

State of Idaho
Department of Water Resources
Permit to Appropriate Water
NO. 65-22948

Priority: September 11, 2003

Maximum Diversion Rate: 0.12 CFS

This is to certify, that GEORGE E COLWELL And/Or CHERYL F COLWELL
3990 HWY 52
PAYETTE ID 83661

have applied for a permit to appropriate water from:

Source: UNNAMED DRAIN

Tributary: SNAKE RIVER

and a permit is APPROVED for development of water as follows:

<u>BENEFICIAL USE</u>	<u>PERIOD OF USE</u>	<u>RATE OF DIVERSION</u>
STOCKWATER	01/01 to 12/31	0.12 CFS

LOCATION OF POINTS OF DIVERSION:

UNNAMED DRAIN	NE $\frac{1}{4}$ NE $\frac{1}{4}$	Sec. 8, Twp 08N, Rge 05W, B.M., PAYETTE County
UNNAMED DRAIN	SE $\frac{1}{4}$ NE $\frac{1}{4}$	Sec. 8, Twp 08N, Rge 05W, B.M., PAYETTE County
UNNAMED DRAIN	SW $\frac{1}{4}$ NE $\frac{1}{4}$	Sec. 8, Twp 08N, Rge 05W, B.M., PAYETTE County

PLACE OF USE: STOCKWATER

Twp Rge Sec	NE				NW				SW				SE				Totals
	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
08N 05W 8	X		X	X													

CONDITIONS OF APPROVAL

1. Proof of application of water to beneficial use shall be submitted on or before **September 01, 2007**.
2. Subject to all prior water rights.
3. Project construction shall commence within one year from the date of permit issuance and shall proceed diligently to completion unless it can be shown to the satisfaction of the Director of the Department of Water Resources that delays were due to circumstances over which the permit holder had no control.
4. Stockwater use is for 500 range cattle.
5. This right does not authorize construction of any new drains or enlargement of any existing drains.
6. The source of water diverted under this right is waste water and is subject to the right of the original appropriator, in good faith and in compliance with state laws governing changes in use and/or expansion of water rights, to cease wasting water, to change the place of use or manner of wasting it, or to recapture it.

This permit is issued pursuant to the provisions of Section 42-204, Idaho Code. Witness the signature of the Director, affixed at Boise, this 15th day of September, 2005.


FOR KARL J DREHER, Director

RECEIVED

AUG 25 2005

Ident. No. 65-22948 12/99

FORM 202

DEPARTMENT OF
WATER RESOURCES

DEPARTMENT OF WATER RESOURCES

APPLICATION FOR PERMIT

To appropriate the public waters of the State of Idaho

(Amended)

RECEIVED

MAY 19 2005

WATER RESOURCES
WESTERN REGION

1. Name of Applicant George E. Colwell and/or Cheryl F. Colwell Phone (208) 278-3448

Mailing address 3990 Highway 52 Payette, ID 83661

2. Source of water supply unnamed drainage ditch which is a tributary of Snake River

3. Location of point of diversion is Township 8N Range 5W Sec. 8, in the SW $\frac{1}{4}$, NE $\frac{1}{4}$, Govt. Lot —, B.M., Payette County;

additional points of diversion if any: —

4. Water will be used for the following purposes:

Amount 0.12 cfs for stockwater purposes from 01/01 to 12/31 (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 is (a) 0.12 and/or (b) —
cubic feet per second acre feet per annum

6. Proposed diverting works:

a. Describe type and size of devices used to divert water from the source constructed drain ditch; construction date unknown but assumed to be concurrent with development of Washoe Ditch system; point of diversion will be check structure in drain, 6 feet high

b. Height of storage dam — feet; active reservoir capacity — acre-feet;
total reservoir capacity — acre-feet

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

d. Is ground water with a temperature of greater than 85°F being sought?

e. If well is already drilled, when? —; Drilling firm —;
Well was drilled for (well owner) —; Drilling Permit No. —

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

8. Description of proposed uses (if irrigation only, go to item 9):

a. Hydropower; show total feet of head and proposed capacity in kW.

b. Stockwatering; list number and kind of livestock. 500 range cattle

c. Municipal; show name of municipality.

d. Domestic; show number of households.

e. Other; describe fully.

9. Description of place of use:

- If water is for irrigation, indicate acreage in each subdivision in the tabulation below.
- If water is used for other purposes, place a symbol of the use (example: *D* for Domestic) in the corresponding place of use below. See instructions for standard symbols.

TWP	RGE	SEC	NE				NW				SW				SE				TOTALS
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
8N	5W	8	S		S	S													

Total number of acres to be irrigated

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

11. a. Who owns the property at the point of diversion? Applicant

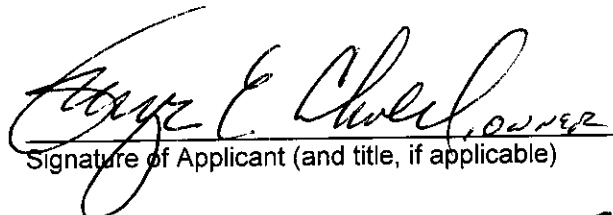
b. Who owns the land to be irrigated or place of use? Applicant

