	3-15-79	80	44.5	A	DL WQ
Woodman 33CCD1	2,910	480	6	420	X	82+ F	3-26-79	12	30.0	A	DL WQ
9S-12E-35BCD1	3,705	797	16	462	X	343.14	2-21-79	--	--	I	DL
9S-13E-20CCD1	3,805	920	20	165	X	448.88	3-27-79	--	--	I	DL
22DDD1	3,700	575	6	46	X	417.43 P	3- 6-79	--	--	H	DL
25ADD1	3,680	400	16	129.5	X	175.80	3- 8-79	--	--	I	DL
31DDC1	3,819	840	16	402	X	458.89	3- 6-79	--	--	I	DL
9S-14E-4BBD1	2,938	700	6	215	X	155+ F	4-25-79	30	39.5	U	DL
Kasler 1 4BDC1	2,940	375	8	28	X	145+ F	3-27-79	92	42.5	A	DL WQ
Ray 3 4CDB1	3,026	610	10	51	X	--	3-15-79	3,000 E	34.0	S	DL WQ
Ray 5 4CDC1	3,022	750	12	116	X	89+	8-20-79	1,540	35.0	S	DL
Ray 2 4CDD1	3,010	755	6	518	X	--	8-16-79	1,130	33.0	S	DL
Ray 1 4DCC1	2,920	590	8	550	X	166+ F	12- 8-78	100	35.0	A	DL WQ
6CDA1	3,400	--	4	--	--	109.60	4- 6-79	--	--	H	DL
Kerpa 3 9ADAL	2,930	750	6	332	X	362+ F	3-14-79	164	33.0	A	DL WQ
Kerpa 1 9ADB1	2,980	530	6	495	X	102+ F	3-14-79	200	32.0	A	DL WQ
Levitt 9ADC1	3,000	850	6	380	X	167+	3-15-79	65	31.5	A	DL WQ
Ray 4 9BAAL	3,060	578	12	45	X	--	4- 5-79	477	32.0	S	DL
Kerpa 2 10CBB1	2,950	615	6	488	X	93+ F	3-14-79	70	32.5	A	DL WQ
Langdon 13DDD1	3,514	900	6	425	X	4+	3-27-79	7	26.0	I	DL WQ
14BDD1	3,205	--	6	--	--	56.09	4- 6-79	--	--	H	DL
17BAAL	3,360	415	6	214.5	X	193.68	2-22-79	--	--	H	DL
21ADD1	3,347	80	6	--	--	61.45	4- 5-79	--	--	H	DL
Anderson 23ABD1	3,345	350	6	39	X	29+	3-27-79	30	25.0	H	DL WQ
36DAC1	3,782	904	16	686	X	96 R	--	260	29.0	P	WQ
10S-12E-2CBAL	3,735	--	--	--	--	365.70	2-21-79	--	--	I	DL
12CDC1	3,742	500	20	10	X	366.48	2-21-79	--	24.5 R	I	DL
10S-13E-5CCAL	3,823	575	12	100	X	448.88	3- 6-79	--	--	I	DL
14DAC1	3,900	--	12	--	--	258.94	2-21-79	--	--	I	DL
25CDC1	3,860	250	6	--	--	68.73	3- 7-79	--	--	H	DL
10S-14E-1CAAL	3,840	688	--	--	--	58.22	2-21-79	--	--	I	DL
5CBB1	3,665	176	--	--	--	26.43	2-21-79	--	--	I	DL
21DCC1	3,850	--	--	--	--	47.97	2-23-79	--	--	I	DL



USE TYPEWRITER OR
BALL POINT PEN

State of Idaho
Department of Water Resources

WELL DRILLER'S REPORT

State law requires that this report be filed with the Director, Department of Water Resources within 30 days after the completion or abandonment of the well.

1. WELL OWNER

Name DICK ~~GARRE~~ Kester

Address HAGERMAN, IDAHO

Owner's Permit No. _____

2. NATURE OF WORK

☒ New well ☐ Deepened ☐ Replacement

☐ Abandoned (describe method of abandoning)

3. PROPOSED USE

☒ Domestic ☐ Irrigation ☐ Test ☐ Other (specify type)
☐ Municipal ☐ Industrial ☐ Stock ☐ Waste Disposal or Injection

4. METHOD DRILLED

☐ Cable ☒ Rotary ☐ Dug ☐ Other

5. WELL CONSTRUCTION

Diameter of hole 8 inches Total depth 375 feet

Casing schedule: ☒ Steel ☐ Concrete

Thickness	Diameter	From	To
<u>250</u> inches	<u>8</u> inches	<u>1</u> feet	<u>28</u> feet
_____ inches	_____ inches	_____ feet	_____ feet
_____ inches	_____ inches	_____ feet	_____ feet
_____ inches	_____ inches	_____ feet	_____ feet
_____ inches	_____ inches	_____ feet	_____ feet

Casing drive shoe used? ☐ Yes ☐ No
Packer or seal used? ☐ Yes ☐ No
Cased? ☐ Yes ☐ No

How perforated? ☐ Factory ☐ Knife ☐ Torch

Size of perforation _____ inches by _____ inches
Number _____ From _____ To _____
_____ perforations _____ feet _____ feet
_____ perforations _____ feet _____ feet
_____ perforations _____ feet _____ feet

Well screen installed? ☐ Yes ☐ No

Manufacturer's name _____

Type _____ Model No. _____

Diameter _____ Slot size _____ Set from _____ feet to _____ feet

Diameter _____ Slot size _____ Set from _____ feet to _____ feet

Gravel packed? ☐ Yes ☐ No Size of gravel _____

Placed from _____ feet to _____ feet

Surface seal depth 28' Material used in seal ☒ Cement grout

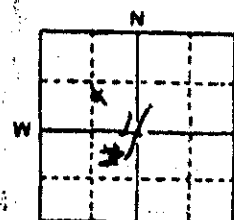
☐ Pudding clay ☐ Well cuttings

Sealing procedure used ☐ Sherry pit ☐ Temporary surface casing

☐ Overbore to seal depth

6. LOCATION OF WELL

Sketch map location must agree with written location.



Subdivision Name _____

Lot No. 2856 Block No. _____

7. WATER LEVEL

Static water level _____ feet below land surface

Flowing? ☒ Yes ☐ No G.P.M. flow 300

Temperature 104° F. Quality _____

Artesian closed-in pressure 5.8 p.s.i. Known _____

Controlled by ☒ Valve ☐ Cap ☐ Plug

8. WELL TEST DATA

☐ Pump ☐ Bailer ☐ Other

Discharge G.P.M.	Draw Down	Hours Pumped

9. LITHOLOGIC LOG

Hole Diam.	Depth		Material	V. Yel.
	From	To		
8"	0	10	BOULDERS	
	10	19	GREY LAM	
	19	24	CLAY	
	24	26	ROCK	
	26	30	CLAY	
	30	32	ROCK	
	32	34	CLAY	
	34	35	ROCK	
	35	40	CLAY	
	40	60	ROCK	
	60	77	WATER TALL + LAM	X
	77	81	HARD SHALE	
	81	101	GREY LAM	
	101	160	SAND + ROCK	
	160	200	CLAY + HARD SHALE	
	200	250	BINE CLAY	X
	250	375	BLACK LAM + LITTLE WATER IN SPOTS	X

10.

