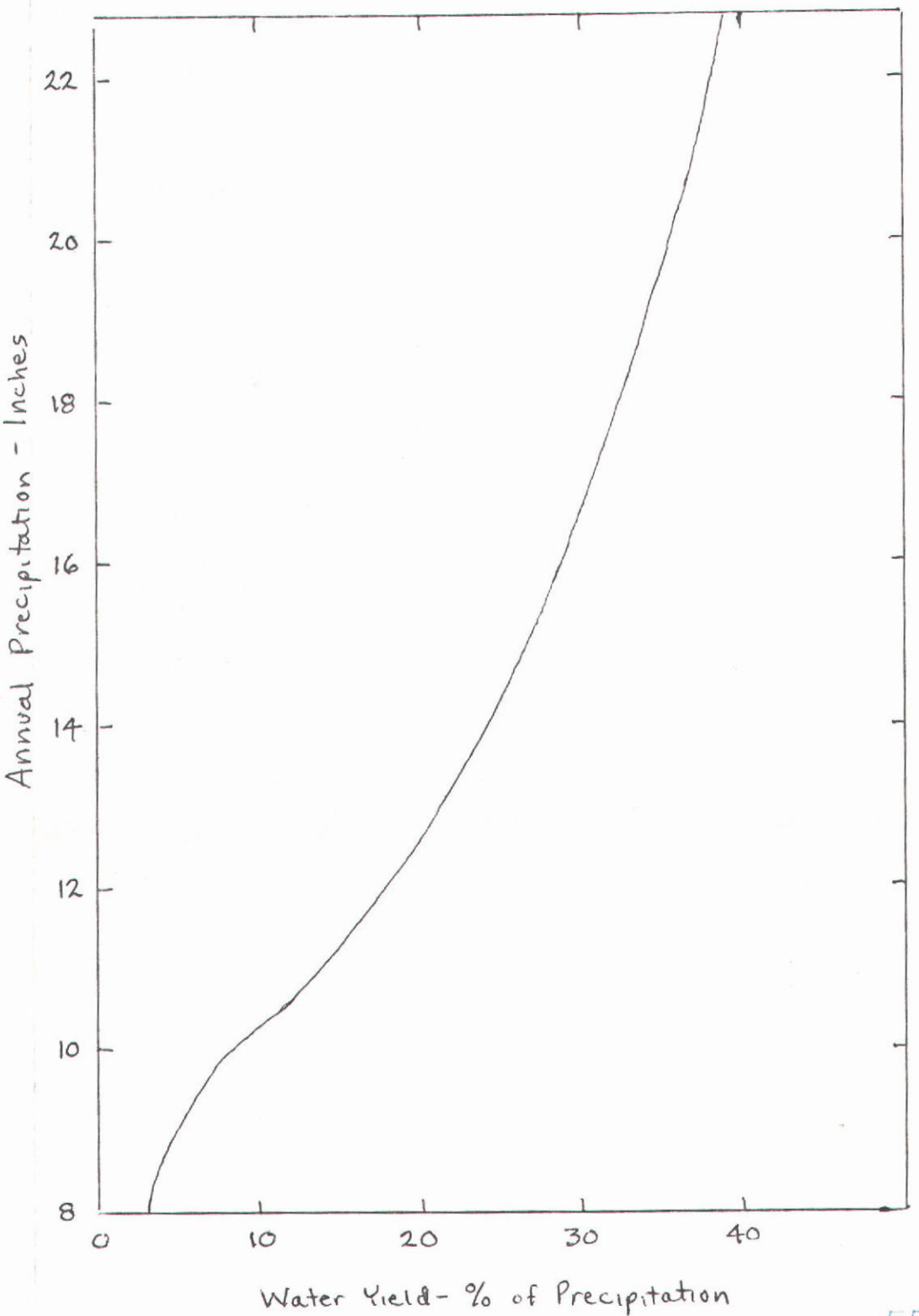
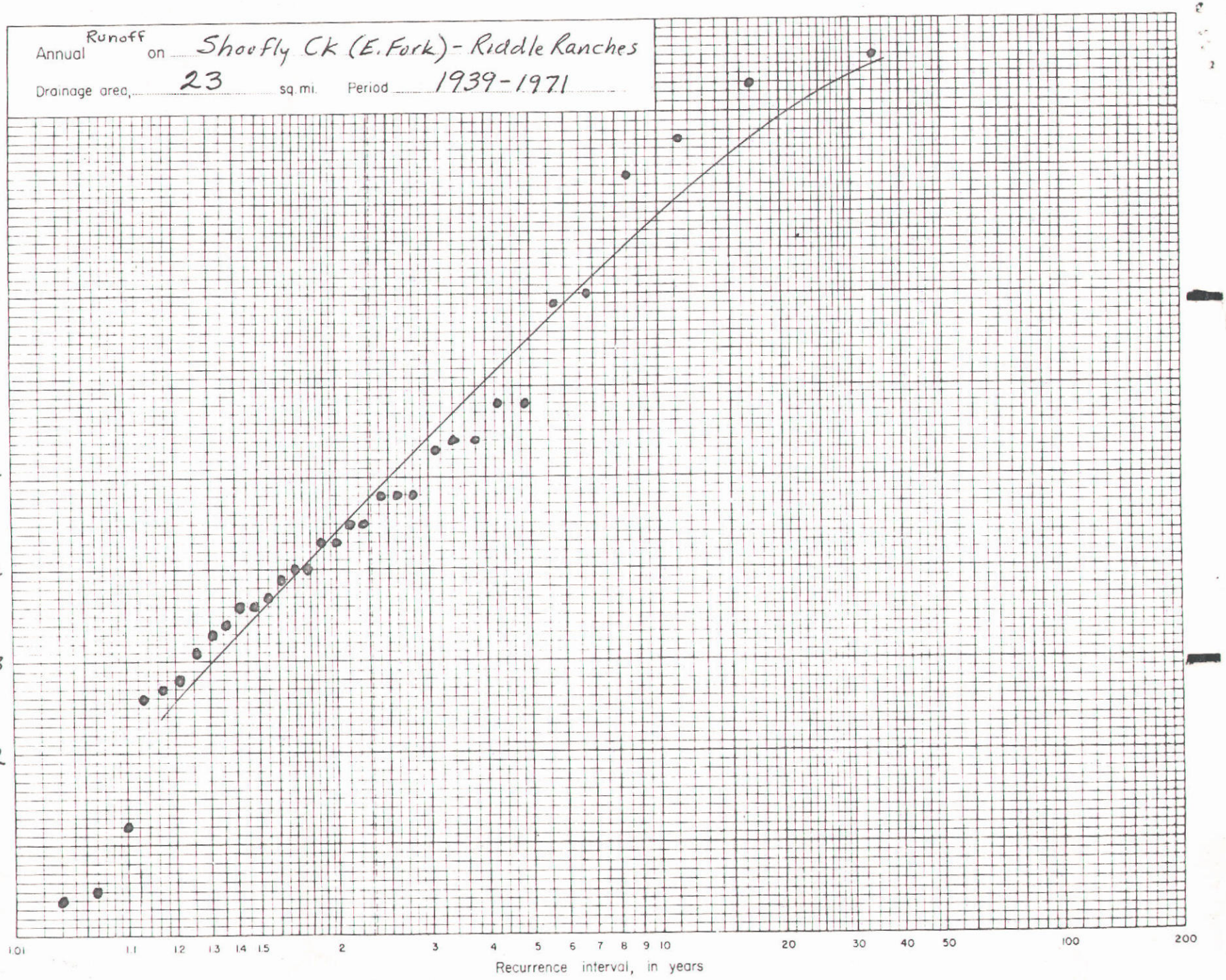
Shoofly Creek

Appl. 55-7009
(Riddle Ranches, Inc.)



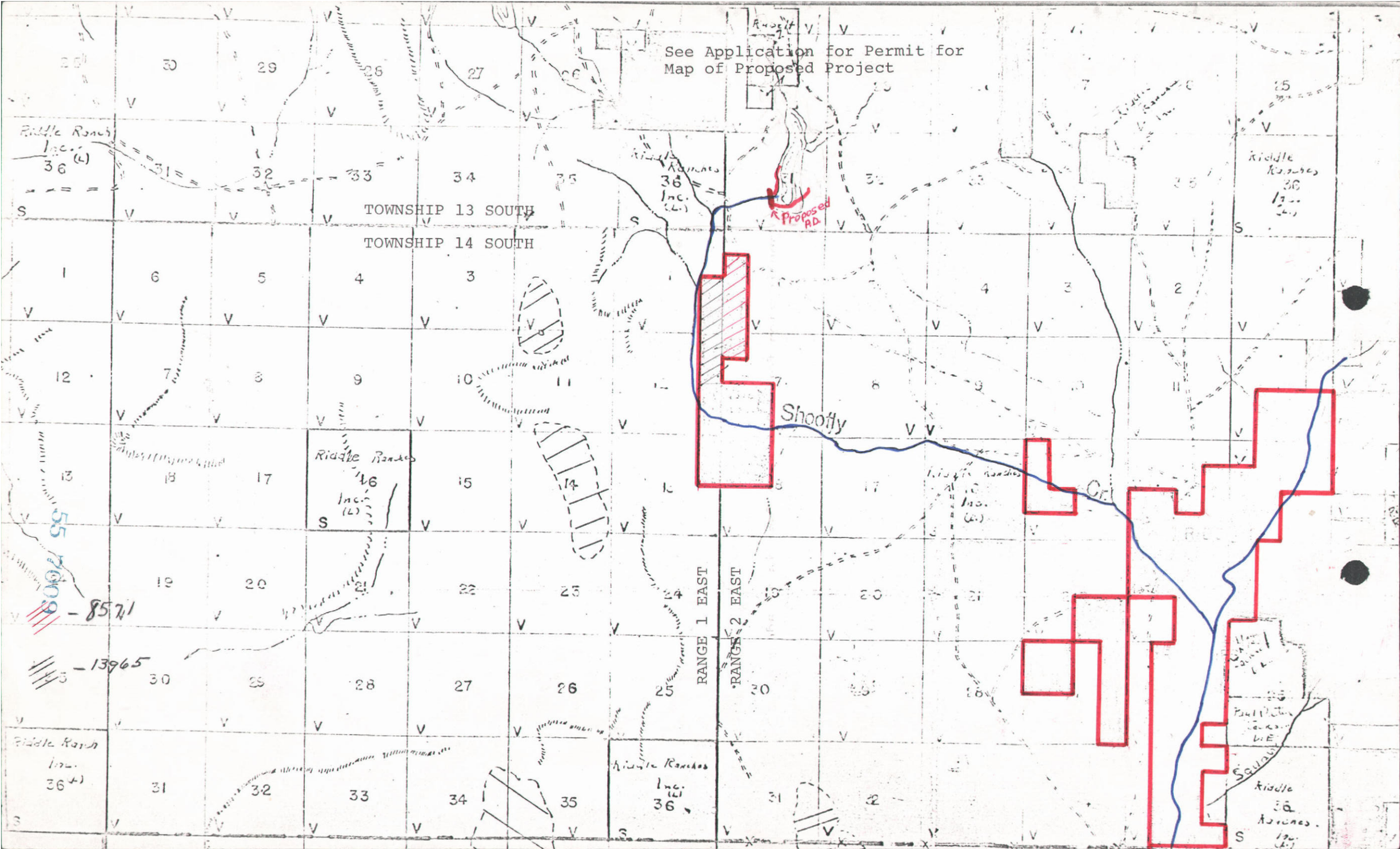
55 7009

File Number 507-2

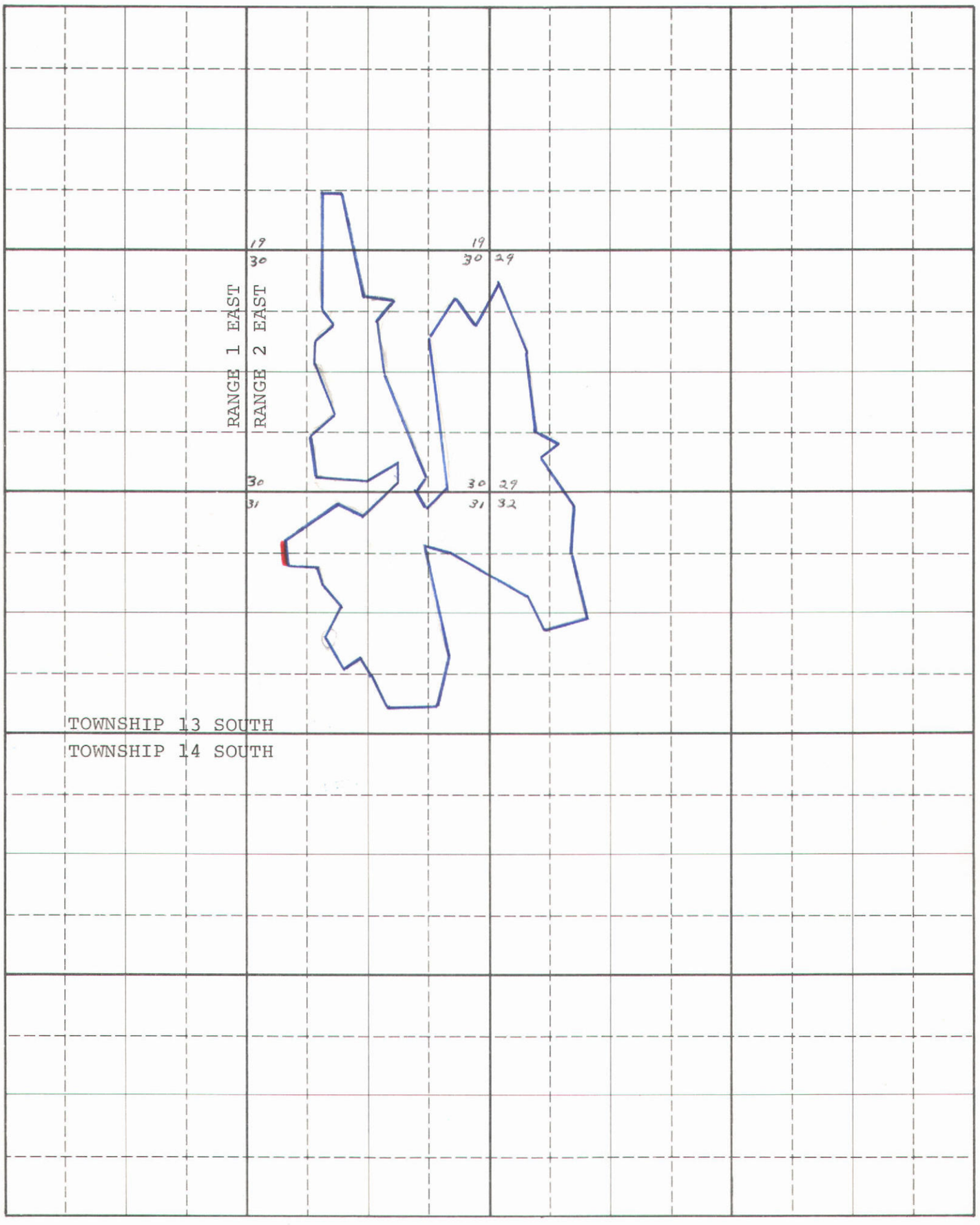


Estimated Annual Runoff - 1000 A.F.

6002 SS


See Application for Permit for
Map of Proposed Project
TOWNSHIP 13 SOUTH
TOWNSHIP 14 SOUTH
RANGE 1 EAST
RANGE 2 EAST
Shootly
Cr.
Proposed AD
Riddle Ranches Inc. (L)
55 7009
-8571
-13965

11. Map of proposed project:



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.

RIDDLE RANCHES, INC.

Harley M. McDowell, Jr.
(Applicant)

55 7009

PROOF OF PUBLICATION

STATE OF IDAHO
County of Owyhee } s.s.

I, RODNEY A. HAWES, being first duly sworn, on oath says that he is the Publisher of the OWYHEE NUGGET, a newspaper of general circulation, published weekly by Rodney A. Hawes, publisher and printer thereof, at Marsing, County of Owyhee, State of Idaho;

That the annexed notice was published in said newspaper once each week and every week for 2 consecutive weeks, the first publication being on the 18 day of March, 1971, and the last publication being on the 25 day of March, 1971;

That the said newspaper has been published continuously and uninterruptedly in said county during a period of more than seventy-eight consecutive weeks prior to the first publication of the attached notice.

Rodney A Hawes
PUBLISHER

Subscribed and sworn to before me this 25 day of March, 1971.

Leona S Hawes
NOTARY PUBLIC

My commission expires 9-10-72

(SEAL)

NOTICE OF APPLICATION FOR WATER PERMIT

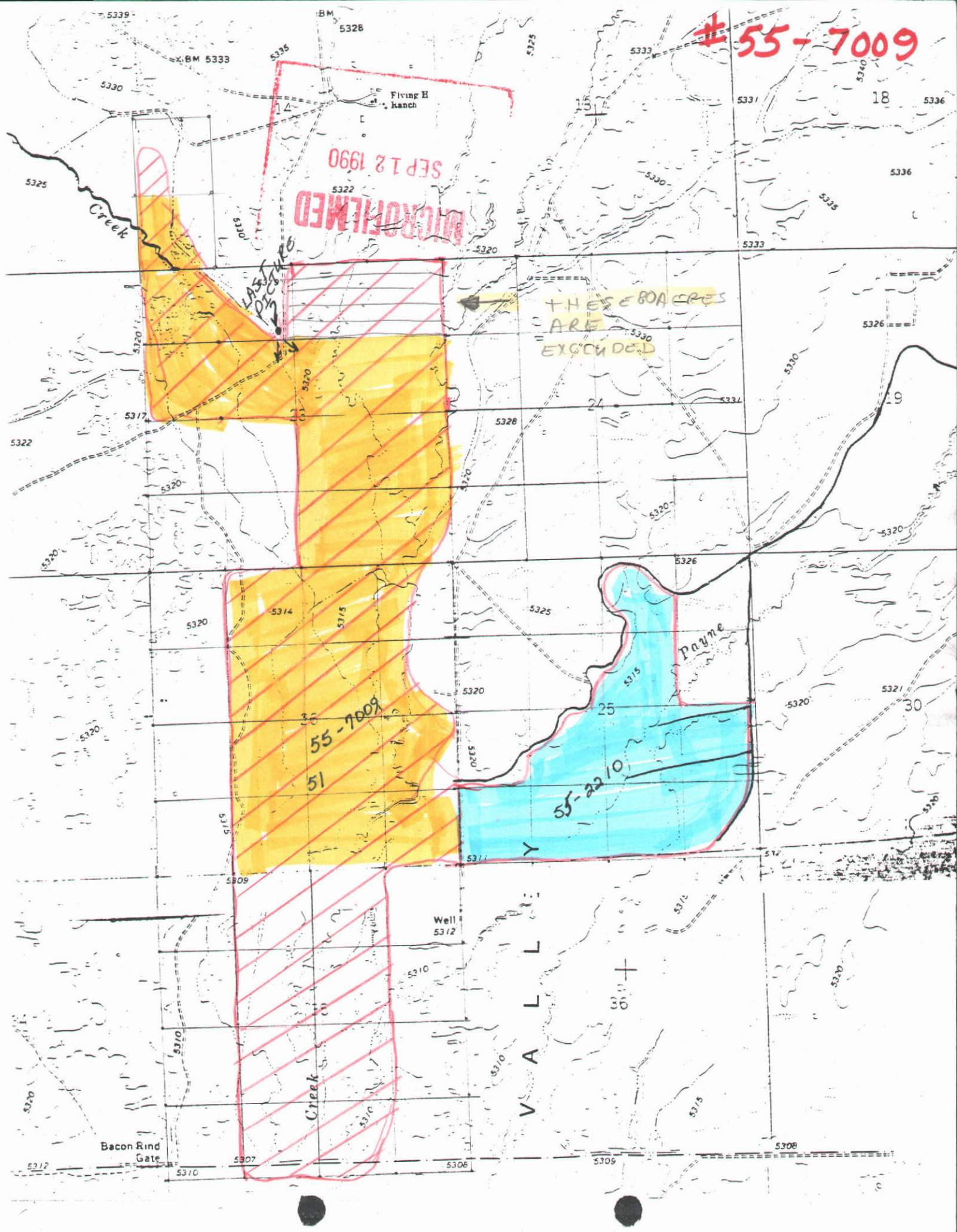
Notice is hereby given that Riddle Ranches, Inc., Riddle—via — Grasmere, Idaho, has on February 23, 1971, submitted Application No. 55 - 7009 for a permit to store 8,050 acre feet per anum of water from Shoo Fly Creek, tributary to East Fork of Owyhee River, from September 1 to July 1, by means of a dam within the NE¼SW¼, Sec. 31, T. 13 S., R. 2 E., B. M., Owyhee County, to be diverted at the rate of 70.0 cubic feet per second and used from April 1 to Oct. 31 for the irrigation of 3,880 acres within the E½SE¼, Sec. 1; E½E½, Sec. 12; E½NE¼, Sec. 13; T. 14 S., R. 1 E., B. M., and SW¼NW¼, W½SW¼, Sec. 6; NW¼NW¼, SW¼, Sec. 7; SE¼, E½SW¼, Sec. 12; SW¼, NE¼, S½NW¼, NE¼NW¼, Sec. 13; SW¼, S½SE¼, NE¼-SE¼, SE¼NE¼, Sec. 14; W½-NW¼, N½SW¼, Sec. 15; NW¼, Sec. 18; SE¼, Sec. 22; N½, SE¼, Sec. 23; W½NW¼, NW¼-SW¼, Sec. 24; NE¼, E½NW¼, E½SW¼, N½SE¼, SW¼SE¼, Sec. 26, E½E½, NW¼, Sec. 27; E½W½, W½E½, NE¼NE¼, SE¼SE¼, Sec. 35; T. 14 S., R. 2 E., 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 April 5, 1971.

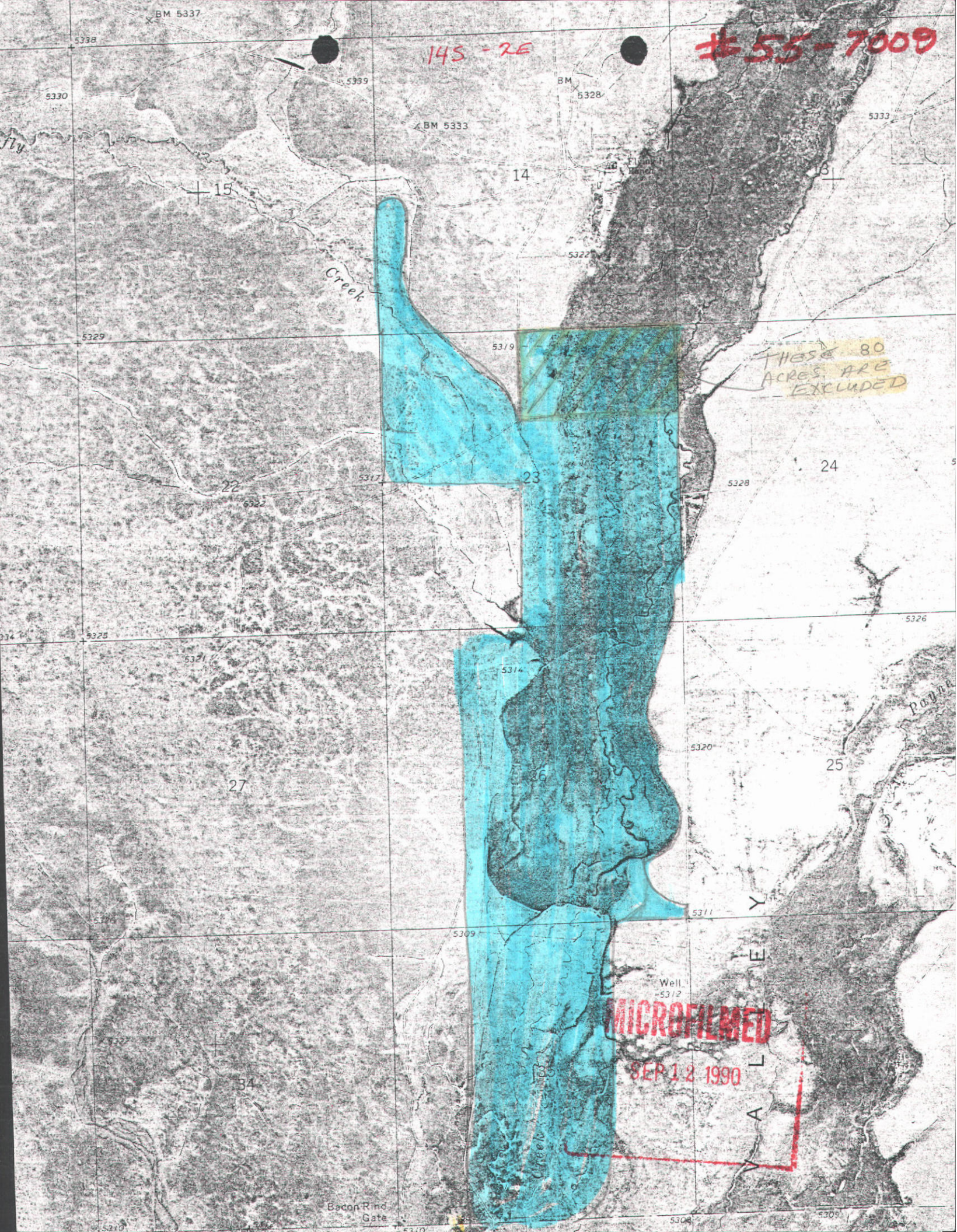
R. KEITH HIGGINSON
Director

Published in the Owyhee Nugget, Marsing, Idaho, on March 18 and March 25, 1971.

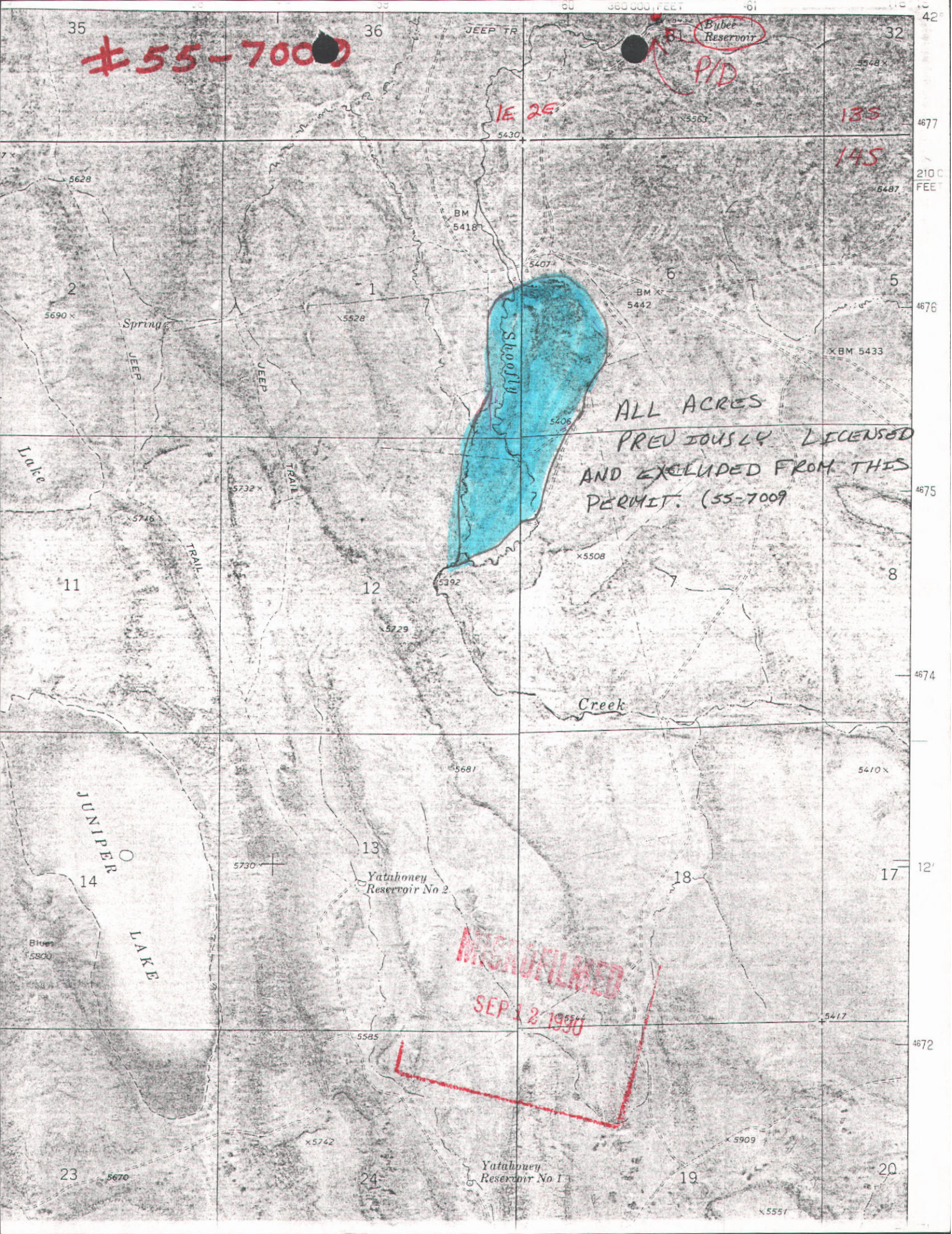
55 7009



#55-7009
Flying H Ranch
SEP 12 1990
MICROFILMED
LAST PICTURE
THESE 80 ACRES ARE EXCLUDED
Creek
Payne
55-7009
51
55-2210
Well
Bacon Rind Gate
VALLEY



14S - 2E
#55-7009
BM 5337
5338
5339
5330
BM 5333
BM
5328
5333
14
15
13
5322
Creek
5329
5319
THESE 80 ACRES ARE EXCLUDED
22
23
24
5317
5328
5322
5326
5325
5321
5314
5320
25
27
26
5311
5309
Well
5312
MICROFILMED
SEP 12 1990
34
35
Bacon Rind Gate
5308
5309



#55-7000
P/D
Bybee Reservoir
1E 2E
13S
14S
JEEP TR
Shoofly
Creek
Spring
JEEP
TRAIL
Lake
JUNIPER
LAKE
Yatahoney Reservoir No 2
Yatahoney Reservoir No 1
ALL ACRES PREVIOUSLY LICENSED AND EXCLUDED FROM THIS PERMIT. (55-7009
MICROFILMED
SEP 12 1990

#55-7009

7.5 MINUTE SERIES

R1E R2E

360 000 FEET

Bybee Reservoir

P/D

JEEP TR

PICTURE TAKEN LOOKING SOUTH

55-7009

55-7002

THIS ACREAGE EXCLUDED FROM 55-7009 AS IT WAS PREVIOUSLY LICENSED.

Shoofly

Creek

Yatahoney Reservoir No 2

Yatahoney Reservoir No 1

Mud Flat

Spring

Flying H

Corral

JEEP TRAIL

BM 5418

BM 5442

BM 5433

BM 5406

BM 5352

BM 5337

5430

5563

5548

5487

5407

5406

5511

5508

5392

5729

5691

5410

5544

5585

5909

5551

5468

5504

5465

5478

5408

5386

5371

5353

5339

5323

5317

5322

5334

5541

5490

5417

5360

5338

5329

5325

5321

5315

5312

5310

5340

5330

5320

5400

5500

5450

5350

#55-7009

LOOKING SOUTH FROM SE/NE/NW SEC 23 14S, 2E.

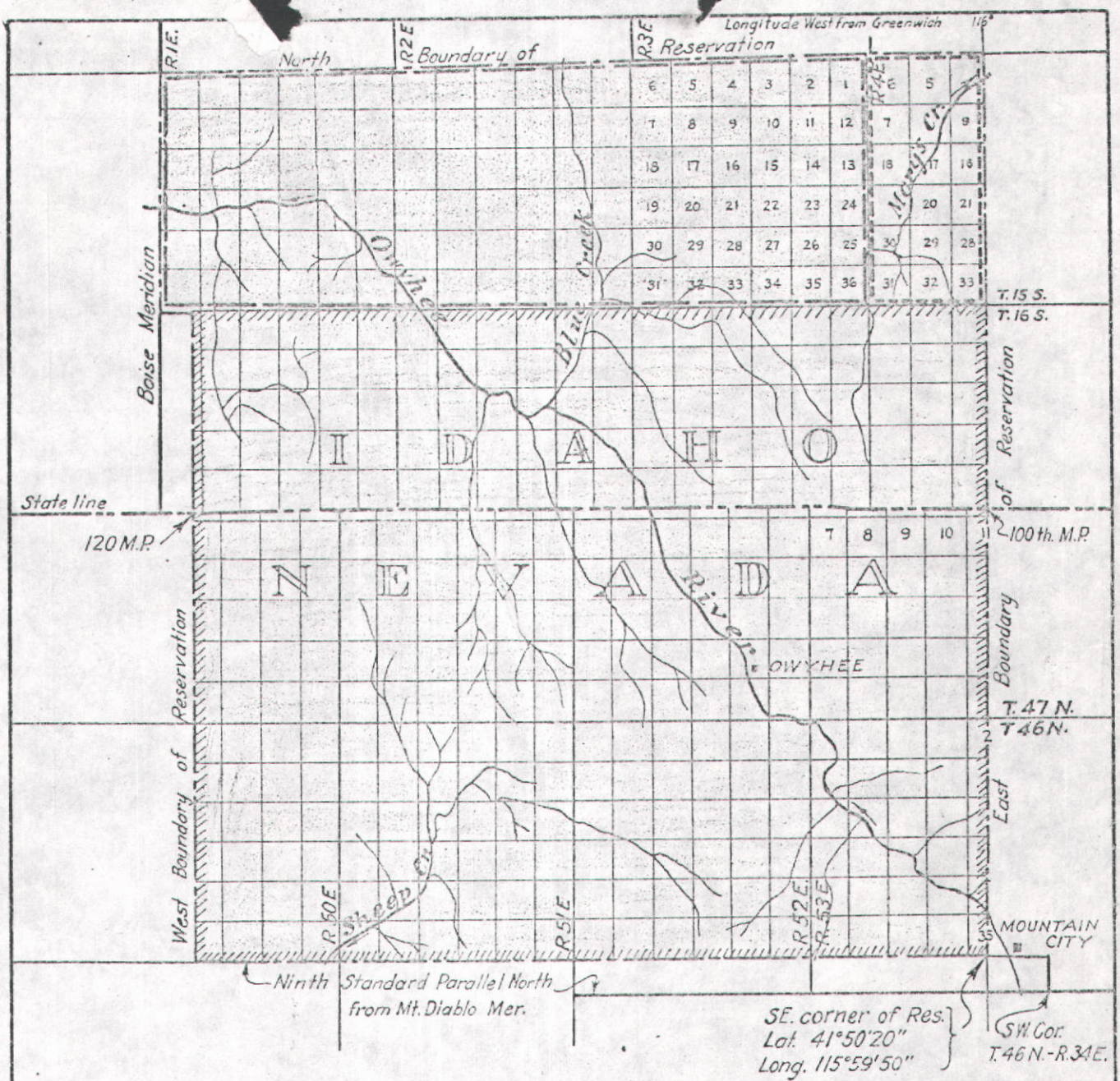
MICROFILMED
SEP 12 1990

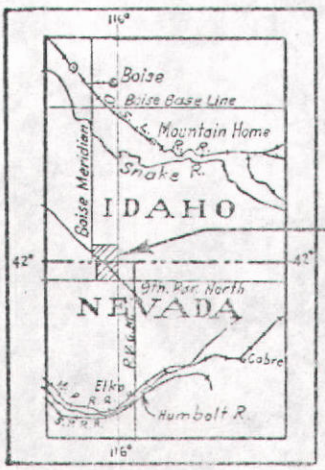
#55-7009

FROM DYKE AT P/D LOOKING SOUTH

LOOKING SOUTH FROM SW/NW SEC 6 14S, 2E

MICROFILMED
SEP 12 1991





WESTERN SHOSHONE INDIAN RESERVATION

Reservation as established by Executive order of April 16, 1877

Addition to Reservation by Executive order, May 4, 1886

Addition to Reservation by Executive order, July 1, 1910

N

Department of the Interior
United States Indian Irrigation Service
H.V. Clotts, Chief Engineer C.A. Engle, Supervising Engineer

WESTERN SHOSHONE OR DUCK VALLEY INDIAN RESERVATION - IDAHO & NEVADA

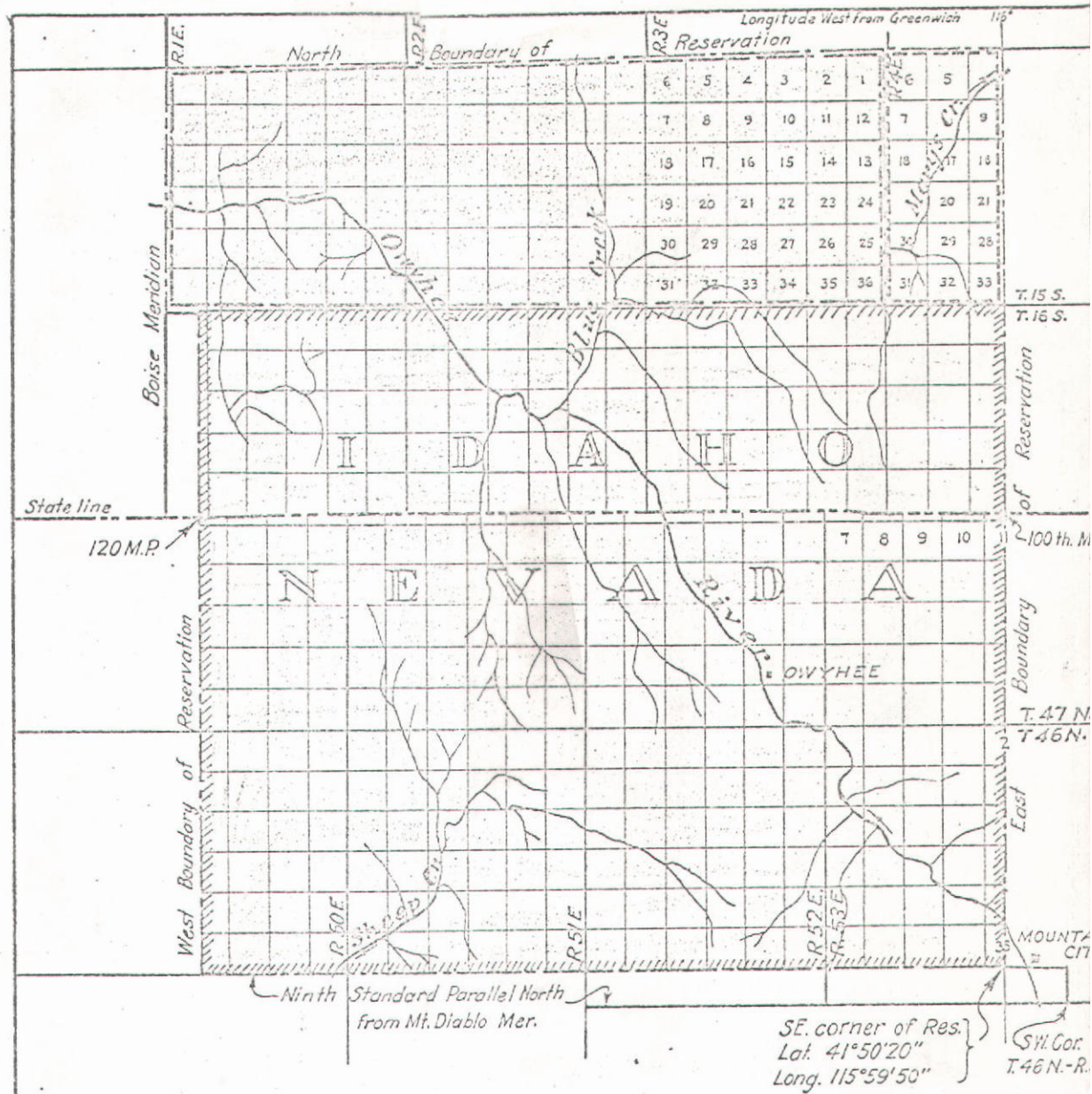
SHOWING

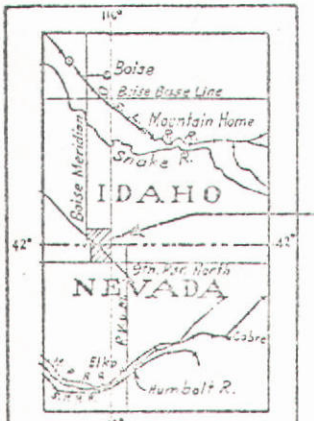
AREAS RESERVED BY VARIOUS EXECUTIVE ORDERS

Scale, 1 inch = 4 miles
Blackfoot, Idaho, April, 1929

A.K.D.

55 7009





WESTERN SHOSHONE INDIAN RESERVATION

Reservation as established by Executive order of April 16, 1877

Addition to Reservation by Executive order, May 4, 1886

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N

Department of the Interior
United States Indian Irrigation Service
H.V. Clotts, Chief Engineer C.A. Engle, Supervising Engi

WESTERN SHOSHONE OR DUCK VALL INDIAN RESERVATION - IDAHO & NEVA

SHOWING
AREAS RESERVED BY VARIOUS EXECUTIVE ORDERS

Scale, 1 inch = 4 miles
Blackfoot, Idaho, April 20

WATER SUPPLY REPORT - WESTERN SHOSHONE RESERVATION - NEVADA

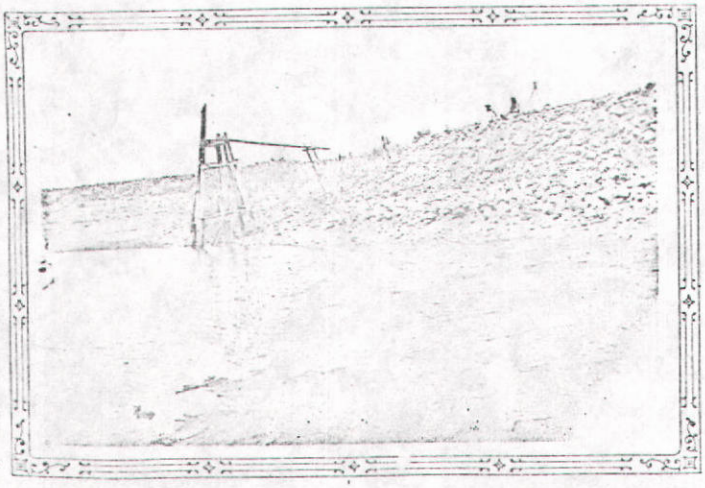
Notes on Indian Creek Reservoir and estimate of cost:

Area	15 acres
Capacity	60 acre-feet
Length of dam on top	310 feet
Maximum fill	10 feet
Crown	8 feet

Estimate of cost:

Embankment 2774 cu. yds. @ 40¢		1109.60
Outlet to reservoir		100.00
Supply ditch to reservoir		100.00
Engineering and contingencies	20%	261.90
Total		$1571.50
Cost per acre-foot of storage		26.19

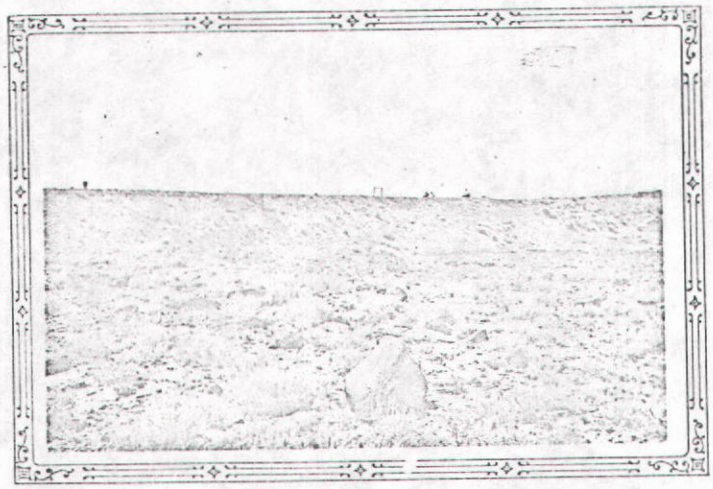
List of photographs Taken.