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

12. Remarks: _____

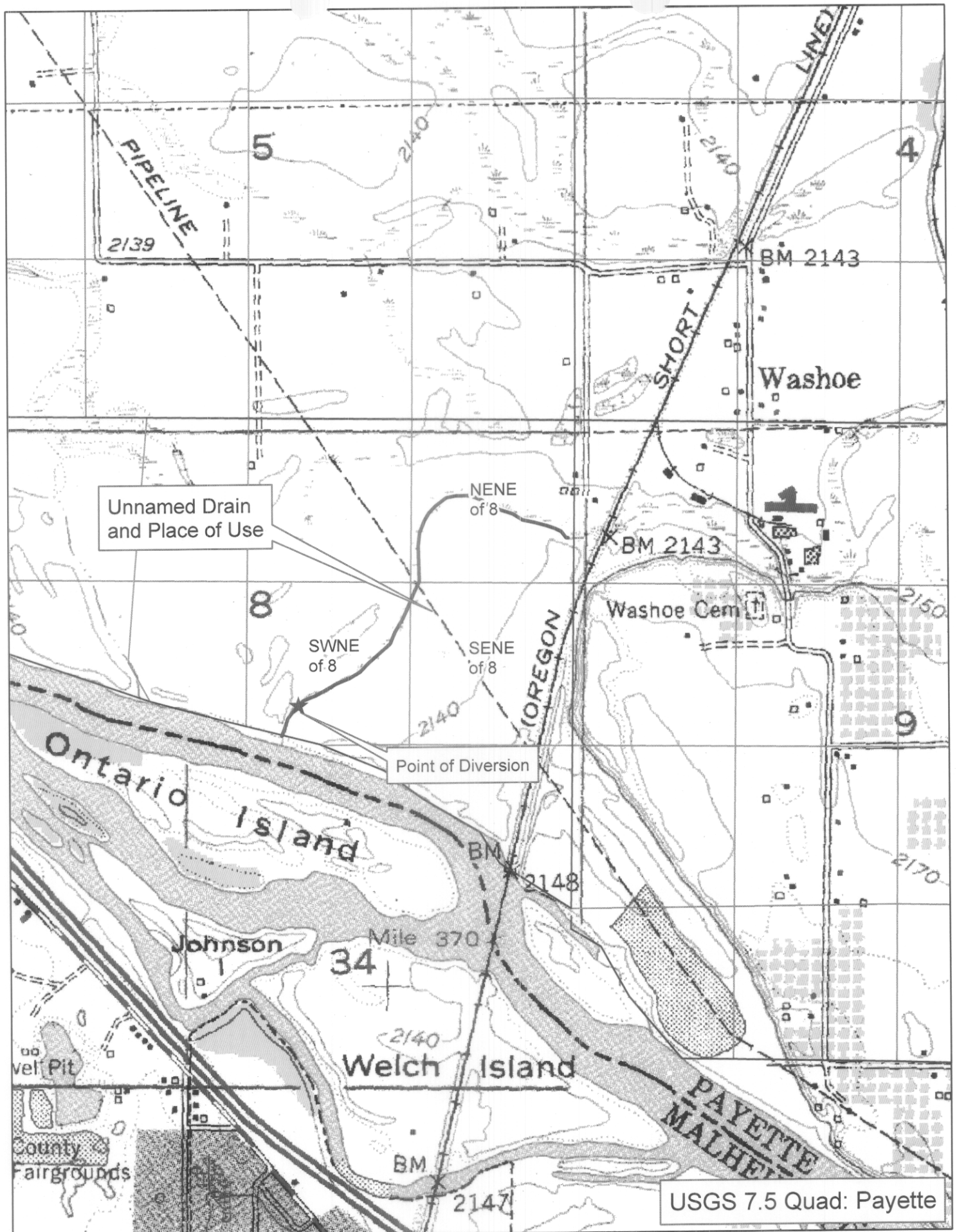
13. **MAP OF PROPOSED PROJECT REQUIRED** - Attach an 8½"x11" map clearly identifying the proposed point of diversion, place of use, section #, township & range. (A photocopy of a USGS 7.5 minute topographic quadrangle map is preferred.)

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


 Signature of Applicant (and title, if applicable)

Received by JE Date 5/19/05 Time 1:00 Preliminary check by JE
 Fee \$ SEE ORIGINAL Received by _____ # _____ Date _____
 Publication prepared by JE Date 6-1-05 Published in Ind. Ent.
 Publication approved JE Date 6-17-05

fee OK



No gov't lots - gr 5/24/05

65-22948

RECEIVED

SEP 11 2003

WATER RESOURCES
WESTERN REGIONSTATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
APPLICATION FOR PERMIT

To appropriate the public waters of the State of Idaho

1. Name of Applicant George E. Colwell and Cheryl F. Colwell Phone (208) 278-3448
Mailing address 3990 Highway 52 Payette, ID 83661
2. Source of water supply unnamed drainage ditch which is a tributary of Snake River
3. Location of point of diversion is Township 8N Range 5W Sec. 8, in the NE $\frac{1}{4}$, NE $\frac{1}{4}$, Govt. Lot Payette, B.M., Payette
- County; additional points of diversion if any: SWNE 8 and SENE 8, T8N, R5W
4. Water will be used for the following purposes:
- | |
|--|
| Amount <u>0.12 cfs</u> for <u>stockwater</u> purposes from <u>01/01</u> to <u>12/31</u> (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) |
| 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 is (a) 0.12 and/or (b) _____
cubic feet per second acre feet per annum
6. Proposed diverting works:
- a. Describe type and size of devices used to divert water from the source constructed drain ditch; construction date unknown but assumed to be concurrent with development of Washoe Ditch system
- b. Height of storage dam _____ feet; active reservoir capacity _____ acre-feet; total reservoir capacity _____ acre-feet
- c. Proposed well diameter is _____ inches; proposed depth of well is _____ feet
- d. Is ground water with a temperature of greater than 85°F being sought? _____
- e. If well is already drilled, when? _____; Drilling firm _____;
Well was drilled for (well owner) _____; Drilling Permit No. _____
7. Time required for completion of works and application of water to proposed beneficial use is 5 years (minimum 1 year)
8. Description of proposed uses (if irrigation only, go to item 9):
- a. Hydropower; show total feet of head and proposed capacity in kW. _____
- b. Stockwatering; list number and kind of livestock. 500 range cattle
- c. Municipal; show name of municipality. _____
- d. Domestic; show number of households. _____
- e. Other; describe fully. _____

ORIGINAL
Superscribed

9. Description of place of use:

- a. If water is for irrigation, indicate acreage in each subdivision in the tabulation below.
- b. If water is used for other purposes, place a symbol of the use (example: D for Domestic) in the corresponding place of use below. See instructions for standard symbols.

