

Affidavit of Publication

STATE OF IDAHO

County of Benewah, ss.

JoJane Hammes, being first duly sworn on oath, deposes and says that she is co-publisher and business manager of the St. Maries Gazette Record, a weekly newspaper printed and published at St. Maries, Benewah County, State of Idaho; the St. Maries Gazette Record is a newspaper having general circulation in Benewah county, State of Idaho, and has been continuously and uninterruptedly published in Benewah County, State of Idaho, during a period of more than seventy-eight consecutive weeks prior to the first publication of the notice of advertisement hereon.

That the notice, of which the one hereto attached is a true copy, was published in said newspaper for a period of two issues, the first publication being on the 4th day of February, 1971, and the last on the 11th day of February, 1971.

That said newspaper was regularly distributed to its subscribers during the time of the same period; that said notice was published in the regular and entire issue of said paper.

Subscribed and sworn to before me this 12th day of February, 1971.

Notary Public in and for Benewah County, Idaho
Residing at St. Maries, Idaho

NOTICE OF APPLICATION
FOR WATER PERMIT

Notice is hereby given that William W. Brownson, Homedale, Idaho, has on January 21, 1971, submitted Application No. 92-7007 for a permit to appropriate 0.50 cubic feet per second of water from an unnamed stream, tributary to Benewah Creek by means of headgate and pipeline within the SE 1/4 NW 1/4, Sec. 34, T. 46N, R. 3W, B.M., Benewah County, to be used from April 1 to Oct. 15 for the irrigation of 20 acres (.40 cfs) and from Jan. 1 to Dec. 31 for domestic purposes (.10 cfs) within the SE 1/4 NW 1/4, Sec. 34, T. 46N, R. 3W, 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 Administration, Statehouse, Boise, Idaho, 83707, on or before February 22, 1971.

R. Keith Hugginson
Director

Published in the St. Maries Gazette Record, St. Maries, Idaho, on February 4 and February 11, 1971.

No. 3536 — Feb. 4 - Feb. 11

RECEIVED

92 7007 12 1971

Department of Water Administration



Unamed (Lick) creek where it enters Benewah Creek. This small creek runs for several miles from its source on tribal land and has one or two small feeder creeks and springs along its course. Pictured flow is about maximum for the year (April 1).

Benewah Creek below Lick Creek showing spring (April 1) flow. As can be seen, it is a scenic creek with general recreational and fishing potential.

92 7007





Benewah Lake in spring moderate drawdown status from East shore. This picture demonstrates the rank bottom growth, decaying and dead in picture, that stretches across entire bottom and, in drawdown status, covers at least half the lake. Rest of lake in foreground has exactly same condition except for greater depth.



Boundary between Benewah Lake and Chatcolet Lake showing overflow of debris, soil, etc. and continuation of shallow, stagnant lake conditions on through Chatcolet and Round Lakes and on into Coeur d'Alene Lake in distant foreground.

State of Idaho
Department of Water Resources
WATER RIGHT LICENSE

License of Water Right No. 95-7564 Priority Jan. 21, 1971 Amount 0.04 cfs

THIS IS TO CERTIFY, that WILLIAM W. BROWNSON
of Harrison, Idaho, has complied with the terms and conditions of Permit
No. 95-7564 issued pursuant to Application for Permit dated January 21, 1971,
and has submitted proof to the Department of Water Resources on February 26, 1976,
that he has applied water to a beneficial use; an examination by the Department indicates that the works have a
capacity for the diversion of 0.04 cfs of water from an unnamed stream,
tributary to Benewah Creek, and that the permit holder has applied to a beneficial use and
established a right to use water as follows:

Beneficial Use	Period of Use	Rate of Diversion	Annual Volume
<u>Domestic</u>	from <u>Jan. 1</u> to <u>Dec. 31</u>	at <u>0.04</u> cfs and	<u>1.2 acre feet</u>
	from _____ to _____	at _____ cfs and	_____
	from _____ to _____	at _____ cfs and	_____

(both dates inclusive)

Subject, however, to the condition that no more than 0.04 cfs of water be diverted at any one time, and
that the amount of water so diverted and to which such right is entitled and confirmed is for the purpose
aforementioned and is limited to the amount which can actually be beneficially used and shall not exceed
1.2 acre feet per year, said waters to be diverted within the SE $\frac{1}{4}$ NW $\frac{1}{4}$ of Sec. 34,
Twp. 46 N, Rge. 3 W, B. M. in the County of Benewah

Description and location of place of use:

Twp.	Range	Sec.	NE $\frac{1}{4}$				NW $\frac{1}{4}$				SW $\frac{1}{4}$				SE $\frac{1}{4}$				Totals
			NE $\frac{1}{4}$	NW $\frac{1}{4}$	SW $\frac{1}{4}$	SE $\frac{1}{4}$	NE $\frac{1}{4}$	NW $\frac{1}{4}$	SW $\frac{1}{4}$	SE $\frac{1}{4}$	NE $\frac{1}{4}$	NW $\frac{1}{4}$	SW $\frac{1}{4}$	SE $\frac{1}{4}$	NE $\frac{1}{4}$	NW $\frac{1}{4}$	SW $\frac{1}{4}$	SE $\frac{1}{4}$	
46 N	3 W	34								X	(1 family)								

Total number of acres irrigated _____

NOTE: Modifications to or variance from this license must be made within the limits of Section 42-222, Idaho Code, or the applicable Idaho Law. This right may be forfeited by five years of non-use.

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

Witness the seal and signature of the Director, affixed at Boise, Idaho, this 2 day of
August, 19 76.

Director

In the Matter of Application for)
Permit No. 92-7007 in the name)
of WILLIAM W. BROWNSON)
_____)

Application No. 92-7007 was filed by William W. Brownson, on January 11, 1971, for a permit to appropriate 0.5 cubic feet per second of water from an unnamed stream tributary to Benewah Creek at a point in the $W\frac{1}{2}SE\frac{1}{4}NW\frac{1}{4}$ Sec. 34, Twp. 46 N., Rge. 3 W., B.M. The water was proposed to be used for irrigation of 20 acres of land and for domestic purposes of five families. Notice of the proposed appropriation was published in the St. Maries Gazette Record, on February 4 and February 11, 1971.

Protest against the granting of the permit was filed by Robert Dellwo, attorney for the Coeur d'Alene Tribe of Indians. A conference concerning the protest was held at St. Maries, Idaho, on April 1, 1971. The Coeur d'Alene Tribe of Indians claims rights to all of the waters within the Coeur d'Alene Indian Reservation under provisions of the Winters Doctrine and, therefore, contended that the water which Mr. Brownson has filed on is not subject to appropriation under state law. The legal bases of this protest and the uses proposed by Mr. Brownson were discussed at the informal conference. The tribal attorney indicated that they would not object to the granting of the permit if the total uses proposed by the applicant were reduced to the domestic requirements of a few homes.

By letter, dated April 14, 1971, Mr. Richard B. Eismann, attorney for the applicant, requested that the application be amended by striking reference to the use of water for irrigation purposes and reducing the total quantity to be appropriated to 0.20 cubic feet per second of water for year-round domestic use for five families.

From our investigation of the flows of this unnamed stream, Benewah Creek, and the St. Joe River, to which they are tributary, it appears that there is unappropriated water available for use in the quantity now proposed by the applicant. It is, therefore, ordered and Application No. 92-7007 is hereby APPROVED.


R. KEITH HIGGINSON
Director

~~92-7007~~
95-7564

Identification No. 92-7007
Application No. 95-7564

STATE OF IDAHO
DEPARTMENT OF WATER ADMINISTRATION
APPLICATION FOR PERMIT

APPROVED

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

1. Name of applicant WILLIAM W. BROWNSON
post office address Homedale, Idaho 83628
2. Source of water supply unnamed stream which is a tributary of Benewah Creek
3. a. Location of point of diversion is W 1/2 SE 1/4 of NW 1/4 of Section 34 Township 46N
Range 3W B.M. Benewah County; additional points of diversion if any: _____

b. If water is not consumed, it will be discharged into the same unnamed stream at a point in W 1/2 SE 1/4
of NW 1/4 of Section 34 Township 46 N Range 3W B.M. Idaho
4. Water will be used for the following purposes:
Amount 2.5 CFS for irrigation purpose from April 1 to Oct. 15 (both dates inclusive)
(cfs or acre-feet per annum) year around
Amount 1/10 CFS for domestic purpose from April 1 to Oct. 15 (both dates inclusive)
(cfs or acre-feet per annum) year around
Amount _____ for _____ purpose from _____ to _____ (both dates inclusive)
(cfs or acre-feet per annum)
5. Total quantity to be appropriated:
a. 5.10 50 20 cubic feet per second and/or See letter 4-14-71
b. _____ acre feet per annum.
6. Proposed diverting works:
a. Description of ditches, flumes, pumps, headgates, etc. Small headgate
unnamed stream and pipe line approximately 400 feet in length

b. Height of storage dam _____ feet, active reservoir capacity _____ acre feet; total reservoir
capacity _____ acre feet, materials used in storage dam: _____
Period of year during which storage will occur _____ to _____ 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 five years.
b. Estimated construction cost is \$ 600.00.
8. Description of proposed uses:
a. If water is not for irrigation:
(1) Give the place of use of water: _____ 1/4 of _____ 1/4 of Section _____ Township _____
Range _____ B.M. _____
(2) Amount of power to be generated: _____ hp under _____ feet of head.
(3) List number of each kind of livestock to be watered 1/10 CFS to be used for
domestic purposes.
(4) Name of municipality to be served _____, or number of families to be
supplied with domestic water 5.
(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.

