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 Receipt No. C032136
 Receipt By: RT
 Date Received: 2-13-95

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

RECEIVED
FEB 13 1995

PROOF OF BENEFICIAL USE Department of Water Resources

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

1. Permit No. 13-07377 Telephone No. 801-563-5467
2. Name(s) of Permit Holder(s): Evan O. Koller
3. Mailing Address: 12693 N 5800 W Cornish, Utah 84320
4. Source of Water: Un-named Drains If **GROUNDWATER** (well), Date Drilled: mo. _____ / yr. _____
- a. Well Driller: _____ Drilling Permit Number: _____ - _____ - _____
- b. **OPTIONAL:**
Pump Horsepower: _____ Pressure (psi): _____ Dynamic pumping level (ft): _____
5. Use(s) (as authorized by the water right permit):

Domestic (No. of households): _____ Stockwater (No. and type of stock): Wildlife, Elk, Deer
Irrigation (No. of acres): 240 Other: Drinking Water, Service Equip, Sprayers
6. Total rate of diversion and/or volume for which proof is submitted: Note Below cfs OR _____ acre feet
7. Measuring Device Requirement: (refer to the approval conditions on your permit and respond accordingly)
(This question is not optional. Please check either yes or no. Proofs returned not checked accordingly, will be considered incomplete)
- Measuring Device: Is a measuring device required? Yes _____ or No X
Has the measuring device been installed? Yes _____ or No _____
- Flow Measurement Port: Is a flow measurement port required? Yes _____ or No X
Has the measurement port been installed? Yes _____ or No _____
8. Fee Enclosed: \$ 100.00 (See Fee Schedule on back of the instructions for filing proof of beneficial use)
9. Person to contact to accompany the Department representative during field examination of the water system.
Name: Evan O. Koller Telephone Number: 801-563-5467
Address: 12693 N 5800 W Cornish, Utah 84320

10. The information given on this form is my true statement of the extent to which the above numbered permit has been developed and I relinquish any undeveloped portion of the permit to the State of Idaho.

MAR 22 1995

Signature of permit holder: Evan O. Koller Date: 9 FEB 95
(Include your title, if on behalf of company or organization)

Note: There are a 6" pipe and a 4" pipe flowing into a reservoir that are easily measured by bucket. The flow is 30 gpm now but has changed greatly over the years.

RECEIVED

JAN 7 1993

Department of Water Resources

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCESFor Office Use Only
\$15 Fee Received by [Signature]
Date 1-7-93
Receipt No. 0226463

REQUEST FOR EXTENSION OF TIME

TO PROVIDE ADDITIONAL TIME IN WHICH TO SUBMIT PROOF OF
BENEFICIAL USE FOR A WATER RIGHT PERMIT

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

Permit No. 13-o7377Name(s) of Permit Holder: EVAN O. KOLLERMailing Address: P.O. BOX 31, CORNISH, UT 84308Date Proof is Due March 1, 1993Telephone No. 801-563-5467

Describe what work has been completed toward the development of this water right:

(This must be filled out! If no work has been completed, show "none".) Drains and storage ponds have been constructed, rebuilt and maintained from floods, a lawsuit was completed regarding drainage rights and another started last summer but put on hold due to political constraints, (The man's brother was on the county commission which was involved but he is no longer a commissioner and it is not expected they will be much involved hereafter). During October and November of 1992 additional work in the amount of \$18,760.37 was done on this project. Further work is necessary but the weather stopped it last fall.

Costing \$ _____

The permit holder(s) has been unable to complete the remainder of the work for the following reasons: 1. We don't know for sure what the extent of the problems and possibilities are. Areas that were always dry turned swampy and then dry again. flows changed dramatically. Evidence indicates another lawsuit with Mr. Buttars is required to resolve issues. A copy has been received of a protest by Mr. Charles Buttars of this application. The info contained therein is erroneous and apparently a lawsuit will be required and is contemplated to resolve the matter. This will have an impact on design. 2. My brother's family who own the property across the road are considering selling. If we purchase the property the design will change greatly.

Permit holder(s) request an extension to March 1, 19 98.

FEE: \$15.00

Evan O. Koller
(Signature)* Evan O. Koller

*If other than permit holder, Power of Attorney must be supplied.

ACTION OF THE DEPARTMENT OF WATER RESOURCES

IT IS HEREBY ORDERED that the above request for extension of time be APPROVED and the time within which to submit proof of beneficial use is extended to March 1, 1995.

JAN 21 1993

Signed this 11th day January, 19 93[Signature]
Chief, Water Allocation Bureau

ACTION REQUIRED

FROM: KAREN L GUSTAFSON

1/8/93

TO: FILE NO. 13-07337

Note - a protest has been filed against issuance of a license on this permit. Before the Department issues a license, and if the controversy has not been resolved, the Department will need to conduct a hearing to settle the matter. The hearing should be held if & when the proof of beneficial use has been filed.

JAN 21 1993

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

JAN 19 1988

REQUEST FOR EXTENSION OF TIME

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

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

Permit No. 13-7377

Name(s) of Permit Holder: Koller, Evan O.

Post Office Address: P.O. Box 31 Cornish, Utah 84308

Telephone No. 801-563-5888

Date Proof is Due: Jan-March 1988

Describe what work has been completed toward the development of this water right: Earthmoving construction

(This must be filled out! If no work has been completed, show "none".)

valued at \$11,040 has been done on this project to store water but this has been impaired by flooding from upstream. We have done much upstream flood control over the years with \$7,940

being done this fall. The whole area has developed swamps with cattails on portions of it.

New flows from as far away as 2 miles upstream have developed and run down through our dams.