TWP	RGE	SEC	NE				NW				SW				SE				TOTALS
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
8N	5W	8	S		S	S													

Total number of acres to be irrigated _____

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

11. a. Who owns the property at the point of diversion? Applicant

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

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

12. Remarks: _____

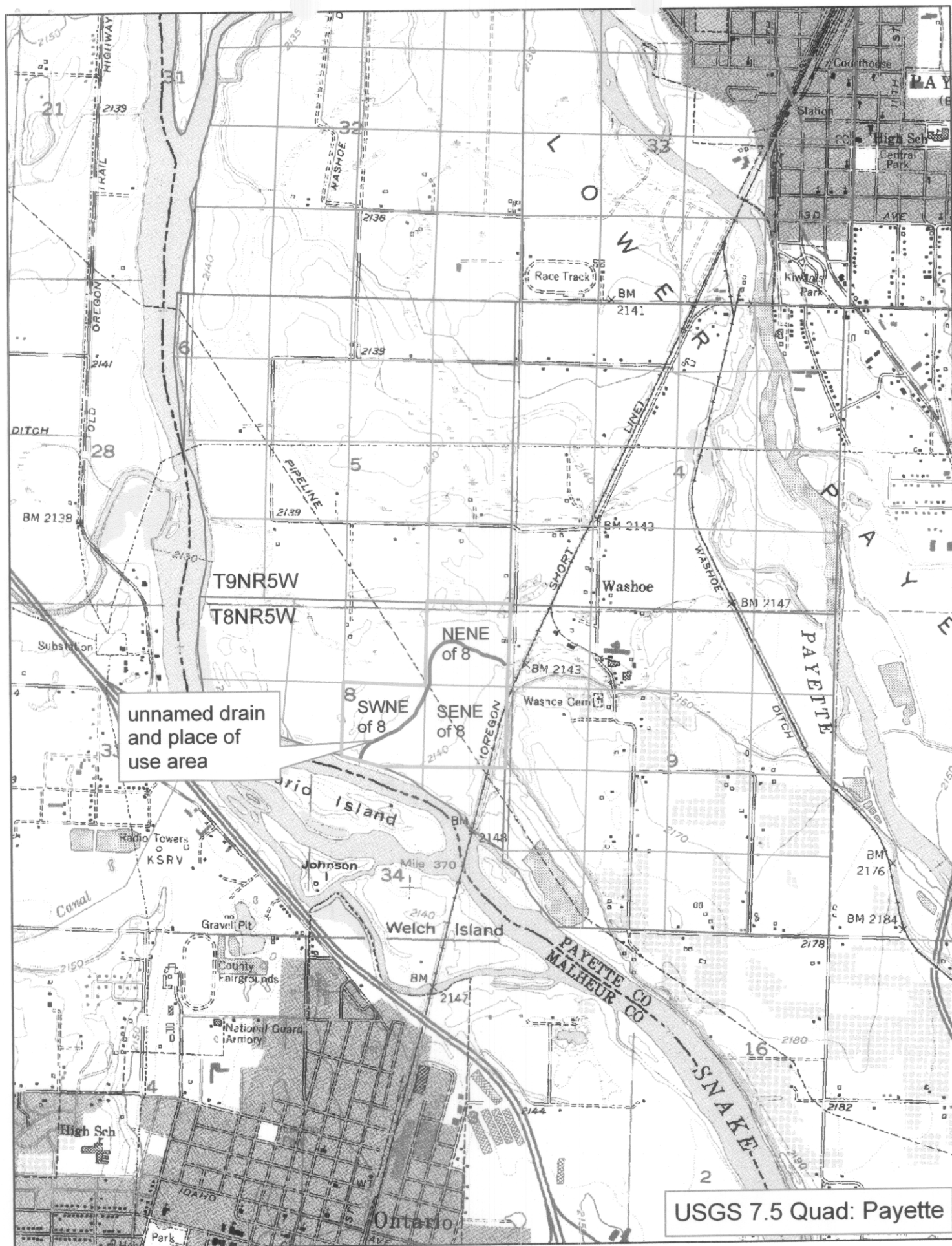
13. **MAP OF PROPOSED PROJECT REQUIRED** - Attach an 8½"x11" map clearly identifying the proposed point of diversion, place of use, section #, township & range. (A photocopy of a USGS 7.5 minute topographic quadrangle map is preferred.)

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

Cheryl F. Solwell
Cheryl F. Solwell owner
 Signature of Applicant (and title, if applicable)

Received by KL Date 9/11/03 Time 3:25 Preliminary check by _____
 Fee \$ 100.00 Received by KL # W030917 Date 9/11/03
 Publication prepared by _____ Date _____ Published in _____
 Publication approved _____ Date _____

22524



**NOW
STARTING
RIGHT
SIDE OF
FILE**



State of Idaho

DEPARTMENT OF WATER RESOURCES

322 East Front Street, P.O. Box 83720, Boise, ID 83720-0098
Phone: (208) 287-4800 Fax: (208) 287-6700 Web Site: www.idwr.idaho.gov.

DIRK KEMPTHORNE
Governor

KARL J. DREHER
Director

September 15, 2005

GEORGE E COLWELL
CHERYL F COLWELL
3990 HWY 52
PAYETTE ID 83661

RE: Permit No. 65-22948

Permit Approval Notice

Dear Permit Holder:

The Department of Water Resources has issued the enclosed permit authorizing you to establish a new water right. Please be sure to thoroughly review the conditions of approval and remarks listed on your permit.

The permit is a PRELIMINARY ORDER issued by the Department pursuant to Section 67-5243, Idaho Code. It can and will become a final order without further action by the Department unless a party petitions for reconsideration or files an exception and/or brief within fourteen (14) days of the service date as described in the enclosed information sheet.

As a permit owner you must commence the excavation or construction of the diverting works within one year of the date the permit was issued, and you must proceed diligently until the project is completed. The date shown under condition no. 1 is the date when the project must be completed.

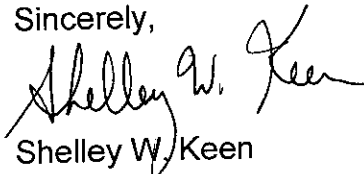
The Department will send you a 'Proof Due Notice' approximately 60 days prior to the above referenced date requesting you to file either a Proof of Beneficial Use form or a Request for Extension of Time form.

Please note that a separate stream channel alteration permit must be obtained from the Department prior to any activity in the stream channel other than construction or maintenance of the diversion structure for your water right(s). Applications for stream channel alteration permits must be filed at least sixty days prior to the commencement of work in the stream.

Also, please note that water right owners are required to report any change of water right ownership and/or mailing address to the Department within 120 days of the change. Failure to report these changes could result in a \$100 late filing fee. Contact any office of the Department or visit the Department's homepage on the Internet to obtain the proper forms and instructions.

