



United States
Department of
Agriculture

Office of the
General Counsel

February 3, 1998

Georgia Satterlee
Department of Water Resources
1341 Fillmore Street, Suite 200
Twin Falls, ID 83301-3380

RECEIVED

FEB 04 1998

Re: Pomerelle Proposed Transfer of Water Right

Department of Water Resources
Southern Region

Dear Ms. Satterlee:

I am writing concerning our recent application for a transfer of water right A45-04114 for Pomerelle Ski Area and regarding your January 5, 1998, letter to Ed Waldapfel. The letter reviews recent activity concerning this water right and concludes with your concern that this proposed transfer "...can be construed as an expansion of an existing right, which would be possible grounds for denial of the application for transfer. Eventually evidence will need to be submitted in order to substantiate that this is not an enlargement".

In order to address your concerns, I have enclosed a letter from the attorney for the permittee, Roger Ling, to me dated October 1, 1997 which provides important background information including the historical basis for claiming .06 CFS. This historical water development and use at the site is substantiated by an affidavit from Condido DeThomas, one of the original developers at Pomerelle which is attached to Mr. Ling's letter. In addition, the Notice Of Claim To A Water Right filed by the Forest Service also contains information pertinent to this historic water use in number 5 response (2) and on a page accompanying this claim in paragraph number 3.

I hope this information will lead to a timely resolution of any concerns you may have concerning this water right. If you have other questions or concerns about this matter, please contact me at (208) 387-0835 at your convenience.

Very truly yours,

Randall J. Bramer

enclosures

cc: Bill LaVere
Roger Ling, Esq.

ROGER D. LING
ROBERT M. NIELSEN
BRENT T. ROBINSON
BRENT C. TINGEY

LING, NIELSEN & ROBINSON
ATTORNEYS AT LAW
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P. O. BOX 396
RUPERT, IDAHO 83350-0396

AREA CODE 208
TELEPHONE 436-4777
FAX 436-6804

October 1, 1997

RECEIVED

FEB 04 1998

Department of Water Resources
Southern Region

Randall J. Bramer
Special Assistant
U.S. Attorney for the District of Idaho
United States Department of Agriculture
380 Park Center, Suite 330
Boise, ID 83724

RE: Water Rights for Pomerelle Ski Area

Dear Randy:

I have enclosed a proposed Amended Notice of Claim to be filed with the Idaho Department of Water Resources. You would have to fill out some of the blanks, such as the telephone and mailing address for the Forest Service, and the verification for the person signing the Amended Claim. You also will be required to fill out the acknowledgment of the signature and the Notice of Appearance by you as the attorney.

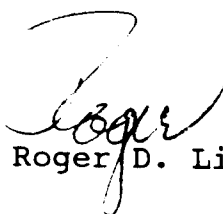
In discussing the development of the Pomerelle ski area with Condidio (Con) DeThomas, one of the original founders of the ski area, I discovered that they obtained a loan to build the ski area in 1964, and had constructed the lodge in 1965. Prior to 1965, their lodge was "dry." In developing a water supply, the water from Pomerelle Spring alone was insufficient, so they pumped from a spring immediately below and adjacent to the parking lot to provide additional water. As he recalls, the Pomerelle Spring was used primarily to operate the restrooms and the water pump from the spring was used for the rest of the lodge, as it was in a collection box and its water quality could be controlled. Accordingly, I have prepared an Amended Claim with the priority date as previously shown in the Claim of the Forest Service, but have increased the amount of the claim to .06 cfs. We do not have records at this time as to what the original pump in the second spring was, but we have to assume that the pump at Bennett Spring, which has a greater lift, was not larger than the one that had been installed in 1965 in the spring above Bennett Spring. It is possible that we can obtain additional information as to the size of the pump that was placed in the second spring in 1965 to determine the diversion rate. We will keep trying. In any event, almost any pump will divert .04 cfs, and it is clear that the Pomerelle Spring provided .02 cfs. Thus, the conclusion that .06 cfs was diverted since 1965.

Randall J. Bramer
Special Assistant
U.S. Attorney for the District of Idaho
United States Department of Agriculture
October 1, 1997
Page 2

I have also enclosed the original Affidavit of Condido DeThomas, affirming some of the above facts and which should be submitted in support of the Amended Claim. If you have any questions, please feel free to call me.

I would suggest that we proceed with an Application for a new permit after we have had a chance to meet with IDWR. It may be that we can get by with .06 cfs, and we would merely need to file an Application to change or add to the constitutional appropriation a new beneficial use.