After running for 4 years they dried up this year. The area we need to drain has increased

about 600 %. Cattails grew where there had been a homesite, barns and corrals since this area

was settled. The area started to dry up a little this year and we spent two days on it with a

back hoe this fall but the weather shut us out.

Costing \$

The permit holder(s) has been unable to complete the remainder of the work for the following reasons: Much of the area we were going to irrigate turned into a swamp. A neighbor upstream with property in the middle of us, filed a law-suit against us over water running across his property and we spent 5 years in litigation over it. He lost the case but he has now diverted the drainage. The area started to dry up some this year. This has turned into a nightmare but we are still working at it.

A copy of the recorded lawsuit judgement is enclosed.

Permit holder(s) request an extension to Jan 20, 1993.
(1 yr. minimum)

Evan O. Koller
(Signature)*

FEE: \$15.00

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

ACTION OF THE DEPARTMENT OF WATER RESOURCES

JUN 16 1988

IT IS HEREBY ORDERED that the above request for extension of time be APPROVED and the time within which to submit proof of beneficial use is extended to March 1, 1993.

Signed this 19th day of April, 19 88.

J. Glen Saxton
Chief, Operations Bureau

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
APPLICATION FOR PERMIT

APPROVED

To appropriate the public waters of the State of Idaho

1. Name of applicant Evan O. Koller Phone 801-563-5467

Post office address Box 31 Cornish, Utah 84308

2. Source of water supply Unnamed Drains which is a tributary of Sinks

3. Location of point of diversion is NE $\frac{1}{4}$ of SE $\frac{1}{4}$ of Section 23 Township 16S

Range 38E B.M. Franklin County, additional points of diversion if any: SE¹ SE¹ SEC 23 T16S R38E

4. Water will be used for the following purposes:

Amount 0.80 for IRRIGATION purposes from April 1 to Nov 1 (both dates inclusive)
(cfs or acre-feet per annum)

Amount _____ for _____ purposes from _____ to _____ (both dates inclusive)
(cfs or acre-feet per annum)

Amount _____ for _____ purposes from _____ to _____ (both dates inclusive)
(cfs or acre-feet per annum)

Amount _____ for _____ purposes from _____ to _____ (both dates inclusive)
(cfs or acre-feet per annum)

5. Total quantity to be appropriated:

a. 0.80 cubic feet per second and/or b. _____ acre-feet per annum.

6. Proposed diverting works:

a. Description of ditches, flumes, pumps, headgates, etc. Tile drains discharging
into two small reservoirs

b. Height of storage dam 7 feet, active reservoir capacity 5 acre-feet; total reservoir capacity 5 acre-feet, materials used in storage dam: _____

Period of year when water will be diverted to storage Jan 1 to Dec 31 inclusive.
(Month/Day) (Month/Day)

c. Proposed well diameter is _____ inches; proposed depth of well is _____ feet.

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

8. Description of proposed uses:

a. If water is not for irrigation:

(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: _____ horsepower 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) water is to be used for other purposes describe: _____

[illegible]

242

None

Evan O. Koller

Evan O. Koller

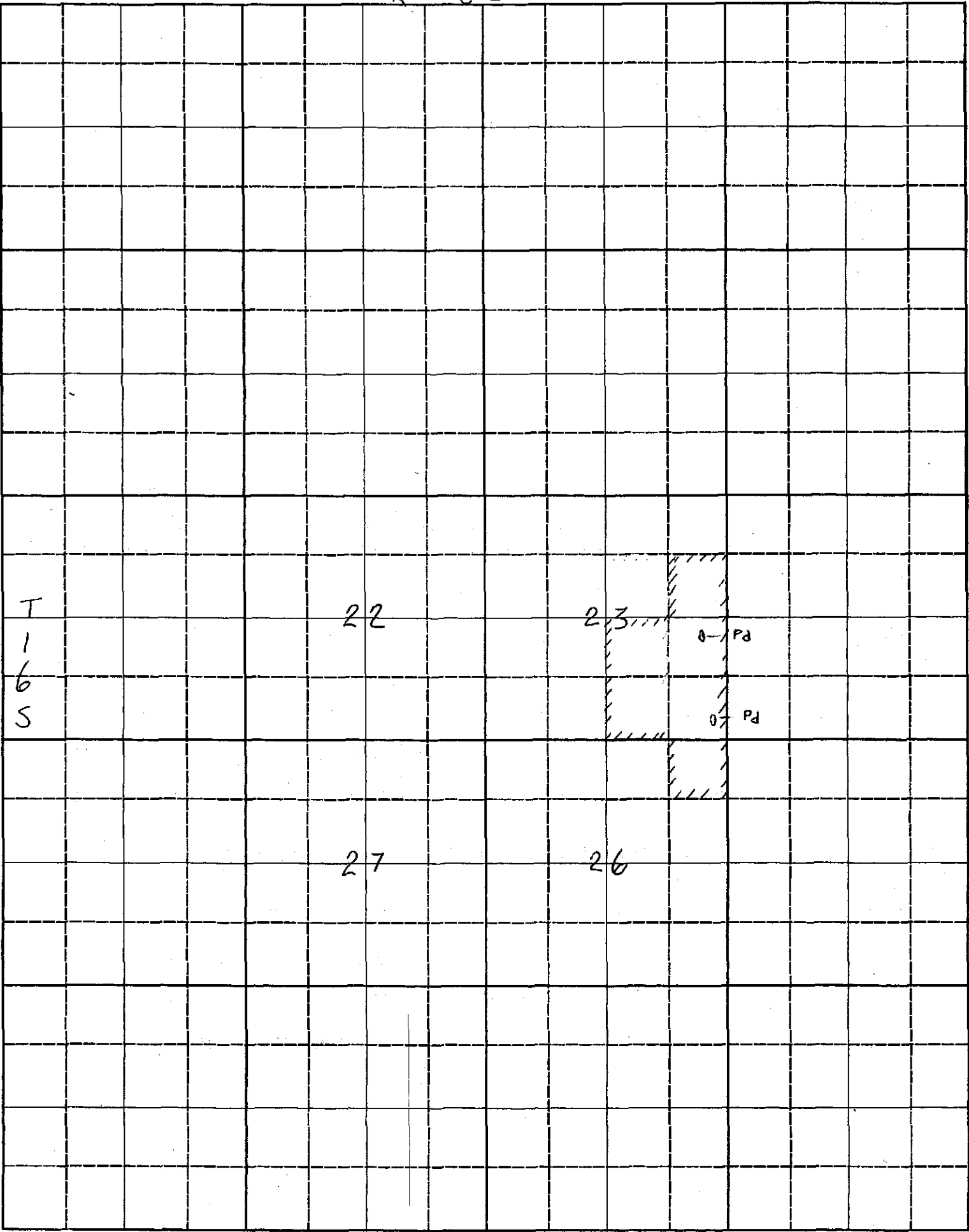
applicant to make this filing.