If you have any questions, please contact me at 208-287-4947.

Sincerely,

A handwritten signature in black ink, appearing to read "Shelley W. Keen". The signature is fluid and cursive, with the first name "Shelley" being the most prominent.

Shelley W. Keen

Water Rights Supervisor

SWK:klf

Enclosure(s)

cc: HOFSTETTER LAW OFFICE LLC

CERTIFICATE OF SERVICE

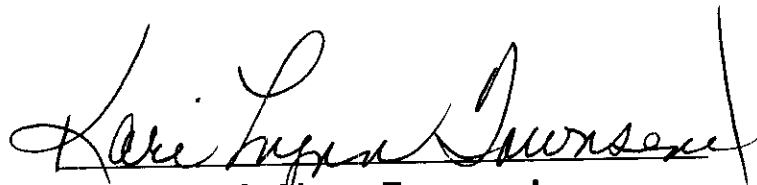
I hereby certify that on September 15, 2005 I mailed a true and correct copy, postage prepaid, of the foregoing PRELIMINARY ORDER(Approved Permit) to the person(s) listed below:

RE: WATER RIGHT NO.

65-22948

**CHERYL F COLWELL
GEORGE E COLWELL
3990 HWY 52
PAYETTE ID 83661**

**HOFSTETTER LAW OFFICE LLC
C/O DANA L HOFSTETTER
608 W FRANKLIN ST
BOISE ID 83702**

A handwritten signature in black ink, appearing to read 'Karl Lynn Townsend', written over a horizontal line.

**Karl Lynn Townsend
Secretary**

**EXPLANATORY INFORMATION
TO ACCOMPANY A
PRELIMINARY ORDER**

(To be used in connection with actions when a hearing was not held)

(Required by Rule of Procedure 730.02)

The accompanying order or approved document is a "**Preliminary Order**" issued by the department pursuant to section 67-5243, Idaho Code. It can and will become a final order without further action of the Department of Water Resources ("department") unless a party petitions for reconsideration, files an exception and brief, or requests a hearing as further described below.

PETITION FOR RECONSIDERATION

Any party may file a petition for reconsideration of a preliminary order with the department within fourteen (14) days of the service date of this order. The department will act on a petition for reconsideration within twenty-one (21) days of its receipt, or the petition will be considered denied by operation of law. See Section 67-5243(3) Idaho Code.

EXCEPTIONS AND BRIEFS

Within fourteen (14) days after (a) the service date of a preliminary order, (b) the service date of a denial of a petition for reconsideration from this preliminary order, or (c) the failure within twenty-one (21) days to grant or deny a petition for reconsideration from this preliminary order, any party may in writing support or take exceptions to any part of a preliminary order and may file briefs in support of the party's position on any issue in the proceeding with the Director. Otherwise, this preliminary order will become a final order of the agency.

REQUEST FOR HEARING

Unless a right to a hearing before the Department or the Water Resource Board is otherwise provided by statute, any person aggrieved by any final decision, determination, order or action of the Director of the Department and who has not previously been afforded an opportunity for a hearing on the matter may request a hearing pursuant to section 42-1701A(3), Idaho Code. A written petition contesting the action of the Director and requesting a hearing shall be filed within fifteen (15) days after receipt of the denial or conditional approval.

ORAL ARGUMENT

If the Director grants a petition to review the preliminary order, the Director shall allow all parties an opportunity to file briefs in support of or taking exceptions to the preliminary order and may schedule oral argument in the matter before issuing a final order. If oral arguments are to be heard, the Director will within a reasonable time period notify each party of the place, date and hour for the argument of the case. Unless the Director orders otherwise, all oral arguments will be heard in Boise, Idaho.

CERTIFICATE OF SERVICE

All exceptions, briefs, requests for oral argument and any other matters filed with the Director in connection with the preliminary order shall be served on all other parties to the proceedings in accordance with IDAPA Rules 37.01.01302 and 37.01.01303 (Rules of Procedure 302 and 303).

FINAL ORDER

The Director will issue a final order within fifty-six (56) days of receipt of the written briefs, oral argument or response to briefs, whichever is later, unless waived by the parties or for good cause shown. The Director may remand the matter for further evidentiary hearings if further factual development of the record is necessary before issuing a final order. The department will serve a copy of the final order on all parties of record.

Section 67-5246(5), Idaho Code, provides as follows:

Unless a different date is stated in a final order, the order is effective fourteen (14) days after its issuance if a party has not filed a petition for reconsideration. If a party has filed a petition for reconsideration with the agency head, the final order becomes effective when:

- (a) the petition for reconsideration is disposed of, or
- (b) the petition is deemed denied because the agency head did not dispose of the petition within twenty-one (21) days.

APPEAL OF FINAL ORDER TO DISTRICT COURT

Pursuant to sections 67-5270 and 67-5272, Idaho Code, if this preliminary order becomes final, any party aggrieved by the final order or orders previously issued in this case may appeal the final order and all previously issued orders in this case to district court by filing a petition in the district court of the county in which:

- i. A hearing was held,
- ii. The final agency action was taken,
- iii. The party seeking review of the order resides, or
- iv. The real property or personal property that was the subject of the agency action is located.

The appeal must be filed within twenty-eight (28) days of this preliminary order becoming final. See section 67-5273, Idaho Code. The filing of an appeal to district court does not itself stay the effectiveness or enforcement of the order under appeal.

MEMORANDUM

TO: File

FROM: Steve Lester 

DATE: August 23, 2005

RE: Cowell Application for Permit Nos. 65-22948 through 65-22954

Colwells filed these unusual applications following a lengthy SRBA process resulting in disallowal of claims for instream rights on drain ditches near the confluence of the Snake and Payette Rivers. According to their attorney, Dana Hofstetter, the clients were advised by IDWR to file applications for permit instead.

They did that. The applications were filed for various reaches of drain ditches. The original applications simply identified those reaches without proposing diversion works of any type. The cattle would simply continue to drink from the ditches. Of course, water rights are not required and cannot be approved for instream use of ditches.