Work started 10-3-75 finished 10-9-75

11. DRILLERS CERTIFICATION

Firm Name EISENBERG DRILLING Firm No. 5

Address P.O. BOX 919 TAFE Date 3/16/76

Signed by (Firm Official) Arnold Elbing

and Operator Pat L. Elbing

WELL DRILLER'S REPORT

State law requires that this report be filed with the State Reclamation Engineer
within 30 days after completion or abandonment of the well.Ken Harbst
Robert Luntz
Wes ReynoldsWELL OWNER Vaughn Stauffer
Name Edward Kerpa

Address Rt. 3 Buhl, Idaho

Owner's Permit No. 47-2115

NATURE OF WORK

☒ New well ☐ Deepened ☐ Replacement☐ Abandoned (describe method of abandoning)

PROPOSED USE

☒ Domestic ☐ Irrigation ☐ Test
☐ Municipal ☐ Industrial ☒ Stock (fish)

METHOD DRILLED

☒ Cable ☐ Rotary ☐ Dug ☐ Other

WELL CONSTRUCTION

30 feet drilled 12" casing computed in

Diameter of hole 6 inches Total depth 530 feet

Casing schedule: ☒ Steel ☐ Concrete

Thickness	Diameter	From	To
250 inches	8 5/8 inches	1 feet	30 feet
250 inches	6 5/8 inches	3 feet	495 feet
inches	inches	feet	feet
inches	inches	feet	feet
inches	inches	feet	feet

plate welded between 6&8

Was a packer or seal used? ☒ Yes ☐ NoPerforated? ☐ Yes ☒ NoHow perforated? ☐ Factory ☐ Knife ☐ Torch

Size of perforation inches by inches

Number	From	To
perforations	feet	feet
perforations	feet	feet
perforations	feet	feet

Well screen installed? ☐ Yes ☒ No

Manufacturer's name

Type Model No.

Diameter Slot size Set from feet to feet

Diameter Slot size Set from feet to feet

Gravel packed? ☐ Yes ☒ No Size of gravel

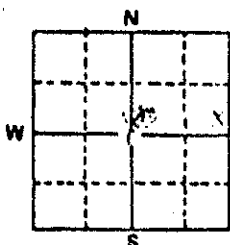
Placed from feet to feet

hole drilled 12" first 30 feet

Surface seal? ☒ Yes ☐ No To what depth 30 feetMaterial used in seal ☒ Cement grout ☐ Puddling clay

LOCATION OF WELL

Sketch map location must agree with written location.



County Blaine, Idaho

SE 1/4 NE 1/4 Sec. 9 T. 2 N. 3. R. 17 E. W.

7. WATER LEVEL

Department of Water Administration

Static water level feet below land surface
Flowing? ☒ Yes ☐ No G.P.M. flow 600
Temperature 86 ° F. Quality
Artesian closed-in pressure 145 p.s.i.
Controlled by ☒ Valve ☐ Cap ☐ Plug

8. WELL TEST DATA

☐ Pump ☐ Bailer ☐ Other

Discharge G.P.M.	Draw Down	Hours Pumped
600		

9. LITHOLOGIC LOG

Hole Diam.	Depth		Material	Wat. Yes
	From	To		
6	0	3	Topsoil	
"	3	12	Rocks & clay	
"	12	20	Olive basalt	
"	20	54	Black basalt	
"	54	64	Brown clay	
"	64	75	Grey clay & rock	
"	75	78	Basalt w/clay seams	
"	78	165	Black basalt	
"	165	169	Grey-green clay	
"	169	192	Black basalt	
"	192	224	Brown shale	X
"	224	230	Grey sand	X
"	230	237	Grey clay	
"	237	260	Grey clay w/thin layers sa	
"	260	307	Grey clay	
"	307	317	Grey sand	X
"	317	380	Grey shale	
"	380	381	Grey sand	X
"	381	465	Grey shale	
"	465	512	Light grey shale	
"	512	530	Layers of shale & sand	X
			(flow coming from this strata)	

10.

Work started 20 Feb. 1971 finished 15 March 71

11. DRILLER'S CERTIFICATION

This well was drilled under my supervision and this report is true to the best of my knowledge.

Boley, Henry, Weech

86

Driller's or Firm's Name

Number

Murtaugh, Idaho

Address

Signed By

Date

WELL DRILLER'S REPORT

State law requires that this report be filed with the Director, Department of Water Resources within 30 days after the completion or abandonment of the well.

[illegible]

WELL DRILLER'S REPORT

RECEIVED

State law requires that this report be filed with the Director, Department of Water Resources
within 30 days after the completion or abandonment of the well.

I. WELL OWNER Name <u>COLEMAN BROS., INC. 1414 E. 1st St. Boise, Idaho</u> Address <u>Rt 4 Buhl Idaho</u> Owner's Permit No. <u>47-7680</u>		7. WATER LEVEL Department of Water Resources Static water level <u>14.5</u> ~~14.5~~ <u>feet</u> Flowing? ☒ Yes ☐ No G.P.M. flow <u>45</u> Artesian closed-in pressure _____ p.s.i. Controlled by: ☒ Valve ☐ Cap ☐ Plug Temperature <u>82</u> °F. Quality <u>good</u>																																																																																																																																																																																																																																			
II. NATURE OF WORK ☒ New well ☐ Deepened ☐ Replacement ☐ Abandoned (describe method of abandoning) _____		8. WELL TEST DATA ☐ Pump ☐ Bailer ☐ Air ☐ Other _____																																																																																																																																																																																																																																			
III. PROPOSED USE ☒ Domestic ☐ Irrigation ☐ Test ☐ Municipal ☐ Industrial ☐ Stock ☐ Waste Disposal or Injection ☐ Other _____ (specify type)		<table border="1"><thead><tr><th>Discharge G.P.M.</th><th>Pumping Level</th><th>Hours Pumped</th></tr></thead><tbody><tr><td> </td><td> </td><td> </td></tr><tr><td> </td><td> </td><td> </td></tr><tr><td> </td><td> </td><td> </td></tr></tbody></table>		Discharge G.P.M.	Pumping Level	Hours Pumped																																																																																																																																																																																																																															
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V. WELL CONSTRUCTION Casing schedule: ☒ Steel ☐ Concrete ☐ Other _____ <table border="1"><thead><tr><th>Thickness</th><th>Diameter</th><th>From</th><th>To</th></tr></thead><tbody><tr><td>inches <u>10 1/4</u></td><td>inches <u>+</u></td><td>feet <u>79</u></td><td>feet <u> </u></td></tr><tr><td>inches <u>8 5/8</u></td><td>inches <u> </u></td><td>feet <u>480</u></td><td>feet <u> </u></td></tr><tr><td>inches <u> </u></td><td>inches <u> </u></td><td>feet <u> </u></td><td>feet <u> </u></td></tr><tr><td>inches <u> </u></td><td>inches <u> </u></td><td>feet <u> </u></td><td>feet <u> </u></td></tr></tbody></table> Was casing drive shoe used? ☐ Yes ☒ No Was a packer or seal used? ☐ Yes ☒ No Is perforated? ☐ Yes ☒ No How perforated? ☐ Factory ☐ Knife ☐ Torch Size of perforation _____ inches by _____ inches <table border="1"><thead><tr><th>Number</th><th>From</th><th>To</th></tr></thead><tbody><tr><td>perforations</td><td>feet</td><td>feet</td></tr><tr><td>perforations</td><td>feet</td><td>feet</td></tr><tr><td>perforations</td><td>feet</td><td>feet</td></tr></tbody></table> Well screen installed? ☐ Yes ☒ No Manufacturer's name _____ Type _____ Model No. _____ Diameter _____ Slot size _____ Set from _____ feet to _____ feet Diameter _____ Slot size _____ Set from _____ feet to _____ feet Gravel packed? ☐ Yes ☐ No ☐ Size of gravel _____ Placed from _____ feet to _____ feet Surface seal depth <u>79</u> Material used in seal: ☒ Cement grout ☐ Puddling clay ☐ Well cuttings Sealing procedure used: ☐ Slurry pit ☐ Temp. surface casing ☒ Overbore to seal depth Method of joining casing: ☐ Threaded ☒ Welded ☐ Solvent <u>Cemented between casing & strata</u> ☒ Cemented between strata Describe access port <u>artesian flow, plate on top of valve</u>		Thickness	Diameter	From	To	inches <u>10 1/4</u>	inches <u>+</u>	feet <u>79</u>	feet <u> </u>	inches <u>8 5/8</u>	inches <u> </u>	feet <u>480</u>	feet <u> </u>	inches <u> </u>	inches <u> </u>	feet <u> </u>	feet <u> </u>	inches <u> </u>	inches <u> </u>	feet <u> </u>	feet <u> </u>	Number	From	To	perforations	feet	feet	perforations	feet	feet	perforations	feet	feet	10. Work started <u>4-14-80</u> finished <u>7-1980</u>																																																																																																																																																																																																			
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III. LOCATION OF WELL Sketch map location must agree with written location. N S Subdivision Name _____ Lot No. _____ Block No. _____ County <u>SE 1/4 Sec. 24, T. 1, R. 14</u>		11. DRILLERS CERTIFICATION I/We certify that all minimum well construction standards were complied with at the time the rig was removed. Firm Name <u>Sherrin Couch Well Drilling</u> Firm No. <u> </u> Address <u>340 Wayne Villa Dr. Boise, Idaho 83706</u> Date <u> </u> Signed by (Firm Official) <u>Sherrin Couch</u> and <u> </u> (Operator) <u> </u>																																																																																																																																																																																																																																			