The plan is to drain additional

Remarks The plan is to drain additional areas & use the water for irrigating the land being drained. However if adequate water is not developed then only a portion of the land described above will be irrigated in any given year. We only anticipate being able to develop the amount shown on this application.

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

R 38 E



Scale: 2 inches equal 1 mile.

RECEIVED

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

Evan O. Koller
(Applicant)

Proposed Priority 1/18/1983

Received by Emc Date 1/18/83 Time _____

Preliminary check by HWS Fee \$ 45.00

Received by BP Date 1/20/83 # 23326

Publication prepared by BP Date 1/20/83

Published in Preston Citizen

Publication dates 2/3 - 2/10/83

Publication approved aw Date 3-7-83

Protests filed by: None

Copies of protests forwarded by _____

Hearing held by _____ Date _____

Recommended for approval denial by Emc

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. 13-7377, 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 be-

fore March 1, 19 88.

c. The rate of diversion, if water is to be used for irrigation under this permit, when combined with all other water rights for the same land shall not exceed 0.02 cubic feet per second for each acre of land.

d. Other: Permit holder shall commence the excavation or construction of diverting works within one year of the date this permit is issued and shall proceed diligently until the project is complete.
An access port or other device as specified by the Department shall be installed by the permit holder to provide for the installation of measuring equipment and the determination of the rate of diversion by the Department.

Witness my hand this 23rd day of March, 1983.

Chief, Operations Bureau

J. Allen Saylor

#875 FEB 28 1983

No 1780

AFFIDAVIT OF PUBLICATION

STATE OF IDAHO, }
County of Franklin } ss.

J. Walter Ross

being duly sworn,

deposes and says:

That he is the Co-Publisher of THE PRESTON CITIZEN, a weekly newspaper published at Preston, in the County of Franklin and State of Idaho; that said paper has been and is in general circulation in the county aforesaid, and in the vicinity of Preston; that the advertisement, a copy of which is attached hereto, was published in said newspaper once a week for 2 consecutive weeks in the regular and entire issue of said paper during the period of time of publication, and was published in the newspaper proper and not a supplement; that said paper has been established and regularly published for more than seventy-eight consecutive weeks prior to the date of first publication of said advertisement.

Such notice was published in the issue beginning with

Feb. 3, 1983, and ending

with the issue of Feb. 10, 1983.

[Signature]

Fee \$ 1563

Subscribed and sworn to before me this 28th day

of Feb, 1983.

Notary Public, Residing at Preston, Idaho

My Commission Expires June 7, 1986

NOTICE OF APPLICATION
FOR WATER RIGHT

The following application(s) have been filed to appropriate the public waters of the State of Idaho:

13-7377

KOLLER, EVAN O.
BOX 31, CORNISH, UT 84308
Source: UNNAMED DRAINS Trib. to SINKS

Date Filed: 01/18/1983
Diversion Pt: NESE SESE Sec 23 T 16S R 38E

Use: IRRIGATION (0.80 CFS)
In: SENE NESE NWSE SWSE SESE Sec 23 T 16S R 38E NENE Sec 26 T 16S R 38E FOR 240 ACRES

The permit(s) will be subject to all prior water rights. Protests must be filed with the Director, Dept. of Water Resources, 150 Shoup Ave., Suite 15, Idaho Falls, Idaho 83402 on or before FEBRUARY 21, 1983.

KEN DUNN, Dir.

Published 2/3 & 2/10/83.
Legal No. 1780 -25L- Published February 3, 10, 1983.

PRESTON

MAR
Department of Water Resources
Eastern District Office

**ANALYSIS SHEET
FOR
PROOF OF BENEFICIAL USE**

Permit No. B-07377 Reviewed by [Signature] Date 3-2-95

GENERAL CONSIDERATIONS

yes Name same as permit?
no Address same as permit?
yes Proof timely received?
If not, complete calculation below.

TYPES OF USE

Irr., stock

Correct Uses? yes

SOURCE OF WATER

✓ Surface water source

 Ground water source

 Drilling permit required?

 Copy in the file? Drilling Permit No.

 Amount paid for permit Correct?

 Well log in the file?

LICENSE EXAMINATION FEE

yes Required?
100.00 Amount Submitted
yes Correct?

MEASURING DEVICE

no Required?
 Installed?
 Waiver requested?