The regional office response to the applications noted that instream rights for constructed ditches are not authorized under Idaho law. The applicants were advised to propose some type of diversion works for stockwater use. After much discussion among regional staff and with the applicants' attorney, the applications were revised to propose simple check structures in the drains. Each check structure would serve as a P/D. For each P/D, the area upstream from that P/D to another one, if applicable, would serve as the P/U.

The amended applications do not propose to divert water from the drains. The proposed developments do not constitute storage as we typically envision it. I guess it could be argued that the applicants have proposed a series of long skinny "ponds" without widening the ditches or doing anything beyond inserting some check structures. That conclusion stretches the definition of ponds beyond credibility. The hybrid solution of check structures for natural flow rights strikes about the right balance for the use of drain ditches for "instream stock."

A different take on this would be to deny the applications unless more traditional development is proposed. I do not think we need to go that far. We should be able to accommodate the unusual sometimes.

Have we done that lately? I think we have. We issued Permit 79-14082 to Tom Lindsey. This involved an exempted use of ground water collected deep within a mining tunnel. He constructed a sump pump area for mining at the end of the tunnel. He filled water jugs by hand at that location and transported them via wheelbarrow to his truck. Then he

drove to his home a few miles away to deliver the “diverted” water to the P/U. The following condition of approval covered that scenario:

Water can only be diverted under this right using power manually generated by a single person. Water can only be conveyed using transient, temporary means of transporting the water. The diversion and conveyance system cannot include a motorized pump or a pipeline. The right holder shall not maintain a diversion structure or diversion works at the point of diversion when water is not being diverted.

I argued that Lindsey’s setup did not constitute a delivery system under our definitions. But he had a diversion of sorts, he moved the water elsewhere, and he made beneficial use of it. Additionally, the source and use were exempted under 42-111. Those factors led to approval of his application.

Well, that is quite a story. Colwells’ story is similarly odd and worthy of consideration. These are not identical situations but they share a common element of liberal interpretations to accommodate something not required under law but desired by the applicant.

Let’s approve the Colwell applications as follows:

Standard conditions but limited to 2 years (5 is too long for such a simple scenario).

Stockwater use is for 500 range cattle (each right for different animals per attorney’s information).

Does not authorize construction of any new drain ditches or enlargement of any existing drain ditches. (Not sure we need this one but seems like a good idea).

Rights 65-22951 and 65-22954 remain subject to Water District #65 Watermaster control:

- Director retains jurisdiction to require measuring devices and/or adjustable/controllable diversion works in the future as needed
- Director retains jurisdiction to require compliance with the mitigation requirements of Water District #65 in the future as needed.¹

This approval authorizes a sufficient amount of water for the above described use to be checked up in the drain ditch(es). Additional water present in the drain ditch(es) shall continue its free flow down the ditch(es) beyond the point(s) of diversion. (Can’t just check up ditches and flood areas beyond the ditch banks).

¹ Do not need to measure and/or control the rights unless future circumstances require this for some reason. Not subject to annual 6/15 cutoff date and probably will not have to lease rental pool water to keep diverting each year due to location and nature of these systems.

Affidavit of Publication

Copy of Notice
(First Copy)

STATE OF IDAHO,
COUNTY OF PAYETTE

ss.

Application for New Water Rights
TITLE OF PUBLICATION

Department of Water Resources
SPONSOR OF PLAINTIFF
PLAINTIFF OR LEGAL AGENT

I, [Signature], being
duly sworn, deposes and says:
That he is the clerk of

THE INDEPENDENT-ENTERPRISE, a weekly newspaper published at Payette, in the County of Payette and State of Idaho; that said paper has been and is in general circulation in the county aforesaid, and in the vicinity of Payette; that the advertisement, a copy of which is attached hereto, was published in said newspaper once a week for two (2) consecutive weeks in the regular and entire issue of said paper during the period and 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 June 1, 2005, and ending with the issue of June 8, 2005.

STATE OF IDAHO
COUNTY OF 9th

On this 9th day of June in the year of 2005, before me, a Notary Public, personally appeared [Signature] known or identified to me to be the person whose name subscribed to the within instrument, and being by me first duly sworn, declared that the statements therein are true, and acknowledged to me that he executed the same.

[Signature]
Notary Public for Idaho

Residing at Payette

My commission expires: 7-1-10

APPLICATIONS FOR NEW WATER RIGHTS

George & Cheryl Colwell of 3990 Hwy 52, Payette ID 83661 filed the following applications on 9/11/2003 to appropriate the public waters of the State of Idaho in Payette County. All applications are for existing unnamed drain ditches. Each application proposes 0.12 cfs stockwater year around for 500 separate range cattle. Except as noted, all applications are (1) tributary to the Snake River, (2) in T9N R5W, and (3) for use within the Washoe Ditch system in the general vicinity of Payette near the confluence of the Snake and Payette Rivers.

Application 65-22948 in T8N R5W Section 8, across the Snake River from Ontario. Application 65-22949 in Section 29. Application 65-22950 in Section 29 & 32. Application 65-22951 in Sections 29, 32 & 33, tributary to Payette River. Application 65-22952 in Section 32. Application 65-22953 in Section 32. Application 65-22954 in Section 33, tributary to Payette River.

All Permits will be subject to all prior water rights. For specific details regarding the applications, please contact the Idaho Department of Water Resources (IDWR) Western Region at 208-334-2190 or visit www.idwr.idaho.gov with detail provided under "new water right applications". Protests may be submitted based on the criteria of Sec 42203A, Idaho Code. Any protest against approval of the applications must be filed with IDWR Western Region, 2735 Airport Way, Boise ID 83705-5082 together with a protest fee of \$25.00 for each application on or before June 20, 2005. The protestant must also send a copy of the protest to the applicant.

KARL J DREHER, Director
No. 1937

June 1, 8

STATEMENT

Independent-Enterprise

PAYETTE, IDAHO

Number of Lines 41
Number of Insertions two (2)
41 Lines @ 1.16 ... \$ 47.56
41 Lines @ .99 ... \$ 40.59
TOTAL COST \$ 88.15
WILL BE

RECEIVED

JUN 10 2005

WATER RESOURCES
WESTERN REGION

No 1937

Kreger (Taylor), Sue

To: eleitzin@idfg.state.id.us
Subject: comment letters

**IDAHO DEPARTMENT OF WATER RESOURCES
WESTERN REGION
2735 AIRPORT WAY
BOISE ID 83705**

May 31, 2005

ERIC LEITZINGER, IDFG
PO BOX 25
BOISE ID 83707

Re: Applications for Permit

Dear Eric:

Attached is a copy(s) of one or more applications that may be of interest to your agency. Please review the application(s) and submit any comments you may have.

