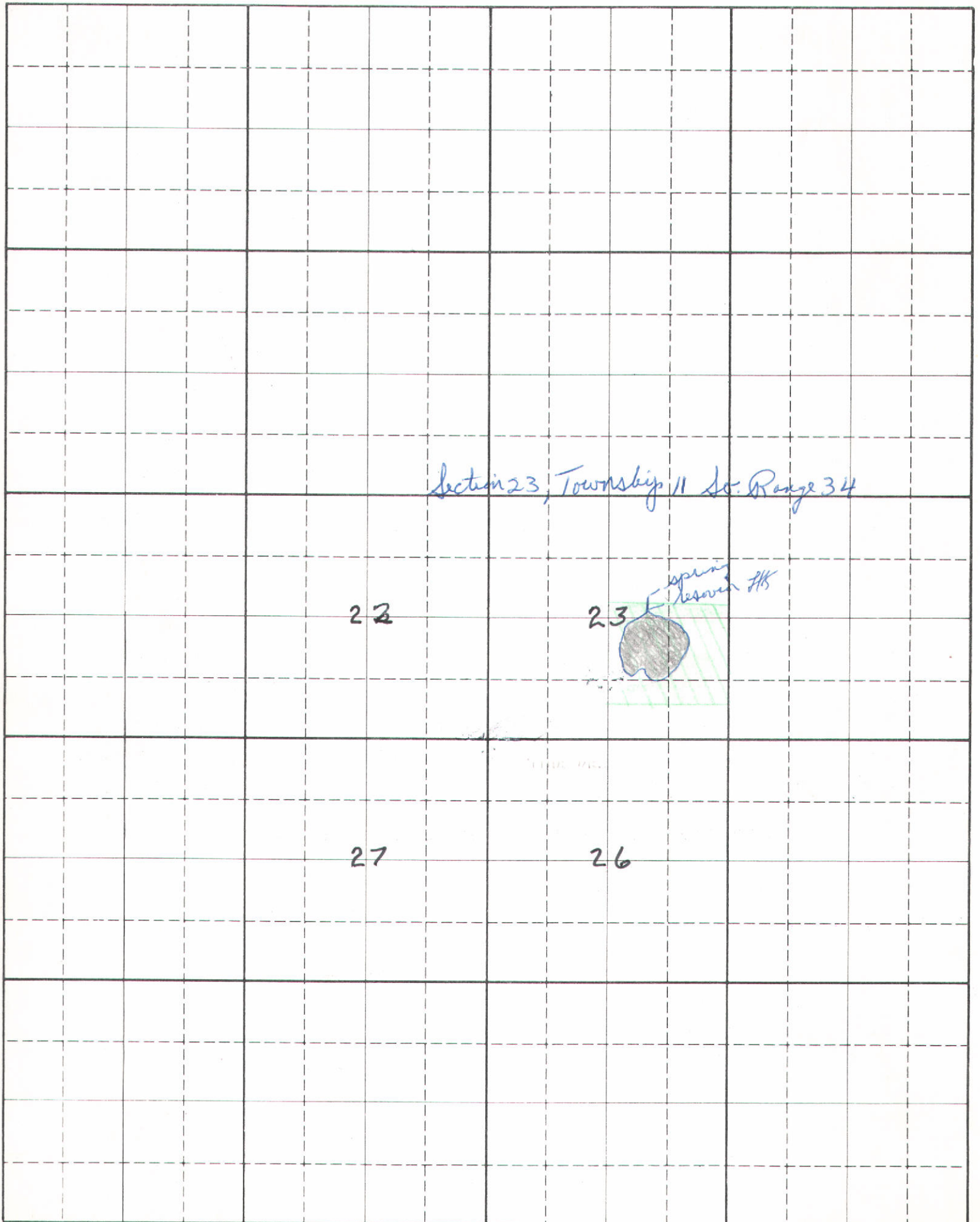


11. Map of proposed project: show clearly the proposed point of diversion, place of use, section number, township and range number. *also see attached aerial Photo*



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.

Lorraine Kent L. Kent
(Applicant) Trustee

$$\begin{array}{r} 15 \overline{) 2214} \\ \underline{22} \\ 0 \end{array}$$

CLAUDE KENT

Henry C Kent

T-2704
35.17

DELMAR CLARK

$$\begin{array}{r} 1413 \\ 23 \overline{) 2324} \end{array}$$

Frank

Protheca

Spinalis septum

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STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
BENEFICIAL USE FIELD REPORT

A. GENERAL INFORMATION

Permit No. 15-7025
Work Phone No. 526-1304

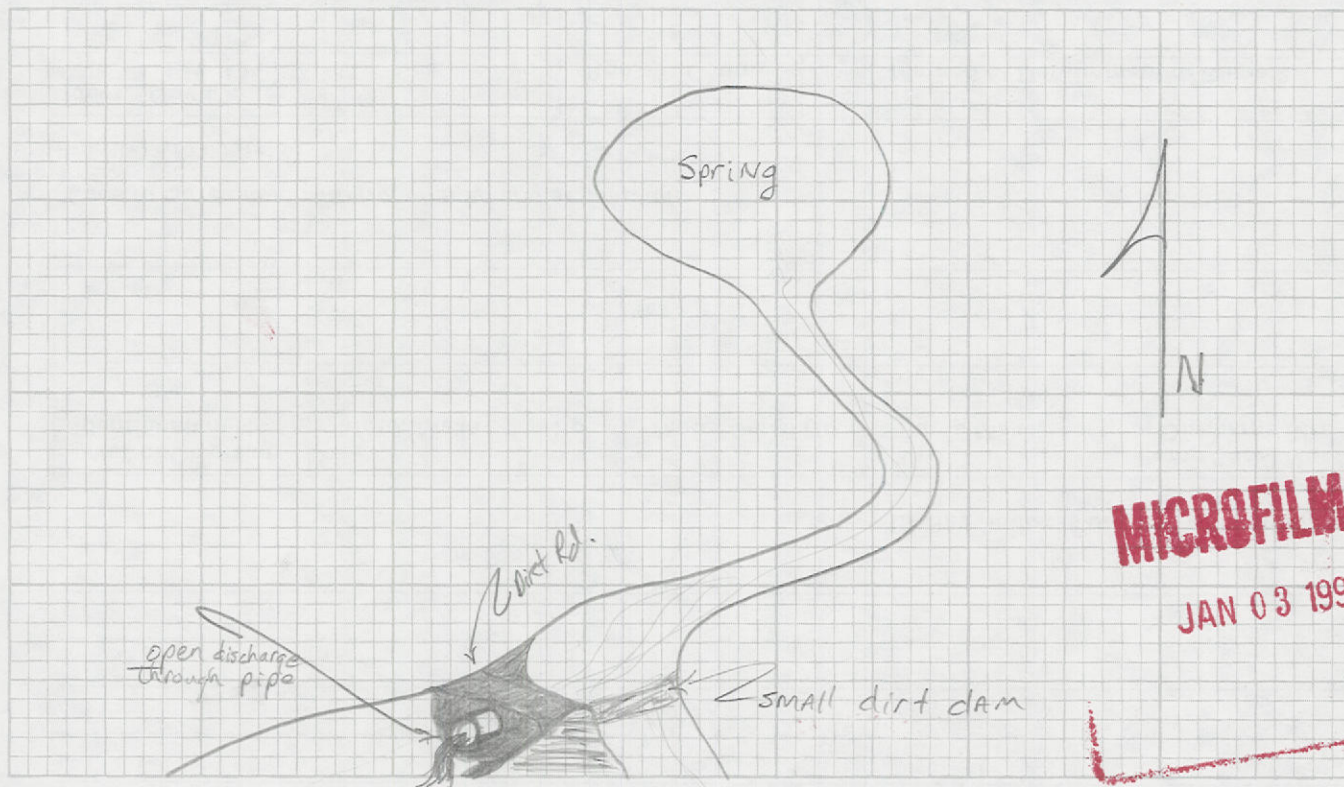
1. Owner: LARRY KENT
Current Address: 1313 LAURAL Idaho Falls Idaho 83401
2. Accompanied by: Sid Kent EXAM. DATE: 7-20-87
Address: Box 184, Arimo Idaho Phone No. 254-3314
Relationship to Permit Holder: Leases LAND
3. Source: unnamed spring tributary to malad river

B. OVERLAP REVIEW

1. Other water rights with same place of use: N.A.
☐ Copies Attached
2. Other water rights with same point of diversion: N.A.
☐ Copies Attached ☐ Copies of Field Exam's Attached

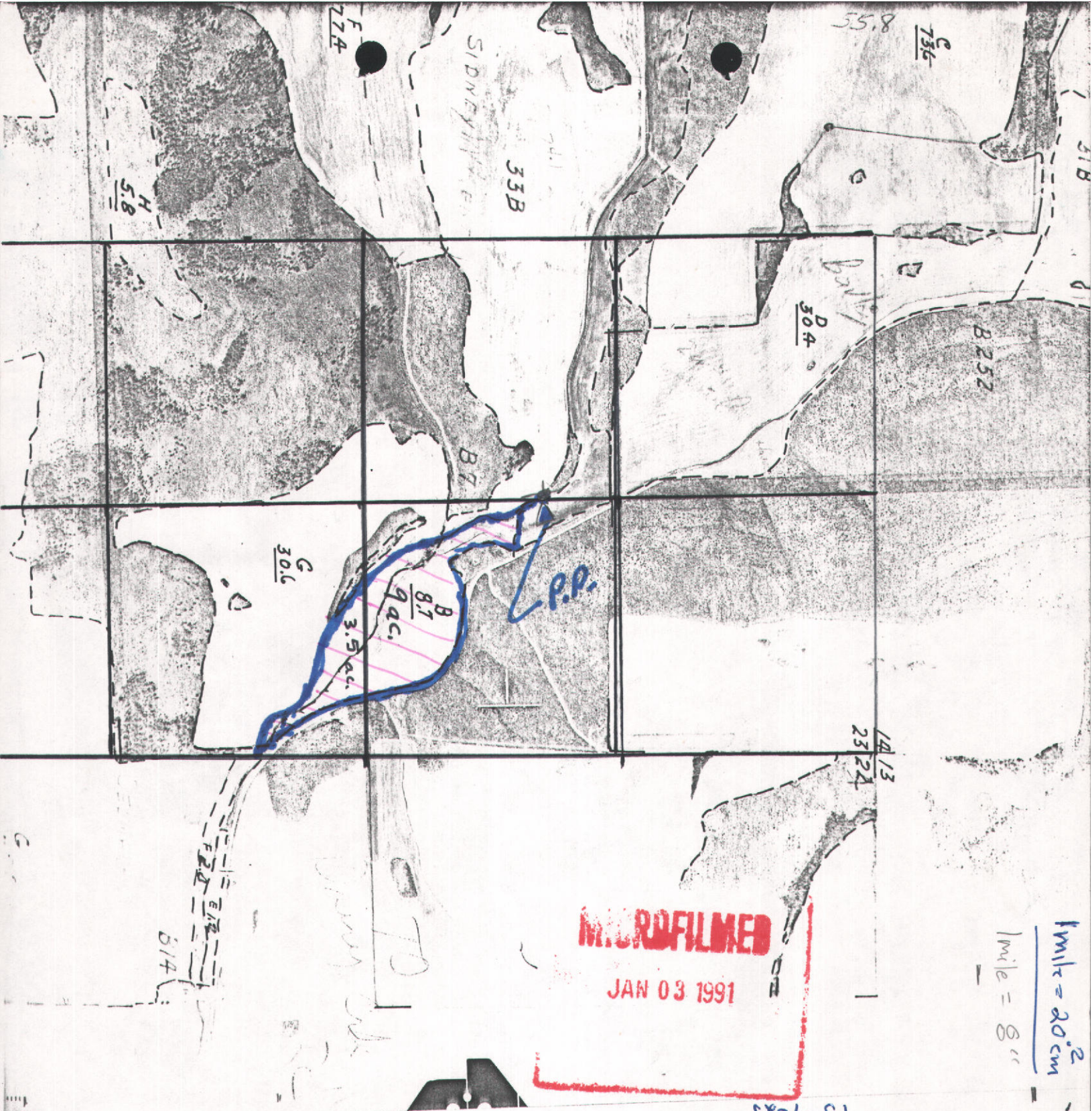
C. SYSTEM DESCRIPTION

1. **Diversion System Diagram:** Indicate all major components and distances between components. Indicate weir size/ditch size/pipe i.d. as applicable. ☐ Alternative diagram attached



Scale: 1" =

2. ☒ Copy of U.S.G.S. Quadrangle Attached
Showing location(s) of point(s) of diversion and
place(s) of use (required). ☒ Aerial Photo Attached
(required for irrigation of 10 acres or more).
- ☒ Photo of Diversion and System Attached
(required for all but single household domestic groundwater, and stockwater).



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1 mile = 20 cm
1 mile = 8"

15-7025

20m

#15-7025



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APPENDIX "A"

Department of Water Resources
Eastern District Office

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE STATE
OF IDAHO, IN AND FOR THE COUNTY OF ONEIDA.

ST. JOHN IRRIGATING COMPANY,
a corporation,
Plaintiff,

vs.

ASA H. DANFORTH, H.O. KENT,
MARVIN A. BUTLER and
JAMES BURNHAM,
Defendants.

DECREE

State of Idaho }
County of Oneida } ss.

I hereby certify that the foregoing is a full, true and

Original

in the Matter of the Decree of

Witness my hand and the seal of said Court this

12th day of Nov. 1975

Barbara C. Cotten

Clerk

This cause came regularly on for trial before the Court without a jury on the 1st day of June 1928, at Latah, Oneida County, Idaho. Jones, Pomeroy & Jones, attorneys at law, appeared for and on behalf of the plaintiff. Merrill & Merrill, attorneys at law, appeared for and on behalf of the defendants and cross-complainants, Asa H. Danforth and Marvin A. Butler. Thomas & Andersen, attorneys at law, appeared for and on behalf of the defendants and cross-complainants, H.O. Kent and James Burnham. Evidence was introduced by and on behalf of the respective parties upon the issues framed by the complaint of the plaintiff and the answer and cross-complaint of the defendants and cross-complainants, Asa H. Danforth and Marvin A. Butler, and also the answer and cross-complaint of the defendants, H.O. Kent and James Burnham, and the answer of the plaintiff and cross-defendant to each of said cross-complaints. After the introduction of the evidence, said cause was argued and briefed by the respective parties and submitted to the Court for decision, and the Court having heretofore made and filed its findings of fact and conclusions of law in writing constituting the decision of the Court in this cause,

WHEREFORE IT IS ORDERED, ADJUDGED AND DECREED, that the plaintiff take nothing by reason of its complaint but that the same be dismissed.

as to each and all of the defendants herein.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED, that the defendant and cross-complainant, Asa H. Danforth, is hereby declared to be the owner, subject only to a contract interest in the cross-complainant Marvin A. Butler, of the right to the perpetual use of the waters of that certain more northerly spring at the head of Sheep Creek located in the Southwest quarter of the Northeast quarter of Section Twenty-three (23), in Township Eleven (11) South, Range Thirty-four (34) East, Boise Meridian, for irrigation and domestic purposes to the extent of one-half cubic foot of water per second of time, with priority dating from June 1st, 1915, and with point of diversion located at said spring in the said Southwest quarter of the Northeast quarter of Section Twenty-three (23), Township Eleven (11) South, Range Thirty-four (34) East, Boise Meridian, and that the use of said waters be and the same hereby are made appurtenant to the following described land situated in Oneida County, Idaho, to-wit:

The West Half of the Northwest quarter (W $\frac{1}{2}$ NW $\frac{1}{4}$) of Section Twenty-four (24), the South Half of the Northeast quarter (S $\frac{1}{2}$ NE $\frac{1}{4}$), the North Half of the Southeast quarter (N $\frac{1}{2}$ SE $\frac{1}{4}$), and the North Half of the Southwest quarter (N $\frac{1}{2}$ SW $\frac{1}{4}$) of Section Twenty-three (23), Township Eleven (11), South, Range Thirty-four (34) East, Boise Meridian.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED, that the defendants and cross-complainants, Henry O. Kent and James Burnham, be and they are hereby decreed to be the owners of the right to the perpetual use of the waters of that certain more southerly spring at the head of Sheep Creek located in the Southeast quarter of the Northeast quarter of Section Twenty-three (23), in Township Eleven (11) South, Range Thirty-four (34) East, Boise Meridian, for irrigation and domestic purposes, to the extent of five-tenths of a cubic foot of water per second of time, with priority dating from June 1st, 1914, and with point of diversion located at said spring in the said Southeast

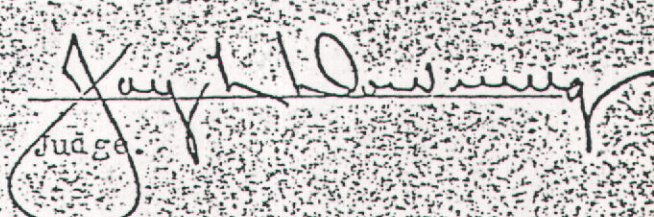
Quarter of the Northeast Quarter of Section Twenty-three (23), Township Eleven (11) South, Range Thirty-four (34) East, Boise Meridian, and that the use of said water be and the same is hereby made appurtenant to the following described land situated in Oneida County, Idaho, to-wit:

The South Half of the Northeast Quarter (S $\frac{1}{2}$ NE $\frac{1}{4}$), the North Half of the Southeast Quarter (N $\frac{1}{2}$ SE $\frac{1}{4}$), the South Half of the Southeast Quarter (S $\frac{1}{2}$ SE $\frac{1}{4}$), of Section Twenty-four (24), and the North Half of the Northeast Quarter (N $\frac{1}{2}$ NE $\frac{1}{4}$), of Section Twenty-five (25), Township Eleven (11) South Range Thirty-four (34) East, Boise Meridian.

IT IS FURTHER ADJUDGED AND DECREED that the title to the use of said waters be quieted in said respective defendants and cross-complainants in the amounts and from the sources aforesaid, free from any claim of the plaintiff whatsoever and that the plaintiff be forever debarred and enjoined from in any manner interfering with the free, lawful and complete use of the said waters by the said defendants and cross-complainants and each of them.

IT IS FURTHER ADJUDGED that the defendants and cross-complainants have and recover of and from the plaintiff herein their necessary costs and disbursements incurred in this action hereby taxed in the sum of

Dated this 29 day of March, 1929.


Judge.

State of Idaho
Department of Water Resources

WATER RIGHT LICENSE

WATER RIGHT NO. 15-07025

Priority: February 8, 1976

Maximum Diversion Rate:
Maximum Diversion Volume:¹

0.25 CFS
43.8 AF

This is to certify, that LORRAINE KENT
CLAUDE KENT TRUST

1313 LAUREL DR.

IDAHO FALLS, ID 83401

has complied with the terms and conditions of the permit, issued pursuant to Application for Permit dated February 5, 1976; and has submitted Proof of Beneficial Use on November 21, 1983. An examination indicates that the works have a diversion capacity of .400 cfs of water from:

SPRING

tributary to DAIRY CREEK

source, and a water right has been established as follows:

<u>BENEFICIAL USE</u>	<u>PERIOD OF USE</u>	<u>RATE OF DIVERSION</u>	<u>ANNUAL VOLUME</u>
IRRIGATION	03/15 to 11/15	0.25 CFS	43.8 AF

LOCATION OF POINT(S) OF DIVERSION:

SWNE , Sec. 23, Township 11S, Range 34E
ONEIDA County

PLACE OF USE: IRRIGATION

<u>TWN</u>	<u>RGE</u>	<u>SEC</u>	<u>ACRES</u>	<u>ACRES</u>	<u>ACRES</u>	<u>TOTAL</u>
11S	34E	23	SENE 9	NESE 3.5		12.5

Total number of acres irrigated: 12.5

CONDITIONS/REMARKS:

1. The maximum diversion volume is defined as the maximum allowable volume of water that may be diverted annually from the source under this right. The use of water confirmed by this right is limited to the amount which can actually be beneficially used. The maximum diversion volume may be adjusted to reflect cropping patterns or acceptable standards of water delivery efficiency.
2. This water right is appurtenant to the described place of use.
3. This right is subject to all prior water rights and may be forfeited by five years of non-use.
4. Modifications to or variance from this license must be made within the limits of Section 42-222, Idaho Code, or the applicable Idaho law.

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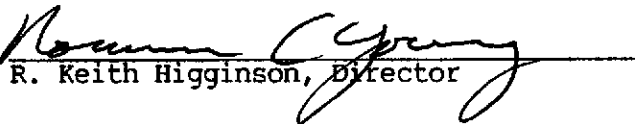
State of Idaho
Department of Water Resources

WATER RIGHT LICENSE

WATER RIGHT NO. 15-07025

This license is issued pursuant to the provisions of Section 42-219, Idaho Code.
Witness the seal and signature of the Director, affixed at Boise, this 14TH
day of DECEMBER, 1990.

Notary Seal


R. Keith Higginson, Director

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BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE
STATE OF IDAHO

IN THE MATTER OF PERMIT)
)
NO. 15-7025 IN THE NAME OF)
)
LORRAINE & CLAUDE KENT TRUST)

ORDER ADVANCING
DATE OF PRIORITY

This matter having come before the Department of Water Resources (Department) as a result of preparing Permit No. 15-7025 for issuance of a license, the Department finds, concludes and orders:

FINDINGS OF FACT

1. The Department approved Application for Permit No. 15-7025 to appropriate the public waters of the State of Idaho with a proposed priority of February 5, 1976.

2. On December 8, 1986 the Department advised the permit holder that a license examination fee was required before an examination could be conducted to confirm the extent of use developed under the permit. The examination fee was due on February 6, 1987.

3. The license examination fee was received on February 9, 1987, 3 day(s) late.

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CONCLUSIONS OF LAW

1. The Director may advance the priority date of the permit one day for each day the license examination fee is late, pursuant to the provisions of Section 42-217, Idaho Code.

2. The date of priority of Permit No. 15-7025 should be advanced 3 day(s).

ORDER

IT IS HEREBY ORDERED that the date of priority of Permit No. 15-7025 is advanced to February 8, 1976.

Dated this 16th day of August, 1989

J. Glen Saylor
Chief, Water Allocation Bureau

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STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

RECEIVED REQUEST FOR EXTENSION OF TIME

SEP 22 1980

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

SEP 22 1980

Department of Water Resources

Department of Water Resources

Larry H. Kent of 2223 Oaktrail Drive IDAHO FALLS
(Name) (Address)

State of Idaho, deposes and says:

That he is the holder, or the duly authorized agent of the holder*, of Permit to Appropriate the Public
Waters of the State of Idaho No. 15-7025.

That under the terms and conditions of said permit, work thereunder was required to be completed on or
before Oct. 1, 1980.

That he has heretofore performed the following work described under said permit: _____

Costing \$ _____

That he is unable to complete the remainder of the work within the required time for the following
reasons, to-wit: The water rights under the above application have been the subject of
litigation since its original submittal. The matter has been through the water board
procedures on disputes and into District Court. It has not yet been fully decided.

Until it is decided, I do not consider it prudent to invest in the intended sprinkler
system. We are presently utilizing a flood irrigation system.

Wherefore, he asks that the Department of Water Resources extend the time for the completion of
obligations under said permit to Oct., 1980.

Larry H. Kent
(Signature)*

ACTION OF THE DIRECTOR, DEPARTMENT OF WATER RESOURCES

IT IS HEREBY ORDERED that the above application for extension of time be APPROVED and the time
within which to submit the statement of beneficial use be submitted on or before January
1, 1984.

Signed this 8th day of October, 1980.

L. Glen Saxton
Chief, Operations Bureau

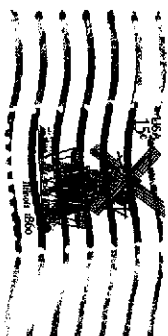
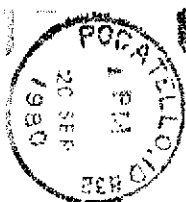
LITIGATION DELAY Jim 10/7/80

* IF OTHER THAN HOLDER, Power of Attorney must be supplied.

\$15 fee received by sf Date 10-2-80 Receipt # 16468

Larry H. Kent
2223 Oaktrail Dr.
Idaho Falls, ID 83401

Department of Water Resources
Statehouse
Boise, Idaho 83720



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BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE
STATE OF IDAHO

IN THE MATTER OF PERMIT NOS. 15-7025,
LORRAINE KENT AND THE CLAUDE KENT TRUST:
NO. 15-7026, LYLE R. BURNHAM; NO. 15-7029
AND 15-7030, DELMAR CLARK

MEMORANDUM DECISION ON
ISSUES RAISED AT REHEARING
AND AMENDED ORDER

On June 17, 1977, the Director of the Department of Water Resources issued a memorandum decision and order approving Applications for Permit Nos. 15-7025, 15-7026, 15-7029 and 15-7030.

On June 27, 1977, Robert C. Huntley, Jr., Attorney for Delmar Clark filed a Petition for Rehearing on Permit Nos. 15-7029 and 15-7030, and on July 5, 1977 a Motion for Rehearing was filed by James B. Green, Attorney for Lyle R. Burnham. These requests for rehearing were approved by the Director on August 25, 1977. On September 16, 1977, a second hearing in the matter was held.

The attorneys for Delmar Clark and Lyle Burnham argued that the Director's decision was faulty in the following areas:

- 1) The water rights decreed in the Danforth Decree have been abandoned.
- 2) Clarence Kent should have only been the successor to, at most, 0.25 cubic feet per second under the Danforth Decree.
- 3) The decision is in error because the protestant, Clarence Kent, did not resume a water right because the only previous use of water was for the irrigation of a garden.
- 4) The decision should have limited Clarence Kent to use of the south (lower) spring.
- 5) The decision is in error for not requiring Clarence Kent to install a measuring device to measure the water he is diverting.
- 6) Lyle R. Burnham has made uninterrupted use of the water rights originally decreed to James Burnham.
- 7) The decision and order are in error in awarding Lyle Burnham a permit to irrigate 80 acres of land.
- 8) The Director erred by not ruling on Delmar Clark's right to water live-stock from the creek.
- 9) Protestant, Clarence Kent, needs a transfer to change the point of diversion if he still has a right under the Danforth Decree or an application for

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permit if he wishes to appropriate water; and has filed neither.

FINDINGS OF FACT

1) In 1929, a decree was issued in the case of St. John Irrigating Co. vs. Asa H. Danforth et al, in which 0.50 cubic feet per second was decreed to H. O. Kent and James Burnham with a 1914 priority from two unnamed springs which flow into Sheep Creek. Clarence Kent and Lyle Burnham are successors in interest to H. O. Kent and James Burnham, respectively.

2) The Department of Water Resources does not confirm or issue water rights based upon diversion of water and application to beneficial use. The Department will accept a claim based upon such use which is admissible as evidence in a general adjudication of water rights.

3) There is unappropriated water from the two unnamed springs during portions of the irrigation season at the present time.

4) Water has been measured at about 1.00 cubic feet per second below the unnamed springs which flow into Sheep Creek.

5) It is within the discretion of the Department of Water Resources to require measuring devices on diversions from sources of water supply not within a water district, (Idaho Code, Sec. 42-701). In an area where a water district has not been formed, the Department will exercise its discretion under Idaho Code, Sec. 42-701 by requiring measuring devices only for water rights, the priorities of which are at issue before the Department.

6) Application for Permit No. 15-7030 was withdrawn by Delmar Clark on January 3, 1977.

CONCLUSIONS OF LAW

1) There is insufficient water available from the springs under existing conditions to satisfy all of the amounts requested under each of the applications for permit. The applicants are entitled to develop additional water from the springs and to use, according to the priority of the application for permit, the unappropriated water that is presently available from the springs after recognizing the water rights established pursuant to the decree issued in St. John Irrigating Co. vs. Asa H. Danforth et al, if they have not been lost by abandonment or forfeiture.

2) The water right claimed to have been established by diversion and beneficial use by Delmar Clark for stockwatering directly from the stream cannot be determined by the Director, as beneficial use rights can only be determined by a court.

3) No measuring device is required at this time to be installed on the

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diverting works of Clarence Kent but may be required at the time a water district is formed.

ORDER

IT IS, THEREFORE, HEREBY ORDERED and Applications for Permit Nos. 15-7025, 15-7026 and 15-7029 are APPROVED subject to the following conditions:

- 1) Subject to all prior water rights including those established under decree or by the diversion and beneficial use of water.
- 2) The following priorities of right shall be recognized between the permit holders:

Permit No. 15-7025	February 5, 1976
Permit No. 15-7026	February 24, 1976
Permit No. 15-7029	April 26, 1976

- 3) Proof of construction of works and application of water to beneficial use shall be submitted to the Department on or before:

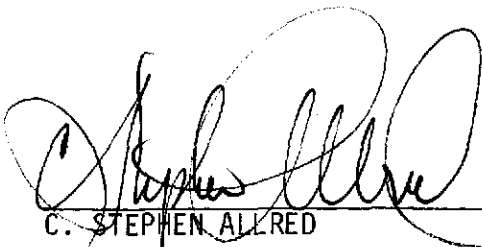
Permit No. 15-7025	October 1, 1980
Permit No. 15-7026	October 1, 1982
Permit No. 15-7029	September 1, 1983

and that no extensions of time shall be granted beyond these dates unless the permit holder can show he was prevented from completing the appropriation by circumstances beyond his control.

- 4) An access port or other device as specified by the Department shall be installed by each permit holder to provide the installation of measuring equipment and the determination of the rate of diversion by the Department.

IT IS FURTHER ORDERED that the approval of Permit No. 15-7030 is hereby VOIDED.

Dated this 15 day of September, 1978.


C. STEPHEN ALLRED
Director

RECEIVED
SEP 15 1978

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

IN THE MATTER OF PERMIT NO'S. 15-7025 -
LORRAINE KENT AND THE CLAUDE KENT TRUST:
NO. 15-7026 - LYLE R. BURNHAM: NO. 15-7029
and 15-7030 - DELMAR CLARK

ORDER APPROVING
PETITION
FOR REHEARING

WHEREAS, on February 5, 1976, February 24, 1976, and April 28, 1976, the Department received applications for permits from Lorraine Kent and the Claude Kent Trust (15-7025), Lyle R. Burnham (15-7026), and Delmar Clark (15-7029 and 15-7030), respectively; and,

WHEREAS, on February 19, 1976, Clarence Kent filed a protest against the approval of Permit No. 15-7025 and on March 11, 1976 he filed a protest against Permit No. 15-7026. On February 26, 1976, a protest was received on Permit No. 15-7025 and on March 16, 1976, a protest was received on Permit No. 15-7026, both from the St. John Irrigating Company. On May 20, 1976, Clarence Kent submitted protests against the approval of Permit No's. 15-7029 and 15-7030; and,

WHEREAS, on January 12, 1977, a hearing concerning these permits was held at Malad, Idaho; and,

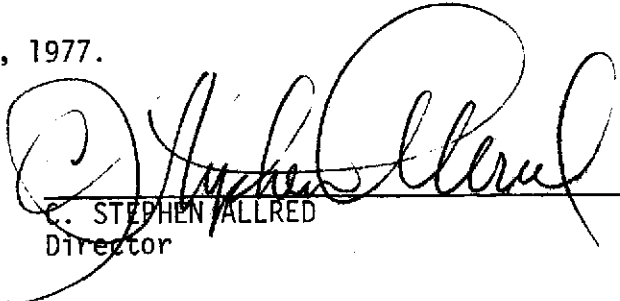
WHEREAS, on June 17, 1977, a Memorandum Decision and Order was issued based upon the testimony of both the applicants and the protestants and information in the Department's files; and,

WHEREAS, on June 27, 1977, Robert C. Huntley, Jr., attorney for Delmar Clark filed a Petition for Rehearing on Permit No's. 15-7030 and 15-7029, and on July 5, 1977, a Motion for Rehearing was filed by James B. Green, attorney for Lyle R. Burnham; and,

WHEREAS, after considering those petitions, the Department finds that a rehearing should be held;

IT IS, THEREFORE, HEREBY ORDERED that the petitions for rehearing be APPROVED.

Dated this 25 day of August, 1977.


C. STEPHEN ALLRED
Director

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

IN THE MATTER OF PROTESTS AGAINST THE APPROVAL OF
APPLICATIONS FOR PERMITS NO. 15-7025 - LORRAINE
KENT AND THE CLAUDE KENT TRUST; No. 15-7026 -
LYLE R. BURNHAM; NO. 15-7029 and 15-7030-DELMAR CLARK

MEMORANDUM DECISION
AND ORDER

On February 5, 1976, Lorraine Kent and the Claude Kent Trust filed application no. 15-7025 to appropriate 0.50 cubic feet per second at a point within the SW $\frac{1}{4}$ NE $\frac{1}{4}$, Sec. 23, Twp. 11S, Rge. 34E, from an unnamed spring, tributary to Dairy Creek for the irrigation of forty (40) acres of land. On February 24, 1976, Lyle R. Burnham filed application no. 15-7026 to appropriate 1.60 cubic feet per second at a point within the SW $\frac{1}{4}$ SE $\frac{1}{4}$, Sec. 24, Twp. 11S, Rge. 34E, from an unnamed spring, tributary to Dairy Creek for the irrigation of eighty (80) acres of land. Notice of these applications was published in the Idaho Enterprise and was subsequently protested by Clarence Kent and St. Johns Irrigating Company. A conference was held in Pocatello, Idaho, on April 9, 1976. At this conference, Larry Kent, representing Lorraine Kent and the Claude Kent Trust, requested the hearing in the matter be continued to a later date to allow him an opportunity to consult with legal counsel.

On April 26, 1976, Delmar Clark filed with the Department of Water Resources applications no. 15-7029 and 15-7030 requesting to appropriate 0.13 cubic feet per second for domestic, stockwater and irrigation purposes from unnamed springs in the SE $\frac{1}{4}$ NE $\frac{1}{4}$, Sec. 23; NESW $\frac{1}{4}$, NW $\frac{1}{4}$ SW $\frac{1}{4}$, Sec. 24; Twp. 11S, Rge. 34E, and 2.40 cubic feet per second for irrigation purposes from unnamed springs in the NW $\frac{1}{4}$ SW $\frac{1}{4}$, Sec. 24, Twp. 11S, Rge. 34E. Notice of these applications were published in the Idaho Enterprise and was protested by Clarence Kent. Department action in this matter was delayed because of a court action involving the water of the springs between Delmar Clark and Clarence Kent.

On January 12, 1977, because of the issues involved, a combined hearing was held in Malad, Idaho, on all of the above referenced applications. At that time, St. Johns Irrigating Company, through their attorney, contacted the Department and indicated they did not wish to appear at this hearing and would like the information presented at the previous conference to be considered by the Department

in making a decision in the matter. All of the applicants were present. Applicant Delmar Clark was represented by attorney, Robert C. Huntley, Jr., of the firm Racine, Huntley and Olson, Pocatello, Idaho. The protestant, Clarence Kent was present and represented by attorney J. W. Crowther. The testimony of both the applicants and protestant was heard primarily on two issues: These issues were: (1) Does the protestant, Clarence Kent, have a water right from the subject springs that will be injured, and (2) is there sufficient water in the source for the purposes intended by the applicant.

FINDINGS OF FACT

On June 5, 1928, the cause of St. John Irrigating Company v.s. Asa H. Danforth, H. O. Kent, Marvin A. Butler and James Burnham came before the Fifth Judicial District Court at Malad, Idaho, Oneida County. This trial resulted in the adjudication of certain rights from springs arising in the SE $\frac{1}{4}$ NE $\frac{1}{4}$, Sec. 23, Twp. 11S, Rge. 34E. The court decreed that the defendants and cross-complainants, Henry O. Kent and James Burnham were decreed owners of a right to the perpetual use of waters from a certain more southerly spring to the extent of five-tenths of a cubic foot per second of time, with a priority dating from June 1, 1914. In this same action, Asa Danforth was decreed the owner of water from a certain more northerly spring at the head of Sheep Creek and had a right to the extent of one-half cubic foot of water per second of time, with a priority dating from June 1, 1915. The use is described for both rights for irrigation and domestic purposes.

The evidence presented at the hearing was that very little use was made of this water and between 1950 and 1973, the only water used from the springs was for domestic purposes.

In 1973, Mr. Clarence Kent constructed a reservoir within the NW $\frac{1}{4}$ SE $\frac{1}{4}$, Sec. 24, Twp. 11S, Rge. 34E, and began diverting water for the irrigation of about 160 acres of land. The water supply for this reservoir originated from the same springs listed in the Danforth Decree. During 1975 to take advantage of the available head between the springs and the place of his use to reduce pumping requirements, Clarence Kent installed a plastic pipeline to collect the water from the springs and transport it to his pump. The installation of this pipeline eliminated the flow in the creek between the springs and the reservoir and, therefore, through the property of Mr. Delmar Clark.

In the decree entitled St. John Irrigating Company -vs- Asa H. Danforth, et. al., it is specified that these springs are not a tributary of Dairy Creek.

From the records available, it appears that Clarence Kent is the successor in interest to the five-tenths cubic foot per second originally decreed to H. O. Kent and James Burnham.

The best available data indicates that the springs flow at the rate of at least one cubic foot per second of time.

CONCLUSIONS OF LAW

1. Even though the water from the springs was not used for irrigation for a period of time greater than five years, and, therefore, the water right may have been lost by nonuse under Section 42-222, Idaho Code, the courts have been reluctant to declare a water right lost if use of the water was resumed prior to the water being taken by subsequent appropriators. Carrington v.s. Crandall, 65 Idaho 525, 147 P2d 1009 (1944); Rams-horn Ditch Co. v.s. United States, 269 Fed. 80; Zezi v.s. Lightfoot, 57 Idaho 707, 713, 68 P2d 50. The protestant Clarence Kent, as successor in interest to the H. O. Kent and James Burnham water right is entitled to 0.50 cubic feet per second.