PRIORITY CALCULATION

Date proof received	<u> </u>	<u> </u>
Date proof due	<u> </u>	<u> </u>
No. of days late	<u> </u>	<u> </u>
Priority Date	<u> </u>	<u> </u>
New Priority Date	<u> </u>	<u> </u>

DEFICIENCIES OR ACTION ITEMS

Proof acceptable

DATA ENTRY

New Address 12693 N 5800 W
Cornish, UT 84320

Proof Made 2-13-95



State of Idaho

DEPARTMENT OF WATER RESOURCES

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

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

PHILIP E. BATT
GOVERNOR

R. KEITH HIGGINSON
DIRECTOR

March 2, 1995

EVAN O KOLLER
12693 N 5800 W
CORNISH UT 84320

PROOF ACKNOWLEDGEMENT LETTER

RE: PERMIT NO. 13-07377

Dear Permit Holder:

The department acknowledges receipt of the proof of beneficial use form submitted for the above referenced permit.

The next step in the process of developing a water right is for the department to conduct a field examination to determine and confirm the use being made of the water.

If you have questions concerning this matter, please feel free to contact the EASTERN Regional Office in Idaho Falls, at (208) 525-7161.

Sincerely,

JULIE L. YARBROUGH
Senior Secretary

c: IDWR - Region

MAR 2 8 1995



State of Idaho

DEPARTMENT OF WATER RESOURCES

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

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

PHILIP E. BATT
GOVERNOR

R. KEITH HIGGINSON
DIRECTOR

February 28, 1995

Evan O. Koller
12693 N 5800 W
Cornish, UT 84320

RE: Permit No. 13-07377

Dear Permit Holder:

I am returning the Proof of Beneficial Use form along with the fifty dollar (\$50.00) license exam fee you submitted for the irrigation of 3-5 acres and wildlife use. I have been unable to locate a water right for this use. I have accepted the Proof of Beneficial Use for Permit No. 13-07337 and I am in the process of reviewing the form.

I have begun the process to refund the fifty dollar (\$50.00) exam fee for the returned proof. The refund should arrive within seven (7) to ten (10) days under separate cover.

If you have any questions or if I can be of any assistance, please do not hesitate to contact me at (208)327-7900.

Sincerely,

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

JULIE L. YARBROUGH
Senior Secretary

Enclosure

cc: Fiscal

RECEIVED
MAR 2 1995

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

RECEIVED

FEB 13 1995

PROOF OF BENEFICIAL USE

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

1. Permit No. _____ Telephone No. 801-563-5467

2. Name(s) of Permit Holder(s): Evan O. Koller

3. Mailing Address: 12693 N 5800 W Cornish, Utah 84320

4. Source of Water: Un-named seep If **GROUNDWATER** (well), Date Drilled: mo. _____ / yr. _____

a. Well Driller: _____ Drilling Permit Number: _____ - _____ - _____

b. **OPTIONAL:**

Pump Horsepower: _____ Pressure (psi): _____ Dynamic pumping level (ft): _____

5. Use(s) (as authorized by the water right permit):

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

Irrigation (No. of acres): 3-5 Other: Service the 320 acre farm. Wildlife.

6. Total rate of diversion and/or volume for which proof is submitted: 0.045 cfs OR _____ acre feet

7. Measuring Device Requirement: (refer to the approval conditions on your permit and respond accordingly)

(This question is not optional. Please check either yes or no. Proofs returned not checked accordingly, will be considered incomplete)

Measuring Device: Is a measuring device required? Yes _____ or No X
Has the measuring device been installed? Yes _____ or No X

Flow Measurement Port: Is a flow measurement port required? Yes _____ or No X
Has the measurement port been installed? Yes _____ or No _____

8. Fee Enclosed: \$ 50.00 (See Fee Schedule on back of the instructions for filing proof of beneficial use)

9. Person to contact to accompany the Department representative during field examination of the water system.

Name: Evan O. Koller Telephone Number: 801-563-5467

Address: _____

10. The information given on this form is my true statement of the extent to which the above numbered permit has been developed and I relinquish any undeveloped portion of the permit to the State of Idaho.

Signature of permit holder: Evan O. Koller Date: 9 FEB 95
(include your title, if on behalf of company or organization)

December 31, 1994

EVAN O. KOLLER
BOX 31
CORNISH UT 84308

PROOF DUE NOTICE

RE: PERMIT NO. 13-07377

Dear Permit Holder:

One of the conditions of approval of the above referenced water permit was that proof of the extent of your beneficial use must be submitted to this office on or before March 1, 1995.

(See last page of your approved permit or your last approved extension request.) Enclosed is a form which when accompanied by the license examination fee or a complete field examination report prepared by a certified water right examiner may be used to submit the required proof.

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

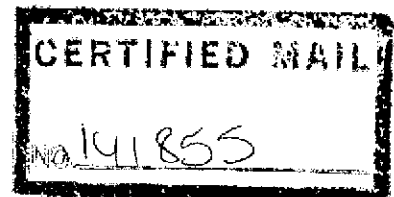
Either an acceptable proof of beneficial use submittal or an acceptable request for an extension of time must be received by this department on or before the above described proof due date. If neither is received, the department will send you a lapse notice. Within sixty (60) days of the mailing of the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

SINCERELY,

JULIE L. YARBROUGH
Senior Secretary

Enclosures

RECEIVED
MAR 2 1995





State of Idaho

DEPARTMENT OF WATER RESOURCES

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

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

CECIL D. ANDRUS
GOVERNOR

R. KEITH HIGGINSON
DIRECTOR

January 11, 1993

Evan O Koller
PO Box 31
Cornish, UT 84308

Re: Permit No. 13-07377

Dear Permit Holder:

Enclosed is a copy of the approved request for extension of time. The time within which to submit proof of beneficial use is extended to March 1, 1995. Please note that the department has granted this extension based on due diligence. It is important that you work diligently toward the completion of this project during the construction period allowed. The department may not be able to grant additional requests.