This office normally completes the processing of an application within a six-week period and is required to take final action shortly thereafter. However, if your agency desires to file a formal protest against the approval of any of these applications, your written protest along with the \$25.00 protest fee for each application protested, must be received in this office by June 20, 2005.

If you have any questions regarding these applications, please contact this office at 334-2190.

Sincerely,



63-32067.pdf



65-22948.pdf



65-22949.pdf



65-22950.pdf



65-22951.pdf



65-22952.pdf



65-22953.pdf



65-22954.pdf

*CORRESPONDENCE in 65-22948
Also covers 65-22949
through 65-22954
-SK*

**IDAHO DEPARTMENT OF WATER RESOURCES
WESTERN REGION
2735 AIRPORT WAY
BOISE ID 83705**

May 24, 2005

Legal Notice Department
INDEPENDENT ENTERPRISE
124 S MAIN
PAYETTE ID 83661

RE: Applications for Permit Nos. 65-22948, 65-22949, 65-22950, 65-22951, 65-22952, 65-22953,
and 65-22954

Dear LEGAL NOTICE DEPARTMENT:

Enclosed you will find a legal notice which we wish to have published in your newspaper on the dates indicated (once a week for two consecutive weekly issues). 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. Please send the affidavit and bill to this office before 06/20/2005. Your cooperation is appreciated.

Sincerely

Sue Kreger
Administrative Assistant

APPLICATIONS FOR NEW WATER RIGHTS

George & Cheryl Colwell of 3990 Hwy 52, Payette ID 83661 filed the following applications on 9/11/2003 to appropriate the public waters of the State of Idaho in Payette County. All applications are for existing unnamed drain ditches. Each application proposes 0.12 cfs stockwater year around for 500 separate range cattle. Except as noted, all applications are (1) tributary to the Snake River, (2) in T9N R5W, and (3) for use within the Washoe Ditch system in the general vicinity of Payette near the confluence of the Snake and Payette Rivers.

Application 65-22948 in T8N R5W Section 8, across the Snake River from Ontario.

Application 65-22949 in Section 29.

Application 65-22950 in Section 29 & 32.

Application 65-22951 in Sections 29, 32 & 33, tributary to Payette River.

Application 65-22952 in Section 32.

Application 65-22953 in Section 32.

Application 65-22954 in Section 33, tributary to Payette River.

All Permits will be subject to all prior water rights. For specific details regarding the applications, please contact the Idaho Department of Water Resources (IDWR) Western Region at 208-334-2190 or visit www.idwr.idaho.gov with detail provided under "new water right applications". Protests may be submitted based on the criteria of Sec 42-203A, Idaho Code. Any protest against approval of the applications must be filed with IDWR Western Region, 2735 Airport Way, Boise ID 83705-5082 together with a protest fee of \$25.00 for each application on or before June 20, 2005. The protestant must also send a copy of the protest to the applicant.

KARL J DREHER, Director

Published in the Independent Enterprise on June 1 and 8, 2005.

HOFSTETTER LAW OFFICE, LLC

608 West Franklin Street
Boise, Idaho 83702

Dana@IdahoWaterLaw.com

Dana L. Hofstetter
Attorney at Law

Telephone: (208) 424-7800
Facsimile: (208) 424-8774

May 19, 2005

RECEIVED

MAY 19 2005

WATER RESOURCES
WESTERN REGION

Via Hand Delivery

Steve Lester
Water Rights Supervisor
Western Region
Idaho Department of Water Resources
2735 Airport Way
Boise, Idaho 83705-5082

Re: George and Cheryl Colwell – Seven Permit Applications for Stockwater

Dear Mr. Lester:

I enclose seven Amended Applications for Permit in the names of George and Cheryl Colwell. The Applications have been amended to identify the locations of check structures. Please let me know if you have any questions or need any additional information regarding this matter. Thank you for your assistance.

Sincerely,

HOFSTETTER LAW OFFICE, LLC



Dana L. Hofstetter

Enclosures

cc: George Colwell w/out enclosures

Terry Scanlan w/out enclosures

4001.2/6476

Lester, Steve

From: Lester, Steve
Sent: Monday, May 02, 2005 3:49 PM
To: 'Hofstetter Law Office'
Subject: RE: Colwell Seven Permit Applications for Stockwater

Dana:

Thank you for your timely request. Please consider this email an approval to extend the written response deadline to June 3, 2005. Please let me know if you have additional questions or concerns.

Steve Lester

-----Original Message-----

From: Hofstetter Law Office [mailto:Dana@IdahoWaterLaw.com]
Sent: Monday, May 02, 2005 3:46 PM
To: steve.lester@idwr.idaho.gov
Cc: Terry Scanlan
Subject: Colwell Seven Permit Applications for Stockwater

Steve:

Terry Scanlan informed me that he met with you this morning regarding the Colwells' seven Permit Applications for stock water. Would it be possible for us to have an additional 30 days to prepare the Amended Applications and have them executed and filed? As you know, the current

deadline pursuant to your December 3, 2004 letter is May 4, 2005. Thank you for your consideration of this matter.

Regards,
Dana Hofstetter

Dana L. Hofstetter
Hofstetter Law Office, LLC
608 West Franklin Street
Boise, Idaho 83702
Telephone: (208) 424-7800
Facsimile: (208) 424-8774

*OK - amended appls. filed
5/19/05
-JL*



State of Idaho

DEPARTMENT OF WATER RESOURCES

Western Region, 2735 Airport Way, Boise, Idaho 83705-5082 - (208) 334-2190
FAX (208) 334-2348

DIRK KEMPTHORNE
Governor

KARL J. DREHER
Director

December 3, 2004

DANA HOFSTETTER
HOFSTETTER LAW OFFICE
608 W FRANKLIN ST
BOISE ID 83702

Re: George and Cheryl Colwell - Seven Applications for Permit for Stockwater

Dear Dana:

Your December 2, 2004, letter seeking more time to amend the above referenced applications was received. A delay of up to six (6) months is approved. The applications should be amended or otherwise addressed in writing by May 4, 2005.