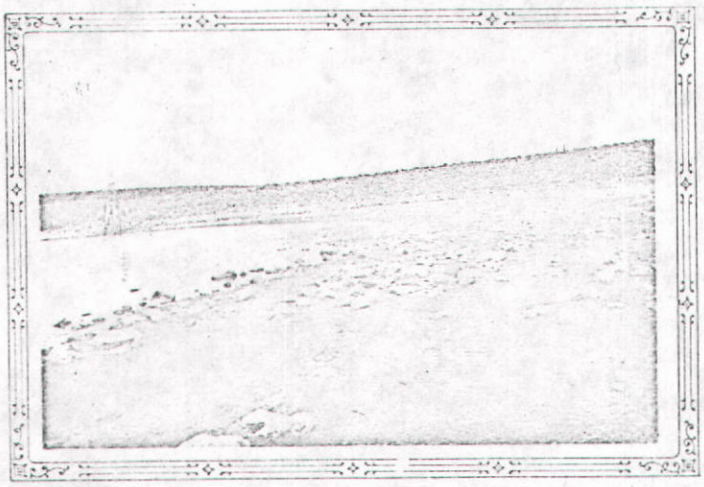
Mary's Creek Reservoir Dam showing control for outlet ditch. Reservoir practically empty, July -12, 1929. Outlet gate closed July 12, 1929.

55 7009

WATER SUPPLY - WESTERN SHOSHONE RESERVATION - NEVADA



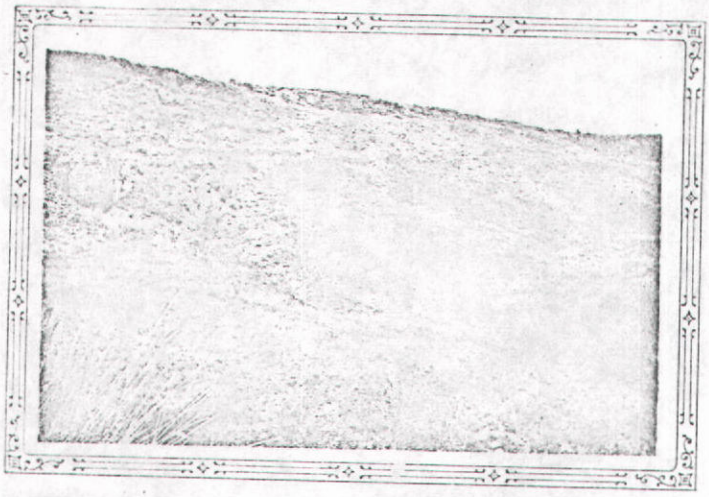
Mary's Creek Reservoir Dam, Facing South or Upstream, July 12, 1939.



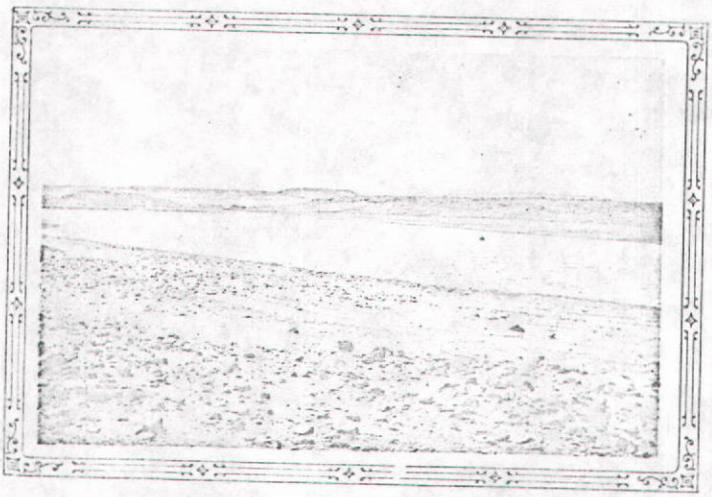
Mary's Creek Reservoir Dam, Showing central gate for outlet ditch, July 12, 1939.

55 7009

WATER SUPPLY ✱ WESTERN SHOSHONE RESERVATION - NEVADA



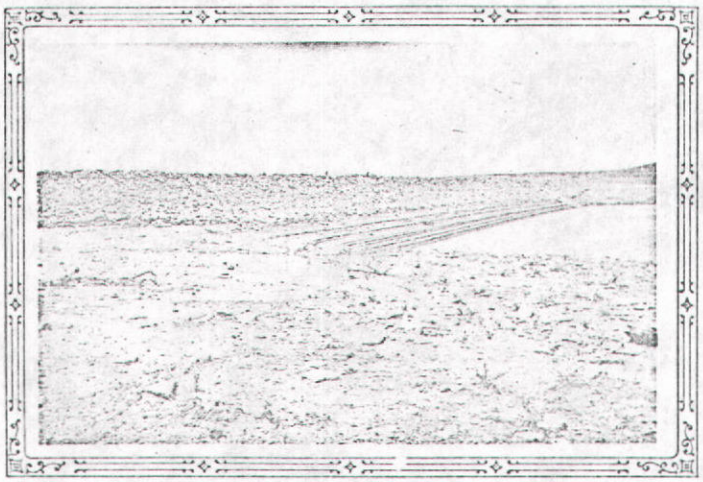
General view of Supply ditch for Marys Creek Reservoir, July 12, 1929.



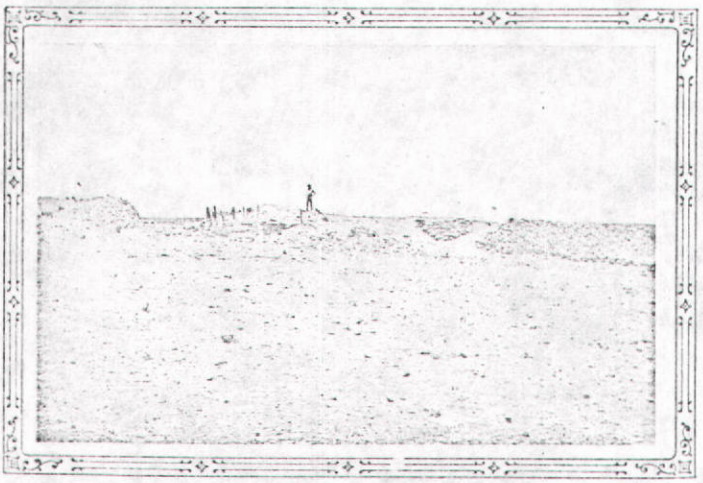
General view of reservoir on Little Blue Creek, July 13, 1929.

55 7009

SUPPLY - WESTERN SHOSHONE RESERVATION - NEVADA



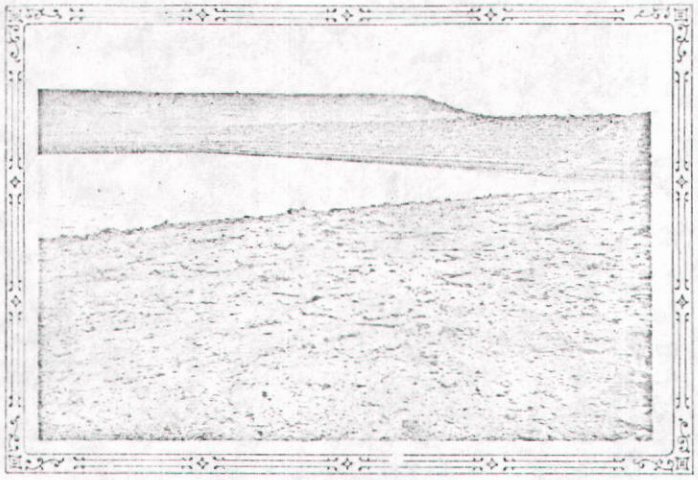
General view of dam on Little Blue Creek, facing west, July 13, 1929.



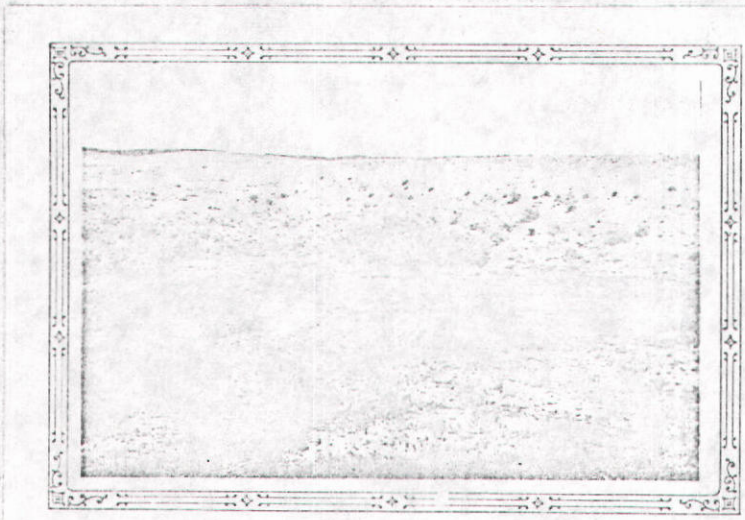
Spillway near Southeast end of dam on Little Blue Creek, July 13, 1929.

55 7009

SUPPLY - WESTERN SHOSHONE RESERVATION - NEVADA



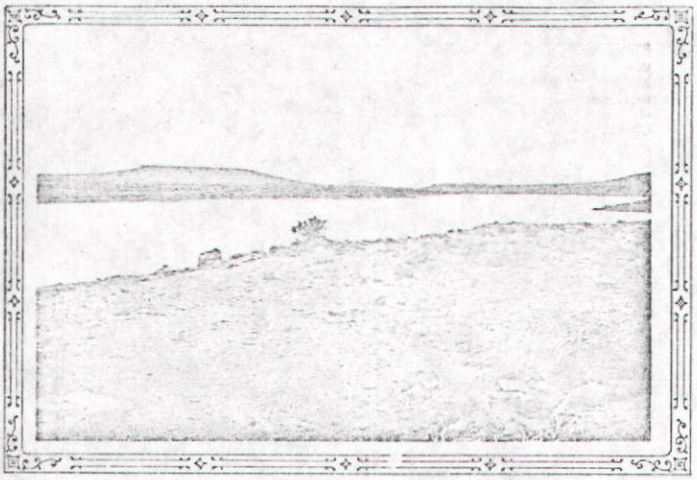
General view of dam on Little Blue Creek facing Northeast or upstream. July 13, 1929.



General view of dam on Little Blue Creek facing downstream. July 13, 1929.

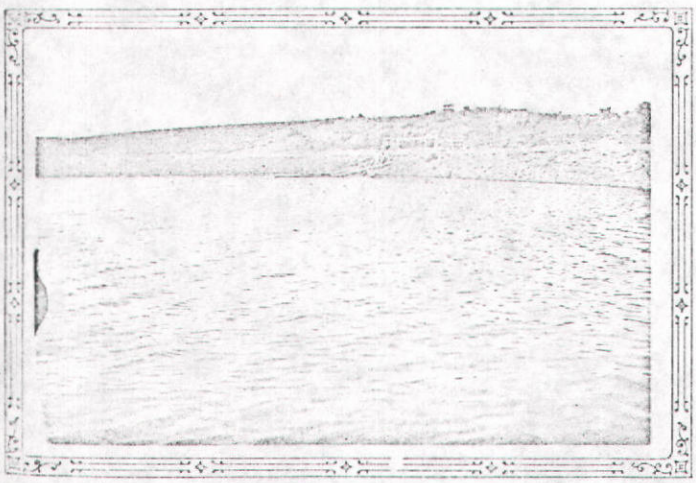
55 7009

R SUPPLY - WESTERN SHOSHONE RESERVATION - NEVADA



General view of Blue Creek Reservoir

July 18, 1929.

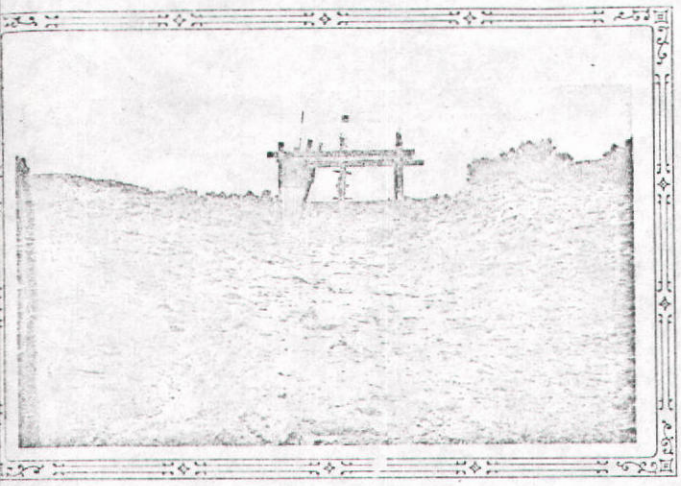


Blue Creek dam facing down stream showing control for outlet to reservoir

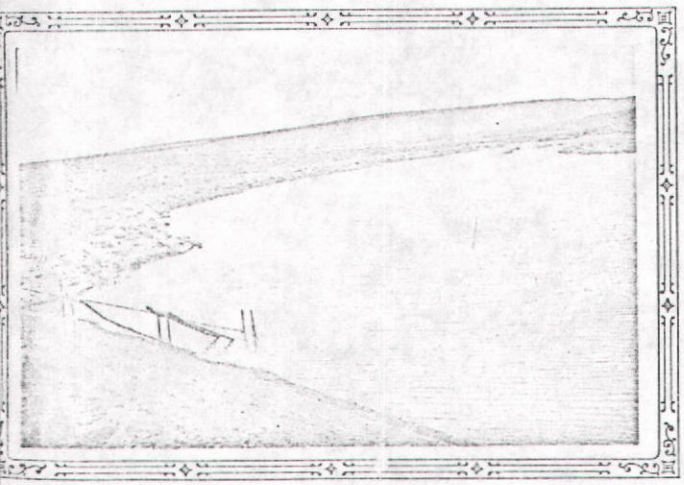
July 18, 1929.

55 7009

ER SUPPLY- WESTERN SHOSHONE RESERVATION - NEVADA



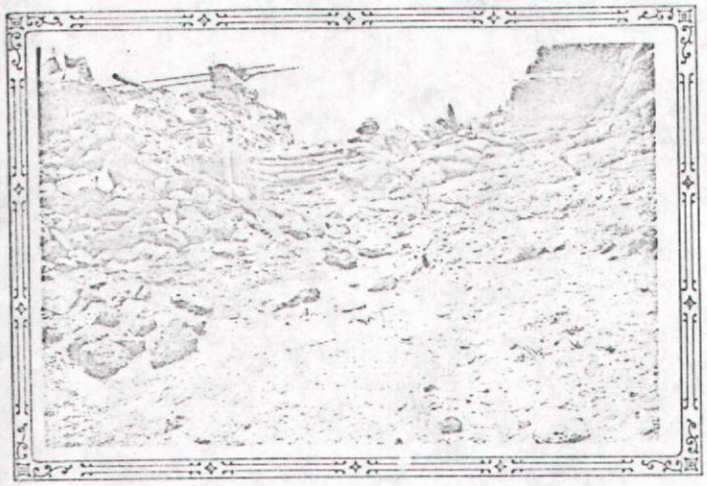
Spillway structure or high water diversion. Blue Creek Reservoir. Structure in bad order and will probably be abandoned in 1930.
July 18, 1929.



General View Payne Creek Reservoir owned by Frank W. Riddle.
July 18, 1929.

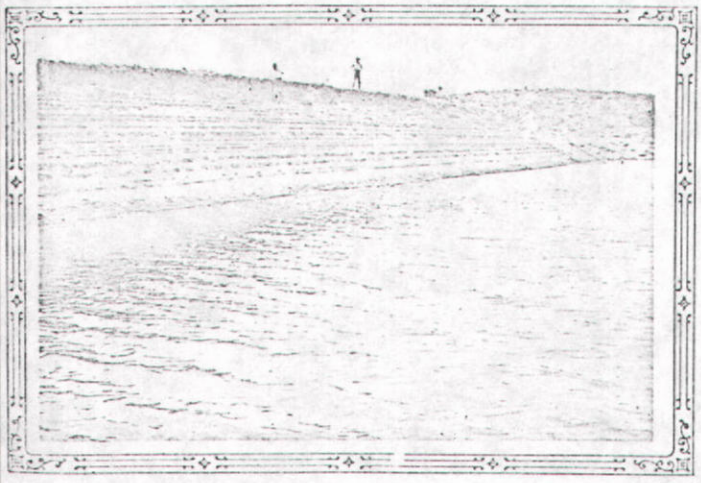
55 7009

TER SUPPLY - WESTERN SHOSHONE RESERVATION - NEVADA



Spillway, Payne Creek Reservoir, showing sand bag dike to increase the capacity of the reservoir

July 18, 1929.

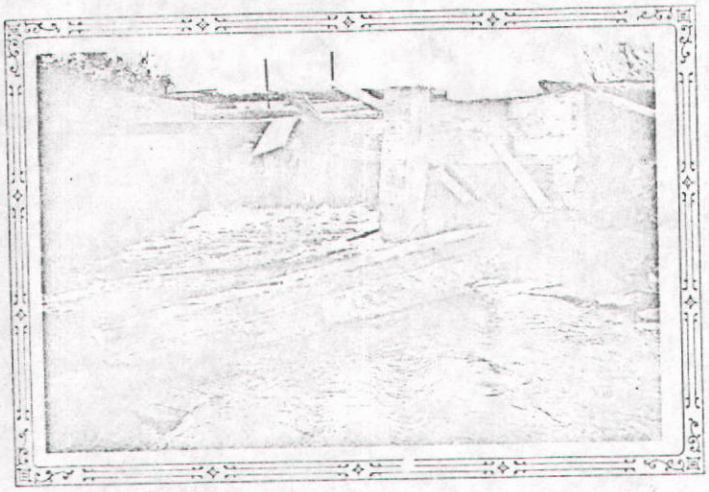


Payne Creek dam from upstream side showing effect of erosion on account of dam not being rip-rapped.

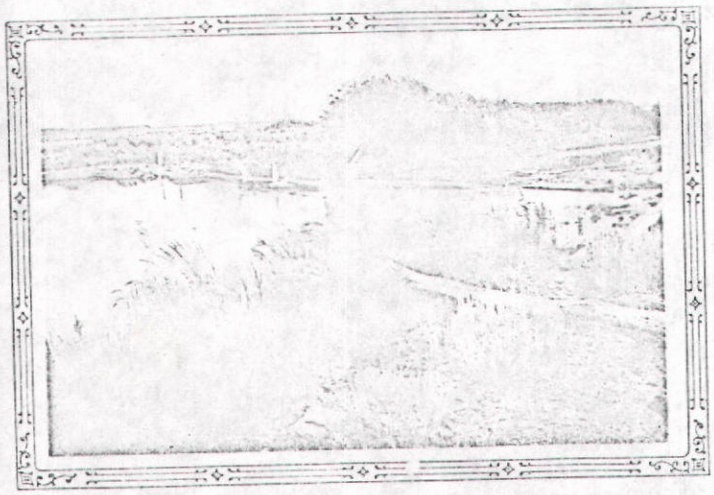
July 18, 1929.

55 7009

WATER SUPPLY - WESTERN SHOSHONE RESERVATION - NEVADA



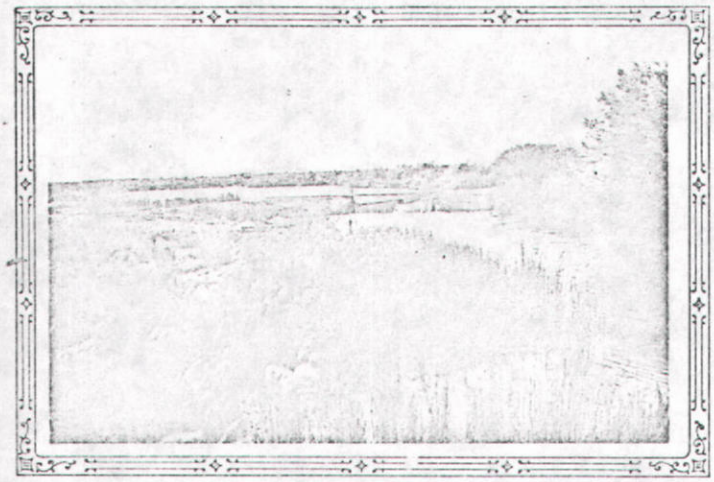
Blue Creek Land & Livestock Company's diversion on Blue Creek from down stream side.



Blue Creek Land & Livestock Company's diversion on Blue Creek Looking downstream. Ditch at right of willows. July 13, 1929.

55 7009

WATER SUPPLY - WESTERN SHOSHONE RESERVATION - NEVADA



Blue Creek Land & Livestock Company's diversion on Blue Creek looking North or upstream. Ditch diversion in center of picture.

July 13, 1929.

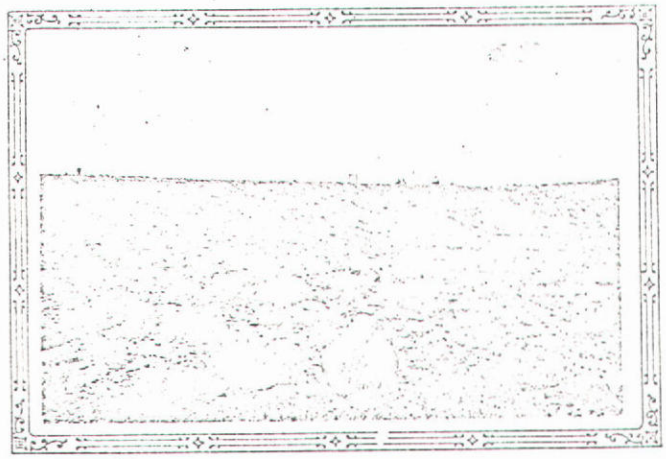
Names and Addresses of Parties Claiming a Water Right on the Upper Owyhee River & Tributaries.

Name	Source of Water Supply	Area Irrigated 1929	Approx. date of settlement	Address
Harry Irland	Trail Creek	6.60	1919	Mountain City, Nev.
Homer Andrea	Trail and Van Duzer Creeks.	489.70	1889	" " "
J. C. Taylor	Trail Creek	57.67	1883	Lovelock, Nev.
Jarvis & Blunk	Van Duzer Creek	80.00	1887	Bert Jarvis-Owyhee, Nev.
C. B. Stinton	Owyhee River, Van Duzer & Slaughter House	152.00	Not known	Ernest Blunk-Mountain City Nev.
John Crosby	Van Duzer, Chicken & California Creek	156.67	1889	" " "
Hugo A. Schlag	California Creek	18.67	1912	" " "
Tom Stinton	" "	98.00	Early 80's	" " "
E. W. Davidson	Owyhee River	49.53	" "	" " "

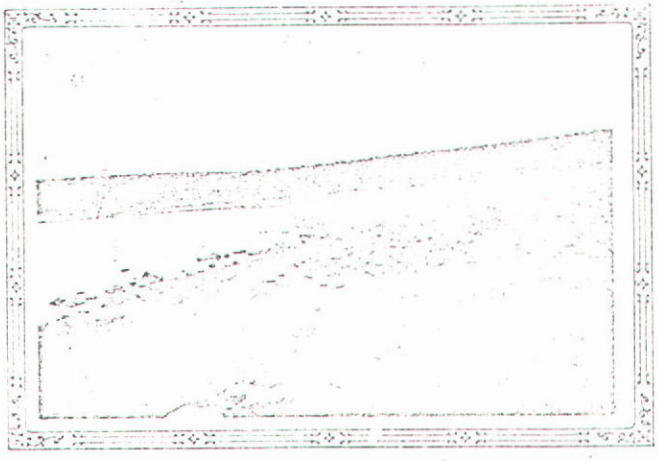
86

55 7009

WATER SUPPLY - WESTERN WATERSHED CONSERVATION - NEVADA

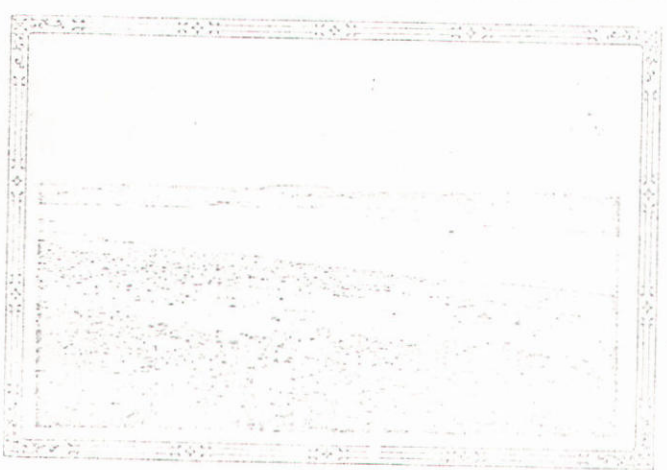


Mary's Creek Reservoir Dam, facing north or upstream. July 12, 1939.



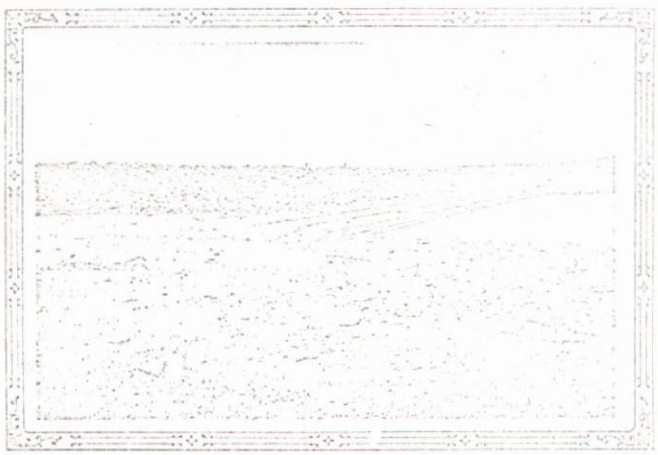
Mary's Creek Reservoir Dam, showing control gate for outlet ditch. July 12, 1939.

General view of Supply ditch for Marys Creek Reservoir, July 12, 1929.

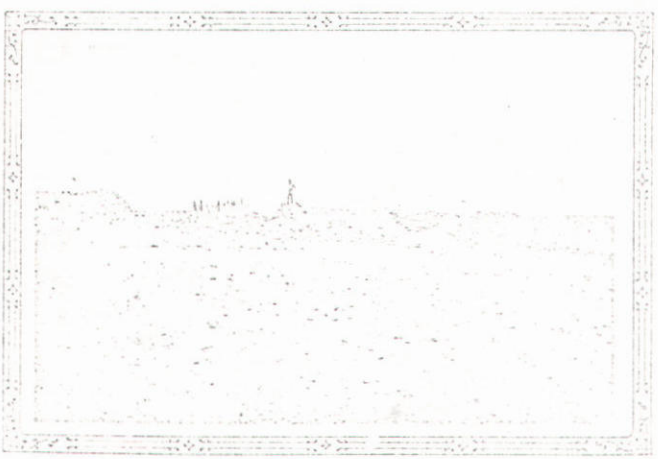


General view of reservoir on Little Bliss Creek, July 13, 1929.

SUPPLY - WESTERN SHOSHONE RESERVATION - NEVADA

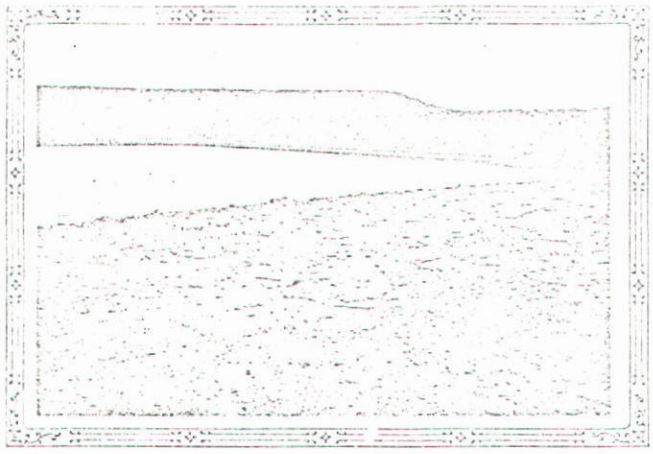


General view of dam on Little Blue Creek, facing west, July 13, 1929.

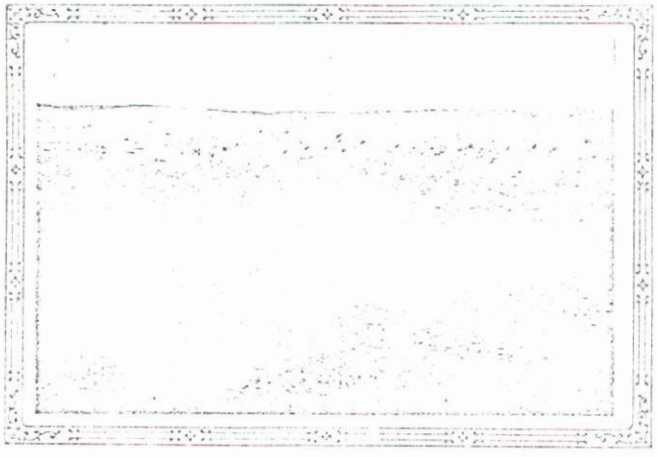


Spillway near Southeast end of dam on Little Blue Creek, July 13, 1929.

WATER SUPPLY - WESTERN SHOSHONE RESERVATION - NEVADA

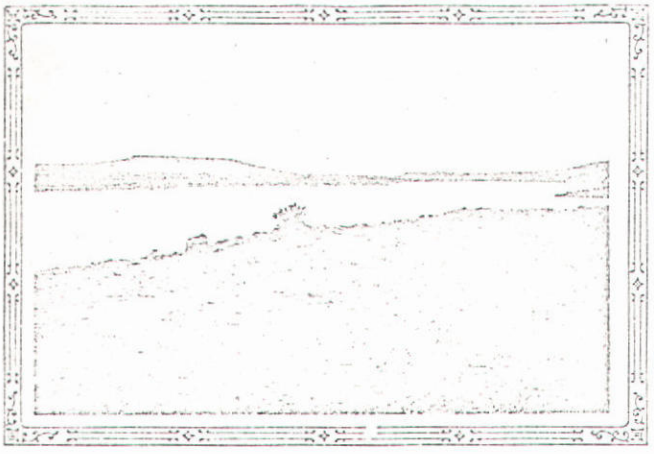


General view of dam on Little Pine Creek facing Northeast or upstream. July 18, 1929.

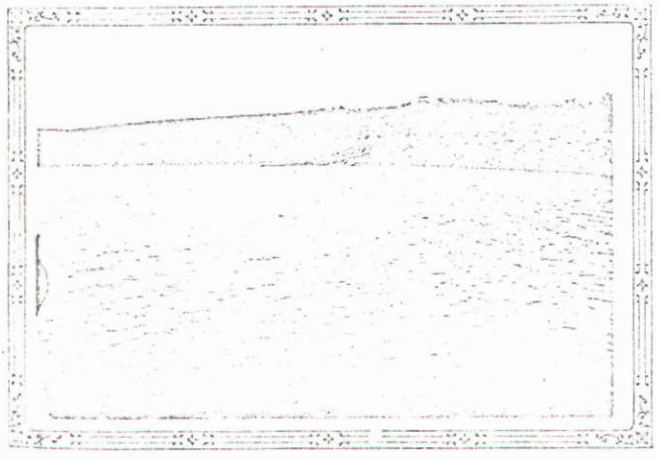


General view of dam on Little Pine Creek facing, downstream. July 18, 1929.

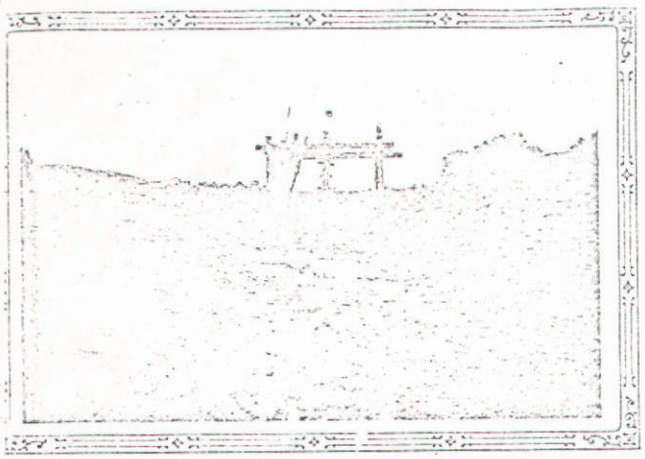
IR SUPPLY - WESTERN SHOSHONI RESERVATION - NEVADA



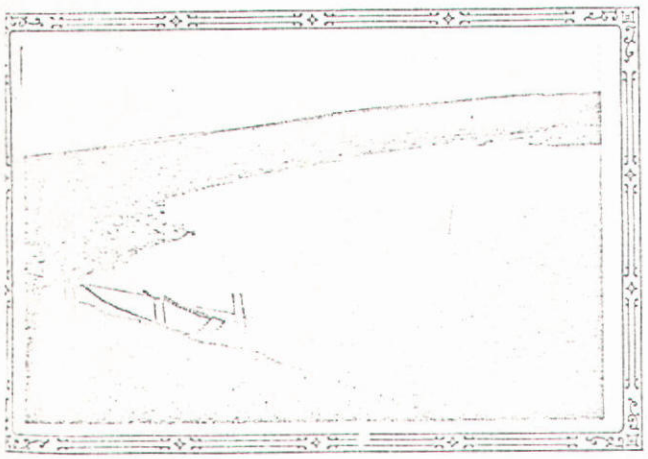
General view of Blue Creek Reservoir
July 18, 1929.



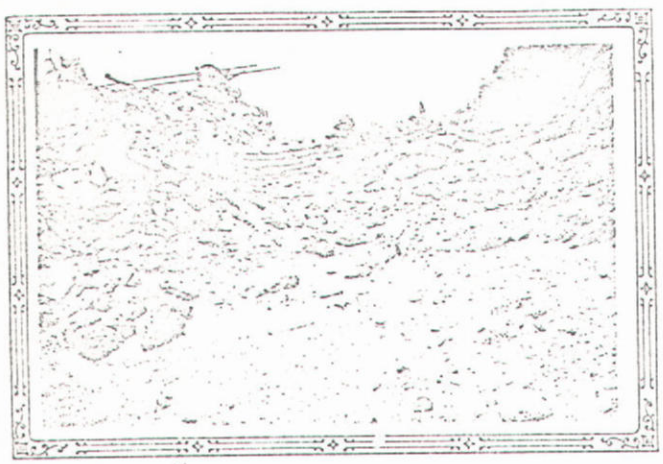
Blue Creek dam
facing down stream
showing control for
outlet to reservoir
July 18, 1929.



Spillway structure on high water diversion. Blue Creek Reservoir. Structure in bad order and will probably be abandoned in 1930.
July 18, 1929.

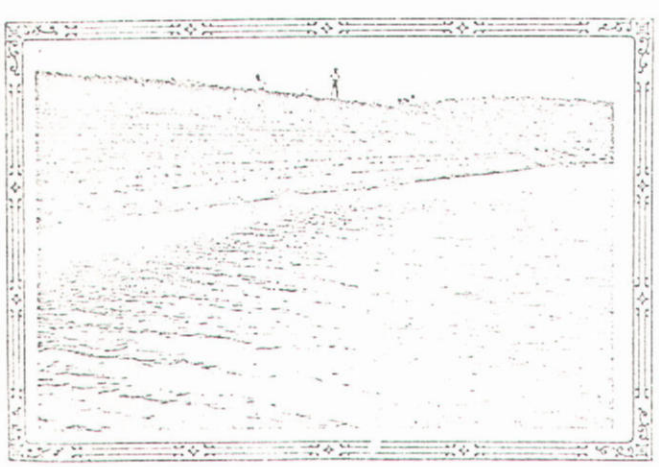


General View Wayne Creek Reservoir owned by Frank W. Riddle.
July 18, 1929.



Spillway, Payne Creek Reservoir, showing sand bag dike to increase the capacity of the reservoir

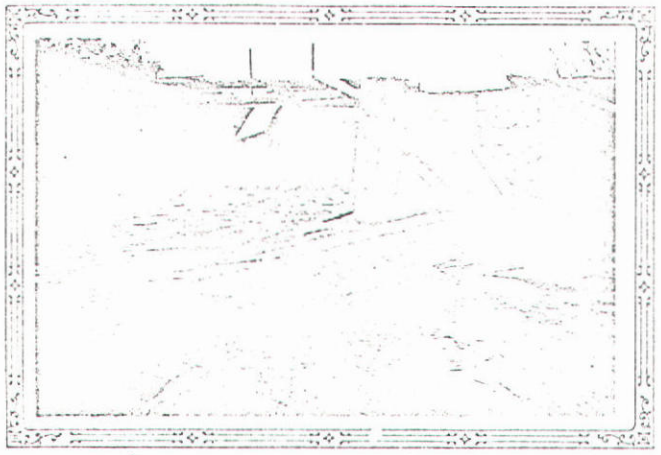
July 18, 1929.



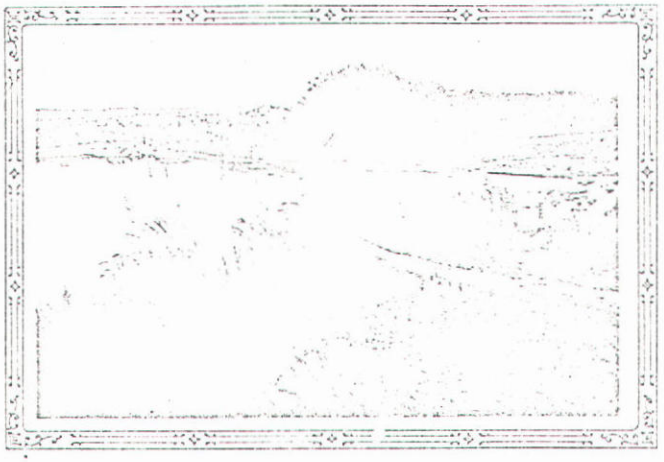
Payne Creek dam from upstream side showing effect of erosion on account of dam not being rip-rapped.

July 18, 1929.

WATER SUPPLY - WESTERN SHOSHONE RESERVATION - NEVADA



Blue Creek Land & Livestock Company's diversion on Blue Creek from down stream side.



Blue Creek Land & Livestock Company's diversion on Blue Creek Looking downstream. Ditch at right of willows. July 13, 1929.

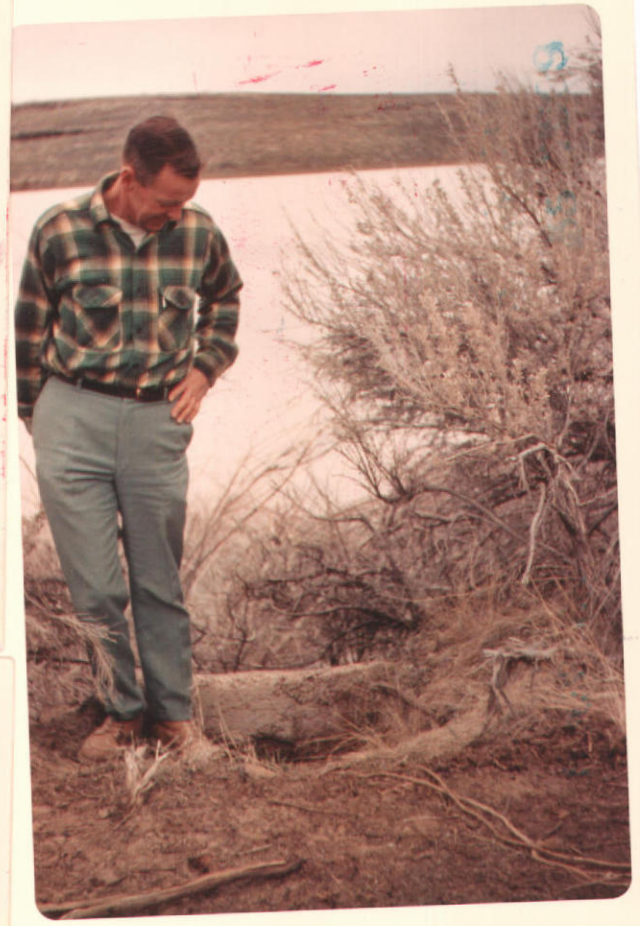
WATER SUPPLY - WESTERN SHOSHONE RESERVATION - NEVADA

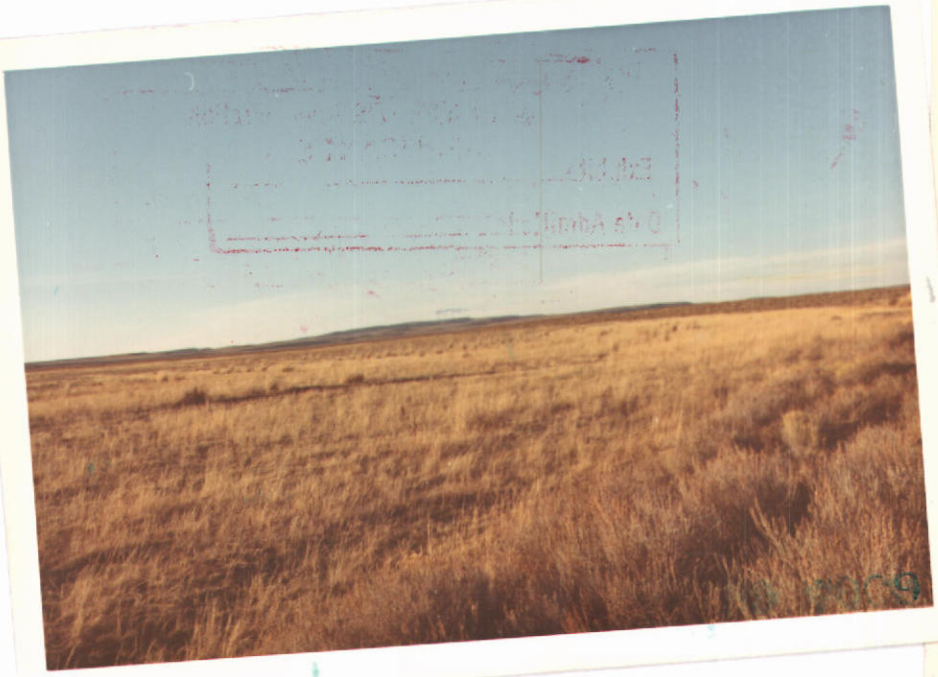
Blue Creek Land & Livestock Company's diversion on Blue Creek looking North or upstream. Ditch diversion in center of picture.