W $\frac{1}{2}$ SE $\frac{1}{4}$ NW $\frac{1}{4}$
Section 34, T46N, R3W. B. M.

X

X point of diversion.
water will be diverted and used
for domestic and irrigation purposes
on applicant's premises described above

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.

William W. Brownson
(Applicant) William W. Brownson

~~92-7007~~
95-7564

Received by ej Date 1-21-71 Time 8:00 am

Preliminary check by dr Fee \$ 10.00

Receipted by ej Date 1-23-71

Publication prepared by dr Date 1-26-71

Published in St. Maries Gazette Record

Publication dates 2-4 & 2-11, 71

Publication approved dr Date 2-17-71

Priority reduced to _____ Reason _____

Protests filed by: Coeur d'Alene Tribe of Idaho

Copies of protests forwarded by dr 2-25-71

Hearing held by _____ Date _____

Recommended for approval denial by dr

ACTION OF THE DIRECTOR, DEPARTMENT OF WATER ADMINISTRATION

This is to certify that I have examined Application for Permit to appropriate the public waters of the State of Idaho No. 92-7007, 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 April 1, 19 76.
- c. Other: Maximum rate of diversion shall not exceed 0.20 c.f.s. of water

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

Witness my hand this 23rd day of April, 19 71.

R. Keith Hays
Director

92-7007
95-7564

DEPARTMENT OF WATER ADMINISTRATION

STAFF ANALYSIS

Application No.	92-7007	Name	William W. Brownson
Source	unnamed stream, trib. to Benewah Creek		
Point of Diversion	SE $\frac{1}{4}$ NW $\frac{1}{4}$, Sec. 34, T. 46N, R. 3W, B.M., Benewah County		
Quantity	.40	Use	irrigation
		Period	Apr. 1 - Oct. 15
Quantity	.1	Use	domestic
		Period	Jan. 1 - Dec. 31
Quantity		Use	
		Period	
Well Size		Diameter	
		Proposed Depth	
Use	5 families, 20 acres		
Date Forwarded	1-27-71	Date Returned	
		Received by	

COMMENTS: Location is in mountainous area south of Benewah Lake, 7 miles WSW of St. Marisa. Area is primarily Columbia River basalt. Major consideration is water rights, Benewah Creek below unnamed stream does not appear to be highly developed.

RECOMMENDED:

Applied: Qty.	.40	Use	IRR.	Period	4/1-10/15	AF/A	3.0	AF	49
Qty.	.10	Use	MULT DOM	Period	1/1-12/31	AF/A		AF	
Qty.		Use		Period		AF/A		AF	
Maximum: Qty.	.40	Use	IRR.	Period	3/15-11/15	AF/A	3.0	AF	60
Qty.	.10	Use	MULT DOM	Period	1/1-12/31	AF/A		AF	
Qty.		Use		Period		AF/A		AF	

ACTION: Approved ☒ Denied ☐

Conditions of approval or reason for denial: _____

INVESTIGATION By Paul M. Castelin Title D.R.I. - I
Date Jan. 28, 1971

92-7007
95-7564

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County of Benewah, ss.

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Subscribed and sworn to before me this 12th... day of February, 1971.

Notary Public in and for Benewah County, Idaho
Residing at St. Maries, Idaho

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FOR WATER PERMIT

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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 Administration, Statehouse, Boise, Idaho, 83707, on or before February 22, 1971.

R. Keith Hugginson
Director

Published in the St. Maries Gazette Record, St. Maries, Idaho, on February 4 and February 11, 1971.
No. 3536 — Feb. 4 - Feb. 11

92 7007

January 16, 1980

Re: Permit No. 95-7564

Mr. & Mrs. Donald Homer
Gary Stephen Homer
1922 Via Lacqua
San Lorenzo, CA 94580

Dear Mr. & Mrs. Homer:

When a water right license is issued the water right automatically becomes appurtenant to the land it covers. Therefore, whoever owns the property owns the water right. This is the reason why name changes are not necessary for water right licenses.

However, we will place your letter in the file as the new owners and a copy of all correspondence concerning this permit will be mailed to you.

Sincerely,

JAN GROVER
Water Rights Supervisor

JG:j

RECEIVED

January 1980

He would like a name change
and up-date of Water Right license
on "unnamed stream" as described
herein attached.

We Purchased property from
William Brownson in June 1977—
Copy of Escrow enclosed.
Thank you

Mr + Mrs. Donald Horner
Gary Stephen Horner
1922 Via Laguna
San Lorenzo, Calif
94580
Tele: 415-276-4483

RECEIVED

JAN 10 1980

Department of Water Resources

It remains a one-family dwelling
Usage same.

MICROFILMED

August 2, 1976

Re: Permit No. 95-7564

William W. Brownson
Box 104
Harrison, ID 83833

Dear Mr. Brownson:

Enclosed herewith is a copy of the water right license issued on the above referenced permit.

Sincerely,

D. DARLENE REICH
Water Rights Supervisor

DDR:mef

Enc:

July 14, 1976

Mr. William W. Brownson
Box 104
Harrison, Idaho 83833

Dear Mr. Brownson:

A representative of this Department has made an examination of the works covered by your Permit No. 95-7564 and has found the following:

Amount of water that can be recognized as beneficially used under
Idaho law: 0.04 cfs Source: unnamed stream

The maximum quantity diverted shall not exceed 1.2 acre feet per
year.

Point of diversion: SE $\frac{1}{4}$ NW $\frac{1}{4}$, Sec. 34, Twp. 46 N, Rge. 3 W, B. M.

Beneficial use: Domestic purposes for one family within the SE $\frac{1}{4}$ NW $\frac{1}{4}$,
Sec. 34, Twp. 46 N, Rge. 3 W, B. M.

Priority date established: January 21, 1971

If you do not concur with these findings please contact us within 10 days, otherwise a
water license will be issued as set forth above.

Sincerely,

BOBBY D. FLEENOR
Chief, Water Rights

DEPARTMENT OF WATER ADMINISTRATION

FIELD REPORT

RECEIVED

1. Name of permit holder William W. Brownson MAR 3 1976
 Post office address Box 104, Hanison, ID 83833 Phone Department of Water Resources
 Person to contact _____ Phone _____
Northern District Office

2. Source of water supply: Groundwater ☐ Surface water ☒ unnamed stream
 (name spring, stream, etc.)
 Tributary to Benewah Cr.

3. Water will be used for the following purposes:

Amount _____ c.f.s. for Irrigation Department of Water Resources
 _____ AF/Annum (nature of use)

Period of Use: from April 1 to October 15
 (mo.-day) inclusive (mo.-day)

Amount 0.10 c.f.s. for Domestic (5)
 _____ AF/Annum (nature of use)

Period of Use: from Jan. 1 to Dec. 31
 (mo.-day) inclusive (mo.-day)

Amount _____ c.f.s. for _____
 _____ AF/Annum (nature of use)

Period of Use: from _____ to _____
 (mo.-day) inclusive (mo.-day)

Other uses: _____

Permit No. 95-7564
 Examination for b/u

4. Total amount to be appropriated:

Max Rate of Diversion 0.20 cubic feet per second and annual volume _____ AF/Annum.