The applications will be voided without timely completion of this action. Please let me know if you need additional information in this regard.

Thank you for your prompt attention to this matter.

Sincerely,

A handwritten signature in black ink, appearing to read 'Steve Lester'.

Steve Lester
Water Rights Supervisor

HOFSTETTER LAW OFFICE

608 West Franklin Street
Boise, Idaho 83702

Dana@IdahoWaterLaw.com

Dana L. Hofstetter
Attorney at Law

Telephone: (208) 424-7800
Facsimile: (208) 424-8774

December 2, 2004

RECEIVED

DEC 03 2004

WATER RESOURCES
WESTERN REGION

Via U.S. Mail and Facsimile 334-2348

Steve Lester
Water Rights Supervisor
Western Region
Idaho Department of Water Resources
2735 Airport Way
Boise, Idaho 83705-5082

Re: George and Cheryl Colwell – Seven Permit Applications for Stockwater

Dear Mr Lester:

This letter will confirm our recent telephone conversation and provide a formal response to your November 8, 2004 letter.

The Colwells intend to amend the stock water Permit Applications to provide for the impoundment of water in the drains by one or more check structures added to each drain. It is my understanding that already there are several check structures along the drains; however, additional check structures also likely will need to be added. Further, because it will be necessary to provide information concerning the locations of the check structures and, also, to recalculate associated water right quantities, the Colwells further request an interruption in Permit Application processing to be able to gather and provide this information to the Idaho Department of Water Resources. I do not anticipate that we will need more than about 30 to 60 days to gather the additional information and to submit it to you.

Steve Lester
December 2, 2004
Page 2

In the interim, please let me know if you have any questions or need any additional information regarding this matter. Thank you for your assistance.

Sincerely,

HOFSTETTER LAW OFFICE, LLC

A handwritten signature in black ink, reading "Dana Hofstetter". The signature is written in a cursive style with a long horizontal flourish extending to the right.

Dana L. Hofstetter

cc: George Colwell
Terry Scanlan
4001.1/6235



State of Idaho

DEPARTMENT OF WATER RESOURCES

Western Region, 2735 Airport Way, Boise, Idaho 83705-5082 - (208) 334-2190

FAX (208) 334-2348

DIRK KEMPTHORNE
Governor

KARL J. DREHER
Director

November 8, 2004

DANA HOFSTETTER
HOFSTETTER LAW OFFICE LLC
608 W FRANKLIN ST
BOISE ID 83702

Re: Applications for Permits in the name of George and Cheryl Colwell

Dear Dana:

Our last contact on the seven applications for permits proposing the use of unnamed drains for stockwater use on the Colwell property was earlier this year in March. The matter has been discussed at the Idaho Department of Water Resources (IDWR) since then. The applicant argues that drain ditches are diversion works in this case.

Furthermore, the "point" of diversion in each case is described as the entire length of the ditch. That is also the place of use in each case. This appears to be another way to describe an "instream right" for stockwater along a ditch instead of along a natural stream specified by I. C. § 42-113. The argument is not persuasive.

Therefore the following options are provided for your consideration based on those discussions.

1. Withdraw the applications. Refunds are possible for withdrawals completed prior to publication of legal notices.
2. Amend the applications to demonstrate (a) diversion of water from the drains at specific points along the drains (natural flow), or (b) impoundment of water in the drains by one or more check structures added to each drain (storage). These impoundments could include one or more check structures along each drain or near the end of each drain to impound water in "ponds."
3. Request a delay in processing of up to one year pursuant to Water Appropriation Rule 40. An approved delay in processing would be conditioned upon a persuasive argument from the applicant that a drain ditch, without one or more diversion points and/or impoundment structures along the ditch, is a diversion of water subject to approval within the application for permit process.

November 8, 2004

Page 2

4. Request that the applications be processed as filed and without additional explanation. In that case, this office will prepare and send legal notices to the local newspaper. If protests against the applications were not filed, this office would recommend to the IDWR State Office that the applications be denied for failure to propose a diversion or impoundment of water.

Please submit your written response for one of the four options within thirty (30) days from the date of this letter. The applications will be removed from IDWR records without a timely written reply.

Please contact me at 334-2190 if you have any questions. Thank you for your attention to this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Steve Lester". The signature is fluid and cursive, with the first name "Steve" and last name "Lester" clearly distinguishable.

Steve Lester
Water Rights Supervisor

CONVERSATION MEMORANDUM

DATE 3/2/04

FILE _____

NAME OF PARTY DANA HOFSTETTER

EMPLOYEE JZ

RE: Status 7 COLWELL APPLS.

Re 1/30/04 letter.

2/20/04 left message for DANA.

3/2/04 She returned the call.

I will consult with J. R. RE history etc to
see if should process as filed.

Let DANA know the results.

Follow up meeting with DANA if needed.

Call DANA by late March.

HOFSTETTER LAW OFFICE

608 West Franklin Street
Boise, Idaho 83702

Dana@IdahoWaterLaw.com

Dana L. Hofstetter
Attorney at Law

Telephone: (208) 424-7800
Facsimile: (208) 424-8774

January 30, 2004

RECEIVED
FEB 02 2004
WATER RESOURCES
WESTERN REGION

Via U.S. Mail and Facsimile 334-2348

Steve Lester
Water Rights Supervisor
Western Region
Idaho Department of Water Resources
2735 Airport Way
Boise, Idaho 83705-5082

Re: George and Cheryl Colwell – Seven Permit Applications for Stockwater

Dear Mr Lester:

This letter responds to your letter to the Colwells dated November 21, 2003, as forwarded to me by your letter of December 1, 2003, regarding their seven Permit Applications for stockwater from drain ditches. The Colwells have valiantly tried to get these water uses appropriately documented to no avail. On the recommendation of IDWR staff for the SRBA, the SRBA proceedings for these rights were withdrawn and the Permit Applications were filed instead. Now the Colwells are being instructed to withdraw these Permit Applications. I continue to believe that the Permit Applications are the appropriate path to pursue and request on behalf of the Colwells that IDWR continue to process them. Further, since their original filing, an error has been identified in the place of use description for one of the Permit Applications. I enclose a corrected Permit Application prepared by Scanlan Engineering. Please use this corrected Permit Application to correct the respective original Permit Application submitted. Please let me know if it is necessary for the Colwells to sign the corrected Permit Application.