The Department also wants to inform you that a protest against issuance of a license has been filed with the Department by Charles Buttars. The Department will hold a hearing in connection with this protest when proof of beneficial use is filed and if the controversy has not been resolved in some manner.

If you have any questions or if I can be of any further assistance, please feel free to contact this office.

Sincerely,

Karen L. Gustafson
Secretary/Records Manager

Enclosure

C: IDWR-Regional Office
Charles Buttars

RECEIVED
JAN 14 1993

JAN 21 1993

ANALYSIS SHEET
FOR
EXTENSION OF TIME

Permit No. 13-07337 Reviewed by Klg Date 1/8/93

BASIC INFORMATION

1/7/93 Date stamp received
yes Extension received timely
yes Fee received and receipted
yes Name and signature same as permit
no Address Change

BASIS FOR EXTENSION REQUEST

yes Has adequate work been completed to demonstrate due diligence?
Has the permit been involved in litigation?
Is supporting documentation needed to complete the file? _____ Requested? _____
Is delay by a government agency?
Is supporting documentation needed to complete the file? _____ Requested? _____
Is the project more than 25,000 acre feet for irrigation or 10,000 acre feet for a reservoir?

ACTION TAKEN

*Recommend for approval Based on due diligence
Extend to 3/1/95*

PRIORITY CALCULATION

Date extension received	_____	=	_____
Proof due date	_____	=	_____
Number of days late	_____	=	_____
Priority date	_____	=	_____
New Priority Date	_____	=	_____

DATA ENTRY

New Address _____
Change Proof Due Date 1/10/93
Change Priority Date _____

December 31, 1992

EVAN O. KOLLER
BOX 31
CORNISH UT 84308

PROOF DUE NOTICE

RE: PERMIT NO. 13-07377

Dear Permit Holder:

One of the conditions of approval of the above referenced water permit was that proof of the extent of your beneficial use must be submitted to this office on or before March 1, 1993. (See last page of your approved permit or your last approved extension request.) Enclosed is a form which when accompanied by the license examination fee or a complete field examination report prepared by a certified water right examiner may be used to submit the required proof.

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

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

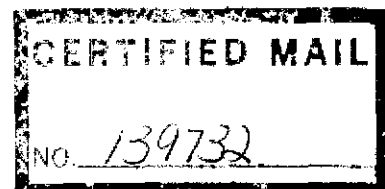
SINCERELY,

Karen L. Gustafson
Secretary/Records Manager

Enclosures

RECEIVED
JAN 8 1993

JAN 8 1993



12/31/91 - Copy to Charles Butters - see 'notice of future proceedings'

RECEIVED

DEC 14 1992

BEFORE THE DEPARTMENT OF WATER RESOURCES Department of Water Resources
OF THE STATE OF IDAHO

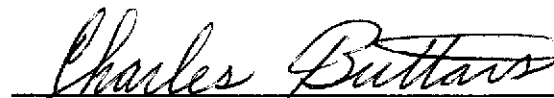
IN THE MATTER OF APPLICATION FOR)	
PERMIT TO APPROPRIATE PUBLIC)	<u>PERMIT NO. 13-7377</u>
WATERS OF THE STATE OF IDAHO)	PROTEST AND REQUEST FOR
NO. 13-7377)	NOTICE OF FUTURE PROCEEDINGS
_____)	

CHARLES BUTTARS, WHO FIRST BEING SWORN DEPOSES AND SAYS:

Comes now CHARLES BUTTARS "Protestant" and pursuant to the provisions of Section 42-224, Idaho Code, protests the issuance of any water licenses in this matter on the grounds and for the reason that there is no water available for appropriation under this permit and the information furnished by the applicant to the Department on January 1, 1988 for an extension to March 1, 1993 to submit proof of beneficial use was not a sufficient reason to grant the extension because the lawsuit reviewed by the Department's staff on April 17, 1988 and used as the basis for the extension had no bearing on this matter since that case did not involve water rights but rather drainage from the applicant's real property.

Protestant also requests notice at his address in Weston, Idaho of all further proceedings in this matter.

Dated this 11 day of ^{December} ~~November~~, 1992.



CHARLES BUTTARS
Box 62
Weston, Idaho 83286
Phone No. 208-747-3401

JAN 21 1993

Subscribed and sworn to before me a Notary Public of the State of Idaho on this 11th day of ~~November~~, 1992.
December

Carol Baker

Notary Public of the State of Idaho

Residing at: Clifton, Id.

Commission Expires: Sept. 29, 1994

CERTIFICATE OF SERVICE

The undersigned certifies that on this 11 day of ~~November~~ December, 1992, a true and correct copy of the foregoing PROTEST AND REQUEST FOR NOTICE was deposited in the U.S. Mail, first class postage prepaid, addressed to the following:

Evan O. Koller
Box 31
Cornish, Utah 84308

Charles Buttars

CHARLES BUTTARS

RECEIVED
FEB 1 1993

JAN 21 1993

MEMORANDUM

TO: File No. 13-7377 in the Name of Evan O. Koller
FROM: Gary Spackman *Gary Spackman*
DATE: October 27, 1992

RE: Extension of Time for Filing Proof

On May 6, 1992, Charles Buttars visited with me about Evan Koller's water right. Buttars alleges that no further extensions of time should be granted, and that the prior extension should not be considered as an extension granted because title to the water was not in question. Buttars requested that we inform him of the receipt of any request for extension of time, or proof of beneficial use, and withhold approval until he has an opportunity to respond to any allegations on a request for extension of time. Mr. Buttars' address is P.O. Box 62, Weston, Idaho 83286. His telephone number is 747-3401.