5. Location of Point(s) of Diversion:

(Proof lists the NW $\frac{1}{4}$ W $\frac{1}{2}$ SE $\frac{1}{4}$)

Township 46N N/S, Range 3W E/W, B.M., Section 34, Subdivision SE $\frac{1}{4}$ NW $\frac{1}{4}$, Benewah
 County

Township _____ N/S, Range _____ E/W, B.M., Section _____, Subdivision _____ $\frac{1}{4}$ _____ $\frac{1}{4}$, _____
 County

Township _____ N/S, Range _____ E/W, B.M., Section _____, Subdivision _____ $\frac{1}{4}$ _____ $\frac{1}{4}$, _____
 County

Other Points of Diversions: _____

Description of diverting works: small headgate unnamed stream and pipeline approx. 400' in length
for domestic purpose

Measuring device required: yes ☐ no ☒

6. Lands to be irrigated or place of use.

TWP.	RANGE	SEC.	NE $\frac{1}{4}$				NW $\frac{1}{4}$				SW $\frac{1}{4}$				SE $\frac{1}{4}$				TOTALS
			NE $\frac{1}{4}$	NW $\frac{1}{4}$	SW $\frac{1}{4}$	SE $\frac{1}{4}$	NE $\frac{1}{4}$	NW $\frac{1}{4}$	SW $\frac{1}{4}$	SE $\frac{1}{4}$	NE $\frac{1}{4}$	NW $\frac{1}{4}$	SW $\frac{1}{4}$	SE $\frac{1}{4}$	NE $\frac{1}{4}$	NW $\frac{1}{4}$	SW $\frac{1}{4}$	SE $\frac{1}{4}$	
46N	3W	34								X									

TOTAL ACREAGE _____

[illegible]

DATE OF EXAM 6-25-76

ACREAGE
Found _____
Recommended _____

Irrigation Requirement _____ Ac Ft/Ac

USE
Irrigation Q= _____ c.f.s. V= _____ AF/Ann. from _____ to _____
Domestic Q= 0.04 c.f.s. V= 1.2 AF/Ann. from Jan 1 to Dec 31
Livestock Q= _____ c.f.s. V= _____ AF/Ann. from _____ to _____

Is water co-mingled? yes _____ no X

Name source: _____
twp. _____ N/S, Rge _____ E/W, B.M., Sec. _____, Sub. _____ 1/4 _____ 1/4 _____
County _____

Exchange? yes _____ no X

Name source exchanged with: _____
twp. _____ N/S, Rge _____ E/W, B.M., Sec. _____, Sub. _____ 1/4 _____ 1/4 _____
County _____

Point of injection: _____
twp. _____ N/S, Rge _____ E/W, B.M., Sec. _____, Sub. _____ 1/4 _____ 1/4 _____
County _____

Point of exchange: _____
twp. _____ N/S, Rge _____ E/W, B.M., Sec. _____, Sub. _____ 1/4 _____ 1/4 _____
County _____

Total Q measured 0.04 cfs Method of measurement Calc

Total Q recommended 0.04 cfs Meter No. _____ Type _____ Condition _____

Total V recommended 1.2 AF/Ann

Recommended Amendments:

P.D. _____
Place of Use _____
Other _____
None _____

MEASUREMENT CALCULATION:
one house hold @ 0.04 cfs, 1.2 AF/Ann

SYSTEM DESCRIPTION:
Dev. Spring w/pipe line to place of use

REMARKS:
Found only one house at SE NW 34 found no place owned by Claimant at NW 1/4 W 1/2 SE 1/4 W 1/2 of 34-6-25-76
Son-Bob Brownson-1722 Center, Harrison, Wm is same place in Alaska Flossie (wife is) in Harrison No phone

Examiner's Signature John D. Cherry Date 7-6-76

Checked by Bob Brownson Date 7-9-76

Approved by _____ Date _____

February 27, 1976

Re: Permit No. 95-7564

William W. Brownson
Box 104
Hanison, Idaho 83833

Dear Mr. Brownson:

We acknowledge receipt of the affidavit 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. We cannot tell just when this examination will be made, but our examiner will try to contact you at the time he makes the examination so that you may show him the system.

If you have any questions regarding the field examination, please contact our District Office in **Coeur d'Alene.**

Sincerely,

D. Darlene Reich
Water Rights Supervisor

DDR:JG

RECEIVED

RECEIVED

FEB 17 1976

Ok

95-7564

Identification No.

92-7007

Permit No.

FEB 17 1976

Department of Water Resources

Department of Water Resources

STATE OF IDAHO

DEPARTMENT OF WATER RESOURCES

PROOF OF APPLICATION OF WATER TO BENEFICIAL USE

1. a) Name of Permit Holder William W Brownson
b) Post Office Address Box 104 Hammon, Idaho 83833

2. Permit Number _____

3. Date of Priority that you are prepared to establish _____

4. a) Source from which water was appropriated _____

b) Location of the point of diversion: unnamed stream NW 1/4 W 1/2 SE 1/4, Section 34

Township 46 N, Range 3 W Boise Meridian, Other points of diversion: _____

5. a) The amount of water and use to which the water has been applied:

Amount 6 for irrigation purposes from April 1 to Oct 15 incl.
(cfs and/or acre-feet per annum) (Month-Day) (Month-Day)

Amount 1/100 F for domestic purposes from year around to year around incl.
(cfs and/or acre-feet per annum) (Month-Day) (Month-Day)

Amount _____ for _____ purposes from _____ to _____ incl.
(cfs and/or acre-feet per annum) (Month-Day) (Month-Day)

b) Total amount appropriated _____ cfs and/or acre-feet per annum

c) Describe how and by whom measurement of rate of flow or amount of storage was made and the qualifications of the person making the measurement: _____

6. If the means of diversion and conveyance are owned by someone other than the Permit Holder:

a) Give the name or description of the canal, ditch or other works by which the water is conducted to the place of use: _____

b) Describe the agreement or understanding by which you take water from the works: Small headgate unnamed stream and pipe line approximately 400 feet in length for domestic purposes

7. a) Briefly describe the works for diverting and conveying the water to the place of use, (if from a subterranean source, give the pump size, motor size, size of well casing, depth of well; if from surface water, give brief description of diversion structure and/or canal or ditch) _____

b) Describe the type and size of measuring device which you have installed at your point of diversion: _____

c) Give well driller's name and address and the date the well was completed: _____

8. If for other than irrigation, describe the beneficial use to which you have applied the water and the place of use: _____

32-76

r

m-b

9. Irrigation uses: describe the lands irrigated by giving the acreages irrigated within each 40 acre subdivision: _____

T	R	SEC.	NE¼				NW¼				SW¼				SE¼				TOTAL
			NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	
46N		34					20												20

Total number of acres irrigated _____

10. Remarks: _____

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

2-14-76
(Date)

William W. Brownson
William W. Brownson
(Signature)

State of Idaho)
County of Benevolence) ss.

On this 24th day of February, 1976, personally appeared before me the signer(s) of the above instrument, who duly acknowledged to me that he (she) (they) executed the same.

Beverly Moore
Notary Public residing at St. Maries

My commission expires 6-5-78

February 20, 1976

Re: Permit No. 92-7007 - renumbered to 95-7564

William W. Brownson
Box 104
Harrison, Idaho 83833

Dear Mr. Brownson:

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

However, we cannot process your proof affidavit unless your signature is notarized. Therefore, we are herewith returning your affidavit.

Please return the notarized affidavit on or before April 1, 1976.

Sincerely,

JANICE RISHM
Secretary

Enclosure

7-1-76

PS **SENDER:** Complete items 1, 2, and 3.
Add your address in the "RETURN TO" space on reverse.

USE THE FOLLOWING SERVICE IS REQUESTED (CHECK ONE).

- ☒ **SHOW TO WHOM** 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:

DEFERRED

3. ARTICLE DESCRIPTION:

REGISTERED NO.

CERTIFIED NO.

INSURED NO.

138330

(Always obtain signature of addressee or agent)

I have received the article described above.

SIGNATURE

☐ Addressee

☐ Authorized agent

4. DATE OF DELIVERY

2-10-76

POSTMARK

5. ADDRESS (Complete only if requested)

6. UNABLE TO DELIVER BECAUSE:

SA/N
839
01
INITIALS

PS, Jan. 1975

RETURN RECEIPT, REGISTERED, INSURED AND CERTIFIED MAIL

UNITED STATES POSTAL SERVICE

OFFICIAL BUSINESS

SENDER INSTRUCTIONS

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DEPARTMENT OF WATER RESOURCES

STATEHOUSE

BOISE, IDAHO 83720

January 30, 1976

CERTIFIED MAIL

138 330

Re: Permit No. 92-7007

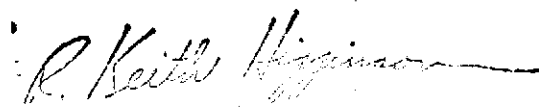
William W. Brownson
Homedale, Idaho
83628

Dear Mr. Brownson:

One of the conditions of approval of your water Permit No. 92-7007 (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 April 1, 1976. 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.



R. KEITH HIGGINSON
Director

RKH:jg
Enc: Proof affidavit

April 23, 1971

Re: Permit No. 92-7007

Mr. William W. Brownson
Homedale,
Idaho 83628

Dear Mr. Brownson:

Enclosed please find a copy of your approved Application for Permit No. 92-7007.
We direct your attention to the conditions of approval as listed on the fourth
page.