2. There is not sufficient water in the springs, under existing conditions, to supply the water requested under each of these applications for permit but each applicant should have the opportunity to develop additional water and use the unappropriated water that is available in the source.

3. The use of the existing water should be developed according to the priority of the water right, therefore, the date that proof of completion of works and application of water to beneficial use should be set later for the junior priority right holders to allow them to construct their projects if the senior right holders do not construct their projects.

4. The water rights of the protestant, St. John Irrigating Company will not be injured since the source of water was declared in the case of St. John Irrigating Company v.s. Asa H. Danforth, et. al. not to be a tributary of Dairy Creek.

ORDER

IT IS, THEREFORE, HEREBY ORDERED and Applications for Permit No. 15-7025, 15-7026, 15-7029 and 15-7030 are APPROVED subject to the following conditions:

1. Subject to all prior water rights including that of Clarence Kent to divert 0.50 cubic feet per second of water with a priority of June 1, 1914.

MICROFILMED

2. That the following priority of right be recognized between the permit holders:

15-7025	February 5, 1976
15-7026	February 24, 1976
15-7029	April 26, 1976
15-7030	April 26, 1976

3. Proof of construction of works and application of water to beneficial use be submitted to the Department on or before:

June 1, 1979 on Permit No. 15-7025
June 1, 1981 on Permit No. 15-7026
June 1, 1982 on Permit No. 15-7029 and 15-7030

and that no extensions of time shall be granted past these dates until the permit holder showing he was prevented from proceeding by circumstances beyond his control.

4. That a measuring device of a type approved by the Department shall be permanently installed and maintained as part of the diverting works on each of the permits.

Dated this 17 day of June, 1977.


C. STEPHEN ALLRED
Director

RECEIVED
JUN 21 1977

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

IN THE MATTER OF PROTESTS AGAINST THE APPROVAL OF
APPLICATIONS FOR PERMITS NO. 15-7025 - LORRAINE
KENT AND THE CLAUDE KENT TRUST; No. 15-7026 -
LYLE R. BURNHAM; NO. 15-7029 and 15-7030-DELMAR CLARK

MEMORANDUM DECISION
AND ORDER

On February 5, 1976, Lorraine Kent and the Claude Kent Trust filed application no. 15-7025 to appropriate 0.50 cubic feet per second at a point within the SW $\frac{1}{4}$ NE $\frac{1}{4}$, Sec. 23, Twp. 11S, Rge. 34E, from an unnamed spring, tributary to Dairy Creek for the irrigation of forty (40) acres of land. On February 24, 1976, Lyle R. Burnham filed application no. 15-7026 to appropriate 1.60 cubic feet per second at a point within the SW $\frac{1}{4}$ SE $\frac{1}{4}$, Sec. 24, Twp. 11S, Rge. 34E, from an unnamed spring, tributary to Dairy Creek for the irrigation of eighty (80) acres of land. Notice of these applications was published in the Idaho Enterprise and was subsequently protested by Clarence Kent and St. Johns Irrigating Company. A conference was held in Pocatello, Idaho, on April 9, 1976. At this conference, Larry Kent, representing Lorraine Kent and the Claude Kent Trust, requested the hearing in the matter be continued to a later date to allow him an opportunity to consult with legal counsel.

On April 26, 1976, Delmar Clark filed with the Department of Water Resources applications no. 15-7029 and 15-7030 requesting to appropriate 0.13 cubic feet per second for domestic, stockwater and irrigation purposes from unnamed springs in the SE $\frac{1}{4}$ NE $\frac{1}{4}$, Sec. 23; NESW $\frac{1}{4}$, NW $\frac{1}{4}$ SW $\frac{1}{4}$, Sec. 24; Twp. 11S, Rge. 34E, and 2.40 cubic feet per second for irrigation purposes from unnamed springs in the NW $\frac{1}{4}$ SW $\frac{1}{4}$, Sec. 24, Twp. 11S, Rge. 34E. Notice of these applications were published in the Idaho Enterprise and was protested by Clarence Kent. Department action in this matter was delayed because of a court action involving the water of the springs between Delmar Clark and Clarence Kent.

On January 12, 1977, because of the issues involved, a combined hearing was held in Malad, Idaho, on all of the above referenced applications. At that time, St. Johns Irrigating Company, through their attorney, contacted the Department and indicated they did not wish to appear at this hearing and would like the information presented at the previous conference to be considered by the Department

MICROFILMED

in making a decision in the matter. All of the applicants were present. Applicant Delmar Clark was represented by attorney, Robert C. Huntley, Jr., of the firm Racine, Huntley and Olson, Pocatello, Idaho. The protestant, Clarence Kent was present and represented by attorney J. W. Crowther. The testimony of both the applicants and protestant was heard primarily on two issues. These issues were: (1) Does the protestant, Clarence Kent, have a water right from the subject springs that will be injured, and (2) is there sufficient water in the source for the purposes intended by the applicant.

FINDINGS OF FACT

On June 5, 1928, the cause of St. John Irrigating Company v.s. Asa H. Danforth, H. O. Kent, Marvin A. Butler and James Burnham came before the Fifth Judicial District Court at Malad, Idaho, Oneida County. This trial resulted in the adjudication of certain rights from springs arising in the SE $\frac{1}{4}$ NE $\frac{1}{4}$, Sec. 23, Twp. 11S, Rge. 34E. The court decreed that the defendants and cross-complainants, Henry O. Kent and James Burnham were decreed owners of a right to the perpetual use of waters from a certain more southerly spring to the extent of five-tenths of a cubic foot per second of time, with a priority dating from June 1, 1914. In this same action, Asa Danforth was decreed the owner of water from a certain more northerly spring at the head of Sheep Creek and had a right to the extent of one-half cubic foot of water per second of time, with a priority dating from June 1, 1915. The use is described for both rights for irrigation and domestic purposes.

The evidence presented at the hearing was that very little use was made of this water and between 1950 and 1973, the only water used from the springs was for domestic purposes.

✓ In 1973, Mr. Clarence Kent constructed a reservoir within the NW $\frac{1}{4}$ SE $\frac{1}{4}$, Sec. 24, Twp. 11S, Rge. 34E, and began diverting water for the irrigation of about 160 acres of land. The water supply for this reservoir originated from the same springs listed in the Danforth Decree. During 1975 to take advantage of the available head between the springs and the place of his use to reduce pumping requirements, ✓ Clarence Kent installed a plastic pipeline to collect the water from the springs and transport it to his pump. The installation of this pipeline ✓ eliminated the flow in the creek between the springs and the reservoir and, therefore, through the property of Mr. Delmar Clark.

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In the decree entitled St. John Irrigating Company -vs- Asa H. Danforth, et. al., it is specified that these springs are not a tributary of Dairy Creek.

From the records available, it appears that Clarence Kent is the successor in interest to the five-tenths cubic foot per second originally decreed to H. O. Kent and James Burnham.

✓ The best available data indicates that the springs flow at the rate of at least one cubic foot per second of time.

CONCLUSIONS OF LAW

1. Even though the water from the springs was not used for irrigation for a period of time greater than five years, and, therefore, the water right may have been lost by nonuse under Section 42-222, Idaho Code, the courts have been reluctant to declare a water right lost if use of the water was resumed prior to the water being taken by subsequent appropriators. Carrington v.s. Crandall, 65 Idaho 525, 147 P2d 1009 (1944); Rams-horn Ditch Co. v.s. United States, 269 Fed. 80; Zezi v.s. Lightfoot, 57 Idaho 707, 713, 68 P2d 50. The protestant Clarence Kent, as successor in interest to the H. O. Kent and James Burnham water right is entitled to 0.50 cubic feet per second.

2. There is not sufficient water in the springs, under existing conditions, to supply the water requested under each of these applications for permit but each applicant should have the opportunity to develop additional water and use the unappropriated water that is available in the source.

3. The use of the existing water should be developed according to the priority of the water right, therefore, the date that proof of completion of works and application of water to beneficial use should be set later for the junior priority right holders to allow them to construct their projects if the senior right holders do not construct their projects.

4. The water rights of the protestant, St. John Irrigating Company will not be injured since the source of water was declared in the case of St. John Irrigating Company v.s. Asa H. Danforth, et. al. not to be a tributary of Dairy Creek.

ORDER

IT IS, THEREFORE, HEREBY ORDERED and Applications for Permit No. 15-7025, 15-7026, 15-7029 and 15-7030 are APPROVED subject to the following conditions:

1. Subject to all prior water rights including that of Clarence Kent, to divert 0.50 cubic feet per second of water with a priority of June 1, 1914.

MICROFILMED

2. That the following priority of right be recognized between the permit holders:

15-7025	February 5, 1976
15-7026	February 24, 1976
15-7029	April 26, 1976
15-7030	April 26, 1976

3. Proof of construction of works and application of water to beneficial use be submitted to the Department on or before:

June 1, 1979 on Permit No. 15-7025
June 1, 1981 on Permit No. 15-7026
June 1, 1982 on Permit No. 15-7029 and 15-7030

and that no extensions of time shall be granted past these dates until the permit holder showing he was prevented from proceeding by circumstances beyond his control.

4. That a measuring device of a type approved by the Department shall be permanently installed and maintained as part of the diverting works on each of the permits.

Dated this 17 day of June, 1977.



STEPHEN ALLRED
Director

RECEIVED
JUN 21 1977
FBI - DENVER

MICROFILMED

Identification No. 15 7025
Application No. _____

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
APPLICATION FOR PERMIT

APPROVED

To Appropriate the Public Waters of the State of Idaho
(TYPE OR PRINT IN INK)

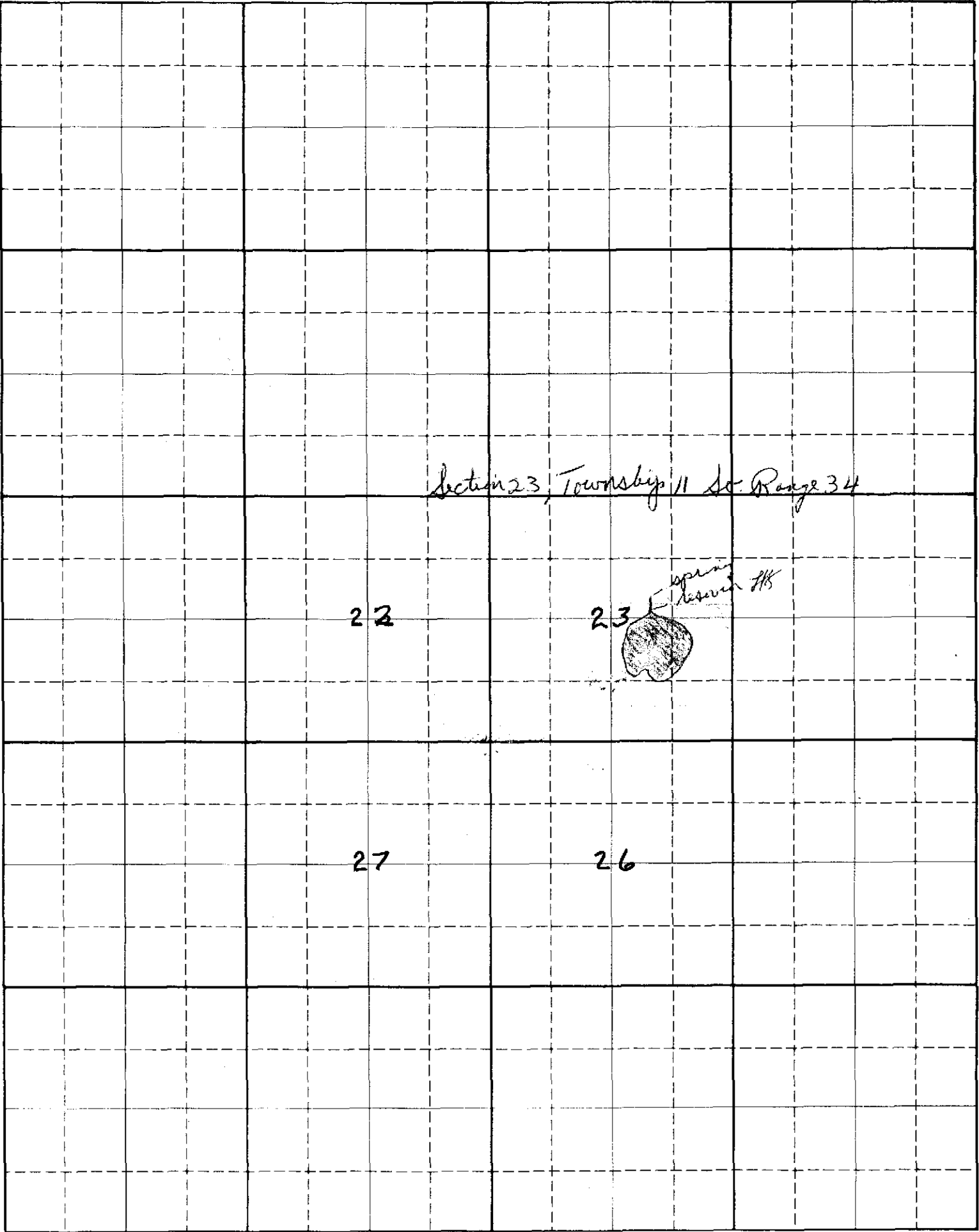
1. Name of applicant Lorraine Kent & Claude Kent Trust Phone: 524-0825
post office address 2223 Oak Trail Drive, Idaho Falls, ID
2. Source of water supply Unnamed Spring which is a tributary of Dairy Creek
3. a. Location of point of diversion is SW $\frac{1}{4}$ of NE $\frac{1}{4}$ of Section 23 Township 11 S.
Range 34 E.B.M. Oneida County; additional points of diversion if any: _____

- b. If water is not consumed, it will be discharged into Dairy Creek at a point in SE $\frac{1}{4}$
of SE $\frac{1}{4}$ of Section 24 Township 11 S. Range 34 E ^{PK} B.M. Oneida County ^{PK}
4. Water will be used for the following purposes:
Amount ~~.80~~ 0.50 for irrigation purpose from April 1 to Nov. 1 (both dates inclusive)
(cfs or acre-feet per annum)
Amount _____ for _____ purpose from _____ to _____ (both dates inclusive)
(cfs or acre-feet per annum)
Amount _____ for _____ purpose from _____ to _____ (both dates inclusive)
(cfs or acre-feet per annum)
5. Total quantity to be appropriated:
a. ~~.80~~ 0.50 cubic feet per second and/or
b. _____ acre feet per annum.
6. Proposed diverting works:
a. Description of ditches, flumes, pumps, headgates, etc. ditches to utilize gravity flow
irrigation. Also, installation of a pump and sprinkler system.

- b. Height of storage dam 6 feet, active reservoir capacity 5 acre feet; total reservoir
capacity 5 acre feet, materials used in storage dam: dirt fill
Period of year during which storage will occur April 1 to Nov. 1 inclusive.
(Mo. Day) (Mo. Day)
- c. Proposed well diameter is _____ inches; proposed depth of well is _____ feet.
7. a. Time required for the completion of the works and application of the water to the proposed beneficial use
is 5 years.
b. Estimated construction cost is \$ 10,000.
8. Description of proposed uses:
a. If water is **not** for irrigation:
(1) Give the place of use of water: _____ $\frac{1}{4}$ of _____ $\frac{1}{4}$ of Section _____ Township _____
Range _____ B.M.
(2) Amount of power to be generated: _____ hp under _____ feet of head.
(3) List number of each kind of livestock to be watered _____

(4) Name of municipality to be served _____, or number of families to be
supplied with domestic water _____.
(5) If water is to be used for other purposes describe: _____

11. Map of proposed project: show clearly the proposed point of diversion, place of use, section number, township and range number. *Also see attached aerial Photo*



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.

Lorraine Kent L. Kent
(Applicant) Trustee

Proposed Priority: 2-05-1976

Received by me Date 8-8-76 Time 12:08 p.
Preliminary check by me Fee \$8.50
Received by me Date 8-15-76 # 15605
Publication prepared by me Date 8-22-76
Published in the State Engineer
Publication dates 8-12-76 & 8-19-76
Publication approved me Date 8-24-76
Priority reduced to _____ Reason _____
Protests filed by: James Earl, Jr. (John)
Copies of protests forwarded by me 8-26-76 - 300-76
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. 15-7025, 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.

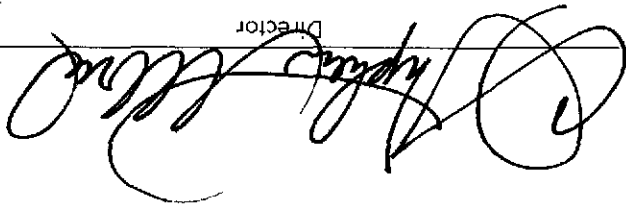
b. Proof of construction of works and application of water to beneficial use shall be submitted on or before June 1, 1979.

c. Other: PURSUANT TO MEMORANDUM DECISION AND ORDER DATE JUNE 17, 1977.

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

Witness my hand this 17 day of June 1977.

Director



13/14
22/23

C 27.0

C 53.0

30.12.0

CLAUDE KENT

C 24.1.0

HENRY C KENT

T-2704
35.17

T-2703
4.05

DELMOND CLARK

14/13
23/24

C 67.0

30.13.0

10.12.0

OREN

Pump

*Spur of
Pike River
reservoir*

Spur into system

McGILL

AFFIDAVIT OF PUBLICATION

RECEIVED

FEB 24 1976

Department of Water Resources
Eastern District Office

State of Idaho
County of Oneida, ss.

Paula Steindel being first duly sworn on
her oath, states: That she is clerk
of the Idaho Enterprise, a newspaper of general circula-
tion in Oneida County, Idaho published weekly at Malad,
in said county, that said newspaper has been published
in said county uninterruptedly and continuously for over
seventy-eight consecutive weeks, prior to the first publi-
cation of the annexed notice or advertisement:

That said Idaho Enterprise was at all of the times of
publication of said notice a newspaper of general circu-
lation made up of at least four pages of at least five
columns each, printed from type matter or stereotyped
forms of at least seventeen and three fourths inches
depth, and said newspaper during all of the times of
publication aforesaid had more than 200 bonafide sub-
scribers thereto living within the county of Oneida in
which said newspaper was published at regular intervals
not less frequently than once a week.

That the annexed notice was published per clipping
attached in the regular and entire edition of said
newspaper and not in any supplement thereof for 2
successive weekly issues thereof the date of the first
publication being the 12 day of Feb., 1976
the date of the last publication being the 19 day of
Feb., 1976.

Paula Steindel

Subscribed and sworn to before me this 20 day of
Feb., 1976

H. D. Mayhew
Notary Public, residing at Malad, Idaho

My Commision expires the 10 day of Oct, 1977.

Costs:

30 lines at 23c per line first insertion \$ 6.90
..... lines tabulated at 34½c per line \$
15c per line each subsequent insertion \$ 4.50
TOTAL \$ 11.40

(Rates for legal notices are fixed by Idaho law)

aw
**NOTICE OF APPLICATION
FOR WATER PERMIT**
NOTICE IS HEREBY GIVEN
that Lorraine Kent & the Claude
Kent Trust, Idaho Falls, Idaho,
have on 2-05-76 submitted Ap-
plication No. 15-7025 for a permit
to appropriate 0.80 cubic feet per
second of water from an un-
named spring tributary to Dairy
Creek by means of ditch and
pump within the SW¼NE¼, Sec.
23, T. 11S, R. 34E, B.M., Oneida
County; to be used from Apr. 1 to
Nov. 1 for irrigation of 40 acres
within S¼NE¼, SE¼, Sec. 23, T.
11S, R. 34E, B.M.
If issued, this permit will be
subject to all prior water rights.
Protests against the granting of
the permit must be filed with the
Idaho Department of Water Re-
sources, 1615 Lincoln Road, Idaho
Falls, Idaho, 83401 on or before
March 1, 1976.
R. Keith Higginson
Director
Published in the Idaho Enter-
prise, Malad City, Idaho on Feb-
ruary 12 and February 19, 1976.

INDEXED

MEMORANDUM

TO: File 15-07025
FROM: Brenda Miller
DATE: January 16, 1991
RE: Address Change

The license issued on the above referenced water right was
returned. Their current address is: 3569 Sun Circle
Idaho Falls, ID 83404

The data base has been updated to reflect the change.

I remailed the license to that address.

December 18, 1990

LORRAINE KENT
CLAUDE KENT TRUST
1313 LAUREL DR.
IDAHO FALLS, ID 83401

RE: WATER RIGHT NO. 15-07025

Dear Water Right Holder(s):

Enclosed herewith is a copy of the Water Right License issued on the above referenced permit.

Sincerely,

JIM JOHNSON
Water Rights Supervisor

JJ:blm

Enclosure

MICROFILMED

JAN 03 1991

MEMORANDUM

TO: Norm
FROM: Sharla *lg*
DATE: December 4, 1990
RE: Conditions (15-7025)

The conditions originally placed on this right by order were not carried forward to the license for the following reasons.

1. Condition #3 on the license reinforces the subjection to all prior rights.
2. The priority date of this right has been advanced due to late submittal of the exam fee. The other two files have lapsed.
3. Proof was submitted in a timely manner. An extension was granted based upon litigation.
4. An access port was required for the determination of the rate of diversion by the Department. The examiner has not stated whether the access port or other device was there at the time of the exam, but the determination of the diversion rate has already occurred and because of the amount of water to be recognized under this right, 0.25 cfs, maintenance of such a device is not required.

MICROFILMED

JAN 03 1991

August 22, 1989

LORRAINE KENT
CLAUDE KENT TRUST
1313 LAUREL DR.
IDAHO FALLS, ID 83401

RE: PERMIT NO. 15-07025

Dear Permit Holder(s):

Enclosed is a draft copy of the license proposed to be issued on the above referenced water right.

This right is currently being reviewed by this office for licensing. The enclosed preliminary copy is subject to change upon further administrative review.

Also enclosed is an order advancing the date of priority of this right due to late submittal of the examination fee.

We ask that you review the proposed license and if you do not concur with the information, please let us know within 10 days.

Sincerely,

JIM JOHNSON
Water Rights Supervisor

JJ:sc

Enclosure

RECEIVED

JAN 03 1991

BENEFICIAL USE FIELD REPORT REVIEW

TO: FILE 15-7025

FROM: JIM JOHNSON

RE: PRIORITY ADVANCE REVIEW

DATE: 3-MAR-1989

This review memo is prepared to show the process for determining what elements were involved in advancement of the priority.

	<u>DATE</u>	<u>JULIAN</u>
PERMIT		
Permit priority Date:	FEBRUARY 05 1976	36
EXAM FEE NOTICE		
Exam Fee Notice Date:	DECEMBER 08 1986	342
Exam Fee/Info Sheet Received Date:	FEBRUARY 09 1987	40
Exam Fee or Info Due Date:	FEBRUARY 06 1987	37
Days Late:		3 DAY(S)
NEW PRIORITY DATE		
Original Priority Date:	FEBRUARY 05 1976	36
Total Days Late:		3 DAY(S)
New Priority Date:	FEBRUARY 08 1976	39

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JAN 63 1991

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

15-7025
Permit No.

Staff Analysis Sheet
for
Beneficial Use Field Report

KENT

EW 2/10/87

RECEIVED

NOV 02 1987

Department of Water Resources

A. Prior to Conducting the Exam, the File Contains:

- ☒ Blank Field Report Form
- ☒ Copy of Permit
- ☒ Copies of any Amendments/Orders with conditions of approval
- ☒ Computer Data Proof Report
- ☒ Copy of U.S.G.S. Quad
- ☒ Check for Government Lots. If so, make a copy of Government Plat

Check of P/D index HWS 4-06-87 (Initial and date)

Overlap? ☐ yes ☒ no If yes: ☐ copy of exam(s) attached?
Type of Overlap? ☐ Add acres or uses to existing system
☐ Increase rate of flow or volume
☐ Other: _____

Check of P/U index HWS 4-06-87 (Initial and date)

Overlap? ☐ yes ☒ no If yes: ☐ copy of water right(s) attached?
Type of Overlap? ☐ Increase rate of flow or volume
☐ Add P/D's
☐ Increase number of acres within tracts
☐ Other: _____

Aerial Photo

Required? ☒ yes ☐ no If yes: ☒ copy attached?

Scheduling Letter sent? _____ (Initial and date)

☒ Appointment made and ~~telephone conversation memo attached~~

B. After Conducting the Exam, the File Contains:

- ☒ Fully completed and signed Field Report Form
- ☒ Photographs of Point of Diversion and Place of Use
- ☐ Corrected Computer Data Proof Report with recommended license information, and date and signature of examiner.

C. Review and Processing:

Exam Completed *Richard L. Larson Jr.* (Signature of examiner and date)

Exam Reviewed by Senior Water Resource Agent *JWJ 8-26-87* (Initial and date)

Exam Reviewed by Manager of Regional Office *SM -10-6-87* (Initial and date)

Exam Date Entered in Computer _____ (Initial and date)

Exam sent to State Office _____ (Initial and date)

Copy of Staff Analysis Sheet sent to Manager of Regional Office and Original
Refiled in White File _____ (Initial and date)

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
BENEFICIAL USE FIELD REPORT

A. GENERAL INFORMATION

Permit No. 15-7025
Work
Phone No. 526-1304

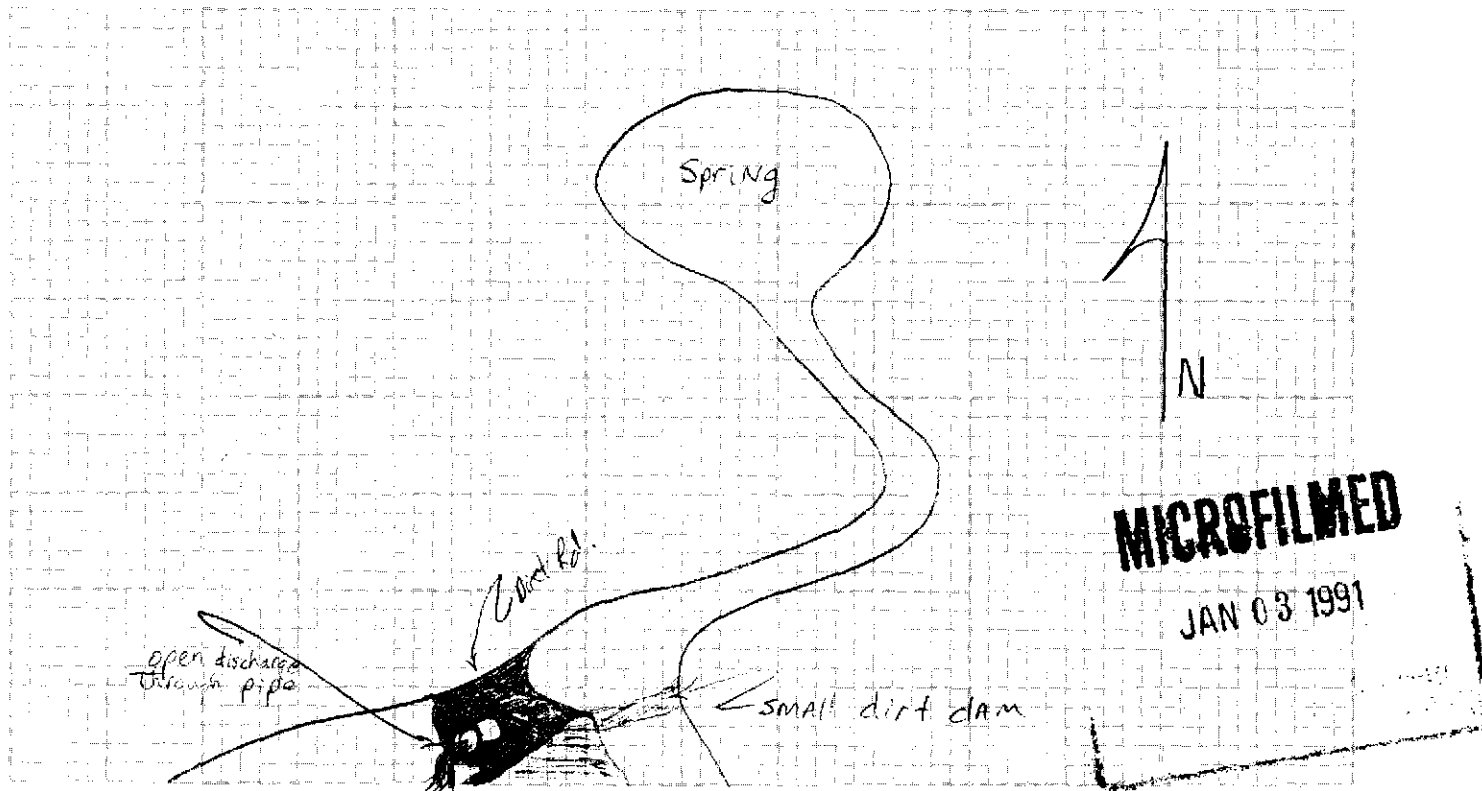
1. Owner: LARRY Kent
Current Address: 1313 LAURAL Idaho Falls Idaho 83401
2. Accompanied by: Sid Kent EXAM. DATE: 7-20-87
Address: Box 184, ARIMA Idaho Phone No. 254-3314
Relationship to Permit Holder: Leases LAND
3. Source: Unnamed Spring tributary to malad river

B. OVERLAP REVIEW

1. Other water rights with same place of use: N.A.
☐ Copies Attached
2. Other water rights with same point of diversion: N.A.
☐ Copies Attached ☐ Copies of Field Exam's Attached

C. SYSTEM DESCRIPTION

1. **Diversion System Diagram:** Indicate all major components and distances between components. Indicate weir size/ditch size/pipe i.d. as applicable. ☐ Alternative diagram attached



Scale: 1" =

2. ☒ Copy of U.S.G.S. Quadrangle Attached
Showing location(s) of point(s) of diversion and
place(s) of use (required).
☒ Photo of Diversion and System Attached
(required for all but single household domestic groundwater, and stockwater).
- ☒ Aerial Photo Attached
(required for irrigation of 10 acres or more).

JAN 29 1967

Do not use this space

D. FLOW MEASUREMENTS

☐ Additional Data Sheets Attached

1.

Measurement Equipment	Type	Make	Model No.	Serial No.	Size	Calib. Date
Bucket					5 gal	
Stopwatch						

2. Measurements:

Spring Filled a 5 gallon bucket in 2 sec, 1.6 sec, 1.4 sec,
through a culvert under dirt Rd.

Average time = 1.67 sec.

E. FLOW CALCULATIONS

☐ Additional Computation Sheets Attached

1. Measured Method:

$$Q = \frac{5 \text{ gal.}}{1.67 \text{ sec.}} \left(\frac{60 \text{ sec.}}{1 \text{ min.}} \right) \left(\frac{1 \text{ min.}}{448.8 \text{ gal.}} \right) \left(\frac{1.48 \text{ ft}^3}{\text{sec.}} \right) = 0.40 \text{ ft}^3/\text{sec.}$$

2. Alternate Method for Checking Purposes:

$$12.5 \text{ acres} \times 0.02 \text{ cfs} = 0.25 \text{ cfs}$$

F. PUMP EFFICIENCY DATA (Optional)

Discharge Pressure: _____ psi x 2.31 = _____ ft (1); Dynamic pumping level: _____ ft (2)

Total Head: (1) + (2) = _____ (3); Flow rate: _____ cfs (4)

Water HP: (3) x (4) ÷ 8.8 = _____ (5)

Meter Input KW: 3.6 x _____ KH x _____ CTR or _____ MULT x _____ PTR x _____ N/ _____ T = _____ (6)

Meter Input HP: (6) x 1.34 = _____ (7)

Panel Input KW: _____ Ave PF x _____ Ave Volts x _____ Ave Amps x .001732 = _____ (6)

Panel Input HP: (6) x 1.34 = _____ (7) Efficiency: (5)/(7) x 100 = _____ %

G. VOLUME CALCULATIONS

1. Volume Calculations for Irrigation:

$$V_{I.R.} = (\text{Acres Irrigated}) \times (\text{Irrigation Requirement}) = 12.5 \times 3.5 = 43.75$$

$$V_{D.R.} = [\text{Diversion Rate (cfs)}] \times (\text{Days in Irrigation Season}) \times 1.9835 = 0.25 \times 245 \times 1.9835 = 121.38$$

$$V = \text{Smaller of } V_{I.R.} \text{ and } V_{D.R.} = 43.75$$

~~2.~~ Volume Calculations for Other Uses:

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JAN 03 1991

1. *Chlorophyll a* (Chl a) is the primary photosynthetic pigment in most plants and algae. It is a green pigment that absorbs light energy in the blue and red regions of the visible spectrum.

2. *Chlorophyll b* (Chl b) is an accessory pigment that absorbs light energy in the blue and red regions of the visible spectrum. It transfers energy to Chl a for photosynthesis.

3. *Carotenoids* are accessory pigments that absorb light energy in the blue and green regions of the visible spectrum. They transfer energy to Chl a and Chl b for photosynthesis.

4. *Xanthophylls* are a group of carotenoids that absorb light energy in the blue and green regions of the visible spectrum. They transfer energy to Chl a and Chl b for photosynthesis.

5. *Phycobilins* are accessory pigments found in cyanobacteria and red algae. They absorb light energy in the blue and red regions of the visible spectrum and transfer energy to Chl a for photosynthesis.