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
WELL DRILLER'S REPORT

USE TYPEWRITER OR
BALLPOINT PEN

State law requires that this report be filed with the Director, Department of Water Resources
within 30 days after the completion or abandonment of the well.

WELL OWNER

Name COLLEEN BROWN
Address _____
Owner's Permit No. _____

7. WATER LEVEL

Static water level _____ feet below land surface.
Flowing? ☐ Yes ☐ No G.P.M. flow _____
Artesian closed-in pressure _____ p.s.i.
Controlled by: ☐ Valve ☐ Cap ☐ Plug
Temperature _____ °F. Quality _____

NATURE OF WORK

New well ☐ Deepened ☐ Replacement
Abandoned (describe method of abandoning) _____

8. WELL TEST DATA

☐ Pump ☐ Bailer ☐ Air ☐ Other _____

Discharge G.P.M.	Pumping Level	Hours Pumped

PROPOSED USE

Domestic ☐ Irrigation ☐ Test ☐ Municipal
Industrial ☐ Stock ☐ Waste Disposal or Injection
Other _____ (specify type)

METHOD DRILLED

Rotary ☐ Air ☐ Hydraulic ☐ Reverse rotary
Cable ☐ Dug ☐ Other _____

WELL CONSTRUCTION

Using schedule: ☐ Steel ☐ Concrete ☐ Other

Thickness	Diameter	From	To
inches _____	inches + _____	feet _____	feet _____
inches _____	inches _____	feet _____	feet _____
inches _____	inches _____	feet _____	feet _____
inches _____	inches _____	feet _____	feet _____

Casing drive shoe used? ☐ Yes ☐ No

Casing hanger or seal used? ☐ Yes ☐ No

Perforated? ☐ Yes ☐ No

How perforated? ☐ Factory ☐ Knife ☐ Torch

Size of perforation _____ inches by _____ inches

Number	From	To
perforations _____	feet _____	feet _____
perforations _____	feet _____	feet _____
perforations _____	feet _____	feet _____

Well screen installed? ☐ Yes ☐ No

Manufacturer's name _____

Type _____ Model No. _____

Diameter _____ Slot size _____ Set from _____ feet to _____ feet

Diameter _____ Slot size _____ Set from _____ feet to _____ feet

Gravel packed? ☐ Yes ☐ No ☐ Size of gravel _____

Placed from _____ feet to _____ feet

Surface seal depth _____ Material used in seal: ☐ Cement grout

☐ Puddling clay ☐ Well cuttings

Sealing procedure used: ☐ Slurry pit ☐ Temp. surface casing

☐ Overbore to seal depth

Method of joining casing: ☐ Threaded ☐ Welded ☐ Solvent

Weld

☐ Cemented between strata

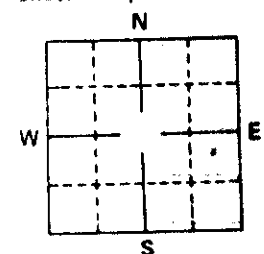
Describe access port _____

10.

Work started 4-14-80 finished 7-1-80

LOCATION OF WELL

Sketch map location must agree with written location.



Subdivision Name _____

Lot No. _____ Block No. _____

County _____

Scale _____ 1/4 Sec. _____

11. DRILLERS CERTIFICATION

I/We certify that all minimum well construction standards were
complied with at the time the rig was removed.

Firm Name WILSON DRILLING Firm No. 123

Address 240 MAIN ST. VICTOR, ID. Date _____

Signed by (Firm Official) [Signature]

and

(Operator) [Signature]

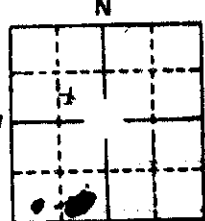
USE ADDITIONAL SHEETS IF NECESSARY - FORWARD THE WHITE COPY TO THE DEPARTMENT

WELL DRILLER'S REPORT

State law requires that this report be filed with the Director, Department of Water Resources
within 30 days after the completion or abandonment of the well.