Very truly yours,

BOBBY D. FLEENOR
Assistant Director

BDF:DR

Enc: Copy of permit

cc: Mr. Robert D. Dellwo
DELLWO, RUDOLF & GRANT
1016 Old National Bank Bldg.
Spokane, Wash. 99201

Mr. Richard B. Eismann
P.O. Box 36
Homedale, Idaho 83628

Enc: Copy of Memorandum Decision
Copy of 4th page of permit

~~92-7007~~
95-7564

RICHARD B. EISMANN

TELEPHONE 337-3135
AREA CODE 208

ATTORNEY AT LAW
HOMEDALE, IDAHO

POST OFFICE BOX 36
ZIP CODE 83628

April 14, 1971

State of Idaho
Department of Water Administration
State House Annex No. 2
Boise, Idaho 83707

Re: Permit No. 92-7007

Gentlemen:

I represent Mr. William M. Brownson who is the holder of the above referred to application.

Mr. Brownson hereby consents to eliminate from his application that portion thereof applying for 2/5 CFS for irrigation purposes. He herewith reaffirms his application for 1/10 CFS for domestic purposes to supply domestic water for five households. If you require any further action on his part to effect this reduction in his application, please advise and we shall comply therewith.

Thank you very much.

Very truly yours,


Richard B. Eismann
RBE/imp

Copy to Mr. William Brownson

92 7007

LAW OFFICES
DELLWO, RUDOLF & GRANT

ROBERT D. DELLWO
KERMIT M. RUDOLF
WILLIAM J. GRANT
RICHARD J. SCHROEDER
JOSEPH A. ESPOSITO

1016 OLD NATIONAL BANK BUILDING
SPOKANE, WASHINGTON 99201
MADISON 4-4291

April 9, 1971

Mr. R. Keith Higginson
Director
Department of Water Administration
Statehouse - Annex 2
Boise, Idaho 83707

Dear Mr. Higginson: Re: Application 92-7007 - William W.
Brownson

Enclosed are original and copy of the Memorandum of the Coeur d'Alene Indian Tribe. Also by separate cover I am sending you two copies of the map of the reservation.

Sincerely yours,

DELLWO, RUDOLF & GRANT



By: Robert D. Dellwo

Attorney for the Coeur d'Alene Tribe

RDD:fb

Encls.

92 7007

BEFORE THE DIRECTOR
OF THE
IDAHO DEPARTMENT OF WATER ADMINISTRATION

In the Matter of Protest Against)
Approval of Application for Permit)
No. 92-7007 in the name of)
WILLIAM W. BROWNSON)

MEMORANDUM OF
COEUR D'ALENE INDIAN TRIBE

The following memorandum is to state the position of the Coeur d'Alene Indian Tribe with regard to the foregoing application. It is being prepared in advance of but with the assumption that applicant Brownson will amend his application to that of domestic water withdrawn from a spring on the property and not to be taken from the creek.

With this assumed amendment to Mr. Brownson's application, the following argument and material are primarily to assist the Idaho Department of Water Administration in forming a proper and acceptable policy as to the water rights of Indians and tribes on Indian reservations in the State of Idaho.

1. FACTUAL SITUATION

There is attached a land ownership map of the Coeur d'Alene Reservation. The property involved is 20 acres of non-Indian land described as the W1/2 of the SE1/4 of the NW1/4 of Section 34, Township 46 North, Range 3 W.M.B., Benewah County, Idaho. The application is to divert 1/2 second foot from an unnamed creek (probably Lick Creek) which is a tributary of Benewah Creek. The headwaters of the involved creek are in timbered and mountainous land owned by the Coeur d'Alene Indian Tribe several miles upstream. There are no Indian lands in the proximity of Benewah Creek or Benewah Lake of which it is tributary.

There is attached a series of pictures which show the entry of this creek into Benewah Creek, Benewah Creek itself, Benewah Lake and Chatcolet Lake. The pictures taken on April 1, 1971 are at a time of relatively high water. Both creeks nevertheless flow theyear around but have insufficient head during the dry summer season to justify irrigation diversions.

All of the described waters are within the exterior boundaries of the Coeur d'Alene Indian Reservation. As set out in the following legal summary the Coeur d'Alene Tribe has what is described as Winters Rights to the waters involved and retains ownership in at least the stream bed of Benewah Creek and to the beds and banks of Benewah and Chatcolet lakes.

The writer assumes that the Department of Water Administration is aware of the marginal "ecological reserve" of Benewah Creek, Benewah Lake and Chatcolet Lake.

The pictures show the nature of the lakes in their present drawn down condition. Visible are the extensive mud flats covered by rotting vegetation. These lakes are frequently described as "dying lakes." An engineer consultant of the tribe has explained that the inevitable

death of these lakes is a result of a combination of factors. Chief of these is that they are naturally shallow lakes covering expanses of fertile land. The water, coming as it does from the surface of adjacent agricultural areas, is full of nutrients, and the combination of warm water, shallowness, fertile soil and water nutrients results in an excessive growth of vegetation on the lake bottom and in the water itself. The algae, slime, moss and plant life grows, flourishes and dies with an ever increasing buildup of decaying vegetable matter. The lakes will become progressively more shallow and gradually disappear as open water.

Another cumulative effect of the vegetable matter buildup is the depletion of dissolved oxygen, the resulting loss of sports fish and the increasing swampiness of the water.

Any reduction of the water in Benewah Creek will add to the foregoing sequence and the net effect of irrigation diversions will be to reduce the inflow of water and increase the water nutrients--the very two things that will most accelerate the dying action.

If Benewah Creek were cut off completely Benewah Lake would then be but a backwater from Chatcolet, also polluted and suffering the same effects. In a very short time Benewah Lake would be but an unattractive swamp. It is therefore important that Benewah Creek be not further depleted and that other steps be taken to save Benewah Lake.

2. LEGAL SUMMARY

The Department of Water Administration is quite aware of the legal origin of the Coeur d'Alene Tribe's Winters Rights. The writer will not therefore engage in any lengthy analysis of the sequence of 9th Circuit Court and U. S. Supreme Court cases which affirmed and defined these rights.

The Coeur d'Alene Tribe and reservation finds its federal statutory origin in the Agreement of 1887 by which the tribe ceded its vast aboriginal lands to the United States Government and retained the present reservation.

The Coeur d'Alene Reservation and Tribe are a reservation and tribe entitled to Winters Rights and to access and property rights to the streams themselves as outlined and discussed in the following series of cases:

U. S. v. Winans, 198 U. S. 371
Winters v. U. S., 143 Fed. 740, 207 U. S. 564, 148 Fed 684
Conrad v. U. S., 161 Fed. 829
U. S. v. Walker-River, 104 F. 2d 334
Arizona v. Calif., 373 U. S. 546, 83 S.Ct. 1468
U. S. v. Ahtanum, 236 F.2d 321, 33 F.2d 897
Choctaw, Chicasaw & Cherokee Nations v. St. of Okla.,
90 S.Ct. 1328, 397 U. S. 620, 25 L.Ed. 2d 615 (1970)

3. JURISDICTION OF THE STATE OF IDAHO OVER THE WATERS WITHIN THE RESERVATION

The Coeur d'Alene Tribe is legally organized with a constitution approved by the Secretary of the Interior. Its governing body is the Coeur d'Alene Tribal Council. The tribe, as other tribes, exists as a quasi sovereignty and retains within its jurisdiction not only those matters expressed in statutory and case law and in its constitution but under the doctrine of inherent and implied powers retains jurisdiction over every matter governing the land and people within the reservation not ceded by it in its agreement or taken from it by statute.

It is the legal position of the tribe, amply supported by cases, that the State of Idaho has no authority or jurisdiction whatever to issue water rights on any water within the outer boundaries of the Indian Reservation unless these waters are clearly surplus waters. The Coeur d'Alene Tribal Council has by attached resolution approved by the Department of the Interior, through its representative the Bureau of Indian Affairs, effectively appropriated all of the waters within the reservation with the exception of the large bodies of water such as Coeur d'Alene Lake. There are no other large streams or water bodies within the reservation and none of the water in the streams that do exist can be classified as "surplus." Certainly there are no waters in this "unnamed" (Lick) creek, Benewah Creek or in Benewah Lake that are surplus. Unless they are surplus the State of Idaho has no jurisdiction to issue a water license or permit to authorize the appropriation of any water by a non-Indian.

Often cited is the case of U. S. v. McIntire, 101 F.2d 650. The rationale is that all of the waters were impliedly reserved to the Indians and the United States became a trustee holding legal title for the benefit of the Indians. As held in the McIntire case, no title to such waters could be acquired by anyone except as specified by Congress.

Cited in that case was 43 USCA 661. The writer invites the Department to review that statute and especially the numerous annotations which seem to justify the conclusion that the State of Idaho would not have any authority to issue permits in such matters as instant case.

This matter was considered however in the Snohomish County Superior Court in 1963 and that court held, on reconsideration, that the state did have the right to grant permits on "surplus waters" in a water of a nonnavigable stream flowing across lands owned in fee by non-Indians where only the right to the use of such water by non-Indians is involved and the right to the use by Indians is not affected thereby.