1. Recommended Amounts

Irrigation

NOV - 15 MAR - 25

0.75

43.75

1. Recommended Amounts

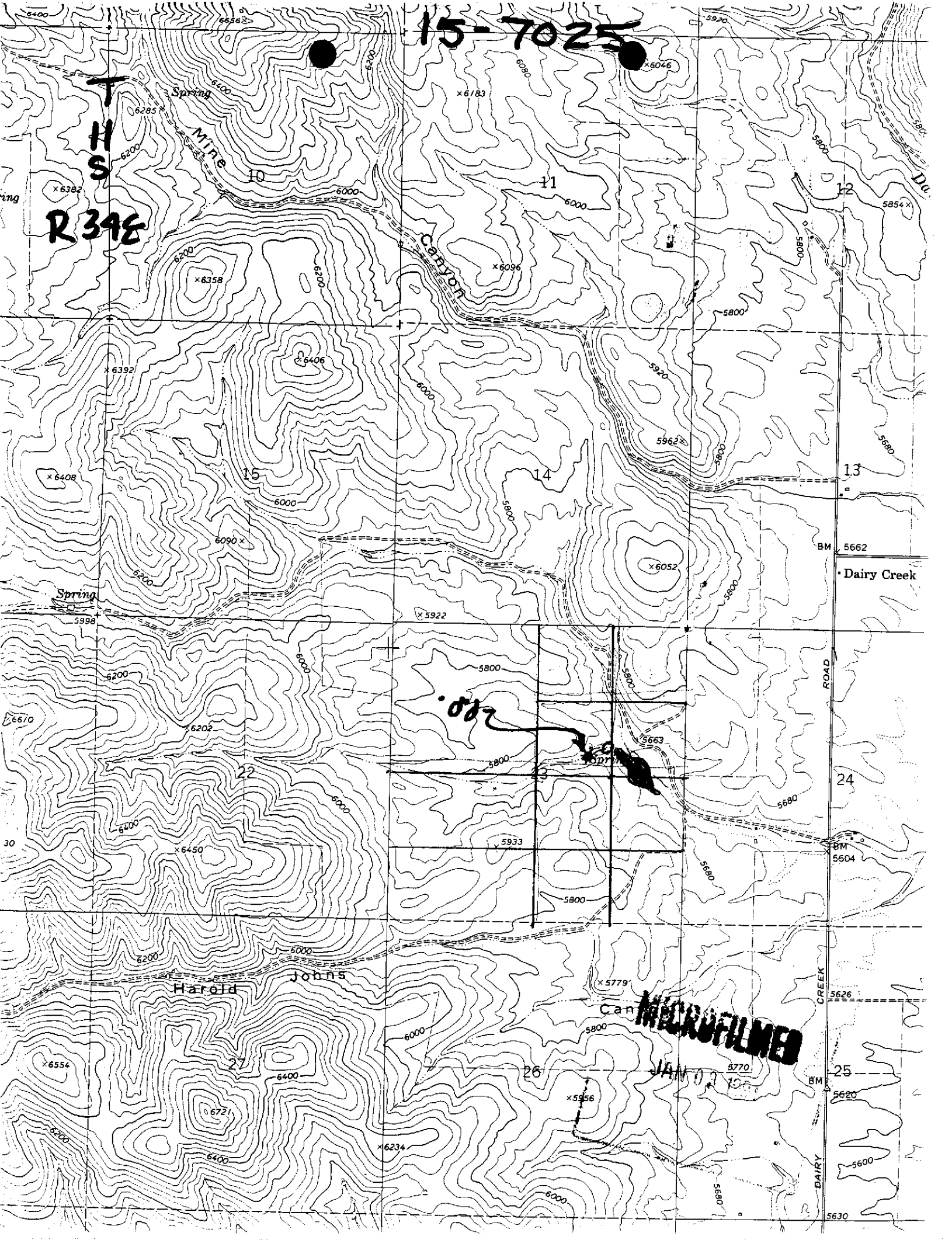
St. Michaels

Richard Lenoir Jr
Steve McMahon 10-5-27

JAN 03 1991

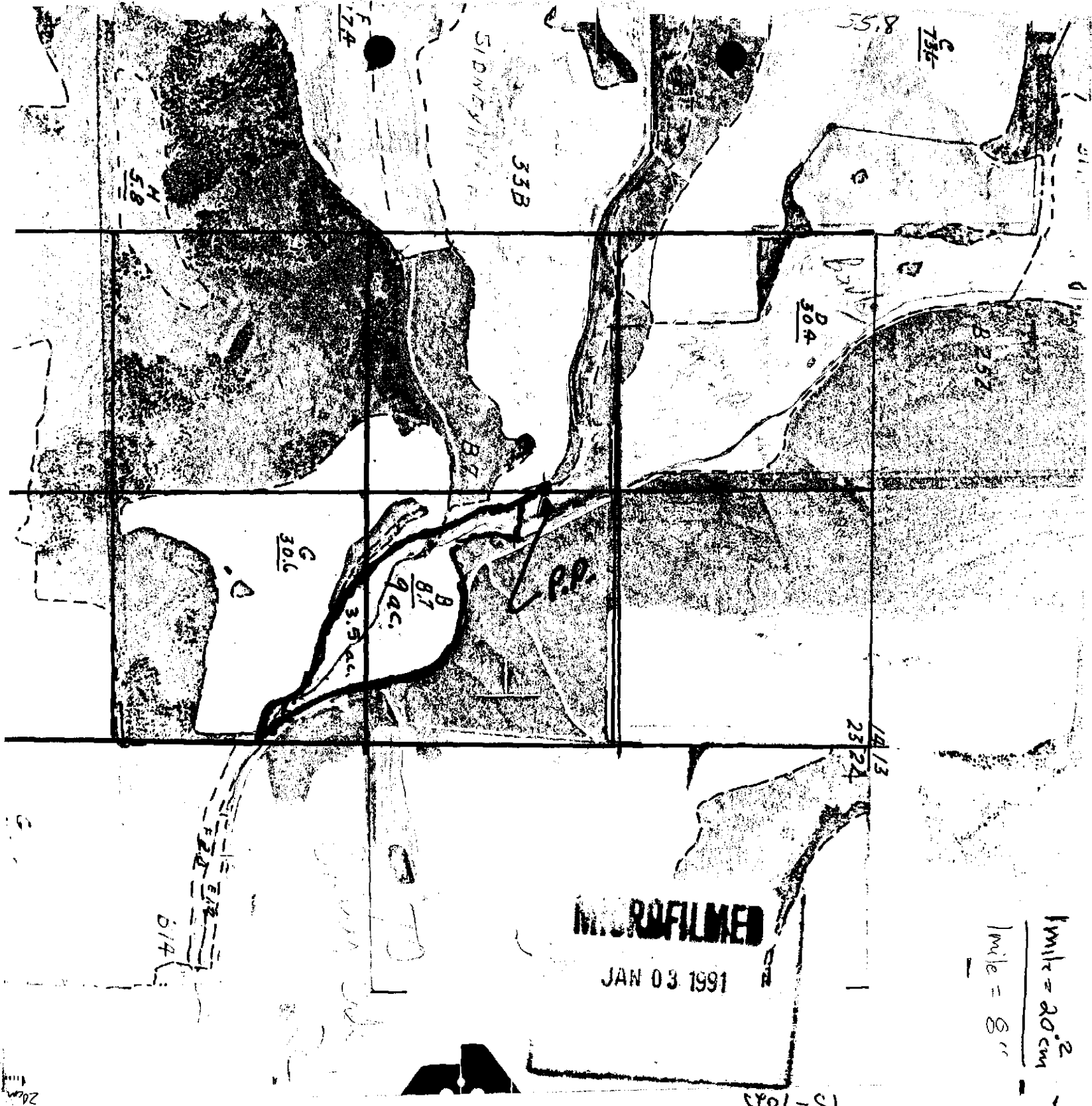
15-7025

T
H
S
R 348



MICROFILMED

JAN 12 1964



1 mile = 20 cm
 1 mile = 8''

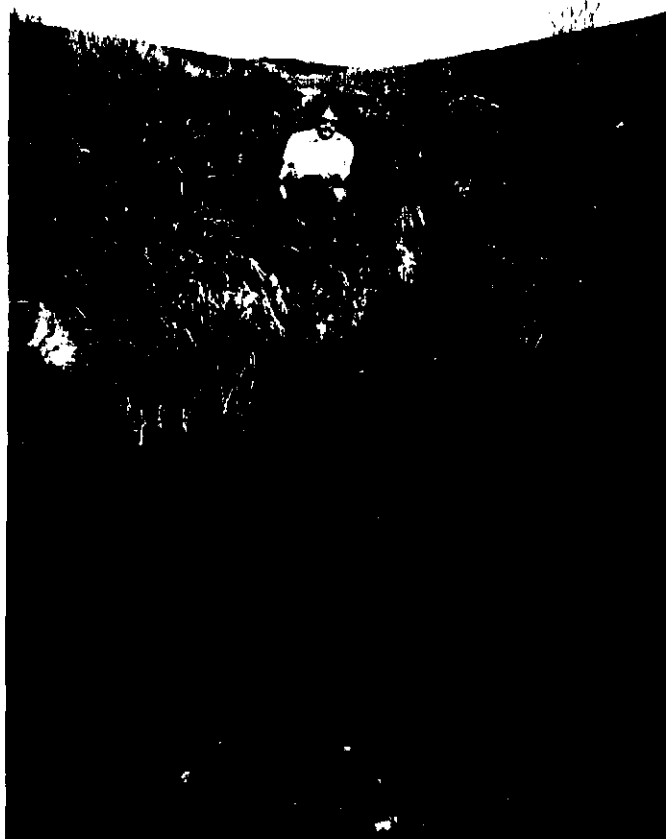
MICROFILMED

JAN 03 1991

15-7025

20cm

15-7029



MICROFILMED

JAN 03 1991

4/86

RECEIVED

FEB 9 1987

Department of Water Resources
Eastern District OfficeSTATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
EXAMINATION FEE INFORMATIONFor Office Use Only
Fee Received 100.00
Date 2-9-87
Receipt # 41034
Receipt by MD
Sent to S.O.

RECEIVED

FEB 27 1987

1. Permit No. 15-7025

ONE OF THE FOLLOWING BOXES SHOULD BE MARKED TO DESIGNATE YOUR CHOICE: Department of Water Resources

- ☐
- I choose to have the department make the field examination of this permit; attached is the examination fee. (If this box is marked, complete items 1 thru 8.)

2. Permit Holder: Lorraine K & Claude Kent Trust3. Post Office Address: 1313 Laurel Idaho Falls, Id. 83401Telephone No. 524-08254. Source of Water: Dairy Creek

5. Extent of Use:

Domestic _____ (No. of households) Stockwater _____ (No. and type of stock)

Irrigation 40 (acres) Other/Remark _____6. Total rate &/or volume for which proof is submitted .50 cfs _____ acre-feet

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

1977

8. Person to contact to accompany the department representative during the field examination:

LARRY H KENT

(Name)

1313 Laurel Idaho Falls Id.

(Address)

MICROFILMED

JAN 13 1981

524-0825 Home526-1304 Work

(Telephone Number)

- ☐
- I choose to have the field examination conducted by a certified water right examiner. Attached is a statement from the certified examiner I have selected verifying that he has been retained to conduct the examination. (If this box is marked, complete items 1 thru 7.)

Feb 3, 1987
DateLarry H Kent
Signature of Permit Holder (and title, if appropriate)Personal Representative
of Claude & Lorraine Kent

copy returned

State of Idaho
Department of Water Resources

LICENSE EXAMINATION FEE SCHEDULE

(c.f.s. = cubic feet per second
AF = acre feet)

cfs	AF	Fee
0 - 0.04	0 - 4	\$ 0
.05 - 0.20	5 - 20	50.00
.21 - 1.0	21 - 100	100.00
1.01 - 2.0	101 - 200	125.00
2.01 - 3.0	201 - 300	150.00
3.01 - 4.0	301 - 400	175.00
4.01 - 5.0	401 - 500	200.00
5.01 - 6.0	501 - 600	225.00
6.01 - 7.0	601 - 700	250.00
7.01 - 8.0	701 - 800	275.00
8.01 - 9.0	801 - 900	300.00
9.01 - 10.0	901 - 1000	325.00
10.01 - 11.0	1001 - 1100	350.00
11.01 - 12.0	1101 - 1200	375.00
12.01 - 13.0	1201 - 1300	400.00
13.01 - 14.0	1301 - 1400	425.00
14.01 - 15.0	1401 - 1500	450.00
15.01 - 16.0	1501 - 1600	475.00
16.01 - 17.0	1601 - 1700	500.00
17.01 - 18.0	1701 - 1800	525.00
18.01 - 19.0	1801 - 1900	550.00
19.01 - 20.0	1901 - 2000	575.00
20.01 & over	2001 & over	600.00

Checks should be made payable to the
Department of Water Resources

No fee is required for single family
domestic use or stockwater use.



STATE OF IDAHO

DEPARTMENT OF WATER RESOURCES

EASTERN REGION

John V. Evans
Governor

A. Kenneth Dunn
Director

DEC 10 1986

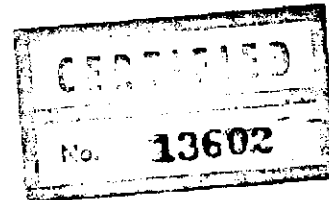
150 Shoup — Suite 15
Idaho Falls, Idaho 83402
(208) 525-7161

Department of Water Resources

15-7025
KENT, LORRAINE
1313 LAUREL DR.
IDAHO FALLS, ID 83401

December 8, 1986

EXAMINATION FEE NOTICE



Dear Permit Holder:

Department records show that proof of beneficial use has been submitted for the above-referenced permit, but that a field examination has not yet been conducted to determine the extent of beneficial use of the water for licensing purposes.

House Bill 671 (effective April 4, 1986) enacted by the 1986 Idaho Legislature requires the payment of a fee before this Department can conduct the field examination needed to issue a license confirming use of water under the permit. This letter is notification that the license examination fee is due within sixty (60) days of the date of this letter. The examination fee information sheet (enclosed) must be returned with the fee.

As an alternative to submitting the fee, the Department will accept a field examination report completed by a certified water right examiner from the private sector. If you choose to have the examination done by a certified water right examiner, you need not submit the license examination fee to the Department, but you must within sixty (60) days of the date of this letter return to the Department, the examination fee information sheet showing appropriate information together with a statement from the certified examiner to verify that you have retained a certified examiner to conduct the field examination. If you choose this alternative, a completed field examination report must be submitted within one year of the date of this letter. You cannot later change your decision to use this alternative and submit the fee needed for the Department to conduct the field examination, but you may change to another certified examiner.

Certified water right examiners are licensed engineers, geologists, or land surveyors certified by the Department to conduct water right examinations. The procedure for certifying examiners results from the recently enacted HB 671 and is being developed at this time. A listing of certified water right examiners will be available from this Department when examiners have been certified.

MICROFILMED

JAN 03 1991

If your permitted use, in fact, has already been examined by the Department and you have not asked to have the examination repeated, the fee requirement is not applicable to your permit. If you believe this is the case, please contact the Department.

The license examination fee is to be based on the amount of water you indicate you have developed, as listed in item 6 on the examination fee information sheet. The amount of water on which the examination fee is based can be less than the permitted amount, if less water has been diverted and beneficially used. The licensed amount of water, however, will not exceed the amount you claim on the examination fee information sheet. The enclosed license examination fee schedule shows a listing of applicable fees.

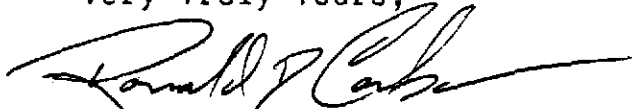
FAILURE TO SUBMIT WITHIN THE SIXTY (60) DAY PERIOD THE FEE OR THE STATEMENT THAT A CERTIFIED EXAMINER HAS BEEN RETAINED TO MAKE THE FIELD EXAMINATION WILL BE CAUSE TO ADVANCE THE PRIORITY OF THE PERMIT ONE DAY FOR EACH DAY THAT THE FEE SUBMITTAL IS LATE.

FAILURE TO SUBMIT THE FEE OR THE COMPLETED FIELD EXAMINATION REPORT WITHIN A YEAR WILL BE CAUSE TO CONSIDER THE PROOF OF BENEFICIAL USE TO BE INCOMPLETE AND TO LAPSE THE PERMIT.

The attached examination fee information sheet and the fee may be submitted to the following Department office:

Eastern Region
Idaho Dept. of Water Resources
150 Shoup Ave., Suite 15
Idaho Falls, Idaho 83401
Phone: 525-7161

Very Truly Yours,



Ronald D. Carlson
Eastern Regional Manager

Enclosures

MICROFILMED

JAN 03 1991



STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
EASTERN REGION

John V. Evans
Governor

A. Kenneth Dunn
Director

150 Shoup, Suite 15
Idaho Falls, Idaho 83402
(208) 525-7161

January 4, 1984

Claude Kent Trust
c/o Larry H. Kent
1313 Laurel Dr.
Idaho Falls, ID 83401

RE: Permit #15-7025

Dear Mr. Kent:

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

Before a license can be issued, a field examination must be made by a representative of this Department.

☐ A field examination of your system has been scheduled for _____.

If this time and date is not convenient for you, please contact this office as soon as possible.

☒ A field examiner will contact you to arrange to examine your system.

If you have any questions regarding the field examination, please contact this office.

Sincerely,

HAROLD W. JONES
Sr. Resource Agent

HWJ:JK

MICROFILMED

JAN 03 1991

DEPARTMENT OF WATER RESOURCES

The Idaho Department of Water Resources will consider this card as a statement that the permit holder(s) has completed development to the extent shown below of Permit No. 15-7025.

Name(s) of Permit Holder: Claude Kent Trust % Gary W. Kent

Post Office Address: 1313 Laurel Dr.

Shale Falls, 83401

Tel. No. 524-0825

Source of Water: Shale Creek

Extent of Use: ☐ Domestic (number of households)

☐ Stockwater (number and type of stock)

☒ Irrigation (acres)

☐ Other

Measuring Device: Required? ☒ Yes ☐ No

Access Point: Required? ☐ Yes ☒ No

Installed? ☒ Yes ☐ No

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

11-15-83

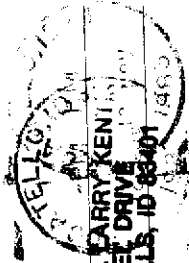
Date

Gary W. Kent

Signature of Permit Holder



MR. & MRS. CARRY KENT
1913 LAUREL DRIVE
IDAHO FALLS, ID 83401



USA
20c

RECEIVED

Nov. 21 1965



Department of Water Resources

IDAHO DEPARTMENT OF WATER RESOURCES
STATEHOUSE
BOISE, IDAHO 83720

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

STATEHOUSE
BOISE, IDAHO 83720
(208) 334-4440
CERTIFIED MAIL

138115

KENT, LORRAINE
2223 OAK TRAIL DR.
IDAHO FALLS, ID 83401

PROOF DUE NOTICE

OCTOBER 31, 1983

DEAR PERMIT HOLDER:

ONE OF THE CONDITIONS OF APPROVAL OF YOUR WATER PERMIT NO. 15-7025 WAS THAT PROOF OF THE EXTENT OF YOUR BENEFICIAL USE MUST BE SUBMITTED TO THIS OFFICE ON OR BEFORE JANUARY 01, 1984. (SEE LAST PAGE OF YOUR APPROVED PERMIT OR YOUR LAST APPROVED EXTENSION REQUEST). ENCLOSED IS A POSTCARD WHICH 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, MORE THAN ONE EXTENSION OF TIME CAN BE GRANTED. AN EXTENSION OF TIME REQUEST FORM IS ENCLOSED FOR YOUR CONVENIENCE.

EITHER THE BENEFICIAL USE POSTCARD OR A 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

RECEIVED
OCT 31 1983

SUPREME COURT OF THE STATE OF IDAHO
451 State Street Boise, Idaho 83720

15-7025 ✓
15-7026
15-7029
15-7030

Director, Dept. of Water Resources
~~CLERK OF THE DISTRICT COURT~~

Boise, Idaho

August 28, 1980

Re: Supreme Court No. 12614

CLARK v. KENT

I enclose herewith Augmentation (Exhibit)
Please fill out form of receipt below and return to this office.

in the above case for filing in your court.

R. H. Young, Clerk

RECEIVED

The Augmentation (Exhibit) in the above entitled case has been received and
filed by me this 9th day of December, 1982

~~XXXXXX~~

By Roberta Garrett

~~XXXXXX~~

R. H. YOUNG
Clerk of the Supreme Court

State of Idaho
Supreme Court

451 W. STATE STREET
BOISE, IDAHO 83720

RECEIVED

(208) 384-2210

March 6, 1979

SEP 4 1980

Department of Water Resources

Mr. C. Stephen Allred, Director
Department of Water Resources
Statehouse
Boise, ID 83720

Re: Supreme Court No. 12614
Clark v. Kent

Dear Mr. Allred:

We hereby acknowledge receipt of Augmentation of the Record pursuant to the order of this Court, dated February 28, 1979.

These documents are received as exhibits and will be returned to your office at the conclusion of this appeal.

Sincerely,

R. H. Young
Clerk

RHY:mb
cc: Counsel of Record

COPY

MAR - 6 1979

LAW OFFICES OF
RACINE, HUNTLEY & OLSON
CHARTERED

LOUIS F. RACINE, JR.
ROBERT C. HUNTLEY, JR.
WILLIAM D. OLSON
D. JAMES MANNING
W. MARCUS W. NYE
GARY L. COOPER
DENNIS W. OLLEY

CENTER PLAZA - CORNER FIRST & CENTER
POST OFFICE BOX 1391
POCATELLO, IDAHO 83201
TELEPHONE [208] 232-6101

TELEPHONE
AREA CODE 208
232-6101

March 5, 1979

RECEIVED

MAR 6 1979

Department of Water Resources

Ms. Ann Harada, Secretary
State of Idaho
Department of Water Resources
Statehouse
Boise, Idaho 83720

Re: Clark v. Kent

Dear Ms. Harada:

Enclosed is an Order of the Supreme Court to Augment the Record with certified copies of three of the Water Board's Orders and Decisions.

Enclosed are three copies, together with a certificate, and we would appreciate your certifying the Orders and then delivering them over to Bill Young, the clerk of the Idaho Supreme Court.

Thank you for your kind consideration.

Very truly yours,



ROBERT C. HUNTLEY, JR.

RCH:bm
Encl.

In the Supreme Court of the State of Idaho

Reference No. 79-19

RECEIVED

DEL CLARK and BEATRICE CLARK,
husband and wife,

MAR 2 1979

Plaintiffs-Appellants,

Department of Water Resources

v.

Supreme Court No. 12614

CLARENCE KENT and VIRGINIA KENT,
husband and wife,

ORDER TO AUGMENT

Defendants-Respondents.

The Appellants herein by and through their attorney of record having filed with the Clerk of this Court on the 26th day of January, 1979, a MOTION TO SUPPLEMENT RECORD, said MOTION showing service on counsel and no filing in opposition having been filed to this date, and

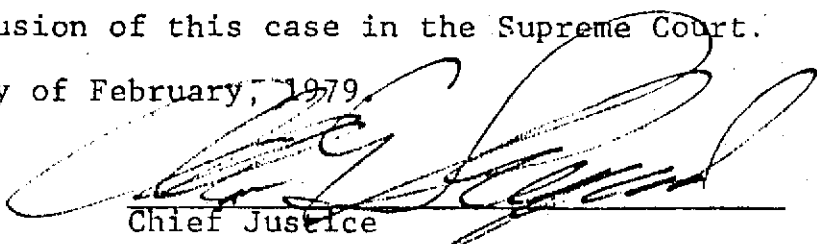
The Court having fully read and considered said MOTION and being fully advised in the premises,

IT IS HEREBY ORDERED AND THIS DOES ORDER that the MOTION be GRANTED, and that the Director of the Department of Water Resources certify to this Court to become a part of the record herein, as EXHIBITS, the following:

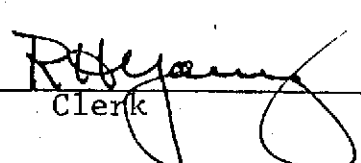
1. MEMORANDUM DECISION AND ORDER dated June 17, 1977.
2. ORDER APPROVING PETITION FOR REHEARING dated August 25, 1977.
3. MEMORANDUM DECISION ON ISSUES RAISED AT REHEARING AND AMENDED ORDER dated September 15, 1978.

IT IS FURTHER ORDERED that the three EXHIBITS above mentioned shall be returned to the Director of the Department of Water Resources at the conclusion of this case in the Supreme Court.

DATED This 28th day of February, 1979


Chief Justice

ATTEST:


Clerk

In the Supreme Court of the State of Idaho

RECORDED

L. R. H. Young, Clerk of the Supreme Court
of the State of Idaho, do hereby certify that the
above is a true and correct copy of the Order
entered in the above entitled cause and now on
record in my office.
WITNESS my hand and the Seal of this Court 2/28/29

R. H. Young Clerk
By: James E. Williams Deputy

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE
STATE OF IDAHO

IN THE MATTER OF PERMIT NOS. 15-7025,
LORRAINE KENT AND THE CLAUDE KENT TRUST:
NO. 15-7026, LYLE R. BURNHAM; NO. 15-7029
AND 15-7030, DELMAR CLARK

MEMORANDUM DECISION ON
ISSUES RAISED AT REHEARING
AND AMENDED ORDER

On June 17, 1977, the Director of the Department of Water Resources issued a memorandum decision and order approving Applications for Permit Nos. 15-7025, 15-7026, 15-7029 and 15-7030.

On June 27, 1977, Robert C. Huntley, Jr., Attorney for Delmar Clark filed a Petition for Rehearing on Permit Nos. 15-7029 and 15-7030, and on July 5, 1977 a Motion for Rehearing was filed by James B. Green, Attorney for Lyle R. Burnham. These requests for rehearing were approved by the Director on August 25, 1977. On September 16, 1977, a second hearing in the matter was held.

The attorneys for Delmar Clark and Lyle Burnham argued that the Director's decision was faulty in the following areas:

- 1) The water rights decreed in the Danforth Decree have been abandoned.
- 2) Clarence Kent should have only been the successor to, at most, 0.25 cubic feet per second under the Danforth Decree.
- 3) The decision is in error because the protestant, Clarence Kent, did not resume a water right because the only previous use of water was for the irrigation of a garden.
- 4) The decision should have limited Clarence Kent to use of the south (lower) spring.
- 5) The decision is in error for not requiring Clarence Kent to install a measuring device to measure the water he is diverting.
- 6) Lyle R. Burnham has made uninterrupted use of the water rights originally decreed to James Burnham.
- 7) The decision and order are in error in awarding Lyle Burnham a permit to irrigate 80 acres of land.
- 8) The Director erred by not ruling on Delmar Clark's right to water livestock from the creek.
- 9) Protestant, Clarence Kent, needs a transfer to change the point of diversion if he still has a right under the Danforth Decree or an application for

permit if he wishes to appropriate water; and has filed neither.

FINDINGS OF FACT

1) In 1929, a decree was issued in the case of St. John Irrigating Co. vs. Asa H. Danforth et al, in which 0.50 cubic feet per second was decreed to H. O. Kent and James Burnham with a 1914 priority from two unnamed springs which flow into Sheep Creek. Clarence Kent and Lyle Burnham are successors in interest to H. O. Kent and James Burnham, respectively.

2) The Department of Water Resources does not confirm or issue water rights based upon diversion of water and application to beneficial use. The Department will accept a claim based upon such use which is admissible as evidence in a general adjudication of water rights.

3) There is unappropriated water from the two unnamed springs during portions of the irrigation season at the present time.

4) Water has been measured at about 1.00 cubic feet per second below the unnamed springs which flow into Sheep Creek.

5) It is within the discretion of the Department of Water Resources to require measuring devices on diversions from sources of water supply not within a water district, (Idaho Code, Sec. 42-701). In an area where a water district has not been formed, the Department will exercise its discretion under Idaho Code, Sec. 42-701 by requiring measuring devices only for water rights, the priorities of which are at issue before the Department.

6) Application for Permit No. 15-7030 was withdrawn by Delmar Clark on January 3, 1977.

CONCLUSIONS OF LAW

1) There is insufficient water available from the springs under existing conditions to satisfy all of the amounts requested under each of the applications for permit. The applicants are entitled to develop additional water from the springs and to use, according to the priority of the application for permit, the unappropriated water that is presently available from the springs after recognizing the water rights established pursuant to the decree issued in St. John Irrigating Co. vs. Asa H. Danforth et al, if they have not been lost by abandonment or forfeiture.

2) The water right claimed to have been established by diversion and beneficial use by Delmar Clark for stockwatering directly from the stream cannot be determined by the Director, as beneficial use rights can only be determined by a court.

3) No measuring device is required at this time to be installed on the

diverting works of Clarence Kent but may be required at the time a water district is formed.

ORDER

IT IS, THEREFORE, HEREBY ORDERED and Applications for Permit Nos. 15-7025, 15-7026 and 15-7029 are APPROVED subject to the following conditions:

- 1) Subject to all prior water rights including those established under decree or by the diversion and beneficial use of water.
- 2) The following priorities of right shall be recognized between the permit holders:

Permit No. 15-7025	February 5, 1976
Permit No. 15-7026	February 24, 1976
Permit No. 15-7029	April 26, 1976

- 3) Proof of construction of works and application of water to beneficial use shall be submitted to the Department on or before:

Permit No. 15-7025	October 1, 1980
Permit No. 15-7026	October 1, 1982
Permit No. 15-7029	September 1, 1983

and that no extensions of time shall be granted beyond these dates unless the permit holder can show he was prevented from completing the appropriation by circumstances beyond his control.

- 4) An access port or other device as specified by the Department shall be installed by each permit holder to provide the installation of measuring equipment and the determination of the rate of diversion by the Department.

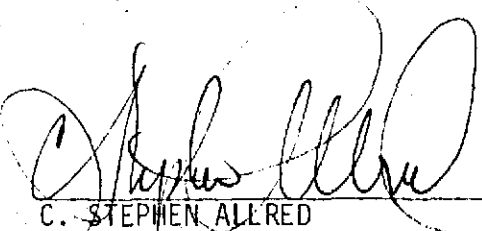
IT IS FURTHER ORDERED that the approval of Permit No. 15-7030 is hereby VOIDED.

Dated this 15 day of September, 1978.

The foregoing is a true and certified copy of the document on file at the Department of Water Resources.

Signed this 6 day of March, 1979.

Billy D. Hanna


C. STEPHEN ALLRED

Director

MICROFILMED

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

IN THE MATTER OF PERMIT NO'S. 15-7025 -
LORRAINE KENT AND THE CLAUDE KENT TRUST:
NO. 15-7026 - LYLE R. BURNHAM: NO. 15-7029
and 15-7030 - DELMAR CLARK

ORDER APPROVING
PETITION
FOR REHEARING

WHEREAS, on February 5, 1976, February 24, 1976, and April 28, 1976, the Department received applications for permits from Lorraine Kent and the Claude Kent Trust (15-7025), Lyle R. Burnham (15-7026), and Delmar Clark (15-7029 and 15-7030), respectively; and,

WHEREAS, on February 19, 1976, Clarence Kent filed a protest against the approval of Permit No. 15-7025 and on March 11, 1976 he filed a protest against Permit No. 15-7026. On February 26, 1976, a protest was received on Permit No. 15-7025 and on March 16, 1976, a protest was received on Permit No. 15-7026, both from the St. John Irrigating Company. On May 20, 1976, Clarence Kent submitted protests against the approval of Permit No's. 15-7029 and 15-7030; and,

WHEREAS, on January 12, 1977, a hearing concerning these permits was held at Malad, Idaho; and,

WHEREAS, on June 17, 1977, a Memorandum Decision and Order was issued based upon the testimony of both the applicants and the protestants and information in the Department's files; and,

WHEREAS, on June 27, 1977, Robert C. Huntley, Jr., attorney for Delmar Clark filed a Petition for Rehearing on Permit No's. 15-7030 and 15-7029, and on July 5, 1977, a Motion for Rehearing was filed by James B. Green, attorney for Lyle R. Burnham; and,

WHEREAS, after considering those petitions, the Department finds that a rehearing should be held;

IT IS, THEREFORE, HEREBY ORDERED that the petitions for rehearing be APPROVED.

Dated this 25 day of August, 1977.

The foregoing is a true and certified copy of the document on file at the department of Water Resources.

Signed this 6 day of March, 19 79.

Betty D. Flemer

E. STEPHEN ALLRED
Director

[Signature of E. Stephen Allred]

RECEIVED

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

IN THE MATTER OF PROTESTS AGAINST THE APPROVAL OF
APPLICATIONS FOR PERMITS NO. 15-7025 - LORRAINE
KENT AND THE CLAUDE KENT TRUST; No. 15-7026 -
LYLE R. BURNHAM; NO. 15-7029 and 15-7030-DELMAR CLARK

MEMORANDUM DECISION
AND ORDER

On February 5, 1976, Lorraine Kent and the Claude Kent Trust filed application no. 15-7025 to appropriate 0.50 cubic feet per second at a point within the SW $\frac{1}{4}$ NE $\frac{1}{4}$, Sec. 23, Twp. 11S, Rge. 34E, from an unnamed spring, tributary to Dairy Creek for the irrigation of forty (40) acres of land. On February 24, 1976, Lyle R. Burnham filed application no. 15-7026 to appropriate 1.60 cubic feet per second at a point within the SW $\frac{1}{4}$ SE $\frac{1}{4}$, Sec. 24, Twp. 11S, Rge. 34E, from an unnamed spring, tributary to Dairy Creek for the irrigation of eighty (80) acres of land. Notice of these applications was published in the Idaho Enterprise and was subsequently protested by Clarence Kent and St. Johns Irrigating Company. A conference was held in Pocatello, Idaho, on April 9, 1976. At this conference, Larry Kent, representing Lorraine Kent and the Claude Kent Trust, requested the hearing in the matter be continued to a later date to allow him an opportunity to consult with legal counsel.

On April 26, 1976, Delmar Clark filed with the Department of Water Resources applications no. 15-7029 and 15-7030 requesting to appropriate 0.13 cubic feet per second for domestic, stockwater and irrigation purposes from unnamed springs in the SE $\frac{1}{4}$ NE $\frac{1}{4}$, Sec. 23; NESW $\frac{1}{4}$, NW $\frac{1}{4}$ SW $\frac{1}{4}$, Sec. 24; Twp. 11S, Rge. 34E, and 2.40 cubic feet per second for irrigation purposes from unnamed springs in the NW $\frac{1}{4}$ SW $\frac{1}{4}$, Sec. 24, Twp. 11S, Rge. 34E. Notice of these applications were published in the Idaho Enterprise and was protested by Clarence Kent. Department action in this matter was delayed because of a court action involving the water of the springs between Delmar Clark and Clarence Kent.

On January 12, 1977, because of the issues involved, a combined hearing was held in Malad, Idaho, on all of the above referenced applications. At that time, St. Johns Irrigating Company, through their attorney, contacted the Department and indicated they did not wish to appear at this hearing and would like the information presented at the previous conference to be considered by the Department

in making a decision in the matter. All of the applicants were present. Applicant Delmar Clark was represented by attorney, Robert C. Huntley, Jr., of the firm Racine, Huntley and Olson, Pocatello, Idaho. The protestant, Clarence Kent was present and represented by attorney J. W. Crowther. The testimony of both the applicants and protestant was heard primarily on two issues: These issues were: (1) Does the protestant, Clarence Kent, have a water right from the subject springs that will be injured, and (2) is there sufficient water in the source for the purposes intended by the applicant.

FINDINGS OF FACT

On June 5, 1928, the cause of St. John Irrigating Company v.s. Asa H. Danforth, H. O. Kent, Marvin A. Butler and James Burnham came before the Fifth Judicial District Court at Malad, Idaho, Oneida County. This trial resulted in the adjudication of certain rights from springs arising in the SE $\frac{1}{4}$ NE $\frac{1}{4}$, Sec. 23, Twp. 11S, Rge. 34E. The court decreed that the defendants and cross-complainants, Henry O. Kent and James Burnham were decreed owners of a right to the perpetual use of waters from a certain more southerly spring to the extent of five-tenths of a cubic foot per second of time, with a priority dating from June 1, 1914. In this same action, Asa Danforth was decreed the owner of water from a certain more northerly spring at the head of Sheep Creek and had a right to the extent of one-half cubic foot of water per second of time, with a priority dating from June 1, 1915. The use is described for both rights for irrigation and domestic purposes.

The evidence presented at the hearing was that very little use was made of this water and between 1950 and 1973, the only water used from the springs was for domestic purposes.

In 1973, Mr. Clarence Kent constructed a reservoir within the NW $\frac{1}{4}$ SE $\frac{1}{4}$, Sec. 24, Twp. 11S, Rge. 34E, and began diverting water for the irrigation of about 160 acres of land. The water supply for this reservoir originated from the same springs listed in the Danforth Decree. During 1975 to take advantage of the available head between the springs and the place of his use to reduce pumping requirements, Clarence Kent installed a plastic pipeline to collect the water from the springs and transport it to his pump. The installation of this pipeline eliminated the flow in the creek between the springs and the reservoir and, therefore, through the property of Mr. Delmar Clark.

In the decree entitled St. John Irrigating Company -vs- Asa H. Danforth, et. al., it is specified that these springs are not a tributary of Dairy Creek.

From the records available, it appears that Clarence Kent is the successor in interest to the five-tenths cubic foot per second originally decreed to H. O. Kent and James Burnham.

The best available data indicates that the springs flow at the rate of at least one cubic foot per second of time.

CONCLUSIONS OF LAW

1. Even though the water from the springs was not used for irrigation for a period of time greater than five years, and, therefore, the water right may have been lost by nonuse under Section 42-222, Idaho Code, the courts have been reluctant to declare a water right lost if use of the water was resumed prior to the water being taken by subsequent appropriators. Carrington v.s. Crandall, 65 Idaho 525, 147 P2d 1009 (1944); Rams-horn Ditch Co. v.s. United States, 269 Fed. 80; Zezi v.s. Lightfoot, 57 Idaho 707, 713, 68 P2d 50. The protestant Clarence Kent, as successor in interest to the H. O. Kent and James Burnham water right is entitled to 0.50 cubic feet per second.

2. There is not sufficient water in the springs, under existing conditions, to supply the water requested under each of these applications for permit but each applicant should have the opportunity to develop additional water and use the unappropriated water that is available in the source.

3. The use of the existing water should be developed according to the priority of the water right, therefore, the date that proof of completion of works and application of water to beneficial use should be set later for the junior priority right holders to allow them to construct their projects if the senior right holders do not construct their projects.

4. The water rights of the protestant, St. John Irrigating Company will not be injured since the source of water was declared in the case of St. John Irrigating Company v.s. Asa H. Danforth, et. al. not to be a tributary of Dairy Creek.

ORDER

IT IS, THEREFORE, HEREBY ORDERED and Applications for Permit No. 15-7025, 15-7026, 15-7029 and 15-7030 are APPROVED subject to the following conditions:

1. Subject to all prior water rights including that of Clarence Kent to divert 0.50 cubic feet per second of water with a priority of June 1, 1914.

2. That the following priority of right be recognized between the permit holders:

15-7025	February 5, 1976
15-7026	February 24, 1976
15-7029	April 26, 1976
15-7030	April 26, 1976

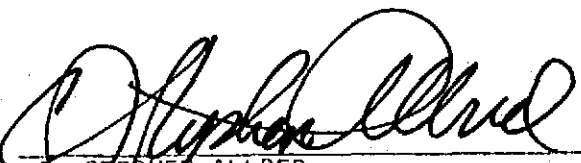
3. Proof of construction of works and application of water to beneficial use be submitted to the Department on or before:

June 1, 1979 on Permit No. 15-7025
June 1, 1981 on Permit No. 15-7026
June 1, 1982 on Permit No. 15-7029 and 15-7030

and that no extensions of time shall be granted past these dates until the permit holder showing he was prevented from proceeding by circumstances beyond his control.

4. That a measuring device of a type approved by the Department shall be permanently installed and maintained as part of the diverting works on each of the permits.

Dated this 17 day of June, 1977.


C. STEPHEN ALLRED
Director

The foregoing is a true and certified copy of the document on file at the department of Water Resources.

Signed this 6 day of March, 1979.



In the Supreme Court of the State of Idaho

DEL CLARK and BEATRICE CLARK,
husband and wife,

Plaintiffs-Appellants,

v.

CLARENCE KENT and VIRGINIA KENT,
husband and wife,

Defendants-Respondents.

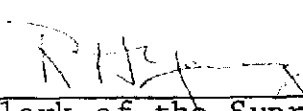
NO. 12614

REMITTITUR

Stipulation of counsel to dismiss the appeal herein
having been approved August 28, 1980, by order of the Court,

IT IS NOW THEREFORE ORDERED that the appeal herein
from the judgment of the District Court of the Sixth Judicial
District of the State of Idaho, in and for Oneida County, be
and is hereby dismissed.

DATED This 28th day of August, 1980.


Clerk of the Supreme Court
STATE OF IDAHO

October 6, 1980

Larry H. Kent
2223 Oaktrail Drive
Idaho Falls, ID 83401

Dear Mr. Kent:

Re: Permit No. 15-7025

Enclosed is a copy of the approved request for extension of time. The time within which to submit the statement of beneficial use is extended to January 1, 1984.