MEMORANDUM

TO: File No. 13-7377 in the Name of Evan O. Koller
FROM: Gary Spackman *Gary*
DATE: May 13, 1992

RE: Extension of Time for Filing Proof

On May 6, 1992, Charles Buttars visited with me about Evan Koller's water right. Buttars alleges that no further extensions of time should be granted, and that the prior extension should not be considered as an extension granted because title to the water was not in question. Buttars requested that we inform him of the receipt of any request for extension of time, until he has an opportunity to respond to any allegations on a request for extension of time. Mr. Buttars' address is P.O. Box 62 Weston, Idaho 83286. His telephone number is 747-3401.

*or proof of beneficial use,
and withhold approval*

RECEIVED
MAY 14 1992

JAN 8 1993

April 21, 1988

Evan O. Koller
P. O. Box 31
Cornish, UT 84308

Dear Mr. Koller:

Re: Permit No. 13-7377

Enclosed is a copy of the approved request for extension of time form. The time within which to submit proof of beneficial use is extended to March 1, 1993.

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

Sincerely,

RITA I. FLECK
Secretary/Records Manager

Enclosure

RECORDED

JUN 16 1988

STAFF REVIEW SHEET - EXTENSION OF TIME

Permit No. 15-7377

Reviewed by [Signature]

Date 4-19-88

BASIC INFORMATION

- Y Date stamp received
- Y Extension received timely
(not prior to 6 month before proof due date or after reinstatement period)
- Y Fee received and receipted
- Y Name and signature same as permit
- N Address change (indicate on coding sheet)

BASIS FOR EXTENSION REQUEST

- ✓ Has adequate work been completed to demonstrate due diligence?
- ✓ Has the cost incurred been adequate to demonstrate an intent to complete the project?
- Y Has the permit been involved in litigation?

- a. Swan Falls No Dismissed from Swan Falls _____
Other Yes Identify _____
- b. Is supporting documentation needed to complete the file? _____
Requested _____
- c. Calculate the period of delay

^{Proof Due}
 Date ~~litigation completed~~ March 1, 1988 3-88
 Date litigation began - March 29, 82 (4-82)
 Total period of delay = 5 yrs + 11 mo
 Present proof due date + March 1, 1988
 NEW PROOF DUE DATE = March 1, 1993

- _____ Is delay by a government agency?
- _____ Is supporting documentation needed to complete the file? _____
- _____ Requested? _____

ACTION TAKEN Recommend approval based on litigation to 3-1-1993-

Special conditions or remarks:

<u>N/A</u> Reinstatement	Date extension received _____	=	_____
	Proof due date _____	=	_____
	No. of days late _____	=	_____
	Priority date _____	=	+
	ADJUSTED PRIORITY DATE _____	=	_____

- _____ Prepare coding sheet
- _____ Change rolodex cardf

CONVERSATION MEMORANDUM

DATE _____

FILE 24-88

NAME OF PARTY _____

EMPLOYEE Beta Fleck

RE: _____

I contacted Randall Budge's office to request a copy of the original complaint. They will get back to me.

2-18-1988- I returned Budge's office phone call. They will continue looking for the information concerning the case for a day or so. Then they will get back to me.

3-29-1988 I contacted Mr. Koller to get a copy of the original complaint. He can't find one.

Called Franklin County Recorder (852-1090) for a copy. Getting a copy would be expensive; suggested I contact J.D. Williams for a copy - 852-2680.

MICROFILMED

JUN 16 1988

170602 -4

Randall C. Budge
RACINE, OLSON, NYE, COOPER
& BUDGE, CHARTERED
P. O. Box 1391
Pocatello, Idaho 83204
Telephone: (208) 232-6101

RECEIVED

JAN 19 1988

Recorded at the request of

OCT 11 1985 1:30 p.m.

CORRIE L. KELLER, RECORDER

By *W. J. Hammer* Deputy
FRANKLIN COUNTY, IDAHO

Department of Water Resources

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF FRANKLIN

CHARLES W. BUTTARS and DONNA)
BUTTARS, husband and wife,)
)
Plaintiffs,)
)
vs.)
)
EVAN O. KOLLER,)
)
Defendant.)

Case No. 4345

AMENDED JUDGMENT

The above entitled matter came on regularly for trial in the Courtroom of the above entitled Court, the Honorable William H. Woodland, District Judge, presiding. Plaintiffs appeared in person and with their attorney J. D. Williams. Defendant appeared in person and with his attorney, Randall C. Budge.

The Court having heard and reviewed the testimony and evidence presented and considered the respective Briefs filed by the parties, issued its Memorandum Decision, Findings of Fact and Conclusions of Law on December 21, 1984, finding in favor of the Defendant. The Court entered Judgment on June 17, 1985, and the parties subsequently stipulated to entry of this Amended Judgment.

RECEIVED

JUN 16 1988

NOW, THEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND
DECREED AS FOLLOWS:

1. That Plaintiffs are the owners of certain real
property located in Franklin County, Idaho, described as
follows:

SW $\frac{1}{4}$ and S $\frac{1}{4}$ of the NW $\frac{1}{4}$ of Section
23.

NW $\frac{1}{4}$ of Section 26.

East 20 rods of SE $\frac{1}{4}$ of the NE $\frac{1}{4}$
and E $\frac{1}{2}$ of SE $\frac{1}{4}$ of Section 22.

East 20 rods of NE $\frac{1}{4}$ of the NE $\frac{1}{4}$
of Section 27.