As argued above, there are no surplus waters in Lick or Benewah Creeks, and as a matter of fact when viewed against the ecological needs of Benewah and Chatcolet Lakes below there is a great shortage of water.

4. CONCLUSION

It would appear that if the State of Idaho does have jurisdiction and authority to issue water permits within the Coeur d'Alene Reservation it would be only as to non-Indian lands, non-Indian water and then only if such water is "surplus" and the issuance of the permit will not affect any Indian water rights.

There are no surplus waters in Lick Creek or Benewah Creek. Any further depletion, especially during the summer low water months, would virtually eliminate both creeks as ecological, recreational assets of the community and cause more rapid deterioration in Benewah and Chatcolet Lakes. The Department should, even without regard to any special Indian rights and viewing only its responsibility to the whole community and the State of Idaho, refuse any permits which will further deplete the two streams.

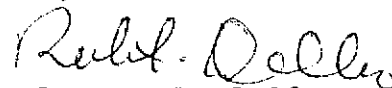
At the time of the hearing the writer and Mr. Higginson discussed the need to have a procedure in Idaho, similar to the one recently inaugurated in the State of Washington to establish administratively or judicially a minimum flow of a stream. While the State of Idaho seems to lack statutory provisions for such, it would seem that the Department of Water Administration must have inherent and implied powers to do this. Otherwise it would be practically compelled to allow the complete elimination of any stream if there were enough applications for domestic and agricultural uses to exhaust the stream.

Let us assume that the Department does not feel that it has this inherent and implied authority. The writer points out that this can be accomplished within Indian Reservations at least. The tribal rights extend on beyond domestic and agricultural uses and, under the Winters Doctrine, would now include recreational, esthetic and ecological needs and uses. The Tribe then can, as in instant case, establish the minimum flow. Exercising its Winters Rights, it can appropriate the waters in the creeks and lakes at least up to the minimum flow needed to maintain the streams as ecological, recreational, esthetic assets. Having done that the State of Idaho would then have, at most, jurisdiction to allow appropriations only of a "surplus" that existed above such minimum flow.

It is suggested that the Tribe and the State of Idaho accomplish that in the case of Lick and Benewah Creeks and Benewah and Chatcolet Lakes.

Respectfully submitted,

DELLWO, RUDOLF & GRANT



By: Robert D. Dellwo

Attorney for Coeur d'Alene Indian Tribe

RDD:fb

R E S O L U T I O N

Whereas, the Coeur d'Alene Reservation boundaries include within them a large section of Coeur d'Alene Lake and many streams and other water bodies, and

Whereas, existing irrigation pumps demonstrate the potential of reservation land for pump, sprinkler irrigation from ground waters, and

Whereas, under the Winters Doctrine the tribe retained all of the waters that bound, traverse or underlay the reservation for the beneficial use of all of the Indian lands in the reservation and as a result have superior, prior, aboriginal and immemorial rights to the use of said waters in so far as they can be used beneficially in the domestic, agricultural, industrial, recreational and esthetic development of the reservation, and

Whereas, said Winters Doctrine guarantees not only the quantity of water that can be beneficially used but also the quality of the water, it being clear that pollution of these waters is an even more serious violation of the tribal rights than their diversion, and

Whereas, as in the case of other tribes, non-Indians are threatening to preempt, pollute and effectively exhaust the potential of the tribe's water resources, and

Whereas, these rights protected, as aforesaid, by the Winters Doctrine, can nevertheless be eroded or lost by failure of the tribe fully to inventory its water resources and develop a plan for their use, now, therefore,

BE IT RESOLVED:

That the Department of the Interior is hereby requested to inventory completely all of the water resources belonging to the tribe within the reservation and that said inventory map, list and describe every water resource that is available whether stream, lake or ground water, and

That said inventory also list in as much detail as possible the various Indian lands within the reservation that can benefit from irrigation and further list other potential uses of said waters in such things as industrial and recreational developments, and

That said inventory include the inter-relationship of reservation waters to off-reservation waters flowing into or from the reservation and the possible non-Indian uses of those waters that might threaten the Coeur d'Alene rights to the same waters, and

That said inventory include a listing of all water permits, certificates or licenses issued by the Idaho State Department of Reclamation or any other Agency for use of waters anywhere

within the Coeur d'Alene Reservation or on bodies of surface, stream or ground waters outside the reservation, the depletion or use of which affect the quantity or quality of water within the reservation, and

That the Department of the Interior, through its various agencies and particularly the Indian Bureau, take all possible steps to protect and develop the water resources of the Coeur d'Alene Reservation.

BE IT FURTHER RESOLVED:

That the Tribe does hereby declare that, along with its lands, the ground and surface waters of the Reservation constitute its prime resource, and it hereby appropriates all of said waters for beneficial uses on tribal and other Indian lands within the reservation, and

That the Tribe prepare a comprehensive, long range plan for the development and use by the tribe of its water resources.

CERTIFICATION

The foregoing resolution was adopted by the Coeur d'Alene Tribal Council at a meeting held August 11, 1970, at the Plummer Sub-Agency, near Plummer, Idaho, with the required quorum present, by a vote of 4 for and 0 against.

Barbara L. Hunter
Chairman
Elizabeth A. Hunter
Secretary

BEFORE THE DIRECTOR
OF THE
IDAHO DEPARTMENT OF WATER ADMINISTRATION

In the Matter of Protest Against)
Approval of Application for Permit)
No. 92-7007 in the name of)
WILLIAM W. BROWNSON)

MEMORANDUM OF
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The following memorandum is to state the position of the Coeur d'Alene Indian Tribe with regard to the foregoing application. It is being prepared in advance of but with the assumption that applicant Brownson will amend his application to that of domestic water withdrawn from a spring on the property and not to be taken from the creek.

With this assumed amendment to Mr. Brownson's application, the following argument and material are primarily to assist the Idaho Department of Water Administration in forming a proper and acceptable policy as to the water rights of Indians and tribes on Indian reservations in the State of Idaho.

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The pictures show the nature of the lakes in their present drawn down condition. Visible are the extensive mud flats covered by rotting vegetation. These lakes are frequently described as "dying lakes." An engineer consultant of the tribe has explained that the inevitable

92 7007

death of these lakes is a result of a combination of factors. Chief of these is that they are naturally shallow lakes covering expanses of fertile land. The water, coming as it does from the surface of adjacent agricultural areas, is full of nutrients, and the combination of warm water, shallowness, fertile soil and water nutrients results in an excessive growth of vegetation on the lake bottom and in the water itself. The algae, slime, moss and plant life grows, flourishes and dies with an ever increasing buildup of decaying vegetable matter. The lakes will become progressively more shallow and gradually disappear as open water.

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It is suggested that the Tribe and the State of Idaho accomplish that in the case of Lick and Benewah Creeks and Benewah and Chatcolet Lakes.

Respectfully submitted,

DELLWO, RUDOLF & GRANT



By: Robert D. Dellwo

Attorney for Coeur d'Alene Indian Tribe

RDD:fb

R E S O L U T I O N

Whereas, the Coeur d'Alene Reservation boundaries include within them a large section of Coeur d'Alene Lake and many streams and other water bodies, and

Whereas, existing irrigation pumps demonstrate the potential of reservation land for pump, sprinkler irrigation from ground waters, and

Whereas, under the Winters Doctrine the tribe retained all of the waters that bound, traverse or underlay the reservation for the beneficial use of all of the Indian lands in the reservation and as a result have superior, prior, aboriginal and immemorial rights to the use of said waters in so far as they can be used beneficially in the domestic, agricultural, industrial, recreational and esthetic development of the reservation, and

Whereas, said Winters Doctrine guarantees not only the quantity of water that can be beneficially used but also the quality of the water, it being clear that pollution of these waters is an even more serious violation of the tribal rights than their diversion, and

Whereas, as in the case of other tribes, non-Indians are threatening to preempt, pollute and effectively exhaust the potential of the tribe's water resources, and

Whereas, these rights protected, as aforesaid, by the Winters Doctrine, can nevertheless be eroded or lost by failure of the tribe fully to inventory its water resources and develop a plan for their use, now, therefore,

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That said inventory also list in as much detail as possible the various Indian lands within the reservation that can benefit from irrigation and further list other potential uses of said waters in such things as industrial and recreational developments, and

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That said inventory include a listing of all water permits, certificates or licenses issued by the Idaho State Department of Reclamation or any other Agency for use of waters anywhere

within the Coeur d'Alene Reservation or on bodies of surface, stream or ground waters outside the reservation, the depletion or use of which affect the quantity or quality of water within the reservation, and

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That the Tribe prepare a comprehensive, long range plan for the development and use by the tribe of its water resources.

CERTIFICATION

The foregoing resolution was adopted by the Coeur d'Alene Tribal Council at a meeting held August 11, 1970, at the Plummer Sub-Agency, near Plummer, Idaho, with the required quorum present, by a vote of 17 for and 0 against.