RECEIVED

SEP 12 1982

1. WELL OWNER Name <u>Collins Bros., Kanab, Rapids Ranch</u> Address <u>RT. 4 Buhl Idaho</u> Owner's Permit No. <u>47-7680</u>		7. WATER LEVEL Department of Water Resources Static water level _____ feet below ground surface Flowing? ☒ Yes ☐ No G.P.M. flow <u>2000</u> Artesian closed-in pressure <u>110</u> p.s.i. Controlled by: ☒ Valve ☐ Cap ☐ Plug Temperature <u>93</u> °F. Quality <u>good</u>																																																																																																																																						
2. NATURE OF WORK ☒ New well ☐ Deepened ☐ Replacement ☐ Abandoned (describe method of abandoning) _____		8. WELL TEST DATA ☐ Pump ☐ Bailor ☐ Air ☐ Other _____ <table border="1"><thead><tr><th>Discharge G.P.M.</th><th>Pumping Level</th><th>Hours Pumped</th></tr></thead><tbody><tr><td> </td><td> </td><td> </td></tr><tr><td> </td><td> </td><td> </td></tr><tr><td> </td><td> </td><td> </td></tr></tbody></table>		Discharge G.P.M.	Pumping Level	Hours Pumped																																																																																																																																		
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	8	16	gray lava solid																																																																																																																																					
	16	22	clay boulders																																																																																																																																					
	22	65	gray lava solid																																																																																																																																					
	65	69	gray lava loose (1st water)	X																																																																																																																																				
	69	95	gray lava solid		X																																																																																																																																			
	95	97	crevice	X																																																																																																																																				
	97	130	gray lava firm	X																																																																																																																																				
	130	145	broken lava	X																																																																																																																																				
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	179	204	gray & brown lava broken	X																																																																																																																																				
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	265	291	broken lava & cinders	X																																																																																																																																				
	291	335	gray lava firm	X																																																																																																																																				
	335	390	gray lava solid	X																																																																																																																																				
	390	393	gray lava loose	X																																																																																																																																				
	393	482	gray lava mostly solid	X																																																																																																																																				
	482	603	green clay alone or sand	X																																																																																																																																				
	603	640	gray lava solid	X																																																																																																																																				
8	640	668	gray lava soft	X																																																																																																																																				
	668	720	gray lava firm	X																																																																																																																																				
	720	906	gray lava mostly solid with crevices & broken areas	X																																																																																																																																				
4. METHOD DRILLED ☒ Rotary ☒ Air ☐ Hydraulic ☐ Reverse rotary ☐ Cable ☐ Dug ☐ Other _____		10. Work started <u>7-14-80</u> finished <u>8-11-80</u>																																																																																																																																						
5. WELL CONSTRUCTION Casing schedule: ☒ Steel ☐ Concrete ☐ Other _____ <table border="1"><thead><tr><th>Thickness</th><th>Diameter</th><th>From</th><th>To</th></tr></thead><tbody><tr><td>1/2 inches</td><td>10 3/4 inches</td><td>+ 1 feet</td><td>29 feet</td></tr><tr><td>1/2 inches</td><td>8 5/8 inches</td><td>+ 1 feet</td><td>346 feet</td></tr><tr><td> </td><td> </td><td> </td><td> </td></tr><tr><td> </td><td> </td><td> </td><td> </td></tr></tbody></table> Was casing drive shoe used? ☐ Yes ☒ No Was a packer or seal used? ☐ Yes ☒ No Perforated? ☐ Yes ☒ No How perforated? ☐ Factory ☐ Knife ☐ Torch Size of perforation _____ inches by _____ inches <table border="1"><thead><tr><th>Number</th><th>From</th><th>To</th></tr></thead><tbody><tr><td> </td><td> </td><td> </td></tr><tr><td> </td><td> </td><td> </td></tr><tr><td> </td><td> </td><td> </td></tr></tbody></table> Well screen installed? ☐ Yes ☒ No Manufacturer's name _____ Type _____ Model No. _____ Diameter _____ Slot size _____ Set from _____ feet to _____ feet Diameter _____ Slot size _____ Set from _____ feet to _____ feet Gravel packed? ☐ Yes ☒ No ☐ Size of gravel _____ Placed from _____ feet to _____ feet Surface seal depth <u>30 ft.</u> Material used in seal: ☒ Cement grout ☐ Puddling clay ☐ Well cuttings Sealing procedure used: ☐ Slurry pit ☐ Temp. surface casing ☒ Overbore to seal depth Method of joining casing: ☐ Threaded ☒ Welded ☐ Solvent <u>oriented between 10 & 12 o'clock</u> ☒ Cemented between strata Describe access port <u>artesian flow plate on top of valve</u>		Thickness	Diameter	From	To	1/2 inches	10 3/4 inches	+ 1 feet	29 feet	1/2 inches	8 5/8 inches	+ 1 feet	346 feet									Number	From	To																																																																																																																
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Number	From	To																																																																																																																																						
6. LOCATION OF WELL Sketch map location must agree with written location.  Subdivision Name _____ Lot No. _____ Block No. _____ County <u>Twin Falls</u> <u>SE 1/4 NW 1/4 14 96 N 14 E</u>		11. DRILLERS CERTIFICATION I/We certify that all minimum well construction standards were complied with at the time the rig was removed. Firm Name <u>Sherman Couch</u> Firm No. <u>161</u> Address <u>340 Wauna Vista Dr</u> <u>Burley, Idaho 83418</u> Signed by (Firm Official) <u>Sherman Couch</u> and <u>Robert Couch</u> (Operator)																																																																																																																																						

Collins Bros Corp
Robert Weaver Attorney
Richard "Chip" Carlson

14.60
2450
14
1800
450
6300

47-7680

3-31-82

Year round use for heating in the sauna →

3,200

99 homesites

Wells — Flowing Artesian

950' deep 2 on East Side Mud Creek

1200' deep on West Mud Creek

1200 psi — 92°F
2200, 1000 gpm
96°F — 70 psi —
not much flow — 83°F

Issue

Lowering of pressure —

Concern

Is the aquifer going to be depleted ?

Need Testing on artesian aquifer →

USGS 80-53 report —

The pressure is dropping rapidly —
Area need to be managed —

47-7680 Royal Crest (Collins Bros Inc, Assignee)

Conf - Weaver - 99 homesites approved in P.U.D.

Carlson - well E of road ct - 1200 gpm

N well - 1000 gpm

Butte well - Small flow

• End 92°F B

County -

0565 80-563 open file report - Pressure dropping

Weaver - Request Dept study & decision

Weaver's Decision Agreed to but wants statement

Check w/ Attorneys → of whether entire Permit must be reviewed
when only 6 esthormal treatment use is
changed.

Protestants will submit data on wells
Copies to Weaver before Decision

MICROFILMED

In The matter of)
Application for Permit) Agreement
NO. 47-7680 - Collins Bros Corp)

We the undersigned agree to
allow The Department of Water Resources
to reach a decision in the matter of
protests against the above referenced
application based upon the conference
held in Twin Falls, March 31, 1982, and
upon information in the records of
the Department.

Robert O. Deane for Collins Bros. Corp
Robert S. Luntz, Rt 3, Box 195 Buhl, Idaho
Fred A. Kambreich Rt 3 Box 310 Buhl, Idaho
Betty Dargatz, Rt 3 Buhl ID 83314
Mr & Mrs L. J. Johnson Rt 3 " Box 172, 83314
Frances Kambreich Rt 3 Buhl Ida 83316

MICROFILMED

STATEMENT

Received at Conference
3/31/82
LH

IN THE MATTER OF PROTESTS AGAINST APPROVAL)
OF APPLICATION FOR PERMIT NO. 47-7080)
IN THE NAME OF ROYAL CREST, INC., KANAKA)
RAPIDS RANCH)

I wish to protest approval of the subject application based on the following considerations listed in the Hearing Information data provided by the Idaho State Department of Water Resources.

1) Will the proposed use reduce the quantity of water under existing water rights?

At present neither the State of Idaho nor the United States Government knows the size and extent of the aquifer from which the Kanaka Rapids Ranch and many others withdraw water. Another unknown is the source of aquifer recharge. What is known by both the State and Federal Government is the fact that the aquifer is rapidly being drawn down, to the point where at least one individual's water level dropped below the installed pump level, burning out the pump. Many other users monitoring their wells have noticed continuing and sometimes precipitous drops in artesian pressure as new wells are developed. Lowering pressure must mean water withdrawal is exceeding recharge.