ALL in Township 16 South, Range
38 E.B.M., Franklin County, Idaho.

That Defendant is the owner of certain real property
in Franklin County, Idaho, which abutts the above described
property of Plaintiffs' on the West and is described as
follows:

S $\frac{1}{2}$ of the NE $\frac{1}{4}$ and ^{the} SE $\frac{1}{4}$, excepting
the East 20 rods thereof in Section
22.

NE $\frac{1}{4}$ of the NE $\frac{1}{4}$, excepting the East
20 rods thereof in Section 27.

S $\frac{1}{2}$ of the NE $\frac{1}{4}$ and the SE $\frac{1}{4}$ of Section
27.

ALL in Township 16 South, Range
38 E.B.M., Franklin County, Idaho.

That a boundary fence exists running North and South
which divides Plaintiffs' property from Defendant's property.

2. That the natural flow of water from Big Hollow

drainage located on Defendant's property, together with adjoining property located on the East thereof, is in a Northeasterly direction through the boundary fence dividing Plaintiffs' and Defendant's property and through Plaintiffs' property in an Easterly direction.

3. That Defendant Evan Koller, the owner of the dominant estate, has an unrestricted easement for drainage through and over Plaintiff Buttars, the owners of the servient estate, for all waters naturally flowing from Big Hollow drainage, and other adjoining property of Defendant which lies to the East thereof.

4. That Plaintiffs have no right or easement by prescription or otherwise to alter or in any way direct said natural flow from Big Hollow or Defendants' property to the East thereof away from the natural drainage and onto Defendants' property; and, further, are restrained from constructing, operating or maintaining any diversion dam, catch basin or other facility, and from plowing against the fence line and utilizing any farm practices that would alter or divert said natural drainage onto Plaintiffs' property.

5. That Defendant may construct, operate and maintain such catch basins, diversion dams and other facilities as may be necessary to maintain within the natural drainage described above all water flowing from Big Hollow and from Defendant's property to the East thereof ~~in a~~ North-

JUN 16 1988

easterly direction through the fence line dividing Plaintiffs' and Defendant's properties.

That in the area South of the point where the Big Hollow drainage intersects the boundary fence, Defendant will not change the historical, natural drainage from the location where water presently runs from Defendant's property into Plaintiffs' property.

In the area North of the point where the flows from Big Hollow intersect the boundary fence line, Defendant may add, fill and construct such catch basins, diversion dams and other facilities as may be necessary to restore and maintain the natural drainage in a Northeasterly direction through the fence line.

6. That the restraining order of March 29, 1982, issued against Defendant be and is hereby dissolved.

DATED this 3 day of ^{Oct} September, 1985.

*True copy
W. H. Woodland*

William H. Woodland

WILLIAM H. WOODLAND
District Judge

c: Randall C. Budge, Esq.
J. D. Williams, Esq.

The document is a full, true and correct copy of the original on file and of record in my office, same having been filed 10-11-85
Attest October 11, 1985
Corrie L. Keller, Clerk of the District Court of the Sixth Judicial District and for Franklin County, Idaho.
By *[Signature]*

JUN 18 1989



State of Idaho
DEPARTMENT OF WATER RESOURCES
STATE OFFICE, 1301 North Orchard Street Boise, Idaho 83706-2237 • (208) 334-4440

CECIL D. ANDRUS
Governor

R. KEITH HIGGINSON
Director

EXTENSION OF TIME

January 25, 1988

Evan O. Koller
P. O. Box 31
Cornish, UT 84308

PERMIT NO. 13-7377

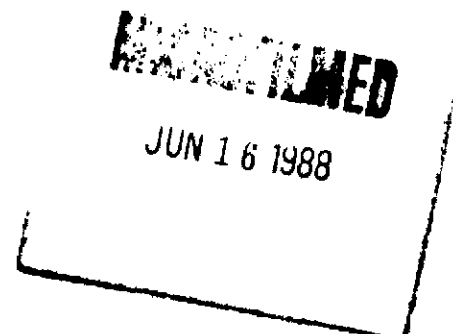
We are in receipt of the \$15 extension fee for Extension(s) of Time to provide additional time in which to submit proof of beneficial use on a water right permit.

Your request for extension(s) of time is being reviewed by staff. You will be informed of our decision when review has been completed.

Enclosed is our receipt No. 48303.

Roberta Garrett
Records Supervisor

Enclosure



138138
CERTIFIED MAIL
December 31, 1987

KOLLER, EVAN O.
BOX 31
CORNISH, UT 84308

PROOF DUE NOTICE

RE: Permit No. 13-7377

Dear Permit Holder:

One of the conditions of approval of the above referenced water permit was that proof of the extent of your beneficial use must be submitted to this office on or before March 1, 1988. (See last page of your approved permit or your last approved extension request.) Enclosed is a form which when accompanied by the license examination fee or a completed field examination report prepared by a certified water right examiner may be used to submit the required proof.

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

Either an acceptable proof of beneficial use submittal or an acceptable request for an extension of time must be received by this Department on or before the above described proof due date, or the permit will no longer be of any force nor effect.

Sincerely,

RITA FLECK
Secretary/Records Manager

Enclosures

RECORDED
JUN 16 1988

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

STATEHOUSE
BOISE, IDAHO 83720
(208) 334-4440

KOLLER, EVAN O.
BOX 31
CORNISH, UT 84308

MARCH 29, 1983

RE: PERMIT NO. 13-7377

DEAR PERMIT HOLDER:

ENCLOSED IS A COPY OF YOUR APPROVED APPLICATION FOR PERMIT. WE DIRECT YOUR ATTENTION TO THE CONDITIONS OF APPROVAL ON THE FOURTH PAGE.