Also enclosed is receipt No. 16468 in the amount of \$15.00.

Sincerely,

RITA FLECK
Sr. Secretary

Enclosure

TO: File

FROM: Jim JOHANSON

IS-7025 REB NOTES FROM REVIEW OF EXTENSION REQUEST

APP received 2/05/76

APP APPROVED 6/17/77
(BY ORDER)

PERIOD ASKED 5 yrs

FOR DEVELOPMENT

B/u due by 10/1/80

ME DEC. CHANGE 9/15/78
§ ORDER

MOTION TO SUPPLEMENT

RECORD SUBMITTED TO

SUPREME COURT 1/26/79

PROTESTANTS APPEALED TO
DISTRICT COURT ?

MEMORANDUM DECISIONS AND ORDERS ISSUED ON 6/7/77 AND 9/15/78

REQUIRED THAT THE PERMITS (IS-7025 et al) would not
be granted extensions of time unless the ^{permit holder} can show
he was prevented from development by circumstances
beyond his control.

Time between Memorandum Decision Issued (9/15/78)
and evidence showing that case was in the Supreme
Court (1/26/79) IS A LITTLE OVER 4 months.

ANALYSIS

Existing records in the water right file can show
that Permit holder was prevented from development
from date of submitting his application thru MARCH 1979.

Permit holder makes a statement on extension request
that litigation issues have still not been decided yet.

MICROFILMED

IF WE ACCEPT THIS STATEMENT THEN THE
PERIOD THAT CAN BE ALLOWED WOULD BE AS
FOLLOWS:

Memorandum Decision AND ORDER ISSUED 6/17/77
REDUCED TIME REQUESTED ON APPLICATION FROM 5YRS
to 2yrs. Proof due 6/1/1979

Memorandum Decision AND ORDER ISSUED 9/15/78
changed Proof due date to Oct 1, 1980
which added 16 months or 1yr 4 mo.

Total years allowed for development is
3 yrs 4 mo.

Recommendation:

Permit holder was prevented from development
during these years by litigation so
therefore present extension request should
allow an additional 3 yrs 4 mo. to
JANUARY 1, ¹⁹⁸⁴ ~~1983~~.

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

STATEHOUSE
BOISE, IDAHO 83720
(208) 334-4440
CERTIFIED MAIL

KENT, LORRAINE
2223 OAK TRAIL DR.
IDAHO FALLS, ID 83401

138324

JULY 31, 1980

DEAR PERMIT HOLDER:

ONE OF THE CONDITIONS OF APPROVAL OF YOUR WATER PERMIT NO. 15-7025 WAS THAT EVIDENCE OF THE EXTENT OF DEVELOPMENT MUST BE SUBMITTED TO THIS OFFICE ON OR BEFORE OCTOBER 01, 1980. (SEE LAST PAGE OF YOUR APPROVED PERMIT). ENCLOSED IS A POST CARD WHICH MAY BE USED TO SUBMIT THE REQUIRED PROOF OF BENEFICIAL USE.

IF YOU HAVE NOT FULLY COMPLETED YOUR PROJECT, AND YOU HAVE NOT PREVIOUSLY RECEIVED AN EXTENSION OF TIME, YOU MAY REQUEST AN EXTENSION OF TIME PROVIDED THE DELAY IS FOR REASONABLE CAUSE AS INDICATED IN SECTION 42-204, IDAHO CODE, AMENDED. IF YOU HAVE BEEN PREVENTED FROM PROCEEDING BY A GOVERNMENTAL AGENCY OR BY LITIGATION, MORE THAN ONE EXTENSION OF TIME CAN BE GRANTED. A REQUEST FOR EXTENSION OF TIME FORM IS ENCLOSED FOR YOUR CONVENIENCE. PLEASE NOTE THAT A FEE OF \$15.00 MUST BE SUBMITTED WITH THIS FORM.

EITHER THE BENEFICIAL USE POST CARD OR A REQUEST FOR AN EXTENSION OF TIME MUST BE RECEIVED BY THIS DEPARTMENT ON OR BEFORE THE ABOVE MENTIONED DATE, OTHERWISE, THE PERMIT WILL LAPSE AND BE OF NO FURTHER FORCE OR EFFECT WITHIN 60 DAYS.

SINCERELY,

RI FLECK
SR SECRETARY

ENCLOSURES

RECORDED



State of Idaho

DEPARTMENT OF WATER RESOURCES

STATE OFFICE, 373 W. Franklin Street, Boise, Idaho

JOHN V. EVANS

Governor

C. STEPHEN ALLRED

Director

Mailing address:

Statehouse

Boise, Idaho 83720

(208) 384-2215

CERTIFIED MAIL

March 30, 1979

Re: Permit No. 15-7025

100720

Lorraine Kent and Claude Kent Trust
2223 Oak Trail Drive
Idaho Falls, ID 83401

Dear Ms. Kent:

One of the conditions of approval of your water Permit No. 15-7025 (see last page of your approved permit) was that evidence of the extent of development be submitted as proof of application of water to beneficial use to this office on or before June 1, 1979. Enclosed is an affidavit form which must be used to submit the required proof of beneficial use.

If you have not fully completed your project, and you have not previously received an extension of time, you may request an extension of time provided the delay is for reasonable cause as indicated in Section 42-204, Idaho Code, amended. If you have been prevented from proceeding by a governmental agency or by litigation, more than one extension of time can be granted.

Either the beneficial use affidavit or a request for an extension of time must be received by this Department on or before the above mentioned date, otherwise, the permit will lapse and be of no further force or effect.


RITA FLECK
Water Rights

Encl: Proof affidavit

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ROUTING SLIP

DATE <u>Mar. 6, 1979</u>		TIME _____
TO: <u>Go</u>		REF. No. (if any) <u>15-7025</u>
FROM: (show title) <u>Director</u>		

FOR YOUR:

- ☐ Information
☐ Approval
☐ Signature

REVIEW AND:

- ☐ Call Me ☐ See Me
☐ Comment & Return
☐ Take Proper Action
☐ Draft a Reply for Me

PER:

- ☐ Our Conversation
☐ Your Request
☐ Boss's Request

*Certified copies have
been made and a copy
of the cover letter attached
and taken to Supreme
Court Clerk*

LAW OFFICES OF
RACINE, HUNTLEY & OLSON

CHARTERED

LOUIS F. RACINE, JR.
ROBERT C. HUNTLEY, JR.
WILLIAM D. OLSON
D. JAMES MANNING
W. MARCUS W. NYE
GARY L. COOPER
DENNIS W. OLLEY

CENTER PLAZA - CORNER FIRST & CENTER
POST OFFICE BOX 1391
POCATELLO, IDAHO 83201
TELEPHONE [208] 232-6101

TELEPHONE
AREA CODE 208
232-6101

March 5, 1979

Ms. Ann Harada, Secretary
State of Idaho
Department of Water Resources
Statehouse
Boise, Idaho 83720

Re: Clark v. Kent

Dear Ms. Harada:

Enclosed is an Order of the Supreme Court to Augment the Record with certified copies of three of the Water Board's Orders and Decisions.

Enclosed are three copies, together with a certificate, and we would appreciate your certifying the Orders and then delivering them over to Bill Young, the clerk of the Idaho Supreme Court.

Thank you for your kind consideration.

Very truly yours,



ROBERT C. HUNTLEY, JR.

RCH:bm
Encl.

R. H. YOUNG
Clerk of the Supreme Court

State of Idaho
Supreme Court

451 W. STATE STREET
BOISE, IDAHO 83720

(208) 384-2210

March 6, 1979

Mr. C. Stephen Allred, Director
Department of Water Resources
Statehouse
Boise, ID 83720

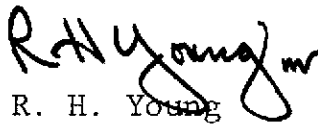
Re: Supreme Court No. 12614
Clark v. Kent

Dear Mr. Allred:

We hereby acknowledge receipt of Augmentation of
the Record pursuant to the order of this Court, dated
February 28, 1979.

These documents are received as exhibits and will
be returned to your office at the conclusion of this appeal.

Sincerely,


R. H. Young
Clerk

RHY:mb
cc: Counsel of Record

In the Supreme Court of the State of Idaho

Reference No. 79-19

RECEIVED

DEL CLARK and BEATRICE CLARK,
husband and wife,

Plaintiffs-Appellants,

v.

CLARENCE KENT and VIRGINIA KENT,
husband and wife,

Defendants-Respondents.

Department of Water Resources

Supreme Court No. 12614

ORDER TO AUGMENT

The Appellants herein by and through their attorney of record having filed with the Clerk of this Court on the 26th day of January, 1979, a MOTION TO SUPPLEMENT RECORD, said MOTION showing service on counsel and no filing in opposition having been filed to this date, and

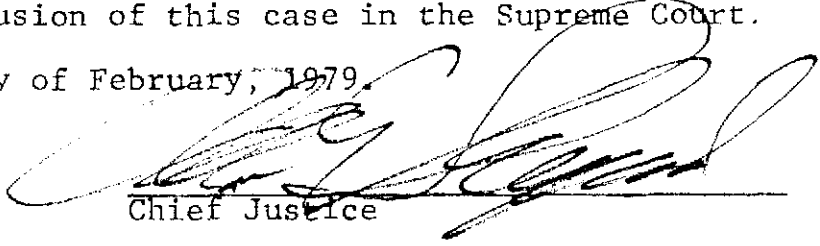
The Court having fully read and considered said MOTION and being fully advised in the premises,

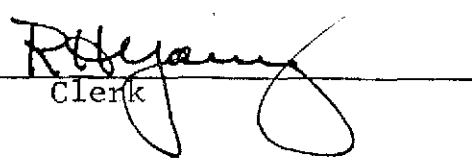
IT IS HEREBY ORDERED AND THIS DOES ORDER that the MOTION be GRANTED, and that the Director of the Department of Water Resources certify to this Court to become a part of the record herein, as EXHIBITS, the following:

1. MEMORANDUM DECISION AND ORDER dated June 17, 1977.
2. ORDER APPROVING PETITION FOR REHEARING dated August 25, 1977.
3. MEMORANDUM DECISION ON ISSUES RAISED AT REHEARING AND AMENDED ORDER dated September 15, 1978.

IT IS FURTHER ORDERED that the three EXHIBITS above mentioned shall be returned to the Director of the Department of Water Resources at the conclusion of this case in the Supreme Court.

DATED This 28th day of February, 1979.


Chief Justice

ATTEST: 
Clerk

In the Supreme Court of the State of Idaho

L. R. H. Young, Clerk of the Supreme Court
of the State of Idaho, do hereby certify that the
above is a true and correct copy of the Order
entered in the above entitled cause and now on
record in my office.

WITNESS my hand and the Seal of this Court 2/29/79

R. H. Young Clerk
By: James E. Gilchrist Deputy



State of Idaho

DEPARTMENT OF WATER RESOURCES

STATE OFFICE, 373 W. Franklin Street, Boise, Idaho

JOHN V. EVANS

Governor

C. STEPHEN ALLRED

Director

Mailing address:

Statehouse

Boise, Idaho 83720

(208) 384-2215

January 3, 1979

Mr. J. W. Crowther
Attorney at Law
60 N. Main Street
Malad City, ID 83252

Dear Mr. Crowther:

Re: Permit Nos. 15-7025, 15-7026, 15-7029 and 15-7030

Pursuant to your phone call on December 28, 1978 to Ron Carlson of our Eastern Regional office in Idaho Falls, we checked the above referenced files and determined that we inadvertently did not forward to you a copy of the Memorandum Decision on Issues Raised at Rehearing and Amended Order.

Enclosed is a copy of the amended Memorandum Decision and Order on issues at the rehearing held on September 16, 1977.

Be sure to note that the approval of Permit No. 15-7030 has been voided.

You should be aware that if you do not agree with the decision, you may request a rehearing before the Director of the Department of Water Resources within 20 days from the date of this letter or may appeal directly to the District Court within 60 days from the date of this letter.

I hope the mailing oversight has not caused you any inconvenience.

Sincerely,

L. GLEN SAXTON
Chief, Operations Bureau

Enclosure

cc: Clarence Kent with enclosure
Delmar Clark
Robert C. Huntley
Lorraine Kent and Claude Kent Trust

Ron Kerl
Lyle Burham
James B. Green

Don - Don Carlson

September 18, 1978

Re: Permit No. 15-7025

Lorraine Kent & Claude Kent Trust
2223 Oak Trail Drive
Idaho Falls, ID 83401

Dear Ms. Kent:

Enclosed is a copy of the amended Memorandum Decision and Order on issues raised at the rehearing held on September 16, 1977.

You should be aware that any person who does not agree with the decision may request a re-hearing before the Director of the Department of Water Resources within 20 days or may appeal directly to the District Court within 60 days of the date of the decision.

Sincerely,

L. GLEN SAXTON
Chief, Operations Bureau

LGS:kw
Enclosure

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RECEIVED

OCT 27 1977

Department of Water Resources
Eastern District Office

TERRELL, GREEN,
SERVICE & GASSER
Attorneys at Law
P. O. Box 4883
Pocatello, Idaho
83201
(208) 232-4471

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE
STATE OF IDAHO

In The Matter of the Applications)
for Permits No. 15-7025 - LORRAINE)
KENT and the CLAUDE KENT TRUST; No.)
15-7026 - LYLE R. BURNHAM; No. 15-7029)
and 15-7030 - DELMAR CLARK)

MEMORANDUM OF
LYLE R. BURNHAM

COMES NOW Lyle R. Burnham, by and through his attorney,
Ron Kerl, of the law firm of Terrell, Green, Service & Gasser,
attorneys, Pocatello, Idaho, and submits the within Memorandum to
the Department of Water Resources, pursuant to its request dated
September 16, 1977.

Rehearing on the above named applications was held
at the Pocatello Municipal Airport on September 16, 1977, after
petitions for rehearing were timely submitted to the Department
of Water Resources by applicants, Lyle R. Burnham and Delmar Clark.
The petitions for rehearing set forth the applicants' assignments
of error regarding the Memorandum Decision issued by the Department
on June 17, 1977. Additional testimony was taken from Louis Burnham,
Lyle R. Burnham and Clarence Kent.

Pursuant to stipulation of all parties, it was agreed
that Lyle R. Burnham is the successor in interest to the real
property owned by James Burnham and subject to the Danforth Decree
entered on the 5th day of June, 1928. It was also stipulated that
Clarence Kent is the successor in interest to the real property
owned by H.O. Kent and subject to the Danforth Decree. It was
further stipulated that Lorraine Kent and the Claude Kent Trust
are the successors in interest to the real property owned by Asa

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TERRELL, GREEN,
SERVICE & GASSER
Attorneys at Law
P. O. Box 4883
Pocatello, Idaho
83201
(208) 232-4471

Danforth, and also subject to the Danforth Decree.

The testimony taken during the rehearing establishes that since the Danforth Decree was rendered, Lyle Burnham and his predecessors in interest have made beneficial use of the water from the southerly spring. This was done by flood irrigating grain, alfalfa and hay crops. In fact, the Burnhams had used more than the .25 c.f.s. allotted to them under the Danforth Decree since the water was not diverted or used by any other individuals from the early 1950's until Clarence Kent began building a dam and point of diversion in 1973 or 1974. During this period of time Louis Burnham hand ditched the water on the Lyle Burnham property so as to direct and redirect the water from one area to another. In 1967 a ditch was dug by Louis Burnham for approximately 120 yards where the stream first enters the property now owned by Lyle R. Burnham, in an effort to facilitate the irrigation of the crops. Counsel for Clarence Kent would have the Department believe that the only reason Louis Burnham took these steps was because the water was not wanted and in fact was a nuisance. As explained by Louis Burnham at the rehearing, this is not true. After the stream had been allowed to flow and irrigate crops on the Burnham property, the stream would then be diverted to another area of the property in order to allow that which was first irrigated to dry out sufficiently to permit harvesting machinery to enter and work. It may be true that when a machine would become bogged down in mud that Louis Burnham felt the water was a nuisance, we all would at that point in time. This, however, can not overcome the fact that the water irrigated growing crops and resulted in their harvest. This was accomplished by reason of the beneficial use of the water by the Burnhams. The use of this water by James Burnham and his successors

in interest dates from the Danforth Decree, and is in all respects similar in scope and nature as was the use made by James Burnham at the time the Danforth Decree was entered. Only when the Burnham's property was in summer fallow was the water from the southerly spring not used to irrigate growing crops. In no respects did there exist any length of time of five (5) years or more where the water was not used by Lyle Burnham or his predecessors in interest for the purposes of irrigating growing crops.

The testimony also established that Clarence Kent used a portion of the water from the southerly spring around 1950 for the purpose of irrigating a domestic garden. The water was thereafter allowed to run in the ditch until it entered the property now owned by Lyle Burnham and was never diverted or placed upon growing crops by Clarence Kent until July 1976. During this period of 25 years, the water was not diverted for irrigation purposes or any other beneficial use by Clarence Kent. The only use made of the water was possibly through seepage from the stream which may then have irrigated wild grass growing upon Clarence Kent's property. Even then, the grass was never cut for hay nor used for the pasture of livestock. Such nonuse of the water by Clarence Kent constitutes both the abandonment and forfeiture, under Idaho law, of any water rights Clarence Kent may have had under the Danforth Decree.

The Department in its Memorandum Decision entered previously herein, found that Clarence Kent had resumed a water right prior to the water being taken by subsequent appropriators. The testimony provided the Department at the rehearing clearly established that any rights Clarence Kent may have had under the Danforth Decree had

TERRELL, GREEN,
SERVICE & GASSER
Attorneys at Law
P. O. Box 4883
Pocatello, Idaho
83201
(208) 232-4471

been totally abandoned by Clarence Kent and his predecessors, for many, many years. In addition, to resume a water right is to go back to the use of a water right that had been exercised before. The testimony established that the most use ever made by Clarence Kent or his predecessors of the water involved was for the watering of a garden, and therefore, the application .5 c.f.s. into an irrigation system to irrigate 160 acres of land is not a resumption, but rather a total new application of water to a new land with a new point of diversion. The only provision in Idaho law for Clarence Kent to establish such a new water right, or new point of diversion, is to make application for same, with the Department, which in fact he has not done.

STATEMENT OF LAW AND ARGUMENT

The first question asked to be resolved by the Department's Hearing Officer was whether or not the subsequent filing of an Application for Permit to appropriate waters from the unnamed springs of Sheep Creek by Lyle R. Burnham constitutes a waiver of any right Lyle R. Burnham may have succeeded to under the Danforth Decree. This is the position taken by Clarence Kent and is no doubt the reason Clarence Kent has not yet made application for appropriation of the water he is attempting to use at his current point of diversion.

The Idaho Supreme Court many years ago resolved this question and held that no waiver of an earlier right to water established by a court decree will occur if the owner of the decreed rights thereafter makes applications to the Department of Water

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Resources for a water permit. Joyce vs. Reuben, 23 Idaho 296, 130 P.2d 793 (1913), Newport Water Company vs. Kellogg, 31 Idaho 574, 174 P.2d 602 (1918).

In Pioneer Irrigation District vs. American Ditch Association, 50 Idaho 732, 1 P.2d 196 (1931), the Idaho Supreme Court reaffirmed its earlier holdings that an application to the State of Idaho does not act as a waiver of any earlier water right of the applicant which has been established by court decree. In the present matter, the filing of an application to appropriate water by Lyle R. Burnham can not be construed to be a waiver of the .25 c.f.s. amount of priority water awarded Lyle R. Burnham's predecessors in interest through the Danforth Decree. The priority set forth in the Danforth Decree remains in effect and for the benefit of Lyle R. Burnham. The Application for Permit was for the purpose of establishing a license to his Danforth Decree priority which license is prima facie proof of his priority, as well as application for an increased appropriation commensurate with the use of this water made by Lyle R. Burnham and his predecessors for over the past 30 years. The claim of Clarence Kent that Lyle R. Burnham's application for a permit constitutes a waiver of any rights he may have under the Danforth Decree can not be accepted under the law and must be dismissed by the Department.

The second issue raised at the rehearing was whether or not a forfeiture or abandonment had occurred regarding the parties' respective rights. The law on abandonment and forfeiture in the State of Idaho is quite clear and explicit.

Abandonment is a common law concept involving the concurrence of an intention to abandon and the actual relinquishment or

surrender of a water right. It is not dependent necessarily upon length of time but upon the essential element of intent. Such intent to abandon may be evidenced by nonuse for a substantial period of time but mere nonuse is not per se abandonment. In contrast, the doctrine of forfeiture is predicated upon a statutory declaration that all rights to use water may be lost where an appropriator fails to make beneficial use of the water for a statutory period regardless of the intent of the appropriator. In Idaho this concept is set forth in Idaho Code Section 42-222(2). This section provides that an appropriator who fails to apply his water right to a beneficial use for a continuous 5 year period is regarded as having lost all rights to the use of such water. There are, however, recognized exceptions to this rule. An appropriator by showing good cause and sufficient reason for the nonuse, may extend the five year period. The reasons for nonuse may be due to involuntary cessation of use to the unlawful acts of another and where there is a resumption of use prior to subsequent appropriation, the water right is not forfeited. Gilbert vs. Smith, 97 Idaho 735, 552 P.2d 1220 (1976).

The intention to abandon must be evidence by clear, unequivocal, and decisive acts. Gilbert vs. Smith, supra. A detailed review of the evidence before the Department on the above applications reveals that there is no clear, unequivocal, and decisive acts on the part of Lyle R. Burnham or his predecessors in interest which shows an actual intent to abandon and relinquish the water right. The evidence does establish, however, a long period of nonuse on the part of Clarence Kent which may not automatically prove abandonment, but does present evidence which

would support a finding of intent to abandon and relinquish the water right claimed by Clarence Kent.

The statutory forfeiture issue, as set forth primarily in Idaho Code Section 42-222(2), requires a continuous five year period during which the owner of a water right or their predecessors in interest fail to apply their water to the beneficial use for which it was appropriated. I again point out to the Department that Lyle R. Burnham and his predecessor's in interest have used the water continuously since the date of the Danforth Decree, precisely in the same manner as it was used when the Danforth Decree was entered on June 5, 1928. As stated by the court in Gilbert:

"... While there is evidence of continuous non-use in this case, the record does not identify any measurable five year period of non-use which would have supported the trial court in making the requisite findings to establish a statutory forfeiture. Forfeiture of water rights is not favored and all intendments are indulged in against a forfeiture." 97 Idaho at 740.

See also, Hodges vs. Trail Creek Irrigation Company, 78 Idaho 10, 297 P.2d 524 (1956). The applicant, Lyle R. Burnham's decreed water right under the Danforth Decree constitutes real property. Lyle Burnham's right to the water is appurtenant to Mr. Burnham's lands and the water rights can not be interfered with if the water has been beneficially applied. Anderson vs. Cummings, 81 Idaho 327 340 P.2d 1111 (1959). It is clear that Lyle Burnham and his predecessors in interest application of the Decreed water right constitutes beneficial use, since it has been applied for agricultural purposes and specifically has been applied for the irrigation of growing grain and alfalfa crops. The testimony at the hearings does not establish otherwise. Should Lyle R. Burnham be denied the .25 c.f.s. of water as set forth in the Danforth

Decree, an unconstitutional taking of real property would occur.

Although the Idaho Supreme Court in the application of Boyer, 73 Idaho 152, 248 P.2d 540 (1952), held that although a statutory forfeiture of a water right occurs, the forfeiture is not effective if after the five year period the original owner or appropriator resumes the use of the water prior to any claim of right by a third party, the facts of this case do not support the holding of the Memorandum Decision which states that Clarence Kent resumed use of .5 c.f.s. from the southerly spring. In fact Clarence Kent has expanded greatly the use of the water as compared with any prior use he may have made. In addition, any resumption of the water by Clarence Kent did not occur prior to any claim of right by a third party. Since the facts establish that Lyle R. Burnham or his predecessors in interest used the full flow of the stream for a period of approximately twenty-five years, Lyle R. Burnham became a subsequent appropriator, by prescription, of any water right of Clarence Kent. As owner of the full flow of the southerly stream, any resumption of use by Clarence Kent would abridge the rights of Lyle R. Burnham to the full flow of water from the southerly spring. The case of Gilbert vs. Smith, supra, held:

"... Prescriptive title to water, which is real property, may be acquired by adverse use for five years. (Citations omitted). Such use must be open, hostile, exclusive, continuous and under claim of right. (Citations omitted). Those elements of prescription must be shown by clear and convincing evidence and the burden to do so is on the claimant. (Citations omitted)." 97 Idaho at 740.

The testimony of Louis Burnham and Lyle R. Burnham established by a preponderance of the evidence that for a period extending beyond five years, Lyle R. Burnham and his predecessors in interest used the full flow of the southerly spring. During this period of

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time Clarence Kent was not using his decreed right under the Danforth Decree. Burnham's use of the full flow of the stream was open and obvious, and not by reason of any license, either oral or written, given by Clarence Kent or his predecessors to Lyle Burnham or his predecessors. The use by Lyle R. Burnham of the full flow of the stream, therefore, constitutes an adverse and prescriptive appropriation of any claim now held or heretofore held by Clarence Kent.

By reason of the foregoing, it is respectively submitted by the applicant, Lyle R. Burnham, that his application be approved for the full amount therein, that his decreed rights under the Danforth Decree be affirmed and that the balance thereof, be licensed to Lyle R. Burnham prior to any right of Clarence Kent to appropriate and divert the waters of the southerly spring.

Respectively submitted this 25 day of October, 1977.

TERRELL, GREEN, SERVICE & GASSER
Attorneys for Applicant, Lyle R.
Burnham
Residence: Center Plaza
Pocatello, Idaho

By: _____


Ron Kerl

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CERTIFICATE OF SERVICE BY RESIDENT ATTORNEY

I hereby certify that I am a duly licensed attorney for the State of Idaho resident of and with my office in Pocatello, Bannock County, Idaho; that I served a copy of the foregoing upon the below named attorney, by mailing a true and correct copy thereof to said attorney at his below listed address, prepaying the postage thereon and that there is a regular communication by U.S. Mail between said Pocatello and said address of said named attorney.

Attorney: J. W. Crowther
Address: 600 N. Main, Pocatello, Idaho
Dated this 25 day of October 1927
Don Kurl

TERRELL, GREEN, SERVICE and GASSER
Center Plaza - Pocatello, Idaho

CERTIFICATE OF SERVICE BY RESIDENT ATTORNEY

I hereby certify that I am a duly licensed attorney for the State of Idaho resident of and with my office in Pocatello, Bannock County, Idaho; that I served a copy of the foregoing upon the below named attorney, by mailing a true and correct copy thereof to said attorney at his below listed address, prepaying the postage thereon and that there is a regular communication by U.S. Mail between said Pocatello and said address of said named attorney.

Attorney: Robert C. Dunthley
Address: P.O. Box 139, Pocatello, Idaho
Dated this 25 day of October 1927
Don Kurl

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Center Plaza - Pocatello, Idaho

CERTIFICATE OF SERVICE BY RESIDENT ATTORNEY

I hereby certify that I am a duly licensed attorney for the State of Idaho resident of and with my office in Pocatello, Bannock County, Idaho; that I served a copy of the foregoing upon the below named attorney, by mailing a true and correct copy thereof to said attorney at his below listed address, prepaying the postage thereon and that there is a regular communication by U.S. Mail between said Pocatello and said address of said named attorney.

Attorney: M. B. Miller
Address: P.O. Box 29, Idaho Falls, Idaho
Dated this 25 day of October 1927
Don Kurl

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BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE
STATE OF IDAHO

OCT 28 1977

Department of Water Resources
Boise District Office

IN THE MATTER OF THE PROTESTS AGAINST)
THE APPROVAL OF APPLICATIONS FOR) POSTHEARING BRIEF
PERMITS NO. 15-7025 - LORRAINE KENT) OF DELMAR CLARK
AND THE CLAUDE KENT TRUST; NO. 15-7026 -)
LYLE R. BURNHAM; NO. 15-7029 and 15-7030 -)
DELMAR CLARK)

The Posthearing Brief of Delmar Clark is comprised of the following comments, together with our Motion for Rehearing and our earlier brief before the Department of Water Resources, which documents are bound hereto.

The evidence at the rehearing established the following facts:

(1) As per Exhibit 101, Clarence Kent is the successor in interest of not more than 0.25 cfs, with that water right being limited to the south spring.

(2) He has forfeited and abandoned even that 0.25 cfs in that he has used none of it except for a small amount on a garden 8 rods by 10 rods -- even that garden use has not been used since 1952 and, therefore, is forfeited and abandoned.

(3) Clarence Kent's present works require an application for a permit since they commenced after 1971, a permit being required for the following three purposes:

- (a) Additional water;
- (b) Application of water to different lands;
- (c) New point of diversion.

Since no applications have been filed, Clarence Kent has no water right at all which is superior to the claims of Del Clark.

(4) Clarence Kent can demonstrate no beneficial use of the water whatsoever between 1952 and the date the filing law became in effect in 1971.

(5) Lyle Burnham's maximum claim should be limited to 0.20 cfs because that is the maximum acreage his testimony established he was using the water on.

(6) Del Clark has an established water right for culinary purposes both by use and application, and by the Decree of Judge Hargraves, for 0.04 cfs, he established a right to a decree for 0.03 cfs for stock water, based on

RECORDED

diversion by the cattle since 1928, and also based on his Application 15-7029.

(7) The attempt by Clarence Kent to take all of the water out of the stream constitutes a violation of the stream channel law, requiring appropriate applications thereto.

(8) Clarence Kent's own testimony at the rehearing established that the flow from the two springs is as follows:

South Spring 33 gpm

North Spring 154 gpm

Therefore, even if the Board were to decide he has a right under the Danforth Decree, it would be to only one-half of the flow of the south spring, or 16.5 gpm.

Respectfully submitted,
RACINE, HUNTLEY & OLSON

BY 
Robert C. Huntley, Jr.
ATTORNEY FOR DEL CLARK
P. O. Box 1391
Pocatello, Idaho 83201

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BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE
STATE OF IDAHO

IN THE MATTER OF THE PROTESTS AGAINST	)	
THE APPROVAL OF APPLICATIONS FOR	)	MOTION FOR REHEARING
PERMITS NO. 15-7025 - LORRAINE KENT	)	TO ALTER AND AMEND
AND THE CLAUDE KENT TRUST; NO. 15-7026 -	)	DECISION AND ORDER
LYLE R. BURNHAM; NO. 15-7029 and 15-7030 -	)	
DELMAR CLARK	)	

COMES NOW Delmar Clark, and moves the Water Resources Board for an opportunity to present oral argument, as well as any further testimony the Board might desire, regarding rehearing of the Memorandum Decision and Order entered herein on the 17th day of June, 1977. The rehearing would be for the purpose of presenting arguments as to all areas wherein it is felt that the Decision and Order is in error, including, but not limited to, the following:

(1) The Conclusion of Law No. 1 is in error in finding that Clarence Kent "resumed a water right prior to it being taken by subsequent appropriators." That conclusion is in error for the following reasons:

(A) The water right under the Danforth Decree had been totally abandoned by Clarence Kent and his predecessors for many, many years.

(B) To resume a water right means to go back to use of a water right that had been exercised before. The testimony established that the most use that had ever been used by Clarence Kent and his predecessors was for the watering of a garden, and therefore the application of .5 cfs into an irrigation system to irrigate 160 acres of land is not a resumption, but rather is a total new application of water to new lands, and the works in 1973 also constitute a new point of diversion which requires an application.

(C) The only provision in the Idaho law for Clarence Kent to establish a new water right or a new point of diversion

Idaho, Laws 1971,
Repealed, Idaho, 1970

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is to make an application for same, which fact he has not done, and therefore the applications for permit of Del Clark under Nos. 15-7029 and 15-7030 constitute a taking of water by a subsequent appropriator prior to any legal resumption by Clarence Kent.

(2) The Memorandum Decision and Order is in error when it finds that Clarence Kent was the successor to 0.50 cfs under the Danforth Decree — the fact was that his maximum right under the Decree, in any event, was 0.25 cfs.

(3) The Board erred in failing to rule and find that the watering of livestock by Del Clark since 1928 constituted a diversion giving him a water right for that purpose with date of priority from 1928.

(4) The Decision and Order is in error in awarding Lyle Burnham a permit to develop irrigation on 80 acres at the rate of 6 feet per cfs when, at the hearing, he testified he was seeking water only for about 10 acres, which would be a maximum entitlement of 0.2 cfs.

(5) That the Decision and Order errs in failing to require Clarence Kent to place a measuring device or splitting device at his portion of diversion in order to ascertain that he receives no more than 0.5 cfs into a pipe system, leaving the balance in the stream channel.

(6) The Decision errs in failing to limit the rights of Clarence Kent to flows awarded his predecessors in interest under the Danforth Decree from the south (lower) spring, which spring, under the Danforth Decree, was divided between Clarence Kent's predecessor, H. O. Kent, and Lyle Burnham's predecessor in interest.

Petitioner respectfully requests that this Petition for Rehearing be granted and that a time and place be set for the rehearing, with notice to all parties.

RACINE, HUNTLEY & OLSON

By _____

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STATE OF IDAHO

DEPARTMENT OF WATER RESOURCES

In the Matter of the Claim
to a Water Right of
DELMAR CLARK

No. 15-7029

BRIEF OF DELMAR CLARK

The evidence establishes that Del Clark is entitled to the granting of his Application No. 15-7029 for 0.13 cfs of the waters of Sheep Creek (tributary to Dairy Creek), as per his Application, for the following reasons:

(1) It is undisputed that he has had the domestic supply from the springs to his home through a pipe (the claim being 0.04 cfs) continuously since 1938 -- no party disputes that right, and we would like it formalized by the granting of the permit even though the right predates the 1971 filing requirement.

(2) ALL OF THE REMAINING WATERS OF SHEEP CREEK REMAIN UNAPPROPRIATED AND SUBJECT TO APPROPRIATION AT THIS TIME FOR THE FOLLOWING REASONS:

(a) Under the 1929 Danforth Decree, the waters were decreed on the following basis, based on 1.0 cfs total flow:
0.5 to the predecessors of Lorraine Kent or successors and Claude Kent Trust
0.25 to the predecessors of Lyle Burnham
0.25 to the predecessor of the protestant, Clarence Kent and Claude Kent Trust.

(b) All of these rights under the Danforth Decree have been lost through forfeiture under the ruling of Gilbert vs Smith, 23 Idaho Capital Reports 479, a copy of which is attached hereto, and which decision reads, in part, as follows:

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"Although framed in the language of abandonment, appellants' principal argument in this appeal concerns not only the doctrine of abandonment but likewise the question of statutory forfeiture. This doctrine, although similar to abandonment, involves characteristics of significant difference which must be borne in mind in resolving this and similar disputes addressing the relinquishment of decreed water rights.

"Abandonment is a common law concept involving the concurrence of an intention to abandon and the actual relinquishment or surrender of the water right. 93 C.J.S., Waters §193, at 994; Wiel, 1 Water Rights in the Western States, §567 (1911). It is not dependent necessarily upon length of time but upon the essential element of intent. Carrington v. Crandall, 65 Idaho 525, 147 P.2d 1009 (1944); Union Grain & Elevator Co. v. McCammon Ditch Co., 41 Idaho 216, 240 P. 443 (1925); St. John's Irr. Co. v. Danforth, 50 Idaho 313, 298 P. 365 (1931); Chili v. Jarvis, 50 Idaho 531, 298 P. 373 (1931); Smith Land Co. v. Furhman, 36 F. Supp. 667 (1941). Such intent may be evidenced by non-use for a substantial period of time but mere non-use is not per se abandonment. Wiel, supra, §569. In contrast, the doctrine of forfeiture is predicated upon a statutory declaration that all rights to use water may be lost where an appropriator fails to make beneficial use of the water for a statutory period regardless of the intent of the appropriator. 93 C.J.S., Waters §193; Wiel, supra, §574; East Side Canal & Irr. Co. v. U.S., 75 F. Supp. 836, 839 (Ct. Claims, 1948); Hammond v. Johnson, 65 P. 2d 894, 899 (Utah 1937). In Idaho this concept is set forth in I.C. §42-222(2). The effect of that provision is that an appropriator who fails to apply his water right to a beneficial use for a continuous five year period is regarded as having lost all rights to the use of such water. Although the terms abandonment and forfeiture have often been used by this Court interchangeably see, Hodges v. Trailblazer Creek Irrigation Co., 78 Idaho 10, (citing cases), the case of Carrington v. Crandall, supra, at 532, makes it clear that they are distinct legal concepts and should be considered as such. We recognize that this Court has in the past failed to indicate this difference in addressing cases involving water rights disputes. Nevertheless, we deem it essential for this and other future cases of a similar nature to keep the concepts of abandonment and statutory forfeiture, and their application, distinct." (Emphasis supplied) **NOTE

(c) The testimony is undisputed that since the 1930s, none of the people under the Danforth Decree or their successors have used the waters, the non-use being for many years in excess of the five years required for forfeiture. The evidence that the

In fact, from 1929 to the date of this hearing, Lorraine Kent and Claude Kent Trust made no use of their water except for gardening, and

**See specific text of I.C. 42-222(2) at page 5 herein.

BRIEF OF DELMAR CLARK - Page 2

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Clarence Kent made no use of his water prior to 1973, except for gardening, up to 1942, with no use between 1942 and 1949, then four years of gardening from 1949 to 1952, and then a period of 19 years of total non-use occurred from that time up until 1971, the effective date of the Act requiring applications for use of water.