Although not listed as a consideration by the State, water quality may be extremely important to some users. As the aquifer is drawn down, water temperatures or water chemistry may change due to rate of flow through the aquifer, different infiltration rates, etc. Should water temperatures drop, some individuals and businesses, such as my own, may suffer financial disaster. A change in water chemistry or radioactivity may also have strong

RECORDED

implication for some businesses. I fear that the State has conducted little or no research on these subjects as they relate to the aquifer under consideration.

2) Is the proposed water supply insufficient for the purpose intended?

The State of Idaho apparently has developed no standards for heating houses with geothermal water. Until the State develops standards taking into consideration water temperature, type of heating (radiant, radiators, etc.) area to be heated, etc., it does not seem appropriate for the State to authorize any further use of geothermal water for heating purposes. I, therefore, urge that the State declare a moratorium on use of water for heating purposes until such time as standards are developed prescribing appropriate water volume for heating.

3) Is the application made in good faith or for delay or speculative purposes?

The application does not state whether the water is to be used for heating existing facilities or for heating homes and related facilities in a proposed subdivision. If used for a subdivision, the State may wish to determine whether or not the proposed use is speculative. Additionally the State may wish to question the need for heating on a year around basis as requested in the amended application.

5) Will the proposed use conflict with the local public interest?

Potentially any further use of water which exceeds recharge may conflict with local public interest. For instance, does the State know whether Buhl's warm water wells draw water from the same aquifer used by Kanaka Rapids Ranch? If Buhl's well water levels are dropping, there will be an increase in pumping costs to Buhl water users. Some homeowners have designed or retrofitted their homes to use geothermal water for heating purposes. Certainly it is in the local public interest as well as the State's, to conserve electricity.

Yet if the State continues to permit water withdrawal from the aquifer in excess of recharge, many may have to resort to pumping, which may prove financially disastrous to some. Obviously it is not in the public interest for the State to permit the aquifer to drop to a level where energy is required for pumping, when such energy use could be avoided by appropriate management of the aquifer.

I urge the State to take immediate action to declare the aquifer a critical ground water management area while studies related to management of the aquifer are underway. Further, I request that no additional withdrawals be permitted until the State can either administratively or through new legislation manage the aquifer on a sustained yield basis, with the intent of restoring artesian pressure to whatever levels are necessary for all current users. If the State will adopt this policy, great benefits can result. To do otherwise may create catastrophic consequences.

Robert S. Luntz 3-31-82
Robert S. Luntz

RECEIVED

47-7680 - ROYAL CREST, INC. (Kanaka Rapids Ranch)

Council Chambers - Twin Falls City Hall, Twin Falls, Idaho

Wednesday, - March 31, 1982 - 10:00 a.m.

Hearing Officer Bob F. Leenser

ROSTER OF ATTENDANCE

Assisted By Loren Holmes

Name	Address	Representing
Richard H. Carlson	609 E. 12th	Collins Bros.
ROBERT C. WEAVER	Jerome	Collins Bros
Betty Duvall	130 N. BROW BLVD	self -
Frank Kambrick	Rt 3 Buhl Ave	Self.
Russ Anderson	Rt 3 Buhl	Self.
J. E. Roberts	" "	" "
Lloyd H. Kambrick	" "	" "
Robert S. Luntz	" "	Self

47-7680-100

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE
STATE OF IDAHO

IN THE MATTER OF PROTESTS AGAINST APPROVAL)
OF APPLICATION FOR PERMIT NO. 47-7680)
IN THE NAME OF ROYAL CREST, INC., KANAKA)
RAPIDS RANCH)

NOTICE OF HEARING
AND/OR CONFERENCE

On November 20, 1980, Royal Crest, Inc., of Las Vegas, Nevada, filed with the Department of Water Resources an application to appropriate the public waters of the State of Idaho. Due to an error in advertising an amended application for permit was filed December 15, 1981. On January 1, 1982, the Department received protests against approval of said amended application from Mr. & Mrs. G. W. Anderson, Fred & Frances Kambrich, Mr. & Mrs. Dale Durrant, and Robert S. Luntley.

The Department has set the matter of protests for hearing for Wednesday, March 31, 1982, at 10:00 a.m., in the Council Chamber of the Twin Falls City Hall, 321 2nd Avenue East, Twin Falls, Idaho. The hearing will be held in accordance with Chapter 2, Title 42 of the IDAHO CODE and adopted Rules of Practice and Procedure of the Department of Water Resources. Opportunity shall be afforded all parties to respond and present evidence and argument on all issues involved.

DATED This 9th day of March, 1982.

MICROFILMED


LOREN O. HOLMES
Southern Region Supervisor

CONFERENCE AND HEARING INFORMATION
IN THE MATTER OF APPROVAL OF AN APPLICATION FOR PERMIT

In accordance with IDAHO CODE, Section 42-203, the following issues are involved in the consideration of the application and protest(s):

- 1) Will the proposed use reduce the quantity of water under existing water rights?
- 2) Is the proposed water supply insufficient for the purpose intended?
- 3) Is the application made in good faith or for delay or speculative purposes?
- 4) Has the applicant sufficient financial resources with which to complete the project?
- 5) Will the proposed use conflict with the local public interest?

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

If the hearing is conducted by a hearing officer appointed by the Director, rather than the Director himself, a proposed decision will be submitted to the parties and the parties may be afforded an opportunity to file exceptions to the proposed decision and present briefs and oral arguments to the Director prior to the issuance of a final decision by the Director. This procedure is required by IDAHO CODE, Section 42-1701A.

The parties by written stipulation may waive their right to a proposed decision, however, the failure of either party to waive a proposed decision will not prejudice the Director's review of a party's evidence and arguments. However, such a waiver will shorten the decision-making process and may expedite substantially the issuance of a final decision. Whether compliance with Section 42-1701A is waived will not affect a party's right to petition for a rehearing of the final decision pursuant to Rule 11 of the Department's Rules of Practice and Procedure or affect a party's right to appeal the final decision to the district court.

MICROFILMED

Under the provision of IDAHO CODE, Sections 42-1701A and 67-5215, any court review of the Department's decision on appeal shall be confined to the record created before the Department.

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

NAME AND ADDRESS OF SENDER

Raygel Ceett 47-7680

Indicate type of mail
☐ REGISTERED ☐ COD
☐ INSURED ☐ CERTIFIED

I certify that we have
☐ Commercial Insurance
☐ A deductible clause
of \$

Affix stamp here if issued as
certificate of mailing or for
additional copies of this bill.
POSTMARK AND DATE OF RECEIPT

NUMBER OF ARTICLE	NAME OF ADDRESSEE, STREET, AND POST-OFFICE ADDRESS	POSTAGE	FEE	Handling Charge	Actual Value (If Registered)	DUE SENDER IF C.O.D.	R. R. FEE	S. D. FEE	S. H. FEE	REST. DEL. FEE	REMARKS
1	197 Raygel Crest, inc										
2	198 Robert A. Luntz										
3	199 Dale Luntz										
4	200 Fred Francis Kaminski										
5	201 J.G.W. Anderson										
6											
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TOTAL NUMBER OF
PIECES LISTED BY
SENDER

5

TOTAL NUMBER OF
PIECES RECEIVED
AT POST OFFICE

POSTMASTER. PER (Name of receiving employee)

The full declaration of value is required on all domestic and international registered mail. Commercial Insurance—Payment of the full registry is required on articles valued up to \$1,000 or the full amount of the deductible if the deductible exceeds \$1,000. The maximum indemnity payable is \$10,000 for registered mail, \$300 for COD and \$200 for insured mail. Special handling charges apply only to third- and fourth-class parcels. Special delivery service also includes special handling service.