July 15, 1929.

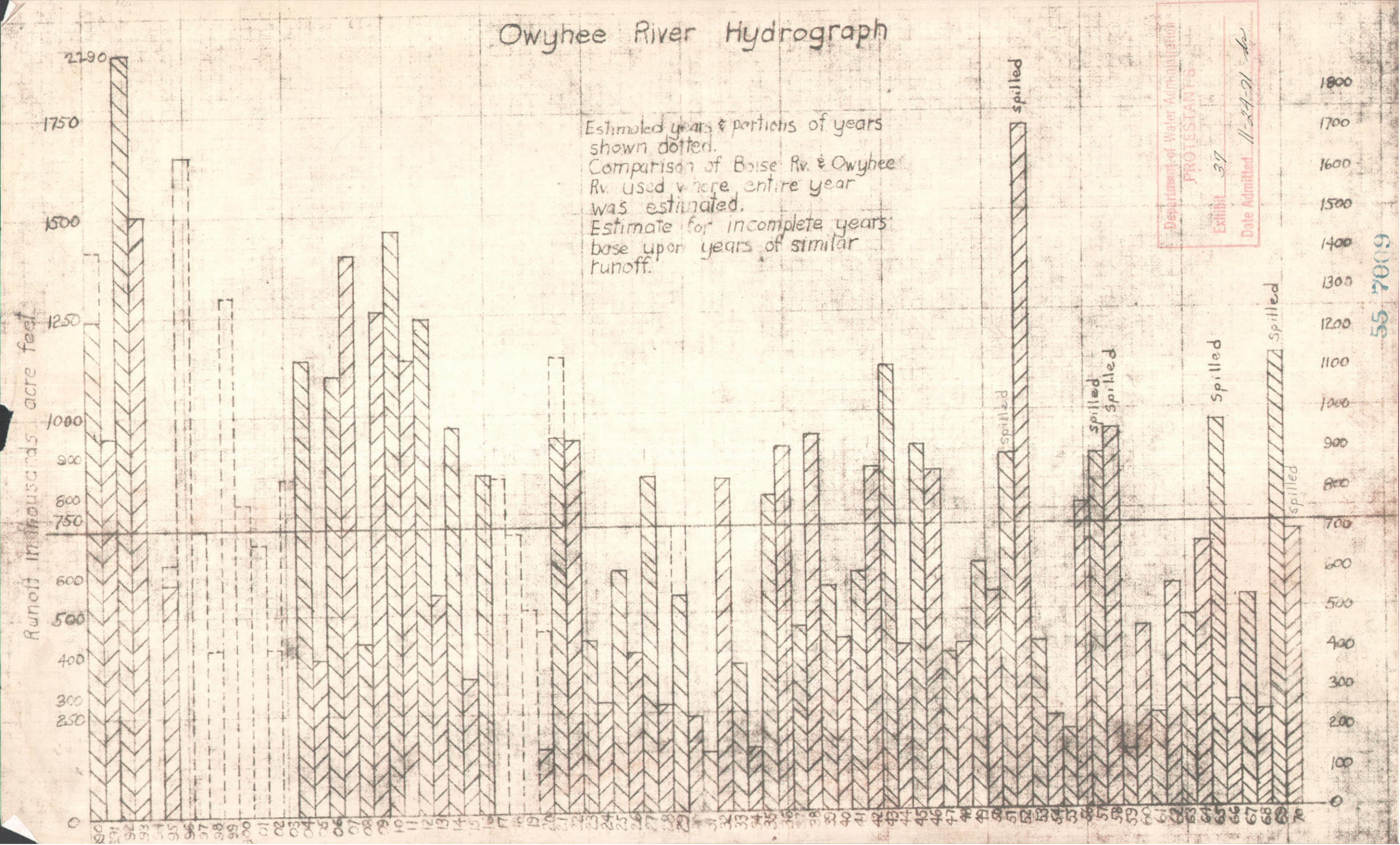
Names and Addresses of Parties Claiming a Water Right on the Upper Owyhee River & Tributaries.

Name	Source of Water Supply	Areas Irrigated 1929	Approx. date of settlement	Address
Harry Irland	Trail Creek	6.60	1919	Mountain City, Nev.
Homer Andrea	Trail and Van Duzer Creeks.	420.70	1889	" " "
J. C. Taylor	Trail Creek	57.67	1880	Lovelock, Nev.
Jarvis & Blunk	Van Duzer Creek	80.00	1887	Bert Jarvis-Owyhee, Nev.
T. B. Stinton	Owyhee River, Van Duzer & Slaughter House	159.00	Not known	Ernest Blunk-Mountain City Nev.
John Crosby	Van Duzer, Chicken & California Creek	[illegible]	1889	" " "
Hugo A. Schlag	California Creek	18.67	1912	" " "
Tom Stinton	" "	98.00	Early 80's	" " "
[illegible]	Owyhee River	[illegible]	" "	" " "





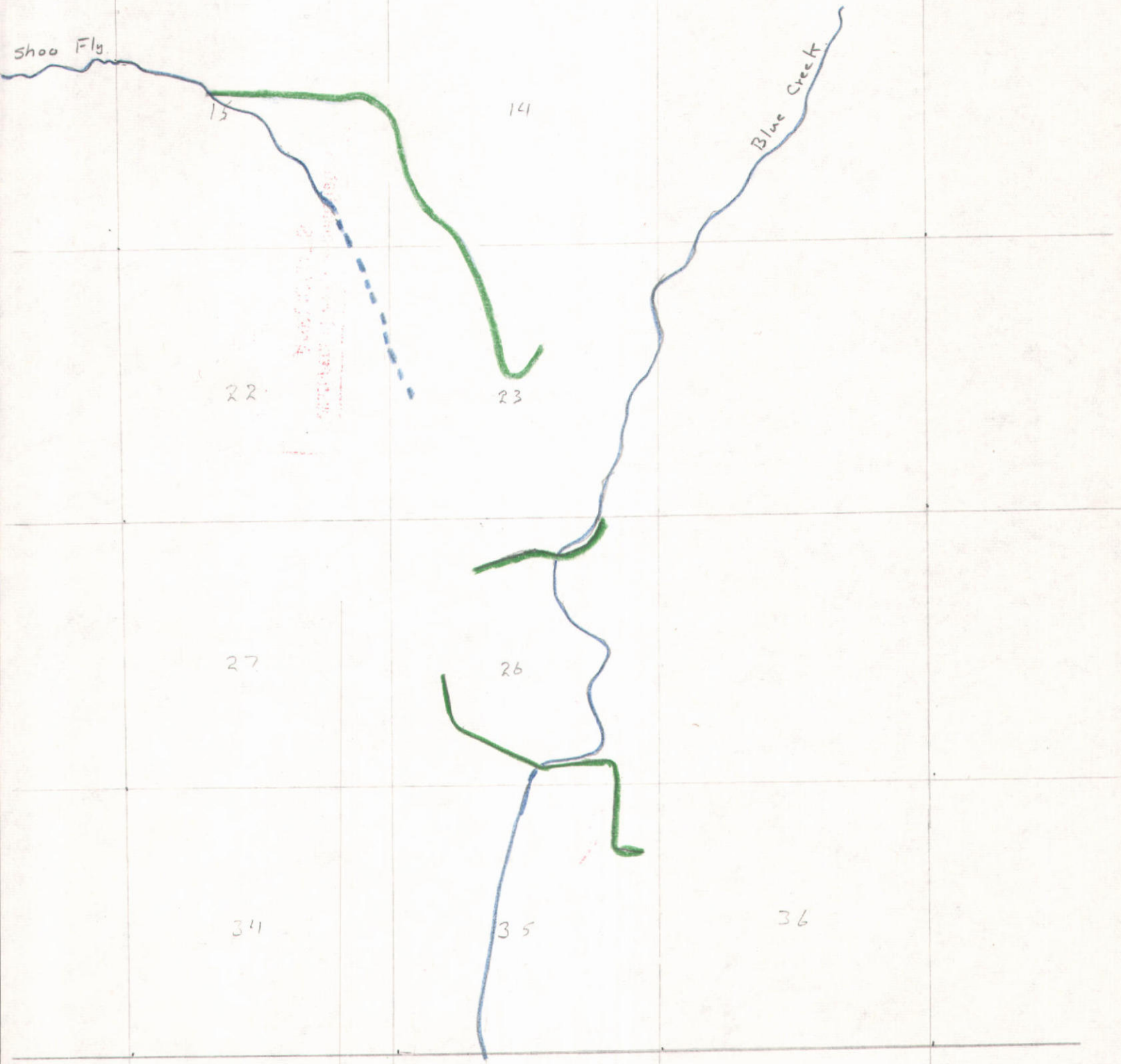
Owyhee River Hydrograph



Department of Water Administration
PROTESTANTS
Exhibit 37
Date Admitted 11-24-91
55 7009

Department of Water Administration
APPLICANT'S
Exhibit 1
Date Admitted 11-23-71 dr

14 S 2 E

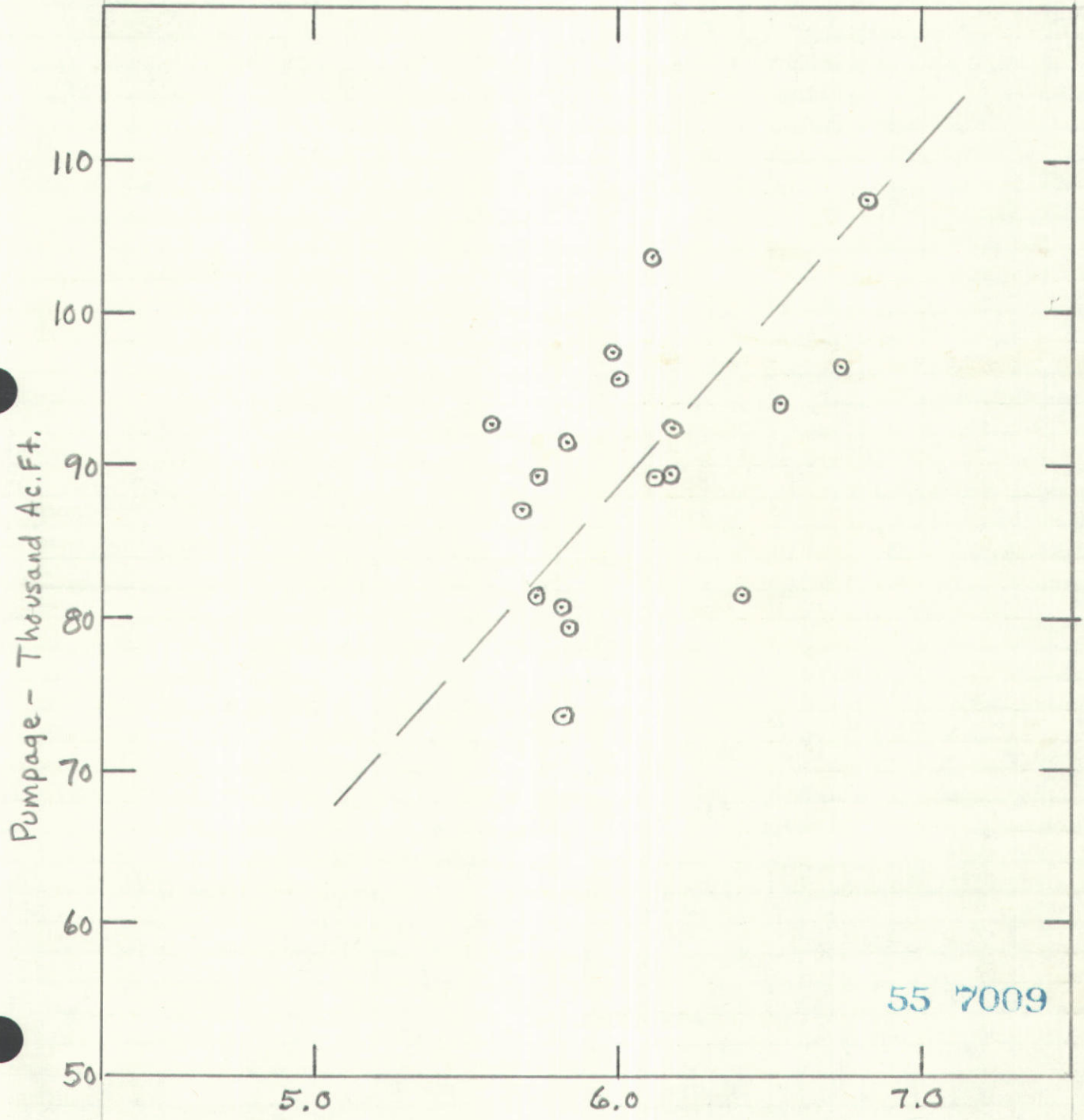


55 7009

Department of Water Administration
APPLICANT'S
Exhibit 13
Date Admitted 11-23-71

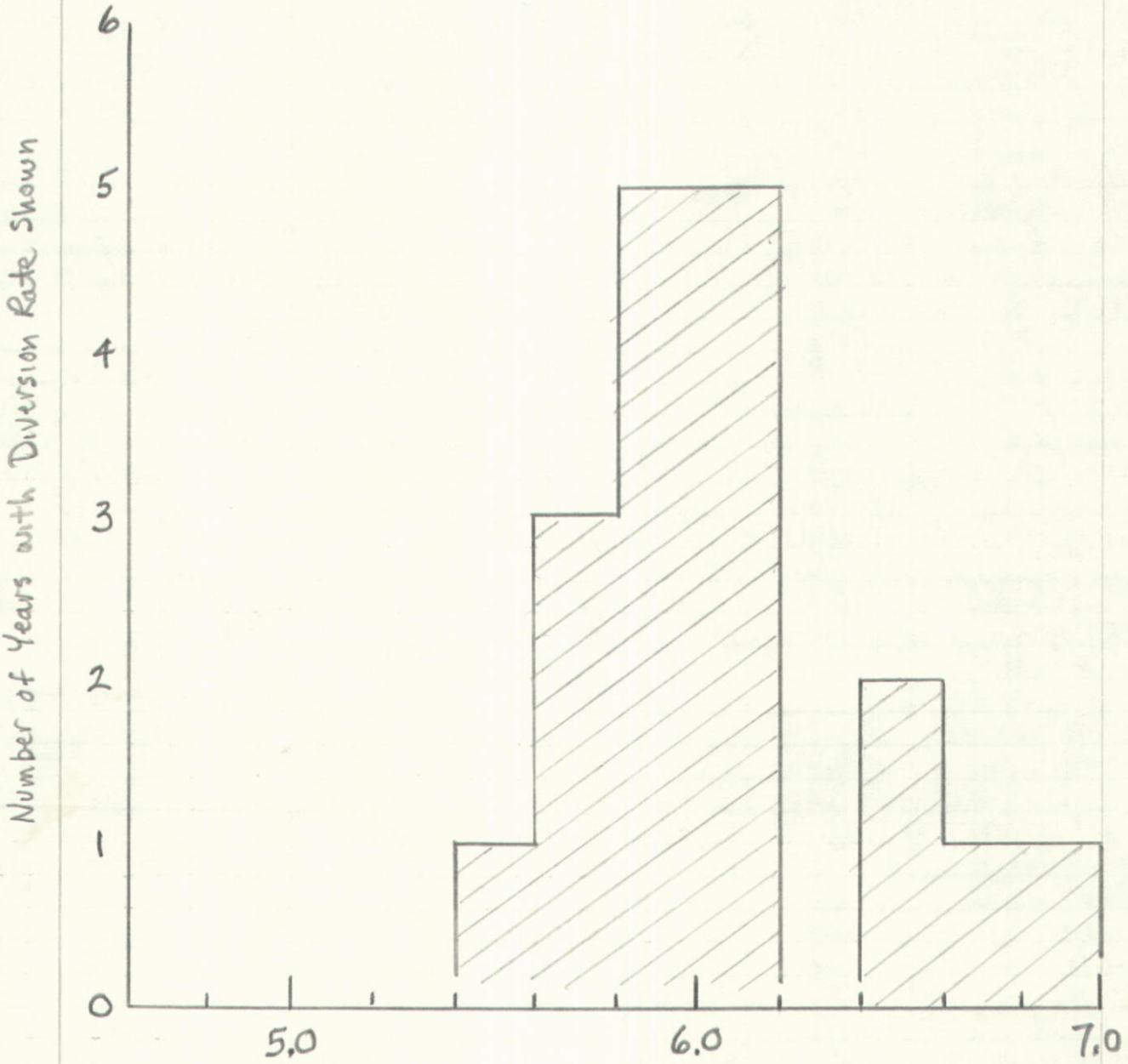
Gem Irrigation District
(Owyhee Project)

Snake River Pumpage related to Diversions



55 7009

Department of Water Administration
APPLICANT'S
Exhibit 11
Date Admitted 11-23-71



Gem Irrigation Dist. (Owyhee Project)
Diversion Rates - Ac. Ft. / Ac.*
(1952-1970)

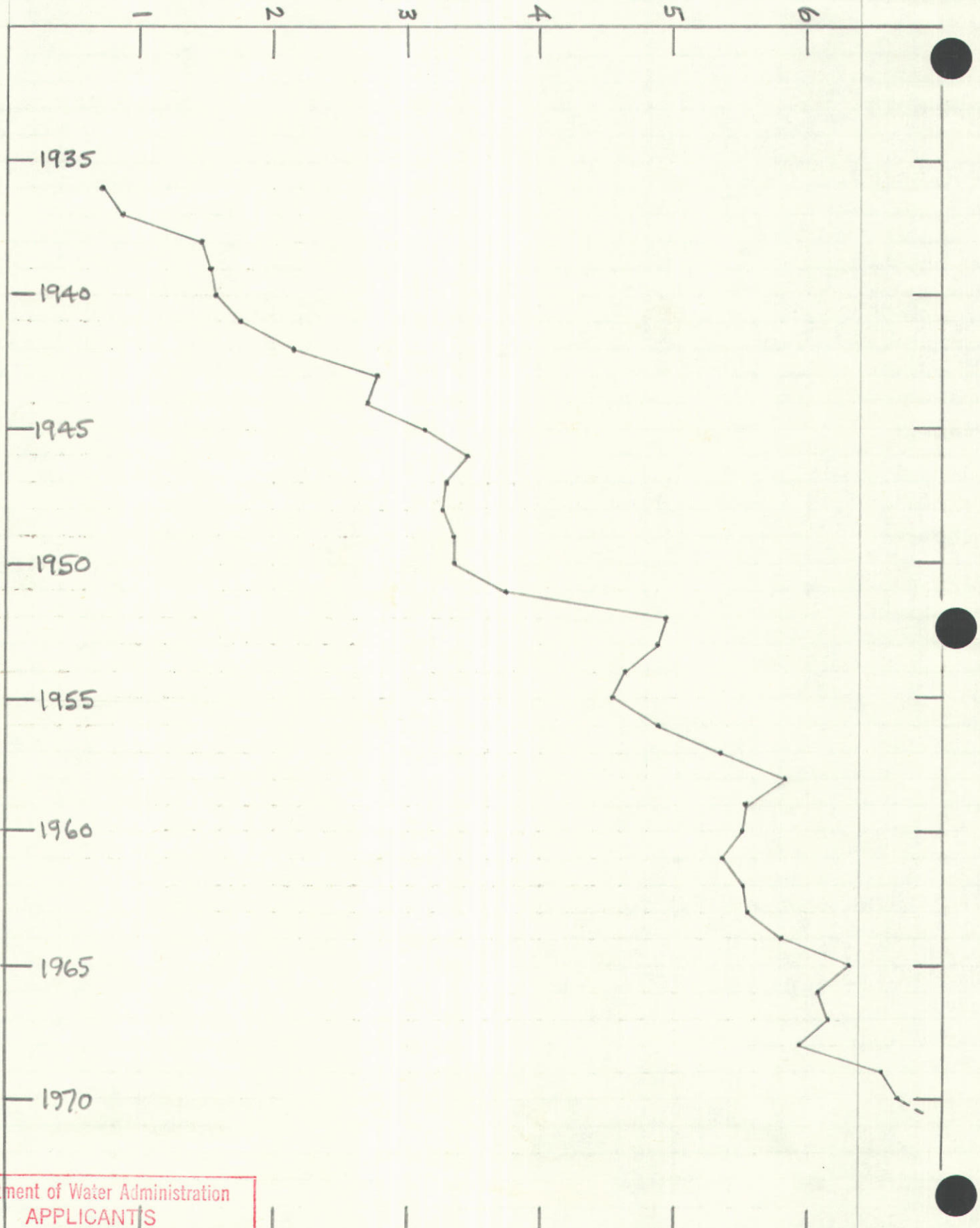
*- Per Irrigable Acre (rates higher if per irrigated acre)

6002 55

Owyhee Reservoir

Cumulative Historical Inflow In Excess of Diversions*

(Millions of Acre Feet)

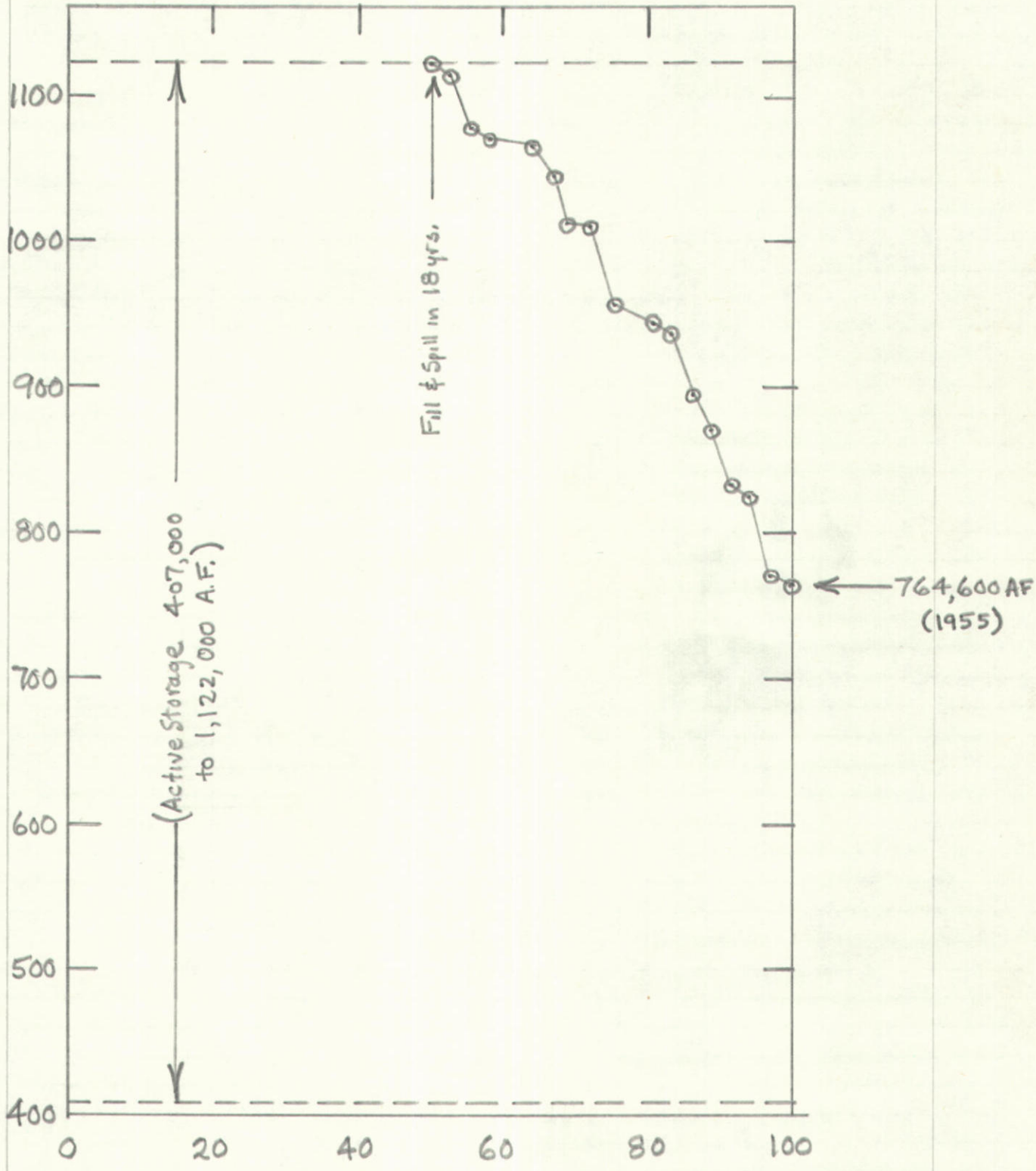


(*-Diversions = Project canals flows plus 40,000 AF/Yr allowance for Owyhee canal downstream)

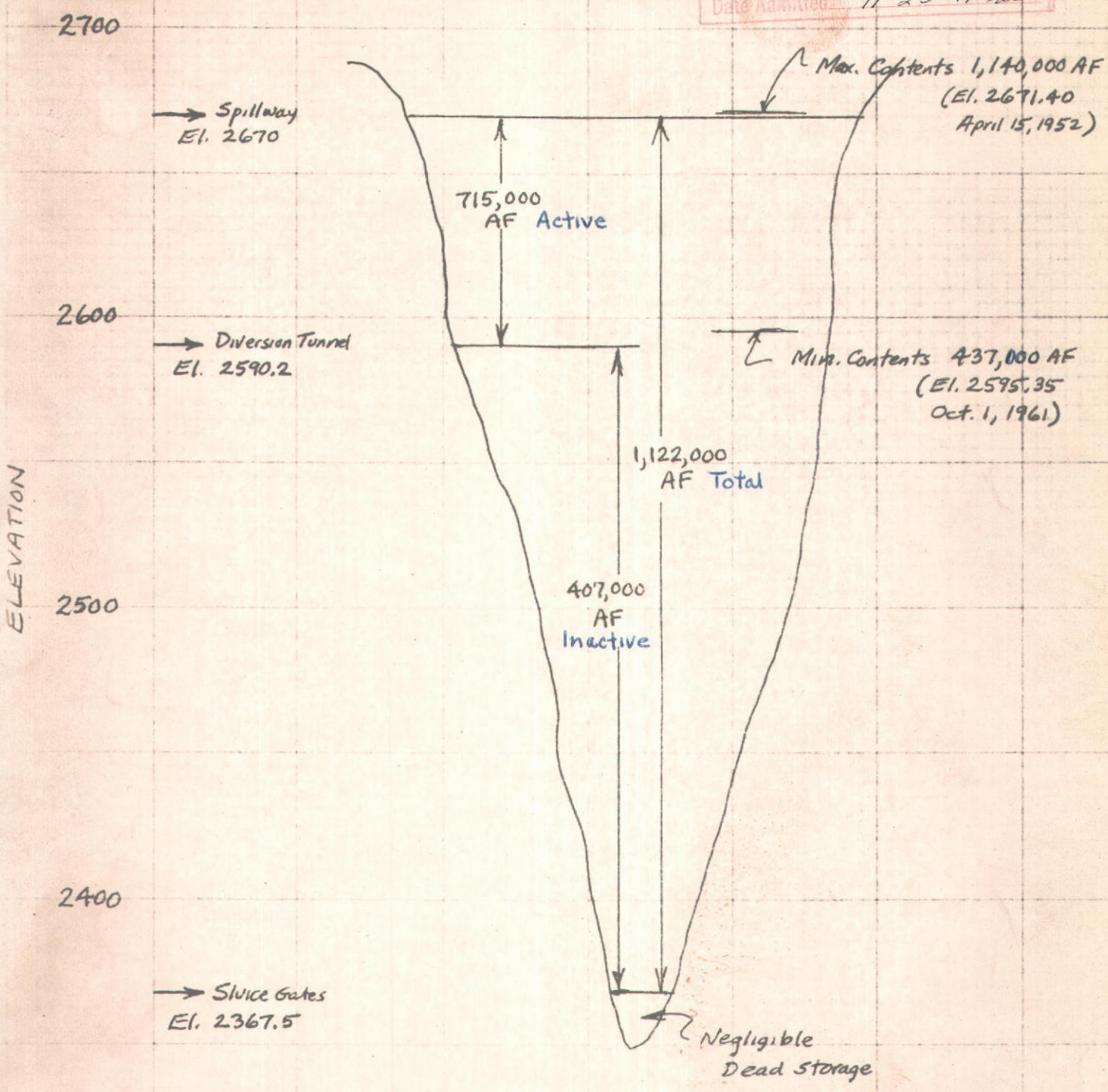
Department of Water Administration
APPLICANTS
Exhibit 9
Date Admitted 11-23-71

Department of Water Administration
APPLICANT'S
Exhibit 8
Date Admitted 11-23-71

Owyhee Reservoir - Oregon



Department of Water Administration
APPLICANT'S
Exhibit 6
Date Admitted 11-23-71 dw

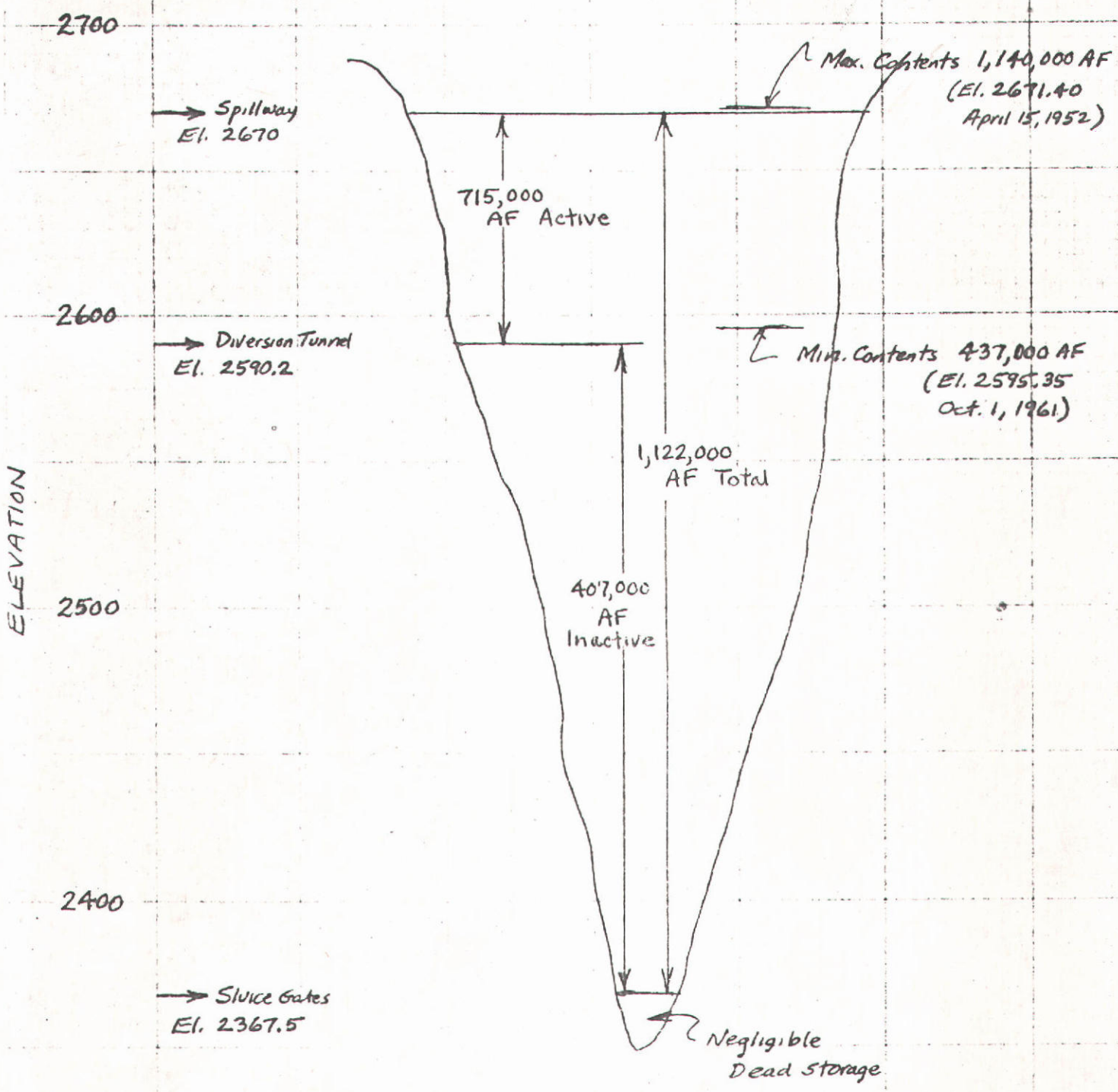


SCHEMATIC DIAGRAM

Lake Owyhee

(Owyhee Reservoir)

55 7009



SCHEMATIC DIAGRAM

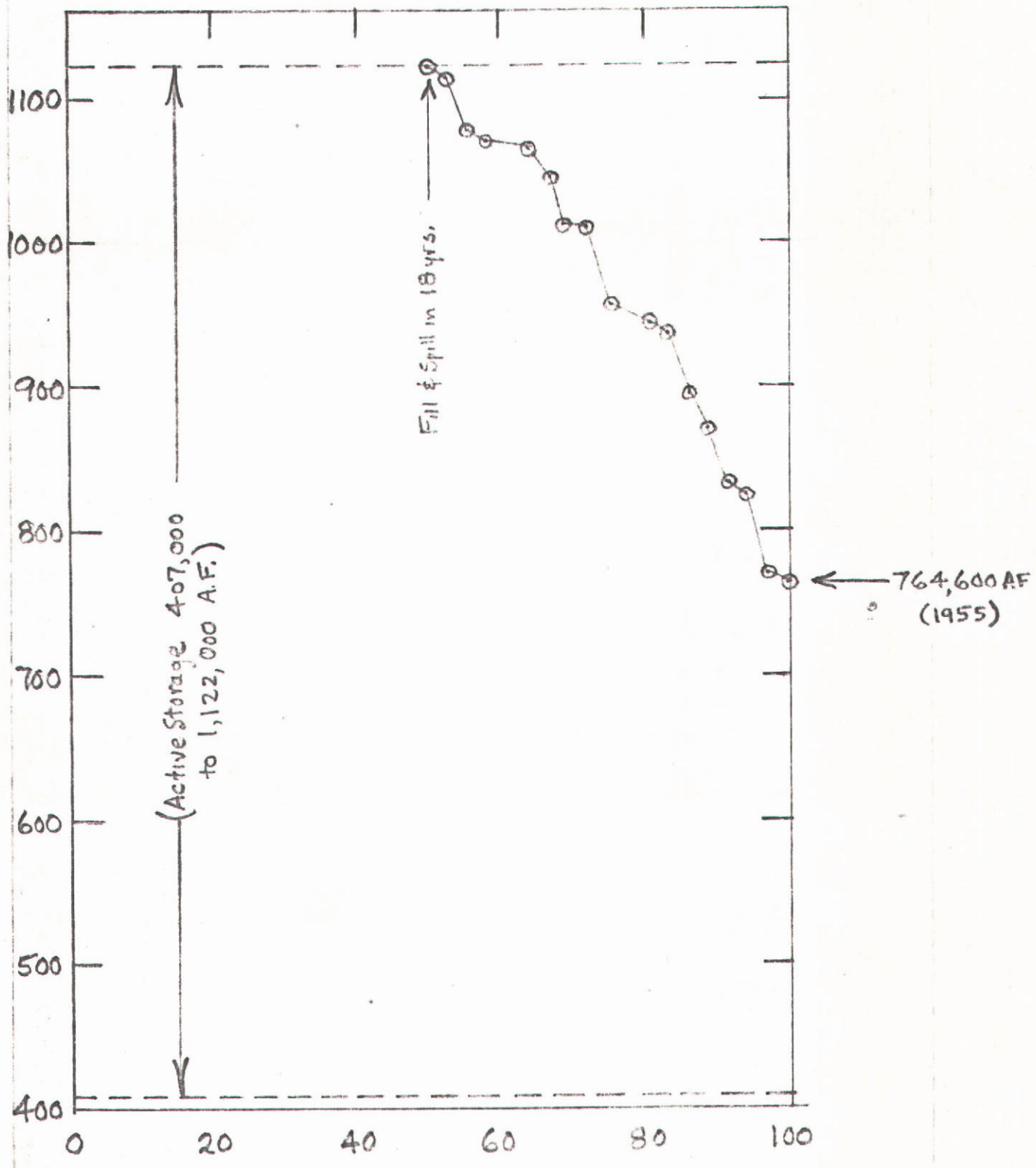
Lake Owyhee

(Owyhee Reservoir)

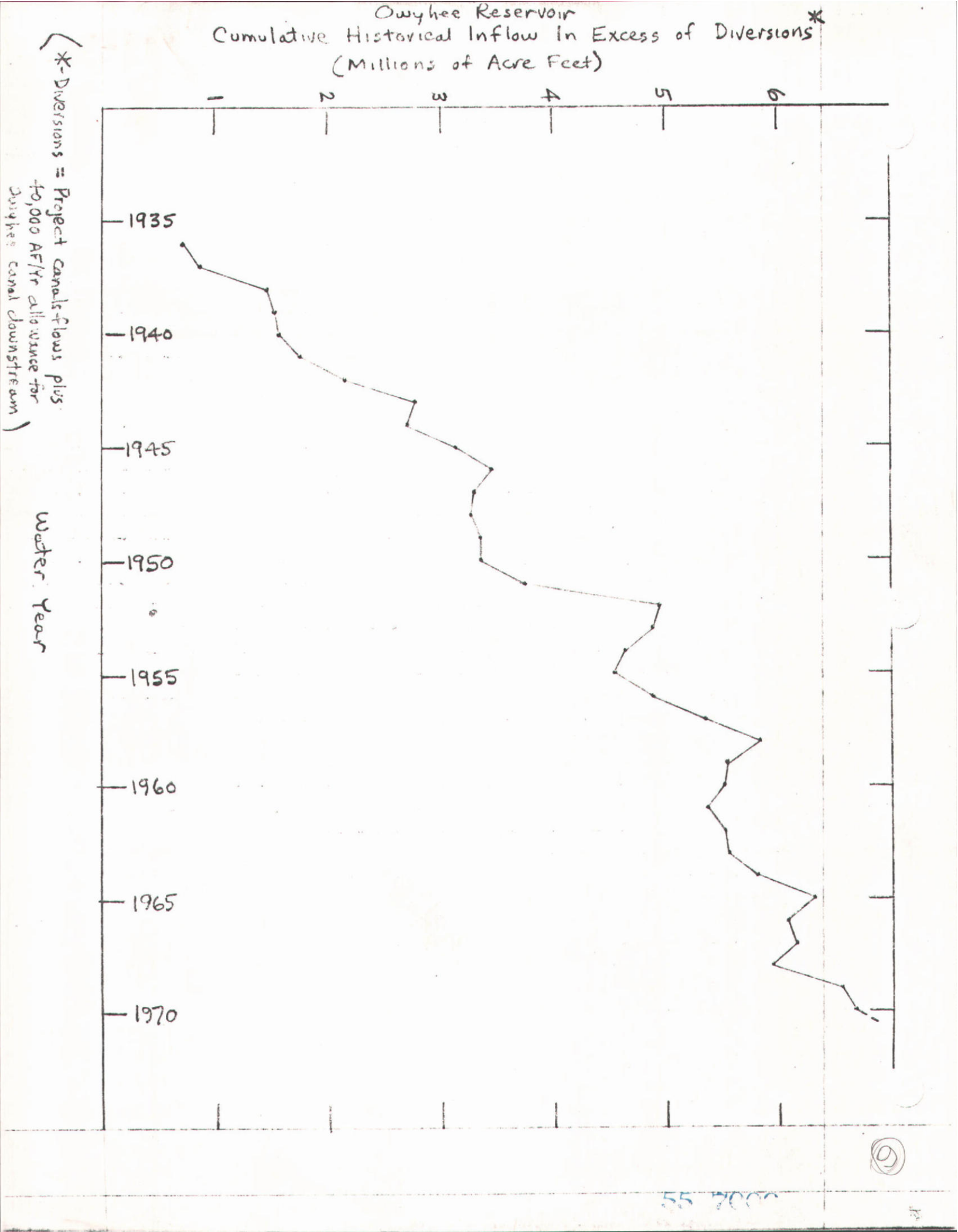
a-6

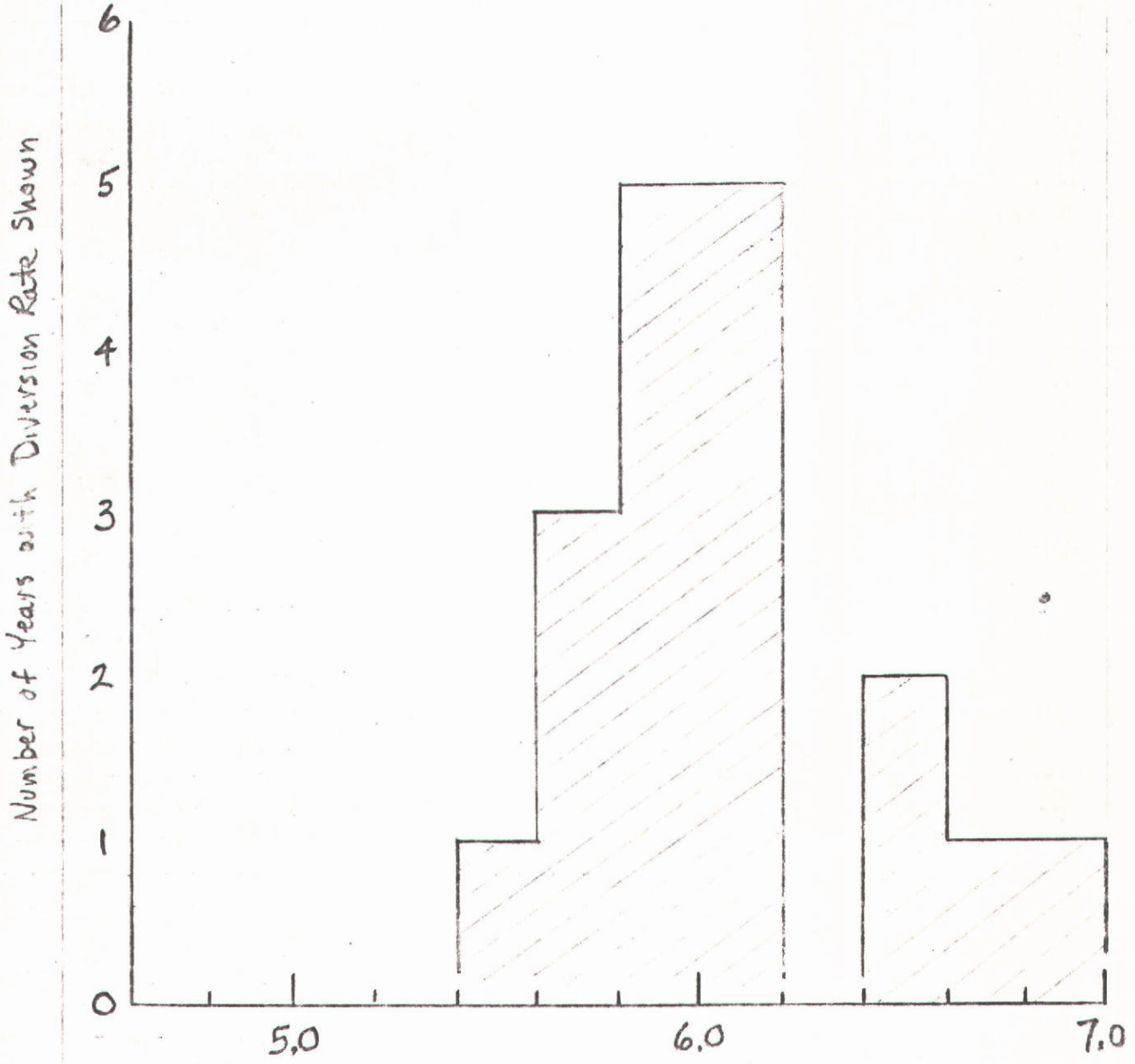
55 7009

Owyhee Reservoir - Oregon



55 7009


Owyhee Reservoir
Cumulative Historical Inflow In Excess of Diversions*
(Millions of Acre Feet)
1
2
3
4
5
6
1935
1940
1945
1950
1955
1960
1965
1970
Water Year
(*-Diversions = Project canals+flows plus 40,000 AF/Yr allowance for Owyhee canal downstream)