Very truly yours,

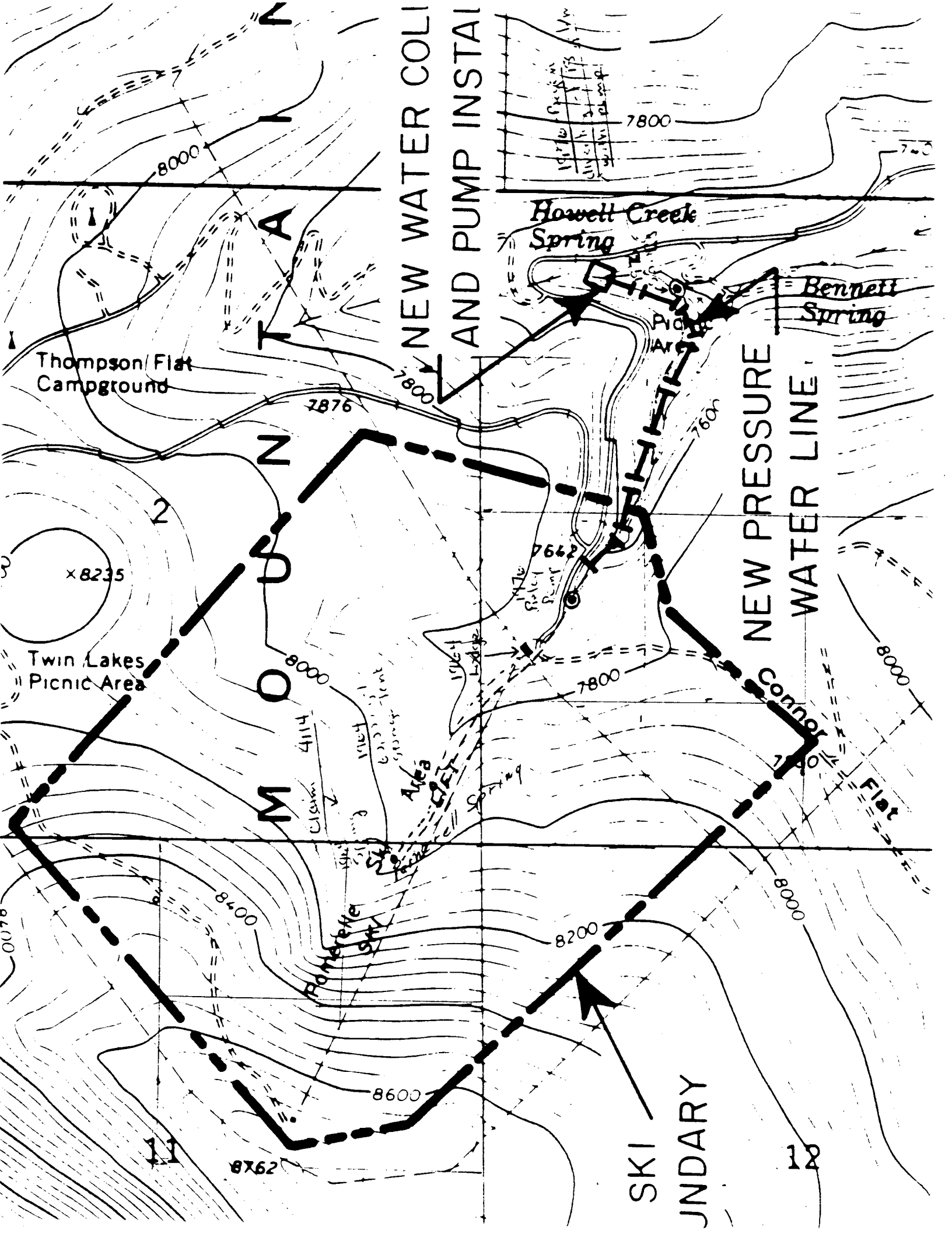


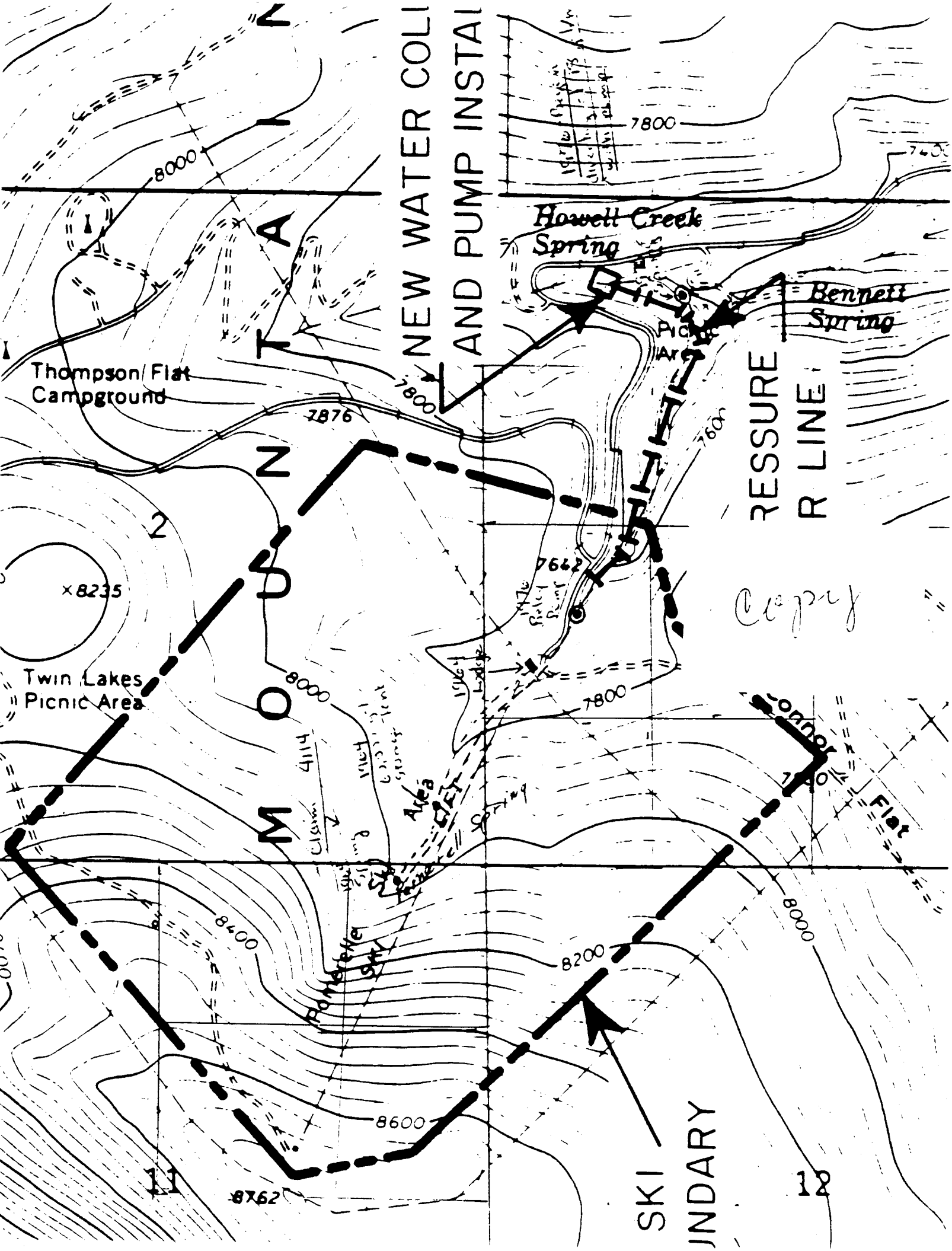
Roger D. Ling

RDL:jkb

enclosures

pc w/enc: Woody Anderson





A F F I D A V I T

STATE OF IDAHO)
) ss.
County of Minidoka)

Condido DeThomas, being first duly sworn on oath, deposes and says:

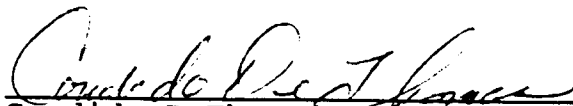
1. That this affiant resides at 125 South, 300 East, Rupert, Idaho, and has resided at said address for over 40 years.

2. That this affiant was one of the co-founders and co-developers of the ski area known as "Pomerelle Ski Resort" located in the Sawtooth National Forest in Cassia County, Idaho. By 1965, this affiant and other co-developers of the Pomerelle Ski Resort had constructed a ski lodge at the Resort. In 1965, we commenced diverting all of the flow of a spring located in the NE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 11, Township 13 South, Range 24 East of the Boise Meridian, known as "Pomerelle Spring." We also in 1965 developed a spring in the NW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 1, adjacent to the area's parking lot, and water was pumped from this spring to the lodge.

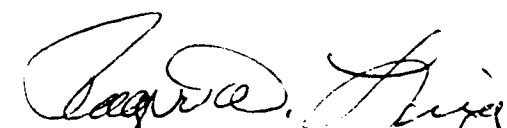
3. In 1965 and all subsequent years, while this affiant was involved with and co-owner of the Pomerelle ski area, the water diverted from what is commonly known as "Pomerelle Spring" and the second spring was used to provide water for the ski lodge and restaurant located therein, which included water for drinking, washing, cleaning, cooking and restrooms.

4. The entire flow of Pomerelle Spring and water pumped from the second spring was required and has been beneficially used in the operation of the ski lodge for the Pomerelle ski area since 1965, to this affiant's knowledge.

FURTHER THIS AFFIANT SAYETH NAUGHT.


Condido DeThomas

SUBSCRIBED AND SWORN to before me this 1st day of October, 1997.


Notary Public for Idaho
Residing at: Rupert, Idaho
My commission expires: 10/30/2000

(SEAL)