FORM MUST BE COMPLETED BY TYPEWRITER, INK OR BALL POINT PEN

*USGPO: 1977 - 227-168

ACCEPTANCE OF REGISTERED, INSURED, C.O.D. AND CERTIFIED MAIL

PS Form 3877 - Aug. 1976



STATE OF IDAHO

DEPARTMENT OF WATER RESOURCES

SOUTHERN REGION

John V. Evans
Governor

C. Stephen Allred
Director

1041 Blue Lakes Blvd. North
Twin Falls, Idaho 83301
(208) 734-3578

March 9, 1982

Jewell Chandler
Secretary
Twin Falls City Hall
Twin Falls, Idaho 83301

Dear Mrs. Chandler:

This is to confirm the use of the conference room and council chambers for conference and/or hearing to be held by this office Tuesday, March 30 at 10:00 a.m., and 1:00 p.m., and Wednesday, March 31, at 10:00 a.m., and 1:30 p.m.

Thank you for your cooperation in this matter.

Very truly yours,

Mary A. Hill
Sr. Secretary

for

Loren O. Holmes
Southern Region Supervisor

MICROFILMED



STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
SOUTHERN REGION

John V. Evans
Governor

C. Stephen Allred
Director

1041 Blue Lakes Blvd. North
Twin Falls, Idaho 83301
(208) 734-3578

January 14, 1982

Royal Crest, Inc.
Kanaka Rapids Ranch
Box 42427 Huntridge Station
Las Vegas Nevada 89104

Re: Application for Permit No. 47-7680

Gentlemen:

Enclosed are copies of protests filed against the issuance of a permit pursuant to your Application No. . The Department suggests you contact the protestant directly in an effort to determine the nature of the protest and to attempt to resolve the protest.

If you do not advise us within twenty (20) days that the protest has been resolved, the matter will be scheduled for conference and/or hearing. At such a conference and/or hearing, the following are the principle items the Department can consider in either approving or denying an application for permit (Section 42-203, Idaho Code):

1. Will the proposed use reduce the quantity of water under existing water rights?
2. Is the proposed water supply insufficient for the purposes intended?
3. Is the application made in good faith or for delay or speculative purposes?
4. Has the applicant sufficient financial resources with which to complete the project?
5. Will the proposed use conflict with the local public interest?

If this office can be of further assistance, please contact us

Very truly yours,

LUREN O. HOLMES
Southern Region Supervisor

LOH:marya

Encl:

MICROFILMED



STATE OF IDAHO

DEPARTMENT OF WATER RESOURCES

SOUTHERN REGION

John V. Evans
Governor

C. Stephen Allred
Director

1041 Blue Lakes Blvd. North
Twin Falls, Idaho 83301
(208) 734-3578

January 14, 1982

Mr. & Mrs. G. W. Anderson
Rt 3 Box 172
Buhl, Idaho 83316

Re: Application for Permit No. 47-7680

Dear Mr. & Mrs. Anderson:

Your protest against the approval of the above-referenced application has been received and a copy has been sent to the applicant. The Department suggests you contact the applicant directly in an effort to determine what is proposed by the application and to attempt to resolve the protest.

If you do not advise us within twenty (20) days that the protest has been resolved, the matter will be scheduled for conference and/or hearing. At such a conference and/or hearing, the following are the principle items the Department can consider in either approving or denying an application for permit (Section 42-203, Idaho Code):

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5. Will the proposed use conflict with the local public interest?

If this office can be of further assistance, please contact us.

Very truly yours,

LOREN O. HOLMES
Southern Region Supervisor

LOH:marya

RECEIVED



STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
SOUTHERN REGION

John V. Evans
Governor

C. Stephen Allred
Director

1041 Blue Lakes Blvd. North
Twin Falls, Idaho 83301
(208) 734-3578

January 14, 1982

Fred & Frances Kambrich
Rt. 3
Buhl, Idaho 83316

Re: Application for Permit No. 47-7680

Dear Mr. & Mrs. Kambrich:

Your protest against the approval of the above-referenced application has been received and a copy has been sent to the applicant. The Department suggests you contact the applicant directly in an effort to determine what is proposed by the application and to attempt to resolve the protest.

If you do not advise us within twenty (20) days that the protest has been resolved, the matter will be scheduled for conference and/or hearing. At such a conference and/or hearing, the following are the principle items the Department can consider in either approving or denying an application for permit (Section 42-203, Idaho Code):

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5. Will the proposed use conflict with the local public interest?

If this office can be of further assistance, please contact us.

Very truly yours,

LOREN O. HOLMES
Southern Region Supervisor

LOH:marya



STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
SOUTHERN REGION

John V. Evans
Governor

C. Stephen Allred
Director

1041 Blue Lakes Blvd. North
Twin Falls, Idaho 83301
(208) 734-3578

January 14, 1982

Mr. & Mrs. Dale Durrant
Rt. 3
Buhl, Idaho 83316

Re: Application for Permit No. 47-7680

Dear Mr. & Mrs. Durrant:

Your protest against the approval of the above-referenced application has been received and a copy has been sent to the applicant. The Department suggests you contact the applicant directly in an effort to determine what is proposed by the application and to attempt to resolve the protest.

If you do not advise us within twenty (20) days that the protest has been resolved, the matter will be scheduled for conference and/or hearing. At such a conference and/or hearing, the following are the principle items the Department can consider in either approving or denying an application for permit (Section 42-203, Idaho Code):

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4. Has the applicant sufficient financial resources with which to complete the project?
5. Will the proposed use conflict with the local public interest?

If this office can be of further assistance, please contact us.

Very truly yours,

LOREN O. HOLMES
Southern Region Supervisor

LOH:marya

MICROFILMED



STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
SOUTHERN REGION

John V. Evans
Governor

C. Stephen Allred
Director

1041 Blue Lakes Blvd. North
Twin Falls, Idaho 83301
(208) 734-3578

January 14, 1982

Robert S. Luntley
Rt. 3 Box 195
Buhl, Idaho 83316

Re: Application for Permit No. 47-7680

Dear Mr. Luntley:

Your protest against the approval of the above-referenced application has been received and a copy has been sent to the applicant. The Department suggests you contact the applicant directly in an effort to determine what is proposed by the application and to attempt to resolve the protest.

If you do not advise us within twenty (20) days that the protest has been resolved, the matter will be scheduled for conference and/or hearing. At such a conference and/or hearing, the following are the principle items the Department can consider in either approving or denying an application for permit (Section 42-203, Idaho Code):

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5. Will the proposed use conflict with the local public interest?

If this office can be of further assistance, please contact us.

Very truly yours,

LOREN O. HOLMES
Southern Region Supervisor

LOH:marya

RECEIVED

Route 3, Box 195
Buhl, Idaho 83316
January 9, 1982

Idaho Department of Water Resources
1041 Blue Lakes Blvd. N.
Twin Falls, Idaho 83301

Gentlemen:

This letter refers to application for permit No. 47 7680 which Royal Crest, Inc., Kanaka Rapids Ranch wishes to amend by changing use of 4.90 cfs for power (from 01/01 to 12/31) to heating (from 01/01 to 12/31). I wish to protest this proposed amendment.