Much of the confusion appears to be due to the source of the water and the characterization of the diversion system. The seven rights have been described as

incidental stockwater rights, then in-stream stockwater rights, then ground water rights and, finally, surface water rights. In 2001, these seven water rights were claimed as incidental stock water rights in the SRBA and assigned SRBA Claim Nos. 65-22520, 65-22522, 65-22523, 65-22524, 65-22528, 65-22529 and 65-22530. The SRBA Director's Report recommended these rights for disallowal because IDWR did not believe these were incidental stock water rights as the source of the water did not appear to be the Washoe Irrigation District headgate. Objections were filed. The Objections described the water rights as in-stream. Again, IDWR objected to this characterization because the drain ditches were not natural streams. We also were told that the drain ditches (less than 18 feet deep) would not be deemed to collect ground water and that the proper way to document these water rights were with new Permit Applications. Accordingly, the 7 SRBA subcases were discontinued and the subject 7 Permit Applications were filed on September 11, 2003.

This property is used (and likely has been used for a very long time) as pasture for cattle. The cattle have access to the subject drain ditches and drink from them. Since the drain ditches are deemed to capture surface water and since they are man-made ditches, we request that the Permit Applications be processed as deriving from a surface water source diverted by these man-made ditches. This was the conclusion that evolved from the SRBA proceedings. Perhaps, it would be appropriate for us to have a meeting with IDWR SRBA staff to discuss this matter further.

Thank you for your assistance with this matter. Please do not hesitate to contact me if you have any further questions.

Sincerely,

HOFSTETTER LAW OFFICE, LLC

A handwritten signature in black ink, appearing to read "Dana Hofstetter", with a stylized, flowing script.

Dana L. Hofstetter

Enclosure
cc: George Colwell without enclosure
Terry Scanlan without enclosure
D:/4001.2/5743



State of Idaho

DEPARTMENT OF WATER RESOURCES

Western Region, 2735 Airport Way, Boise, Idaho 83705-5082 - (208) 334-2190

FAX (208) 334-2348

DIRK KEMPTHORNE
Governor

KARL J. DREHER
Director

December 1, 2003

DANA HOFSTETTER
HOFSTETTER LAW OFFICE LLC
608 W FRANKLIN ST
BOISE ID 83702

Re: Applications for Permit in the name of George and Cheryl Colwell

Dear Dana:

You called me last week regarding several applications filed by the Colwells for instream stockwater use. As you can see from the enclosed information, the applicants are not receiving mail at the mailing address provided to this office.

I am forwarding this letter to you based on our conversation. Please contact your clients and have them provide a written response identifying their preference in this matter. This might be an opportunity to make your appearance on their behalf if that is their desire.

Because of the mail situation for the Colwells and given the holiday season, a written response should be provided within sixty (60) days instead of the customary shorter time frame of thirty (30) days. The applications will be returned and a refund will be issued if a timely reply is not received by February 1, 2004.

Please contact me at 334-2190 if you have any questions. Thank you for your assistance in this situation

Sincerely,

A handwritten signature in black ink, appearing to read 'Steve Lester', is written over a horizontal line.

Steve Lester
Water Rights Supervisor

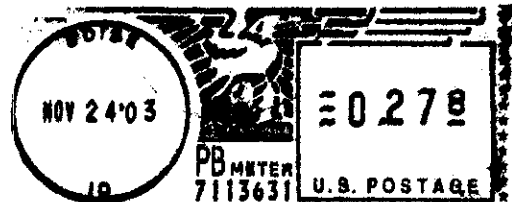
Enclosure

11/21/03 letter Retrieval

NT OF WATER RESOURCES
ERN REGION
Airport Way
daho 83705-5082

RETURN SENT
REQUESTED

PRESENTED
FIRST CLASS



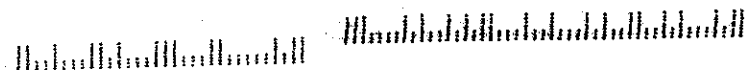
RECEIVED

DEC 01 2003

WATER RESOURCES
WESTERN REGION

COLW990* T836612001 1B03 06 11/28/03
COLWELL RETURN TO SENDER
TEMPORARILY AWAY
RETURN TO SENDER

JAACTM53868/5082





State of Idaho

DEPARTMENT OF WATER RESOURCES

Western Region, 2735 Airport Way, Boise, Idaho 83705-5082 - (208) 334-2190

FAX (208) 334-2348

DIRK KEMPTHORNE
Governor

KARL J. DREHER
Director

November 21, 2003

GEORGE AND CHERYL COLWELL
3990 HWY 52
PAYETTE ID 83661

Re: Applications for Permit for Instream Use

Dear Applicants:

This office received seven Applications for Permit from you on September 11, 2003. The filings seek to establish new water rights for instream stockwater use on various drain ditches. Water rights for stockwater use can be issued but are not required for instream scenarios. But an instream water right cannot be approved for a drain ditch. As you can see in the enclosed copy of I. C. § 42-113, approvals must be based on a *natural* stream. A drain ditch is not a natural stream.

Your applications must be denied if processed. The applications can be withdrawn prior to processing and a full refund of the \$700 filing fees can be issued. A refund cannot be issued if processing continues.

Alternately, you can amend the applications to propose diverting water from the drains. Such filings are approvable assuming protests or other complications do not derail the proposals. For example, the drain water might be subject to control of a water delivery organization and therefore not available for appropriation. Applications can be amended by making changes on original application forms or by submitting new forms labeled as "amended."

Please let me know if you want to amend the applications to include diversion systems instead of instream uses. A lack of response within thirty (30) days will be interpreted as your withdrawal of the applications. The applications will be returned to you and a \$700 refund will be issued in that case.

Thank you for your attention to these matters.

Sincerely,

A handwritten signature in black ink, appearing to read 'Steve Lester', is written over a horizontal line.

Steve Lester
Water Rights Supervisor

Enclosure