Bernard J. LaPointe
Chairman
Evangelina Alvarado
Secretary



Unnamed (Lick) creek where it enters Benewah Creek. This small creek runs for several miles from its source on tribal land and has one or two small feeder creeks and springs along its course. Pictured flow is about maximum for the year (April 1).

Benewah Creek below Lick Creek showing spring (April 1) flow. As can be seen, it is a scenic creek with general recreational and fishing potential.





Benewah Lake in spring moderate drawdown status from East shore. This picture demonstrates the rank bottom growth, decaying and dead in picture, that stretches across entire bottom and, in drawdown status, covers at least half the lake. Rest of lake in foreground has exactly same condition except for greater depth.



Boundary between Benewah Lake and Chatcolet Lake showing overflow of debris, soil, etc. and continuation of shallow, stagnant lake conditions on through Chatcolet and Round Lakes and on into Coeur d'Alene Lake in distant foreground.

April 8, 1971

Re: Application for Permit No. 92-7007

**Mr. William W. Brownson
Homedale,
Idaho 83628**

Dear Mr. Brownson:

At the recent conference concerning your Application No. 92-7007 held in St. Maries on April 1, you agreed to furnish this office with information concerning the maximum number of homes that you propose supplying with domestic water and the total area in acres of land to be irrigated. I would appreciate receiving this information, as soon as possible, so that we may conclude our action concerning your application.

Very truly yours,

**R. KEITH HIGGINSON
Director**

RKH:kh

cc. Robert D. Bellwo

92 7007

LAW OFFICES
DELLWO, RUDOLF & GRANT

ROBERT D. DELLWO
KERMIT M. RUDOLF
WILLIAM J. GRANT
RICHARD J. SCHROEDER
JOSEPH A. ESPOSITO

1016 OLD NATIONAL BANK BUILDING
SPOKANE, WASHINGTON 99201
MADISON 4-4291

March 29, 1971

Mr. R. Keith Higginson
Director
Department of Water Administration
Statehouse - Annex 2
Boise, Idaho 83707

Dear Mr. Higginson:

Re: Application for Permit No. 92-7007
William W. Brownson

Thank you for your March 26, 1971 letter. I probably will be in attendance at 9:00 a.m. on April 1 and if possible will have a map showing land title within the Coeur d'Alene Reservation.

Sincerely yours,

DELLWO, RUDOLF & GRANT

Robert Dellwo
By: Robert D. Dellwo

Attorney for Coeur d'Alene Tribe

RDD:fb

cc: Richard B. Eismann, Attorney
Homedale, Idaho

92 7007

DEPT OF THE INTERIOR
BUREAU OF INDIAN AFFAIRS
NORTHERN INDIAN AGENCY
BRANCH OF FORESTRY
CONSERVATIVE INDIAN PRESERVATION
F.D.A.O.

JANUARY 1963

APPLICATION NO. 92-7007 - BROWNSON

PROPOSES TO USE WATER FOR 5 HOMES AND ONLY
SMALL AMOUNT OF IRRIGATION. PROBABLY RUNNING ABOUT 60 INCHES.
TITLE STILL IN REFORESTATION INC. RUNS INTO BANCROFT
CR. IN ABOUT 1/4 MILE. MAY BE COULD LICK CREEK.
BUYING W 1/2 SE 1/4 NW 1/4 SEC 34.

MAXIMUM OF 5 LOTS W/INCIDENTAL IRRIGATION USES

DELLWOOD

" WINTERS DOCTRINE - FORT BELNAP PRESERVATION, MONTANA

" WHEN A PRESERVATION WAS FORMED, THERE MUST HAVE BEEN INTENDED
A PRESERVATION OF THE WATERS NEEDED FOR THE PURPOSE OF THE PRESERVATION."

IN GENERAL BECAUSE OF LONG-RANGE PURCHASE PROGRAM
OF TRIBE WOULD WANT RECOGNITION OF WINTERS RIGHTS.

92 7007

92-7007 - William W. Brownson

Benewah County Court House, Community Room, St. Maries, Idaho

April 1, 1971 at 9:00 a.m.

ROSTER OF ATTENDANCE

Name

Address

Representing

William W. Brownson	Box 962 Homedale, Ida.	
Flossie W. Brownson	Box 962 Homedale, Ida.	
Raymond C. Casman	Box 996 Coeur d'Alene, Idaho	
Robert D. Dillwo	1016 old Nat Bank, Arden,	

92 7007

March 26, 1971

Re: Application for Permit No. 92-7007

Dellwo, Rudolf & Grant
1016 Old National Bank Building
Spokane, Washington 99201

Attention: Mr. Robert D. Dellwo

Dear Mr. Dellwo:

This is in response to your letter, of March 22, 1971, relative to the conference and/or hearing scheduled to be held in St. Maries, on April 1, 1971, concerning Application for Permit No. 92-7007.

This office would, of course, be happy to continue the hearing to another time, if you should request. However, if the position of the Coeur d'Alene Tribe of Indians can be stated in writing, since you indicate there are only issues of law and not facts to be determined, I would ask that this be done.

In any event, I will be in northern Idaho all of next week conducting several hearings and would appreciate an opportunity to discuss this matter informally with a representative of the Tribal Council.

We still would like to have a map which would show the land ownership status within the exterior boundaries of the reservation, since this will undoubtedly have an effect upon application of the Winters Doctrine.

Very truly yours,

R. KEITH HIGGINSON
Director

RKH:kh

92 7007

RKA

LAW OFFICES
DELLWO, RUDOLF & GRANT

ROBERT D. DELLWO
KERMIT M. RUDOLF
WILLIAM J. GRANT
RICHARD J. SCHROEDER
JOSEPH A. ESPOSITO

1016 OLD NATIONAL BANK BUILDING
SPOKANE, WASHINGTON 99201
MADISON 4-4291

March 22, 1971

Director
Idaho Department of Water Administration
State House
Boise, Idaho 83700

Attention: Bobby D. Fleenor
Assistant Director

Gentlemen: Re: In the Matter of Protest Against
Approval of Application for Permit No. 92-7007
William W. Brownson

The State of Idaho is holding its Idaho State Indian Conference in Boise, I believe on March 30, 31 and April 1. A primary consideration of this conference is a discussion of Indian Water Rights. It is hoped that members of your department will attend. Bureau of Indian Affairs and Department of the Interior Water Rights experts will be in attendance.

This makes it impossible for me or the Coeur d'Alene Tribal Council officers to attend the hearing in captioned matter scheduled for April 1, 1971 at St. Maries. If the hearing cannot be postponed, we would be willing to agree that the entire tribal presentation will be in writing.

The tribe, if in attendance, would not present evidence that it has irrigable land in the immediate vicinity. It does not at this time have engineering studies of the stream itself. The basis for its opposition is its legal position that the streams within the Coeur d'Alene Reservation do not constitute public waters, available for appropriation under state law. Under the Winters Doctrine the tribe retained by an implied appropriation the waters that came with the reservation to the extent that they can be beneficially used now or in the future.

This right of the tribe is not subject to state law or jurisdiction. It can't be nullified or eroded away by non-Indian users appropriating the water under state law. It is one of those rights covered in the fine print of the water permit or license which says "subject to existing rights."

Under this interpretation of the Winters Doctrine one might ask why the tribe has any apprehension of an action the state might take since the tribe is not bound by that action and can get the water back later on if it needs it. The experience of the tribes in the Winters, Conrad, Ahtanum, Walker River and Arizona v. California cases indicates

92 7007

Director

Idaho Department of Water Administration -2- March 22, 1971

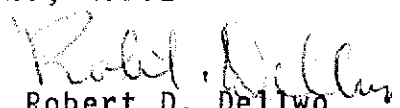
that they have no trouble securing judicial recognition of their Winters Rights but they seldom get back all they started with. The courts are most reluctant to take water away from a user or a community which has built its or his economy on it. The extent of Winters Rights are subject to interpretation and definition and are affected by intervening diversions that have been allowed to take place without tribal appearance or objection.

Additionally, the definition of "beneficial use" is a changing one. Originally it seemed confined to irrigation and domestic use. Now it extends to recreation, fishing, esthetic and ecological uses and safeguards. For example, the Colville Tribe has succeeded in shutting down a water user (under state law) not because of the diversion of the water but because he was polluting it and endangering the tribe's downstream rights to clean water.

Primarily the tribe wants it understood that if you do issue the requested permit you do so with both the state and the applicant on notice of the tribe's rights and the likelihood that at some future date it will demand the water back.