It is obvious to those of us using geothermal water for heating that such use is needed only during the colder months of the year (possibly September through April). Consequently I believe the requested period of use for heating is inconsistent with the need for heating and should be rejected or amended.

Sincerely yours,

Robert S. Luntz
Robert S. Luntz

RECEIVED
JAN 11 1982
Department of Water Resources
Southern District Office

RECEIVED

RECEIVED

JAN 11 1982

Department of Water Resources
Boise District Office

Jan. 8, 1982

Water Resources
Twin Falls, Id.

Complaint:

Kanaka Rapids Ranch has lowered the pressure in our domestic artesian well until we had no water for household use.

We propose a moratorium on large well drilling until a survey is made on water levels in the area.

H W Anderson
Mrs. D. M. Anderson
Rt. 3 Box 172
Buhl, Id. 83316

RECEIVED

Department of Water Resources,
We wish to protest
the amendment of permit #47-7680 for Kanaka
housing project.

The practice of indiscriminately issuing
permits for large artesian wells should be
halted until a thorough study has been made
of the Barbury area aquifer.

The pressure of our well has dropped
significantly since so many large wells have been drilled.
Being on a community well we try to conserve,
so it is annoying to observe large amounts
of water running freely with no apparent use

Fred & Frances Kambrich

Rt 3 Buhl

Mrs & Mrs Dale Durant

Rt 3 Buhl

MICROFILMED

JAN 22 1982

WATER RESOURCES
DIVISION

NOTICE OF AMENDED APPLICATION FOR PERMIT
NO. 47-7680

Notice is hereby given that Application for Permit No. 47-7680 in the name of
Royal Crest, Inc., Kanaka Rapids Ranch, Las Vegas, Nevada was filed as follows:

~~47-7680~~

ROYAL CREST, INC., KANAKA RAPIDS RANCH

BOX 42427 HUNTRIDGE STATION, LAS VEGAS., NV 89104

Source: GROUNDWATER

Date Filed: 11/20/1980

Amount: 14.60 CFS

Diversion Point: SENE SESE Sec 10 T 09S R 14E SENW Sec 14 T 09S R 14E,
TWIN FALLS Co.

Use: IRRIGATION	(6.60 CFS)	from 04/01 to 10/31
COMMERCIAL	(2.70 CFS)	from 01/01 to 12/31
POWER	(4.90 CFS)	from 01/01 to 12/31
DOMESTIC	(0.40 CFS)	from 01/01 to 12/31

Place of Use: NWNE SWNE NENW NWNW SENW Sec 14 T 09S R 14E SWNW NWSW SWSW
Sec 11 T 09S R 14E SWNE SENE NENW SENW NESW NESE NWSE SESE
Sec 10 T 09S R 14E FOR 430 ACRES

Diversion Means: ARTESIAN WELLS, PUMPS

Application for Permit No. 47-7680 is hereby amended to read as follows:

ROYAL CREST, INC., KANAKA RAPIDS RANCH

BOX 42427 HUNTRIDGE STATION, LAS VEGAS., NV 89104

Source: GROUNDWATER

Date Filed: 11/20/1980

Amount: 14.60 CFS

Diversion Point: SENE SESE Sec 10 T 09S R 14E SENW Sec 14 T 09S R 14E,
TWIN FALLS Co.

Use: IRRIGATION	(6.60 CFS)	from 04/01 to 10/31
COMMERCIAL	(2.70 CFS)	from 01/01 to 12/31
HEATING	(4.90 CFS)	from 01/01 to 12/31
DOMESTIC	(0.40 CFS)	from 01/01 to 12/31

Place of Use: NWNE SWNE NENW NWNW SENW Sec 14 T 09S R 14E SWNW NWSW SWSW
Sec 11 T 09S R 14E SWNE SENE NENW SENW NESW NESE NWSE SESE
Sec 10 T 09S R 14E FOR 430 ACRES

Diversion Means: ARTESIAN WELLS, PUMPS

Any protest against approval of the amending of Permit No. 47-7680 as set forth
above must be filed with the Idaho Department of Water Resources, 1041 Blue Lakes
Blvd. North, Twin Falls, Idaho 83301, on or before January 11, 1982.

A. KENNETH DUNN
Director

Published in Times News on December 24 and December 31, 1981

plgl water dept
6 IN 10:31
Notice to start
Thursday, December 24,
1981.

**NOTICE OF AMENDED
APPLICATION FOR
PERMIT NO. 47-7680**

Notice is hereby given
that Application for
Permit NO. 47-7680 in the
name of Royal Crest,
Inc., Kanaka Rapids
Ranch, Las Vegas,
Nevada was filed as
follows:

47-7680
ROYAL CREST, INC.,
KANAKA RAPIDS
RANCH
BOX 42427 HUNTRIDGE
STATION, LAS VEGAS,
NV 89104

Source:
GROUNDWATER
Date Filed: 11/20/1980
Amount: 14.60 CFS
Diversion Point: SENE
SESE Sec 10 T 09S R 14E
SENW Sec 14 T 09S R
14E, TWIN FALLS Co.
Use: IRRIGATION (6.60
CFS) from 04/01 to 10/31
COMMERCIAL (2.70 CFS)
from 01/01 to 12/31
POWER (4.90 CFS) from
01/01 to 12/31
DOMESTIC (0.40 CFS)
from 01/01 to 12/31
Place of Use: NWNW
SWNE NENW NWNW
SENW Sec 14 T 09S R 14E
SWNW NWSW SWSW
Sec 11 T 09S R 14E SWNE
SENE NENW SENW
NESW NESE NWSE
SESE Sec 10 T 09S R 14E
FOR 430 ACRES

Diversion Means:
ARTESIAN WELLS,
PUMPS

Application for Permit
No. 47-7680 is hereby
amended to read as
follows:

ROYAL CREST, INC.,
KANAKA RAPIDS
RANCH
BOX 42427 HUNTRIDGE
STATION, LAS VEGAS,
NV 89104

Source:
GROUNDWATER
Date Filed: 11/20/80
Amount: 14.60 CFS
Diversion Point: SENE
SESE Sec 10 T 09S R 14E
SENW Sec 14 T 09S R
14E, TWIN FALLS Co.
Use: IRRIGATION (6.60
CFS) from 04/04 to 10/31
COMMERCIAL (2.70 CFS)
from 01/01 to 12/31
HEATING (4.90 CFS)
from 01/01 to 12/31
DOMESTIC (0.40 CFS)
from 01/01 to 12/31

Place of Use: NWNW
SWNE NENW NWNW
SENW Sec 14 T 09S R 14E
SWNW NWSW SWSW
Sec 11 T 09S R 14E SWNE
SENE NENW SENW
NESW NESE NWSE
SESE Sec 10 T 09S R 14E
FOR 430 ACRES

Diversion Means:
ARTESIAN WELLS,
PUMPS

Any protest against
approval of the amend-
ing of Permit No. 47-7680
as set forth above must
be filed with the Idaho
Department of Water
Resources, 1041 Blue
Lakes Blvd. North, Twin
Falls, Idaho 83301, on or
before January 11, 1982.