Gem ~~Irrigation~~ Pumping Dist. (Ouzel Project)

Diversion Rates - Ac. Ft. / Ac.*

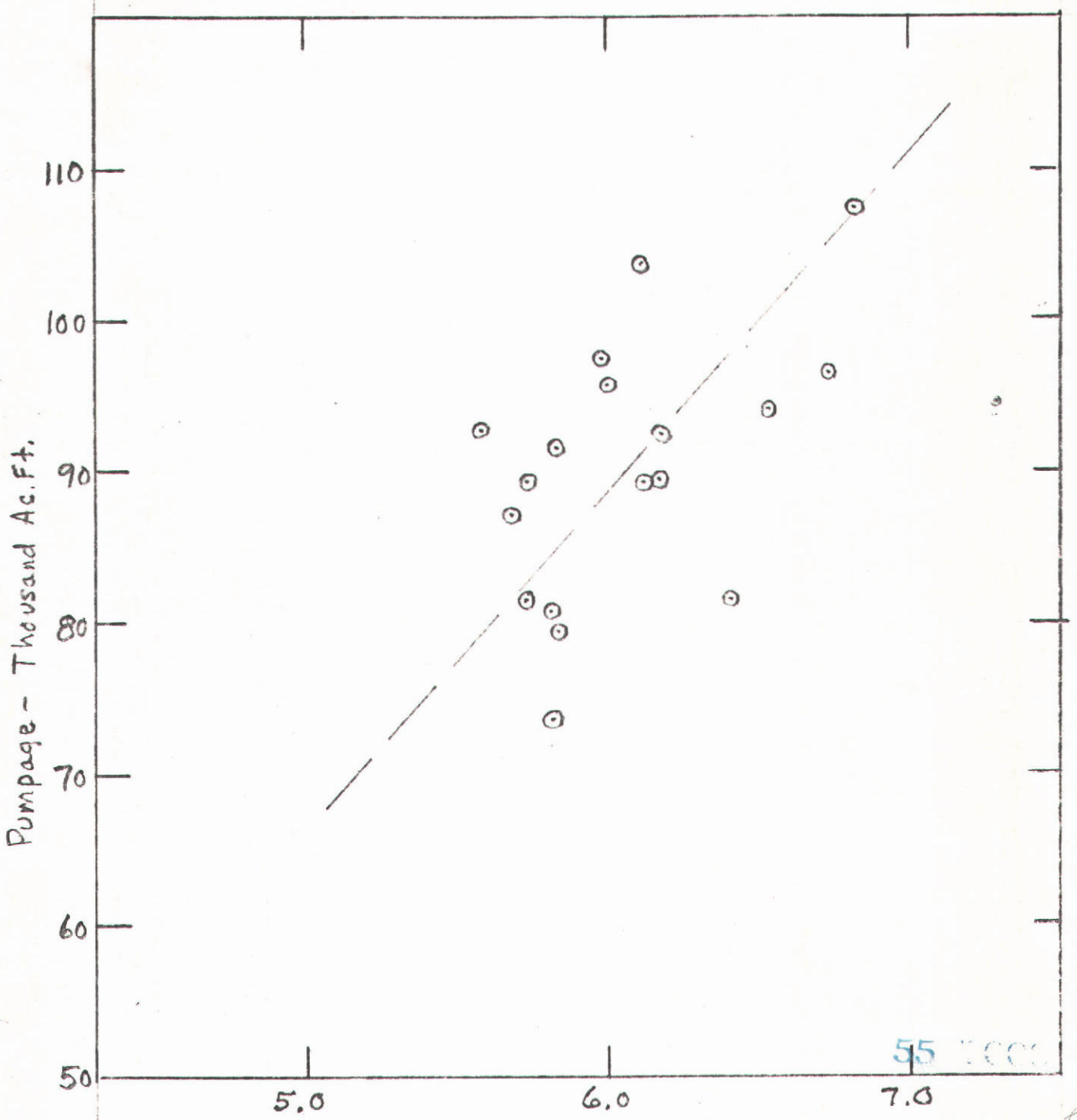
(1952-1970)

*- Per Irrigable Acre (rates higher if per irrigated acre)

55 7003 (11)

Pumping Area
Gem ~~Irrigation District~~
(Owyhee Project)

Snake River Pumpage related to Diversions



*- Diversion per irrigated acre is higher

(13)

Ringert

55-7009

JACKSON - Runoff is over in March.
- Water is diverted - Water only goes down creek when water overflows ditch & reaches meadow is section 23. Old natural channel is non-existant through meadow. Dam diversion installed ≈1965
- Can presently only irrigate shoosfly creek lands until July

GREENE JACKSON

Other diversions between dam & area described in A-1 - covered by licenses issued in 1913.

Question

without upper diversion

- ~~does water flow from shoosfly creek directly into Blue Creek~~
- resent Rubelt dam is approx 250 acre feet. this is the dam to be enlarged.
He does not know of any time that water was allowed to flow down stream without diversion - He did not think that this would have a significant on flow into Blue Creek.

Redirect —

55 7009

sec 22, 13 S 1E — other location not concerned with this application

sec 31 - 13 S 2E - Rubelt Reservoir which will be rebuild.

Report

Keith Anderson

Proposed dam is about 90 ft high
Watershed Area ± 20 sq. mi
estimates - average yield to reservoir ± 2000 - 4000 acre ft/yr.
net depletion ± 1000 acre feet per year.
from Owyhee Basin.
Though creek does not have a definite channel adjacent to Blue Creek. overland flow tributary only during high water periods

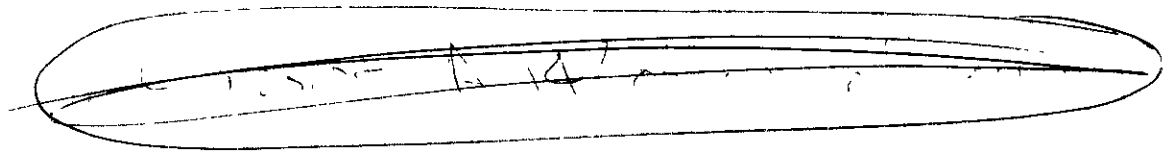
Question: ~~Would project be affected considering upper yield figures~~

One Canal diverts about 13 mi downstream from dam.

~~Question for Protestant - what water are you required to deliver downstream from dam,~~ from below canal.

55 7009

Project has about 85% efficiency should divert about 4.5 acre ft to deliver 3-35 acre ft to farm -



Green Cross-exam Anderson

Average Elevation =500 - very little variation, generally flat.

Required Applicant to supply Analysis of Expected yield to Reservoir to justify Request of 9000 ac ft -30 days-

Green Mr. Stevens

Mr Wright - Jan 31 to submit Simultaneous Briefs then follow with Reply Brief - ie Indian Rights

4000 acres flood irrigated by Blue Creek during High water.

Report Mr. Stevens.

Area Irrigated 2 mi x 4 mi

55 7019

took official Notice of Owyhee Report.

~~Dake~~

Green
direct Barnett

~~OF~~

Need to resolve admission of reports

23 sq mi. of watershed Area above the dam.

Ringert cross exam Stearns — Recalled to allow him to be excused for other Pressing Business

Green Direct Barnett.

Question — ~~Have you made any estimates of the Yield of the Watershed in Questions~~

Barnett — Estimated average Yield is 7000

Green direct Cotton —

Decreed right delivered downstream.
- Delivers 41,880 acre feet.
+ 2.937% live Storage Water.
Decreed right is prior.
Two years 1955 - 1961 when no Excess Water was available

(Question — During those Years that excess water was not available did any lands experience a shortage in your opinion)

During those years that you stated that a decision was made to pump water, why was excess water still available

- All lands are in Oregon except Old Lem & New Lem Districts

1956 Survey indicated 119,318 acres irrigable

- Question Actually more water was delivered to Owyhee Ditch in those years that is. Spilled than is shown

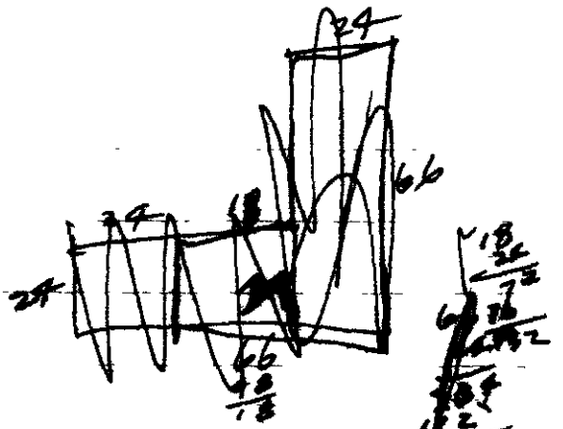
~~How did you determine what the average of good years was - on what basis~~

~~Where~~

- 92,000 approx is irrigated

Question of Applicant — if water were only available 50% of the time - would you still construct

Total capacity of diversion canals is 1580



OFFICE OF THE SOLICITOR
202 - 343 - 7406

Mr. HOWARD A. [illegible] QUIST — WASHINGTON D.C.
BUREAU OF INDIAN AFFAIRS — SOLICITOR

DEPT OF RIDDLE RANCHES — BLUE CREEK

IT HAS BEEN RECORD — THAT IN ORDER TO AVOID HAVING TO GO INTO FED COURT THAT THE US SHOULD APPEAR IN STATE ADM PROCEDURES

WILLING TO APPEAR — BUT DON'T WISH TO BE PLACED IN POSITION OF A STATE POSITION THAT ONCE THAT ACTION HAS TAKEN PLACE — THAT THEY ARE THEN BOUND TO STATE ADM PROCEDURES — WOULD LIKE TO APPEAL IN FED COURT

55 7009

Points of Contest:

1. No Water Available
2. Will injure prior rights

3. Can Indians rights be considered in these proceedings

Priest

1. Should tributary to Blue Creek.
2. Water Available in Owyhee System
3. Water supply adequate
4. Indian rights.
5. Regulations

Conclusions of Law

1. Indian rights - effect

55 7009

Confidential

55 7009

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

Cecil D. Andrus
Governor

R. Keith Higginson
Director

Statehouse
Boise, Idaho 83720
(208) 384-2215

March 18, 1977

Riddle Ranches, Inc.
Riddle via Grasmere, ID 83625

Gentlemen:

On November 7, 1972, I approved your application and issued permit 55-7009 for appropriation of water from Shoo Fly Creek through construction of a reservoir with a capability of 9,000 acre-feet. The Memorandum Decision which accompanied that approval imposed several conditions including the following:

> "(1) Storage and use of the waters of Shoo Fly Creek is subject to all prior water rights on streams to which it is tributary. This includes the rights of the Indians as well as the protestant's prior rights for storage in Owyhee Reservoir. In the event the Paiute and Shoshone Indians construct adequate facilities to use the water of Blue Creek which would require these waters of Shoo Fly Creek, the applicant may be required to allow the water to pass on downstream."

That condition was added as a means of protecting the Indians rights as well as to put you on notice that such rights existed and could be exercised at any time.

I have now received evidence that the Indians have expended several hundred thousand dollars in constructing diversions and storage dams since 1972. Due to the anticipated low runoff for 1977 and for all future years, it is necessary that your use of the reservoir be in full recognition of their entitlement.

MICROFILMED
SEP 12 1990

You are, therefore, directed to bypass waters up to the entire inflow to the reservoir, if necessary, to meet the requirements of the Paiute and Shoshone Indians for irrigation and other purposes. Measuring devices of a type approved by this office shall be installed as necessary to determine the inflow and outflow of the reservoir pursuant to Section 42-702 and 42-703, Idaho Code.

I recommend that you attempt to reach a written agreement with the Indians concerning your respective rights and uses. Failure to do so can only lead to unnecessary and costly litigation.

Very truly yours,

R. KEITH HIGGINSON
Director

RKH/slg

CC: Shoshone-Paiute Tribes of the
Duck Valley Reservation
Bill Ringert
Tom Cotton
Idaho Land & Appraisal
Sherl Chapman
Maurice Greene
U.S. Department of the Interior
Office of the Solicitor, Phoenix
U.S. Department of the Interior
Bureau of Indian Affairs, Owyhee
U.S. Bureau of Land Management
Boise, Idaho

MICROFILMED
SEP 12 1990

55-7009

LAND LEST ATTACHMENT

Description and location of place of use: a

TWP.	RANGE	SEC.	NE¼				NW¼				SW¼				SE¼				TOTALS
			NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	
14S	1E	1													40			40	80
		12	40			40									40			40	160
		13	40			40													80
14S	2E	6							40			40	40						120
		7						40			40			40					200
		12									40			40				40	240
		13	40				40		40					40					440
		14				40					40				40		40	40	320
		15						40	40		40	40							160
		18					40			40									160
		22													40			40	160
		23	40							40					40	40	40	40	480
		24						40	40			40							120
		26	40			40	40			40	40			40	40	40	40		440
		27	40			40	40			40					40			40	320
		35	40	40	40		40			40	40			40		40	40	40	400

Total number of acres irrigated _____

MICROFILMED

1972

Department of Water Administration

BEFORE THE DEPARTMENT OF

WATER ADMINISTRATION OF THE STATE OF IDAHO

IN THE MATTER OF APPLICATION IN THE NAME OF RIDDLE RANCHES, INC.	NO. 55-7009

REPLY BRIEF OF PROTESTANTS SOUTH BOARD OF CONTROL AND GEM IRRIGATION DISTRICT

MAURICE H. GREENE
Attorney for Protestants
South Board of Control
and Gem Irrigation District

DATED: April 15, 1972

55 7009

BEFORE THE DEPARTMENT OF

WATER ADMINISTRATION OF THE STATE OF IDAHO

IN THE MATTER OF APPLICATION)
NO. 55-7009 IN THE NAME OF)
RIDDLE RANCHES, INC.)
)

REPLY BRIEF OF
PROTESTANTS SOUTH BOARD
OF CONTROL AND GEM IRRIGATION DISTRICT

As a preface to this reply brief, protestants South Board of Control and Gem Irrigation District desire to apologize to the Department for the way in which the filing of briefs has been followed procedurally in this case. There apparently was a misunderstanding concerning what was to be covered by initial briefs as counsel for protestants understood that the entire subject matter of the application was to be discussed, while counsel for the applicant understood that only the question of the status of the Indian water rights was to be considered. In any event, this reply brief will cover all phases of the application but will be restricted to only a few points that protestants feel should be discussed to a somewhat greater extent than was done in their initial brief.

THE INDIAN WATER RIGHTS

It would appear that applicant concedes a water right exists in favor of the irrigable lands located within the Duck Valley Indian Reservation. However, it apparently takes the position that the Department of Water Administration should completely disregard these rights in determining whether a permit should be granted the applicant to construct the reservoir on Shoo Fly Creek. Protestants believe the record is clear that the irrigable lands within the Indian Reservation have a water right. At the present time, to the extent the waters of Shoo Fly Creek flow into the Owyhee River and there impounded into the Owyhee Reservoir, the Owyhee Project has the benefit of these waters. If the applicant is granted an unrestricted permit to construct the proposed reservoir on Shoo Fly

Creek, the reservoir will impound the waters of Shoo Fly Creek so that (1) they will not be available for use on the irrigable lands in the Indian Reservation, and (2) to the extent they are not used on the lands in the Reservation and flow into the Owyhee River they will not be available for use on the Owyhee Project. Thus the end result of granting an unrestricted permit to the applicant to construct the proposed reservoir, the water right involved being junior to both that of the Indian Reservation and the Owyhee Project, will be to interfere with both of these prior rights.

Protestants are not asking the Department to determine the amount of any water right the lands within the Indian Reservation have. They are only asking that the Department recognize that such rights exist. If the Department recognizes that these rights exist and then recognizes that, to the extent the waters of Shoo Fly Creek are not used on Reservation land to fill the Indian water rights, the Owyhee Project obtains the benefit of the unused portion of the Indian rights, then the Department should limit any permit granted to the applicant by recognizing the existence of the prior Indian water rights and those of the Owyhee Project. It is apparent from the applicant's supplemental brief that it has not changed the views expressed in its initial brief that the Department should completely disregard the Indian water rights. In other words, it still urges that the Department has no right to recognize the Indian water rights and restrict the permit sought by the applicant accordingly but that the Indians should be forced to take court action to protect those rights. Protestants believe the Idaho statutes and the decisions of the Idaho Supreme Court cited in their opening brief clearly disclosed that the Department of Water Administration has the right and it is its duty, in considering this application, to take into account the existence of the Indian water rights. Certainly the Department is vested with full power and authority concerning water appropriations made from streams in the

55 7009

State of Idaho. While it may be true that the Indians could file suit in Federal Court to have their water right adjudicated, the fact that they have not seen fit to do so up to the present time certainly does not oust the Department of Water Administration from its jurisdiction to consider all water rights, Indian or otherwise, in determining whether the permit of the type applied for by Riddle Ranches, Inc., should be granted or what restrictions should be placed on such a permit if one were to be granted.

THE GOVERNMENT REPORTS

In its supplemental brief, applicant urges that all of the Government reports concerning the water supply on the Duck Valley Indian Reservation should be eliminated from consideration by the Department as being what the applicant calls "rank hearsay." These documents, among other things, included the report made by Charles A. Engle to the United States Department of the Interior in 1930 pursuant to an Act of Congress of March 4, 1929. Other documents are the aerial photos of the lands in and adjacent to the Indian Reservation. Applicant urges that, under the provisions of § 9-318 Idaho Code, these documents are inadmissible because there was no witness available who could be cross-examined in connection with their contents. The statute to which the applicant makes reference, of course, has to do with court procedure and not administrative bodies. However, even though the statute to which the applicant refers certainly pertains to evidence produced in court, protestants believe the very language of the statute is broad enough to permit the Department's consideration of the Government evidence for the limited purpose for which they were offered. The statute provides:

> "Official reports as evidence--Cross-examination.--Any adverse party may cross-examine any person making such reports or findings or any person furnishing information used therein; but the fact that such testimony may not be obtainable shall not affect the admissibility of the report or finding, unless, in the opinion of the court, the adverse party is unfairly prejudiced thereby." (Emphasis ours)

As noted by the underlined portion of the statute, the courts must

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receive official reports in evidence unless it finds the failure to produce a witness for cross-examination unfairly prejudices the opposing party. Protestants do not see how Riddle Ranches has been "unfairly prejudiced" by the presentation of these reports for the consideration of the Department of Water Administration. The documents were identified by an officer of the Bureau of Indian Affairs who testified they were official documents kept in his possession and custody. They were not prepared for the purpose of this case. Since they were not prepared for the specific purpose of opposing the instant application and some of them are rather ancient in character, protestants do not believe that Riddle Ranches would in any way be "unfairly prejudiced" by the Department considering their contents.

However, as pointed out previously, § 9-318 Idaho Code contemplates court procedure. The statute governing procedure at hearings before the Department of Water Administration specifically gives the Department authority to consider facts far beyond that which a court might accept. Section 42-203 Idaho Code specifically provides that in hearings on applications for permits to appropriate water, "technical rules of pleading and evidence need not be applied." (Emphasis ours) Under this statute, the Department clearly has the right to consider the documents of the Bureau of Indian Affairs in connection with whether the permit sought by Riddle Ranches should be granted or, if granted, should be restricted.

THE RECORD CLEARLY SHOWS A WATER RIGHT EXISTS IN SHOO FLY CREEK.

The applicant devotes a considerable portion of its supplemental brief to a claim that the records of the Department of the Interior, together with the other evidence of record, are not sufficient to establish a water right on the part of the Indians or that any amount of water flows from Shoo Fly Creek that would be available for impounding in the Owyhee Reservoir. (Applicant's brief, pp. 5-av - 14-av) In support of this claim, the applicant first argues that the records of the Department of the Interior, and particularly the 1930 Engle report, show that Shoo Fly Creek

makes no significant contribution to the water supply of either Blue Creek or the Owyhee River. It quotes extensively from page 51 of Volume 1 and page 10 of Volume 2 of the report in support of its claim. Protestants call attention to the following statement taken from page 120 of the Engle report:

> "It was stated by Mr. Rubelt that the water shed of the two creeks above named contained an area of 70 square miles and the runoff was sufficient to fill the three reservoirs to capacity each year. It is not known if this is true or not as no records are available of the runoff at this point which occurs in the early spring and lasts but a few days. When the flow of Shoo Fly Creek is at flood height, a considerable quantity of water finds its way to the Blue Creek channel."

Further, protestants call attention to the statement on page 12-av of applicant's supplemental brief that its own witness, Mr. Keith Anderson, expressed a view that at times more than 1,000 acre-feet of water from Shoo Fly Creek would enter the natural channel of Blue Creek and would be available for impounding in the Owyhee Reservoir. In other words, applicant's own brief is contradictory concerning the issue of whether the storage of water as contemplated by it through the construction of the proposed reservoir would in fact divert water that is presently available for use on the Owyhee Project. Taking the record as a whole, protestants believe the record is clear that Shoo Fly Creek does make a substantial contribution of water each year, particularly in the runoff season that has been utilized by the Owyhee Project in the past.

Applicant also claims, in its supplemental brief, that the use of water by the Indians is in the nature of "natural irrigation" which does not constitute an actual appropriation of water under Idaho law. It cites Hutchinson v. Watson Slough Ditch Co., 16 Idaho 484, 101 P. 1059, in support of its claim that the use of the waters of Shoo Fly Creek by the Indians in the past has been a riparian use of water and not an actual appropriation. Protestants have no argument with the decision of the Supreme Court in Hutchinson v. Watson Slough Ditch Co., supra. In fact

they recently filed a brief with the Department of Water Administration taking exactly that portion in the proceeding now pending before the Department involving the legality of a legislative attempt to appropriate certain of the waters of Malad Canyon. However, in this case the record, contrary to applicant's claims, is clear of man-made dikes having been constructed in the channel of Shoo Fly Creek and that there is a substantial quantity of lands that have been under irrigation in the past that are now reverting back to sagebrush. This evidence appears in the reports of the Department of the Interior, the aerial photographs of the channel of Shoo Fly Creek, and the testimony of the representative of Bureau of Indian Affairs concerning the dikes and abandoned irrigated lands.

Protestants do not believe the burden rests on them to establish any particular quantity of water available in Shoo Fly Creek for irrigation purposes. Since admittedly the rights of the Indians and the rights of the Owyhee Project are prior in time to the storage rights proposed by Riddle Ranches, protestants believe the burden was on Riddle Ranches to establish there is water available in Shoo Fly Creek that is not now and has not in the past been put to beneficial use. Certainly the evidence in the record of the many years in which the Owyhee Reservoir did not fill and spill establishes that all of the waters of Shoo Fly Creek that reached the Owyhee River have been in the past impounded in the Owyhee Reservoir and put to beneficial use. As protestants stated in their opening brief, they have no objection to Riddle Ranches impounding and making beneficial use of the waters of Shoo Fly Creek in those years when there was a water supply available to more than fill the needs of all prior appropriators and they are willing to work with Riddle Ranches to accomplish that result. They believe that when the applicant's witness Anderson admitted a substantial volume of the waters of Shoo Fly Creek reached the confluence of Shoo Fly Creek and Blue Creek, and that those waters would be impounded if the proposed permit were granted, the record established an interference with

prior water rights. Accordingly they believe an unrestricted permit should not be granted the applicant but the permit should be restricted so that it fully protects the prior rights. Protestants believe it immaterial whether the amount of water available for the Owyhee Project is 100 acre-feet, 1,000 acre-feet, or 10,000 acre-feet. They believe the criteria would be whether <u>any water</u> presently available would be subject to diversion if an unrestricted permit were to be granted. The burden was clearly on the applicant to establish that there is water available for appropriation for the purposes contemplated by it and not upon the protestants to prove there is no water available. In that connection, protestants, in their original brief, made an extended statement with respect to their willingness to work out some kind of arrangement with Riddle Ranches whereby it could capture and put to beneficial use any waters of Shoo Fly Creek that might otherwise be wasted when the Owyhee Reservoir fills and spills. Applicant infers, in its supplemental brief, that such an arrangement would be unworkable and completely rejects the proposal suggested by protestants in their original brief. If the applicant feels that a working arrangement between Riddle Ranches and the Owyhee Project is impossible, then protestants suggest that, if any permit be issued the applicant, it should be restricted so that the applicant could only impound any waters in Shoo Fly Creek <u>during the periods of the year in which it affirmatively appears that no water from Shoo Fly Creek is flowing into Blue Creek</u>. Protestants believe a working arrangement between Riddle Ranches and Owyhee Project would certainly be more preferable to the applicant than a restricted type of permit suggested above. However, in the absence of any willingness on the part of the applicant to attempt to work out such an arrangement, protestants submit that a restricted type of permit as suggested above is the only way in which the prior Indian water rights and those of the Owyhee Project can be effectively protected against a diversion of water by Riddle Ranches.

On pages 14-av and 15-av, applicant points to the fact that it is admitted by protestants that over a period of 36 years the Owyhee Reservoir filled to capacity in 18 years. Does the fact that the reservoir filled to capacity in 18 years out of 36 years mean that the applicant should be granted an unrestricted permit so that it may have an upstream right of diversion of the waters of Shoo Fly Creek in 36 out of the 36 years? Does the fact that the Owyhee Project has seen fit to spend millions of dollars in the construction of a reservoir to impound waters in good water years for use in bad water years give an admitted junior appropriator the right to use the waters of the Owyhee River in the bad years as well as the good years? If such be the law, then why construct the reservoir at all? If the water rights of the Owyhee Project were not filled in 18 out of the 36 years, should applicant be given the right to divert water in the 18 short water years as well as the 18 good years? Protestants think not.

In their opening brief, protestants pointed to the fact that in many years if there had been no Owyhee Reservoir, the natural flow of water in the Owyhee River would not have filled the water rights of the Owyhee Project. They pointed to the fact that without the reservoir the spring runoff in the Owyhee Basin would terminate early in the irrigation season. Without the reservoir certainly the Owyhee Project would undoubtedly be unable to produce the crops it is now producing with the aid of the reservoir. The primary purpose, of course, for the construction of the Owyhee Reservoir was to control the spring runoff of the Owyhee Project so that the waters might be put to use during the entire irrigation season. In fact the witness for Riddle Ranches conceded in this case that one of the primary purposes of the construction of the proposed reservoir was to extend the period of time it could utilize the waters of Shoo Fly Creek for irrigation purposes. Simply because the water supply in the Owyhee drainage area varies from year to year so that in some years there is

carryover water in the Owyhee Reservoir and at times water may spill over the Owyhee Dam certainly does not give a junior appropriator the unrestricted right to make use of those waters in years of short water supply. In other words, make a short water supply shorter.

On pages 20-av through 22-av of its supplemental brief, the applicant argues that the water rights of the Owyhee Project violate the provisions of § 40-202 Idaho Code because that statute states that an applicant for a permit "shall not claim more than five acre feet of water land to be irrigated." Protestants do not believe the water rights of the Owyhee Project are in issue in this proceeding. They are Oregon rights and are governed by Oregon law. They have been established in Oregon and have been recognized by the Department of Water Administration. Having once been recognized by the Department, those rights, protestants believe, can only be changed by court adjudication. Protestants do not believe § 42-202 has an application to an Oregon water right but that such a right is governed by the reciprocity statutes between the two states. However, they also believe that the statute to which the applicant refers concerns a quantity of water measured <u>at the point of use</u> and not at the point of diversion. If the maximums fixed in § 42-202 Idaho Code were intended to apply to the point of diversion rather than to the point of use, the end result would be that a water user at the point of diversion would have a substantial water supply while a water user at the end of a canal, with perhaps 20 miles or more of loss through seepage and evaportation, would have a water supply wholly insufficient ti fulfill his irrigation requirements. Protestants believe the construction the applicant would place on § 42-202 is repugnant to the practical use of irrigation water. They believe water rights must recognize canal loss from point of diversion to point of use.

Applicant also argues at some length that there is no possible practical method of arriving at a working arrangement between Riddle Ranches

and the Owyhee Project whereby full utilization of the waters in the Owyhee drainage area could be made every year. Applicant urges such an arrangement is impossible because the point of diversion of the Owyhee Project is in Oregon while the proposed point of diversion of Riddle Ranches is in Idaho. It, therefore, claims that the Department of Water Administration of the State of Idaho would be unable to police the operations of the Owyhee Project. Protestants see no reason why a working arrangement could not be made between Riddle Ranches and the Owyhee Project if Riddle Ranches were willing to attempt to work out such an arrangement. Water compacts are common between states. Such an agreement would certainly be enforceable in the courts. However, when protestants' offers to attempt to work out such an arrangement with Riddle are met with a statement by the applicant that "such a proposal is completely unacceptable to the applicant" (p. 16-av), it is obvious that what the applicant wants is to obtain an upstream water right completely independent of the prior rights of the Owyhee Project and which would divert water that presently flows into the reservoir.

Finally the applicant urges that the Owyhee Project should have been fully aware of the "knowledge of the risks inherent in making determinations as to whether they should hold or release water and whether they should pump water from Snake River to supplement Owyhee River water." (Pp. 22-av - 23-av) Protestants' reply to this argument is that one of the risks the Owyhee Project did not contemplate when the project was built was that some junior appropriator, twenty-five years after the project was completed and in full operation, would be granted an upstream right that would permit the junior appropriator to tap the water supply of the project at the upstream point that depletes the supply of water available to the project <u>in bad water years as well as good water years</u>. They believed, and still believe, they had the right to rely upon the established legal doctrine in the State of Idaho concerning the use of water that "first in time is first in right." There can be no doubt that an

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unrestricted grant of the permit sought by the applicant would adversely affect the water supply of the Owyhee Project in poor water years. The Owyhee Project believes it has the right to have its water rights protected in the bad years as well as in the good years. Accordingly it submits to the Department that if Riddle Ranches is unwilling to attempt to work out a working arrangement with the Project whereby anticipated needs of the Project can be tied to the water supply available from year to year, then the only alternative of the Department would be to restrict any permit issued to Riddle Ranches so that it can only store any water available at the proposed reservoir site during the periods of the year when there is no water flowing from Shoo Fly Creek into Blue Creek. With this restriction it would then be up to Riddle Ranches to make a determination whether it wants to gamble the cost of its proposed reservoir against the water supply that would be available to it under such a restricted permit.

Respectfully submitted,

MAURICE H. GREENE, Attorney for
Protestants South Board of Control
and Gem Irrigation District

P. O. Box 5402, 2619 Camas Street
Boise, Idaho 83705

CERTIFICATE OF MAILING

I hereby certify that I have this 15th day of April, 1972 mailed a copy of the foregoing brief to Mr. William F. Ringert, attorney for applicant, 503 Idaho Building, Boise, Idaho 83702.

MAURICE H. GREENE

55 7009

FILED

BEFORE THE DEPARTMENT OF

WATER ADMINISTRATION OF THE STATE OF IDAHO

IN THE MATTER OF APPLICATION IN THE NAME OF RIDDLE RANCHES, INC.	NO. 55-7009

REPLY BRIEF OF PROTESTANTS SOUTH BOARD OF CONTROL AND GEM IRRIGATION DISTRICT

MAURICE H. GREENE
Attorney for Protestants
South Board of Control
and Gem Irrigation District

DATED: April 15, 1972

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REPLY BRIEF OF
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As a preface to this reply brief, protestants South Board of Control and Gem Irrigation District desire to apologize to the Department for the way in which the filing of briefs has been followed procedurally in this case. There apparently was a misunderstanding concerning what was to be covered by initial briefs as counsel for protestants understood that the entire subject matter of the application was to be discussed, while counsel for the applicant understood that only the question of the status of the Indian water rights was to be considered. In any event, this reply brief will cover all phases of the application but will be restricted to only a few points that protestants feel should be discussed to a somewhat greater extent than was done in their initial brief.

THE INDIAN WATER RIGHTS

It would appear that applicant concedes a water right exists in favor of the irrigable lands located within the Duck Valley Indian Reservation. However, it apparently takes the position that the Department of Water Administration should completely disregard these rights in determining whether a permit should be granted the applicant to construct the reservoir on Shoo Fly Creek. Protestants believe the record is clear that the irrigable lands within the Indian Reservation have a water right. At the present time, to the extent the waters of Shoo Fly Creek flow into the Owyhee River and there impounded into the Owyhee Reservoir, the Owyhee Project has the benefit of these waters. If the applicant is granted an unrestricted permit to construct the proposed reservoir on Shoo Fly

Creek, the reservoir will impound the waters of Shoo Fly Creek so that (1) they will not be available for use on the irrigable lands in the Indian Reservation, and (2) to the extent they are not used on the lands in the Reservation and flow into the Owyhee River they will not be available for use on the Owyhee Project. Thus the end result of granting an unrestricted permit to the applicant to construct the proposed reservoir, the water right involved being junior to both that of the Indian Reservation and the Owyhee Project, will be to interfere with both of these prier rights.

Protestants are not asking the Department to determine the amount of any water right the lands within the Indian Reservation have. They are only asking that the Department recognize that such rights exist. If the Department recognizes that these rights exist and then recognizes that, to the extent the waters of Shoo Fly Creek are not used on Reservation land to fill the Indian water rights, the Owyhee Project obtains the benefit of the unused portion of the Indian rights, then the Department should limit any permit granted to the applicant by recognizing the existence of the prior Indian water rights and those of the Owyhee Project. It is apparent from the applicant's supplemental brief that it has not changed the views expressed in its initial brief that the Department should completely disregard the Indian water rights. In other words, it still urges that the Department has no right to recognize the Indian water rights and restrict the permit sought by the applicant accordingly but that the Indians should be forced to take court action to protect those rights. Protestants believe the Idaho statutes and the decisions of the Idaho Supreme Court cited in their opening brief clearly disclosed that the Department of Water Administration has the right and it is its duty, in considering this application, to take into account the existence of the Indian water rights. Certainly the Department is vested with full power and authority concerning water appropriations made from streams in the

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State of Idaho. While it may be true that the Indians could file suit in Federal Court to have their water right adjudicated, the fact that they have not seen fit to do so up to the present time certainly does not oust the Department of Water Administration from its jurisdiction to consider all water rights, Indian or otherwise, in determining whether the permit of the type applied for by Riddle Ranches, Inc., should be granted or what restrictions should be placed on such a permit if one were to be granted.

THE GOVERNMENT REPORTS

In its supplemental brief, applicant urges that all of the Government reports concerning the water supply on the Duck Valley Indian Reservation should be eliminated from consideration by the Department as being what the applicant calls "rank hearsay." These documents, among other things, included the report made by Charles A. Engle to the United States Department of the Interior in 1930 pursuant to an Act of Congress of March 4, 1929. Other documents are the aerial photos of the lands in and adjacent to the Indian Reservation. Applicant urges that, under the provisions of § 9-318 Idaho Code, these documents are inadmissible because there was no witness available who could be cross-examined in connection with their contents. The statute to which the applicant makes reference, of course, has to do with court procedure and not administrative bodies. However, even though the statute to which the applicant refers certainly pertains to evidence produced in court, protestants believe the very language of the statute is broad enough to permit the Department's consideration of the Government evidence for the limited purpose for which they were offered. The statute provides:

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As noted by the underlined portion of the statute, the courts must

receive official reports in evidence unless it finds the failure to produce a witness for cross-examination unfairly prejudices the opposing party. Protestants do not see how Riddle Ranches has been "unfairly prejudiced" by the presentation of these reports for the consideration of the Department of Water Administration. The documents were identified by an officer of the Bureau of Indian Affairs who testified they were official documents kept in his possession and custody. They were not prepared for the purpose of this case. Since they were not prepared for the specific purpose of opposing the instant application and some of them are rather ancient in character, protestants do not believe that Riddle Ranches would in any way be "unfairly prejudiced" by the Department considering their contents.

However, as pointed out previously, § 9-318 Idaho Code contemplates court procedure. The statute governing procedure at hearings before the Department of Water Administration specifically gives the Department authority to consider facts far beyond that which a court might accept. Section 42-203 Idaho Code specifically provides that in hearings on applications for permits to appropriate water, "technical rules of pleading and evidence need not be applied." (Emphasis ours) Under this statute, the Department clearly has the right to consider the documents of the Bureau of Indian Affairs in connection with whether the permit sought by Riddle Ranches should be granted or, if granted, should be restricted.

THE RECORD CLEARLY SHOWS A WATER RIGHT EXISTS IN SHOO FLY CREEK.

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makes no significant contribution to the water supply of either Blue Creek or the Owyhee River. It quotes extensively from page 51 of Volume 1 and page 10 of Volume 2 of the report in support of its claim. Protestants call attention to the following statement taken from page 120 of the Engle report:

> "It was stated by Mr. Rubelt that the water shed of the two creeks above named contained an area of 70 square miles and the runoff was sufficient to fill the three reservoirs to capacity each year. It is not known if this is true or not as no records are available of the runoff at this point which occurs in the early spring and lasts but a few days. When the flow of Shoo Fly Creek is at flood height, a considerable quantity of water finds its way to the Blue Creek channel."

Further, protestants call attention to the statement on page 12-av of applicant's supplemental brief that its own witness, Mr. Keith Anderson, expressed a view that at times more than 1,000 acre-feet of water from Shoo Fly Creek would enter the natural channel of Blue Creek and would be available for impounding in the Owyhee Reservoir. In other words, applicant's own brief is contradictory concerning the issue of whether the storage of water as contemplated by it through the construction of the proposed reservoir would in fact divert water that is presently available for use on the Owyhee Project. Taking the record as a whole, protestants believe the record is clear that Shoo Fly Creek does make a substantial contribution of water each year, particularly in the runoff season that has been utilized by the Owyhee Project in the past.

Applicant also claims, in its supplemental brief, that the use of water by the Indians is in the nature of "natural irrigation" which does not constitute an actual appropriation of water under Idaho law. It cites Hutchinson v. Watson Slough Ditch Co., 16 Idaho 484, 101 P. 1059, in support of its claim that the use of the waters of Shoo Fly Creek by the Indians in the past has been a riparian use of water and not an actual appropriation. Protestants have no argument with the decision of the Supreme Court in Hutchinson v. Watson Slough Ditch Co., supra. In fact

they recently filed a brief with the Department of Water Administration taking exactly that portion in the proceeding now pending before the Department involving the legality of a legislative attempt to appropriate certain of the waters of Malad Canyon. However, in this case the record, contrary to applicant's claims, is clear of man-made dikes having been constructed in the channel of Shoo Fly Creek and that there is a substantial quantity of lands that have been under irrigation in the past that are now reverting back to sagebrush. This evidence appears in the reports of the Department of the Interior, the aerial photographs of the channel of Shoo Fly Creek, and the testimony of the representative of Bureau of Indian Affairs concerning the dikes and abandoned irrigated lands.