As to the Lyle Burnham right under the Danforth Decree, the evidence is clear that there has never been any use made except for what spread out naturally on about 10 acres of ground, until about seven years ago when he started making some diversions for, again, the same 10 acres of ground, which would be a maximum usage of 0.2 cfs.

The Claude and Lorraine Kent Trust last used water in 1950 for a one-acre garden, which was 27 years ago, and which would have preserved a maximum entitlement of 0.02 cfs even if the time lapse had not occurred.

(d) There is a conflict in the evidence as to whether Clarence Kent has made any diversions, or whether his watering was merely sub-irrigation, and the Hearing Board will have to resolve that conflict. The credible evidence is that there were no diversions. Clarence Kent testified there had been some dirt dams placed in the stream one or two times in a couple of the summers, but it is clear that all other persons who were in a position to observe never saw those dams, and it is clear that he had no lateral ditches constructed to take the water. Even assuming that the Board resolves that question in favor of him, the maximum that the testimony will support would be irrigation of a strip 220 yards long and about 6 to 7 rods wide on one side of the stream, and 4 rods wide on the other side of the stream, or an area of 3 acres, or a preservation of water rights to the extent of 0.06 cfs.

RECEIVED CLARENCE KENT TRUST
OF DENVER

(e) It is undisputed that Del Clark also had the benefits of sub-irrigation on about 3 acres of ground since 1933, which entitles him to 0.25 cfs which he now wishes to physically divert pursuant to the Application.

Likewise, Del Clark has had stock water rights by way of beneficial use by livestock all summer and 100 head of cattle in the fall since 1933.

Under the Avondale case (a copy of which we will furnish as soon as we receive the District Court opinion), it has been held that watering of livestock directly from a stream is a beneficial use, which constitutes a water right.

However, should the Board feel there is a problem with that type of diversion, Del Clark will make an actual diversion and establish a pond or a watering trough for the diversion of the 0.03 cfs he requests for his cattle.

ON THE AVAILABILITY OF WATER

The evidence establishes that there is adequate unappropriated water available for the 0.13 cfs Del Clark requests in his Application No. 15-7029, the record establishing the following maximum existing water rights and availability of water:

<u>NAME OF PARTY</u>	<u>AMOUNT OF RIGHT IN CFS</u>	<u>MANNER IN WHICH OBTAINED</u>
Del Clark	0.04 for domestic purposes	a. Usage since 1923 b. Application 15-7029
Del Clark	0.03 for stock water	a. Usage since 1923 b. Application 15-7029
Del Clark	0.06 for irrigation	a. Sub-irrigation since 1923 b. Application 15-7029 By diversion works
Lyle Burnham	0.20	a. Diversion in last 7 years b. Application 15-7026
Lorraine Kent and Claude Kent Trust	0.50	a. Application 15-7023
Clarence Kent	0.06	a. DISPUTED diversion of approximately 3 acres

TOTAL CLAIMS ESTABLISHED
OR PENDING 0.99

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The above total maximum provable claims by the four parties involved of 0.89 cfs does not utilize the whole stream, based on the August flow measured at 0.975 at the Lorraine and Claude Kent Trust property, leaving still unappropriated waters of 0.085 cfs over and above all valid claims at that time of year.

In providing the Board with the foregoing table, we would point out that the domestic water right of Del Clark is established by diversion and application to beneficial use prior to 1971, and was decreed to him in the decision of Judge Hargraves, as was stipulated into evidence.

Furthermore, the livestock right of Del Clark also dates from 1928 by actual application to beneficial use, and both of these claims have priority over any claims of any of the other parties because they were utilized and exercised in all cases during five-year forfeiture periods by the other parties, and the law is that if a forfeiture period has occurred and during that interval another appropriation takes place, the forfeiting party cannot reestablish his right under an earlier decree in derogation of that intervening appropriation.

We further dispute that Clarence Kent has established by his testimony any pre-existing water right even to the 0.06 cfs for 3 acres. If we understood his testimony correctly, there was no testimony showing any diversion by placing dirt dams in the stream during any particular years prior to 1971, and the use of earth dams after 1971 would be of no effect because an application for a permit is required. It is to be further noted that Clarence Kent's own testimony clearly establishes a total abandonment as well as forfeiture of all waters since 1929 except possibly for the garden plot, and even the garden plot was abandoned and forfeited for non-use since 1952.

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With respect to the claim of Lyle Burnham, he presented no testimony of any intent to construct any irrigation system or any financial ability to construct any irrigation system for any acreage in excess of 10 acres, and therefore, although his claim is for many more acres, any granting of an application should be limited to 10 acres.

CONCLUSION

The testimony establishes that Del Clark has a prior right by diversion and application to beneficial use prior to 1971 for the claim of 0.04 cfs for domestic water, and 0.03 cfs for stock water, and that claim should be confirmed by granting of the application.

Furthermore, the evidence shows his financial ability to construct the irrigation works for the three acres of irrigated land, entitling him to 0.06 cfs therefor, which amount of water is available in the stream for appropriation, and therefore his application for a total of 0.13 cfs should be granted in full.

Respectfully submitted,

RACINE, HUNTLEY & OLSON

By

Robert C. Huntley, Jr.

**NOTE FROM PAGE 2:

I.C. 42-222(2): "All rights to the use of water acquired under this chapter or otherwise shall be lost and forfeited by a failure for the term of five (5) years to apply it to the beneficial use for which it was appropriated and when any right to the use of water shall be lost through non-use or forfeiture such rights to such water shall revert to the state and be again subject to appropriation under this chapter. Provided, further, that upon proper showing before the director of the department of water resources of good and sufficient reason for non-application to beneficial use of such water for such term of five (5) years, the director of the department of water resources is hereby authorized to grant an extension of time extending the time for forfeiture of title for non-use thereof, to such waters for a period of not to exceed five (5) additional years. . ."

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W. MARCUS W. NYE
GARY L. COOPER

October 27, 1977

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OCT 28 1977

Department of Water Resources
Eastern District Office

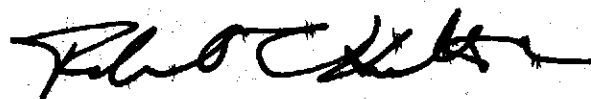
Mr. Norman Young
State of Idaho
Department of Water Resources
Statehouse
Boise, Idaho 83720

Re: Permit Nos. 15-7030 and 15-7029
Delmar Clark

Dear Sir:

Enclosed please find Posthearing Brief of Delmar Clark in the
above-captioned matter.

Very truly yours,


ROBERT C. HUNTLEY, JR.

RCH:bm
Encl.
cc: Mr. Ron Carlsen ✓

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Y

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ARCHIE W. SERVICE
CLARK GASSER
RON KERL

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ROBERT M. TERRELL
1883 - 1971

February 24, 1978

Mr. Ronald Carlson
Supervisor, Eastern Region
Department of Water Resources
1515 Lincoln Road
Idaho Falls, Idaho 83401

Re: Lyle R. Burnham

Dear Mr. Carlson:

Enclosed herein please find the original response to the Reply Brief of Clarence Kent in the above entitled matter. Would you please file same.

Thank you.

Very truly yours,

GREEN, SERVICE, GASSER & KERL

Ron Kerl
Ron Kerl

RK:cf
Enc.

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FEB 28 1978

Department of W.
Eastern District

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FEB 28 1978

Department of Water Resources,
Eastern District Office.

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE
STATE OF IDAHO

In the Matter of the Applications	)	
for Permits No. 15-7025-LORRAINE	)	
KENT and the CLAUDE KENT TRUST,	)	RESPONSE TO THE
No. 15-7026-in the Name of LYLE	)	REPLY BRIEF OF
R. BURNHAM, No. 15-7029 and 15-	)	CLARENCE KENT
7030-DELMAR CLARK.	)	
	)	

COMES NOW Lyle R. Burnham, by and through his attorney of record and submits the within response to the Reply Brief filed on behalf of Clarence Kent, by his attorney on or about February 4, 1978.

Counsel for Clarence Kent, apparently believing in the old adage that the "squeaky wheel gets the grease" has belatedly supplied a Reply Brief to the board for the purposes of confusing, maligning and ignoring testimony before the board and part of this record. Therefore, we submit this response to the Brief of Clarence Kent in an effort to correct any erroneous misunderstandings the board may derive from the statements of Clarence Kent.

Contrary to the statement of Clarence Kents' counsel, the Burnhams have, since prior to the entry of the Danforth Decree, taken considerable interest in maintaining the flow of the stream from the sight of the springs, through and until its entry upon their property. At no time, prior to 1975, did the Burnhams observe or become aware of any actions on the part of Clarence Kent to maintain, clear or erect channels which would facilitate the flow of this water.

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Contrary to the statements contained in Clarence Kents Reply Brief, this water has always had a beneficial effect upon the property now owned by Lyle R. Burnham, and while no formal system of laterals for irrigation was created, this water was during each year, save and except those where the ground lay fallow, redirected the water by shovel or plow to aid the Burnhams in harvesting and irrigating the subject property.

Contrary to the Reply Brief of Clarence Kent, Lyle R. Burnhams' father Louis Burnham, considered the water to be a nuisance upon the property only on those occasions when it was necessary to bring heavy equipment or harvesting equipment in the area where the water had been sitting. When no longer needed for irrigation purposes, and the season calls for harvesting equipment to be brought upon the property then, in that event only, saturation from this irrigation water became unnecessary. However, by use of shovels and plows, this water was redirected onto other propertys and the property earlier irrigated allowed to dry and firm up so that equipment could be brought thereon for harvesting purposes.

Contrary to the Reply Brief of Clarence Kent, the ditch referred to as being the only ditch dug and maintained by the Burnhams was not the only ditch created and maintained. While the same was placed along the boundary lines of their respective propertys, its purpose was to facilitate the irrigation and drainage of

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crop land as the same was necessary during the course of each growing season. In 1967 another ditch was dug by Louis Burnham for approximately 120 yards where the stream first enters on the property of Lyle R. Burnham for purposes of controlling the water and turning the same out upon the property as needed.

Until Clarence Kent began construction on his reservoir in the fall of 1975, the stream water flowed freely, when available, upon the property of Lyle R. Burnham. The water contained in the reservoir of Clarence Kent was not used for the purposes of growing crops until mid July of 1976, and prior to that time was not used by Clarence Kent in any beneficial manner. Rather, since the stream crossed approximately 220 yards of Clarence Kents' property, and the terrain is such that the property adjacent to the stream rises sharply on each side, the only benefit gained by Clarence Kent through the use of this water was in the area immediately adjacent to the stream bed. As indicated in the testimony before the board, there is no evidence of any growing crops or livestock raising on this portion of the ground, save and except for a garden maintained in approximately 1950 and not maintained thereafter.

It is respectfully submitted that the board carefully review the testimony in all of the previous hearings so that further confusion from miss-statements of fact do not become the basis for the board's decision.

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(208) 232-4471

Again, as submitted in our original brief, an abandonment of the Burnham's water right cannot flow from the fact that they made application to this board for a water permit, even though the same asked for a different amount of water to be used in a yet unconstructed system of laterals. As the board is aware, upon granting the permit, the improvements can be made within the statutory period of time and the date of priority runs back to, for the extra water requested, the date of application.

It is, therefore, respectfully submitted by your applicant Lyle R. Burnham, that his application be approved for the full amount therein, that his decreed rights under the Danforth Decree be affirmed and that the balance thereof be licensed to Lyle R. Burnham prior to any right of Clarence Kent to appropriate and divert the waters of this southerly spring.

SUBMITTED this 24 day of February, 1978

GREEN, SERVICE, GASSER & KERL
Attorneys for Applicant
Lyle R. Burnham
Residing at: Center Plaza
Pocatello, Idaho

By: Ron Kerl

Ron Kerl

GREEN, SERVICE,
GASSER & KERL
Attorneys at Law
P. O. Box 4883
Pocatello, Idaho
83201
(208) 232-4471

CERTIFICATE OF MAILING

I hereby certify that on this 24 day of February, 1978 I mailed a true and correct copy of the within and foregoing RESPONSE TO THE REPLY BRIEF OF CLARENCE KENT on the following attorneys record.

J. W. Crowther
60 North Main Street
Malad City, Idaho 83252

Robert C. Huntley
RACINE, HUNTLEY & OLSON
P.O. Box 1391
Pocatello, Idaho 83201

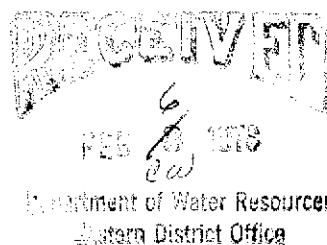
M. B. Hiller
St. CLAIR, HILLER, BENJAMIN
WOOD & McGRATH
P.O. Box 29
Idaho Falls, Idaho 83401



Ron Kerl

RECEIVED
FEB 24 1978
FBI - BOISE

J. W. Crowther
Attorney for
60 N. Main
Malad, Idaho
Telephone: 766-2644



BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE

STATE OF IDAHO

In The Matter of the Applications	)	REPLY BRIEF TO BRIEF
for Permits No. 15-7025 - LORRAINE	)	OF LORRAINE KENT AND
KENT, and the CLAUDE KENT TRUST; No.	)	CLAUDE KENT TRUST
15-7026 - LYLE R. BURNHAM; No. 15-7029	)	
and 15-7030 - DELMAR CLARK	)	

Reply is hereby tendered to the Brief in Opposition heretofore filed by Lorraine Kent and Claude Kent Trust.

Perhaps the disparity in facts established by the record and those alleged in the referenced brief can be explained by the fact that counsel for Lorraine Kent and Claude Kent Trust was not present at all of the previous hearings and thus is not familiar with the record. It must be reiterated as has been stated before and undisputed until this belated attempt to "muddy the waters" as it were, that the northerly springs flowing from the Claude Kent property have never been used for by the Claude Kent Interest irrigation purposes, at least since 1939 when Claude Kent took ownership of that farm. This fact has been testified to in every hearing under oath by various witnesses and the record is completely void of any evidence to the contrary.

It should be further noted that Lorraine Kent was present along with her son Larry at the hearing before this Board when Clarence Kent again testified that the waters of the northern

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Burnhams or the Claude Kent interest, ever took any action to maintain the flow of water from the springs involved. The record stands uncontradicted that Clarence Kent diligently maintained the flow by cleaning the ditch at least every two years and sometimes as often as two or three times in a single year in order to maintain his flow of water. No one questioned his right to do so or questioned his use of the water he thus obtained.

These facts are completely different from any of the authorities cited by the Claude Kent interest. For example, in Joyce vs. Reuben, 23 Idaho 296, 130 P.2d 793(1913), the Court strictly held that where a party had constructed his ditches and diverted water and irrigated his land for a number of years and thereafter filed his claim with the State, his right dated from the time of his appropriation and not from the time of his filing. As noted here, Claude Kent interest had not used the water, at least since 1939, and have never had up to the present time, a system of ditches.

The Newport Water Company vs. Kellogg, 31 Idaho 574, 174 P.2d 602 (1918) case is in the same vein. There, the respondent was using the water upon which he applied for a State license. Similarly in the Pioneer Irrigation District vs. American Ditch Association, 50 Idaho 732, 1 P.2d 196(1931) case, the Court merely held that where the applicant had an existing water right in a ditch and subsequently filed with the State for an additional water right, he did not waive his right to the already existing and used original right. The obvious difference, the Claude Kent interests have never irrigated with these waters nor have they at any time had a system in which

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spring were turned into the southern spring in 1938 or 1939 and that he and his predecessor had exclusive use thereof up until the present time. This was the same hearing in which Clarence Kent testified that before beginning his project in 1975 he told Claude Kent of his plans and was advised, "Go ahead, it's a cinch I'm not going to use it", and later received the assurance from Claude's wife Lorraine that she had no objections, that "we always intended you should have it". Neither Lorraine nor Larry Kent offered any comment or testimony in refutation of the Clarence Kent testimony at that hearing where they would have been subject to cross-examination and we submit the affidavits offered in the second reply brief several months and one hearing later are ill-timed, inappropriate, and certainly lack credulity and are not properly submitted for this Board's examination.

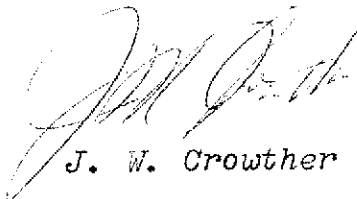
However, to buttress Clarence Kent's testimony that Claude Kent interests have not been using the the water prior to this time, we submit as a supplemental to this brief, the Affidavit of Cordell Williams who observed the condition of the ditch prior to the beginning of Clarence Kent's project.

It should be further noted in reply to the Claude Kent interests' Supplemental Memorandum that none of the cases cited therein are pertinent to the issues involved. According to all of the facts properly adduced before this Board, Clarence Kent and his predecessors had sole use of the water from 1929 until approximately 1950. While there is some testimony by the Burnhams that some water came onto their premises during this period, it seems very clear that this was only water which escaped after use by the Clarence Kent interests. The record is still void of contradiction of the fact that during the entire period from 1929 to the present time no one, either

to use them. Their rights were without question abandoned at least by 1939 and have not been used since, until an abortive attempt in 1977 after the issuance of this Board's opinion. On the other hand, Clarence Kent has never completely stopped using the water, but even if we were to admit, (which we do not) arguendo, that there was a break in his use of the water, certainly under any view of the facts elicited before this Board, Clarence Kent was the first to resume any use and certainly has shown his intent and good faith through the expenditure of in excess of \$50,000.00 to utilize the waters to their fullest potential.

We submit that Clarence Kent should be allowed to continue his beneficial use until such time as the other pretenders to a water right are prepared to spend an equal sum to apply the water in as beneficial a use.

Respectfully submitted,


J. W. Crowther

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J. W. Crowther
Attorney at Law
60 North Main
Malad, Idaho
Telephone: 766-2644

BEFORE THE DEPARTMENT OF WATER

RESOURCES OF THE STATE OF IDAHO

In the Matter of the Applications)
for Permits No. 15-7025 - LORRAINE) AFFIDAVIT
KENT and the CLAUDE KENT TRUST: No.)
15-7026 - LYLE BURNHAM; No. 15-7029)
and 15-7030 - DELMAR CLARK)
_____)

COMES NOW Cordell Williams, who after being duly sworn deposes and says: My name is Cordell Williams. I am the owner and manager of Williams Irrigation Services, Inc. During the summer of 1975 my company installed an underground pipe and irrigation system for Clarence Kent. The system gathered water from various springs extending from Clarence Kent's property on the Northwest and running thence Southeasterly through the Claude Kent property past the Del Clark property and back on to Clarence Kent property and into the Clarence Kent reservoir, which was then in existence. The system generally followed the existing ditch conveying the waters known as Sheep Creek except that the segment Northwest of the Claude Kent property was a new spring developed by Clarence Kent specifically for this system and had not previously been a part of the Sheep Creek drainage.

Prior to beginning our project and during the course of the work thereon, I had opportunity to become intimately acquainted with the channel from the spring rising on the Claude Kent

J. W. Crowther _
Attorney for Protestant
60 N. Main
Malad, Idaho
Telephone: 766-2644

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FEB 9 1978

Department of Water Resources
Eastern District Office

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE
STATE OF IDAHO

In the Matter of the Applications) REPLY BRIEF TO THE
for Permits No. 15-7025 - LORRAINE) LYLE R. BURNHAM
KENT and the CLAUDE KENT TRUST; No.) BRIEF
15-7026 - LYLE R. BURNHAM; No.15-7029)
and 15-7030 - DELMAR CLARK)

In response to the brief of Applicant Lyle R. Burnham
salient points stand out:

1. The Burnham's admittedly have never taken any interest in maintaining the flow of the stream and, as has been previously noted, this responsibility was left entirely to Clarence Kent.
2. There is not now and never has been any type of system of laterals for irrigation purposes on the Burnham property.
3. Lyle R. Burnham's father admitted in testimony before this Board that during the five (5) years he ran the place between 1968 and 1973 he considered the water to be more of a nuisance than a benefit.
4. The only ditch dug and maintained by the Burnhams during the entire history of this stream, at least since 1929, was a ditch to convey the waters off of the Burnham property and this was even dug so close to the boundary line of their property that for a maximum distance possible it lay entirely upon Clarence Kent's bordering lands.

THE UNIVERSITY OF CHICAGO

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Department of Water Resources
Eastern District Office

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE
STATE OF IDAHO

In the Matter of Approved Permits)
)
No. 15-7025 in the Name of LORRAINE)
)
KENT and CLAUDE KENT TRUST, No. 15-)
)
7026 in the Name of LYLE R. BURNHAM,)
)
No. 15-7029 and 15-7030 in the Name)
)
of DELMAR CLARK)

BRIEF

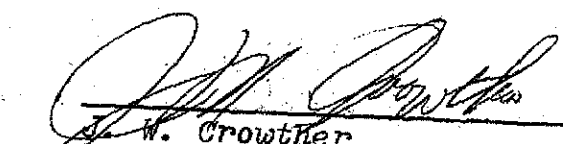
RESTATEMENT OF FACTS

The ownership of the waters of Sheep Creek by Clarence Kent is based upon a history of nearly fifty (50) years of continuous care, use and development. The salient facts elicited through the hearings before this Board have established that Clarence Kent's father, H. O. Kent, dug the original ditch flowing from the Southern Springs in 1914. The waters of the Northern Springs were originally diverted and developed by John Turner in 1915. These were the waters which were the subject of the so-called Danforth Decree. Clarence Kent and his brother Wayne Kent testified that from 1928 on, their family had the exclusive use of the waters from the Southern Springs. James Burnham, great-grandfather of applicant Lyle Burnham, and one of the parties in the original Danforth Decision left the area in about 1929 and made no effort to use any of the waters decreed to him in the Danforth Decision. This was explained

RECORDED
JAN 10 1918

Therefore, respectfully submitted that all applications should be denied and the rights of Clarence Kent to the stream be affirmed.

DATED this 10th day of November, 1977


J. W. Crowther
Attorney for Protestant

VERIFICATION OF SERVICE BY RESIDENT ATTORNEY

I hereby certify that I am a duly licensed attorney for the State of Idaho, resident of and with my office in Malad City, Blaine County, Idaho; that I served a copy of the foregoing upon the below named attorney, by mailing a true and correct copy thereof to said attorney at his below listed address, pre-paying the postage thereon and that there is a regular communication by U. S. Mail between said Malad City and said address of said named attorney.

Attorney: Robert Huntley

Address: P.O. Box 1321, Pocatello

Dated this 11 day of Nov 19 77

J. W. CROWTHER, ATTORNEY AT LAW
60 North Main Street, Malad City, Idaho

VERIFICATION OF SERVICE BY RESIDENT ATTORNEY

I hereby certify that I am a duly licensed attorney for the State of Idaho, resident of and with my office in Malad City, Blaine County, Idaho; that I served a copy of the foregoing upon the below named attorney, by mailing a true and correct copy thereof to said attorney at his below listed address, pre-paying the postage thereon and that there is a regular communication by U. S. Mail between said Malad City and said address of said named attorney.

Attorney: M. B. Zeller

Address: P.O. Box 29, Idaho Falls, Idaho

Dated this 11 day of Nov 19 77

J. W. CROWTHER, ATTORNEY AT LAW
60 North Main Street, Malad City, Idaho

VERIFICATION OF SERVICE BY RESIDENT ATTORNEY

I hereby certify that I am a duly licensed attorney for the State of Idaho, resident of and with my office in Malad City, Blaine County, Idaho; that I served a copy of the foregoing upon the below named attorney, by mailing a true and correct copy thereof to said attorney at his below listed address, pre-paying the postage thereon and that there is a regular communication by U. S. Mail between said Malad City and said address of said named attorney.

Attorney: Ben Neal

Address: P.O. Box 4883, Pocatello

Dated this 11 day of Nov 19 77

J. W. CROWTHER, ATTORNEY AT LAW
60 North Main Street, Malad City, Idaho

BRIEF - 7

MICROFILMED

File

LAW OFFICES OF
RACINE, HUNTLEY & OLSON
CHARTERED

LOUIS F. RACINE, JR.
ROBERT C. HUNTLEY, JR.
WILLIAM D. OLSON
D. JAMES MANNING
W. MARCUS W. NYE

CENTER PLAZA - CORNER FIRST & CENTER
POST OFFICE BOX 1391
POCATELLO, IDAHO 83201

TELEPHONE
AREA CODE 208
232-6101

February 6, 1978

GARY L. COOPER
DENNIS W. OLLEY

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FEB 8 1978

MAR 16 1978

Department of Water Resources

Department of Water Resources
Eastern District Office

Mr. Norman Young
State of Idaho
Department of Water Resources
State House
Boise, Idaho 83720

Re: Permit Nos. 15-7030 and 15-7029,
Delmar Clark

Dear Mr. Young:

We are in receipt of the Reply Briefs of Lorraine Kent and
Lyle Burnham.

We have no other matters to submit that were not covered in
our Opening Brief, and we would hope there is an early
decision of this matter since another irrigation season is
upon us.

Very truly yours,

ABC

ROBERT C. HUNTLEY, JR.

RCH:bm

cc: Del Clark
Tim Clark
M. B. Hiller
J.W. Crowther
Ron Kerl

DIRECTOR	
DEPUTY DIR.	
RESO. ADMIN.	<i>NY</i>
RESO. ANALYSIS	
OPER. BUREAU	
TECH. SER. DIV.	
PROJ. STUD. DIV.	
LEGAL	
FISCAL	
PERSONNEL	
FILES	
<i>File now</i>	

LOUIS E. RACINE, JR.
ROBERT C. HUNTLEY, JR.
WILLIAM D. OLSON
D. JAMES MANNING, JR.
W. MARCUS W. NYE
GARY L. COOPER
DENNIS W. OLLEY

LAW OFFICES OF
Racine, Huntley & Olson, Chartered

CENTER PLAZA - CORNER FIRST STREET
POST OFFICE BOX 1391
POCATELLO, IDAHO 83201
TELEPHONE (208) 232-6101
December 3, 1977

Mr. Norman Young
State of Idaho
Department of Water Resources
State House
Boise, Idaho 83720

Re: Permit Nos. 15-7030 and 15-7029
Delmar Clark

Dear Mr. Young:

Please be advised that we do not intend to file a brief in response to the briefs of the other parties, in that our position has been fully covered in our opening brief. Accordingly, we consider the case submitted.

Thank you for your kind consideration.

Very truly yours,

ROBERT C. HUNTLEY, JR.

RCH:bm

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MAR 15 1978
Department of Water Resources
Eastern District Office

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Law Offices of
ST. CLAIR, MILLER, BENJAMIN, WOOD & McGRATH
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FIRST SECURITY BANK BUILDING
POST OFFICE BOX 29
IDAHO FALLS, IDAHO 83401
(208) 522-2350

MAR 18 1976

Department of Water Resources
Eastern District Office

State of Idaho
Department of Water Resources
Statehouse
Boise, Idaho 83720

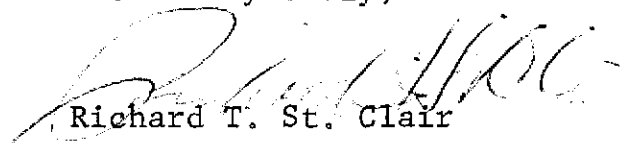
Re: Lorraine Kent and Claude Kent
Trust - Water Permit

Gentlemen:

Enclosed please find our Brief in
Opposition to Brief of Clarence
Kent in the above matter. Would
you please file the same with the
Department of Water Resources.

Thanks for your assistance.

Yours very truly,


Richard T. St. Clair

RTS:dw
Enclosure

RECEIVED
MAR 22 1976
WATER RESOURCES
DIVISION

ROUTING SLIP

DATE 3/15/78 TIME _____TO: Colleen REF. No. (if any) _____FROM: (show title) Janice _____

OF YOUR:

☐ Information☐ Approval☐ Signature

REVIEW AND:

☐ Call Me☐ See Me☐ Comment & Return☒ Take Proper Action☐ Draft a Reply for Me

PER:

☐ Our Conversation☐ Your Request☐ Boss's Request

Please file these
in 15-70294-7030

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SECRET

Department of Water Resources
Eastern District Office

Applicants Lorraine Kent and the Claude Kent Trust object to the mischaracterization of testimony before the hearing officer of the Department of Water Resources and the conclusions therefrom as expressed in the recent brief filed on behalf of Clarence Kent. At the very outset and throughout the several hearings in this matter, the appropriation and use of the springs which are tributary to Sheep Creek were shown to be non-continuous, intermittent, and infrequent by all parties having an interest therein from and after the Danforth Decree announced June 5, 1928. It was further

evident from the testimony of all witnesses, that what little use was made of the water from these springs, such use was prior to 1950 and subsequent to 1972.

It is eminently clear that Clarence Kent seeks to establish a claim to all the waters of the Northern and Southern Springs solely by virtue of his appropriation from a reservoir constructed in 1973, into which both Northern and Southern Spring are comingled. However, the only claim of Clarence Kent having any support at all in the presented facts and law, is to an amount not in excess of .25 c.f.s. The support for this claim lies in the decree of .5 c.f.s. to Harry O. Kent and James Burnham from the Southerly Spring, one-half (1/2) of which passed to Clarence Kent from his predecessor Harry O. Kent, and the other half to Lyle Burnham. In 1973, Clarence Kent resumed his use of the .25 c.f.s. interest by appropriation and use of the water. However, from and after 1971, the sole method of establishing a water right in the State of Idaho has been by virtue of the filing of an application for a permit with the Department of Water Resources, which admittedly has never been done by Clarence Kent. Therefore, if the Department is to recognize the doctrine of resumption, the maximum water right to which Clarence Kent is entitled, by any stretch of the facts or law, is at most .25 c.f.s. from the Southerly Spring. If the Department is not to recognize resumption in this instance then Clarence Kent has no recognizable claim to any water from the springs.

Lorraine Kent and the Claude Kent Trust take issue and deny the contentions in Clarence Kent's recent brief that Claude Kent "turned the entire flow of the Northern Spring into the stream with the Southern Spring in 1938 or 1939," advised Clarence Kent "go ahead, it's a cinch, I'm not going to use it," or that

Lorraine Kent stated to Clarence Kent "that's fine, we always intended that you should have it." To the best recollection of these applicants, the foregoing quoted remarks were not presented as testimony at any of the hearings in this matter.

Attached hereto, and incorporated herein, are Affidavits of Lorraine Kent and Sidney Kent, specifically denying and rebutting the foregoing remarks. Moreover, these applicants submit that the true "intent" of Claude Kent was to resume utilization of the Northern Spring in the summer of 1974, but for the untimely death of Claude Kent.

Lastly, it is submitted that applicants Lorraine Kent and the Claude Kent Trust resumed use and appropriation of waters from the Northernly Spring simultaneously with their Application for Permit No. 15-7025 in the spring of 1976. That if the Department of Water Resources intends to apply the doctrine of resumption to the resumption of Clarence Kent's Danforth rights in the spring of 1973, it is equitable and just that the Department of Water Resources also apply the doctrine of resumption to the resumption of their Danforth rights by Lorraine Kent and the Claude Kent Trust in the spring of 1976. Prior to the filing of this brief, applicants Lorraine Kent and the Claude Kent Trust submitted a Supplemental Memorandum to the Department outlining Idaho Supreme Court decisions to the effect that the filing of an application for permit does not constitute waiver or estoppel as to an earlier right established by court decree.

Therefore, having rebutted the mischaracterizations found in the brief filed on behalf of Clarence Kent, applicants Lorraine Kent and the Claude Kent Trust respectfully request the Department to either (1) modify its Memorandum Decision and Order of the 17th day of June, 1977, reducing the priority right of

Clarence Kent to .25 c.f.s., and affirm as modified, or (2) find that applicants established a resumption of their Danforth decreed rights to .50 c.f.s. of the Northern Spring with priority of June 1, 1915.

Respectfully submitted this 21st day of December, 1977.

ST. CLAIR, HILLER, BENJAMIN,
WOOD & McGRATH, Chartered

BY Richard T. St. Clair
Richard T. St. Clair
Attorneys for Lorraine Kent and
the Claude Kent Trust

CERTIFICATE OF MAILING

I hereby certify that on this 21st day of December, 1977, I mailed a true and correct copy of the within and foregoing BRIEF IN OPPOSITION TO BRIEF OF CLARENCE KENT to the following attorneys, prepaying the postage thereon and depositing the same with the U. S. Mail.

Ron Kerl, Esq.
Terrell, Green, Service & Gasser
P. O. Box 4883
Pocatello, Idaho 83201

J. W. Crowther, Esq.
Attorney at Law
60 North Main Street
Malad City, Idaho 83252

Robert Huntley, Esq.
Racine, Huntley & Olson, Chartered
P. O. Box 1391
Pocatello, Idaho 83201

Richard T. St. Clair
Richard T. St. Clair

M. B. Hiller
Richard T. St. Clair
ST. CLAIR, HILLER, BENJAMIN,
WOOD & McGRATH, Chartered
P. O. Box 29
Idaho Falls, Idaho 83401
Telephone: (208) 522-2350
Attorneys for Lorraine Kent
and Claude Kent Trust

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MAR 16 1978

Department of Water Resources
Eastern District Office

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE
STATE OF IDAHO

In the Matter of Approved Permits)
No. 15-7025 in the Name of LORRAINE)
KENT and CLAUDE KENT TRUST, No. 15-7026)
in the Name of LYLE R. BURNHAM, No.)
15-7029 and 15-7030 in the Name of)
DELMAR CLARK)

AFFIDAVIT

STATE OF IDAHO)
County of Bonneville) ss.

COMES NOW Sidney Kent after first being duly sworn
upon oath, deposes and says:

1. That affiant has been the Lessee of the property
owned by Lorraine Kent and Claude Kent out of which the springs
at issue in this matter arise from 1970 through the present.

2. That during 1973 through May 1974, affiant
and Claude Kent discussed the reservoir constructed by Clarence
Kent, and Claude Kent never indicated that he wanted Clarence Kent
to have waters from the Northern Spring.

3. That affiant and Claude Kent discussed the reservoir and diversion of Clarence Kent in the spring of 1974 at the location of the reservoir, and affiant recalls Claude Kent stating "we ought to start using the water again."

4. That affiant and Claude Kent did not make further plans to divert and use the waters from the springs thereafter because Claude Kent passed away in June of 1974.

Further affiant sayeth not.

DATED this 10th day of December, 1977.

Sidney Kent
Sidney Kent

Subscribed and sworn to before me this 10th day of December, 1977.

H. Larry Spilken
Notary Public for Idaho
Residing at Idaho Falls, Idaho
Commission Expires: _____

(SEAL)

M. B. Hiller
Richard T. St. Clair
ST. CLAIR, HILLER, BENJAMIN,
WOOD & McGRATH, Chartered
P. O. Box 29
Idaho Falls, Idaho 83401
Telephone: (208) 522-2350
Attorneys for Lorraine Kent
and Claude Kent Trust



MAR 16 1978

Department of Water Resources
Eastern District Office

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE
STATE OF IDAHO

In the Matter of Approved Permits)
No. 15-7025 in the Name of LORRAINE)
KENT and CLAUDE KENT TRUST, No. 15-7026)
in the Name of LYLE R. BURNHAM, No.)
15-7029 and 15-7030 in the Name of)
DELMAR CLARK)

AFFIDAVIT

STATE OF IDAHO)
County of Bonneville) ss.

COMES NOW Lorraine Kent after first being duly sworn
upon oath, deposes and states:

1. That affiant is the widow of Claude Kent and the
applicant in Application for Approval of Water Permit No. 15-7025
filed before the Department of Water Resources for the State of
Idaho.

2. That affiant is familiar with the recitation of
facts contained in the brief filed by counsel for Clarence Kent
with the Department of Water Resources on the 10th day of November,
1977.

3. That affiant recalls certain conversations with Clarence Kent prior to the beginning of work on the reservoir, and affirmatively states that affiant never advised Clarence Kent that he might have or appropriate the water from the Northern Spring mentioned in the Danforth Decree.

4. Affiant further affirmatively states that affiant and her former husband Claude Kent never intentionally directed the water flowing from the Northern Spring mentioned in the Danforth Decree into the flow of the Southern Spring.

5. That affiant and her former husband, Claude Kent, never intended to abandon and give up, any rights to appropriation and use of the waters from the Northern Spring awarded to them and their predecessors under the Danforth Decree.

6. That affiant was present at certain hearings in this matter at which Clarence Kent gave testimony, and to affiant's best recollection, neither Clarence Kent nor any witness testified that affiant had stated at any time to Clarence Kent "that's fine, we always intended that you should have it." Had this testimony been presented, affiant would have denied it at the time, and presently affirmatively states that the comment was never made by affiant to Clarence Kent.

Further affiant sayeth not.

DATED this 10th day of December, 1977.

Lorraine Kent
Lorraine Kent

Subscribed and sworn to before me this 10th day of December, 1977.

H. Larry Spilka
Notary Public for Idaho
Residing at Naho Falls, Idaho
Commission Expires: _____

(SEAL)

M. B. Hiller
Richard T. St. Clair
ST. CLAIR, HILLER, BENJAMIN,
WOOD & McGRATH, Chartered
P. O. Box 29
Idaho Falls, Idaho 83401
Telephone: (208) 522-2350
Attorneys for Lorraine Kent
and Claude Kent Trust

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE
STATE OF IDAHO

In the Matter of Approved Permits)
No. 15-7025 in the Name of LORRAINE)
KENT and CLAUDE KENT TRUST, No. 15-7026)
in the Name of LYLE R. BURNHAM, No.)
15-7029 and 15-7030 in the Name of)
DELMAR CLARK)

MEMORANDUM BRIEF IN
SUPPORT OF APPROVAL
OF APPLICATION FOR
PERMIT NO. 15-7025

COMES NOW Lorraine Kent and the Claude Kent Trust, by and through their attorney M. B. Hiller of the firm of St. Clair, Hiller, Benjamin, Wood & McGrath, Chartered, Idaho Falls, Idaho and submits the following points and authorities in support of the approval of Application for Permit No. 15-7025.