A. KENNETH DUNN
Director

PUBLISH: Thursday,
December 24, and 31,
1981.

ole
maye
12/21/81

RECORDED

December 15, 1981

Times News
P. O. Box 548
Twin Falls, Idaho 83301

Re: Notice of Amended Application for Permit No. 47-7680

Gentlemen:

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

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

In order to receive payment, an affidavit of publication must be submitted to the Department along with the publication bill.

Sincerely,

Mary A. Hill
Sr. Secretary

Encl:

Bill submitted: _____

MICROFILMED

original sent Copy



State of Idaho

DEPARTMENT OF WATER RESOURCES

STATE OFFICE, 450 W. State Street, Boise, Idaho

JOHN V. EVANS

Governor

A. KENNETH DUNN

Director

Mailing address:
Statehouse
Boise, Idaho 83720
(208) 334-4440

47-7680

July 24, 1981

RECEIVED

AUG 10 1981

Department of Water Resources
Southern District Office

RE: Application for Permit No.

Dear Applicant:

The 1981 Idaho Legislature made a change in Section 42-205, Idaho Code, that may affect the above referenced application. The change requires that if a proposed hydropower project will use existing irrigation facilities, the approval of the owner of the facilities must be obtained before an application for permit to develop a water right can be approved.

Please find enclosed an affidavit which we must receive before we can complete the review of your application. Please complete the affidavit, sign it before a notary, and return it to this office at your earliest convenience, no later than August 15, 1981.

Sincerely,

David R. Tuthill Jr.

DAVID R. TUTHILL JR., P. E.
Supervisor, Water Allocation Section

DRT:jg

Enclosure

MICROFILMED



TWIN FALLS CANAL COMPANY

POST OFFICE BOX 326

TWIN FALLS, IDAHO, 83301



December 18, 1980

RECEIVED

DEC 19 1980

Department of Water Resources
1041 Blue Lakes Blvd. North
Twin Falls, Idaho 83301

Department of Water Resources
Southern District Office

RE: App. for Permit No. 47-7684, 47-7683, 47-7680
Name: Royal Crest, Inc., Kanaka Rapids Ranch

Gentlemen:

The Twin Falls Canal Company after researching filed water right permit has concluded that water sought to be appropriated is waste water, which would accrue below the Company's last delivery. However, we are advised that many others hold prior rights to this waste water and of course the holder has a right to cease wasting water.

The Canal Company will continue to make deliveries to their shareholders to the extent possible, but makes no effort to put additional water in the ditches so as to insure that waste water would be available for permits such as this one.

Respectfully Submitted,

C.W. Travis
General Manager

CWT:brw

MICROFILMED

NOTICE OF APPLICATION FOR WATER RIGHT

Notice is hereby given that the following application(s) have been submitted for permit to appropriate the public waters of the State of Idaho:

42-2680

ROYAL CREST, INC., KANAKA RAPIDS RANCH

BOX 42427 HUNTRIDGE STATION, LAS VEGAS., NV 89104

Source: GROUNDWATER

Date Filed: 11/20/1980

Amount: 14.60 CFS

Diversion Point: SENE SESE Sec 10 T 09S R 14E SENW Sec 14 T 09S R 14E,
TWIN FALLS Co.

Use: IRRIGATION	(6.60 CFS)	from 04/01 to 10/31
COMMERCIAL	(2.70 CFS)	from 01/01 to 12/31
POWER	(4.90 CFS)	from 01/01 to 12/31
DOMESTIC	(0.40 CFS)	from 01/01 to 12/31

Place of Use: NUNE SWNE NENW NWNW SENW Sec 14 T 09S R 14E SWNW NWSW SWSW
Sec 11 T 09S R 14E SWNE SENE NENW SENW NESW NESE NWSE SESE
Sec 10 T 09S R 14E FOR 430 ACRES

Diversion Means: ARTESIAN WELLS, PUMPS

If issued, the permit(s) will be subject to all prior water rights. Protests against the granting of any permit must be filed with the Director of the Idaho Department of Water Resources, 1041 Blue Lakes Blvd. North, Twin Falls, Idaho 83301 and received on or before JANUARY 5, 1981.

C. STEPHEN ALLRED

Director

Published 12/18 & 12/25/80.

MICROFILMED

MICROFILMED

ab
mays
12/17/80

47-7880
ROYAL CREST, INC.,
KANAKA RAPIDS RANCH
BOX 42427 HUNTRIDGE
STATION, LAS VEGAS, NV
89104
Source: GROUNDWATER
Date Filed: 11/20/1980
Amount: 14.60 CFS
Diversion Point: SENE SESE
Sec 10 T 09S R 14E SENW
Sec 14 T 09S R 14E, TWIN
FALLS Co.
Use: IRRIGATION (8.60 CFS)
from 04/01 to 10/31
COMMERCIAL (2.70 CFS)
from 01/01 to 12/31
POWER (4.90 CFS) from
01/01 to 12/31
DOMESTIC (0.40 CFS)
from 01/01 to 12/31
Place of Use: NWNE SWNE
NENW NWNW SENW Sec
14 T 09S R 14E SWNW
NWSW SWSW Sec 11 T
09S R 14E SWNE SENE
NENW SENW NESW
NESE NWSE SESE Sec 10
T 09S R 14E FOR 430
ACRES
Diversion Means:
ARTESIAN WELLS,
PUMPS

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
Southern Region

1041 Blue Lakes Blvd N.
Twin Falls, Idaho 83301
(208) 734-3578

DECEMBER 15, 1980

Times News
P. O. Box 548
Twin Falls, Idaho 83301

Gentlemen:

Enclosed you will find a legal notice which we wish to have published on the dates indicated (once a week for two consecutive weekly issues) in your newspaper. We have allowed ample time for you to submit a galley proof to this office for review before the first publication date. If you cannot publish the notice on the proposed dates, please contact us immediately.

An affidavit of publication must be submitted to the Department along with the publication bill. Your cooperation is appreciated.

Please send the affidavit of publication and publication billing to this office before JANUARY 5, 1981.

Yours truly,

Mary A. Hill

Mary A. Hill
Secretary

Encl.



STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
SOUTHERN REGION

John V. Evans
Governor

C. Stephen Allred
Director

1041 Blue Lakes Blvd. North
Twin Falls, Idaho 83301
(208) 734-3578

December 4, 1980

Mr. Alex Schaefer
Department of Health & Welfare
Division of Environment
P. O. Box 1626
Twin Falls, Idaho 83301

Re: Application for Permit No. 47-7679 - 47-7680

Dear Mr. Schaefer:

Please find enclosed a copy of the above referenced application for permit for your information and files.

Sincerely,

Mary A. Hill
Secretary

for

Loren O. Holmes
Southern Region Supervisor

Encl:

MICROFILMED



STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
SOUTHERN REGION

John V. Evans
Governor

C. Stephen Allred
Director

1041 Blue Lakes Blvd. North
Twin Falls, Idaho 83301
(208) 734-3578

December 4, 1980

Mr. Bob Bell, Regional Fisheries Biologist
Idaho Fish & Game Department
Region #4
P. O. Box 428
Jerome, Idaho 83338

Re: Application for Permit No. 47-7680

Dear Mr. Bell:

Please find enclosed a copy of the above referenced application for permit for your information and files.

Sincerely,

Mary A. Hill
Secretary

for

Loren O. Holmes
Southern Region Supervisor

encl:
RECEIVED