Protestants do not believe the burden rests on them to establish any particular quantity of water available in Shoo Fly Creek for irrigation purposes. Since admittedly the rights of the Indians and the rights of the Owyhee Project are prior in time to the storage rights proposed by Riddle Ranches, protestants believe the burden was on Riddle Ranches to establish there is water available in Shoo Fly Creek that is not now and has not in the past been put to beneficial use. Certainly the evidence in the record of the many years in which the Owyhee Reservoir did not fill and spill establishes that all of the waters of Shoo Fly Creek that reached the Owyhee River have been in the past impounded in the Owyhee Reservoir and put to beneficial use. As protestants stated in their opening brief, they have no objection to Riddle Ranches impounding and making beneficial use of the waters of Shoo Fly Creek in those years when there was a water supply available to more than fill the needs of all prior appropriators and they are willing to work with Riddle Ranches to accomplish that result. They believe that when the applicant's witness Anderson admitted a substantial volume of the waters of Shoo Fly Creek reached the confluence of Shoo Fly Creek and Blue Creek, and that those waters would be impounded if the proposed permit were granted, the record established an interference with

prior water rights. Accordingly they believe an unrestricted permit should not be granted the applicant but the permit should be restricted so that it fully protects the prior rights. Protestants believe it immaterial whether the amount of water available for the Owyhee Project is 100 acre-feet, 1,000 acre-feet, or 10,000 acre-feet. They believe the criteria would be whether <u>any water</u> presently available would be subject to diversion if an unrestricted permit were to be granted. The burden was clearly on the applicant to establish that there is water available for appropriation for the purposes contemplated by it and not upon the protestants to prove there is no water available. In that connection, protestants, in their original brief, made an extended statement with respect to their willingness to work out some kind of arrangement with Riddle Ranches whereby it could capture and put to beneficial use any waters of Shoo Fly Creek that might otherwise be wasted when the Owyhee Reservoir fills and spills. Applicant infers, in its supplemental brief, that such an arrangement would be unworkable and completely rejects the proposal suggested by protestants in their original brief. If the applicant feels that a working arrangement between Riddle Ranches and the Owyhee Project is impossible, then protestants suggest that, if any permit be issued the applicant, it should be restricted so that the applicant could only impound any waters in Shoo Fly Creek <u>during the periods of the year in which it affirmatively appears that no water from Shoo Fly Creek is flowing into Blue Creek</u>. Protestants believe a working arrangement between Riddle Ranches and Owyhee Project would certainly be more preferable to the applicant than a restricted type of permit suggested above. However, in the absence of any willingness on the part of the applicant to attempt to work out such an arrangement, protestants submit that a restricted type of permit as suggested above is the only way in which the prior Indian water rights and those of the Owyhee Project can be effectively protected against a diversion of water by Riddle Ranches.

On pages 14-av and 15-av, applicant points to the fact that it is admitted by protestants that over a period of 36 years the Owyhee Reservoir filled to capacity in 18 years. Does the fact that the reservoir filled to capacity in 18 years out of 36 years mean that the applicant should be granted an unrestricted permit so that it may have an upstream right of diversion of the waters of Shoo Fly Creek in 36 out of the 36 years? Does the fact that the Owyhee Project has seen fit to spend millions of dollars in the construction of a reservoir to impound waters in good water years for use in bad water years give an admitted junior appropriator the right to use the waters of the Owyhee River in the bad years as well as the good years? If such be the law, then why construct the reservoir at all? If the water rights of the Owyhee Project were not filled in 18 out of the 36 years, should applicant be given the right to divert water in the 18 short water years as well as the 18 good years? Protestants think not.

In their opening brief, protestants pointed to the fact that in many years if there had been no Owyhee Reservoir, the natural flow of water in the Owyhee River would not have filled the water rights of the Owyhee Project. They pointed to the fact that without the reservoir the spring runoff in the Owyhee Basin would terminate early in the irrigation season. Without the reservoir certainly the Owyhee Project would undoubtedly be unable to produce the crops it is now producing with the aid of the reservoir. The primary purpose, of course, for the construction of the Owyhee Reservoir was to control the spring runoff of the Owyhee Project so that the waters might be put to use during the entire irrigation season. In fact the witness for Riddle Ranches conceded in this case that one of the primary purposes of the construction of the proposed reservoir was to extend the period of time it could utilize the waters of Shoo Fly Creek for irrigation purposes. Simply because the water supply in the Owyhee drainage area varies from year to year so that in some years there is

carryover water in the Owyhee Reservoir and at times water may spill over the Owyhee Dam certainly does not give a junior appropriator the unrestricted right to make use of those waters in years of short water supply. In other words, make a short water supply shorter.

On pages 20-av through 22-av of its supplemental brief, the applicant argues that the water rights of the Owyhee Project violate the provisions of § 40-202 Idaho Code because that statute states that an applicant for a permit "shall not claim more than five acre feet of water land to be irrigated." Protestants do not believe the water rights of the Owyhee Project are in issue in this proceeding. They are Oregon rights and are governed by Oregon law. They have been established in Oregon and have been recognized by the Department of Water Administration. Having once been recognized by the Department, those rights, protestants believe, can only be changed by court adjudication. Protestants do not believe § 40-202 has an application to an Oregon water right but that such a right is governed by the reciprocity statutes between the two states. However, they also believe that the statute to which the applicant refers concerns a quantity of water measured at the point of use and not at the point of diversion. If the maximums fixed in § 42-202 Idaho Code were intended to apply to the point of diversion rather than to the point of use, the end result would be that a water user at the point of diversion would have a substantial water supply while a water user at the end of a canal, with perhaps 20 miles or more of loss through seepage and evaportation, would have a water supply wholly insufficient ti fulfill his irrigation requirements. Protestants believe the construction the applicant would place on § 42-202 is repugnant to the practical use of irrigation water. They believe water rights must recognize canal loss from point of diversion to point of use.

Applicant also argues at some length that there is no possible practical method of arriving at a working arrangement between Riddle Ranches

and the Owyhee Project whereby full utilization of the waters in the Owyhee drainage area could be made every year. Applicant urges such an arrangement is impossible because the point of diversion of the Owyhee Project is in Oregon while the proposed point of diversion of Riddle Ranches is in Idaho. It, therefore, claims that the Department of Water Administration of the State of Idaho would be unable to police the operations of the Owyhee Project. Protestants see no reason why a working arrangement could not be made between Riddle Ranches and the Owyhee Project if Riddle Ranches were willing to attempt to work out such an arrangement. Water compacts are common between states. Such an agreement would certainly be enforceable in the courts. However, when protestants' offers to attempt to work out such an arrangement with Riddle are met with a statement by the applicant that "such a proposal is completely unacceptable to the applicant" (p. 16-av), it is obvious that what the applicant wants is to obtain an upstream water right completely independent of the prior rights of the Owyhee Project and which would divert water that presently flows into the reservoir.

Finally the applicant urges that the Owyhee Project should have been fully aware of the "knowledge of the risks inherent in making determinations as to whether they should hold or release water and whether they should pump water from Snake River to supplement Owyhee River water." (Pp. 22-av - 23-av) Protestants' reply to this argument is that one of the risks the Owyhee Project did not contemplate when the project was built was that some junior appropriator, twenty-five years after the project was completed and in full operation, would be granted an upstream right that would permit the junior appropriator to tap the water supply of the project at the upstream point that depletes the supply of water available to the project <u>in bad water years as well as good water years</u>. They believed, and still believe, they had the right to rely upon the established legal doctrine in the State of Idaho concerning the use of water that "first in time is first in right." There can be no doubt that an

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unrestricted grant of the permit sought by the applicant would adversely affect the water supply of the Owyhee Project in poor water years. The Owyhee Project believes it has the right to have its water rights protected in the bad years as well as in the good years. Accordingly it submits to the Department that if Riddle Ranches is unwilling to attempt to work out a working arrangement with the Project whereby anticipated needs of the Project can be tied to the water supply available from year to year, then the only alternative of the Department would be to restrict any permit issued to Riddle Ranches so that it can only store any water available at the proposed reservoir site during the periods of the year when there is no water flowing from Shoo Fly Creek into Blue Creek. With this restriction it would then be up to Riddle Ranches to make a determination whether it wants to gamble the cost of its proposed reservoir against the water supply that would be available to it under such a restricted permit.

Respectfully submitted,

MAURICE H. GREENE, Attorney for
Protestants South Board of Control
and Gem Irrigation District

P. O. Box 5402, 2619 Camas Street
Boise, Idaho 83705

CERTIFICATE OF MAILING

I hereby certify that I have this 15th day of April, 1972 mailed a copy of the foregoing brief to Mr. William F. Ringert, attorney for applicant, 503 Idaho Building, Boise, Idaho 83702.

MAURICE H. GREENE

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BEFORE THE DEPARTMENT OF

WATER ADMINISTRATION OF THE STATE OF IDAHO

IN THE MATTER OF APPLICATION NO. 55-7009 IN THE NAME OF MIDDLE RANCHES, INC.

POSTHEARING BRIEF
ON BEHALF OF PROTESTANTS SOUTH BOARD
OF CONTROL AND GEM IRRIGATION DISTRICT.

MAURICE H. GREENE
Attorney for Protestants
South Board of Control and
Gem Irrigation District

P. O. Box 5402, 2619 Camas St.
Boise, Idaho 83705

DATED: February 11, 1972

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BEFORE THE DEPARTMENT OF

WATER ADMINISTRATION OF THE STATE OF IDAHO

IN THE MATTER OF APPLICATION)
NO. 55-7009 IN THE NAME OF)
RIDDLE RANCHES, INC.)
)

POSTHEARING BRIEF
ON BEHALF OF PROTESTANTS SOUTH BOARD
OF CONTROL AND GEM IRRIGATION DISTRICT.

This is an application by Riddle Ranches, Inc., of Riddle, Idaho, seeking a permit from the Department to store 8,050 acre-feet of the waters of Shoo-Fly Creek from September 1 to July 1 in each year and to use such stored water for irrigation purposes during the period April 1 to October 31. The application seeks to appropriate a maximum of 70.0 cfs and/or 8,050 acre-feet per annum from Shoo-Fly Creek. While the application states Shoo-Fly Creek is a tributary of the East Fork of the Owyhee River, the proof clearly discloses that Shoo-Fly Creek actually flows into Blue Creek, which in turn flows into the East Fork of the Owyhee River. The proof also shows, and protestants do not believe the applicant will dispute, that about the point where Shoo-Fly Creek flows into Blue Creek, the latter stream enters the Duck Valley Indian Reservation and its course, until it flows into the East Fork of the Owyhee River, is entirely within the boundaries of the Reservation. The proof also shows, and again protestants do not believe applicant will dispute the fact, that the East Fork of the Owyhee River flows into the main Owyhee River, which latter stream is the source of protestants' water rights, both natural stream flow and storage.

The applicant proposes to construct a dam and diversion works in the channel of Shoo-Fly Creek and to use the impounded water to irrigate hay meadows in an area adjacent to the reservoir site. A prior permit authorizing the storage of 950 acre-feet (Permit No. 8571) was granted October 21, 1912 for the same site. The applicant proposes to reconstruct

the present dam and diversion works so as to greatly increase the quantity of water stored, increase the acreage that will be irrigated, and lengthen the period that water has been available for irrigation in the past.

Protestants do not question the financial ability of the applicant to construct the proposed works.

THE STATUS OF PROTESTANTS

At the initial prehearing conference in this proceeding, the applicant challenged the right of protestants to protest the application because the point of diversion of their water supply is in the State of Oregon. In denying applicant's challenge, the Department said:

> "Water flows without regard to political boundary, and we have an elaborate reciprocity system arranged in recognition thereof in Chapter 4 of Title 42 of the Idaho Code. It would be an offensive disservice of the principle of reciprocity if we were to deny recognition of interstate rights in the absence of some statutory foundation for such a denial. More concretely, we might seriously prejudice the rights of Idaho water users who divert water from Oregon and Idaho water rights for use in Oregon.
>
> "It appears that the Applicant, in its argument in support of its motion, has confused the question of our jurisdiction over or governing water rights in Oregon with the question of standing of Oregon right holders to appear before this Department in a matter of a water right clearly subject to our jurisdiction. We are in no sense, acting to broaden, to limit, to otherwise condition, or to remove conditions on any Oregon water use right, permit, or license, There is no question of our attempting to exercise a jurisdiction of this sort over Protestants' water rights. The only question concerns our recognition of Protestants as parties having standing to appear before this Department in a matter which is clearly within its jurisdiction. The statutory provisions appearing to contemplate persons in Protestants' position, we have concluded that they do have standing to appear." (Emphasis added)

Protestants do not know whether applicant will renew its challenge of the right of protestants to pursue their protest or not. They believe the order of the Deputy Director denying applicant's motion to dismiss the protests is a clear and concise statement of the applicable law. They further believe the above-quoted ruling of the Deputy Director justifies the receipt in evidence of protestants' Exhibit "1" which is the recognition by Idaho of protestants' Oregon water rights and establishes their status as protestants in this proceeding.

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THE STATUS OF THE DEPARTMENT

During the course of the hearing, counsel for the applicant, on several occasions, suggested that protestants' appropriate remedy is an adjudication proceeding of the waters of the Owyhee River and all its tributaries. In other words, applicant suggested that the Department should issue the permit sought by it and, if the Owyhee Project felt the water supply awarded to applicant interfered with the water supply of the project, the project could secure relief by forcing a complete stream adjudication. Because of these repeated suggestions by applicant's counsel, protestants deem it appropriate to briefly review the status of the Department in application proceedings to show that the primary duty of the Department in application proceedings is to protect existing rights. Further that, in an application proceeding, the burden is on the applicant to establish that its proposed use of water will not interfere with existing rights. In other words, protestants believe it is the province of the Department in issuing permits to follow a policy of water use that will tend to eliminate the necessity for adjudication proceedings, not a policy that will force water users to resort to stream adjudications to settle their claims to the use of water. Protestants believe the Department is the first resort to determine the right to appropriate water and apply it to a beneficial use. On the other hand, they believe stream adjudication is the last resort, the final remedy when all other lawful means of determination of the right of use have been exhausted and have failed. They believe the Department, in this case, has all the legal authority necessary to act on the instant application, and to make a decision that will not be another step toward forcing a stream adjudication.

Protestants believe permit proceedings before the Department and stream adjudication proceedings both serve a useful purpose in adjusting the use of water. They believe the proving of the Department in an application proceeding is to prevent the overappropriation of public water in the State of Idaho. They believe an adjudication proceeding is for the

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purpose of determining the quantities of water appropriators are entitled to use after an overappropriation has taken place and the conflicting claims of the appropriators must be resolved. The province of the Department is preventive. The province of the adjudication proceeding is the cure. They believe that when an applicant for a permit seeks to use waters concerning which prior rights exist, the applicant must clearly show that its proposed diversion will not interfere with existing rights and the Department, if it determines to issue a permit, should make sure that the terms and conditions of the permit are such that the permitted use will not impair in any way the use or uses made by prior appropriators. That this is the province of the Department in an application proceeding, protestants believe is established by statute and court decisions.

First in time is first in right has been the pillar of reclamation law in Idaho since statehood. (Const., Art. 15, Secs. 3, 4, 5, Sec. 42-106, I.C.) Section 5 of Article 15 of the state constitution specifically provides:

> "§5. Priorities and limitations on use.--Whenever more than one person has settled upon, or improved land with the view of receiving water for agricultural purposes, under a sale, rental, or distribution thereof, as in the last preceding section of this article provided, as among such persons, priority in time shall give superiority of right to the use of such water in the numerical order of such settlements or improvements; but whenever the supply of such water shall not be sufficient to meet the demands of all those desiring to use the same, such priority of right shall be subject to such reasonable limitations as to the quantity of water used and times of use as the legislature, having due regard both to such priority of right and the necessities of those subsequent in time of settlement or improvement, may by law prescribe." (Emphasis added)

And Section 3 of the same article provides:

> "Priority of appropriation shall give the better right as between those using the water * * *."

Section 42-101, Idaho Code, declares the public policy of the state in the appropriation and use of water and states the duty of the state with respect thereto in part as follows:

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"All the waters of the state, when flowing in the natural channels, including the waters of all natural springs and lakes within the boundaries of the state are declared to be the property of the state, whose duty it shall be to supervise their appropriation and allotment to those diverting the same therefrom for any beneficial purpose * * *."

Section 42-202, Idaho Code, provides in part as follows:

"For the purpose of regulating the use of the public waters and of establishing by direct means the priority right to such use, any person, association or corporation hereafter intending to acquire the right to the beneficial use of the waters of any natural streams, springs or seepage waters, lakes or ground water, or other public waters in the state of Idaho, shall, * * * make an application to the department of reclamation for a permit to make such appropriation." (Emphasis added)

Section 42-203 provides the findings the state engineer must make before issuing a permit:

"The state reclamation engineer shall find and determine from the evidence presented to what use or uses the waters sought to be appropriated can be and are intended to be applied, and where such proposed use is such that it will reduce the quantity of water under existing water rights, or that the water supply itself is insufficient for the purpose for which it is sought to be appropriated, * * * the state reclamation engineer may reject such application and refuse issuance of permit therefor, or may partially approve and grant permit for a less quantity of water than applied for, or may grant permit upon conditions." (Emphasis added)

It should be noted that, if it appears that the proposed use "is such that it will reduce the quantity of water under existing water rights," the state engineer may refuse the permit or "may grant permit upon conditions."

Under this statute it has been repeatedly held that the burden is on an applicant for a water permit to prove that the proposed diversion and use of water to prove that such diversion and use will not reduce the quantity of water under existing water rights. In other words, the applicant has the burden of proving that there is available a quantity of water that would not otherwise be used to fill existing rights and any permit he may issue to the applicant must be made upon conditions that will insure that the diversion and use authorized will not impair or injure existing rights. In Cantlin V. Carter, 88 Idaho 179, 397 P.(2d) 761, the Supreme Court stated the rule as follows:

"This Court has long held that the State Reclamation Engineer has no right, power or authority to interfere with vested rights or to grant a permit for the appropriation and diversion of the water of a stream where the same has already been diverted and applied to a beneficial use. Nielson v. Parker, 19 Idaho 727, 115 P. 488; Youngs v. Regan, 20 Idaho 275, 118 P. 499.

"[4] A subsequent appropriator attempting to justify his diversion has the burden of proving that it will not injure prior appropriations. Moe v. Harger, 10 Idaho 302, 77 P. 645; Josslyn v. Daly, 15 Idaho 137, 96 P. 568; Jackson v. Cowan, 33 Idaho 525, 196 P. 216; Silkey v. Tiegs, 54 Idaho 126, 28 P.2d 1037. In Josslyn v. Daly, supra, at 15 Idaho 149, 96 P. at 571, this court stated:

> "'* * * It seems self-evident that to divert water from a stream or its supplies or tributaries must in a large measure, diminish the volume of water in the main stream, and, where an appropriator seeks to divert water on the grounds that it does not diminish the volume in the main stream or prejudice a prior appropriator, he should, as we observed in Moe v. Harger, 10 Idaho 305, 77 Pac. 645, produce 'clear and convincing evidence showing that the prior appropriator would not be injured or affected by the diversion.' The burden is on him to show such facts.' (Emphasis added)
>
> "[5, 6] It is a fundamental concept that under our constitution, water which has already been appropriated is not subject to appropriation by another, unless it has been abandoned by the original appropriator or his successor in interest. Idaho Const. Art. 15, §§ 3, 4, 5. Before any permit to appropriate water to a beneficial use can ripen into a right to use the water, it is basic that the permit holder must show a supply of unappropriated water. Idaho Const. Art. 15 § 3." (Emphasis added)

Protestants believe the burden stated by the Supreme Court of Idaho that rests on a junior appropriator of water remains regardless of how distant the point of diversion of the senior appropriator is from the source of the water supply. In United States v. Ahtanum Irrigation District, 236 F. (2d) 321, 325, the Court said:

> "* * * it would be a novel rule of water law to limit the reparian proprietor or the appropriator to waters which originated upon his lands or within the area of appropriation. Most streams in this portion of the country originate in the mountains and far from the lands to which their waters ultimately become appurtenant."

So protestants say in this case the burden was on the applicant to prove that its proposed storage of the waters of Shoo-Fly Creek in each irrigation year would not interfere with the diversion and use of those

same waters by the Owyhee Project. If the evidence shows that the proposed diversion and use of such waters would in any way interfere with the existing water rights of the Owyhee Project, then protestants believe the statute, Section 42-203, requires that the permit be denied or be issued subject to conditions that, to the extent of the use authorized, no interference would result. Protestants do not believe the showing made by the applicant in this case proved that for the applicant to store, in each irrigation year, 8,050 acre-feet of the waters of Shoo-Fly Creek, would never reduce the flow of the waters of the Owyhee River below that required to fill the existing and prior water rights of the Owyhee Project. If the applicant did not make such a showing, then protestants submit the permit should be denied or be made subject to conditions that would insure fulfillment of the water rights of the Owyhee Project first.

Protestants desire to make plain again that they have no objection to the applicant being issued a permit that would permit it to store water when there is a water supply available that would otherwise not be put to beneficial use. Their objection is the issuance to the applicant of an unrestricted permit that would permit it to divert and store water in any irrigation year that is needed downstream to fill the rights of prior appropriation.

THE STATUS OF THE INDIAN WATER RIGHTS

The problem the Department is faced with in making a decision in this proceeding is accentuated by the fact that the rights of the Indians on the Duck Valley Indian Reservation are inextricably involved. The evidence in this case is clear that the waters of Shoo-Fly Creek flow into Blue Creek and that the channel of Blue Creek traverses the Reservation. There also can be no question but that any upstream storage by the applicant, if its proposed reservoir is ever put in operation, will store water that otherwise would flow into Blue Creek.

When the prehearing conference in this matter was held on July 29, 1971, it was attended by the Field Solicitor for the Department of the

Interior representing the Shoshone-Paiute Indian Tribes. At the time the Department was advised that the Government and the Indians were not submitting their claims to the waters in Shoo-Fly Creek to the jurisdiction of the State and participation in the conference was in the interest of comity between the respective governments. On September 22, 1971, the Field Solicitor directed a letter to the Director, to which were attached some nine appendices that set forth the position of the Department of the Interior. These appendices include, among other things, copies of the executive orders of the President of the United States, creating the reservation and defining its boundaries. (Enc. 1) They also include a list of licenses issued by the State Reclamation Engineer covering the use of water in the Blue Creek drainage from 1905 to 1929. (Enc. 2) They also include excerpts from an official report made by Charles A. Engle, Supervising Engineer of the Bureau of Indian Affairs, concerning the water supply of the Duck Valley Reservation, prepared pursuant to an act of Congress in May, 1930. (Encs. 4 and 5) Protestants believe the Director may take official notice of these enclosures, the first being executive orders of the President and the second being taken from the records of the Department of Water Resources.

At the hearing, the above documents were supplemented by copies of the reports and aerial photographs of the Blue Creek drainage area being presented by James Stevens, Superintendent of the Indian Reservation. So far as the official reports of the Government are concerned, the portions that are material to this proceeding are the excerpts that are attached to the Field Solicitor's letter as enclosures 4 and 5.

There can be no doubt but that the Indians have water rights in the waters of Shoo-Fly Creek that flow into the reservation. The so-called Winters doctrine, (Winters v. United States, 207 U.S. 564, 28 S.Ct. 207, 52 L.ed. 340), is too well embedded in American Jurisprudence to be now subject to challenge. (See more recent cases cited in the letter of the

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Field Solicitor.)[1]

Protestants are not here attempting to assert the rights of the Indians on the Duck Valley Indian Reservation. Nor do they propose to expound the virtues or the vices of the decision of the Supreme Court of the United States and subsequent decisions that spell out in more detail the effect of that decision. They believe it sufficient to state in this brief that, under those decisions, it is clear that:

1. The Indians in the Duck Valley Indian Reservation have a water right to all waters that flow into the reservation as well as those that originate within the boundaries of the reservation itself dating from the executive orders creating the reservation.

2. The Indian water right is not subject to state law relating to the right of use of water by appropriation and diversion.

3. The Indian water right is restricted in quantity only by the present and future needs of the Indians on the reservation to properly develop the resources of the land comprising the reservation.

4. Upstream appropriators of water that otherwise would be available for diversion and use on reservations lands are chargeable with notice of the existence of the Indian water rights.

Since the extent of the Indian water rights have never been determined, the question immediately arises, should the Department give any credence to the fact that the Indian water rights exist in determining whether it should issue the applicant a permit? Protestants believe the Department must recognize the existence of those rights under Section 42-203, Idaho Code, the same as the Department has held it must recognize, under the same section, the water rights of the Owyhee Project, even though those rights arise under the laws of another state. The Indian rights exist. They are prior to any right the applicant can claim in this

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[1] Also see "Federal Encroachment of Indian Water Rights and the Impairment of Reservation Development" by William H. Veider, Joint Committee Report, 91 at Congress, headed "Toward Economic Development for Native American Communities."

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proceeding. Protestants believe they must be recognized by the Department when it considers whether, under Section 42-203, Idaho Code, the applicant's proposed use "will reduce the quantity of water under existing rights." There can be no question but that the applicant's proposed storage of water will reduce the water supply of the Indians in the Duck Valley Indian Reservation. Since the applicant's own evidence tends to show that the natural flow of water in Shoo-Fly Creek becomes nonexistent in the late summer months in the irrigation year, there can be no doubt that the proposed storage cannot help but reduce the Indian water supply. Certainly any upstream diversion will reduce the supply of water at the point where Shoo-Fly Creek enters the reservation.

In this case, there is clear and uncontradicted evidence in the record that upstream diversion and use of the waters of Shoo Fly Creek has depleted the water supply available to the lands in the Indian Reservation. This evidence is in the testimony of James Stevens, Reservation Superintendent, concerning areas of land on the north side of the reservation that were reverting to sage brush because of a lack of irrigation, the aerial photographs of brown areas along the stream channel in the reservation, and the Engle Report made pursuant to an Act of Congress that describes water conditions pertaining to reservation lands as they existed away back in 1930. Particularly material on this issue is the aerial map that shows the upstream storage and diversion works that have been constructed and are being used to divert water in the Blue Creek drainage that would otherwise be available for use on reservation lands.

THE PREVIOUS DECISION OF THE DEPARTMENT

Protestants' concern with respect to the burden of proof resting on the applicant in this case was created by the Department in its decision in a previous application by Riddle Ranches, Inc. In that case, No. 55-7002, the Director, in overruling the protest of the South Board of Control and granting the permit sought by Riddle, said:

> "In this instance the applicant has submitted evidence to support those three points. The primary issue of contention was whether or not there was a water supply available for the appropriation. There appears to be conclusive evidence that the Owyhee Reservoir spills or releases water on occasion that is not applied to beneficial use by the protestants. Those spills or releases are at times the result of carry-over storage from the previous season or seasons of operation, and as a result it appears to the State Reclamation Engineer that there is unappropriated public water in the irrigation system during those times of spills or releases. Recognizing that these spills or releases are partly unused hold-over water from previous seasons, it must follow that such waters have not been applied to beneficial use by the Owyhee Project and therefore no right to such water previously existed. The Department of Reclamation recognizes the importance of carry-over or holdover storage for providing water during periods of below-normal streamflow. However, it also recognizes that the mere existence of a reservoir with a capacity to catch or hold more than the seasonal needs of an applicant is not in and of itself sufficient to substantiate an appropriation of the entire flow of that stream or river system. There must be a subsequent release of stored water and application of that water to beneficial use over a period of time." (Emphasis added)

If protestants understand the above holding the Department correctly, it is that if, in any irrigation season, water is released from a storage reservoir because, in that water year, the reservoir is filled to capacity with carry-over water from a previous year plus the stream flow in the current year, the fact that water is released or spilled from the reservoir proves that there is water available that is subject to unrestricted appropriation by an upstream junior appropriator. If protestants are correct in their interpretation of the Department's holding the effect is that, in determining whether unappropriated water exists in a stream, only the natural stream flow in any one year must be considered as the measurement of a water right because, if the fact that carry-over water in a reservoir plus the stream flow causes the reservoir to spill, there is excess water that is open to appropriation. In his decision, the Director said:

> "These spills or releases are at times the result of carry-over storage from the previous season or seasons of operation, and as a result it appears to the State Reclamation Engineer that there is unappropriated public water in the irrigation system during those times of spills or releases."
> (Emphasis added)

If the State Engineer had issued to Riddle Ranches a permit that would have restricted Riddle's storage of water to the times when and in the amounts of the "spills or releases" of water from the Owyhee Reservoir, and the instant application of Riddle were to be so restricted, the Owyhee Project would not be before the Department protesting. However, the State Engineer, in his previous decision, went on to say:

> "Recognizing that these spills or releases are partly unused holdover water from previous seasons, it must follow that such waters have not been applied to beneficial use by the Owyhee Project and therefore no right to such water previously existed. The Department of Reclamation recognizes the importance of carry-over or holdover storage for providing water during periods of below-normal streamflow. However, it also recognizes that the mere existence of a reservoir with a capacity to catch or hold more than the seasonal needs of an applicant is not in and of itself sufficient to substantiate an appropriation of the entire flow of that stream or river system. There must be a subsequent release of stored water and application of that water to beneficial use over a period of time." (Emphasis added)

The Department then issued Riddle a permit that enables an upstream junior appropriator (Riddle) to divert and use water that otherwise would flow into the Owyhee Reservoir irrespective of whether, at the time of the upstream diversion, water is being spilled from the Owyhee Reservoir so in fact there is or will be sufficient water available in that year to fill the prior water rights of the Owyhee Project. If the Department, in this case, would issue Riddle a permit that would limit its right of storage to only water that would otherwise spill from the Owyhee Reservoir, then Riddle's storage of the waters of Shoo-Fly Creek would not, in the language of Section 42-203, Idaho Code, "reduce the quantity of water under existing water rights." On the other hand, if in any year the water supply in the Owyhee River is not sufficient to fill the reservoir, then any upstream storage of water by Riddle has to "reduce the quantity of water under existing water rights." It can have no other effect.

In this case protestants presented specific evidence to show the State Engineer that, disregarding carry-over water entirely, there were years in which the entire streamflow in the Owyhee River at the reservoir

site would not fill the water rights of the Owyhee Project. Protestants submit that, disregarding the reservoir entirely, if the streamflow of the Owyhee River is not sufficient to fill the water right of the Owyhee Project, then, in that year, the storage by Riddle Ranches of 8,000 acre-feet of the waters of Shoo-Fly Creek would have to "reduce the quantity of water under existing water rights." Certainly if the stream supply is already insufficient to fill existing water rights, then any upstream diversion of the existing supply has to reduce the quantity of water under existing rights. The upstream diversion would have to have that effect.

The evidence that protestants believe conclusively establishes that the storage of water by Riddle will have that effect, except in years when the Owyhee Reservoir fills and spills, is Cotton's Exhibit 36 and particularly pages 2 and 5 thereof. As pointed out earlier in this brief, the Department held, in its previous decision concerning Riddle Ranches, that "there is unappropriated public water in the irrigation system during those times of spills or releases" from the Owyhee Reservoir. Page 2 of Cotton's Exhibit No. 36 shows that, over a period of twenty-three years, the Owyhee Reservoir spilled in only seven years. In other words, paraphrasing the language used by the Department in its previous decision, "there is unappropriated public water in the irrigation system" in only seven out of the last twenty-three irrigation seasons. Yet, if the applicant is issued an unrestricted permit in this proceeding, it will divert 8,000 acre-feet of water, not only in the seven irrigation seasons in which water spilled from the Owyhee Reservoir, but also in the sixteen years in which no water spilled.

Page 5 of Cotton's Exhibit No. 36 is even more enlightening that the storage proposed by Riddle will "reduce the quantity of water under existing rights." Riddle's own witness established that there is 715,000 acre-feet of active storage in the Owyhee Reservoir. (Ex. A-6) Column one, page 5, of Cotton's Exhibit 36 shows that in sixteen out of the last twenty-seven years the total inflow into the reservoir in each year was not

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sufficient to fill the project's water right. This deficiency ranged from a high of 574,600 acre-feet in 1959 to a low of 81,600 acre-feet in 1970.(2) The material fact is that the entire streamflow of the Owyhee River, in approximately two years out of three, does not fill the prior rights of the Owyhee Project. Column 6, page 5, of Cotton's Exhibit 36 is further enlightening. That column shows the quantity of water per acre-foot available for use on the Owyhee Project if only streamflow water were being used. Column 5 of the same page shows the quantity of water (streamflow plus carry-over water) actually used on the project. For example in 1959, the Project used an average of 4.70 per acre-foot of water on the lands irrigated from the reservoir. Of this 4.70 acre-feet used, only 1.47 acre-feet were provided by the available streamflow. Protestants do not believe they need to argue at length that only 1.47 acre-feet of water is not sufficient to produce crops of the type grown on the Owyhee Project. In fact, applicant's own witness produced evidence that in 1955, which he identified as being a "dry" year, the water diversion for the Gem and Ridgeview Irrigation Districts was 5.381 acre-feet. (Ex. A-14)

It is admitted by the applicant that some of the waters of Shoo-Fly Creek reach the Owyhee Reservoir.(3) It cannot be questioned but that, in years when the Owyhee Reservoir does not spill, any water from Shoo-Fly Creek that reaches the Owyhee Reservoir is needed to fill the prior rights of the Owyhee Project. Under these circumstances, protestants do not

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(2) This deficiency is annual streamflow to fill the water right of the Owyhee Project completely ignores the fact that the storage in the Reservoir permits the spring runoff to be used throughout the irrigation season. Without the storage, the streamflow in the river during the late summer months would be practically nil.

(3) It is the recollection of counsel for protestants that applicant's witness Anderson expressed an opinion that some 1,000 acre-feet reached the Reservoir but he was to provide the Department with more specific figures. Under date of February 1, 1972, protestants received a copy of a letter from Mr. Anderson to the Deputy Director making a new estimate of the runoff of Shoo-Fly Creek drainage. The new estimate was 4,800 acre-feet, somewhat higher than his previous estimate. The increase in Mr. Anderson's estimate of the annual runoff of Shoo-Fly Creek must increase proportionately his estimate of the runoff that eventually flows into the Owyhee Reservoir.

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believe Riddle should be issued a permit that would permit it to divert any upstream flow until after the water rights of the Project have been filled.

PROTESTANTS' PROPOSAL

Protestants have no desire to be considered as taking a "dog in the manger" attitude in protesting this application. They are desirous of seeing every drop of water available on the Owyhee River drainage put to beneficial use. Their concern is that their prior right to the use of those waters be preserved to them in the future as they have diverted and used those waters in the past. They recognize that in good water years waters of the Owyhee River have spilled over the Owyhee Dam and the beneficial use of the spilled waters in those years has been lost. They recognize also, through bitter experience, that, in poor water years, they have been forced to the use of pumped water to supply lands that normally are irrigated with gravity water. And, on occasions, they had to put a ceiling on the use of water to avoid a drouth. They offered, and still offer, to have Riddle Ranches participate in their meetings that set the use of gravity waters and pumped waters in each year and, in those meetings, determine whether the water supply in the Owyhee watershed is such that there will be water available over and above that required to meet the reasonable needs of the Project. They are agreeable to "conditions" whereby this Department police the diversions made by Riddle Ranches so that the Project, in any one year, will receive the waters provided by its existing water rights and Riddle may divert and use any excess. Riddle Ranches has seen fit to summarily reject the offers of the Project. It has taken the position that it is entitled to make upstream diversion of 8,000 second feet of water each year and leave the Owyhee Project with whatever quantity of water that is left in the Owyhee River, regardless of whether the admittedly senior water rights of the Project will be filled.

The Department has the statutory right to issue a permit "with conditions." Protestants are ready and willing today to sit down with Riddle Ranches and attempt to work out "conditions" that will insure the

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Project of securing to it the supply of water its senior rights call for and permitting the remaining water, if any, be made available for storage by Riddle. If Riddle is unwilling to attempt to work out the "conditions" voluntarily, then protestants submit, under the provisions of Section 42-203, Idaho Code, it is the duty of the Department to do so.

CONCLUSION

Page 4 of Cotton's Exhibit 36 establishes that in twelve out of the last twenty-seven years the Owyhee Project resorted to excessive use of pumps in order to save on the supply of gravity water available in the Reservoir. This excessive use of pumps cost the settlers on the Project thousands of dollars to insure themselves of a water supply sufficient to harvest a crop. Those same settlers are also repaying the Government millions of dollars representing the cost of the Owyhee Dam and storage works in order that they may make maximum use of the water supply in the Owyhee River. Applicant's expert witness in these proceedings has admitted that the water storage contemplated by the proposed dam on Shoo-Fly Creek will divert some water that would otherwise flow into the Reservoir. Protestants submit their prior water rights are entitled to protection from this proposed upstream diversion until those rights are filled. They should not be forced to resort to a stream adjudication to have those rights protected.

Respectfully submitted,

MAURICE H. GREENE, Attorney for
Protestants South Board of Control
and Gem Irrigation District

P. O. Box 5402, 2619 Camas Street
Boise, Idaho 83705

CERTIFICATE OF MAILING

I hereby certify that I have this 11th day of February, 1972 mailed a copy of the foregoing brief to Mr. William F. Ringert, attorney for applicant, 503 Idaho Building, Boise, Idaho 83702.

MAURICE H. GREENE

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Department of Water Administration

BEFORE THE DEPARTMENT OF WATER ADMINISTRATION

OF THE STATE OF IDAHO

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IN THE MATTER OF THE APPLICATION)
) No. 55-7009
OF RIDDLE RANCHES, INC.)

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APPLICANT'S BRIEF

Our notes state that the Hearing Examiner, at the conclusion of the presentation of evidence, requested that briefs be submitted by January 31, 1972, on the question of whether the Indian water rights for the Duck Valley Indian Reservation could be established by the testimony of Mr. James Stephens and by the other documents submitted by the Protestants rather than by evidence in the nature of a water license or a water decree adjudicating the water rights claimed for the Indian Reservation. In telephone conversations with the staff of the Department of Water Administration, it was indicated to counsel for the Applicant that the Department desired that the question of whether the Indian water rights can be considered at all in these proceedings be briefed, also. Therefore, this brief will be directed to the foregoing questions.

We note that counsel for the Protestants has filed an extensive brief apparently covering all points of law and evidence

deemed by the Protestants to be germane to the proceedings. Our planning has not been directed to the submission of such an extensive brief, and we request a period of 15 days within which to submit a reply brief with respect to the questions other than the two which will be discussed in this brief.

At the outset, we encounter some difficulty in determining why the Protestants desire to inject into these proceedings any issue with respect to the water rights for the Duck Valley Indian Reservation. If the Indians have such water rights as the Protestants attempted to show by evidence they presented, and of the nature and extent and priority claimed by the Protestants for the benefit of the Indians, then surely the use by the Indians under those water rights would consume whatever water, if any, might flow into Blue Creek from the East Fork of Shoo Fly Creek on which the Applicant desires to make an appropriation of water, and as a result there would be no water available in Blue Creek to flow into the Owyhee River and, ultimately, to satisfy the water rights claimed by the Protestants.

If any water were available to the Protestants after the Indian rights claimed by the Protestants to exist have been satisfied, it would seem that that water would be more in the nature of waste water than it would be in the nature of natural stream flow, and the Protestants make no assertion that they have made any application of any waste waters being returned by one means

or another into the main stream of Blue Creek or into the main stream of any fork of Owyhee River.

If the water rights claimed for the Indians by the Protestants do not [redacted] whatever waters of Shoo Fly Creek might flow into Blue Creek and thence into the Owyhee River, then the Indian rights, whatever they might be, would have no effect upon the water rights claimed by the Protestants or upon the appropriation sought to be made by the Applicant.

In either event, it would seem that to the extent the Indians might have water rights, the Protestants recognize those rights as being superior to their own and by their own argument, water required for the Indian rights would not be available to fill the rights claimed by the Protestants and, to the extent that the water was not consumed under the rights claimed for the Indians, the rights of the Indians would have no effect whatsoever upon the use of water either by the Applicant or by the Protestants.

It is a well settled rule in real property cases that a party's rights are to be determined from the strength of his own title and not from the weakness of his opponent's title. See, e.g., Washington State Sugar Co. vs. Goodrich, 27 Idaho 26, 147 P. 1073 (1915); Steinour vs. Oakley State Bank, 45 Idaho 472, 262 P. 1052 (1928); Snell vs. Stickler, 50 Idaho 648, 299 P. 1080 (1931).

The philosophy of this rule is applicable to the issues with which we are concerned in this proceeding. If there is any controversy between the Indians and the Applicant regarding water rights, that is a matter to be determined in an appropriate proceeding to which both the Applicant and the Indians or someone in their behalf and in privity with them, are the parties actually before the tribunal. Even in an adjudication suit, the courts will not assume to make a determination with respect to the rights of persons who are not made parties to the suit and properly served with process so as to bring them within the jurisdiction of the court. See, e.g., Scott vs. Nampa Meridian Irrigation District, 55 Idaho 672, 45 P. 2d 1062; Ingen vs. Round Valley Irrigation Co., 41 Idaho 482, 238 P. 1018; Mays vs. District Court of Sixth Judicial District, in and for Butte County, 34 Idaho 200, 200 P. 115.

If the Indians do have certain rights in the waters of Shoo Fly Creek and the Applicant's use of water under the requested appropriation has some effect upon those rights, it is a matter to be determined between the Applicant and the Indians, and the Protestants would not be necessary parties to such a proceeding. In fact, we doubt that the Protestants even would be proper parties to such a proceeding.

We submit that the Protestants' principal, if not their only, purpose in raising issues with respect to the Indian water rights in this proceeding, is the hope that water under the rights claimed for the Indians by the Protestants will not be used by the Indians and that such water, therefore, will flow into the Owyhee River unimpeded and thus be available for satisfaction of the water rights claimed by the Protestants. But, again, we still come back to the same controlling point, which is that the Indian rights claimed by the Protestants for the Indians are also claimed by the Protestants to be superior to the rights of the Protestants (at least we doubt that they could argue with any conviction that their rights are superior to the Indian rights) and that being the case, any water not used by the Indians would be available for appropriation and use upstream from the Reservation just as well as it would be available for appropriation and use downstream from the Reservation, and the situation naturally comes back to the question strictly between the Applicant and the

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Protestants, and the Indian rights would have no bearing whatsoever on the question as to waters not used by the Indians and therefore made available for appropriation by other water users, all of whose rights would be of later priority than the rights claimed for the Indians.

Even if the Indians have some rights in the waters of Shoo Fly Creek, it is settled law in this State that those rights, even if prior to the rights to be obtained by the Applicant under the permit it seeks, would not prevent the Applicant from using water of Shoo Fly Creek when that water was not being diverted by the Indians and used by them for beneficial purposes. In United States vs. Hibner, 27 F. 2d 909 (District Court - Idaho, 1928), the United States District Court for the District of Idaho discussed the rule announced by the United States Supreme Court in Winters vs. United States, 207 U. S. 564, 52 L. Ed. 340, 28 S. Ct. 207, and concluded that under the facts before the court the Indian lands should be awarded a continuous right through the entire year to the use of one miner's inch of water per acre for the irrigation of that portion of their lands which the evidence disclosed was susceptible to irrigation. Having reached that conclusion, and having in mind the fact that other persons desired to make use of the water of the same stream, the court stated (27 F. 2d 909, at 911-912) as follows:

> "* * *It will be borne in mind that the conclusions here reached, granting to the Indian lands

> the right to the use of one inch of water to the acre during the entire year will not prohibit the next appropriator on the stream from using the water, when it is not diverted and used from the stream by the Indians, and applied by them to a beneficial use, but the failure of the Indians to use their water will not cause either an abandonment or a forfeiture of their rights thereto."