A chronology of the material facts presented the Department of Water Resources at the hearing on January 12, 1977, is as follows. On June 5, 1928, the District Court of the Fifth Judicial District decreed to Henry O. Kent and James Burnham a right to the perpetual use of waters from the Southerly spring arising in the Northeast Quarter (NE1/4) Northeast Quarter (NE1/4) of Section Twenty-three (23), Township Eleven (11) South, Range 34 E.B.M. to the extent of .5 c.f.s., with a priority date from June 1, 1914.

MEMORANDUM BRIEF -1

Accepted as
Argument

Asa Danforth was decreed a right to perpetual use of .5 c.f.s. of water from the Northerly spring arising from said situs. The use was described for irrigation and domestic purposes. During the years 1950 through 1973 water was diverted from the Southerly spring for domestic purposes only, and not for irrigation. Mr. Clarence Kent succeeded to the interest of H. O. Kent prior to 1973. Lorraine Kent and Claude Kent Trust succeeded to the interest of Asa Danforth. In 1973, Mr. Clarence Kent began diverting water from the Southerly spring and in 1975 installed a plastic pipeline to collect water from the Southerly spring and transport to a pump.

On February 5, 1976, applicant Lorraine Kent and the Claude Kent Trust made application to appropriate .50 c.f.s. from tributaries to Sheep Creek for irrigation purposes. On June 17, 1977, applicant's application for permit was approved subject to the right of Clarence Kent to divert .50 c.f.s. of water with a priority date of June 1, 1974. Applicant submits that the Department of Water Resources erred in recognizing the priority claim of Clarence Kent in excess of .25 c.f.s. of water.

ARGUMENT

1. Contrary to the testimony, the Water Resources Board in the Memorandum Decision of June 17, 1977, held that Clarence Kent "resumed" a water right to .50 c.f.s. from the Southerly spring in 1973. This finding is in error inasmuch as Clarence Kent succeeded to at most .25 c.f.s. from H. O. Kent his predecessor under the Danforth Decree. Clarence Kent's resumption of appropriation in 1973 was ineffectual to establish a right to water in excess of .25 c.f.s., inasmuch as the only permissible method for establishing a new water right in 1973 was through application under the provisions of Idaho Code §42-201 et seq.

2. Contrary to the claims of Lyle Burnham and Delmar Clark, the Department of Water Resources correctly found that the testimony presented at the hearing established no appropriation to beneficial use of water from the Southerly spring by Lyle Burnham or Delmar Clark at any time prior to February 5, 1976. To the extent that Lyle Burnham succeeded to the .25 c.f.s. water right awarded James Burnham pursuant to the Danforth Decree, such water right was abandoned and forfeited by Lyle Burnham and his predecessors through non-use.

Abandonment is a common law concept involving the concurrence of an intention to abandon and the actual relinquishment or surrender of the water right. It is not dependent necessarily upon length of time but upon the essential element of intent. Such intent may be evidenced by non-use for a substantial period of time. Gilbert vs. Smith, 97 Idaho 735, 552 P.2 1220, 1223 (1976). It is established that a water right in Idaho, although affirmed by court decree, may be abandoned and subject to subsequent appropriation. Idaho Code §42-222 (2); Gilbert vs. Smith, id. at 1223.

The doctrine of forfeiture is predicated upon a statutory declaration that all rights to use water may be lost where an appropriator fails to make beneficial the use of the water for a statutory period regardless of the intent of the appropriator. In Idaho this concept is set forth in Idaho Code §42-222(2). The effect of that provision is that an appropriator who fails to apply his water right to a beneficial use for a continuous five (5) year period is regarded as having lost all rights to the use of such water. Gilbert vs. Smith, id. at 1223.

3. In the event the Department of Water Resources affirms its decision recognizing a water right in Clarence Kent in the

amount of .25 c.f.s., or any other amount, the Department should require installation of a measuring device at Clarence Kent's place of diversion so that the amount of the appropriation may be ascertained.

CONCLUSION

In view of the testimony presented by all parties to this action, it is manifest that Clarence Kent did not establish an appropriation to beneficial use of water from the southerly spring in excess of .25 c.f.s. The other applicants Lyle Burnham and Delmar Clark established no appropriation to beneficial use of water from the southerly spring.

Therefore, the application of Lorraine Kent and the Claude Kent Trust should be approved subject only to the Clarence Kent priority of June 17, 1977 to appropriate .25 c.f.s. of water from the Southerly spring.

Respectfully submitted this 16 day of September, 1977.

ST. CLAIR, HILLER, BENJAMIN,
WOOD & McGRATH, Chartered

BY

M. B. Hiller
Attorney for Lorraine Kent
and the Claude Kent Trust

Robert C. Huntley, Jr.
MAGINE, HUNTLEY & OLSON
P. O. Box 1391 - Center Plaza
Pocatello, Idaho 83201
Telephone: (208) 232-6101

STATE OF IDAHO

DEPARTMENT OF WATER RESOURCES

In the Matter of the Claim
to a Water Right of
DELMAR CLARK

No. 15-7029

BRIEF OF DELMAR CLARK

The evidence establishes that Del Clark is entitled to the granting of his Application No. 15-7029 for 0.13 cfs of the waters of Sheep Creek (tributary to Dairy Creek), as per his Application, for the following reasons:

(1) It is undisputed that he has had the domestic supply from the springs to his home through a pipe (the claim being 0.04 cfs) continuously since 1933 -- no party disputes that right, and we would like it formalized by the granting of the permit even though the right predates the 1971 filing requirement.

(2) ALL OF THE REMAINING WATERS OF SHEEP CREEK REMAIN UNAPPROPRIATED AND SUBJECT TO APPROPRIATION AT THIS TIME FOR THE FOLLOWING REASONS:

(a) Under the 1929 Danforth Decree, the waters were decreed on the following basis, based on 1.0 cfs total flow:

0.5 to the predecessors of Lorraine Kent
and Claude Kent Trust

0.25 to the predecessors of Lyle Burnham

0.25 to the predecessor of the protestant, Clarence Kent.

(b) All of those rights under the Danforth Decree have been lost through forfeiture under the ruling of Gilbert vs Smith, 23 Idaho Capital Reports 479, a copy of which is attached hereto, and which decision reads, in part, as follows:

"Although framed in the language of abandonment, appellants' principal argument in this appeal concerns not only the doctrine of abandonment but likewise the question of statutory forfeiture. This doctrine, although similar to abandonment, involves characteristics of significant difference which must be borne in mind in resolving this and similar disputes addressing the relinquishment of decreed water rights.

"Abandonment is a common law concept involving the concurrence of an intention to abandon and the actual relinquishment or surrender of the water right. 93 C.J.S., Waters §193, at 994; Wiel, 1 Water Rights in the Western States, ¶567 (1911). It is not dependant necessarily upon length of time but upon the essential element of intent. Carrington v. Crandall, 53 Idaho 525, 147 P.2d 1009 (1944); Union Grain & Elevator Co. v. McCammon Ditch Co., 41 Idaho 216, 240 P. 443 (1925); St. John's Irr. Co. v. Danforth, 50 Idaho 513, 298 P. 365 (1931); Chill v. Jarvis, 50 Idaho 531, 298 P. 373 (1931); Smith Land Co. v. Furhman, 36 F. Supp. 667 (1941). Such intent may be evidenced by non-use for a substantial period of time but mere non-use is not per se abandonment. Wiel, *supra*, ¶569. In contrast, the doctrine of forfeiture is predicated upon a statutory declaration that all rights to use water may be lost where an appropriator fails to make beneficial use of the water for a statutory period regardless of the intent of the appropriator. 93 C.J.S. Waters §193; Wiel, *supra*, ¶574; East Side Canal & Irr. Co. v. U.S., 76 F. Supp. 936, 839 (Ct. Claims, 1948); Hammond v. Johnson, 66 P. 2d 894, 899 (Utah 1937). In Idaho this concept is set forth in I.C. §42-222(2). The effect of that provision is that an appropriator who fails to apply his water right to a beneficial use for a continuous five year period is regarded as having lost all rights to the use of such water. Although the terms abandonment and forfeiture have often been used by this Court interchangeably *see*, Hodges v. Trailmont Creek Irrigation Co., 78 Idaho 10, (citing cases), the case of Carrington v. Crandall, *supra*, at 532, makes it clear that they are distinct legal concepts and should be considered as such. We recognize that this Court has in the past failed to indicate this difference in addressing cases involving water rights disputes. Nevertheless, we deem it essential for this and other future cases of a similar nature to keep the concepts of abandonment and statutory forfeiture, and their application, distinct." (Emphasis supplied) **NOTE

(c) The testimony is undisputed that since the 1930s, none of the people under the Danforth Decree or their successors have used the waters, the non-use being for many years in excess of the five years required for forfeiture.

In fact, from 1929 to the date of this hearing, Lorraine Kent and Claude Kent Trust made no use of their water except for gardening, and

**See specific text of I.C. 42-222(2) at page 6 herein.

Clarence Kent made no use of his water prior to 1973, except for gardening, up to 1942, with no use between 1942 and 1949, then four years of gardening from 1949 to 1952, and then a period of 19 years of total non-use occurred from that time up until 1971, the effective date of the Act requiring applications for uses of water.

As to the Lyle Burnham right under the Danforth Decree, the evidence is clear that there has never been any use made except for what spread out naturally on about 10 acres of ground, until about seven years ago when he started making some diversions for, again, the same 10 acres of ground, which would be a maximum usage of 0.2 cfs.

The Claude and Lorraine Kent Trust last used water in 1930 for a one-acre garden, which was 27 years ago, and which would have preserved a maximum entitlement of 0.02 cfs even if the time lapse had not occurred.

(d) There is a conflict in the evidence as to whether Clarence Kent has made any diversions, or whether his watering was merely sub-irrigation, and the Hearing Board will have to resolve that conflict. The credible evidence is that there were no diversions. Clarence Kent testified there had been some dirt dams placed in the stream one or two times in a couple of the summers, but it is clear that all other persons who were in a position to observe never saw those dams, and it is clear that he had no lateral ditches constructed to take the water. Even assuming that the Board resolves that question in favor of him, the maximum that the testimony will support would be irrigation of a strip 220 yards long and about 6 to 7 rods wide on one side of the stream, and 4 rods wide on the other side of the stream, or an area of 3 acres, or a preservation of water rights to the extent of 0.06 cfs.

(a) It is undisputed that Del Clark also had the benefits of sub-irrigation on about 3 acres of ground since 1938, which entitles him to 0.06 cfs which he now wishes to physically divert pursuant to the Application.

Likewise, Del Clark has had stock water rights by way of beneficial use by livestock all summer and 100 head of cattle in the fall since 1938.

Under the Avondale case (a copy of which we will furnish as soon as we receive the District Court opinion), it has been held that watering of livestock directly from a stream is a beneficial use, which constitutes a water right.

However, should the Board feel there is a problem with that type of diversion, Del Clark will make an actual diversion and establish a pond or a watering trough for the diversion of the 0.03 cfs he requests for his cattle.

ON THE AVAILABILITY OF WATER

The evidence establishes that there is adequate unappropriated water available for the 0.13 cfs Del Clark requests in his Application No. 15-7029, the record establishing the following maximum existing water rights and availability of water:

<u>NAME OF PARTY</u>	<u>AMOUNT OF RIGHT IN CFS</u>	<u>MANNER IN WHICH OBTAINED</u>
Del Clark	0.04 for domestic purposes	a. Usage since 1928 b. Application 15-7029
Del Clark	0.03 for stock water	a. Usage since 1928 b. Application 15-7029
Del Clark	0.06 for irrigation	a. Sub-irrigation since 1928 b. Application 15-7029 By diversion works
Lyle Burnham	0.20	a. Diversion in last 7 years b. Application 15-7026
Lorraine Kent and Claude Kent Trust	0.50	a. Application 15-7025
Clarence Kent	0.06	a. DISPUTED diversion of approximately 3 acres

TOTAL CLAIMS ESTABLISHED
OR PENDING 0.89

The above total maximum provable claims by the four parties involved of 0.89 cfs does not utilize the whole stream, based on the August flow measured at 0.975 at the Lorraine and Claude Kent Trust property, leaving still unappropriated waters of 0.086 cfs over and above all valid claims at that time of year.

In providing the Board with the foregoing table, we would point out that the domestic water right of Del Clark is established by diversion and application to beneficial use prior to 1971, and was decreed to him in the decision of Judge Hargraves, as was stipulated into evidence.

Furthermore, the livestock right of Del Clark also dates from 1929 by actual application to beneficial use, and both of these claims have priority over any claims of any of the other parties because they were utilized and exercised in all cases during five-year forfeiture periods by the other parties, and the law is that if a forfeiture period has occurred and during that interval another appropriation takes place, the forfeiting party cannot reestablish his right under an earlier decree in derogation of that intervening appropriation.

We further dispute that Clarence Kent has established by his testimony any pre-existing water right even to the 0.06 cfs for 3 acres. If we understood his testimony correctly, there was no testimony showing any diversion by placing dirt dams in the stream during any particular years prior to 1971, and the use of earth dams after 1971 would be of no effect because an application for a permit is required.

It is to be further noted that Clarence Kent's own testimony clearly establishes a total abandonment as well as forfeiture of all waters since 1929 except possibly for the garden plot, and even the garden plot was abandoned and forfeited for non-use since 1952.

With respect to the claim of Lyla Burnham, he presented no testimony of any intent to construct any irrigation system or any financial ability to construct any irrigation system for any acreage in excess of 10 acres, and therefore, although his claim is for many more acres, any granting of an application should be limited to 10 acres.

CONCLUSION

The testimony establishes that Del Clark has a prior right by diversion and application to beneficial use prior to 1971 for the claim of 0.04 cfs for domestic water, and 0.03 cfs for stock water, and that claim should be confirmed by granting of the application.

Furthermore, the evidence shows his financial ability to construct the irrigation works for the three acres of irrigated land, entitling him to 0.06 cfs therefor, which amount of water is available in the stream for appropriation, and therefore his application for a total of 0.13 cfs should be granted in full.

Respectfully submitted,

RACINE, HUNTLEY & OLSON

By

Robert C. Huntley, Jr.

**NOTE FROM PAGE 2:

I.C. 42-222(2):

"All rights to the use of water acquired under this chapter or otherwise shall be lost and forfeited by a failure for the term of five (5) years to apply it to the beneficial use for which it was appropriated and when any right to the use of water shall be lost through non-use or forfeiture such rights to such water shall revert to the state and be again subject to appropriation under this chapter. Provided, further, that upon proper showing before the director of the department of water resources of good and sufficient reason for non-application to beneficial use of such water for such term of five (5) years, the director of the department of water resources is hereby authorized to grant an extension of time extending the time for forfeiture of title for non-use thereof, to such waters for a period of not to exceed five (5) additional years. . ."

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE
STATE OF IDAHO

IN THE MATTER OF THE PROTESTS AGAINST	)	
THE APPROVAL OF APPLICATIONS FOR	)	
PERMITS NO. 15-7025 - LORRAINE KENT	)	MOTION FOR REHEARING
AND THE CLAUDE KENT TRUST; NO. 15-7026 -	)	TO ALTER AND AMEND
LYLE R. BURNHAM; NO. 15-7029 and 15-7030 -	)	DECISION AND ORDER
DELMAR CLARK	)	

COMES NOW Delmar Clark, and moves the Water Resources Board for an opportunity to present oral argument, as well as any further testimony the Board might desire, regarding rehearing of the Memorandum Decision and Order entered herein on the 17th day of June, 1977. The rehearing would be for the purpose of presenting arguments as to all areas wherein it is felt that the Decision and Order is in error, including, but not limited to, the following:

(1) The Conclusion of Law No. 1 is in error in finding that Clarence Kent "resumed a water right prior to it being taken by subsequent appropriators." That conclusion is in error for the following reasons:

(A) The water right under the Danforth Decree had been totally abandoned by Clarence Kent and his predecessors for many, many years.

(B) To resume a water right means to go back to use of a water right that had been exercised before. The testimony established that the most use that had ever been used by Clarence Kent and his predecessors was for the watering of a garden, and therefore the application of .5 cfs into an irrigation system to irrigate 160 acres of land is not a resumption, but rather is a total new application of water to new lands, and the works in 1973 also constitute a new point of diversion which requires an application.

(C) The only provision in the Idaho law for Clarence Kent to establish a new water right or a new point of diversion

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Accepted

is to make an application for same, which fact he has not done, and therefore the applications for permit of Del Clark under Nos. 15-7029 and 15-7030 constitute a taking of water by a subsequent appropriator prior to any legal resumption by Clarence Kent.

(2) The Memorandum Decision and Order is in error when it finds that Clarence Kent was the successor to 0.50 cfs under the Danforth Decree -- the fact was that his maximum right under the Decree, in any event, was 0.25 cfs.

(3) The Board erred in failing to rule and find that the watering of livestock by Del Clark since 1928 constituted a diversion giving him a water right for that purpose with date of priority from 1928.

(4) The Decision and Order is in error in awarding Lyle Burnham a permit to develop irrigation on 80 acres at the rate of 6 feet per cfs when, at the hearing, he testified he was seeking water only for about 10 acres, which would be a maximum entitlement of 0.2 cfs.

(5) That the Decision and Order errs in failing to require Clarence Kent to place a measuring device or splitting device at his portion of diversion in order to ascertain that he receives no more than 0.5 cfs into a pipe system, leaving the balance in the stream channel.

(6) The Decision errs in failing to limit the rights of Clarence Kent to flows awarded his predecessors in interest under the Danforth Decree from the south (lower) spring, which spring, under the Danforth Decree, was divided between Clarence Kent's predecessor, H. O. Kent, and Lyle Burnham's predecessor in interest.

Petitioner respectfully requests that this Petition for Rehearing be granted and that a time and place be set for the rehearing, with notice to all parties.

RACINE, HUNTLEY & OLSON

By _____

Robert C. Huntley, Jr.
P. O. Box 1391
Pocatello, Idaho 83201

RECEIVED

I HEREBY CERTIFY that a copy of the foregoing Motion was mailed this 24th day of June, 1977, to the following parties of record:

J. W. Crowther
60 North Main
Malad, Idaho attorney for Clarence Kent

Larry Kent
2222 Oak Trail Dr.
Idaho Falls, Idaho

Lyle Burnham
Arimo, Idaho

Robert C. Huntley, Jr.

MICROFILMED

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE
STATE OF IDAHO

IN THE MATTER OF THE PROTESTS AGAINST	)	
THE APPROVAL OF APPLICATIONS FOR	)	MOTION FOR REHEARING
PERMITS NO. 15-7025 - LORRAINE KENT	)	TO ALTER AND AMEND
AND THE CLAUDE KENT TRUST; NO. 15-7026 -	)	DECISION AND ORDER
LYLE R. BURNHAM; NO. 15-7029 and 15-7030 -	)	
DELMAR CLARK	)	

COMES NOW Delmar Clark, and moves the Water Resources Board for an opportunity to present oral argument, as well as any further testimony the Board might desire, regarding rehearing of the Memorandum Decision and Order entered herein on the 17th day of June, 1977. The rehearing would be for the purpose of presenting arguments as to all areas wherein it is felt that the Decision and Order is in error, including, but not limited to, the following:

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(C) The only provision in the Idaho law for Clarence Kent to establish a new water right or a new point of diversion

Accepted

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(3) The Board erred in failing to rule and find that the watering of livestock by Del Clark since 1928 constituted a diversion giving him a water right for that purpose with date of priority from 1923.

(4) The Decision and Order is in error in awarding Lyle Burnham a permit to develop irrigation on 80 acres at the rate of 6 feet per cfs when, at the hearing, he testified he was seeking water only for about 10 acres, which would be a maximum entitlement of 0.2 cfs.

(5) That the Decision and Order errs in failing to require Clarence Kent to place a measuring device or splitting device at his portion of diversion in order to ascertain that he receives no more than 0.5 cfs into a pipe system, leaving the balance in the stream channel.

(6) The Decision errs in failing to limit the rights of Clarence Kent to flows awarded his predecessors in interest under the Danforth Decree from the south (lower) spring, which spring, under the Danforth Decree, was divided between Clarence Kent's predecessor, H. O. Kent, and Lyle Burnham's predecessor in interest.

Petitioner respectfully requests that this Petition for Rehearing be granted and that a time and place be set for the rehearing, with notice to all parties.

RACINE, HUNTLEY & OLSON

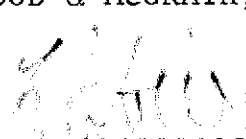
By _____

Robert C. Huntley, Jr.
P. O. Box 1391
Pocatello, Idaho 83201

preserve the priority of use awarded them in the Danforth
Decree.

Respectfully submitted this 4 day of October,
1977.

ST. CLAIR, HILLER, BENJAMIN,
WOOD & McGRATH, Chartered

BY 

M. B. Hiller
Attorneys for Lorraine Kent
and The Claude Kent Trust

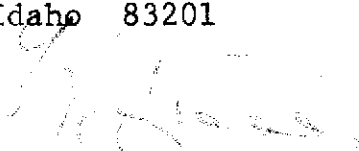
CERTIFICATE OF MAILING

I hereby certify that on this 5th day of October, 1977,
I mailed a true and correct copy of the within and foregoing
SUPPLEMENTAL MEMORANDUM on the following attorneys of record:

James B. Green, Esq.
Terrell, Green, Service & Gasser
P. O. Box 4883
Pocatello, Idaho 83201

J. W. Crowther, Esq.
Attorney at Law
60 North Main Street
Malad, Idaho 83252

Robert C. Huntley, Jr., Esq.
Racine, Huntley & Olson
P. O. Box 1391
Pocatello, Idaho 83201


M. B. Hiller

M. B. Hiller
Richard T. St. Clair
ST. CLAIR, HILLER, BENJAMIN,
WOOD & McGRATH, Chartered
P. O. Box 29
Idaho Falls, Idaho 83401
Telephone: (208) 522-2350
Attorneys for Lorraine Kent
and Claude Kent Trust

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SEP 6 1977

Department of Water Resources
Eastern District Office

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE
STATE OF IDAHO

In the Matter of Approved Permits
No. 15-7025 in the Name of LORRAINE
KENT and CLAUDE KENT TRUST, No. 15-7026
in the Name of LYLE R. BURNHAM, No.
15-7029 and 15-7030 in the Name of
DELMAR CLARK

SUPPLEMENTAL
MEMORANDUM

COME NOW Lorraine Kent and the Claude Kent Trust, by
and through their attorneys of record, and submit the following
supplemental memorandum.

At the hearing of the above entitled matter before the
Water Resources Board on the 16th day of September, 1977, testimony
established that Lorraine Kent and the Claude Kent Trust were the
successors in interest to .5 c.f.s. of water from the Northerly
spring to Sheep Creek decreed to Asa Danforth. Further, testimony
established that Lorraine Kent and the Claude Kent Trust resumed
application of the water right to beneficial use in the summer of
1976. The question arose as to whether the subsequent filing of an
application for permit to appropriate water from the unnamed
springs to Sheep Creek by Lorraine Kent and the Claude Kent Trust
constituted a waiver of the rights succeeded to under the Danforth
Decree.

The Idaho Supreme Court long ago resolved this question in Joyce vs. Reuben, 23 Idaho 296, 130 P.2d 793 (1913), and Newport Water Company vs. Kellogg, 31 Idaho 574, 174 P.2d 602 (1918).

In Newport Water Company vs. Kellogg, the Court stated:

Appellants assigned as error, the action of the trial court admitting in evidence, over objection, respondent's Exhibit N. This exhibit was a water license issued by the State Engineer pursuant to Rev. Codes, Section 3261. It granted to respondent a perpetual right to two cubic feet per second of water to be conducted to the towns of Newport, Washington, and Newport, Idaho, for the purpose of fire protection and domestic use. Rev. Codes, Section 3262, makes such a license prima facie evidence as to the water right. As the license on its face indicated that it was granted for the same system of works and the same water right referred to in the complaint, its admission in evidence was not error. By obtaining the issuance of this license, respondent did not waive any rights they may have had previously through actual diversion and application to a beneficial use. (Citation Omitted).

Later in Pioneer Irrigation District vs. American Ditch Association, 50 Idaho 732, 1 P.2d 196 (1931), the Idaho Supreme Court affirmed its earlier holdings to the effect that application to the State Water Resources Department did not waive an earlier right to water established by court decree. In that instance, the Court affirmed in the Farmers Cooperative Ditch Company, 154.455 second feed of water with a priority of April 1, 1905, based on a court decree, notwithstanding a subsequent application for and issuance of a license to appropriate 140 second feet of water.

In the instant case, the filing of an application to appropriate by Lorraine Kent and the Claude Kent Trust, does not constitute a waiver of the decreed amount or priority of water rights obtained by way of the Danforth Decree. Therefore, the resumption of appropriation by Lorraine Kent and The Claude Kent Trust would

Law Offices of

ST. CLAIR, HILLER, BENJAMIN, WOOD & McGRATH
CHARTERED

FIRST SECURITY BANK BUILDING
POST OFFICE BOX 29
IDAHO FALLS, IDAHO 83401
(208) 522-2350

CLENCY ST. CLAIR (1871-1957)
PAUL T. PETERSON (1892-1967)
ROBERT W. ST. CLAIR
GILBERT C. ST. CLAIR
MORTON B. HILLER
WILLIS B. BENJAMIN
THEODORE V. WOOD
STEPHEN J. McGRATH
JOHN G. ST. CLAIR
RICHARD T. ST. CLAIR
STEVEN K. TOLMAN

KETCHUM-SUN VALLEY OFFICE
CHRISTMAS TREE BUILDING
P.O. DRAWER DD
KETCHUM, IDAHO 83340
(208) 726-4483

October 5, 1977

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OCT 6 1977

Department of Water Resources
Eastern District Office

Mr. Ronald D. Carlson
State of Idaho
Dept. of Water Resources
1515 Lincoln Road
Idaho Falls, Idaho 83401

Re: Larry Kent Natural Spring Matter

Dear Ron:

I am sending you a Supplemental Memorandum in behalf of Lorraine Kent and the Claude Kent Trust; this memorandum was requested by the hearing officer. I have sent copies to Jim Green, Bob Huntley and Wesley Crowther.

Sincerely yours,

ST. CLAIR, HILLER, BENJAMIN,
WOOD & McGRATH, Chartered


M. B. Hiller

MBH:csr
Enc.

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9
Please sign permit
also.

MICROFILMED

Drafted
by BDF

TO Norm
DATE 6/15 WHILE YOU WERE OUT TIME 9:45
M Linda Clark
OF Pocantello
PHONE: 232-2268 EXT.
AREA CODE NUMBER

☒ Telephoned

☐ Returned Your Call

☐ Will Call Again

☒ Please Call

☐ Called to See You

she's
call if
decision will be
delayed past
6/27/78

MB

NOT FILMED

INTER-DEPARTMENT MEMO — 1

FROM

Alan + BDF

TO

To Beerman

SUBJECT

attached info.

We think the Dept should become
involved as an interuser on
behalf of the watermaster

DATE

4-10-78

Alan + BDF

MICROFILMED

SIGNATURE

Sixth Judicial District — District Court

P. O. BOX 121
MALAD CITY, IDAHO 83252

February 17, 1978

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FEB 21 1978

Department of Water Resources
Eastern District Office

State of Idaho
Dept. of Water Resources
1515 Lincoln Road
Idaho Falls, Idaho 83401

Dear Mr. Carlson

Enclosed you will find testimony given by Lyle R. Burnham on the Clark -vs- Kent hearing held on the 13th day of January, 1977.

We are sorry that the testimony was at times very hard to understand.

We hope that what is here will be of help to you.

If there is anything else we can be of assistance to you please feel free to contact this office.

Sincerely

/s/ Barbara Colton

Barbara Colton
Deputy Clerk

bc/kt
enclosure

MICROFILMED

FEB 21 1978

Department of Water Resources

Eastern District Office

#157026 filed by Lyle R. Burnham, Mr. Burnham representing
self. Testimony of Lyle R. Burnham as follows:

Lyle R. Burnham sworn

INQUIRER. State your full name and address for our
record then, please?

MR. BURNHAM. My name is Lyle Burnham, address Box 8
Arimo, Idaho.

Q. Okay you may present any statement you have concern-
ing why you feel there is water available, why you wish to
have this particular permit.

MR. BURNHAM. I, at the time I submitted my application
little water had been diverted from the stream for any use
down from where it come from in my property of any noticable
amount and it's also there on the property and we've always
had, since the property, what I have is flat there, it always,
the water always went into the ground there after it went on
my property so we all got beneficial value because the water
just naturally spread out from it so more or less a total
amount of that water out of all these streams for the last,
except it naturally went out over the sub irrigation along,
in the people above me had all died there on the property up
till 71, where a ditch was put through so it would run all
through, some times this water was a problem, subbing out and
getting in the way, prior to that put a ditch in to keep it
from spreading out, oh I guess it was about 12 years ago on

1 part of it and then the rest of it ? ? ? build a ditch clear
2 on through now. I've had been taking it out since then by
3 throwing a canvas across the stream and having to pull them
4 up several times for irrigation.

5 INQUIRER. Okay so you're actually the last user or the
6 last furtherest down on the stream that's formed by these
7 springs, is that correct?

8 A. Yes, due to the conture of the land normally it
9 would spread out on my property which is fairly flat, above
10 me it's always been in a sort of narrow canyon where it spreads
11 out till 71 then water normally would ? ? property till 71
12 when I built a ditch through there and then almost a full
13 stream would go through unless I diverted it. It's just goes
14 across the, several hundred yards now the number of ? ?
15 Clarks property and go in the Dairy Creek now.

16 INQUIRER. Okay Mr. Crowther do you have any questions
17 for Mr. Burnham?

18 MR. CROWTHER. Mr. Burnham, have you ever taken any
19 action as far as maintaining the ditches bringing the streams
20 down from the spring to your place?

21 A. No I have not, I'd been trespassing if I would have
22 done...

23 Q. So you've never done anthing?

24 A. No.

25 Q. I see and so all the water that came is just what

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JAN 10 1964

1 flowed off Kent's through whatever means it got there?

2 A. Yes, for all practical purposes up till last year
3 same amount of water got to my place as got to Kents.

4 Q. Now I think at the trial it was testified that you
5 came onto the land about 1973 to actually take it over and
6 run it yourself.

7 A. Well see, it would have ? ? 72.

8 Q. 72?

9 A. Yuh.

10 Q. When was the first time you put the dam in the ditch
11 after you came onto?

12 A. It would have been the first year or 72.

13 Q. 72?

14 A. Yuh.

15 Q. Are you sure it's 72 or was it 73?

16 A. ? ? 72.

17 Q. I see where you testified 73 at the prior hearing.

18 A. Did I, if I did why I don't think I'll make a mistake
19 here or I could go for 72, pay for it by chance anyway but
20 even prior to 71, see it naturally went onto my property and
21 irrigated so it only been a year ? ? we had the ditch in.
22 Flowed right on through maybe or 1 year maybe 2 years it flowed
23 straight through without getting, went straight through my
24 property of no use.

25 Q. Now as I recall the testimony at the trial you and

1 your father testified that it did pond on your property and
2 caused kind of a mud hole?

3 A. Well, well it was spread out on quite a few acres
4 really and in the spring it was a problem.

5 Q. And that's why you dig the ditch was to get it out
6 of there so it wouldn't create the problem?

7 A. Right so and then we could just trun it back in when
8 we wanted it.

9 Q. And that the ditch was more for the purpose of drain-
10 ing the land than it was for irrigating it?

11 A. Well, well it depends on, in the spring it's for
12 drainage and then later in the summer it would be for irrigation.

13 Q. Okay but prior to 7 at least 72 you didn't put a dam
14 in to irrigate?

15 A. Well true but water was already there all the time
16 irrigating.

17 Q. Running through the ditch?

18 A. Right, well spreading out on the property, just wasn't
19 any ditch there down below the ? ? part ot 71.

20 Q. Prior to 71?

21 A. No.

22 Q. Prior to 71 it just spread out and was a mud hole?

23 A. ? ? lucrene sometimes.

24 Q. You didn't mow it where that mud was did you?

25 A. Well ? ? later in the year usually and got into a

RECEIVED
JAN 11 1964

1 little later when Bill was home it was a problem but just to
2 work around.

3 Q. It was a problem and that's why the ditch was dug so ?

4 MR. HUNTLEY. I object, this is argumentative. He stated
5 it was for two purposes draining earlier and for irrigation
6 later it was in the year in the season.

7 INQUIRER. I do think we understand the problem that your
8 on the point that your trying to make.

9 MR. CROWTHER. Okay, do you know who maintained the ditch
10 and kept the flow coming down Mr. Burnham?

11 A. No I never could see any ditch work done on the ditch.

12 Q. You never observed any?

13 A. Well I will go back in the 20's when my father,
14 great grandfather had a ditch, diverted that.

15 Q. Excuse me were you there in the 20's?

16 A. I saw the remains of the ditch and I...

17 Q. Where is this ditch?

18 A. It went around the side of the hill up there to
19 divert water up so it came directly onto the property and Mr.
20 Clarence there, was a ditch there.

21 Q. You never observed the use of that ditch?

22 A. No, my father did and he's here to testify to that
23 fact.

24 Q. Okay, you personally didn't?

25 A. No.

RECORDED

1 Q. Up until up until the present time have you ever
2 asserted a claim or a specific amount of water for irrigation
3 purposes?

4 A. No, it was always there and so there wasn't any need
5 to.

6 Q. I see. I have no further questions.

7 INQUIRER. I think I failed to ask you, do you have any
8 witnesses that you wanted to call in your behalf?

9 MR. BURNHAM. Well it depends if not unless I have a
10 rebuttal ? ? I don't care, something in question and ? ? my
11 fathers been there and living there since 1912 so if there any
12 question comes up, establish a point then I'll...

13 INQUIRER. Yes Mr. Huntley do you have any questions for
14 Mr. Burnham?

15 MR. HUNTLEY. Yes. Mr. Burnham, I have taken exhibit A
16 which is the card map and put a larger sheet of paper on and
17 marked it exhibit B to try to extend this map to more of your
18 property. Now would you draw where the stream goes onto
19 exhibit B now from A?

20 A. Comes off where it comes here, goes around this hill
21 goes around the hill there then ditch right along the fence
22 ? ? normally it would spread out down to here all the way.

23 Q. Okay now you got to be kind of doing so these gentlemen
24 can see what your talking about. Why don't you stand up here.
25 Now the stream normally you say went like this around?

1 A. Okay. Well normally would have come out here like
2 this and start spreading out here, spread out here all during
3 this area down here and ? ? this is 12 - 15 years ago and
4 when my father had the place and he ditched around this hill
5 and it's made a narrow ditch around the hill like that and
6 then it still spread out down here like this up til 71 and
7 then I and my father put together, we ditched over here and
8 we put it right along this fence line right down here and
9 this right here would be Ray Clarks right here this would be
10 half right here or half right here, this would be Ray Clarks.

11 Q. Would you write the word ditch and point a arrow
12 toward this ditch?

13 A. Okay this ditch goes right down the fence line.

14 Q. In the, where was some diversion, when you first
15 testified you I wasn't clear what you said you, you opened
16 your statement with a statement that there had been no water
17 ever diverted down to your property, do you mean there's
18 never been any diversions above your property?

19 A. No there never have been.

20 Q. How many years have you been acquainted with this
21 stream?

22 A. Oh since the, I've began to remember 33, 34.

23 Q. And since 1933 or 34, have you ever seen any diver-
24 sions put in this stream along the portion of the stream that
25 flows through Clarence Kent's land?

RECORDED
INDEXED

1 A. Oh well we did have a garden there but of course
2 that didn't divert the whole stream.

3 Q. Okay now other than diversion for a garden have you
4 seen any irrigation by Clarence Kent along that stream by
5 way of gravity flow irrigation?

6 A. No.

7 Q. And how many of the years since 1973 have you, 33,
8 have you been back there from time to time?

9 A. I was usually come back, well I missed one period of
10 4 years to ? ?, I was there most years and missed a few.

11 Q. And when was that 4 year period?

12 A. It was in 56 through 60.

13 Q. Now the distance from what is marked a pond here on
14 the Clarence Kent's land to your bondary is about how long?

15 A. Well from the end of the pond it's it's not a
16 hundred yards. It's only I believe measured on the map,
17 there's only two, this was most about at most 220 about 200
18 yards between here and here where it normally flow, in other
19 words...

20 Q. Records showing I'm putting a bracket here and show-
21 ing 220 yards and is that 220 represent of what your estimate
22 of the distance from the raod to where the stream finally
23 come onto your property?

24 A. ? ? Well yuh, it's from here to here, yuh it would
25 be well be a little farther from here to there I guess I
haven't figured out.

1 Q. Okay so the 220 is this distance here to here?

2 A. Yuh but I'd say it would be less than 30 yards from
3 here to here no it would be less than that, no it would be
4 oh half hundred, hundred believe little bit 120 feet say from
5 here to here something like that from here to here.

6 Q. Okay now after when did you construct the ditch thats
7 on exhibit B?

8 A. Well this down here the first portion of this ditch
9 was constructed by my father bout 12 - 15 years ago around here.