Respectfully yours,

DELLWO, RUDOLF & GRANT


By: Robert D. Dellwo

Attorneys for Coeur d'Alene Tribe

RDD:fb

cc: Richard B. Eismann
Attorney
Homedale, Idaho 83628

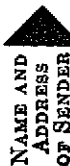
Chairman Bernard LaSarte
Coeur d'Alene Tribe of Indians
Plummer, Idaho 83851

Mr. Paul Mast
Office of Superintendent
Bureau of Indian Affairs
Northern Idaho Agency
Lapwai, Idaho 83540

Major cases involving the Winters Doctrine:

U. S. v. Winans, 198 U. S. 371
Winters v. U. S., 143 Fed. 740, 207 U. S. 564, 148 Fed. 684
Conrad v. U. S. 161 Fed. 829
U. S. v. Walker-River, 104 Fed.2d 334
Arizona v. Calif., 373 U.S. 546, 83 S.Ct. 1468
U. S. v. Ahtanum, 236 F.2d 321, 330 F. 2d 897
Choctaw & Cherokee Nations v. State of Oklahoma, U.S. S.Ct. (4/27/60)

92 7007



NAME AND ADDRESS OF SENDER
Dept of Water Administration

Indicate type of mail:
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✓ 3 22577	Mr & Mrs O.G. Day Rte 5, Priest River, Idaho	06	30	15			97-7007
✓ 4 22578	Mr & Mrs W. J. Lunsford, East 8111 Cassietta, Spokane, Wash	06	30	15			97-7007
✓ 6 22579	John & Clara E. Smyth, 1413 West Dean, Spokane, Wash	06	30	15			97-7007
✓ 8 22580	Mr & Mrs Joseph H. Schmidt, 3414 Riverview Ave, Spokane, Wash	06	30	15			97-7007
✓ 10 22581	Wm J. Kidd, Rte 5, Priest River, Ida	06	30	15			97-7007
✓ 11 22582	Mr & Mrs Michael D. DePaola, 3006 Monticello Place, Spokane, Wash	06	30	15			97-7007
✓ 13 22583	Richard B. Eismann, Attorney at Law, Hamilton, Idaho	06	30	15			97-7007
✓ 15 22584	Oellwa, Rudolf & Son, Attorneys at Law, 100 old National Bank Bldg, Athol, Mass	06	30	15			97-7007
✓ 18 22585	William W. Brownson, Hamden, Idaho	06	30	15			97-7007
✓ 19 22586	Donald R. Fuller, Rte 5, Priest Falls, Ida	06	30	15			97-7131

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J. Bowme

DATE DELIVERED

3/18/71

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92-7007

92-7007

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3/19/71

1

W W Brown

2

SIGNATURE OF ADDRESSEE'S AGENT, IF ANY

Kathy Brown

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7007

92-7007

OD Form 3811 Apr. 1967

550-18-71848-10

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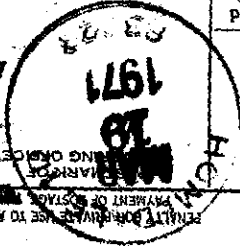
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BOISE, IDAHO

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22583

INSURED NO.

DATE DELIVERED

3/18/71

1

Richard B. Corman

2

SIGNATURE OF ADDRESSEE'S AGENT, IF ANY

Gene Corman

3

SHOW WHERE DELIVERED *(only if requested)*

92 7007

92-7007

POD Form 3811 Apr. 1967

GSA-16-71648-10

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OFFICIAL BUSINESS



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PAYMENT OF POSTAGE, 1300

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STATE OF IDAHO

STREET AND NO. OR P.O. BOX
DEPARTMENT OF WATER ADMINISTRATION

BOISE, IDAHO

POST OFFICE, STATE, AND ZIP CODE

STATE OF IDAHO
DEPARTMENT OF WATER ADMINISTRATION
Statehouse - Annex 2
Boise, Idaho 83707

92-7007

March 17, 1971

Re: Application for Permit No. 92-7007

C
County Clerk
Benewah County Court House
St. Maries, Idaho 83861

Dear Sir:

This letter is to confirm the use of the community room for a conference and/or hearing to be held by this office at 9:00 a.m. on April 1, 1971. Thank you for your cooperation in this matter.

Very truly yours,

Y
BOBBY D. FLEENOR
Assistant Director

BDF:kh

2004 26
92-7007

BEFORE THE DIRECTOR
OF THE
IDAHO DEPARTMENT OF WATER ADMINISTRATION

In the Matter of Protest Against
Approval of Application for Permit
No. 92-7097 in the name of
WILLIAM W. BROWNSON

NOTICE OF CONFERENCE
AND/OR HEARING

On January 21, 1971, Richard B. Eismann, Attorney at Law, filed in behalf of William W. Brownson, Homedale, Idaho, an application to appropriate the public waters of the State of Idaho. On February 20, 1971, Robert Dellwo, Attorney at Law, filed in behalf of The Coeur d'Alene Tribe of Indians, Coeur d'Alene, Idaho, a protest against approval of this application for permit.

The Department has set the matter of protest for conference and/or hearing on April 1, 1971, at 9:00 a.m., in the Bonewah County Court House, Community Room, St. Maries, 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 Administration. 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 protest or the application. Any and all cost incurred by reason of such nonappearance may be assessed against such nonappearing parties.

Dated this 16 day of March, 19 71.

Bobby D. Fleenor

BOBBY D. FLEENOR
Assistant Director

Mailed this 17th day of March, 1971, to Richard B. Eismann, Attorney at Law, Homedale, Idaho, certified mail No. 22583; Dellwo, Rudolf & Grant, Attorneys at Law, Attn: Mr. Robert Dellwo, 1010 Old National Bank Building, Spokane, Washington, certified mail No. 22584; William W. Brownson, Homedale, Idaho, certified mail No. 22585. Copy of protest enclosed with Mr. Brownson's notice.

February 25, 1971

Re: Application for Permit No. 92-7007

Mr. William W. Brownson
Homedale,
Idaho 83628

Dear Mr. Brownson:

Enclosed please find a copy of the protest filed by Mr. Robert D. Delliwo in behalf of the Coeur d'Alene Tribe of Idaho against the issuance of a permit pursuant to your application-for-permit.

The following are the only 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 waters intended to be appropriated must be public water of the State of Idaho. If private waters, as defined under Section 42-212 of the Idaho Code, the applicant must have authority from the owner of the land on which the water lies to divert the water.

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.

2002 26

Page 2

Mr. William W. Brownson

Re: 92-7007

February 25, 1971

A permit issued by this office is subject to all prior water rights and does not in any way convey or establish right-of-ways over private or governmental lands. Right-of-ways or easements 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 hearing and/or conference to discuss the matters of protest. Legal counsel's 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,

BOBBY D. FLEENOR
Assistant Director

EDF:DR
Enclosure

92 7007

February 25, 1971

Re: Application for Permit No. 92-7007 - William W. Brownson

Mr. Robert D. Dallwo
DELLWO, RUDOLF & GRANT
1010 Old National Bank Bldg.
Spokane, Washington 99201

Dear Mr. Dallwo:

We acknowledge receipt of the protest in connection with the above referenced application for permit filed in behalf of the Coeur d'Alene Tribe of Idaho. The following are the only items which, under Section 42-203 of the Idaho Code, can be considered at a hearing and/or conference in either approving or denying an application for permit:

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?

Please bear in mind that the Department may reject such 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.

92 7007

Page 2

Mr. Robert D. Dellwo

Re: 92-7007

February 25, 1971

A permit issued by this office is subject to all prior water rights and does not in any way convey or establish right-of-ways over private or governmental lands. Right-of-ways or easements 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 a hearing and/or conference to discuss the matters of protest. If we can be of further assistance, please contact us.

Very truly yours,

BOBBY D. FLEENOR
Assistant Director

BDF:DR

92 7007

February 22, 1971

Re: Permit No. 92-7007

Law Offices of
DELLWO, RUDOLF & GRANT
1010 Old National Bank Building
Spokane, Washington 99201

ATTENTION: Robert Dellwo, Tribal Attorney

Dear Mr. Dellwo:

We are returning your blank check #28-4, limited to \$10.00. We have recorded your protest against Application No. 92-7007.

We will advise you as to the time and date of any conferences or hearings in connection with this matter.

Very truly yours;

Donald W. McEldowney
Appropriation Supervisor

DWM:CM

Enc: check #28-4

92 7007

LAW OFFICES
DELLWO, RUDOLF & GRANT

ROBERT D. DELLWO
KERMIT M. RUDOLF
WILLIAM J. GRANT

1010 OLD NATIONAL BANK BUILDING
SPOKANE, WASHINGTON 99201
MADISON 4-4291

February 20, 1971

Idaho Department of Water Administration,
Statehouse
Boise, Idaho
83707

Re: PROTEST
Application No. 92-7007
William H. Brownson

The undersigned, attorney for the Coeur d'Alene Tribe of Idaho hereby files this protest, protesting the granting of Application No. 92-7007 in accordance with the provisions of Idaho Code 42-203.