The only rational conclusion to be derived from the cited portion of the opinion in the Winters case is that, even though the entire flow of a stream might be covered by Indian water rights, the water of that stream would still be available for subsequent appropriators for use during such periods of time as the Indians were not actually diverting water of that stream and applying that water to beneficial use. If we concede, for purposes of this phase of the argument, that the evidence offered with regard to water used by the Indians be considered by the Department, that evidence clearly shows that for many years lands formerly subjected to some form of irrigation have not been irrigated and the only conclusion to be drawn from that circumstance is that the Indians have not been using the water for irrigation. We are not concerned with the question of why the Indians have not used the water, but merely with the question of whether they did use the water. Obviously they did not use the water and that water is available for use by other appropriators, including the Applicant.

It should be noted that the Applicant and the Protestants, on the one hand, and the Indians, on the other hand, do not stand

on equal footing with regard to use or nonuse of water under whatever water rights they might have. No citation of authorities should be required for the proposition that the water rights of the Applicant or of the Protestants may be lost by abandonment or forfeiture. However, under the rule announced in the Hibner case, the nature of the Indian water rights seems to be such that failure of the Indians to use their water will not cause either an abandonment or a forfeiture.

Assuming, again, for purposes of this phase of the argument that the evidence regarding the Indian rights may be considered by the Department, it is apparent from that evidence that areas of land that were irrigated by one means or another and to some extent or another before 1929 had not been irrigated for some considerable time before 1929 and have not been irrigated since 1929. It could well be that lands on the Indian Reservation which were irrigated in 1929 have not been irrigated on the Indian Reservation for several years last past. Whatever might be the reason for such nonuse by the Indians of water under rights claimed for them by the Protestants, it seems obvious that no steps have been taken by the Indians or anyone in their behalf to revive or reinstate use of that water and irrigation of those lands during a period of more than 40 years. It is axiomatic that the public policy of the State of Idaho encourages the beneficial use of the waters of this State, and the Applicant should be allowed to make use of

these waters until such time as the Indians might assert whatever rights they have and commence to apply these waters to beneficial use to the extent that their rights might authorize them to do so.

When the Prehearing Conference was held in this proceeding, the Department of the Interior Field Solicitor from the Phoenix office attended the conference and unconditionally declined to submit the United States or the Indians of the Duck Valley Reservation or the water rights of the Duck Valley Reservation and of the Indians residing thereon to the jurisdiction of the Department of Water Administration. The Field Solicitor requested that the Indian rights be considered by the Department of Water Administration as a matter of "comity" between the Government of the United States and the Government of the State of Idaho. The granting of that request would give rise to a decidedly one-sided exercise in comity. The United States and its various agencies, including the Bureau of Indian Affairs, are fully aware of the scope of the protection available with regard to Indian water rights. Yet the United States has not seen fit to have the water rights adjudicated as was recommended as far back as 1929 by field personnel of the United States and the United States is unwilling to have the Department of Water Administration, in these proceedings, make whatever determination the Department has jurisdiction to make with respect to the Indian water rights, yet the United States asks the State of Idaho to deny the Applicant's request for authority to

appropriate water which, to the extent it might arise in the water shed of the East Fork of the Shoo Fly Creek, the United States has not seen fit to utilize for more than 40 years.

If the Indians have any rights in the waters that the Applicant seeks to appropriate, those rights appear to be controlled entirely and exclusively by federal statutes, executive orders or treaties creating the Indian reservation. See United States vs. McIntire, 101 F. 2d 650 (CA-9, 1939). Therefore, it would seem that nothing done by the State of Idaho in issuing the requested permit could have any effect whatsoever on whatever water rights the Indians might have. In United States vs. McIntire, supra (at 101 F. 2d 650, 654), the court ruled that the Montana statutes regarding water rights were not applicable to an appropriation of water claimed to have been made on an Indian reservation in Montana, because Congress at no time had made the Montana statutes controlling in the reservation. There would seem to be no reason why the statutes of the State of Idaho would be controlling in any respect with regard to appropriations made on the Duck Valley Reservation, and there is nothing to indicate that the Idaho statutes regarding appropriation of water were intended in any way for the establishment or protection or administration of Indian water rights. We submit that the Idaho Legislature, at the time it enacted I.C. 42-203, was fully aware that water rights reserved by or for Indians were not subject to

control by the State of Idaho and that the Legislature did not intend to include Indian water rights in the phrase "existing water rights" as employed in I.C. 42-203. We submit that the Legislature surely would not intend to provide protection for Indian water rights against encroachment by appropriations made under State law when it could not, and presumably knew it could not, provide any protection for water rights acquired by appropriation under State law against encroachment by Indian water rights.

Finally, on the question of whether the Indian water rights can be considered in this proceeding, we submit that it would be grossly inequitable to permit the United States to remain outside the jurisdiction of the Department of Water Administration and yet achieve its purpose of preventing an appropriation by the Applicant by the device of having the Protestants, who are parties to the proceeding, assert that the Indian rights must be considered as existing water rights for purposes of I.C. 42-203. Ample protection is available for the United States and the Indians for whatever water rights they might have but, if the United States' request to deny the application is granted, the Applicant has no remedy or recourse whatsoever against the United States and would have to sit back and watch the water it seeks to store and apply to beneficial use dissipate somewhere within the spring runoff as it has done for 40 years or more, without evidence of a finger being lifted by the United States or anyone else to increase

the storage or distribution capacity of the irrigation facilities on the Reservation so that the water could be used.

We turn now to the question of whether the testimony of Mr. Stephens and the documentary evidence concerning water rights claimed for the Indians can be considered by the Department of Water Administration or whether the Indian rights must be established by decree or license.

The entire statutory scheme for administration of water rights within the State of Idaho by the Department of Water Administration is clearly directed to water rights evidenced by court decree, water license, water permit and recorded claims of water rights under I.C. 42-225a. Under the law as it existed before 1969, watermasters appointed by the Department to control distribution of water under I.C. 42-607 had no authority to make determinations of priority with respect to rights evidenced by water licenses or water permits; the watermasters' authority was limited to control of adjudicated rights after it became necessary to shut off all unadjudicated rights in order to fill the adjudicated water rights. The 1965 amendment to I.C. 42-605 and I.C. 42-607 changed that situation by providing that for purposes of those statutes a "right" shall mean any water right which has been adjudicated by the court or is represented by a valid permit or license issued by the Department of Reclamation. It should be noted that I.C. 42-605 does not even include reported water claims

under I.C. 42-225a in the class of water rights included in the order of priorities for distribution control in times of water shortage. We do not think the Legislature intended that rights which could not be protected in the distribution process in times of water shortage would be considered in determining whether a requested appropriation would reduce the quantity of water under existing rights in proceedings under I.C. 42-203. If water rights are not of such statuge as to be entitled to protection under actual use conditions pursuant to I.C. 42-607, surely those rights would not be of sufficient stature to be considered in determining whether an appropriation could be made under I.C. 42-203.

We submit that the Legislature did not intend to confer upon the State Reclamation Engineer authority to determine the existence and nature of water rights not evidenced by decree, license or permit, in proceedings under I.C. 42-203. Where the Legislature intended to confer such authority upon the State Reclamation Engineer or other administrative authority, it did so by express language that left no doubt as to the legislative purpose. For example, in I.C. 42-237, the Legislature provided that:

> "* * *Upon such hearing the board shall have authority to determine the existence and nature of the respective water rights claimed by the parties and whether the use of the junior right affects, contrary to the declared policy of this act, the use of the senior right.* * *"

No such authority is conferred upon the State Reclamation

Reclamation Engineer by I.C. 42-203. The State Reclamation Engineer is required to make a determination as to whether "* * * such proposed use is such that it will reduce the quantity of water under existing water rights, * * *". The Legislature obviously intended that existing rights should be determined on the basis of court decrees following adjudication under Title 42, Chapter 14 of the Idaho Code, or licenses or permits issued by the Department of Water Administration following an appropriate investigation by the Department.

The most recent expression by the Idaho Supreme Court with respect to the showing required by an applicant for a water permit is Cantlin vs. Carter, 88 Idaho 179, 397 P. 2d 761, wherein the court stated (397 P. 2d 761 at 766):

> "The record is devoid of evidence as to the actual amount of water flowing in Hardscrabble Ditch and used by the respondents over and above their decreed rights. Aside from an opinion given by one of appellant's witnesses, the record fails to show the amount of water at the claimed point of diversion that had not been adjudicated. The evidence is wholly insufficient to establish that any of the respondents had abandoned any right to the use of their decreed rights."

We submit that it is implicit in the cited portion of the opinion in the Cantlin case that the court did not deem water over and above the decreed rights of the prior appropriators to be unavailable for appropriation for purposes of I.C. 42-203. The cases cited at 397 P. 2d 766 for the proposition that a subsequent appropriator attempting to justify his diversion has the

burden of proving that it will not injure prior appropriations all dealt with situations in which one party or another to the applicable lawsuit was seeking an adjudication of water rights or the water rights on the stream had already been decreed. The water rights had already been decreed in the Cantlin case.

We submit that in this case it would be necessary for the State Reclamation Engineer to make a judicial determination which is beyond his authority in order to determine the nature and extent of the rights claimed for the Indians by the Protestants, and that such a determination was not intended by the Legislature and is not authorized or permitted by I.C. 42-203. We submit that the case law of Idaho establishes that in proceedings of this nature decreed rights are the only rights to be considered in determining the quantity of water available for an appropriation for which the applicant is seeking a permit. In no event should rights that are not evidenced either by a decree or by a water permit or a water license which is a matter of record in the Department of Water Administration be considered in determining the quantity of water available for a subsequent appropriator. The Indian rights, being neither decreed nor evidenced by water permit or water license should not be considered in these proceedings.

Respectfully submitted.

ANDERSON, KAUFMAN, ANDERSON & RINGERT

By William F. Ringert
A Member of the Firm
503 Idaho Building, Boise, Idaho
Attorneys for Applicant

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I hereby certify that service of the within and foregoing Applicant's Brief was made by mailing a copy thereof to Maurice H. Greene, Attorney for Protestants, at P. O. Box 5402, Boise, Idaho 83705, this 15th day of February, 1972.

William F. Ringert

BDF

BEFORE THE DEPARTMENT OF WATER ADMINISTRATION

OF THE STATE OF IDAHO

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IN THE MATTER OF THE APPLICATION)
) No. 55-7009
OF RIDDLE RANCHES, INC.)

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APPLICANT'S SUPPLEMENTAL BRIEF

The Applicant's Brief filed in the above captioned proceeding on February 15, 1972, covered the question of the type of evidence required to show the water rights claimed for the Indian reservation and the question of whether the Indian water rights could be considered at all in these proceedings. This Supplemental Brief will cover, generally, the other issues with respect to which the Department of Water Administration has requested argument and authorities. However, we first desire to submit some additional comments regarding the evidence submitted in support of the water rights claimed for the Indian reservation.

We respectfully submit that the correspondence from Mr. William G. Lavell, Field Solicitor, and all other correspondence from officials or representatives of the United States Department of the Interior, including the "attachments" incorporated in or sent to the Department with, the correspondence, is rank hearsay

which should not be considered by the Department of Water Administration and which could not serve as a proper basis for the decision to be rendered in this proceeding. We know of no exception to the hearsay rule that would render evidence of this nature admissible. To the extent that the records might constitute official records of the United States of America, the original documents should have been submitted and properly identified or certified copies should have been obtained from the official custodian of the original records and those certified copies should have been submitted. See, generally, Idaho Code, § 9-315.

Idaho Code, § 9-318 provides that whenever an official report is offered in evidence, any adverse party may cross-examine any person making such reports or finding or any person furnishing information used therein and further provides that the fact that such testimony may not be obtainable shall not affect the admissibility of the report or finding, unless, in the opinion of the court, the adverse party is unfairly prejudiced thereby. We submit that consideration of the water supply reports, Protestants' Exhibits 22 and 23, would be unfairly prejudicial to the Applicant because there can be no opportunity for cross-examination of the Indians who made the statements concerning water usage upon which the report is based. In October of 1930, when Volume 2 of the report was made, the Indians who gave the statements appearing at pages 36 through 42, inclusive, of the report, were of the

respective ages of 74, 80, 55 to 60, 65, 72 and 78. It is doubtful that any of those men are alive at this time and the Protestants offered no evidence to indicate that they were alive and available for cross-examination.

The rule is well established in Idaho that in administrative proceedings, hearsay evidence presented in a manner which affords the adverse party no opportunity for cross-examination of the persons having direct knowledge of the matters stated is inadmissible and should not be considered by the administrative body, and an administrative agency cannot make a finding based upon hearsay. See Application of Citizens Utilities Company, 82 Idaho 208, 351 P. 2d 487, 490.

> "A hearing at which the applicant is fully advised of the claims of the opposition and of the facts which may be weighed against him, and at which he is given full opportunity to test and refute such claims and such facts, and to present his side of the issues in relation thereto, is essential to due process. Allied Van Lines, Inc. v. Idaho Public Utilities Commission, 79 Idaho 220, 312 P. 2d 1050; Philadelphia Co. v. Securities and Exchange Comm., 84 U.S. App. D.C. 73, 157 F. 2d 808; Morgan v. United States, 304 U.S. 1, 58 S. Ct. 773, 999, 82 L. Ed. 1129; Consolidated Edison Co. of New York v. N. L. R. B., 305 U.S. 197, 59 S. Ct. 206, 83 L. Ed. 126."
>
> Application of Citizens Utilities Company
> 82 Idaho 208
> 351 P. 2d 487, 490

We submit that official notice cannot be taken with respect to the records and correspondence of the Department of the Interior submitted by the Protestants in this proceeding. Idaho Code, §

67-5210 provides that, in contested administrative cases, notice may be taken of judicially cognizable facts and of generally recognized technical or scientific facts within the agency's specialized knowledge, and Idaho Code § 67-5210 requires that the parties be notified either before or during the hearing, or by reference in preliminary reports or otherwise, of the material noticed. We do not recall that any proper request that official notice be taken with respect to the Department of the Interior material was made by the Protestants nor granted by the Department.

The statutory provision regarding facts that may be judicially noticed is found in Idaho Code, § 9-101. The correspondence and reports of the Department of the Interior do not fall within any of the classes of facts set forth in Idaho Code § 9-101. We are aware that Department Rule 9.16(a) provides that the Engineer may take notice of official reports of federal regulatory agencies. However, we feel that official reports of federal agencies are not covered by Idaho Code, § 9-101 and that the Department has no power to extend by rule or regulation the scope of its authority to take official notice.

In Application of Citizens Utilities Company, supra, the court stated that "In any event the commission cannot by rule transcend the constitutional requirements of due process." 351 P. 2d 487, 491.

It is implicit in the decision in Application of Citizens

Utilities Company, supra, that administrative agencies of the State of Idaho are not authorized to make findings based on facts not in evidence. See 351 P. 2d 487 at 491.

Should the Department disagree with our contentions regarding the use of records and correspondence of the Department of the Interior as evidence in this proceeding, we submit that the facts stated or claimed in such records and correspondence are not sufficient to establish the water rights claimed for the Indians and are not sufficient to establish the amount of water, if any, flowing from Shoo Fly Creek into Blue Creek and thence into the Owyhee River. In fact, the statements regarding Shoo Fly Creek in the 1930 report, show that Shoo Fly Creek makes no significant contribution to the water supply of either Blue Creek or the Owyhee River. At page 51 of Volume I of the report there appears the following statement:

> "* * *It is stated that only during extreme high water in the early spring does the stream flow of Shoo Fly Creek reach the channel of Blue Creek and for that reason the irrigated area is not included in the total irrigated area of Blue Creek and its tributaries, neither is the water of Shoo Fly Creek considered in the water supply."

At page 10 of Volume II of the report it is stated as follows:

> "There are, however, no feasible storage sites on Blue Creek or Mary's Creek, or any of their tributaries within the reservation, and all feasible storage sites on these streams outside the reservation have already been developed by private parties to such an extent that the spring floods, except of

abnormal snow-fall, are insufficient to fill the existing reservoirs * * *".

It is asserted that "natural irrigation" is a reasonable use and a beneficial use of water and that the Indian water rights included the right to employ "natural irrigation" as a means of establishing the water rights and as a continuing method of irrigation. The contention seems to be that the Indians are entitled to have the entire spring runoff of the entire watershed of Blue Creek and the watersheds of all of its tributaries flow into the Blue Creek drainage so as to accumulate a greater quantity of water in that drainage and so as to achieve as a result of that accumulation a raising of the water to a higher elevation with consequent spreading over a greater land area. It is established law in Idaho that "natural irrigation" does not amount to an appropriation of water and is not considered as a beneficial use of water within the meaning of the Constitution and statutes of the State of Idaho. In Hutchinson vs. Watson Slough Ditch Co., 16 Idaho 484, 101 P. 1059, a showing was made by a riparian proprietor that for more than 17 years the water of the stream in question had continuously flowed through his land, "moistening the same". The court, reiterating its holding in Drake vs. Earhart, 2 Idaho 750, 23 P. 541, stated that the claim of a riparian proprietor to the use of water of a stream flowing through his land, which is not based upon appropriation under the territorial (state) laws, is inferior to that of a prior appropriator of the waters of the

stream. In other words, a riparian proprietor who has not made an appropriation by diverting water from the natural channel of the stream and applying that water to beneficial use, has no right or claim in or to the waters of a stream flowing by or through his lands, that he can successfully assert as being prior or superior to the rights and claims of one who has appropriated the water by diverting the same from the stream and applying it to a beneficial use. See, particularly, 16 Idaho 484, at 490-491.

Although there was some evidence that spreader dikes have been constructed upon the Indian reservation for the purpose of spreading the waters of Blue Creek, that same evidence indicates that the spreader dikes are partially ineffective and are inefficient and that the maximum use of the available water is not being obtained by the spreader dikes in their present location and condition.

It is clear that the Protestants' purpose in presenting evidence regarding the rights claimed for the Indians was to establish that a higher volume of water should be permitted to flow across the Indian reservation during the few days of the high spring runoff, in order to spread water over a few more acres of land, the number of which is not established by the evidence, during that period of a few days, in order to produce some increase in the growth of native forage plants on that land. Of course, this condition would cause a greater volume of water

to flow through the Indian reservation and, ultimately, into the Owyhee River and into the storage facilities of the Protestants, thus increasing the amount of storage water available to the Protestants. It is obvious that the Protestants are not concerned with effective or efficient uses of the water resources of the State of Idaho, but are concerned only with filling their reservoir anew during each and every year, regardless of the effect that might have upon upstream appropriators, and regardless of whether their irrigation needs for that season require a full reservoir.

Whatever might be the nature and extent of the water rights appurtenant to lands in the Duck Valley Indian Reservation, it is obvious from the evidence presented by the Protestants that those rights are not being exercised fully at the present time with respect to the water the Applicant seeks to appropriate. There is no evidence to show how much water, if any, flows from Shoo Fly Creek into Blue Creek and thence onto the Indian reservation, and there is no evidence to show how much of <u>that</u> water, if any, is used for irrigation of land in the Indian reservation. More importantly, there is no showing that the quantity of water available to the Indian reservation through the Blue Creek drainage would not be sufficient to properly irrigate the irrigable lands in the reservation, <u>even after making allowance for the appropriation requested by the Applicant</u>, if a reasonably effective and efficient irrigation system were constructed for distribution of the available water.

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We submit that the public policy of the State of Idaho and the public policy of the United States of America require the use of reasonably efficient operations for the maximum beneficial use of the available water supplies in arid regions such as southwestern Idaho and southeastern Oregon. See, e.g., Idaho Constitution, Article 15, Sections 1 and 5; Idaho Code, § 42-101; 43 USC 371 et seq; Van Camp vs. Emery, 13 Idaho 202, 208, 89 P. 752 (1907). In the Van Camp case the court stated, 89 P. 752, 754, as follows:

> "* * *In this arid country, where the largest duty and the greatest use must be had from every inch of water in the interest of agriculture and home building, it will not do to say that a stream may be dammed so as to cause sub-irrigation of a few acres at a loss of enough water to surface irrigate 10 times as much by proper application."

The Field Solicitor of the Department of the Interior indicated to the State Reclamation Engineer in correspondence dated September 22, 1971, that the Department of the Interior took the position that "natural irrigation" was a reasonable use of water, and implied that the extent of the Indian water rights should be measured by the amount required to irrigate the irrigable lands in the reservation by "natural irrigation." In support of that position, the Field Solicitor cited In Re Water Rights In Silvies River, 115 Ore. 27, 237 P. 322, and United States vs. Gerlach Live Stock Co., 339 U.S. 725, 94 L. Ed. 1231 (1949). The decision in the Silvies case, made by the Oregon Supreme Court, establishes the law in Oregon but is neither controlling nor persuasive with respect to

water rights in Idaho. The rule in Idaho is that "natural irrigation" does not establish a water right. See Hutchinson vs. Watson Slough Ditch Co., supra. The Gerlach Live Stock Co. case did not involve Indian water rights. In the Gerlach case the United States Supreme Court applied the law of California to a situation involving water rights entirely within the State of California. The Gerlach decision is neither controlling nor persuasive with respect to water rights in Idaho, whether those rights be for lands within or without an Indian reservation. We are unable to find a single decision holding that Indian water rights are to be measured by the amount required for "natural irrigation". On the contrary, the decisions in Winters vs. United States, 207 U.S. 564, United States vs. Walker River Irrigation District, 104 F. 2d 334, and United States vs. Hibner, 27 F. 2d 909, and numerous other cases involving Indian water rights, indicate that diversion from the natural stream by means of man-made irrigation facilities is contemplated as a necessary element of irrigation under Indian water rights.

No claim has been made in these proceedings that the Indians are using all the water in Blue Creek and its tributaries all of the time in satisfaction of their water rights, whatever those rights might be. The decision in United States vs. Hibner, supra, makes it clear that water which might be required to satisfy Indian water rights is subject to appropriation by others at such times as that water is not in fact being used to satisfy the Indian water rights.

At such times as an appropriator is not using the water under his appropriation, and is not applying the water to a beneficial use, such water must be considered and treated as unappropriated public water of the state, and for such period of time is subject to appropriation and use by others. Hutchinson vs. Watson Slough Ditch Co., supra.

The Protestants' claims that water from Shoo Fly would ultimately reach the Owyhee Reservoir, if not appropriated and stored by the Applicant, clearly indicate that the Protestants do not think that all of the water to which the Indians are entitled is in fact being used by them, and this, alone, should preclude the Protestants from arguing that as regards the Indian water rights there is no water available for appropriation by the Applicant.

Turning to the extent of the water rights of the Indians, we submit that the proof is insufficient and inadequate to prove any Indian water rights in the waters of Shoo Fly Creek covered by the application of Riddle Ranches, Inc. Mr. Barnett examined Shoo Fly Creek in April of 1971 and testified regarding that examination. His testimony shows only that at some point in time a substantial quantity of water was flowing in the creek. He could not estimate the length of time during which that flow existed and did not observe the water at the time it was flowing, but only testified as to highwater mark, debris, erosion and other

indications of water flow. Neither Mr. Barnett nor any other witness for the Protestants testified that they had observed water from the Shoo Fly Creek drainage flowing into Blue Creek. There is no evidence which can properly serve as a basis for inferring that any specific quantity of water flowed into Blue Creek from the Shoo Fly Creek drainage in 1971 or in any other year.

Mr. Peter Jackson, testifying for the Applicant, stated that the entire flow of Shoo Fly Creek was diverted from the natural channel of the stream into the irrigation system of the Applicant and that even in extremely high water years the entire flow of Shoo Fly Creek either was diverted into the Applicant's irrigation system or overflowed from the canals and ditches and dissipated in the large flat area north and west of the point where Blue Creek flows into the Duck Valley Indian Reservation.

Mr. Keith Anderson, testifying for the Applicant, estimated that even in the years of highest runoff, not more than 1,000 acre feet of water from Shoo Fly Creek would find its way across the irrigated fields of the Applicant and into the natural channel of Blue Creek.

The aerial photographs offered in evidence by the Protestants do not show any defined channel for Shoo Fly Creek in the vicinity of Blue Creek, and there is no evidence of any defined confluence of Shoo Fly Creek and Blue Creek. The map prepared by the Bureau

of Indian Affairs in connection with the 1930 report shows Shoo Fly Creek as dissipating in Section 18, Township 14 South, Range 2 East, B.M., approximately 3½ to 4 miles short of the channel of Blue Creek.

Mr. James Stephens testified for the Protestants and stated that he had observed land on the Indian reservation that apparently had received water from Blue Creek at one time or another, but his testimony was couched in general terms and made no effort to establish the contribution, if any, made by the flow of Shoo Fly Creek, and Mr. Stephens did not attempt to state, by quantity of water, what he thought the irrigation requirements of the lands in the reservation irrigable from Blue Creek were at the present time or would be in the future. Mr. Stephens' education and experience did not seem to qualify him as an expert as to the irrigation requirements of the lands in the reservation.

Thus, it is obvious that the evidence is not sufficient to establish the amount of water contributed by Shoo Fly Creek to the Blue Creek water supply and is not sufficient to establish the amount of water actually used in the past or at the present time for irrigation of lands in the reservation, nor is it sufficient to establish the amount of water reasonably required for irrigation of lands in the Indian reservation.

We submit that the appropriation laws of the State of Idaho contemplate that the burden is on the Protestants to establish the

existence and quantity of the prior rights they claim in proceedings of this nature. Until those prior rights are established, the water within any stream should be deemed to be unappropriated water for purposes of appropriation proceedings. Where the existing rights are not established by water permit, license or decree, those existing rights should be established with the same certainty as is required in an adjudication proceeding. In that regard, the nature of the required proof was stated by the Idaho Supreme Court in Head vs. Merrick, 69 Idaho 106, 203 P. 2d 608 (1949) as follows:

> "'Water rights are valuable property, and a claimant seeking a decree of a court to confirm his right to the use of water by appropriation must present to the court sufficient evidence to enable it to make definite and certain findings as to the amount of water actually diverted and applied, as well as the amount necessary for the beneficial use for which the water is claimed.' Reno v. Richards, 32 Idaho 1, at page 15, 178 P. 81, 86, Federal Land Bank v. Union Cent. Life Ins. Co., 51 Idaho 490, at page 500, 6 P. 2d 486; Graham v. Leek, 65 Idaho 279, 144 P. 2d 475."

With regard to the water rights claimed for the Indians, the evidence in this proceeding is entirely insufficient to enable the Department to make definite and certain findings as to the amount of water actually diverted and applied and is entirely insufficient for the Department to make definite and certain findings as to the amount of water necessary for the beneficial use for which the water rights are claimed for the Indians.

The evidence presented by the Applicant shows that the Owyhee Reservoir filled to capacity in 18 of the 36 years between

1936 and 1971, inclusive. See Exhibit A-7. Exhibit A-7 shows, also, that considerable quantities of water have been discharged from the reservoir into the Owyhee River in each year since 1936. Mr. Tom Cotton testified that the decreed right of the Owyhee Ditch Company is 41,880 acre feet and that 2.937% of the live storage in Owyhee Reservoir belongs to the Owyhee Ditch Company. Exhibit A-7 shows that in at least 17 years from 1936 to 1971 the outflow from the Owyhee Reservoir to the river was more than that required to fill the rights of the Owyhee Ditch Company.

Mr. Cotton testified that the Owyhee Project made releases from its reservoir from time to time for flood control purposes and our notes indicate that on occasion those releases were 20,000 acre feet or more and were usually up to 12,000 acre feet and that the releases usually lasted for two or three days and that there was a heavy flow from the reservoir during the releases.

The water thus spilled or released is not needed by the Protestants and is available for appropriation.

The Protestants have indicated a willingness to permit the Applicant to participate in the meetings held by the Protestants to determine whether the water supply in the Owyhee watershed is sufficient to meet the needs of the Protestants for the applicable year and the Protestants have indicated that they are agreeable to having the Department police the diversions made by the Applicant in order to insure that the Protestants will

receive the waters they claim they are entitled to, with the Applicant then to receive any excess. The reasons why such a proposal is completely unacceptable to the Applicant should be obvious. The Owyhee Reservoir is an interstate stream; the appropriation sought by the Applicant would be made by diversion at a point in the State of Idaho and the water rights claimed by the Protestants are for diversions to be made entirely within the State of Oregon. The Department of Water Administration would have jurisdiction over the water rights of the Applicant, but would have no jurisdiction or control whatsoever over the water rights or diversions of the Protestants. In Walbridge vs. Robinson, 22 Idaho 236, 125 P. 814, 815-816, the Idaho Supreme Court stated as follows:

> "* * *Black on Interpretation of Laws, p. 91, says: 'Prima facie, every statute is confined in its operation to the persons, property, rights, or contracts, which are within the territorial jurisdiction of the Legislature which enacted it. The presumption is always against any intention to attempt giving to the act an exterritorial operation and effect.' Endlich on Interpretation of Statutes, p. 233, announces the same principle. Cooley on Constitutional Limitations (7th Ed.) p. 176, says: 'The legislative authority of every state must spend its force within the territorial limits of the state.' The Supreme Court of the United States, in Hilton v. Guyot, 159 U. S. 113, 16 Sup. Ct. 139, 40 L. Ed. 95, says: 'No law has any effect, of its own force, beyond the limits of the sovereignty from which its authority is derived.'* * *
>
> "* * *The statutes of this state, authorizing the appropriation and diversion of waters and the granting of permits by the state engineer, confer upon the state the right to control the use of such waters, to supervise the distribution of water commissioners, to

> establish rates, to control the method of distribution, prevent waste and wrongful diversions and obstructions of the flow thereof, etc. Sections 3268 to 3283, 3284 to 3293, 3294 to 3298, and 7144 to 7149, Rev. Codes. It is at once apparent that the state has no means by which it can enforce or execute the provisions of the above-cited sections of the statute beyond its borders; and, if the right here contended for were recognized and conferred, the power of regulation and control of that right would be wholly gone so far as it is to be exercised beyond the confines of the state. * * *"

The Protestants have not gone so far as to offer to have the Department of Water Administration make the determination as to when water should or should not be released from the Owyhee Reservoir for flood control purposes, but even if it made such a suggestion it is obvious that neither the State Reclamation Engineer nor any of his subordinates would have any authority to go into the State of Oregon and exercise control over the valves and gates at the Owyhee Reservoir in order to regulate storage for flood control purposes. We doubt that the State Reclamation Engineer or any of his subordinates would wish to expose themselves or the State of Idaho to the liabilities which might arise from departmental activity beyond the boundaries of the State of Idaho.

It is obvious, therefore, that the Protestants' offer is decidedly a one-sided affair. They are willing to have the Applicant controlled but they are not willing to be controlled by the same authority themselves and, in fact, should know that the authority which they seek to have control the Applicant's diversions

could not and would not exercise any control over their diversions or storage programs.

Aside from the other questions involved, it should be obvious that the Protestants would be in no position to complain of storage by the Applicant on Shoo Fly Creek unless the Protestants close the release gates and valves on the Owyhee Reservoir as soon as the irrigation season ended and continued to store the entire flow of the river until the reservoir filled, before releasing any water. It is obviously impractical for the Protestants to do so; the nature of their storage facilities and the variations in the amount of water produced in the Owyhee Reservoir watershed require that they take certain flood control measures from time to time. However, there is no justification for imposing the flood control problems inherent in the Protestants' project upon this Applicant. There is no justification for imposing upon this Applicant whatever risks are involved in erroneous determinations or calculations with respect to anticipated runoff.

In the proceedings held with respect to this Applicant's application for a storage permit on the West Fork of Shoo Fly Creek, the Department ruled that holdover storage water spilled or released from the reservoir without being diverted into the irrigation canals of the project was unappropriated water and was available for appropriation for subsequent appropriators. That ruling by the Department is supported by the decisions of

the Idaho Supreme Court in Washington County Irrigation District vs. Talboy, 55 Idaho 382, 43 P. 2d 943 and Glavin vs. Salmon River Canal Co., 44 Idaho 583, 258 P. 532, at least so far as the rights of subsequent appropriators are concerned. In the Washington County Irrigation District case the court stated, at 43 P. 2d 943, 945, as follows:

> "* * *The waters so impounded then became the property of the appropriators and owners of the reservoir, impressed with the public trust to apply it to a beneficial use. A subsequent appropriator claiming a part or all of such waters would be the only person who could question the lack, extent, or nature of its application to a beneficial use."

It is clear from the foregoing that with respect to subsequent appropriators such as the Applicant, the Protestants are required to apply their holdover storage to beneficial use, and to the extent that such holdover storage water is not applied to beneficial use it is subject to appropriation by the Applicant. As applied to these proceedings, the holding of the Washington County Irrigation District case means that whenever the Protestants release holdover storage water or whenever the reservoir fills as a result of the combination of holdover storage and contemporary inflow, the water released or spilled from the reservoir is available for appropriation by subsequent appropriators and, of necessity, that water is available for appropriation by subsequent upstream appropriators. In other words, the law does not entitle the Protestants demand or require that subsequent upstream appropriators

allow water to flow past their points of diversion in order to provide inflow to the reservoir to replace holdover storage that the Protestants have released from the reservoir or have allowed to flow out through the spillway.

The evidence shows that the smallest quantity of water used during the period from 1947 to 1970, inclusive, by the Protestants was 4.26 acre feet per acre in 1955. See Exhibit P-36, page 5. It appears that that amount of water was determined without regard to whatever additional water might have been pumped from Snake River. Exhibit A-10 shows that total diversions to the project during the period from 1952 to 1970, inclusive, ranged from a high of 6.184 acre feet per acre in 1966 to a low of 5.195 acre feet per acre in 1963. Idaho Code, § 42-202, requires that a showing satisfactory to the Department of Reclamation is necessary in order to justify a diversion of more than 5 acre feet per acre per annum for irrigation purposes. The evidence presented by the Protestants is not sufficient to establish that the lands in the Owyhee project require more than 5 acre feet per acre per annum in order to properly irrigate those lands. Our computations, based on irrigable acreage of 95,321 acres as shown on page 5 of Exhibit P-36, show that total diversions to land in the Owyhee project exceeded the statutory allowance of 5 acre feet per acre per annum by a minimum of 18,587.595 acre feet in 1963 and by a maximum of 112,860.064 acre feet in 1966.

These excesses are over and above the amount of water spilled or released by the project because the reservoir filled or because flood control releases were made by the Protestants. These excesses are above the statutory allowance and, no showing having been made in justification of such excess diversions, the excesses are available for appropriation by subsequent appropriators, including the Applicant.

The evidence clearly shows that, if the water of Shoo Fly Creek reaches the channel of Blue Creek, it does so only in those years in which the runoff is much higher than average. In most years, the entire flow of Shoo Fly Creek either is intercepted by the existing storage facility or by the downstream diversion works of the Applicant and either is stored or immediately used for irrigation on the Applicant's land. It naturally follows that in those years in which Shoo Fly water might reach the channel of Blue Creek, the entire Owyhee River watershed will experience a high runoff and the Protestants will be releasing water from the Owyhee Reservoir for flood control purposes or, if no releases are made, the reservoir will fill to capacity and excess water will flow out the spillway. That being the case, storage by the Applicant on Shoo Fly Creek would not have any adverse effect on the Protestants and would not reduce the quantity of water below that required to fill the rights claimed by the Protestants.

The Protestants have requested that the Department impose

conditions upon the permit requested by the Applicant. It appears to us that the Protestants are requesting the Department to impose a condition that the Applicant not be permitted to begin storage in any particular year until the Protestants have placed 715,000 acre feet of that year's runoff into their reservoir, without regard to whatever quantities the Protestants might have held over from the previous years or might have released during that year for flood control purposes. We do not believe that Idaho Code, § 42-203 contemplates the imposition of conditions of that sort, and we do not believe that Idaho Code, § 42-203 authorizes the Department to impose conditions of that sort. The Protestants' rights will be fully protected by imposition of the standard condition that the permit is issued subject to all prior water rights.

If there be problems in the administration of the Protestants' water rights and in the operation of their storage and irrigation facilities, those problems are inherent in the nature of the Protestants' project and result from the fact that the Protestants have their storage facilities near the mouth of a river which draws upon a watershed lying in three different states. The Protestants had to be aware of these problems at the time their project was planned and constructed. The Protestants obviously entered into their project freely and voluntarily, and with knowledge of the risks inherent in making determinations as to whether they should release or hold water and whether they should pump

water from Snake River to supplement Owyhee River water. It would be unrealistic and impractical to key the use of Owyhee River watershed water by all subsequent appropriators to the decisions and determinations made by the governing body of the Protestants.

We recognize that a certain amount of reciprocity is necessary between or among the states in the development and administration of the waters of interstate streams, such as the Owyhee River. However, we do not believe that the Idaho Legislature ever intended that a preference should be granted citizens of other states, whose lands and irrigation facilities are not subject to control by the State of Idaho and whose property and income do not contribute any tax revenue to the State of Idaho. The Protestants are asking the State of Idaho to police one of its own citizens for the benefit, in large measure, of citizens of the State of Oregon who are beyond the police power and administrative authority of the State of Idaho. We do not believe that reciprocity requires such measures, nor do we believe that the laws of this State authorize such measures, and the Protestants have not directed our attention to any statutes or decisions authorizing the Department to impose the conditions requested by the Protestants.

We respectfully submit that the application should be granted and that a permit should be issued in accordance therewith, subject only to the condition that the water rights to be perfected

thereunder shall be subject to all prior rights as provided by law.

Dated March 2, 1972.

ANDERSON, KAUFMAN, ANDERSON & RINGERT

By William F. Ringert
A Member of the Firm
503 Idaho Building, Boise, Idaho
Attorneys for Applicant

I hereby certify that service of the within and foregoing Applicant's Supplemental Brief was made by mailing a copy thereof to Maurice H. Greene, Attorney for Protestants, at P. O. Box 5402, Boise, Idaho 83705, this 2nd day of March, 1972.

William F. Ringert

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Department of Water Administration

BEFORE THE DEPARTMENT OF WATER ADMINISTRATION

OF THE STATE OF IDAHO

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IN THE MATTER OF THE APPLICATION)
) No. 55-7009
OF RIDDLE RANCHES, INC.)

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APPLICANT'S REPLY BRIEF

The Protestants assert that burden was on the Applicant in these proceedings to prove that its proposed storage of the waters of Shoo Fly Creek in each year would not interfere with the use of those same waters by the Owyhee Project. No authority is cited by the Protestants for that position and we submit that no such authority exists. The concept asserted is novel and unworkable. If the Protestants' theory were correct, nearly all subsequent appropriators would be relegated to the position of having to make separate annual applications for each year in which it appeared that the estimated water supply would be sufficient to satisfy the prior appropriations. The time required by the hearing process would be sufficient to insure that these annual applications could not be granted in time to store water during the applicable runoff period, thus assuring

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that all of the available water would flow to the point of diversion of the prior appropriators and insuring that the excess water would flow past the prior appropriators' points of diversion and be wasted so far as Idaho water users were concerned. Clearly, this would result in a nightmare of administrative proceedings and court litigation and it would result in the loss to the State of Idaho and its citizens of very substantial quantities of water arising in smaller streams tributary to the Owyhee River and the Snake River and other interstate streams.

Although the average availability of water may be estimated with reasonable certainty, the amount of water actually available in any given year can be determined only in that year. The Protestants take the position that, if the permit is granted as requested by the Applicant, the Applicant should be required to make an affirmative showing, before impounding any of the waters of Shoo Fly Creek, that the amount of water available on the entire watershed of the Owyhee River during that particular water year, would be adequate to satisfy the water rights claimed by the Protestants. The Protestants are not entitled to that type of protection and the law does not grant that protection to them, any more than it insures the Applicant or any other water user that there will be adequate water in each and every year to fill its appropriation.

The determination as to whether the amount of water available

in any particular water year is adequate to satisfy the water rights claimed by the Protestants and leave water available for the appropriation sought by the Applicant is a judicial or quasi-judicial function and one that could be performed with the necessary objectivity only by a tribunal or agency having full control over the Protestants' facilities as well as the Applicant's facilities. Factors other than the amount of water are important in such a determination, including the efficiency of the irrigation practices of the water users in the Owyhee Project and including the flood control practices followed by the Protestants, particularly as to the release of water to make room available in the reservoir in anticipation of heavy runoff. We are unaware of any authority vested in the Department to authorize even an examination of the Protestants' storage and delivery facilities or the on-farm irrigation systems and practices of the water users in the Owyhee Project and it is a certainty that the Department has no authority to regulate the flow of water from the Owyhee Reservoir either for flood control purposes or irrigation delivery purposes.

The matters suggested by the Protestants can only be accomplished through the adjudication procedures established by law. The courts are equipped to make determinations of the numerous factual issues which must be decided in order to ascertain whether water is available in any particular water year to satisfy the rights claimed by the Protestants and yet permit the Applicant to

store water under the permit which it seeks in these proceedings. All that the Applicant need show in these proceedings is that water is available for appropriation by it in some years, and that that has been established in these proceedings beyond any reasonable doubt.

The Protestants take the position that water is not available for appropriation by the Applicant in years in which the Owyhee Reservoir does not fill and spill. We submit that water is available for the requested appropriation even in years in which the reservoir does not fill and spill. The evidence clearly shows that in short water years the water of Shoo Fly Creek does not even reach the channel of Blue Creek and, therefore, in those years Shoo Fly Creek is not tributary to the Owyhee River. In high water years the Owyhee Reservoir consistently fills and spills, clearly showing the existence of surplus water available for appropriation by the Applicant.

The suggestion that the Applicant should not be permitted to store more than the licensed 850 acre feet of Shoo Fly Creek water until the Owyhee Reservoir fills and spills is unrealistic. The runoff period on the Shoo Fly Creek watershed is so short that it is over before any significant runoff occurs in the high mountain areas in the Owyhee River watershed. The Protestants' suggestion puts the entire risk on the Applicants; there is no offer by the Protestants to pump water back to the Shoo Fly Creek

watershed if, at the time Owyhee Reservoir fills and spills, there is no water left on the Shoo Fly Creek watershed to fill the Applicant's storage rights.

The issuance of the permit and an appropriation of water thereunder must occur before an adjudication of the Applicant's water rights and of the Protestants' water rights can be made. The purpose of the adjudication process is to afford year-to-year protection of all water rights, to insure, so far as possible, that the various appropriators receive the water to which they are entitled by virtue of their respective water rights. The adjudication process necessarily involves the consideration of matters which are not, and can not be, considered in the application process, including flood control practices and efficiency of water use. When the water rights have been adjudicated, direct resort may be had to the appropriate court for a judicial determination as to whether the water is sufficient in the applicable year to satisfy all rights and, if not, what procedure shall be followed to insure that the prior rights are satisfied first.