BE SURE TO NOTE THE SPECIAL CONDITION REQUIRING YOU TO INSTALL A MEASURING DEVICE, OR AN ACCESS PORT TO PROVIDE FOR THE INSTALLATION OF MEASURING EQUIPMENT BY THE DEPARTMENT. ENCLOSED PLEASE FIND A LIST OF MEASURING DEVICE OPTIONS, AND SPECIFICATIONS FOR THE INSTALLATION OF THE ACCESS PORT.

THE 1982 IDAHO LEGISLATURE ADDED A REQUIREMENT THAT AS A PERMIT HOLDER YOU MUST COMMENCE THE EXCAVATION OR CONSTRUCTION OF DIVERTING WORKS WITHIN ONE YEAR OF THE DATE THE PERMIT WAS ISSUED, AND YOU MUST PROCEED DILIGENTLY UNTIL THE PROJECT IS COMPLETED. THE ENCLOSED BLUE CARD MUST BE COMPLETED AND RETURNED TO THIS OFFICE AS SOON AS YOU COMMENCE CONSTRUCTION, NO LATER THAN ONE YEAR FROM THE DATE THE PERMIT WAS APPROVED.

WE HAVE ENCLOSED INSTRUCTIONS ENTITLED "MAKING PROOF OF BENEFICIAL USE". PLEASE READ THE INSTRUCTIONS CAREFULLY SINCE YOU MUST TAKE FURTHER ACTION TO DEVELOP THIS PERMIT INTO A LICENSE.

RE: PERMIT 13-7377

PAGE 01
MARCH 29, 1983

SINCERELY,

DAVID R. TUTHILL, JR., P.E.
SUPERVISOR, WATER ALLOCATION SECTION

ENCLOSURE

State of Idaho
Department of Water Resources

APPLICATION FOR PERMIT ANALYSIS SHEET

INITIAL REVIEW BY: HWT

APPLICATION NUMBER: 13 7377

CHECK:

- ☒ Source.
☒ Point of diversion.
☒ County.
☒ Quantity of water and period of use.
☒ Description of diverting works.
☒ Time required for beneficial use of water.
☒ Place of use or acres irrigated.
☒ Map.
☒ Signature.
☒ Fee.
☒ Yes ☒ No Field check required.
☒ Yes ☒ No Critical groundwater area.
☒ Yes ☒ No Request dam safety information. Sent by: _____ Date: _____
☒ Yes ☒ No* In form to receipt.

Field check by: _____

Date: _____

Comments: _____

*REQUEST THE FOLLOWING ADDITIONAL INFORMATION FROM THE APPLICANT: _____

SEND COPIES TO:

- ☐ Idaho State Health Department.
☐ Idaho Fish and Game Department.
☐ Idaho Department of Lands.
☐ U.S. Bureau of Land Management.
☐ U.S. Forest Service.
☐ Other _____

Copies sent by: _____ Date: _____

PROCESSING:

- ☐ Yes ☒ No Platted by: _____ Map No. _____
☐ Yes ☒ No Other rights on same place of use. _____
☒ Yes ☐ No* In form for advertising.
Final date for protests: Feb. 21, 1983
☐ Yes ☒ No Protests received. If yes, record information on 4th page of application.

FINAL REGIONAL PROCESSING REVIEW:

- ☒ Affidavit of publication received. Date: 3-4-83
☒ Application published correctly. If not, record action taken: _____
☒ Fee amount, receipt date & number, recorded on application.
☒ Publication dates and paper, recorded on application.
☒ Protests, dates, withdrawal, etc., recorded on application.
☒ Recommendation & initial, recorded on application.
☒ Yes ☐ No Measuring device required. Code OIC
☒ Yes ☐ No Access port required.
☒ Yes ☐ No Will water be delivered by watermaster? If yes, what district? _____
1-12-83 Date of priority recommended.
☒ Special conditions of approval or cover letter. _____

By: Ernest Carlson

Date: March 8, 1983

STATE OFFICE REVIEW:

return receipt
SLW/LIT 103

☐ See attached sheet for more information.

By: [Signature]

Date: 3/17/83

RECEIVED

MAR 14 1983



STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
EASTERN REGION

John V. Evans
Governor

150 Shoup
Idaho Falls, Idaho 83401
(208) 525-7161

A. Kenneth Dunn
Director

February 28, 1983

RE: Claim to a Water Right No.	13-4214	HULL
	13-4215	HANSEN
	13-4216	AUGER
	13-4217	JENSEN
Application for Permit No.	13-7373	BENNETT
	13-7375	BLM
	13-7376	BOUCK
	13-7377	KOLLER
	13-7378	GRIFFETH
	13-7379	CHRISTENSEN
	13-7380	CHRISTENSEN

Preston Citizen
P.O. Box 472
Preston, ID 83263

Gentlemen:

Would you please submit an affidavit of publication and certified bill in connection with the above referenced application(s). The legal notice was to have been published in your paper on February 3 and 10, 1983.

Your cooperation in this matter is greatly appreciated.

Very truly yours,

COLLEEN WRAY
Adm. Secretary

13-7373

IDENT. NO. 13 7377

WATER RIGHT
DATA ENTRY LOG

[illegible]

13-7377-

KOLLER, EVAN O.

BOX 31, CORNISH, UT 84308

Source: UNNAMED DRAINS trib. to SINKS

Date Filed: 01/18/1983

Diversion Pt: NESE SESE Sec 23 T 16S R 38E

Use: IRRIGATION (0.80 CFS)

In: SENE NESE NWSE SWSE SESE Sec 23 T 16S R 38E NENE Sec 26 T 16S R 38E
FOR 240 ACRES