The application is for the appropriation of waters within the Coeur d'Alene Indian Reservation. The CDA Tribe is a tribe duly organized and recognized under Federal Law. Its reservation was formed by congressional enactment as a result of Agreements with the U.S. of 1887 and 1889 which reserved all the lands within the boundaries of the Reservation to be held in trust by the U.S. Government for the Indian people "forever". Included were the waters that bounded, flowed through or under the reservation.

The tribe has therefore Winters Doctrine rights to all of the waters of the reservation to the extent necessary for its beneficial needs. This has been held by the Winters, Conrad, Walker River and Ahtanum cases to include future as well as present needs. It is not limited to agricultural or domestic uses but includes all other beneficial needs and uses including those relating to esthetics, recreation, business and industry.

The Tribe has by resolution enacted by its governing body appropriated all of the waters on the CDA Reservation including the waters that are the subject of the foregoing application. It is presently conducting an inventory of these waters and the tribal and allotted lands that will be benefited by them. This inventory includes agricultural, domestic, recreational, industrial and other potential uses.

The writer asks that this protest be properly filed and that the Tribe and he as its attorney be allowed to file an amended Protest and supplementary documents and information to more fully document and establish the legal position of the CDA Tribe.

The Coeur d'Alene Tribe of Indians

by Robert Dellwo
Tribal Attorney.

92 7007

LAW OFFICES
DELLWO, RUDOLF & GRANT

ROBERT D. DELLWO
KERMIT M. RUDOLF
WILLIAM J. GRANT

1010 OLD NATIONAL BANK BUILDING
SPOKANE, WASHINGTON 89201
MADISON 4-4291

February 20, 1971

Idaho Department of Water Administration,
Statehouse
Boise, Idaho
83707

Re: PROTEST
Application No. 92-7007
William W. Brownson

The undersigned, attorney for the Coeur d'Alene Tribe of Idaho hereby files this protest, protesting the granting of Application No. 92-7007 in accordance with the provisions of Idaho Code 42-203.

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The Tribe has by resolution enacted by its governing body appropriated all of the waters on the CDA Reservation including the waters that are the subject of the foregoing application. It is presently conducting an inventory of these waters and the tribal and allotted lands that will be benefited by them. This inventory includes agricultural, domestic, recreational, industrial and other potential uses.

The writer asks that this protest be properly filed and that the Tribe and he as its attorney be allowed to file an amended Protest and supplementary documents and information to more fully document and establish the legal position of the CDA Tribe.

The Coeur d'Alene Tribe of Indians
by Robert Dellwo
Tribal Attorney.

92 7007

**NOTICE OF APPLICATION
FOR WATER PERMIT**

Notice is hereby given that William W. Brownson, Homedale, Idaho, has on January 21, 1971, submitted Application No. 92-7007 for a permit to appropriate 0.50 cubic feet per second of water from an unnamed stream, tributary to Benewah Creek by means of headgate and pipeline within the SE $\frac{1}{4}$ NW $\frac{1}{4}$, Sec. 34, T. 46N, R. 3W, B.M., Benewah County, to be used from April 1 to Oct. 15 for the irrigation of 20 acres (.40 cfs) and from Jan. 1 to Dec. 31 for domestic purposes (.10 cfs) within the SE $\frac{1}{4}$ NW $\frac{1}{4}$, Sec. 34, T. 46N, R. 3W, 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 Administration, Statehouse, Boise, Idaho, 83707, on or before February 22, 1971.

R. Keith Hugginson
Director

Published in the St. Maries
Gazette Record, St. Maries,
Idaho, on February 4 and
February 11, 1971.
No. 3536 — Feb. 4 - Feb. 11

January 26, 1971

Re: Application No. 92-7007 - William W. Brownson

St. Maries Gazette Record
P.O. Box 367
St. Maries, Idaho 83861

Gentlemen:

Enclosed you will find a legal notice which we wish to have published once a week for two consecutive weekly issues of your newspaper. We have inserted the publication dates allowing ample time for you to submit us a galley proof for our 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 date. If you cannot publish the notice on the proposed dates, please contact us immediately.

An affidavit of publication must be submitted to the Department along with the publication bill. In order to receive payment, the following certification must appear on the bill:

"I hereby certify that the foregoing account is just and correct, that the amount claimed is legally due, after allowing all just credits, and that no part of the same has been paid."

(signature of claimant)

Very truly yours,

Donald W. McEldowney
Appropriation Supervisor

Bill submitted 2-17-71 by AW

DWM:DR
Enc: Legal notice

92 7007

NOTICE OF APPLICATION FOR WATER PERMIT

Notice is hereby given that William W. Brownson, Homedale, Idaho,

has on January 21, 1971, submitted Application No. 92-7007

for a permit to appropriate 0.50 cubic feet per second ~~Acres/ Feet/ per/ Month~~

of water from an unnamed stream, tributary to Benewah Creek

by means of headgate and pipeline

within the SE 1/4, Sec. 34, T. 46N, R. 3W, B.M., Benewah County,

to be used from April 1 to Oct. 15 for the irrigation of 20 acres (.40 cfs) and

~~1/4~~ from Jan. 1 to Dec. 31 for domestic purposes (.10 cfs)

within the SE 1/4, Sec. 34, T. 46N, R. 3W, B.M.

issued

If ~~any~~, 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 Administration, Statehouse, Boise, Idaho, 83707, on or before February 22, 1971.

R. KEITH HIGGINSON
Director

Published in the St. Maries Gazette Record, St. Maries, Idaho,

on February 4 and February 11, 1971.

92 7007

January 25, 1971

Re: Permit No. 92-7007

Mr. Richard B. Eismann, Attorney
Post Office Box # 36
Homedale, Idaho 83628

Dear Mr. Eismann:

As requested in your letter of January 20, 1971, please find enclosed a copy of application for Permit No. 92-7007.

It will take the Department approximately six (6) to eight (8) weeks to process and approve this application. Once it has been approved, we will send a copy to the applicant.

If you should have any further questions, please do not hesitate to contact us.
Very truly yours,

Dorian Clay
Appropriation Examiner

DC:cm

Enc: copy of Permit No. 92-7007

92 7007

January 22, 1971

Richard B. Eismann
Attorney at Law
Box 36
Homedale, Idaho 83628

Dear Mr. Eismann:

Returned herewith is Departmental Receipt No. 5538 in the amount of
\$10.00 for Application for Permit in the name of William W. Brownson,
which was received in this office under the above date.

Very truly yours,

M. RUSSELL BOSCH
Administrative Assistant

MRB:ejw

Enclosure: Receipt

92 7007

92-7007

TELEPHONE 337-3135
AREA CODE 208

RICHARD B. EISMANN

ATTORNEY AT LAW
HOMEDALE, IDAHO

POST OFFICE BOX 36
ZIP CODE 83628

January 20, 1971

State of Idaho,
Department of Water Administration
State House Annex No. 2
Boise, Idaho 83707

Gentlemen:

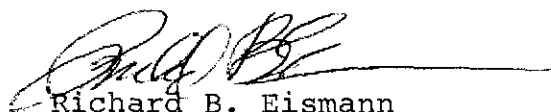
Enclosed herewith please find my check in the sum of \$10.00 and the application of William W. Brownson in duplicate. Attached is a copy of your letter of January 12, 1971 for your information.

I have completed the blank on the number of families as you requested. And also the point of diversion.

Please acknowledge your receipt thereof by affixing your receipt stamped to the copy and returning it to me.

Thank you very much.

Very truly yours,



Richard B. Eismann
RBE/imp
Enclosure:

92-7007

92-7007

STATE OF IDAHO

DEPARTMENT OF WATER ADMINISTRATION

Statehouse - Annex 2

Boise, Idaho 83707

(208) 384-2215



R. Keith Higginson
Director

Water Rights Administration
Water Resource Investigations
Dam and Reservoir Safety
Water Well Drilling
Flood Plain Management
Irrigation and
Flood Control Districts

January 12, 1971

Mr. Richard B. Eismann
Attorney-at-Law
Homedale, Idaho 83628

Dear Mr. Eismann:

We are returning your personal check, no. 92-300, in the amount of \$10.00 and the application for permit that you have submitted in the behalf of William W. Brownson.

We find in reviewing this application that there are several questions that need clarification before we can process it. Please note under item 3a that you have listed the point of diversion as being in the W $\frac{1}{2}$ SE $\frac{1}{4}$, Sec. 34, T. 46N, R. 3W, B.M. This description should be defined by the 40-acre legal subdivision that it lies within. You have also listed 0.1 cubic feet/second of water for domestic use under item 4, but have neglected to list the number of families to be served under item 8a4. We wish to advise you that, under normal conditions, the maximum quantity of water that we could approve for appropriation would be 0.02 c.f.s. per family unit.

If we may be of any further assistance in this matter, please feel free to contact us.

Very truly yours,

Dorian Clay,
Appropriation Examiner

DC/DG

Enc: check no. 92-300
application for permit

92 7007