The Protestants want the Department to make an adjudication of the water rights in these application proceedings, for that is the impact of the relief they request. Such an adjudication is beyond the power and authority of the Department. The Department's duty and responsibility in application proceedings is to determine

whether there is water available for appropriation. The evidence in this case clearly shows that water is available for appropriation. If, in some years, the water supply is insufficient to fill all water rights, the Protestants have ample remedies for establishing and protecting their claimed rights through the court adjudication process established by the Idaho Legislature. The Idaho Legislature has not seen fit to impose upon water permits the stringent and arbitrary restrictions and burdens sought by the Protestants.

Several additional points regarding the water rights claimed for the Duck Valley Indian Reservation merit discussion.

Although the evidence indicates some usage of Blue Creek water for irrigation of lands in the reservation, the evidence is not sufficient to establish any water rights in Shoo Fly Creek for the lands in the reservation. There is no presumption that the Indians have water rights in Shoo Fly Creek. The burden of proof with respect to unadjudicated waters not represented by a valid permit or license is upon the party seeking to establish those water rights. See Head vs. Merritt, 69 Idaho 106, 203 P. 2d 608 (1949). The Protestants did not directly assert that the Applicant had the burden of establishing the quantity and priority of all other existing water rights on Shoo Fly Creek, but that seems to be the thrust of their assertions with respect to the water rights claimed for the Indians; the Protestants presented no proof whatsoever to show what quantity, if any, of the waters

of Shoo Fly Creek were used for irrigation of lands in the reservation. We submit that the burden is upon the Protestants to prove any prior (existing) rights that it claims the Applicant's appropriation will reduce the quantity of water under as contemplated by Idaho Code, § 42-203. The Protestants would have the Applicant prove the amount of the Indian rights in the Shoo Fly Creek waters and would then have the Applicant prove that there is more water in Shoo Fly Creek than is required to satisfy the Indian rights. The law does not impose such a burden upon the Applicant.

The Protestants are asserting the existence of prior rights and the burden is upon them to establish the existence of those rights. See Kent vs. Idaho Public Utilities Commission, 93 Idaho 618, 469 P. 2d 745 (Dissenting opinion); see, also, Walker vs. San Gabriel, 20 Cal. 2d 879, 129 P. 2d 349 (1942); Philadelphia Co. vs. Securities & Exchange Commission, 84 U.S. App. D.C. 73, 175 F. 2d 808 (1948); Alaska Alcoholic Beverage Control Board vs. Malcolm, Inc., Alaska, 391 P. 2d 441 (1964). The rule established by these cases is that in administrative proceedings the burden of proof lies with the party asserting the affirmative with respect to any particular issue.

If the Indians have water rights, the water required to fill those rights would not be available to the Protestants unless the Indians were electing not to use the applicable water. If the Indians were electing not to use the water, diversions by the

Applicant would not have any effect on the water rights of the Indians as to the water which the Indians were not using. Apparently the Protestants contend that the Applicant would have to allow enough water to flow onto the reservation to satisfy the total water rights of the Indians, even though the Indians were not using, or could not use, all that water. This position is untenable and directly contrary to the law as announced in United States vs. Hibner, 27 F. 2d 909. A downstream appropriator, even with a prior water right, cannot compel an upstream appropriator to release more water than is then required to fill the then existing needs of the downstream appropriator. Neither can such a downstream appropriator compel the release of more water than he needs at the time, merely to provide a supply of water for another water user further downstream. There is no method by which the Protestants can compel the Applicant to release water under the water rights of the Indians when the Indians are not in need of that water, merely to furnish water to satisfy the water rights claimed by the Protestants.

If the Protestants contend that they are entitled to the return flow from irrigation on the Indian reservation, that claim would not be covered by the water rights they now claim, because it would be waste water and none of their permits or certificates indicate that they were to appropriate any waste water. Furthermore, the Protestants could not compel the Applicant to release water to

create a flow of waste water on the Indian reservation, even if the Protestants did have water rights in the waste water from the reservation.

The Applicant does not have to show the amount and priority of whatever rights the Indians might have in order to show that water is available for the requested appropriation. The availability of water is readily established by the evidence that in 50% or more of the years since the Owyhee Project started, there has been more water at the Owyhee Dam than the Protestants could use or store. If any Shoo Fly Creek water contributed to that excess at the Owyhee Dam, then that water, of necessity, is water that was not required to fill the water rights of the Indians; if it had been required to fill the water rights of the Indians, it would not have reached the Owyhee Dam. Therefore, the water spilling or released from the Owyhee Reservoir for non-irrigation purposes is not required to satisfy the Indian rights or the Protestants' rights, and it is available for appropriation by the Applicant.

The Department can consider only decreed water rights or rights evidenced by a valid permit or license issued by the Department, in distributing the waters of public streams. See Idaho Code, §§ 42-605 and 42-607. Before the 1969 amendment, the statute provided and the Idaho Supreme Court held that unadjudicated water rights were to be treated as inferior and subordinate to decreed rights. See, e.g., State vs. Hall, 90 Idaho 478,

413 P. 2d 685; Big Wood Canal Co. vs. Chapman, 45 Idaho 380, 260 Pac. 45. As the statute now stands, the Supreme Court would undoubtedly hold that rights neither decreed nor evidenced by valid permit or licensed would be treated as subsequent and inferior to all decreed, permitted or licensed rights. The same principle should be controlling with respect to these proceedings so far as consideration of the Indian rights is concerned. The Legislature has manifested an intention that water rights established other than through adjudication or through the statutory appropriation system should be judicially determined before being entitled to protection and enforcement as to decreed rights or rights established through the statutory appropriation system.

Mr. Keith Anderson estimated that in high water years approximately 1,000 acre feet of Shoo Fly Creek water might reach the channel of Blue Creek. The present license for storage on Shoo Fly Creek is for 950 acre feet with a priority of October 21, 1912. Thus, the existing license would consume nearly all of the flow that might be expected to reach Blue Creek under the most favorable conditions.

We think the Protestants misinterpret the effect of a permit issued by the Department, and that the Protestants do not give full credit to the statutory provisions for adjudication and administration of water rights in Idaho. A permit issued to the

Applicant by the Department would not authorize the Applicant to divert or store water to which the Protestants had a prior right. The Department has no power or authority to take water rights away from the Protestants and give those rights to the Applicant. All the Department can do is issue a permit authorizing the Applicant to impound and store water available at the particular time and not required at that time to fill valid prior rights. The Protestants assume, without basis in fact, that the Applicant intends to divert, impound and store water to which the Protestants are entitled, but there is no evidence to indicate such an intention on the part of the Applicant.

Should the Applicant go beyond its rights under the permit, it must be assumed that the Idaho courts would be readily available to enforce the water rights of the Protestant and to prevent the Applicant from diverting, impounding or storing water to which it was not entitled.

The Protestants suggest that the Applicant should be issued a permit that would not allow it to divert any upstream flow until after the water rights of the Protestants had been filled, meaning that the Applicant could not store more than 950 acre feet of Shoo Fly Creek water until the Owyhee Dam had filled and spilled. Such a limitation is not necessary for protection of the Protestants' rights and would necessarily result in wasting a significant amount

of Idaho water. The statutory procedure for distribution of water adequately protects the water rights of the Protestants and they are not entitled to more protection than the statutes allow.

Dated this 17th day of April, 1972.

ANDERSON, KAUFMAN, ANDERSON & RINGERT

By William J. Ringert
A Member of the Firm
503 Idaho Building, Boise, Idaho
Attorneys for Applicant.

I hereby certify that service of the within and foregoing Applicant's Reply Brief was made by mailing a copy thereof to Maurice H. Greene, Attorney for Protestants, at P. O. Box 5402, Boise, Idaho 83705, this 17th day of April, 1972.

William J. Ringert

12-av

MAURICE H. GREENE
ATTORNEY AT LAW
BOISE, IDAHO
83705

April 15, 1972

Department of Water Administration 5402

Mr. Keith Higginson
State Reclamation Engineer
Idaho Water Department Administration
614 W. State Street
Boise, Idaho 83707

Re: Riddle Ranches - Permit No. 55-7009

Dear Mr. Higginson:

Enclosed herewith is brief of protestants Owyhee Project South Board of Control and Gem Irrigation District in reply to applicant's brief in the above-captioned matter.

As indicated by the Certificate of Service, a copy is today being mailed to Mr. Wm. F. Ringert, attorney for Riddle Ranches.

Very truly yours,

Maurice H. Greene

MHG:ih
Encl.

CC: Mr. Wm. F. Ringert

55 7009

MAURICE H. GREENE
ATTORNEY AT LAW
BOISE, IDAHO
83705

POST OFFICE BOX 5402
TELEPHONE 343-2641

February 11, 1972

Mr. Keith Higginson
State Reclamation Engineer
Idaho Water Department Administration
614 W. State Street
Boise, Idaho 83707

Re: Riddle Ranches - Permit No. 55-7009

Dear Mr. Higginson:

I am enclosing herewith a brief of protestants Gem Irrigation District and Owyhee Project South Board of Control in the above-captioned matter. As indicated by the Certificate of Service, a copy is today being mailed to Mr. Wm. F. Ringert, attorney for Riddle Ranches.

One of the questions covered by the brief is the status of the Indian water rights on the Duck Valley Indian Reservation. Recently I was given a copy of a statement made by William H. Veeder, Water Conservation and Utilization Specialist of the Bureau of Indian Affairs, Department of the Interior. I am enclosing a copy of Mr. Veeder's report to Congress. It, of course, has no direct relationship to the matter of the water rights of the Indians on the Duck Valley Indian Reservation in this case but it was rather informative to me concerning Indian water rights in general and I thought it might be interesting to you if you cared to read it.

Sincerely yours,

Maurice H. Greene

MHG:ih
Encls.

CC: Mr. Wm. F. Ringert

55 7009

CABLE ADDRESS: ANDKEL

TELEPHONE 375-9220
AREA CODE 208

ANDERSON & KELLY
CONSULTANTS IN ENGINEERING AND GEOLOGY
6700 EMERALD STREET
BOISE, IDAHO 83704

February 1, 1972

MEMORANDUM

To: C. Stephen Allred, Deputy Director
Department of Water Administration

From: Keith E. Anderson

Subject: Estimated Available Runoff (Application 55-7009, Riddle Ranches, Inc.)

This memorandum is in response to your request during the hearing of November 23-24, 1971, for an estimate of the annual runoff at the Rubelt (Bybee) dam site in Sec. 31, T.13S., R.2E., B.M., Owyhee County which is the storage site proposed in Application 55-7009 by Riddle Ranches, Inc. As agreed upon in our telephone conversation, copies of this memorandum are being sent to Riddle Ranches, Inc. (applicant) Gem Irrigation District and South Board of Control (protestants), and to the attorneys representing each party.

Previous Estimates

Previous estimates were presented at the time of your Department's hearing on the subject application.

Our estimate, for the applicant, was that the average annual runoff would be between 2,000 and 4,000 AF. No actual analysis had been made and this estimate was based on a preliminary consideration of the factors of assumed average precipitation, average total evapotranspiration, and drainage area.

Protestant's estimate, by Mr. Barnett, was that the average annual runoff would be 7,000 AF. This was drived using a direct correlation between a drainage area of 23 square miles and records of runoff from the U.S.G.S. gaging station Jordan Creek above Lone Tree Creek near Jordan Valley, Oregon (approximately 440 square mile drainage area with 21-year average annual discharge of 133,300 AF).

55 7009

Basic Data

For the purpose of this analysis, the following assumptions have been made:

Drainage Area Above Dam - 23 square miles (14,720 acres)

Precipitation - same as at Owyhee, Nevada

Basin Elevations - generally 5,500-5,700 feet

Precipitation records are available for the Weather Bureau station at Owyhee, Nevada for the period 1900-01, 1924, 1933-34, and 1939 to date. The station is located only about 20 miles south and 9 miles east of the dam site, at an elevation of 5,396 feet. Mean annual precipitation at Owyhee for the 32 year period (1939-70) is 14.58 inches.

No stream gaging records are available for the basin above the dam site, nor on nearby streams that are considered to have comparable drainage basin characteristics.

Method

Consideration was given to using a correlation with records of gaged runoff from other drainage areas. None of the nearby areas in Idaho, Nevada and Oregon for which such long-term records are avaiable, however, are considered sufficiently representative of the area in question to make such correlations valid. Even in the case of the Jordan Creek above Lone Tree Creek gage, where the average elevation of the drainage area above the gage is comparable to the Shoofly Creek drainage, most of the runoff at that gage is probably generated in the high elevations of the Owyhee Mountains (up to 8,000 feet or more). It is at these high elevations, with greater precipitation and higher unit runoff, that most of the supply to the Owyhee River originates.

55 7069

Because long-term precipitation records are available at nearby Owyhee, Nevada--where the elevation is similar to the Shoofly drainage--the runoff at the proposed dam site has been estimated in this analysis using a relationship between precipitation and water yield. The annual water yield from the drainage area, expressed as percentage of annual precipitation, has been assumed to be as shown on the attached graph. This graph is based primarily upon studies in the Snake River Basin (U.S.G.S. Water Supply Paper 1654) and is in line with other estimates of total consumptive use and water yield in Nevada drainage basins. With annual precipitation at Owyhee since 1939 ranging from 8.5 to 20.8 inches, the anticipated runoff would be from 3 to 37 percent of the precipitation. In a year of normal precipitation the runoff would be about 25 percent (rather than about 40 percent of a normal year precipitation if the runoff volume were correlative with the Jordan Creek gage mentioned).

Results

Using the precipitation-water yield relation described, the estimated runoff has been determined for each year in the period 1939-date and the recurrence interval plotted on the attached graph.

This would indicate the mean annual runoff (2.33 year recurrence) as 4,800 acre feet and sufficient runoff to fill the 8,050 acre-foot space applied for expected once each 11 to 12 years.

This estimated runoff and frequency is admittedly an approximation, because of the lack of more detailed physical data, but is considered to be reasonable for evaluation of the proposed project.

Keith E. Anderson

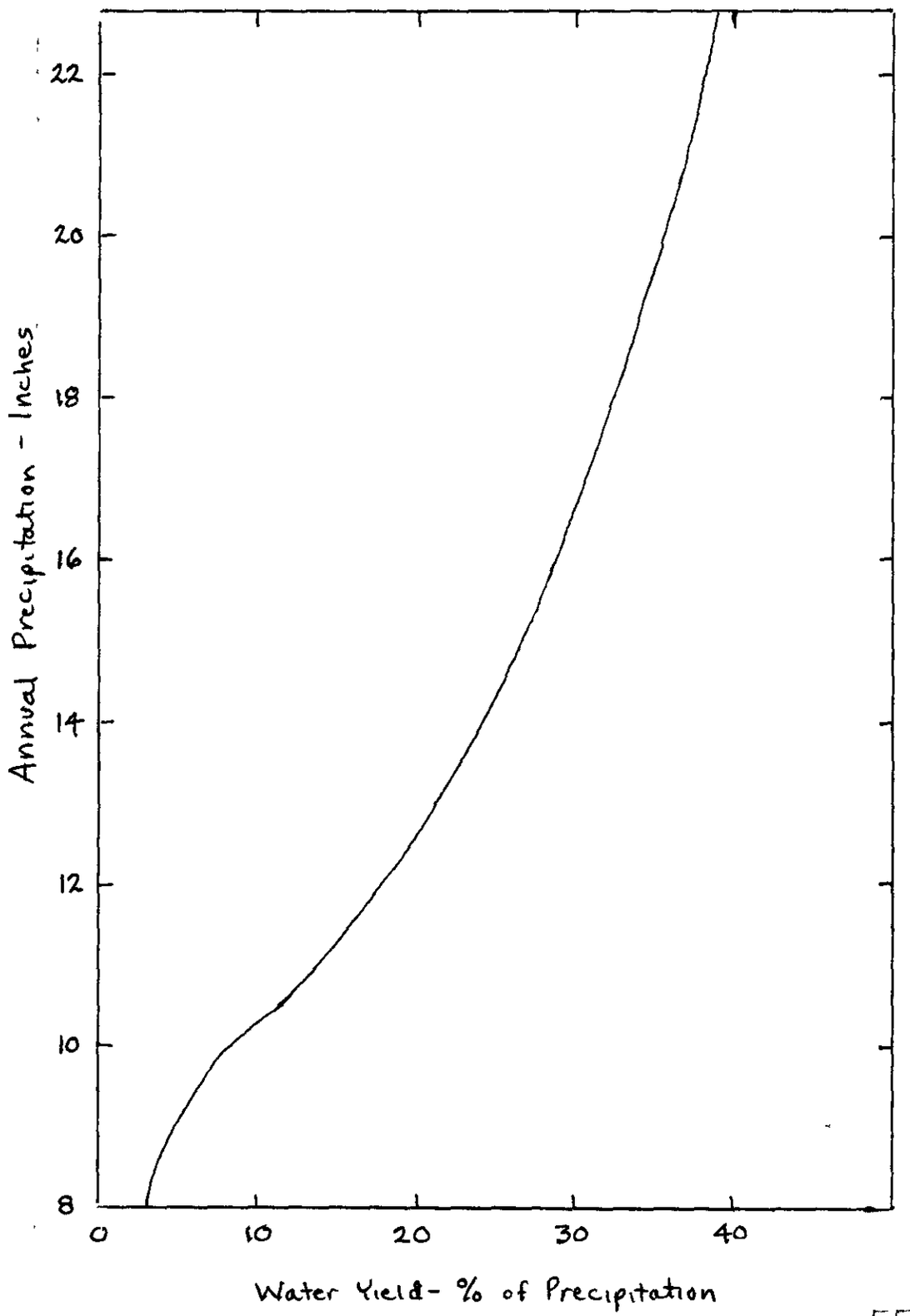
REGISTERED PROFESSIONAL ENGINEER 1027 STATE OF IDAHO KEITH E. ANDERSON

Attachments (2)

cc: Riddle Ranches, Inc.
Owyhee Project, South Board of Control and Gem Irrigation Dist.
William Ringert
Maurice Greene

Shoofly Creek

Appl. 55-7009
(Riddle Ranches, Inc.)



55 7009

JACK A. BARNETT
CONSULTANT
520 IDAHO BUILDING – BOISE, IDAHO
Phone 344-1541

GROUND-WATER HYDROLOGY • WATER RIGHTS • GEOLOGIC ENGINEERING

RECEIVED
JAN 27 1972
Department of Water Administration

BDF

January 26, 1972

Mr. Steve Allred
Department of Water Administration
Statehouse - Annex 2
Boise, ID 83707

Dear Steve:

Following discussions with Phil Barber, Maurice Greene and Bill Ringert it was agreed that if you have no objection we will not be required to submit briefs on the Riddle Ranch storage application until February 15. Part of the reason for this request for extention of time is the fact that the protestant has agreed to provide to the applicant a copy of the report prepared for the Bureau of Indian Affairs. This report was submitted in a barely legible form at the time of the hearing. It is my understanding that you have now received a better copy of the report, and I would be happy to facilitate its distribution to the applicant. In addition, we would like an opportunity to review the report.

A second matter is the requested hydrologic analysis from Keith Anderson concerning the drainage above the reservoir. It was our understanding that we would have an opportunity to review the applicant's data with respect to this prior to our submitting a brief.

If the continuation is not satisfactory, we would appreciate being advised immediately.

Sincerely,

Jack A. Barnett
Consultant

JAB:cww

cc Bill Ringert
Keith Anderson
Maurice Greene
Tom Cotton

55 7009

JACK A. BARNETT
CONSULTANT
520 IDAHO BUILDING -- BOISE, IDAHO
Phone 344-1541

GROUND-WATER HYDROLOGY • WATER RIGHTS • GEOLOGIC ENGINEERING

RECEIVED
DEC 30 1971
Department of Water Administration

December 29, 1971

Mr. Steve Allred
Department of Water Administration
Statehouse - Annex 2
Boise, ID 83707

Dear Steve:

I am in receipt of a letter dated December 20 from Mr. William G. Lavell, Field Solicitor for the Bureau of Indian Affairs, Phoenix, Arizona. Mr. Lavell indicates in that letter that the Engle Report that was introduced by the South Board of Control in connection with application 55-7009 is being sent to you in a more legible form than the copies we had on hand at the hearing.

With that in mind, I would appreciate your advising me if you have received the reports and also how I might help to facilitate the review of the report for comment by both the applicant and the protestants as was outlined in the hearing. Because the report is being received at this late date, I would also appreciate your indicating the date when the Department will expect briefs from both parties concerned in this hearing.

Sincerely,

Jack A. Barnett
Consultant

JAB:cvw

cc Tom Cotton
Maurice Greene

55 7009

UNITED STATES
DEPARTMENT OF THE INTERIOR
OFFICE OF THE SOLICITOR
ROOM 410, ARIZONA TITLE BUILDING ANNEX
135 NORTH 2ND AVENUE
PHOENIX, ARIZONA 85003

IN REPLY REFER TO

RECEIVED
DEC 1971
Department of Water Administration

December 20, 1971

Mr. Keith Higgison, Director
Idaho Department of Water Administration
Statehouse
Boise, Idaho 83707

Re: Application No. 55-7009 for Permit to Appropriate Public Waters of the State of Idaho (Riddle Ranches, Inc.)

Dear Mr. Higgison:

I have this date received a letter from Mr. Jack A. Barnett indicating that the Owyhee Project South Board of Control introduced copies of Volumes I and II of the Engle Report at the hearing in the above matter on November 23 with the understanding that a more legible copy would be substituted. Unfortunately, there was a misunderstanding on this matter which was called to my attention by his letter. Enclosed is a copy of such report. Since there are a limited number of these copies, we would appreciate it if you could return it after the above proceeding has been completed.

I note in reviewing my file that the letter submitted by this office was mistakenly misdated September 22, 1971. Please correct the date to read November 22.

If there is anything further this office can do to assist in this matter, please advise.

Sincerely yours,

William G. Lavell
Field Solicitor

Enclosures

Copy to:
Mr. Jack A. Barnett, 520 Idaho Building, Boise 83702
Field Solicitor, Boise Field Office, P.O.B. 8008, Boise 83707
Mr. Maurice Green, Attorney for South Board of Control, Owyhee Project, 2619 Comas Street, Boise 83705
Area Director, Bureau of Indian Affairs, Phoenix
Assistant To Supt., Western Shoshone Subagency, Owyhee, Nevada 89332

55 7009

Department of Water Administration

BDF
ok to file
no reply necessary

December 13, 1971

Mr. William G. Lovell, Field Solicitor
U.S. Department of the Interior
Room 410, Arizona Title Building Annex
135 North 2nd Avenue
Phoenix, AZ 85003

Dear Bill:

It was my understanding when I discussed the pending hearing on the application by Riddle Ranches to appropriate waters from Blue Creek tributaries to the Gwyhee River that you would shortly be sending copies of two reports to the Department of Water Administration for their consideration.

The copies were not received by the time of the hearing so we chose to introduce the very poor copy that you left with me with the understanding that when more legible copies were received from you we would substitute these more legible copies into evidence. This more legible copy was to be circulated to the representatives of the applicant so they could review the contents and comment on our exhibit. There were several pages that cannot be read in the copy that is temporarily lodged as an exhibit. In checking with the Department of Water Administration I find that they have received only a few pages of these reports from you. They further commented that the pages they have received are much more legible than the same pages found in the copy of the report that we have submitted.

We would greatly appreciate your preparing better copies and submitting them to the Department of Water Administration. Attorneys have a limited time to submit briefs on this matter, and so a prompt reply would be very helpful.

Sincerely,

Jack A. Barnett
Consultant

JAB:cww

cc Tom Cotton
Maurice Greene
Bob Fleener

55 7009

COPY

IN THE DEPARTMENT OF WATER ADMINISTRATION OF THE STATE OF IDAHO

IN THE MATTER OF PROTEST AGAINST APPROVAL OF APPLICATION FOR PERMIT NO. 55-7009 IN THE NAME OF RIDDLE RANCHES, INC.) ORDER

APPLICANT, RIDDLE RANCHES, INC., has come before this Department and moved for an order dismissing Protestants South Board of Control and Gem Irrigation District. That motion was heard on November 23, 1971.

Idaho Code §42-203 provides that:

> "Any person, firm, association, or corporation concerned in any such application may, within the time allowed in the notice of application, file with said Director of the Department of Water Administration a written protest against the approval of such application . . ."

This is the basic standing statute for Protestants before this Department. It in no way limits the right of protest to persons having water diversions in this state. Said Protestants do, therefore, have standing.

Idaho Code §42-203, in setting out grounds of protest, does not limit the Department to recognition of Idaho diversion water rights only. This case,

involving alleged interference with rights for water which is applied in Idaho gives ample demonstration of why no such limitation is included therein.

Water flows without regard to political boundary, and we have an elaborate reciprocity system arranged in recognition thereof in Chapter 4 of Title 42 of the Idaho Code. It would be an offensive disservice of the principle of reciprocity if we were to deny recognition of interstate rights in the absence of some statutory foundation for such a denial. More concretely, we might seriously predjudice the rights of Idaho water users who divert water from Oregon and Idaho water rights for use in Oregon.

It appears that the Applicant, in its argument in support of its motion, has confused the question of our jurisdiction over or governing water rights in Oregon with the question of standing of Oregon right holders to appear before this Department in a matter of a water right clearly subject to our jurisdiction. We are in no sense, acting to broaden, to limit, to otherwise condition, or to remove conditions on any Oregon water use right, permit, or license. There is no question of our attempting to exercise a jurisdiction of this sort over Protestants' water rights. The only question concerns our recognition of Protestants as parties having standing to appear before

this Department in a matter which is clearly within its jurisdiciton. The statutory provisions appearing to contemplate persons in Protestants' position, we have concluded that they do have standing to appear.

IT IS THEREFORE ORDERED that Applicant's motion be denied and that the aforesaid Protestants be allowed to appear.

DATED this twenty-third day of November, 1971.

E. STEPHEN ALLRED, Deputy Director
Department of Water Administration

55 7009

IN REPLY REFER TO

UNITED STATES
DEPARTMENT OF THE INTERIOR
OFFICE OF THE SOLICITOR
ROOM 410, ARIZONA TITLE BUILDING ANNEX
135 NORTH 2ND AVENUE
PHOENIX, ARIZONA 85003

RECEIVED
NOV 26 1971
Department of Water Administration

September 22, 1971

Mr. Keith Higgison, Director
Idaho Department Water Administration
Statehouse
Boise, Idaho 83707

In Re: Application No. 55-7009 for Permit to Appropriate Public Waters of the State of Idaho (Riddle Ranches, Inc.).

Dear Mr. Higgison:

On June 4, 1971, this office sent you a letter regarding the above application in which we pointed out that the granting of this application would interfere with the prior rights of the Shoshone-Paiute Tribes of the Duck Valley Reservation. On July 29, 1971, the undersigned attended a conference conducted by Mr. Steven Allred, Deputy Director, which was also attended by representatives of Riddle Ranches, Inc., and the South Board of Control, Owyhee Project. At the conference, I suggested that the Bureau of Indian Affairs might wish to file a further statement in this matter. In my letter of June 4 and at the conference of July 29, I advised that I was not authorized to submit the rights of the United States or the Shoshone-Paiute Tribes to the jurisdiction of this agency but that our letter and participation in the conference was in the interest of comity between United States and your office. You are hereby further advised that by the filing of this letter the United States is not submitting to the jurisdiction of the Department of Water Administration and is not hereby requesting adjudication of the rights of the United States or the Shoshone-Paiute Tribes, and that neither will be bound by any decision or ruling which might adversely affect such rights. However, again in the interests comity, we feel it is desirable that this further statement be filed.

The subject application is for a permit to store 8,050 acre-feet of water on Shoo-Fly Creek from September 1 to July 1 and to use such water for irrigation from April 1 to October 31 and the right to appropriate 70.0 cfs and/or 8,050 acre-feet per annum from Shoo-Fly Creek. A prior permit which authorizes storage of 950 acre-feet (Permit No. 8571) was granted October 21, 1912, for the same site. Section 42-203 of the Idaho Code provides that in a hearing on a protest the State Reclamation Engineer shall find and determine from the evidence to what uses the water sought to be appropriated can be and

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is intended to be applied and..."where such proposed use is such that it will reduce the quantity of water under existing water rights... the State Reclamation Engineer may reject such application and refuse issuance of permit therefor, or may partially approve and grant permit for a less quantity of water than applied for, or may grant permit upon condition." As noted in the preliminary conference of July 29, whether or not there is water available for appropriation for the purposes intended which will not interfere with prior rights is one of the issues to be determined in this proceeding.

The water rights in streams or other sources of water which arise upon or traverse an Indian Reservation are reserved by the United States for the benefit of the Indian lands at least to the extent necessary to the full beneficial use of those lands, and the priority of these rights runs from the date the lands in question were made part of the Indian Reservation. Winters v. United States 207 US 564 (1908); United States v. Ahtanum Irrigation District, 236 F. 2d 321 (1956); Conrad Investment Co. v. United States 161 F. 829 (1908). In Arizona v. California, 373 U.S. 546, 600-601, the Supreme Court held that the measure of this right is enough water to irrigate all the practicably irrigable acreage on the Reservation. The Duck Valley Reservation was created by Executive Orders of April 16, 1877, May 4, 1886, and July 1, 1910. All the Reservation lands lying within the Blue Creek Drainage were included in the 1886 and 1887 Executive Orders, excepting lands along Alder Creek in the 1910 Executive Order Area. See enclosure No. 1.

The Application herein states that Shoo-Fly Creek is a tributary of the East Fork of the Owyhee River. This is true, but it would be more accurate to state that Shoo-Fly Creek is a tributary of Blue Creek which is a tributary of the East Fork of the Owyhee River. A short distance south of the place where Shoo-Fly Creek empties into Blue Creek, Blue Creek enters the Duck Valley Reservation and flows in a southerly direction through the reservation into the East Fork of the Owyhee River. See map attached to application. Therefore, since Blue Creek traverses the Duck Valley Reservation the Shoshone-Paiute Tribes have a right to the use of all the waters of that stream, including the waters of its tributaries, to the extent necessary to the full beneficial use of all the lands of the Reservation and the priority dates of the right are April 16, 1877, and May 4, 1886. Since these rights are present existing rights (Arizona v. California, Supra), and are prior to any of the rights in the Blue Creek Drainage (see enclosure No. 2), they must be considered in this proceeding. It is clear that this Department does not have jurisdiction to determine the Indian rights. However, this does not determine whether or not the rights of the Indians should be considered in this proceeding. The language of Section 42-302 is plain - the effect on "existing water rights" must be considered.

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As further noted in the preliminary conference, the burden of proof is on the applicant to show that there is water available which will not interfere with prior rights.

As noted above, the measure of the Indian rights is that amount of water which is sufficient to irrigate all the practicably irrigable acreage on the reservation. Numerous studies and reports on this subject have been made and the results were summarized in a letter dated December 23, 1959, from Mr. George W. Hedden, Assistant Area Director, Phoenix Area Office, Bureau of Indian Affairs to Mr. E. L. White, Area Engineer, Snake River Development Office, Bureau of Reclamation, Boise. A copy is attached as enclosure No. 3. As noted in that letter the total of irrigable acreage on the Duck Valley Reservation is 36,200 acres. The measure of this water right would also include water needed for domestic and stock watering purposes on the Reservation. This letter indicates that 11,000 acres in the Blue Creek drainage are irrigable and that approximately 6,500 acres are being flood irrigated by natural spreading. The figure of 9,170 acres in the Duck Valley Project area has been increased to 11,394 at the present time. Therefore the presently irrigated acreage is approximately 19,122 leaving approximately 17,078 acres on the Reservation entitled to waters from streams which traverse the Reservation. Of this, approximately 4,500 acres are located in the Blue Creek drainage. Of all the studies which deal with the subject of irrigation and water rights on the Duck Valley Reservation the most comprehensive is the study entitled, "Report - Water Supply, Water rights and Agricultural Conditions - Western Shoshone or Duck Valley Reservation - Nevada - Idaho," by Charles A. Engle, Supervising Engineer dated May 1930. On pages 49 to 51 of the Report a complete history of water development on Blue Creek and its tributaries up to 1930 is given. A copy is attached as enclosure No. 4. From pages 58 to 62 the Report documents how the impounding of water north of the Reservation boundary resulted in a loss of use of such water to the Indians on the Reservation. A copy of those pages are included as enclosure No. 5. In this section Mr. Engle points out that there had been farming by the Indians on approximately 200 acres along Blue Creek on the Reservation until approximately 1913, and that the diversions north of the Reservation on Blue Creek and its tributaries were detrimental to the Indian farming downstream to the extent that the lands previously farmed by the Indians became worthless for raising hay and the value of the lands adjacent to Blue Creek on the Reservation were decreased. He points out that three farms on Blue Creek were abandoned for this reason approximately in 1913 and that in 1930 there was still evidence of an old well, a cabin, and portions of several earth and rock dams which had been placed across the creek channel by the Indians to cause the stream to overflow its banks and flood the adjoining hay land. The location of these farms is indicated on the General Land Use Map of a resurvey of T. 15 S., R. 2 E., of Boise Meridian, Idaho,

55 7009

dated January 26, 1915. A copy is included as enclosure No. 6. The location of these farms is also noted as "Lands formerly occupied by Indians" on a map entitled Duck Valley Irrigation Map, dated March 1930. A copy is enclosed as enclosure No. 7. A statement taken at the time of the Engles report from a Mr. Guy Manning, an Indian who resided on the Duck Valley Reservation, is included in the report in this section. The statement tells of the abandonment of the above-mentioned Indian farms and states that this took place due to the construction of the "Sewell" Reservoir. A current statement dated September 21, 1971, given by a Mr. Webster Thomas, an Indian who has resided on the Duck Valley Reservation most of his life, is included as enclosure No. 8. This statement indicates that Mr. Thomas has observed the Blue Creek area for many years and noticed that the edge of the hay meadows has been drying up over the years due to the appropriation of water by upstream users, and that Blue Creek used to flow year round but that since dams and spreaders were built north of the Reservation, it now dries up during the summer. He further points out that during the spring runoff the lower area of Blue Creek is flooded but that this mostly disappears in early summer. He further notes that during the 1930's the CCC built five spreader dams on Blue Creek and that, although the structures have been damaged over the years, they continue to function to a degree. These spreader dams referred to by Mr. Thomas are located on the Reservation. The Engle report contains many sections which should be of assistance to the Department in this proceeding. We would be happy to supply a copy of the full report if the Department so desires.

The above report and statement clearly indicate that the Indians had been diverting water from Blue Creek for farming but that they had to discontinue most such diversions due to the lack of water occasioned by diversions and impoundments on the stream and its tributaries north of the Reservation. Some diversions in addition to the natural overflow still occur on the Reservation from the spreader dams referred to and from a low dike which runs parallel to the East Fork of theOwyhee River on which dike the road which crosses Blue Creek near its mouth is located, as indicated on enclosure No. 7.

At the preliminary conference on July 29, Mr. Jackson of Riddle Ranches indicated that the purpose of enlarging the 950 acre-foot impoundment to approximately 9,000 acre-feet is to store water in the early spring and use it later in order to extend the irrigation season. This has been the purpose for most of the diversions north of the Reservation, as noted in enclosure No. 4. The developers north of the reservation have been able to increase their yield of hay considerably by this practice. The ultimate effect of all of the diversions and impoundments listed in enclosure No. 2 and shown on Bureau of Land Management Map, Tindall No. 2 Administrative Unit, Boise District, Idaho, (1965) has been to extend the hay meadow acreage and production on lands north of

the Reservation. This result is graphically demonstrated by the aerial photographs taken for the Owyhee Project, Idaho - Nevada, in 1969, under series GS-SWCX which were taken at 6,000 feet on August 6, 1969. Photos numbers 1-47 through 1-69 show Blue Creek as it flows from a point several miles north of the Flying H. Ranch to its confluence with the East Fork of the Owyhee River. In these photographs it is very plain to see that the areas along Blue Creek north of the reservation boundary are dark indicating considerable moisture and vegetation. In the photos which show the area on both sides of the reservation boundary (Nos. 1-54 and 1-55) the change in vegetation is dramatically demonstrated. At a point not far south of the reservation boundary the dark shaded areas, which indicate presence of water and vegetation, fade abruptly to a lighter shade, indicating a lack of water. This continues down to photo No. 1-48 where again the darker shade is evident immediately prior to the confluence of Blue Creek and Owyhee River. (We understand that these photographs and the map of Tindal #2 will be presented at the hearing on November 23. If they are not, we would be happy to provide copies.) In essence what the applicant is asking is that this process of impounding and diverting waters north of the reservation in order to increase the acreage for irrigation and/or increase the yield on the acreage already irrigated, at the expense of the use of the water for the same purpose on the Indian reservation, be continued. We suggest that it is time to call halt to this activity. The full impact of the proposed impoundment can be appreciated only if compared to the existing situation. Present impoundment permits total approximately 16,000 acre-feet per annum. See enclosure No. 9. To impound half again as much water would obviously drastically reduce the area of hay meadows now irrigated by Blue Creek on the reservation beyond the reduction which has already occurred. The reduction would be substantial since the only irrigation of the hay meadows on the reservation occurs during the spring runoff. Mr. Jackson at the July 29 conference stated that the proposed dam would impound all of the spring runoff of Shoo Fly Creek. Enclosure No. 4 indicates that spring runoff water from Shoo Fly Creek reaches Blue Creek and contributes to its flow. To completely cut off this portion of Blue Creek's spring runoff at a point only 2 miles north of the reservation boundary would necessarily reduce the amount of overflow irrigation from Blue Creek on the reservation. Any such reduction would clearly "reduce the quantity of water under existing water rights" within the meaning of Sec. 42-203, Idaho Code.

At the preliminary conference the Deputy Director asked what a reasonable use of water from Blue Creek on the reservation would be. First it should be noted that the use of water and other aspects of Indian water rights are not to be determined by State law. The right is a present existing right whether the water has been put to use or not. However, several cases regarding the use of water should be mentioned. In re Water Rights in Silvies River, 115 Ore. 27, 237 P. 322 (1925) held that natural irrigation is a reasonable use of water. United States v.

55 7009

Gerlack Livestock Co., 339 U.S. 725 (1949) held that the owner of land along a stream is entitled to the use and flow of such stream to the extent that natural overflow of such stream was a benefit to such lands.

In summary we submit that the following points should be considered:

1. The Shoshone-Paiute Tribes of the Duck Valley Reservation have a right to all of the waters in Blue Creek and its tributaries to the extent that such waters are needed for irrigation on reservation lands.

2. This right is prior to any rights now being exercised by non-Indians on the Blue Creek north of the reservation.

3. In the past Indians diverted waters from Blue Creek for irrigation of farmlands and were forced to abandon this practice after diversions north of the reservation depleted the water supply.

4. Continued diversions and impoundments north of the reservation have further diminished the acreage of hay meadows on the reservation.

5. Lands on the reservation are presently being irrigated by the water of Blue Creek by means of natural overflow and some diversion.

6. The proposed impoundment of an additional 8,050 acre-feet on Shoo Fly Creek during the spring runoff would reduce the quantity of water available for use by the Indians on the reservation under their existing water rights in the waters of Blue Creek.

Therefore, we respectfully submit that the subject application should be denied.

Sincerely,

William G. Lavell
Field Solicitor

Enclosures

cc:
Mr. William Ringert, Attorney for Riddle Ranches, Inc.
Mr. Maurice Greene, Attorney for South Board of Control, Owyhee Project

55 7019

ANDERSON, KAUFMAN, ANDERSON AND RINGERT
LAWYERS
IDAHO BUILDING
BOISE, IDAHO 83701

EUGENE H. ANDERSON
SAMUEL KAUFMAN
RICHARD ANDERSON
WILLIAM F. RINGERT

AREA CODE 208
TELEPHONE 342-4591
POST OFFICE BOX [illegible]

November 9, 1971

Water Administration

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

Re: Riddle Ranches, Inc. - Application for Permit No. 55-7009

Dear Mr. Higginson:

Herewith is Motion to Strike or Dismiss Protest of South Board of Control and Gem Irrigation District, which please file in the above mentioned proceeding in your office.

I request that this motion be heard and a decision rendered thereon at the hearing which is now scheduled for Tuesday, November 23, 1971, at 10:00 a.m. Since the motion goes to the Department's jurisdiction to hear the protest, I request that the motion be disposed of before the taking of any evidence in support of the protest.

Yours respectfully,

ANDERSON, KAUFMAN, ANDERSON & RINGERT

By William F. Ringert
William F. Ringert

WFR:av
Enclosure
cc: Maurice H. Greene

7009

BEFORE THE DEPARTMENT OF WATER ADMINISTRATION

OF THE STATE OF IDAHO

*
*
*

IN THE MATTER OF PROTEST AGAINST APPROVAL OF APPLICATION FOR PERMIT NO. 55-7009 IN THE NAME OF RIDDLE RANCHES, INC.	MOTION TO STRIKE OR DISMISS PROTEST OF SOUTH BOARD OF CONTROL AND GEM IRRIGATION DISTRICT

*
*
*

COMES NOW Riddle Ranches, Inc., the applicant in the above captioned proceeding, and moves the Department of Water Administration for an order dismissing the protest filed in said proceeding on March 31, 1971, by South Board of Control and Gem Irrigation District on and for the following grounds and reasons:

1. The protestants have no standing before the Department of Water Administration of the State of Idaho because the water rights claimed by the protestants are entirely under the jurisdiction of the State or Oregon and any diversions of water under the water rights claimed by the protestants were made in the State of Oregon and are not subject to the jurisdiction of the State of Idaho or of the Idaho Department of Water Administration;

55 7009

2. The Idaho Department of Water Administration has no authority or jurisdiction to recognize the water rights claimed by the protestants and said Department has no authority or jurisdiction to protect the water rights claimed by the protestants;

3. Any requirement that the applicant in this proceeding prove that use of the water sought to be appropriated under the above numbered application would not reduce the quantity of water under the rights claimed by the protestants would constitute a denial of due process with respect to the applicant.

This motion is based upon the application and the documents filed in connection therewith, and upon the protest and the documents filed in support thereof and upon the official records of the Department of Water Administration of the State of Idaho.

ANDERSON, KAUFMAN, ANDERSON & RINGERT

By William F. Ringert
A Member of the Firm
503 Idaho Building, Boise, Idaho
Attorneys for Applicant

55 744

2-av

I hereby certify that service of the within and foregoing Motion to Strike or Dismiss Protest of South Board of Control and Gem Irrigation District was made by mailing a copy thereof to Maurice H. Greene, Attorney for Protestants, at 2619 Camas, Boise, Idaho, this 9th day of November, 1971.

William F. Kingert

55 7069

3-av

55-7009 - Riddle Ranches, Inc.

Room #420, Statehouse, Boise, Idaho

November 23, 1971 - 10:00 a.m.