10 Q. Okay.

11 A. And then it spread out here and the one I put in was
12 put in 71, it extended the rest of the distance down here.

13 Q. Now you testified at the earlier trial I believe that
14 you've for several years irrigated about 9 or 10 acreas did
15 you?

16 A. Yuh.

17 Q. Pardon?

18 A. Yuh.

19 Q. Now where are those 9 or 10 acres, would you draw a
20 dashed line?

21 A. Be this normal run right in here see where because
22 I just throw either I put a canvas right across here or right
23 across here to get ? ? and it just spreads out down here.

24 Q. Okay now I'm going to put a mark across the channel
25 in two places and is that where you had canvas dams?

RECORDED

1 A. Yes.

2 Q. And starting when did you put those canvas dams there?

3 A. A year after ? ? .

4 Q. And now would you draw a dashed line around the 9 or
5 10 acres that you've irrigated from time to time since 1973?

6 A. Well be right, take this ditch right down here,
7 dashed line, Okay starting right there, goes over, comes down
8 there, down this fence line, be that normal low place in the
9 ground.

10 Q. Now would it be fair to say that the only lands that
11 had ever received irrigation water in the last oh say 10 years
12 has been the land within that dashed area?

13 A. Yes that's true.

14 Q. Okay?

15 A. And in the 20's of course there's a stream that went
16 up across here, come out of here and went right in the corner
17 there but that was a long long time ago.

18 Q. Now did your predecessors and interest ever have any
19 interest under that Dan Forth decree of 1929?

20 A. Interest.

21 Q. Well were your land purchased from anybody that was
22 connected with that Dan Forth law suit?

23 A. Well yes my ? ? was my great grandfather.

24 Q. And what lands did he own?

25 A. Exactly the same I have at the present time. He

1 originally was trying to irrigate the upper end there but
2 that would be back in the 20's ? ? but they didn't use that
3 little ditch there.

4 Q. Okay would it be fair to say that after he left in
5 the 20's that there was no actual attempt to irrigate any land
6 on the Burnham propertys by putting dikes in and any kind of
7 gravity flow laterals or anything other than what you testified
8 what you've done the last few years, is that correct or not?

9 A. Well there's always a natural irrigation down there
10 but there's never, my parents had lived in the house on the
11 place there I think there in 32 about 32, 33, 31, 32 anyway
12 I was to young to remember but anyway we did have a garden
13 there.

14 Q. Okay then what I'm trying to ask is for as other than
15 garden, first attempts of putting of using canvas dams to
16 divert water out of the stream?

17 A. Well dad would always go down there with a shovel if
18 it wasn't going in the right place, shovel out of the way in
19 one place and into another.

20 Q. For the garden?

21 A. Well no just on the ground down there.

22 Q. Okay. But then you're, when your talking about that
23 ground down there your still talking about that same approximate
24 10 acres aren't you?

25 A. Well yuh ? ? about 10 acres there usually ? ? .

1 Q. I've no further questions.

2 INQUIRER. Mr. Kent do you have any questions for Mr.

3 Burnham?

4 MR. KENT. No.

5 INQUIRER. Yes, do you have any?

6 MR. CROWTHER. Yes. Mr. Burnham regarding the map which

7 you've been looking at and which you've drawn, could you tell

8 us who owns the land immediately north of the ditch in that

9 10 acres?

10 A. Well that's Clarence Kent.

11 Q. Could you mark that in it please?

12 A. ? ? yuh.

13 Q. So that it goes over that far. Okay now when and you

14 say you extended the straight part along the boundary between

15 you and Mr. Kent, Clarence Kent then?

16 A. Yuh.

17 Q. Is ther is there anything to mark physically mark

18 the division line between your property and Mr. Kents?

19 A. No, we've, well the fence was taken out.

20 Q. Are there any remaining post at all or anything?

21 A. Well, well up on this hill there is where marks

22 were made from the main post and but on this ditch no, the

23 ditch was run ? ? so we took, a fence was had been down for

24 many years and we tore out the tore out the posts and then

25 ditch ? ? .

1 Q. Now would you say the ditch was exactly on the divid-
2 ing line or on Mr. Kents side of the line?

3 A. Well I have to admit the real problem was 2 big post
4 down the end here after we tore it out we dug it and then I
5 didn't have the mark ? ? ditch down here. I was trying to
6 stay on my side of the line but down here I got wound up on
7 the wrong post by accident I got over there I'd say about
8 over 3 feet at any place.

9 Q. So that the ditch actually though was on Mr. Kent's
10 side of the line?

11 A. Well after I'd made it but that was due ? ? they had
12 2 big post down here. I got wound up over here ? ? I been
13 well it giving him all this property up here ? ? it was...

14 Q. Yuh but well the ditch was physically there on his
15 side of the line?

16 A. Well.

17 Q. We're not arguing about property we're not suggesting
18 you trying to get extra land but just where the ditch was?

19 A. Well when I made it at the lower end here I got over
20 by it cause there's nothing to mark where it's showing where
21 I was ditching, I did get of a little bit on this lower end
22 maybe a foot or so on to his property.

23 Q. Okay and that has been the ? ? ?

24 A. But the normal stream bed would be way to the inside
25 my property ? ? ditch that.

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1 Q. But this became the normal stream bed after you put
2 the ditch there?

3 A. Well except when it breaks out, breaks out it looks
4 like this whole stream bed.

5 Q. Has it broken out since you put the ditch there?

6 A. Well ? ? this canvas dam well it has once.

7 Q. It has once and then you put it back?

8 A. Yuh when I put a canvas dam it goes down to normal...

9 Q. This past summer has there been a pond from the runoff
10 that came out of Mr. Kents?

11 A. Has there been a pond?

12 Q. From his runoff caused by his runoff?

13 A. Well he flooded me out once last spring when he filled
14 up his dam and then opened it up and yuh there was quite a
15 pond down there.

16 Q. Now whereabouts was that pond?

17 A. Well it flooded out down in the bottom of here and
18 it even broke out on his over here and broke out on both sides
19 of this ditch.

20 Q. So it went as much on him as it did on you?

21 A. Well on that case yuh but it was quite that was quite
22 a full when he opened that up wide open with all that water
23 behind here was quite full there too.

24 Q. Now this canvas dam that you said you put in about
25 1972?

RECORDED

1 A. Well it been later than that because I planted alfalfa
2 in 72 so it been 73 ? ? canvas dam right there.

3 Q. Okay so the canvas dam was put in 73 now can you tell
4 us approximately what month of the year that that was put in?

5 A. Well it been ? ? took water out of it a couple of times
6 a year, first ? ? just put in a earth dam and diverted it out
7 and then last two years I put in a, last two or three years I
8 put in a canvas dams and diverted it for a few days twice a
9 year this year was ? ? only twice.

10 Q. This year was only twice?

11 A. Yuh.

12 Q. But the canvas dam can you tell us when that first
13 went in? Was that the fall or the spring or about when, what
14 part of the year of 73?

15 A. Well usually, I ? ? could I in well in June, just
16 before I cut my alfalfa a week before I tried to get a little
17 water down there so I could and then let it dry and then cut
18 it so and it's around the first part of July so it's been the
19 first part of July somewhere.

20 Q. At the previous hearing didn't you testify it was in
21 the fall of the year?

22 INQUIRER: I think what he's looking for is that first
23 year when you did...

24 Q. First year?

25 INQUIRER. First year of 73, were you able to get in in

RECORDED
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1 June that year or was it? ?

2 A. Well after I cut the alfalfa I the first year I put
3 it in I think I just used earth dams for using canvas ones.

4 INQUIRER. Was that in the fall?

5 A. Yuh I used I put partially one in, why I put it in
6 a couple of times it washed out.

7 Q. That was in the fall of 73?

8 A. Yuh it's hard to remember exactly.

9 Q. And you remember when Mr. Kent first started digging
10 his the reservoir for his system?

11 A. Well I believe it was well it been I think it been
12 73 he did a little bit most of he did the next he didn't do
13 much that one year and then next summer he did most of it.

14 Q. He started it in 73?

15 A. Just barely yuh didn't do very much, the next summer
16 if I remember right did most of it, almost all of it was done
17 the next year after.

18 Q. I have no further...

19 INQUIRER. Do you have anything further Mr...

20 MR. HUNTLEY. No I don't.

21 INQUIRER. Mr. Burnham do you have anything further you
22 would like to say at this time?

23 A. No I don't think so.

24 INQUIRER. I believe at this time we're ready to proceed
25 to application No. 15029 which is in the name of Delmar Clark,

RECEIVED

June 17, 1977

Re: Permit No's. 15-7030 and 15-7029

Delmar Clark
298 S. Main
Malad City, Idaho 83252

Dear Mr. Clark:

Enclosed are copies of the approved Applications for Permit No's. 15-7029 and 15-7030 along with a copy of the Memorandum Decision and Order issued on these permits. We direct your attention to the conditions of approval as listed on the fourth page of the Order.

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

Sincerely,

BOBBY D. FLEENOR
Chief, Operations Bureau

BDF:jfr

Encls.

cc: Protestants and Attorneys

KENT CLARK File

(withdrawn)
15-7030 } D. CLARK - Atty Huntley } asked for rehearing
15-7029 } ~~L. Burnham Atty Green~~ } 4/26/76
15-7026 } ~~Kent Clark~~ Lyle Bowham } (Green) 2/24/76
15-7095 CLARK Kent 2/5/76

FINDINGS OF FACT:

3. CLARK's stock watering claim has not been adjudicated and is not properly an issue before the Dept.

CLARK did not protest any of the applications being considered.

4. CLARK's claim to domestic water from the springs was not contested and was not an issue before the Dept. CLARK has not protested any of the applications nor shown that the granting of the permits will interfere w/ his water rights.

3. There appears to be a resumption of rights denied to Asa Danforth by the DANFORTH Decree (O.S.C.F.S). Resumption by H.O. Kent and James Burnham

7. Director finds that his approval of #15-7030 was in error because on 1/3/1977 CLARK through his attorney Bob Huntley formally requested that Application 15-7030 be withdrawn.

RECEIVED

DECREE

ST. JOHN IRR

VS

ASA H. DANFORTH,

H.O. KENT ET AL.

0.50 CFS - 6/1/1915

PD SW $\frac{1}{4}$ NE $\frac{1}{4}$ SEC 23 T11S R 34E

0.50 CFS 6/1/1914

PD SE $\frac{1}{4}$ NE $\frac{1}{4}$ SEC 23 T11S R 34E

RECORDED

June 17, 1977

Re: Permit No. 15-7025

Lorraine Kent & Claude Kent Trust
2223 Oak Trail Drive
Idaho Falls, Idaho 83401

Dear Ms. Kent:

Enclosed is a copy of the approved Application for Permit No. 15-7025 along with a copy of the Memorandum Decision and Order issued on this permit. We direct your attention to the conditions of approval as listed on the fourth page of the Order.

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

Sincerely,

BOBBY D. FLEENOR
Chief, Operations Bureau

BDF:jfr

Encls.

15-7026

Lyle Burnham

Water from spring always sank on his property
Since 1971 -

The Last user downstream -

X-exam by J. Crowther

No

All the water

Moved to the land in 1972

Natural irrigation prior to 1972 -

Never observed maintenance of ditch above

Have never asserted a claim -

X-exam by Mr Huntley

No diversions above Mr. Burnham's Property until recently

~~that~~

Irrigated 9 or 10 acres by canvas dam since 1973

Prior to that land just subbed -

Land originally owned by Grandfather - included in Danforth decree

Grandfather left in 1920 -

Given in 1932 by Father -

Re-exam by Mr Crowther

Ditch constructed ^{RTB} on Mr. Kent's property on lower end.

Canvas dam 1973 what month - Fall of 1973

Mr. Kent ^{began digging} his reservoir in 1973 -

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15-7029

Delmar Clark

Live in area May to October each year

Moved there in 1938

What use of the water

Garden 4 years during 1940's

Pasture land is subirrigated - 3 acres

Desire to now divert and irrigate 3 acres -

Want to grow wheat & barley

Livestock use 100 ^{3 head horses} head beef drink from creek but 20 year

No previous opposition to stockwatering -

Mr. ^{Delmar} Clark is above Mr. Clarence Kent -

Benefit - For increase value of property - Issue denied
Natural streambed since 1930

Born June 4, 1914

Any Diversions on Clarence Kent's land by Mr C. Kent. None
until 1973.

Only irrigation by C. Kent was a garden -

Mr Kent has dry farmed the area

X-exam of Mr Clark by Mr. Crowther

No cattle except during Sept, Oct

8 hogs each year 1938 to 1972 or 2

Has never cleared the ditch -

Clarence Kent has been clearing the ditch

Re-direct

Flow of stream Aug 2. -

Re-exam

MICROFILMED

3 22 40
6
15840

Jack Farbush

SCS Technician

education ~~4~~ 1/4 College

training -

Requested to measure water by Del Clark and Clarence Kent

Method - Constructed Rectangular ~~litter~~ flume -

Timed float on surface of water -

Protestant

Direct

→ Wayne Kent - brother to Clarence Kent

Familiar with area since 1924 ~~1941~~ ~~without garden & livestock~~

From 1924 to 1941 Watered garden & livestock

Flow Ditch maintained until 1941 that he knows of since he left the area

Operated farm in 1947 & 48 raised a garden -

Ditch cleaned twice a year -

No Diversion noted in April 1976 on Mr. Burnham's property

Mr. Burnham's Grandfather grew a garden in 1920's

X-exam - by Huntley

No irrigation of Clarence Kent property

X-exam - by Burnham

Re-direct

→ Direct

Russell O. Daniels -

Loaned Ditcher to Clarence Kent to clean the channel -

Direct

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Robert O. Kent - Son of Clarence Kent

Remember last 11 years

Stream ~~dammed~~ by Clarence Kent observed

No earthen ^{dams} observed -

Redirect

Why weren't dams seen because

D

Direct

Del ~~Clark~~ Clark

Has never seen stream dry - since 1958 - Differing testimony -

X-exam

Direct

Rick Clark

Lived there 22 years

X-exam

Mr. Huntley - Rick Clark - Rebuttal witness

= Noticed no dam -

X-exam - -

= Tim - Linda Clark - also same testimony -

=

MICROFILMED

Dired - Clarence Kent

Born 1922

Lived there every summer except during war and mission
Clarence cleaned the ditch

Left 1942

1928-1942 - Garden & Stockwatering

Upper Spring diverted to lower spring in 1937

In 1949 Clarence began living there

1949 & 50 garden grown

Subbed ground adjacent to ditch by ^{placing} small dams.
Channel cleaned each year.

~~Subbed~~

→ Does clearing ^{ditch} preserve a decreed water right

Sprinkler System purchased \$54,000

→ How much land is irrigated ^{planned} - 160 acres

→ How much land was previously irrigated - $3\frac{1}{2}$ acres

No objections voiced to the improvement -
until Del Clark objected.

~~Exam~~

X-exam by Mr. Huntley

Subbed $\frac{16}{32}$ rods by 250 yards = area =

No Application for ~~permit~~ change in p.d. of p.v.

No Application for permit filed =

H.O Kents lands as shown in the decree

To

Take - Judicial notice of Danforth decree

More than $\frac{1}{2}$ water comes from upper spring -

First time you told ~~Burnham~~ Clark in 1975

X-exam by Mr. Burnham

Did water leave -

Re-dired - land descri'd in Decree is same as being irrigated

MICROFILMED

Hearing

15-7025

Lorraine Kent & Claude Kent Trust - Larry H. Kent

Protestant

Clarence Kent & - J. M. Crowther - T.

Delmar Clark - Robert Huntley

Lyle R. Burnham -

15-7026

Lyle R. Burnham - Ha

Protestant - Delmar Clark ^{Huntley}; ^{Clarence Kent} J. M. Crowther; Larry H. Kent

15-7029

Delmar Clark - Ha - R

15-7025

0.50 ^{some} decree - Danforth Decree

X-exam ^{by Crowther} of Larry Kent

Water last used - 1950 for garden

used by Claude Kent.

Stockwatering has been used consistently

Mr. Kent's last work done prior to 1956 As far as Larry Kent

- No diversion works at present -

Interested in preserving w/r by using the water

Born 1943

X-exam by Huntley of Larry Kent

- 12 acres

- Last livestock within 3 year - approx 100 head after harvest late Sept

- Decreed water right never sold or given away

- Diversion works above the Lower S

MICROFILMED

15-7025 - Q - Reduced to 0.50 by Larry Kent -
Lorraine Kent & Claude Kent Trust

Procedant

Crowthair

~~App~~ Del Clark
Robert Huntley

15-7026

15-7029 - 1

The Domestic Use is the same as recent decree.
The Stockwater has been used for many year.
Irrigation has subed for year then wish to
sprinkle irrigate -

Issue

- Speculation
- Water Available
- Injury to other water right -
- Injury to stream by drying up aesthetic value -

MICROFILMED

Larry Kent's Final Statement

Mr. Burnham -

Mr. Huntley - Summary

Mr. Crowther - Thank

→ Mr.

MICROFILMED

- 15-7030 - WITHDRAWN BY APPLICANT

- 15-7025 - Lorraine Kent -

Reduce to 0.50 CFS By Applicant
Larry Kent.

- 15-7026 - Burnham - would
Reduce his application down -
ward on % basis(?)

CLARENCE KENT - Application -
- 15-7029 - is for Stockwater
out of stream & Domestic
same as that specified by
the court

- 15-7029
Applicant contends 3 acres
have been irrigated through
subirrigation.

- ISSUES

injury

MICROFILMED

15-7025 - LARRY KENT

15-7026 - LYLE BURNHAM

15-7029 - Delmar Clark

- LARRY KENT

1. have revised application to 50 to be consistent w/ decree
2. Application filed to be consistent w/ Danforth decree and to maintain some entitlement if right has been abandoned
- X - Cawther
3. Water has not been used for irrigation since 1950 for irrigation of a garden by Clark Kent consistent with stock watering from stream
4. Ditch periodically maintained
5. Now contemplating irrigating 12 acres. Is interested in preserving water rights

X - Huntley - Applicant Del Clark
EXHIBIT A

Livestock watered every year
Sid Kent's livestock ~ 100 head
After harvest = SEPT 15

PD just S of N Spring (not shown - a map.

MICROFILMED

LYLE BURNHAM - 15-7026

At time of application - no water had been diverted on property - Natural provided sub irrigation - 12 years put a ditch in to keep water from spreading
1971 - built ditch to drain property

X - Crowther -

1. Has never maintained ditch to property

2. 1972 - Took over property & started running property

X - HUNTLEY

3. Has never asserted water right in past.

* - Del Clark EXHIBIT ~~B~~ - continuation of map to Burnham property

4. Started diverting water w/ 2 Canvas dams, in 1973 (9-10 AC)

5. Burnham lands part of Panforte decree

6. Mr Kent dug his Reservoir in 1973

MICROFILMED

Delmar Clark — 15-7029

X - Hoytley

1. Del Clark house on exhibit A.
live in house May 1 - Oct 1

2. Came on to lands 1938

3. Has had a garden in 40's

4. Has had sub irrigation along
 $\frac{1}{2}$ mile of Creek — 3 acres

5. 100 head of Cattle water
from Creek. 3 head of horses

6. Has watered livestock for
~ 20 years

~~7.~~ Would like to Brief
Beneficial use of livestock
watering from stream
~~8.~~ Aesthetic — Denied consideration.

7. Stream called Sheep creek

X - CROWTHER

8. 1976 — 3 horses

1975 — 3 horses

No Cattle for 10 years or longer
until after harvest. Sept. or
October

9. Mr. Kent offered to supply
water for livestock

10. Never maintained ditch

11. Clarence Kent has maintained
ditch

12. Flow Measured Aug 2 by Mr. Forbush

MICROFILMED

JACK FORBUSH — Tech for SCS
has been w/ ENGINEERS who have
made measurement.

MEASUREMENT — w/ RECTANGULAR
WEIR

Velocity Checked by Block METHOD

— PROTESTANT

WAYNE R. KENT —
X-Crowther

1. Clarence Kent - Brother

2. Father used water for livestock
& garden — 1929 — 1941

3. Maintained ditch 1929-1941

4. 1947 & 48 — Garden — last
time planted — water from lower
spring

5. No diversion noted on Bur-han
property IN ^{APRIL} 1976

~~X-Huntley~~

6. Water would not have ~~passed~~
entered Bur-han 1 year 1-10.

RUSS DANIELS

1. ~~Loaned~~ Pitchers to Claude &
Clarence Kent 2 or 3 Times

2. Kents only one he knows of that
has maintained ditch

MICROFILMED

Clarence Kent

1. Has lived on property all of his life since 1928
2. St. John cleaned ditch in 1927
3. Kents have cleaned since
4. Water used for garden & stockwater.
5. Upper Spring came into use ~1938 - connected w/ lower spring.
6. Dams put in ditch and adjacent land irrigated.
7. Began building pond in 1973
8. 1975 put in sprinkler system
9. \$54,000 invested in system
10. Claud said go ahead and use water.
11. Lorraine - go ahead and use water.
12. Del Clark objected late Summer 1975

hear 5-11

X - HUNTLEY

12. Diversion prior to 1975
4 rods x 7 rods

13. No Transfer applied for by Kent
14. No Application for Permit.

MICROFILMED

NOTE DAN FORTH Decevee -

15. More than $\frac{1}{2}$ water comes from upper spring.
16. Told Clark in Sept 1975 that he was going to put all of water into pipe.
17. ~~was to~~ Clark pipeline goes from lower spring.
18. There is no difference in present P.U. & decreed P.U.
19. Kent is proposing to irrigate 160 acres of land.

Bob Kent -

1. Son of Clarence Kent.
2. has seen results of use of water
3. Has not seen the dams in Sheep Creek.
4. Dams would have been hidden by grass.

Lyle Burnham -

Del Clark - has never seen a time when water does not reach Burnham.

— Would Kent's present development stop water from entering Burnham's property

Rick Clark - Never noticed any dams in creek

Briefs - 20 Days - NUNTLE
20 -

15-7025 Mr. Larry Kent will let us know during
the next week if he wishes to continue with
his application,

MICROFILMED

MEMORANDUM

TO: FILE NO.s 15-7025, 15-7026, 15-7029 and 15-7030

FROM: BOB FLEENOR

DATE: JAN. 18, 1977

A hearing was held and final arguments are to be presented by the attorneys. The first brief should be submitted to the Department within 10 days and 15 days following that for the reply briefs.

January 18, 1977

Ms. Barbara Colton
Deputy Clerk
Oneida County Courthouse
Malad City, Idaho 83252

Dear Ms. Colton:

This letter is to express our appreciation for your assistance at the recent hearing the Department held in Malad. Through your help we have an excellent record which otherwise would have been impossible for us to obtain.

We will transcribe the tape you made for us and return it to the court after the appeal period which will be in May. If it is not reasonable to keep the tape for that period, we certainly can copy it and return it sooner.

Again thank you for your help.

Very truly yours,

RONALD D. CARLSON
Supervisor,
Eastern Region

RDC:cw

January 18, 1977

RE: Applications for Permit No. 15-7025, 15-7026, 15-7029 and 15-7030

Mr. J. W. Crowther
Attorney at Law
60 North Main
Malad City, Idaho 83252

Dear Mr. Crowther:

This letter is to confirm the agreement reached at the combined hearing for the above referenced applications for permit.

It is our understanding that Mr. Huntley will submit a closing brief on the issues involved on or before February 3, 1977. A copy of this brief will be sent to you and to the Department of Water Resources, and you will be allowed until the 28th of February to respond. Mr. Huntley will then have an additional ten (10) days for a rebuttal, if he wishes to submit one.

The Department, therefore, is planning to commence preparation of the decision in this matter on March 14, 1977.

If you have any questions concerning this agreement, please feel free to contact me.

Very truly yours,

RONALD D. CARLSON
Supervisor,
Eastern Region

RDC:cw

January 18, 1977

RE: Application for Permit No. 15-7025, 15-7026, 15-7029 and 15-7030

Mr. Robert C. Huntley, Jr.
Attorney at Law
P.O. Box 1391
Pocatello, Idaho 83201

Dear Mr. Huntley:

This letter is to confirm the agreement reached at the combined hearing for the above referenced applications for permit.

It is our understanding that you will submit a closing brief on the issues involved on or before February 3, 1977. A copy of this brief will be sent to Mr. Crowther and to the Department of Water Resources, and Mr. Crowther will be allowed until the 28th of February to respond. You will then have an additional ten (10) days for a rebuttal, if you wish to submit one.

The Department, therefore, is planning to commence preparation of the decision in this matter on March 14, 1977.

If you have any questions concerning this agreement, please feel free to contact me.

Very truly yours,

RONALD D. CARLSON
Supervisor,
Eastern Region

RDC:cw

H E A R I N G S C H E D U L E

THURSDAY, January 13, 1977

Oneida County Courthouse, Malad City, Idaho

9:00 a.m. (15-7025 - KENT
 (15-7026 - BURNHAM
 (15-7029 - CLARK
 (15-7030 - CLARK

COMBINED

Franklin County Courthouse, Preston, Idaho

2:30 p.m. 11-7098 - PHELPS

FRIDAY, January 14, 1977

Madison County Courthouse, Rexburg, Idaho

9:00 a.m. 22-7199 - HILL ENTERPRISES

January 10, 1977

RE: Applications for Permit No. 15-7025 and 15-7026

Mr. D. James Manning
Attorney at Law
P.O. Box 1391
Pocatello, Idaho 83201

Dear Mr. Manning:

We are in receipt of your letter of January 7, 1977, which indicates St. John Irrigating Company will not be represented at the hearing scheduled for January 13, 1977, to hear objections against approval of the above referenced applications for permit.

In reaching a decision in this matter, the department will consider all of the information contained in the Department's files, which includes that presented by St. John Irrigating Company at the conference held in Pocatello, Idaho. If, since that time, additional information has become available that you wish the Department to consider it may be submitted and will be considered by the Department before taking final action on these applications.

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

Very truly yours,

RONALD D. CARLSON
Supervisor,
Eastern Region

RDC:cw

LAW OFFICES OF
RACINE, HUNTLEY & OLSON
CHARTERED

LOUIS F. RACINE, JR.
ROBERT C. HUNTLEY, JR.
WILLIAM D. OLSON
D. JAMES MANNING

CENTER PLAZA - CORNER FIRST & CENTER
POST OFFICE BOX 1391
POCATELLO, IDAHO 83201

TELEPHONE
AREA CODE 208
232-6101

W. MARCUS W. NYE
GARY L. COOPER

January 4, 1977

RECEIVED
JAN 7 1977

Department of Water Resources
Eastern District Office

Mr. Ronald D. Carlson
Supervisor, Eastern Region
Department of Water Resources
1515 Lincoln Road
Idaho Falls, Idaho 83401

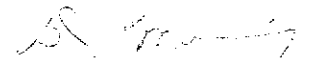
Re: Application for Permit No. 15-7025 and 15-7026
Lorraine Kent & Claude Kent & Lyle R. Brunham

Dear Mr. Carlson:

I represent St. John Irrigating Company, a protestant in the above consolidated water hearings. I appeared on their behalf, as did members of their Board of Directors, at the initial conference on these applications.

We have determined that St. John Irrigating will not be participating further by way of attendance at or offering of evidence on its protest at the subsequent hearing scheduled for January 12, 1977. We recognize that under the procedural rules this may result in dismissal of our protest, and are writing this letter mainly to avoid any imposition of costs. We would, however, prefer that the protest by St. John Irrigation Company to these applications, and our remarks at the original conference remain for consideration by the Department.

Very truly yours,


D. JAMES MANNING

DJM:jc

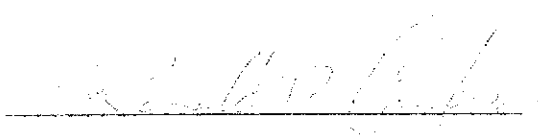
BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE
STATE OF IDAHO

In the Matter of Protests Against Approval of
Application for Permits No. 15-7025, LORRAINE
KENT and CLAUDE KENT TRUST; No. 15-7026, LYLE
R. BURNHAM; No. 15-7029 and 15-7030 in the
Name of DELMAR CLARK

NOTICE OF COMBINED
HEARING

Notice is hereby given that the Department of Water Resources has rescheduled the conference and/or hearing concerning the above referenced applications for permit for Thursday, January 13, 1977, at 9:00 a.m., in the Jury Room of the Oneida County Courthouse, Malad City, Idaho. Any hearing will be held in accordance with the Rules and Regulations of the Idaho Code and adopted Rules of Practice and Procedure of the Department of Water Resources as previously indicated in the conference and/or hearing notice dated December 28, 1976.

Dated this 11th day of January, 1977.


RONALD D. CARLSON

Supervisor, Eastern Region

January 6, 1977

Oneida County Clerk
Oneida County Courthouse
Malad City, Idaho 83252

Gentlemen:

This is to confirm our telephone conversation of this date, rescheduling the use of the Jury Room for Thursday, January 13, 1977, at 9:00 a.m.

Your cooperation has been greatly appreciated.

Very truly yours,

RONALD D. CARLSON
Supervisor,
Eastern Region

RDC:CW

January 5, 1977

Oneida County Clerk
Oneida County Courthouse
Malad City, Idaho 83252

Gentlemen:

This is to confirm the rescheduling of the use of the Jury Room for conference and/or hearing to be held by this Department on Wednesday, January 12, 1977, at 2:00 p.m.

Your cooperation in this matter is greatly appreciated.

Very truly yours,

RONALD D. CARLSON
Supervisor,
Eastern Region

RDC:CW



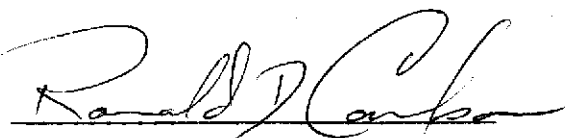
BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE
STATE OF IDAHO

In the Matter of Protests Against Approval of
Application for Permits No. 15-7025, LORRAINE
KENT and CLAUDE KENT TRUST; No. 15-7026, LYLE
R. BURNHAM; No. 15-7029 and 15-7030 in the
Name of DELMAR CLARK

NOTICE OF COMBINED
HEARING

Notice is hereby given that the Department of Water Resources has rescheduled the conference and/or hearing concerning the above referenced applications for permit for Wednesday, January 12, 1977, at 2:00 p.m., in the Jury Room of the Oneida County Courthouse, Malad City, Idaho. Any hearing will be held in accordance with the Rules and Regulations of the Idaho Code and adopted Rules of Practice and Procedure of the Department of Water Resources as previously indicated in the conference and/or hearing notice dated December 28, 1976.

Dated this 3rd day of January, 1977.



RONALD D. CARLSON

Supervisor, Eastern Region

MICROFILMED

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE
STATE OF IDAHO

In the Matter of Protests Against Approval of
Application for Permits No. 15-7025, LORRAINE
KENT and CLAUDE KENT TRUST; No. 15-7026, LYLE
R. BURNHAM; No. 15-7029 and No. 15-7030 in the
Name of DELMAR CLARK

NOTICE OF COMBINED
HEARING

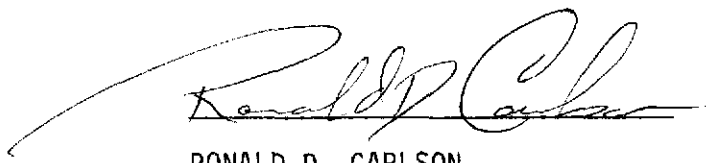
Application for Permit No. 15-7025, 15-7026, 15-7029 and 15-7030 have been filed with the Idaho Department of Water Resources to appropriate the public waters of the State of Idaho, and protests have been received pursuant to Section 42-203, Idaho Code.

Because of the similarity of the issues involved these hearings have been combined. The Department has rescheduled the matter of protests for hearing for Wednesday, January 12, 1977, at 9:00 a.m., in the Courtroom of the Oneida County Courthouse, Malad City, Idaho. Any hearing will be held in accordance with the Rules and Regulations of the Idaho Code and adopted Rules of Practice and Procedure of the Department of Water Resources. Opportunity shall be afforded all parties to respond and present evidence and argument on all issues involved.

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

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

Dated this 28th day of December, 1976.



RONALD D. CARLSON

Supervisor, Eastern Region

MICROFILMED

Name and Address of Sender

Indicate type of mail:
☐ REGISTERED ☐ C.O.D.
☐ CERTIFIED

Postmark here if issued as certificate of mailing or for additional copies of the bill
 POSTMARK AND DATE OF RECEIPT

NUMBER OF ARTICLE	NAME OF ADDRESSEE, STREET AND POST OFFICE ADDRESS	POSTAGE	FEE	R.R. FEE	INT. FEE	ACTUAL VALUE	HANDLING CHARGE	REMARKS*
153	W.D. Sharnick, 305 S. 2nd St., Hephner, Mo.	13	60					22-7199
234	W.D. Sharnick, 305 S. 2nd St., Hephner, Mo.	13	60					"
235	W.D. Sharnick, 305 S. 2nd St., Hephner, Mo.	13	60					"
236	W.D. Sharnick, 305 S. 2nd St., Hephner, Mo.	13	60					"
237	W.D. Sharnick, 305 S. 2nd St., Hephner, Mo.	13	60					"
238	W.D. Sharnick, 305 S. 2nd St., Hephner, Mo.	13	60					"
239	W.D. Sharnick, 305 S. 2nd St., Hephner, Mo.	13	60					"
240	W.D. Sharnick, 305 S. 2nd St., Hephner, Mo.	13	60					"
241	W.D. Sharnick, 305 S. 2nd St., Hephner, Mo.	13	60					"
242	W.D. Sharnick, 305 S. 2nd St., Hephner, Mo.	13	60					15-7025126
243	W.D. Sharnick, 305 S. 2nd St., Hephner, Mo.	13	60					15-7025130
244	W.D. Sharnick, 305 S. 2nd St., Hephner, Mo.	13	60					"
245	W.D. Sharnick, 305 S. 2nd St., Hephner, Mo.	13	60					"
246	W.D. Sharnick, 305 S. 2nd St., Hephner, Mo.	13	60					"
247	W.D. Sharnick, 305 S. 2nd St., Hephner, Mo.	13	60					"
248	W.D. Sharnick, 305 S. 2nd St., Hephner, Mo.	13	60					"
249	W.D. Sharnick, 305 S. 2nd St., Hephner, Mo.	13	60					13-71533
250	W.D. Sharnick, 305 S. 2nd St., Hephner, Mo.	13	60					"
251	W.D. Sharnick, 305 S. 2nd St., Hephner, Mo.	13	60					"
252	W.D. Sharnick, 305 S. 2nd St., Hephner, Mo.	13	60					13-71534

Dec 1973

APPLICATION FOR REGISTERED, REGISTERED C.O.D. AND CERTIFIED MAIL

FORM MUST BE MADE OUT IN INK OR BALL POINT PEN

DECLARATION OF VALUE IS REQUIRED ON INTERNATIONAL REGISTERED MAIL

U.S. POSTAL SERVICE

60 1976 125 100

December 29, 1976

Oneida County Clerk
Oneida County Courthouse
Malad City, Idaho 83252

Dear Sir:

This is to confirm the use of the courtroom for conference and/or hearing to be held by this office on Wednesday, January 12, 1977, at 9:00 a.m.

Thank you for your cooperation in this matter.

Very truly yours,

RONALD D. CARLSON
Supervisor,
Eastern Region

RDC:CW

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE
STATE OF IDAHO

In the Matter of Protest Against Approval)
of Application for Permit No. 15-7025,)
15-7026, 15-7029 and 15-7030)

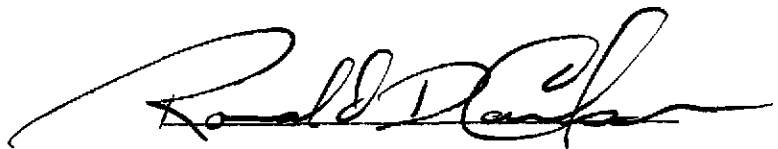
NOTICE OF CANCELLATION
COMBINED HEARING

Notice is hereby given that the Department of Water Resources has cancelled the conference and/or hearing concerning the above applications at the request of J. W. Crowther, attorney for Clarence Kent.

Mr. Crowther has requested a continuance because the parties involved will be in grain harvest at that time, and because a court hearing will be held in the near future concerning matters germane to those issues involved in these hearings.

The Department will reschedule the conference and/or hearing in the near future, at which time all interested parties will again be notified.

Dated this 4th day of August, 1976.



RONALD D. CARLSON
Supervisor, Eastern Region

MICROFILMED

COMBINED HEARING

15-7025 Kent, 15-7026 Burnham, 15-7029-15-7030 Clark

Commissioners Room, Oneida County Courthouse, Malad City, Idaho

August 11, 1976 - 10:00 a.m.

ROSTER OF ATTENDANCE

Name	Address	Representing
------	---------	--------------

RECEIVED

August 2, 1976

Oneida County Clerk
Oneida County Courthouse
Malad City, Idaho 83252

Gentlemen:

This is to confirm the use of the Commissioners Room for a conference and/or hearing to be held by this office on Wednesday, August 11, 1976, at 10:00 a.m.

Thank you for your cooperation in this matter.

Very truly yours,

RONALD D. CARLSON
Supervisor,
Eastern Region

RDC:CW

Affix stamp here if issued as certificate of mailing or for additional copies of this bill.

II International

(Declaration of value is required on international registered mail)

Curt Aaron - 21-7083 v 22-0255 Dist Court

Murphy Martin - 32-0014 det. Sgt. Thibault

FORM MUST BE MADE OUT IN INK OR BALL POINT PEN

Mr. Robert Luid - 29^x ^{U.S. DEPARTMENT OF JUSTICE} ^{PHOTOGRAPHY OFFICE} ^{WASHINGTON, D.C.}

Dud Williams - 21-7083

" "

" "

" "

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE
STATE OF IDAHO

In the Matter of Protests Against Approval of
Application for Permits No. 15-7025, LORRAINE
KENT and CLAUDE KENT TRUST; No. 15-7026, LYLE
R. BURNHAM; No. 15-7029 and No. 15-7030 in the
Name of DELMAR CLARK

NOTICE OF COMBINED
HEARING

Application for Permit No. 15-7025, 15-7026, 15-7029 and 15-7030 have been filed with the Idaho Department of Water Resources to appropriate the public waters of the State of Idaho, and protests have been received pursuant to Section 42-203, Idaho Code.

Because of the similarity of the issues involved these hearings have been combined. The Department has set the matter of protests for hearing for Wednesday, August 11, 1976, at 10:00 a.m., in the Commissioners Room of the Oneida County Courthouse, Malad City, Idaho. Any hearing will be held in accordance with the Rules and Regulations of the Idaho Code and adopted Rules of Practice and Procedure of the Department of Water Resources. Opportunity shall be afforded all parties to respond and present evidence and argument on all issues involved.

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

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

Dated this 29th day of July, 1976


RONALD D. CARLSON
Supervisor, Eastern Region

NOTIFIED

April 21, 1976

Mr. Ronald D. Carlson
State of Idaho
Dept. of Water Resources
1515 Lincoln Rd.
Idaho Falls, ID 83401

Please be advised that the attached copy of judgement (dated June 5, 1928) establishes our rights to the following:

One-half cubic foot of water per second, with priority dating from June 1, 1915 to be used on the following described land:

The West Half of the Northwest Quarter ($W\frac{1}{2}NW\frac{1}{4}$) of Section Twenty-four (24), the South Half of the Northeast Quarter ($S\frac{1}{2}NE\frac{1}{4}$), the North Half of the Southeast Quarter ($N\frac{1}{2}SW\frac{1}{4}$), and the North Half of the Southwest Quarter ($N\frac{1}{2}SW\frac{1}{4}$) of Section Twenty-three (23), Township Eleven (11), South, Range Thirty-four (34) East, Boise Meridian.

Notwithstanding this judgement, we wish to allow our present application for Permit No. 15-7025 to stand. In this regard we are willing to have your office make a determination based upon our previous hearing and the content of the application and protests thereto without an additional hearing.

This action should not be construed as relinquishing our decreed rights as identified in the attached judgement.

Thank you for your interest, time and attention.

Sincerely,


L. H. Kent

lm



LAW OFFICES OF
RACINE, HUNTLEY & OLSON
CHARTERED

LOUIS F. RACINE, JR.
ROBERT C. HUNTLEY, JR.
WILLIAM D. OLSON

CENTER PLAZA - CORNER FIRST & CENTER
POST OFFICE BOX 1391
POCATELLO, IDAHO 83201

TELEPHONE
AREA CODE 208
232-6101

D. JAMES MANNING
W. MARCUS W. NYE
GARY L. COOPER

June 17, 1976

RECEIVED

JUN 18 1976

Department of Water Resources
Eastern District Office

Mr. Ronald D. Carlson
Supervisor, Eastern Region
Department of Water Resources
1515 Lincoln Road
Idaho Falls, Idaho 83401

RE: Application for Permit No. 15-7025 and 15-7026

Dear Mr. Carlson:

Would you please advise status of the above water applications. Inasmuch as we received no further word about a hearing, I assume that there will be none and the matter has been submitted to the Department based on the informal conference held earlier.

Very truly yours,

DJ Manning
D. JAMES MANNING

DJM:jc

CC: Mr. Dave Deschamps

RECORDED



STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
EASTERN DISTRICT

Cecil D. Andrus
Governor

R. Keith Higginson
Director

1515 Lincoln Road
Idaho Falls, Idaho 83401
(208) 523-7186

April 14, 1976

RE: Application for Permit No. 15-7025 LORAINNE KENT & CLAUDE KENT TRUST
" " " No. 15-7026 LYLE R. BURNHAM

Mr. D. James Manning
Attorney at Law
P.O. Box 1391
Pocatello, Idaho 83201

Dear Mr. Manning:

Please find enclosed a copy of the agreement reached at the conference held in Pocatello, Idaho, April 9, 1976.

Pursuant to the agreement reached at this conference, the Department will reschedule a hearing for April 27, 1976, unless action by the applicants or protestants prior to that time make a hearing in this matter unnecessary.

If you have any questions concerning this agreement, please feel free to contact me.

Very truly yours,

RONALD D. CARLSON
Supervisor,
Eastern Region

RDC:CW





STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
EASTERN DISTRICT

Cecil D. Andrus
Governor

R. Keith Higginson
Director

1515 Lincoln Road
Idaho Falls, Idaho 83401
(208) 523-7186

April 14, 1976

RE: Application for Permit No. 15-7025 LORAINNE KENT & CLAUDE KENT TRUST
" " " " No. 15-7026 LYLE R. BURNHAM

Mr. J. W. Crowther
Attorney at Law
60 North Main
Malad City, Idaho 83252

Dear Mr. Crowther:

Please find enclosed a copy of the agreement reached at the conference held in Pocatello, Idaho, April 9, 1976.

Pursuant to the agreement reached at this conference, the Department will reschedule a hearing for April 27, 1976, unless action by the applicants or protestants prior to that time make a hearing in this matter unnecessary.

If you have any questions concerning this agreement, please feel free to contact me.

Very truly yours,

RONALD D. CARLSON
Supervisor,
Eastern Region

RDC:CW





STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
EASTERN DISTRICT

Cecil D. Andrus
Governor

R. Keith Higginson
Director

1515 Lincoln Road
Idaho Falls, Idaho 83401
(208) 523-7186

April 14, 1976

RE: Application for Permit No. 15-7025 LORAINNE KENT & CLAUDE KENT TRUST
" " " No. 15-7026 LYLE R. BURNHAM

Mr. Clarence Kent
48 N. 150 E.
Malad City, Idaho 83252

Dear Mr. Kent:

Please find enclosed a copy of the agreement reached at the conference held in Pocatello, Idaho, April 9, 1976.

Pursuant to the agreement reached at this conference, the Department will reschedule a hearing for April 27, 1976, unless action by the applicants or protestants prior to that time make a hearing in this matter unnecessary.

If you have any questions concerning this agreement, please feel free to contact me.

Very truly yours,

RONALD D. CARLSON
Supervisor,
Eastern Region

RDC:CW

RECEIVED
APR 15 1976
IDaho Falls



STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
EASTERN DISTRICT

Cecil D. Andrus
Governor

R. Keith Higginson
Director

1515 Lincoln Road
Idaho Falls, Idaho 83401
(208) 523-7186

April 14, 1976

RE: Application for Permit No. 15-7025 LORAINNE KENT & CLAUDE KENT TRUST
" " " No. 15-7026 LYLE R. BURNHAM

Ms. Lorraine Kent
2223 Oak Trail Drive
Idaho Falls, Idaho 83401

Dear Ms. Kent:

Please find enclosed a copy of the agreement reached at the conference held in Pocatello, Idaho, April 9, 1976.

Pursuant to the agreement reached at this conference, the Department will reschedule a hearing for April 27, 1976, unless action by the applicants or protestants prior to that time make a hearing in this matter unnecessary.

If you have any questions concerning this agreement, please feel free to contact me.

Very truly yours,

RONALD D. CARLSON
Supervisor,
Eastern Region

RDC:CW

RECEIVED
APR 15 1976
IDaho Falls

IN THE MATTER OF)
APPLICATION FOR) STIPULATION
PERMIT NO 15-7026) AND
LYLE R. BORNHAM) AGREEMENT

WE HEREBY AGREE THAT ALL OF THE PERTINENT INFORMATION CONCERNING THE PROTESTS AND AVAILABILITY OF WATER WERE PRESENTED BEFORE THE DEPT. OF WATER RESOURCES AT THE CONFERENCE HELD IN POCOTELLO, IDAHO APRIL 9, 1976. HOWEVER BECAUSE THE ISSUES ARE SUBSTANTIALLY THE SAME AS THOSE INVOLVED IN APPLICATION 15-7025, WHICH WAS CONTINUED, WE FEEL THAT IF A HEARING IS HELD TO CONSIDER PROTESTS FILED AGAINST THIS APPLICATION, PROTESTS AGAINST 15-7026 SHOULD ALSO BE HEARD AT THAT TIME.

THEREFORE WE AGREE TO ALLOW THE DEPT OF WATER RESOURCES TO MAKE A DECISION BASED UPON THE INFORMATION PRESENTED AT THE CONFERENCE IF APPLICATION FOR PERMIT 15-7025 IS WITHDRAWN. IF 15-7025 IS NOT WITHDRAWN WE WISH TO BE INCLUDED AT ANY SUBSEQUENT HEARING.

Clarence Kent
Larry L. Kent
Lyle R. Bornham

St. John Irrig. Co - Protestant
By: Djan Manning

UNITED STATES POSTAL SERVICE
OFFICIAL BUSINESS

SENDER INSTRUCTIONS

Print your name, address, and ZIP Code in the space below.
• Complete items 1, 2, and 3 on reverse side.
• Moisten gummed ends and attach to back of article.

RETURN
TO

MAIL
ENCLOSURE
FILMED

DEPARTMENT OF WATER RESOURCES
EASTERN DISTRICT OFFICE
1515 LINCOLN ROAD
IDAHO FALLS, IDAHO 83401



PENALTY FOR PRIVATE
USE TO AVOID PAYMENT
OF POSTAGE \$3.00

MAR
31
1976

RECEIVED

APR 1 1976

Department of Water
Eastern District Office



- **SENDER:** Complete items 1, 2, and 3.
Add your address in the "RETURN TO" space on reverse.

1. The following service is requested (check one).

- ☒ Show to whom and date delivered..... 15¢
☐ Show to whom, date, & address of delivery.. 35¢
☐ **RESTRICTED DELIVERY.**
 Show to whom and date delivered..... 65¢
☐ **RESTRICTED DELIVERY.**
 Show to whom, date, and address of delivery 85¢

2. **ARTICLE ADDRESSED TO:**

*Joseph P. Manning atty.
 Box 1391
 Waterloo, Ia.*

3. **ARTICLE DESCRIPTION:**

REGISTERED NO.

CERTIFIED NO.

INSURED NO.

(Always obtain signature of addressee or agent)

I have received the article described above.

SIGNATURE



Addressee



Authorized agent

4.

DATE OF DELIVERY

MAR 31 1976

5. **ADDRESS** (Complete only if requested)

6. **UNABLE TO DELIVER BECAUSE:**

CLERK'S
INITIALS

UNITED STATES POSTAL SERVICE
OFFICIAL BUSINESS

SENDER INSTRUCTIONS

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

- Complete items 1, 2, and 3 on reverse side.
- Moisten gummed ends and attach to back of article.



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

RETURN
TO



DEPARTMENT OF WATER RESOURCES
EASTERN DISTRICT OFFICE
1515 LINCOLN ROAD
IDAHO FALLS, IDAHO 83401

RECEIVED

APR 1 1976

Department of Water Resources
Eastern District Office

- **SENDER:** Complete items 1, 2, and 3.
Add your address in the "RETURN TO" space on reverse.

1. The following service is requested (check one).

- ☒ Show to whom and date delivered..... 15¢
☐ Show to whom, date, & address of delivery.. 35¢
☐ **RESTRICTED DELIVERY.**
 Show to whom and date delivered..... 65¢
☐ **RESTRICTED DELIVERY.**
 Show to whom, date, and address of delivery 85¢

2. **ARTICLE ADDRESSED TO:**

*W. Cawthon, Atty
60 No. Main
Malad City, Id.*

3. **ARTICLE DESCRIPTION:**

REGISTERED NO. | CERTIFIED NO. | INSURED NO.

54

(Always obtain signature of addressee or agent)

I have received the article described above.

SIGNATURE ☐ Addressee ☒ Authorized agent

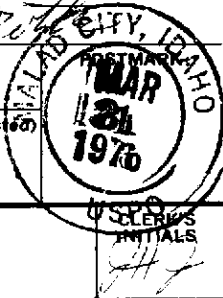
4.

DATE OF DELIVERY

3-31-76

5. **ADDRESS** (Complete only if requested)

6. **UNABLE TO DELIVER BECAUSE:**



UNITED STATES POSTAL SERVICE
OFFICIAL BUSINESS

SENDER INSTRUCTIONS

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

- Complete items 1, 2, and 3 on reverse side.
- Moistened gummed ends and attach to back of article.

RETURN
TO



DEPARTMENT OF WATER RESOURCES
EASTERN DISTRICT OFFICE
1515 LINCOLN ROAD
IDAHO FALLS, IDAHO 83401

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



RECEIVED

APR 2 1976

Department of Water Resources
Eastern District Office

- **SENDER:** Complete items 1, 2, and 3.
Add your address in the "RETURN TO" space on reverse.

1. The following service is requested (check one).

- ☒ Show to whom and date delivered..... 15¢
☐ Show to whom, date, & address of delivery.. 35¢
☐ **RESTRICTED DELIVERY.**
 Show to whom and date delivered..... 65¢
☐ **RESTRICTED DELIVERY.**
 Show to whom, date, and address of delivery 85¢

2. **ARTICLE ADDRESSED TO:**

*Gerraine Kent
 2223 Oak Grove Drive
 Idaho Falls, Ida*

3. **ARTICLE DESCRIPTION:**

REGISTERED NO. CERTIFIED NO. INSURED NO.

52

(Always obtain signature of addressee or agent)

I have received the article described above.

SIGNATURE ☐ Addressee ☐ Authorized agent

Larry H. Kent

4. **DATE OF DELIVERY**

4-1-76

POSTMARK

5. **ADDRESS** (Complete only if requested)

6. **UNABLE TO DELIVER BECAUSE:**

CLERK'S INITIALS

C

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
Eastern District Office
1515 Lincoln Road • Idaho Falls, Idaho
83401

Returned Receipts

15-7025 - Lorraine Kent and Claude Kent Trust

Conference Room, Pocatello Municipal Airport, Pocatello, Idaho

April 9, 1976 - 9:00 a.m.

ROSTER OF ATTENDANCE

Name	Address	Representing
------	---------	--------------

See Roster of Attendance in 15-7026 -

15-7025

April 5, 1976

RE: Application for Permit No. 15-7025 and 15-7026

Mr. D. James Manning
Attorney At Law
Box 1391
Pocatello, Idaho 83201

Dear Mr. Manning:

Pursuant to a telephone request, please find enclosed copies of the above referenced applications and the protests concerning them.

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

Very truly yours,

RONALD D. CARLSON
Supervisor,
Eastern Region

RDC:CW

Enclosures

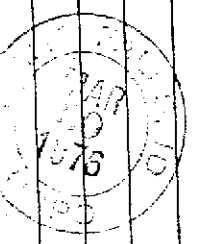
RECEIVED
APR 10 1976
FBI - IDAHO

Name and Address of Sender

Indicate type of mail:
☐ REGISTERED ☐ C.O.D.
☐ CERTIFIED

Attach 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	R.F. FEE	POST. DUTY FEE	ACTUAL VALUE	HANDLING CHARGE	REMARKS*
1	446 Grant Abbott, Danvers, Vt.	13	30	15				13-7122
2	447 Grant & Robert Danvers, Vt.	13	30	15				"
3	448 General & Russell Danvers, Vt.	13	30	15				"
4	449 General Abbott Danvers, Vt.	13	30	15				"
5	550 General J. Danvers, Vt. P.O. Box 191, Danvers	13	30	15				
6	551 Mrs. J. Danvers, Danvers, Vt.	13	30	15				15-7025
7	552 General Grant, 2223 Main Street, St. Albans, Vt.	13	30	15				"
8	553 General H. Manning, P.O. Box 1301, Danvers, Vt.	13	30	15				"
9	554 J. Danvers, Vt. 600 N. Main, Danvers, Vt.	13	30	15				
10								
11								
12								
13								
14								
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16								
17								
18								
19								
20								



TOTAL NO. OF PIECES LISTED BY SENDER: 9

TOTAL NO. OF PIECES RECD. AT P.O.: 9

POSTMASTER, R. (Name of receiving employee): R. S. S.

APPLICATION FOR REGISTERED, REGISTERED C.O.D. AND CERTIFIED MAIL

(Declaration of value is required on international registered mail)

* U. S. GOVERNMENT PRINTING OFFICE: 1974-0-511-718

PS Form 3877, Dec. 1973

Handwritten notes: "1. See Section 1973" and "FORM MUST BE MADE OUT IN INK OR BALL POINT PEN"

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE
STATE OF IDAHO

In the Matter of Protests Against Approval)
of Application for Permit No. 15-7025 in)
the name of LORRAINE KENT AND CLAUDE KENT)
TRUST)

NOTICE OF CONFERENCE
AND/OR HEARING

On February 5, 1976, Lorraine Kent and L. H. Kent, Trustee, filed with the Department of Water Resources an application to appropriate the public waters of the State of Idaho. On February 19, 1976, the Department received a protest against approval of said application from Clarence Kent. On February 26, 1976, the Department received an additional protest from St. John Irrigating Company.

The Department has set the matter of protest for conference and/or hearing for Friday, April 9, 1976, at 9:00 a.m., in the Conference Room of the Pocatello Municipal Airport, Pocatello, Idaho. Because of the similarity of the issues involved this hearing has been combined with Application for Permit No. 15-7026, Lyle R. Burnham. Any hearing will be held in accordance with the Rules and Regulations of the Idaho Code and adopted Rules of Practice and Procedure of the Department of Water Resources. Opportunity shall be afforded all parties to respond and present evidence and argument on all issues involved.

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

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

Dated this 30th day of March, 1976.


RONALD D. CARLSON

Supervisor, Eastern Region

March 30, 1976

Mr. Merle Wilhelm
Airport Manager
Pocatello Municipal Airport
P.O. Box 1021
Pocatello, Idaho 83201

Dear Mr. Wilhelm:

This is to confirm the use of the Conference Room for conference and/or hearing to be held by this office on Friday, April 9, 1976 at 9:00 a.m.

Thank you for your cooperation in this matter.

Very truly yours,

RONALD D. CARLSON
Supervisor,
Eastern Region

RDC:CW

March 2, 1976

RE: Application for Permit No. 15-7025

Ms. Lorraine Kent
2223 Oak Trail Drive
Idaho Falls, Idaho 83401

Dear Ms. Kent:

Enclosed please find an additional protest filed against the above referenced application for permit.

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

Very truly yours,

RONALD D. CARLSON
Supervisor,
Eastern Region

RDC:CW

Enclosure

cc: IDWR - State Office



STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
EASTERN DISTRICT

Cecil D. Andrus
Governor

R. Keith Higginson
Director

March 2, 1976

1515 Lincoln Road
Idaho Falls, Idaho 83401
(208) 523-7186

Mr. D. James Manning
Attorney at Law
P.O. Box 1391
Pocatello, Idaho 83201

RE: Application for Permit No. 15-7025

Dear Mr. Manning:

This is to acknowledge receipt of your protest to issuance of a permit pursuant to the above referenced application. The following are the principle items we can consider at a conference and/or hearing 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?

The Department may reject an application and refuse issuance of a permit, partially approve the permit, approve the permit for a quantity of water less than applied for, or approve the permit subject to special conditions.

A permit issued by this office is subject to all prior water rights and does not in any way convey or establish a right-of-way over private or governmental lands. Any right-of-way or easement must be obtained by the individuals concerned through action outside of the water right proceedings.

You will be notified at a later date as to the time and place set for conference and/or hearing to discuss the matters of protest. If we may be of further assistance, please contact us.

Very truly yours,

RONALD D. CARLSON
Supervisor,
Eastern Region

RDC: CW

cc: IDWR - State Office

RECEIVED

FEB 26 1976

Department of Water Resources
Eastern District Office

D. James Manning
RACINE, HUNTLEY & OLSON, CHARTERED
Attorneys at Law
Center Plaza; P. O. Box 1391
Pocatello, Idaho 83201
Telephone: (208) 232-6101

Attorneys for St. John Irrigating Company

BEFORE THE STATE OF IDAHO,

DEPARTMENT OF WATER RESOURCES

Application of Lorraine	)	
Kent and Claude Kent Trust	)	<u>PROTEST</u>
for Permit.	)	<u>RE APPLICATION NO. 15-7025</u>
_____		)

COMES NOW St. John Irrigating Company, by and through its counsel, and protests against the approval of the application for water permit in the above matter.

The name and address of protestant is as follows:
St. John Irrigating Company, Malad City, Idaho 83252.

This protest is made upon the grounds and for the reason that the water permit sought in the above application would interfere with the prior existing right of this protestant to the use of the waters of Dairy Creek and its tributaries and sources including those from which the applicant seeks to divert or use water.

DATED this 25 day of February, 1976.

RACINE, HUNTLEY & OLSON, CHARTERED

By: *D. James Manning*
D. James Manning
Attorneys for St. John Irrigating Co.

LOUIS F. RACINE, JR.
ROBERT C. HUNTLEY, JR.
WILLIAM D. OLSON

D. JAMES MANNING, JR.
W. MARCUS W. NYE
GARY L. COOPER

LAW OFFICES OF
Racine, Huntley & Olson, Chartered

CENTER PLAZA - CORNER FIRST STREET
POST OFFICE BOX 1391
POCATELLO, IDAHO 83201
TELEPHONE (208) 232-6101

February 25, 1976

REC-1

FEB 26 1976

Department of Water Resources
Eastern District Office

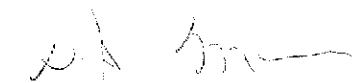
Director, Idaho Dept. of Water Resources
c/o Ron D. Carlson, District Engineer
1515 Lincoln Road
Idaho Falls, Idaho 83401

Re: Application of Lorraine and Claude Kent
Trust for Permit

Dear Mr. Carlson:

Herewith for filing in the above matter Protest of St. John Irrigating
Company.

Very truly yours,



D. JAMES MANNING

DJM: gma
Enclosure



STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
EASTERN DISTRICT

Cecil D. Andrus
Governor

R. Keith Higginson
Director

February 20, 1976

1515 Lincoln Road
Idaho Falls, Idaho 83401
(208) 523-7186

RE: Application for Permit No. 15-7025

Mr. J. W. Crowther, Attorney
60 North Main
Malad City, Idaho 83252

Dear Mr. Crowther:

This is to acknowledge receipt of your protest to issuance of a permit pursuant to the above referenced application. The following are the principle items we can consider at a conference and/or hearing 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?

The Department may reject an application and refuse issuance of a permit, partially approve the permit, approve the permit for a quantity of water less than applied for, or approve the permit subject to special conditions.

A permit issued by this office is subject to all prior water rights and does not in any way convey or establish a right-of-way over private or governmental lands. Any right-of-way or easement must be obtained by the individuals concerned through action outside of the water right proceedings.

You will be notified at a later date as to the time and place set for conference and/or hearing to discuss the matters of protest. If we may be of further assistance, please contact us.

Very truly yours,

RONALD D. CARLSON
Supervisor,
Eastern Region

RDC:cw

cc: IDWP - State Office



STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
EASTERN DISTRICT

Cecil D. Andrus
Governor

February 20, 1976

1515 Lincoln Road
Idaho Falls, Idaho 83401
(208) 523-7186

R. Keith Higginson
Director

Ms. Lorraine Kent
2223 Oak Trail Drive
Idaho Falls, Idaho 83401

RE: Application for Permit No. 15-7025

Dear Ms. Kent:

We have enclosed a copy of the protest filed against the issuance of a permit pursuant to your Application No. 15-7025. You should be aware that the following are the principal items we can consider at a conference and/or hearing 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?

The Department cannot allow a permit for irrigation purposes which would entail the use of more than a continuous flow of 0.02 cubic feet per second of water for each acre of land, or an annual amount of 5 acre feet for each acre of land, unless the applicant can show that more is required (Section 41-202, Idaho Code).

A permit issued by this office is subject to all prior water rights and does not in any way convey or establish a right-of-way over private or governmental lands. Any right-of-way or easement must be obtained by the applicant through action outside of the water right proceedings.

You will be notified at a later date as to the time and place set for a conference and/or hearing to discuss the matters of protest. Legal counsel is not mandatory at any proceeding before the Department, although you may desire to employ an attorney in your behalf.

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

Very truly yours,

RONALD D. CARLSON
Supervisor,
Eastern Region

RDC: CW

cc: IDWR - State Office

RECEIVED

FEB 18 1976

J. W. CROWTHER

ATTORNEY AT LAW

Department of Water Resources
Eastern District Office

60 NORTH MAIN MALAD CITY, IDAHO
PHONE 788-2644

February 18, 1976

Idaho Department of Water Resources
1515 Lincoln Road
Idaho Falls, Idaho 83401

Re: Claim of Lorraine Kent & the
Claude Kent Trust

Gentlemen:

Enclosed please find two affidavit of protests to be
filed with your agency.

Yours very truly,

J. W. Crowther
J. W. Crowther

JWC/lec
cc

RECEIVED

FEB 26 1976

Department of Water Resources
Eastern District Office

D. James Manning
RACINE, HUNTLEY & OLSON, CHARTERED
Attorneys at Law
Center Plaza; P. O. Box 1391
Pocatello, Idaho 83201
Telephone: (208) 232-6101

Attorneys for St. John Irrigating Company

BEFORE THE STATE OF IDAHO,

DEPARTMENT OF WATER RESOURCES

Application of Lorraine	)	
Kent and Claude Kent Trust	)	<u>PROTEST</u>
for Permit.	)	<u>RE APPLICATION NO. 15-7025</u>
_____	)	

COMES NOW St. John Irrigating Company, by and through its counsel, and protests against the approval of the application for water permit in the above matter.

The name and address of protestant is as follows:
St. John Irrigating Company, Malad City, Idaho 83252.

This protest is made upon the grounds and for the reason that the water permit sought in the above application would interfere with the prior existing right of this protestant to the use of the waters of Dairy Creek and its tributaries and sources including those from which the applicant seeks to divert or use water.

DATED this 25 day of February, 1976.

RACINE, HUNTLEY & OLSON, CHARTERED

By: D. James Manning
D. James Manning
Attorneys for St. John Irrigating Co.

RECEIVED

FEB 18 1976

BEFORE THE DIRECTOR OF IDAHO DEPARTMENT
OF WATER RESOURCES
Idaho Falls, Ida

Department of Water Resources
Eastern District Office

RE: Claim of Lorraine Kent & the)
Claude Kent Trust)
Water Right No. 15-7025)
)
)

AFFIDAVIT OF PROTEST

Comes now Clarence Kent who, after being first duly sworn, deposes and says: My name is Clarence Kent. I do hereby file objection and protest to the above referenced application on the following grounds:

1. All waters tributary to Dairy Creek arising within Section 23, Township 11 South, Range 34 EBM, Oneida County, have been previously appropriated and have been continuously used by this objector and his predecessor in interest at least since 1928.
2. All of said waters are now incorporated in a sprinkler irrigation system of this objector.
3. Granting of applicants' application would seriously deplete the waters used in the said sprinkler irrigation system to the extent that he would suffer irreparable damage and loss through diminished water flow.

Dated this 17th day of February, 1976.

STATE OF IDAHO
County of Oneida, ss

Clarence Kent
Clarence Kent

On this 17th day of February, 1976, before me Laura E. Crowther, Notary Public, personally appeared Clarence Kent known to me to be the person whose name is subscribed to the within

instrument and acknowledged to me that he is the person who 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.

Notary Public

Residing at: Malad, Idaho

BEFORE THE DIRECTOR OF IDAHO DEPARTMENT
OF WATER RESOURCES
Idaho Falls, Ida

RE: Claim of Lorraine Kent & the)
Claude Kent Trust) AFFIDAVIT OF PROTEST
Water Right No. 15-7025)
)
)

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2. All of said waters are now incorporated in a sprinkler irrigation system of this objector.
3. Granting of applicants' application would seriously deplete the waters used in the said sprinkler irrigation system to the extent that he would suffer irreparable damage and loss through diminished water flow.

Dated this 17th day of February, 1976.

STATE OF IDAHO
County of Oneida, ss

Clarence Kent
Clarence Kent

On this 17th day of February, 1976, before me Laura E. Crowther, Notary Public, personally appeared Clarence Kent known to me to be the person whose name is subscribed to the within

instrument and acknowledged to me that he is the person who 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.

Notary Public

Residing at: Malad, Idaho

February 6, 1976

RE: Application for Permit No. 15-7025

The Idaho Enterprise
P.O. Box 205
Malad City, Idaho 83252

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 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.

An affidavit of publication must be submitted to the Department along with the publication bill.

Very truly yours,

RONALD D. CARLSON
Supervisor,
kEastern Region

Bill submitted 2-24-76 by AC

RDC:ME

Legal ~~BY~~ Notice (1)

RECEIVED

NOTICE OF APPLICATION FOR WATER PERMIT

Notice is hereby given that Lorraine Kent & the Claude Kent Trust,
Idaho Falls, Idaho

~~have~~
~~has~~ on 2-05-76 submitted Application No. 15-7025
for a permit to appropriate 0.80 cubic feet per second ~~XXXXXXXXXXXXXXXXXXXX~~
of water from an unnamed spring tributary to Dairy Creek
by means of ditch and pump
within the SW $\frac{1}{4}$ NE $\frac{1}{4}$, Sec. 23, T. 11S, R. 34E, B.M., Oneida County;

to be used from Apr. 1 to Nov. 1
for the irrigation of 40 acres

within the ~~XXXXXXXXXXXXXXXXXXXX~~ SW $\frac{1}{4}$ NE $\frac{1}{4}$, SE $\frac{1}{4}$, Sec. 23, T. 11S, R. 34E, B.M.

If issued, this permit will be subject to all prior water rights. Protests
against the granting of the permit must be filed with the Idaho Department of
Water Resources, 1515 Lincoln Road, Idaho Falls, Idaho, 83401 on or before _____
March 1, 1976.

R. KEITH HIGGINSON

Director

Published in the Idaho Enterprise, Malad City, Idaho

on February 12 and February 19, 1976.

*CW-L
CW-H*

RECEIVED

NOV 21 1975

APPENDIX "A"

Department of Water Resources
Eastern District Office

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE STATE
OF IDAHO, IN AND FOR THE COUNTY OF ONEIDA.

ST. JOHN IRRIGATING COMPANY,
a corporation,
Plaintiff,

vs.

ASA H. DANFORTH, H.O. KENT,
MARVIN A. BUTLER and
JAMES BURNHAM,
Defendants.

DECREE

State of Idaho }
County of Oneida } ss.
I hereby certify that the foregoing is a full, true and
Original
in the matter of the Decree of
Witness my hand and the seal of said Court
12th day of Nov. 1975
Barbara Cotton
Clerk

This cause came regularly on for trial before the Court without
a jury on the 12th day of June 1928, at Palad, Oneida County,
Idaho. Jones, Pomeroy & Jones, attorneys at law, appeared for and on
behalf of the plaintiff. Merrill & Merrill, attorneys at law, appeared
for and on behalf of the defendants and cross-complainants, ss. H.
Danforth and Marvin A. Butler. Thomas & Andersen, attorneys at law,
appeared for and on behalf of the defendants and cross-complainants,
H.O. Kent and James Burnham. Evidence was introduced by and on behalf
of the respective parties upon the issues framed by the complaint
of the plaintiff and the answer and cross-complaint of the defendants
and cross-complainants, Asa H. Danforth and Marvin A. Butler, and also
the answer and cross-complaint of the defendants, H.O. Kent and James
Burnham, and the answer of the plaintiff and cross-defendant to each
of said cross-complaints. After the introduction of the evidence,
said cause was argued and briefed by the respective parties and sub-
mitted to the Court for decision, and the Court having heretofore
made and filed its findings of fact and conclusions of law in writing
constituting the decision of the Court in this cause,
WHEREUPON IT IS ORDERED, ADJUDGED AND DECREED, that the plaintiff
take nothing by reason of its complaint but that the same be dismissed.

as to each and all of the defendants herein.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED, that the defendant and cross-complainant, Asa H. Danforth, is hereby declared to be the owner, subject only to a contract interest in the cross-complainant Marvin A. Butler, of the right to the perpetual use of the waters of that certain more northerly spring at the head of Sheep Creek located in the Southwest quarter of the Northeast quarter of Section Twenty-three (23), in Township Eleven (11) South, Range Thirty-four (34) East, Boise Meridian, for irrigation and domestic purposes to the extent of one-half cubic foot of water per second of time, with priority dating from June 1st, 1915, and with point of diversion located at said spring in the said Southwest quarter of the Northeast quarter of Section Twenty-three (23), Township Eleven (11) South, Range Thirty-four (34) East, Boise Meridian, and that the use of said waters be and the same hereby are made appurtenant to the following described land situated in Oneida County, Idaho, to-wit:

The West Half of the Northwest quarter (W $\frac{1}{2}$ N $\frac{1}{2}$ W $\frac{1}{2}$) of Section Twenty-four (24), the South Half of the Northeast quarter (S $\frac{1}{2}$ NE $\frac{1}{4}$), the North Half of the Southeast quarter (N $\frac{1}{2}$ SE $\frac{1}{4}$), and the North Half of the Southwest quarter (N $\frac{1}{2}$ SW $\frac{1}{4}$) of Section Twenty-three (23), Township Eleven (11) South, Range Thirty-four (34) East, Boise Meridian.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED, that the defendants and cross-complainants, Henry O. Kent and James Burnham, be and they are hereby decreed to be the owners of the right to the perpetual use of the waters of that certain more southerly spring at the head of Sheep Creek located in the Southeast quarter of the Northeast quarter of Section Twenty-three (23), in Township Eleven (11) South, Range Thirty-four (34) East, Boise Meridian, for irrigation and domestic purposes, to the extent of five-tenths of a cubic foot of water per second of time, with priority dating from June 1st, 1914, and with point of diversion located at said spring in the said Southeast

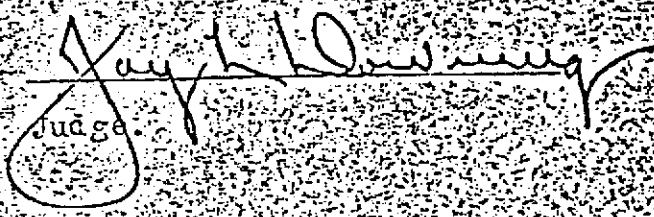
Quarter of the Northeast Quarter of Section Twenty-three (23), Township Eleven (11) South, Range Thirty-four (34) East, Boise Meridian, and that the use of said water be and the same is hereby made apportioned to the following described land situated in Oneida County, Idaho, to-wit:

The South Half of the Northeast Quarter (S $\frac{1}{2}$ NE $\frac{1}{4}$), the North Half of the Southeast Quarter (N $\frac{1}{2}$ SE $\frac{1}{4}$), the South Half of the Southeast Quarter (S $\frac{1}{2}$ SE $\frac{1}{4}$), of Section Twenty-four (24), and the North Half of the Northeast Quarter (N $\frac{1}{2}$ NE $\frac{1}{4}$), of Section Twenty-five (25), Township Eleven (11) South Range Thirty-four (34) East, Boise Meridian.

IT IS FURTHER ADJUDGED AND DECREED that the title to the use of said waters be quieted in said respective defendants and cross-complainants in the amounts and from the sources aforesaid, free from any claim of the plaintiff whatsoever and that the plaintiff be forever debarred and enjoined from in any manner interfering with the free, lawful and complete use of the said waters by the said defendants and cross-complainants and each of them.

IT IS FURTHER ADJUDGED that the defendants and cross-complainants have and recover of and from the plaintiff herein their necessary costs and disbursements incurred in this action hereby taxed in the sum of

Dated this 29 day of March, 1929.


Judge.

DEPARTMENT OF WATER RESOURCES
- STAFF ANALYSIS -

Item Initial Date

Application No. _____

- ☒ Source
☒ Point of Diversion
☒ County
☒ Quantity of Water and Period of Use
☒ Description of Diverting Works
☒ Time required for B/U of water
☒ Place of Use or Acres Irrigated
☒ Map
☒ Signature
☒ Fee

(1) MAH 2/6/76

In form to receipt

(2) MAH 2/6/76

Send Copies to:

- _____
Idaho State Health Department

Idaho Fish and Game Department

Bureau of Land Management

N/A

(3) MAH 2/6/76

- _____
Request Special Use Permit from U.S.F.S.

Request Easement from B.L.M.

Request Information from Applicant

N/A

(4) MAH 2/6/76

In form for advertising

(5) MAH 2/6/76

Platted on Map No. T115, R34 E

(6) MAH 2/6/76

Located within Water District No. N/A

(7) MAH 2/6/76

Critical groundwater area: yes _____ no X

(8) MAH 2/6/76

Groundwater levels: N/A

Declining, _____ Stable, _____ Increasing

(comment) _____

(9) MAH 2/6/76

Cat Other rights on the same place of use None none

(10) MAH 2/6/76

Comments: None

(11) EW 2-24-76

Affidavit of Publication received (date) 2-24-76

(12) EW 2-19-76

Final date for protests March 1, 1976

Protests received: yes V no _____

(13) RDC 4/11/77

All requested information received from agencies or applicant: yes _____ no _____

(14) LL LL

Action recommended:

V Approve

Deny

2/5/76 Proposed Priority

Reason for Reduction

V Measuring device required

V See attached sheet for other conditions of approval

No special conditions for approval

(15) District E

By RDC

Date 4/11/77

15-7025, 15-7026
15-7029, 15-7030
Combined M.D.

copy
date
4/11/77