ROSTER OF ATTENDANCE

Name	Address	Representing
Peter Jackson	Riddle Ranches Riddle, Ida.	Riddle Ranches Inc.
Wm F. Ringert	Box 2773 Boise 83701	"
Keith E Anderson	6700 Emerald St Boise 83704	"
Maurice H. Greene	P.O. Box 5402 Boise Idaho 83705	South Board of Control Owyhee Project
William Burpee	P.O. Box 8008 Boise, Idaho 83705	U.S. Dept of the Interior
Jack A. Barnett	Room 520 Idaho Bld Boise, Idaho 83702	South Board of Control
Tom Cotton	Box 67 Homedale Idaho	South Board of Control
Adam Focht	17 So First St. Nyssa Oregon	North Board of Control
Hal Henigson	106 Main St. Nyssa, Oregon	North Bd of Control Owyhee Project
Benson Gibson	Box 219 Duck Valley Indian Reservation Owyhee, Nevada	Western Shoshone + Paiute Tribes & Columbia River Compact
JAMES H STEVENS	OWYHEE, NEVADA	U.S. BUREAU OF INDIAN AFFAIRS
Wendell Later	Owyhee, Nev.	" " " "
Richard A. Gerity	Boise, Idaho	BLM
Larry A. Lievsay	Boise, Idaho	B.L.M.
David R. Simpson	Boise Idaho	BLM
Clara Little	Owyhee 83761	55 7009
Douglas Little	Owyhee Cow	

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D. Hunt

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Margaret Betts

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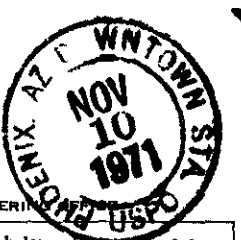

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1 SIGNATURE OR NAME OF ADDRESSEE (*Must always be filled in*)

Riddle Ranches Inc.

2 SIGNATURE OF ADDRESSEE'S AGENT, IF ANY

by Peter Jackson, Pres.

3 SHOW WHERE DELIVERED (*only if requested*)

~~Riddle~~, Idaho.

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1 SIGNATURE OR NAME OF ADDRESSEE (*Must always be filled in*)

South Board of Control

2 SIGNATURE OF ADDRESSEE'S AGENT, IF ANY

Beverly Fisher

3 SHOW WHERE DELIVERED (*only if requested*)

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1. SIGNATURE OR NAME OF ADDRESSEE (*Must always be filled in*): Jack A Barnett

2. SIGNATURE OF ADDRESSEE'S AGENT, IF ANY: Kristine M Wooten

3. SHOW WHERE DELIVERED (*only if requested*): 55 7069

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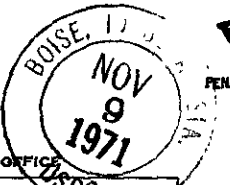

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DEPARTMENT OF WATER ADMINISTRATION
[redacted]house – Annex 2
Boise, Idaho 83707

1009
5-5-52

MAURICE H. GREENE
ATTORNEY AT LAW
BOISE, IDAHO
83705

POST OFFICE BOX ~~XXXX~~ 5402
TELEPHONE 343-2841

November 8, 1971

RECEIVED

Department of Water Administration

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

Re: Riddle Ranches, Inc.
Application for Permit 55-7002

Dear Mr. Higginson:

Mr. Greene is in Portland, Oregon at the present time and has asked that I write you in regard to his letter to you dated October 27, 1971 regarding changing the hearing dates in the above matter to November 22 and 23.

I would appreciate your advising if this would be agreeable to you at your earliest convenience.

Very truly yours,

I. M. Hamilton
(Secretary to Mr. Greene)

IMH

55 7209

BEFORE THE DEPARTMENT OF WATER ADMINISTRATION

OF THE

STATE OF IDAHO

IN THE MATTER OF Protest Against Approval of Application for Permit No. 55-7009 in the name of RIDDLE RANCHES, INC.	NOTICE OF HEARING

On February 23, 1971, Riddle Ranches, Inc., Riddle -via Grasmere, Idaho, filed with the Department of Water Administration an application to appropriate the public water of the State of Idaho. On March 31, 1971, the Department received a protest against approval of this application from Mr. Tom Cotton, Sec-Mgr, South Board of Control and Gem Irrigation District, Homedale, Idaho.

On July 29, 1971, a pre-hearing conference was held by the Department of Water Administration and it was decided that the matter of protest would be set for a formal hearing. The parties involved are to agree on what exhibits can be entered into record prior to the hearing and to obtain a court reporter to make a permanent transcript of the hearing.

The Department has set the matter of protest for hearing on Tuesday, November 23, 1971, at 10:00 a.m. in Room No. 420 of the Statehouse, Boise, Idaho. Said 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.

Failure to appear at the time and place set for hearing by the applicant or the protestant may allow the Department, without prejudice, to dismiss the application or the protest. Any and all cost incurred by reason of such non-appearance may be assessed against such non-appearing parties.

Dated this 8th day of November, 1971.

Bobby D. Fleenor

BOBBY D. FLEENOR
Assistant Director

55 7009

Sent this 8th day of November, 1971, to: Certified Mail No.

Riddle Ranches, Inc., Riddle -via- Grasmere, Idaho, 83625.....23186
Idaho Land & Appraisal Service, P.O. Box 1603, Boise, Idaho, 83701..... 23187
Tom Cotton, Sec-Mgr, South Board of Control & Gem Irrigation District, Homedale, Idaho, 83628..... 23188
Jack A. Barnett, 520 Idaho Bldg., Boise, Idaho, 83702..... 23189
U.S. Dept. of the Interior, Office of the Solicitor, Room 410 - Arizona Title Bldg. Annex, 135 North 2nd Avenue, Phoeniz, Arizona, 85003..... 23190
U.S. Dept. of the Interior, Bureau of Land Management, 230 Collins, Road, Boise, Idaho.....Attn: Richard A. Gerity..... 23191
Maurice H. Greene, Attorney-at-Law, P.O. Box 5402, Boise, Idaho, 83705.... 23192
William F. Ringer, Attorney-at-Law, Idaho Bldg., Boise, Idaho, 83702..... 23193
Walter H. Yarbrough, Grandview, Idaho, 83624.....Regular Mail

By Darlene Rich

55 7009

MAURICE H. GREENE
ATTORNEY AT LAW
BOISE, IDAHO
83705

BDF

POST OFFICE BOX 5402
TELEPHONE 343-2841

RECEIVED
OCT 28 1971
Department of Water Administration

October 27, 1971

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

Re: Riddle Ranches, Inc.
Application for Permit 55-7002

Dear Mr. Higginson:

The above matter has been set for hearing before the Department on November 16 and 17, 1971, by agreement of the parties at the conference held in September. Since the matter was set for formal hearing, I have had a conflict in dates resulting from the Interstate Commerce Commission setting for further hearing a matter at Portland, Oregon that will commence on November 8 and is expected to continue through November 19. I previously participated in two full weeks of hearing in this matter before the I.C.C. at Spokane, Washington. Because I did participate in two full weeks of previous hearings, I do feel that I am obligated to continue to represent my clients at the continued hearing in Portland.

On this basis, I contacted Mr. William Ringert, attorney for Riddle Ranches, about the possibility of continuing the hearing in the Riddle Ranch matter until November 22 and 23, being the Monday and Tuesday of the week following the time the hearing is presently scheduled for. I briefly mentioned this matter to you this morning and you suggested that I should write a letter asking for the postponement and also advising that I had mentioned it to Mr. Ringert and the postponement was agreeable to him. Under the circumstances, I would appreciate it if the matter could be continued until November 22 and 23.

I am sending a copy of this letter to Mr. Ringert for confirmation of the fact that he has no objection to the dates mentioned.

Sincerely yours,

Maurice H. Greene

MHG:ih

CC: Mr. Wm. F. Ringert
Mr. Tom Cotton

55 7009

October 27, 1971

Mr. Harold A. Renquist
Office of the Solicitor
Bureau of Indian Affairs
Room 6453, Interior Building
Washington, D.C.

RE: INDIAN JUDICIAL APPEAL - RIDDLE RANCH WATER PERMIT MATTER

Dear Mr. Renquist:

Your inquiry of Mr. Higginson, Director of the Department of Water Administration, concerning the availability of Federal Court "appeal" for Indian protestants in the matter of Riddle Ranches Water Permit has been forwarded to me for reply.

It is our opinion that an appeal from a Department of Water Administration decision in this or a similiar matter is a creation of state statutory law. Without an explicit state statute, a question of constitutional law, or a problem amenable to mandamus or prohibition, it is doubtful that a judicial "appeal" would lie from this sort of administrative determination. We have, therefore, concluded that your only "appeal" would have to be through the state courts according to the state statutory procedure.

You may, however, have some species of independent federal law cause of action which you could bring in federal court under federal question jurisdiction. It is possible that the propriety of the Department's decision as it is related to federal law might be "reviewed" in such an action. This would not be an

55 7009

"appeal" as comprehended by our water law regime. We are, of course, unable to venture an opinion concerning the basis for any such independent federal action, nor are we able to suggest what the state's attitude might be should you choose to bring an action of this sort.

If you have any further questions concerning our position on this or any other aspect of the Riddle Ranches case or any related matter, please do not hesitate to contact me.

Sincerely,

FOR THE ATTORNEY GENERAL

PHILLIP M. BARBER
Assistant Attorney General

PMB/sc

COPY

MEMORANDUM

Re: Conference in connection with - Application for Trans. Nos. 55-2035
55-2211
Application for Permit No. 55-7009

A conference was held in the Gold Room of the Statehouse on July 29, 1971, at 9:00 a.m., to discuss the protests against Application for Transfer Nos. 55-2035 and 55-2211, as well as Application for Permit No. 55-7009.

At that conference, the applicant, Peter Jackson (Riddle Ranches), was represented by William F. Ringert, Attorney at Law, Boise, Idaho. The protestant, the South Board of Control, Owyhee Project, was represented by Mr. Tom Cotton, Secretary, Manager, Mr. Maurice H. Greene and by Mr. Jack Barnett. Representatives from the Bureau of Indian Affairs were W. S. Leavell, Attorney and James H. Stevens. The Bureau of Land Management were also present at the conference. All parties attending the conference are listed on the roster of attendance. Mr. Steve Allred and Mr. Bob Fleenor presided over the conference.

Mr. Allred briefly reviewed, for those in attendance, the protested transfer applications. After discussing the applications, Mr. Maurice H. Greene stated, in behalf of the South Board of Control, Owyhee Project, that after obtaining a thorough understanding of the intended transfer, they no longer had a protest to the applications. They are to submit a letter to that effect.

Mr. Allred then reviewed the protested Application for Permit. The applicant described his project to be covered by this Application for Permit. Mr. Jackson stated that his reason for filing for this permit was for additional storage and to extend the irrigation season to lands which have been previously irrigated by Blue Creek and Shoo Fly Creek. Mr. Ringert stated that there will be less than 100 acres of newly irrigated land under this application. Representatives of the South Board of Control, Owyhee Project, stated that they object to the diversion of water under this application only when Owyhee Reservoir fails to fill and spill. Representatives from the Bureau of Indian Affairs stated that they feel they have a right to the use of water based upon the "reserved water right doctrine." The reservation lands are irrigated by the overflow of Blue Creek.

55 7009

If the proposed project were to be approved and constructed, it would reduce the flows of Blue Creek and thereby prohibit the Indians from irrigating their hay meadows. When asked if there was not a more effective way in which the Indians could irrigate their lands, they stated that there was not a feasible way.

After a thorough discussion, it was decided that the matters of protest would have to be set for a formal hearing. A tentative date for this hearing was agreed upon by all parties. That date was November 16th and 17th, 1971.

Mr. Ringert stated that as of this date, his list of witnesses would be limited to two. Those witnesses would be Mr. Jackson and Mr. Keith Anderson. Mr. Greene stated that his testimony would be similar to that presented at previous hearings. It was asked that a transcript of the hearing be taken. The parties involved are to obtain a court reporter and to agree on what exhibits can be entered into record prior to the hearing.

The issues to be heard at hearing are as follows:

1. Whether the proposed use is such that it will reduce the quantity of water under existing water rights.
2. Whether the water supply itself is insufficient for the purposes for which it is said to be appropriated.

The Bureau of Indian Affairs will not be a party- court decisions, State Law and Federal Law were sited as prohibiting them from becoming a party.

C. STEPHEN ALLRED
Deputy Director

55-7009 - Riddle Ranches, Inc.

Department of Water Administration, Boise, Idaho

July 29, 1971, - 9:00 a.m.

ROSTER OF ATTENDANCE

Name & Address		Representing
William J. Rinyert	Box 2773 Boise 83701	Riddle Ranches, Inc
Peter Jackson	Riddle, Idaho	Riddle Ranches Inc.
Keith E Anderson	Boise, Idaho	Riddle Ranches, Inc.
Maurice A. Greene	Box 1402 Boise 83701	Owyhee Project
W. B. Lavell	Phoenix, Arizona	Bureau of Indian Affairs
James H Stevens	Owyhee, Nev.	" " " "
JACK A. BARNETT	BOISE, Idaho	SOUTH BOARD
Tom Cotton	Homedale, Idaho	South Board of Control
Wendell Later	Owyhee, Nevada	Bur. of Ind. Affairs
Ray Edmiston	Owyhee, Nevada	Bur. of Ind. Affairs
Adam Zacht	Nyssa, Oregon	North Board of Control
Dave E Hofman	Boise, Ida	Bureau of Land Mgmt.
Richard A Gerity	" "	" " " "
David L Simpson	" "	" " " "
JACK H HANSEN	BOISE IDAHO	US Bureau of Reclamation
Walter H. Yarbrough	Grand View, Ida	C.S.P.O. State Senate Dist 13

55 7009

Gem Irrigation District — Ridgeview Irrigation District

South Board of Control, Owyhee Project

Homedale, Idaho 83628
Phone 337-3760

Beverly Fisher
Treasurer

Tom Cotton
Secy.-Mgr.

July 13, 1971

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

Dear Mr. Higginson,

This is to verify that Jack Barnett has been authorized to work in behalf of the South Board of Control and Gem Irrigation District in the matter of a hearing for an application for Permit No. 55-7009 made by Riddle Ranches, Inc.

Yours very Truly,

TOM COTTON, Secty.-Mgr.

55 7009

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X L. Bain

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INSURED NO.	② SIGNATURE OF ADDRESSEE'S AGENT, IF ANY by Peter Jacobson Pres.
DATE DELIVERED	③ SHOW WHERE DELIVERED (*only if requested*) 55 7009

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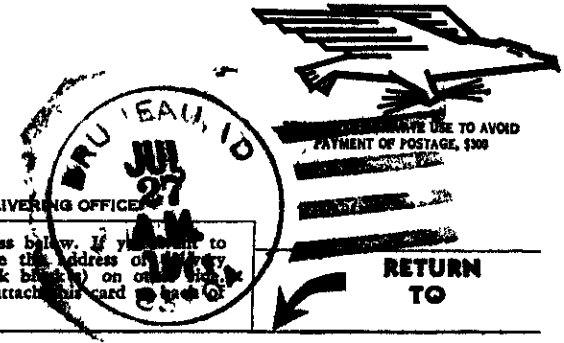

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2. SIGNATURE OF ADDRESSEE'S AGENT, IF ANY Kathryn A. Barnett

3. SHOW WHERE DELIVERED (*only if requested*)

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	cw
DATE DELIVERED JUL 9 1971	③ SHOW WHERE DELIVERED (*only if requested*) 55 7069

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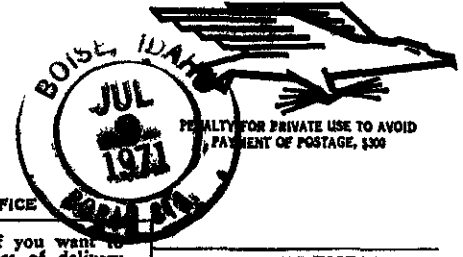

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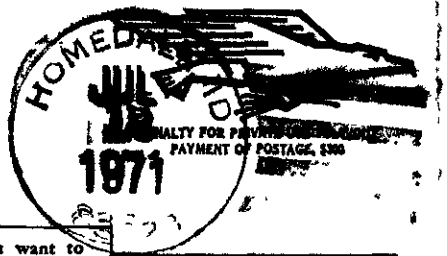

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2									
3	22933	Riddle Ranches Inc, Riddle via Grasmere							
4									
5	22934	Idaho Land + Appraisal, BX 1603, Boise							
6									
7	22935	Tom Cotton, Sec Board of Central and							
8		Tom Irrigation Dist, Homedale							
9									
10	22936	Bureau of Indian Affairs, Western							
11		Shoshone Sub-Agency, Owyhee, Nevada							
12									
13	22937	U S Dept of the Interior, Office of the							
14		Solicitor, Room 910 - Arizona Title							
15		Bldg Annex, 135 No 2nd Ave							
16		Phoenix Arizona							
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18	22938	Bureau of Land Management, 230							
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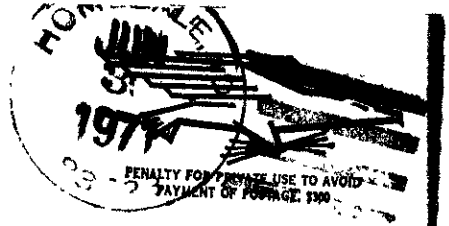

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Jack A. Barnett

2 SIGNATURE OF ADDRESSEE'S AGENT, IF ANY (C)

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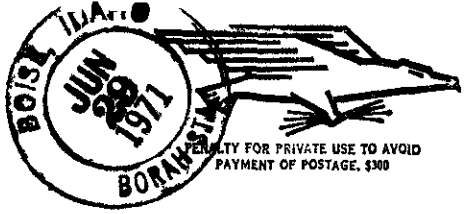

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Riddle Ranches Inc.

2 SIGNATURE OF ADDRESSEE'S AGENT, IF ANY

By Peter Jackson

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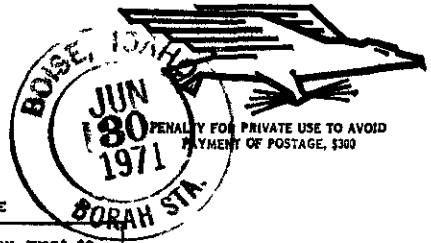

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2. SIGNATURE OF ADDRESSEE'S AGENT, IF ANY

Sally Carpenter

3. SHOW WHERE DELIVERED (*only if requested*) 35 70S 9

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3									
4	22857	Idaho Land + Appraisal Service							
5		PO Bx 1603, Boise 83701							
6									
7	22858	Lom Cotton, Sec-Mgr, South Board							
8		of Central + Gem Irri Dist, Homedale							
9									
10	22859	Jack A Barnett, 520 Idaho Bldg, Boise							
11									
12	22860	Bureau of Indian Affairs, Owyhee, Nevada							
13									
14	22861	U S Dept of the Interior, Office of the							
15		Solicitor, Room 410 - Arizona Title							
16		Bldg Annex, 135 No 2nd Ave, Phoenix							
17		Arizona 85003							
18									
19	22862	B L M, 230 Collins Road, Boise 83702						55	7009
20		Attn Richard A Gerity, Bremen Area Mgr							

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

55-7009

July 8, 1971

Re: Application No. 55-7009 - Riddle Ranches, Inc.

COPY

Dept. of the Interior
Bureau of Land Management
230 Collins Road
Boise, Idaho

Attn: Richard A. Gerity

Gentlemen:

We have received a request to vacate and reschedule the conference &/or hearing primarily set for July 14, 1971, regarding the above referenced application. It is our understanding, based upon Mr. Barnett's letter to us of July 7th, that you have agreed to vacate the hearing date of July 14, 1971, and reschedule the date for July 29, 1971. Mr. Barnett's letter to us indicated that you received a copy of that communication.

Based upon Mr. Barnett's statement, we are rescheduling the matter for conference &/or hearing at 9:00 a.m., July 29, 1971, at the offices of the Department of Water Administration, Statehouse - Annex 2, 614 State Street, Boise, Idaho.

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

Very truly yours,

C. STEPHEN ALLRED
Deputy Director

CSA:dr

Certified Mail #22938

55 7009

July 8, 1971

Re: Application No. 55-7009 - Riddle Ranches, Inc.

COPY

U.S. Dept. of the Interior
Office of the Solicitor
Room 410 - Arizona Title Bldg. Annex
135 No. 2nd Ave.
Phoenix, Arizona 85003

Gentlemen:

We have received a request to vacate and reschedule the conference &/or hearing primarily set for July 14, 1971, regarding the above referenced application. It is our understanding, based upon Mr. Barnett's letter to us of July 7th, that you have agreed to vacate the hearing date of July 14, 1971, and reschedule the date for July 29, 1971. Mr. Barnett's letter to us indicated that you received a copy of that communication.

Based upon Mr. Barnett's statement, we are rescheduling the matter for conference &/or hearing at 9:00 a.m., July 29, 1971, at the offices of the Dept. of Water Administration, Statehouse - Annex 2, 614 State Street, Boise, Idaho.

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

Very truly yours,

C. STEPHEN ALLRED
Deputy Director

CSA:dr

Certified Mail #22937

55 7009

July 8, 1971

Re: Application No. 55-7009 - Riddle Ranches, Inc.

COPY

U.S. Dept. of the Interior
Bureau of Indian Affairs
Western Shoshone Sub-Agency
Owyhee, Nevada 89832

Gentlemen:

We have received a request to vacate and reschedule the conference &/or hearing primarily set for July 14, 1971, regarding the above referenced application. It is our understanding, based upon Mr. Barnett's letter to us of July 7th, that you have agreed to vacate the hearing date of July 14, 1971, and reschedule the date for July 29, 1971. Mr. Barnett's letter to us indicated that you received a copy of that communication.

Based upon Mr. Barnett's statement, we are rescheduling the matter for conference &/or hearing at 9:00 a.m., July 29, 1971, at the offices of the Dept. of Water Administration, Statehouse - Annex 2, 614 State Street, Boise, Idaho.

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

Very truly yours,

C. STEPHEN ALLRED
Deputy Director

CSA:dr

Certified Mail #22936

55 7009

July 8, 1971

Re: Application for Permit No. 55-7009
Transfer No. 1666 - Riddle Ranches, Inc.

COPY

Mr. Tom Cotton, Sec-Mgr.
South Board of Control and
Gem Irrigation District
Hemedale, Idaho 83638

Dear Mr. Cotton:

We have received a request to vacate and reschedule the conference &/or hearing primarily set for July 14, 1971, regarding the above referenced applications. It is our understanding, based upon Mr. Barnett's letter to us of July 7th, that you have agreed to vacate the hearing date of July 14, 1971, and reschedule the date for July 29, 1971. Mr. Barnett's letter to us indicated that you received a copy of that communication.

Based upon Mr. Barnett's statement, we are rescheduling the matter for conference &/or hearing at 9:00 a.m., July 29, 1971, at the offices of the Dept. of Water Administration, Statehouse - Annex 2, 614 State Street, Boise, Idaho.

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

Very truly yours,

C. STEPHEN ALLRED
Deputy Director

CSA:dr

Certified Mail #22935

55 7009

July 8, 1971

Re: Application No. 55-7009 - Riddle Ranches, Inc.

COPY

Idaho Land & Appraisal Service
P.o. Box 1603
Boise, Idaho 83701

Gentlemen:

We have received a request to vacate and reschedule the conference &/or hearing primarily set for July 14, 1971, regarding the above referenced application. It is our understanding, based upon Mr. Barnett's letter to us of July 7th, that you have agreed to vacate the hearing date of July 14, 1971, and reschedule the date for July 29, 1971. Mr. Barnett's letter to us indicated that you received a copy of that communication.

Based upon Mr. Barnett's statement, we are rescheduling the matter for conference &/or hearing at 9:00 a/m/, July 29, 1971, at the offices of the Dept. of Water Administration, Statehouse - Annex 2, 614 State Street, Boise, Idaho.

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

Very truly yours,

C. STEPHEN ALLRED
Deputy Director

CSA:dr

Certified Mail #22934

55 7009

July 8, 1971

Re: Application for Permit No. 55-7009
Transfer No. 1666

COPY

Riddle Ranches, Inc.
Riddle -via- Grasmere,
Idaho 83625

Gentlemen:

We have received a request to vacate and reschedule the conference &/or hearing primarily set for July 14, 1971, regarding the above referenced applications. It is our understanding, based upon Mr. Barnett's letter to us of July 7th, that you have agreed to vacate the hearing date of July 14, 1971, and reschedule the date for July 29, 1971. Mr. Barnett's letter to us indicated that you received a copy of that communication.

Based upon Mr. Barnett's statement, we are rescheduling the matter for conference &/or hearing at 9:00 a.m., July 29, 1971, at the offices of the Dept. of Water Administration, Statehouse - Annex 2, 614 State Street, Boise, Idaho.

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

Very truly yours,

C. STEPHEN ALLRED
Deputy Director

CSA:dr

Certified Mail #22933

55 7009

July 8, 1971

Re: Application No. 55-7009 - Riddle Ranches, Inc.
(Transfer #1666)

Mr. Jack A. Barnett
520 Idaho Bldg.
Boise, Idaho 83702

Dear Jack:

You may consider this notice as vacating the hearing date of July 14, 1971, regarding the above referenced application, and rescheduling the conference and/or hearing for July 29, 1971, at 9:00 a.m. The meeting will be held in the office of the Dept. of Water Administration, Statehouse - Annex 2, Boise, Idaho.

In reviewing the file, we find no authority for you to act in behalf of the South Board of Control. However, for purposes of rescheduling the conference date, we will assume that you have such temporary authority. Please supply us with written authority from your client authorizing you to act in their behalf in such matters.

We are notifying the other parties that we understand, based upon your letter of July 7, 1971, that they have agreed to the conference being rescheduled and confirming the new date for conference and/or hearing.

If you have any questions, please feel free to contact us.

Very truly yours,

C. STEPHEN ALLRED
Deputy Director

CSA:dr

Certified Mail #22932

55 7009

RECEIVED
JUL 7 1971
Department of Water Administration

JACK A. BARNETT
CONSULTANT
520 IDAHO BUILDING – BOISE, IDAHO
Phone 344-1541

GROUND-WATER HYDROLOGY • WATER RIGHTS • GEOLOGIC ENGINEERING

July 7, 1971

Mr. Donald W. McEldowney, Appropriation Supervisor
Department of Water Administration
Statehouse - Annex 2
Boise, ID 83707

Dear Mr. McEldowney:

Following my discussions with you and Mr. Fleenor concerning the scheduled conference and/or hearing on application for permit No. 55-7009, I have contacted all of the interested parties.

As you will recall, the conference and/or hearing was originally scheduled for July 14 at 1:30 p.m. I have been retained by the South Board of Control, one of the protestants in this matter, to assist them with the hearing. Upon receipt of notice, it was found that it was impossible for Mr. Maurice Greene, the attorney for the South Board of Control, to attend the hearing as scheduled on July 14. Because of this conflict in dates, I have contacted Mr. William Ringert, the attorney for Riddle Ranches, Inc. in this matter, and he has consented to allow the hearing to be continued to a more convenient date for the South Board of Control.

I have contacted all interested parties, and all parties have agreed that they could meet for the purpose of discussing this matter at 1:30 p.m. on July 29. It is my understanding that this is a date that the Department of Water Administration could schedule the conference and/or hearing, and in my discussion with the interested parties I find that this is the only date in July convenient to everyone concerned. I would therefore suggest and urge that you schedule the matter for that date.

Mr. Ringert has indicated to me that the applicant is anxious to proceed, and he is hoping that the issue can be fully discussed in a conference on that date. He has further indicated that he is hopeful that a formal hearing will not be necessary. He asked me to convey to you his belief that if a formal hearing must be held it will have to be scheduled at a later date, as the applicant could not be ready in the month of July to present their position in a formal hearing.

Sincerely,

Jack A. Barnett, Consultant

JAB:cww

cc: Riddle Ranches, Idaho Land & Appraisal Service, Tom Cotton, Bureau of Indian Affairs, Office of the Solicitor, BLM, Keith Anderson, Maurice Greene, William Ringert

55 7009

BEFORE THE DEPARTMENT OF WATER ADMINISTRATION

OF THE

STATE OF IDAHO

IN THE MATTER OF PROTEST AGAINST APPROVAL OF APPLICATION FOR PERMIT NO. 55-7009 in the name of RIDDLE RANCHES, INC.	NOTICE OF CONFERENCE AND/OR HEARING

On February 23, 1971, Riddle Ranches, Inc., Riddle -via- Grasmere, Idaho, filed with the Department of Water Administration an application to appropriate the public waters of the State of Idaho. On March 31, 1971, the Department received a protest against the approval of this application from Mr. Tom Cotton, Sec.-Mgr., South Board of Control and Gem Irrigation District, Homedale, Idaho.

The Department has set the matter of protest for conference and/or hearing on July 14, 1971, at 1:30 p.m., at the office of the Department, Statehouse - Annex 2, 614 State Street, Boise, 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 the protestant may allow the Department without prejudice to dismiss the protest or the application. Any and all cost incurred by reason of such non-appearance may be assessed against such non-appearing parties.

Dated this 28th day of June, 1971.

Bobby D. Fleenor

BOBBY D. FLEENOR
Assistant Director

55 7009

Mailed this 28th day of June, 1971, to: Certified Mail #

Riddle Ranches, Inc., Riddle -via- Grasmere, Idaho, 83625..... 22856
Idaho Land & Appraisal Service, P.O. Box 1603, Boise, Idaho..... 22857
Mr. Tom Cotton, Sec-Mgr., South Board of Control and Gem
Irrigation District, Homedale, Idaho, 83628..... 22858
Mr. Jack A. Barnett, 520 Idaho Bldg., Boise, Idaho..... 22859
U.S. Dept. of the Interior, Bureau of Indian Affairs, Western
Shoshone Sub-Agency, Owyhee, Nevada, 89832..... 22860
U.S. Dept. of the Interior, Office of the Solicitor, Room 410-
Arizona Title Bldg. Annex, 135 North 2nd Avenue, Phoenix,
Arizona, 85003..... 22861
U.S. Dept. of the Interior, Bureauof Land Management, 230 Collins
Road, Boise, Idaho..... 22862
(attn: Richard A. Gerity)

Copy of protest enclosed with notice to Riddle Ranches, Inc.

by [signature]

55, 7009

June 22, 1971

Application for Permit No. 55-7009

Idaho Land and Appraisal
Post Office Box #1603
Boise, Idaho 83701

Gentlemen:

In connection with the above referenced permit, which is at this time being protested, we are enclosing a copy of a letter of position filed by the Bureau of Indian Affairs. Please forgive any inconvenience we may have caused you.

If we may be of any further assistance to you in this matter, please do not hesitate to contact this office.

Very truly yours,

Donald W. McEldowney
Appropriation Supervisor

DWM:CM

Enclosures

55 7009

June 22, 1971

Re: Application for Permit No. 55-7009

United States Department of the Interior
Bureau of Land Management
Boise District Office
230 Collins Road
Boise, Idaho 83702

ATTENTION: Dave Holeman

Dear Mr. Holeman:

In connection with the above referenced permit, which is at this time being protested, we are enclosing a copy of a letter of position filed by the Bureau of Indian Affairs. Please forgive any inconvenience we may have caused you.

If we may be of any further assistance to you in this matter, please do not hesitate to contact this office.

Very truly yours,

Donald W. McEldowney
Appropriation Supervisor

DWM:CM

Enclosures

55 7009

June 22, 1971

Re: Application for Permit No. 55-7009

Mr. Peter Jackson, President
Riddle Ranches, Incorporated
Riddle via Grasmere, Idaho 83625

Dear Mr. Jackson:

In connection with the above referenced permit, which is at this time being protested, we are enclosing a copy of a letter of position filed by the Bureau of Indian Affairs. Please forgive any inconvenience we may have caused you.

If we may be of any further assistance to you in this matter, please do not hesitate to contact this office.

Very truly yours,

Donald W. McEldowney
Appropriation Supervisor

DWM:CM

Enclosures

55 7009

June 22, 1971

Re: Application for Permit No. 55-7009

United States Department of the Interior
Bureau of Land Management
Boise District Office
230 Collins Road
Boise, Idaho 83702

ATTENTION: Richard A. Gerity, Bruneau Area Manager

Dear Mr. Gerity:

In connection with the above referenced permit, which is at this time being protested, we are enclosing a copy of a letter of position filed by the Bureau of Indian Affairs. Please forgive any inconvenience we may have caused you.

If we may be of any further assistance to you in this matter, please do not hesitate to contact this office.

Very truly yours,

Donald W. McEldowney
Appropriation Supervisor

DWM:CM

Enclosures

55 7009

IN REPLY REFER TO

UNITED STATES
DEPARTMENT OF THE INTERIOR
OFFICE OF THE SOLICITOR
ROOM 410, ARIZONA TITLE BUILDING ANNEX
135 NORTH 2ND AVENUE
PHOENIX, ARIZONA 85003

June 8, 1971

Mr. Keith Higginson, Director
Idaho Department of Water Administration
State House
Boise, Idaho 83707

Re: Identification No. 55-7009: Permit to Appropriate Public Waters of the State of Idaho (Riddle Ranches, Inc.)

Dear Mr. Higginson:

It has been noted that the legal description in line 8, Par. 1, of our letter to you dated June 4, 1971, is incomplete. The correct legal description should read:

NE¼ of the SW¼ of Sec. 31, T. 13S., R. 2E., B.M., Owyhee County.

We regret the error and request you make the necessary amendment.

Sincerely yours,

William G. Lavell
Field Solicitor

Copy to:
Associate Solicitor, Indian Affairs, Washington, D.C. 20240
Area Director, Bureau of Indian Affairs, Phoenix 85011
Superintendent, Nevada Agency, Stewart, Nevada 89437
Assistant to the Superintendent, Western Shoshone Subagency, Owyhee
State Director, Bureau of Land Management, Boise, Idaho 83702
Field Solicitor, Federal Building, Boise, Idaho

55 7009

IN REPLY REFER TO

UNITED STATES
DEPARTMENT OF THE INTERIOR

OFFICE OF THE SOLICITOR

ROOM 410, ARIZONA TITLE BUILDING ANNEX
135 NORTH 2ND AVENUE
PHOENIX, ARIZONA 85003

June 4, 1971

Mr. Keith Higginson, Director
Idaho Department of Water Administration
State House
Boise, Idaho 83707

Re: Identification No. 55-7009: Permit to Appropriate Public Waters of the State of Idaho (Riddle Ranches, Inc.)

Dear Mr. Higginson:

On behalf of the Western Shoshone Subagency, Owyhee, Nevada, Bureau of Indian Affairs, United States Department of the Interior, I would like to notify you that the application referred to above which is pending before your office is in conflict with prior reserved water rights claimed by the United States for the Indians. The above application seeks to appropriate 70.0 second feet and/or 8050 acre feet of water from Shoofly Creek which is a tributary of the Owyhee River at a point in the northeast corner of the SW¼ of Sec. 13S., Range 2E., BM, Owyhee County, to be stored from September 1 to July 1 by means of a dam over 20 feet in height and an active reservoir capacity of approximately 9000 acre feet and to be used from April 1 to October 31 for irrigation of 3888 acres of land. If approved, the resulting appropriation will interfere with prior rights of the Western Shoshone Indians to the use of water from the Owyhee River for the irrigation of approximately 3000 acres of native hay meadows, domestic uses, water of livestock and breeding areas for water fowl. Winters v. United States, 207 U.S. 564 (1908), confirmed by Arizona v. California, 373 U.S. 546, (1963), have made it clear that water rights in a stream or other source of water which arises or borders on or traverses an Indian reservation, are reserved by the United States for the benefit of the Indian lands to the extent necessary to the beneficial use of those lands. The above application will interfere with these prior rights which have priorities dating from April 16, 1877, May 4, 1886 and July 1, 1910.

Your cooperation in this matter is sought. Although I am not authorized to submit the rights of the United States or the Indians to the jurisdiction of your agency, the foregoing information is furnished to you

55 7009

in the interests of comity between the United States and your office. I understand that members of your staff and the Bureau of Land Management staff are going to the proposed dam site and the Owyhee Reservation for an inspection of the proposed irrigation use and the existing Indian uses on June 15 and 16. We would be pleased to meet with you and the applicant at any hearing you may schedule with respect to this application and explain the position of the Indian agency and the water rights claimed for the Indians.

Sincerely yours,

William C. Lavell
Field Solicitor

Copy to:

Associate Solicitor, Indian Affairs, Washington, D.C. 20240
Area Director, Bureau of Indian Affairs, Phoenix 85011
Superintendent, Nevada Agency, Stewart, Nevada 89437
Assistant to the Superintendent, Western Shoshone Subagency, Owyhee 89832
State Director, Bureau of Land Management, Boise, Idaho 83702

55 7009

June 2, 1971

Re: Application for Permit No. 55-7009

Mr. James H. Stevens
Assistant to the Superintendent
United States Dept. of Interior
Bureau of Indian Affairs
Western Shoshone Sub-Agency
Owyhee, Nevada 89832

Dear Mr. Stevens:

We are writing in reference to your letter of April 14, 1971 concerning application for permit No. 55-7009, Shoo-Fly Creek by the Jackson Ranches.

Your letter stated that a formal protest would be filed by the United States Bureau of Indian Affairs Solicitor in connection with this matter. We understand that the Bureau has received the protest; however, as of this date we have not received a formal protest. We would like to set the matter of protests in connection with this application for conference or formal hearing. We would, therefore, request that you advise as to whether or not a formal protest will be filed and if so, the approximate date for filing.

Your assistance in this matter is appreciated.

Very truly yours,

Donald W. McIldowney
Appropriation Supervisor

DWM:er

55 7009

IN REPLY REFER TO:

United States Department of the Interior

2800(cf)

BUREAU OF LAND MANAGEMENT
Boise District Office
230 Collins Road
Boise, Idaho 83702

May 13, 1971

RECEIVED
MAY 17
Department of Water Administration

Mr. Dan McEldowney
Department of Water Administration
614 West State Street
Boise, Idaho 83702

Dear Mr. McEldowney:

Enclosed are the two protests on the Jackson Dam. If there are any new developments we would appreciate a copy being sent to this office to my attention.

At present we are planning to make an on-the-ground inspection of the dam site, etc., and we will let you know at least a few days in advance if you should decide to go with us.

Sincerely,

Richard A. Gerity
Bruneau Area Manager

Enclosure

55 7009

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF RECLAMATION
REGIONAL OFFICE, REGION 1
BOX 8008
BOISE, IDAHO 83707

IN REPLY
REFER TO
150

APR 15 1971

RECEIVED
U S Department of the Interior
APR 15 1971
Bureau of Land Management
Idaho State Office
Boise Idaho

To: State Director, BLM, Boise, Idaho

From: Acting Regional Director, Boise, Idaho

Subject: Right-of-Way Application for Irrigation Facilities of the Riddle Ranches, Inc.

We have been informed by the South Board of Control of the Owyhee Project that the Riddle Ranches, Inc., whose post office address has been listed as "Riddle via Grasmere, Idaho 83625" has filed an application for a water permit with the State of Idaho to irrigate 3,880 acres in township 14 south, ranges 1 and 2 east, Owyhee County, being adjacent to Shoo Fly Creek, a tributary of the East Fork of the Owyhee River. A reservoir proposal is located in sections 29, 30, 31 and 32, township 13 south, range 2 east, Owyhee Reservoir. An application for this reservoir has been filed in your office, No. I-4069. The reservoir would be on public land.

The United States, acting through the Secretary of the Interior, Bureau of Reclamation, has contracted with the water users on the Owyhee Federal reclamation project that it, the United States, will be concerned about the water rights and water supply for the project. The Owyhee Project water users regard the Riddle Ranches irrigation proposal as conflicting with the project water supply. The water users have taken steps to protest to the Director, Idaho Department of Water Administration, the issuance of a State of Idaho water permit for the proposed development. In these circumstances we suggest this problem be resolved before any action is taken on the right-of-way application of the Riddle Ranches for use of the public lands.

55 7009

F/WJ-4069

IN REPLY REFER TO.

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF INDIAN AFFAIRS
Western Shoshone Sub-Agency
Owyhee, Nevada 89832

April 19, 1971

RECEIVED
APR 22 1971
Bureau of Land Management
Boise District

District Manager
Bureau of Land Management
Federal Building
250 Collins Road
Boise, Idaho

Dear Mr. Thompson:

The Riddle Ranches have applied for a right of way for an irrigation reservoir on Shoo Fly Creek, a tributary of Blue Creek. (Copy Attached.)

The Blue Creek Area contains large areas of native hay meadows which have been cut and baled in some of the years in the past, and serves as an outstanding grazing area for Indian cattle. These grasses and native hay land exist because of the natural irrigation they receive during the spring run-off. Blue Creek contains a tremendous amount of water during the run-off, and as the Owyhee River is constricted leaving the Duck Valley-Blue Creek area, this run-off forms a very large shallow lake (estimated at 3,000 acres this year) which effectively irrigated the most productive portion of the Blue Creek area.

The water from the spring run-off also fills potholes and catchment basins which furnish livestock water, and breeding areas for water fowl.

The Bureau of Indian Affairs is concerned over the possible taking of water from Blue Creek, and I have referred this matter to our Solicitors. We will appreciate an opportunity to be heard prior to any decisions being made on the petition.

Sincerely,

James H Stevens
Assistant to the Superintendent

Attachment

														Act
														Info
			2				3						1	
			LIB	LAND	FIRE	JAPB	OWY	BRUN	CASC	ADM	OPER	RPM	A/DM	DM
														Inst

Dave
See me on this —

55 ~~20~~

L:CRT
I-4069

Idaho Land Office
Room 334, Federal Building
550 W. Fort Street
Boise, Idaho 83702

BDF

APR 27 1971

55 - 7009

Peter Jackson, President
Riddle Ranches, Inc.
Riddle via Grasmere, Idaho 83625

Dear Mr. Jackson:

Your application for a right-of-way for a reservoir to be located in T. 13 S., R. 2 E., was received on March 15, 1971. Shortly thereafter, it was sent to the Boise District Office for a field report.

By memorandum of April 15, 1971, we are advised by the Bureau of Reclamation that the Owyhee Project water users have taken steps to protest the water permit. This is on the basis of possible conflict with the project water supply.

No action will be taken as to your right-of-way application until the water permit situation is settled. The decision on this rests with the Idaho Department of Water Administration.

Sincerely yours,

/S/ CURTIS [illegible]

FOR Orval G. Hadley
Manager, Land Office

cc: Idaho Dept. of Water Admn.

55 7009

JACK A. BARNETT
CONSULTANT
520 IDAHO BUILDING – BOISE, IDAHO
Phone 344-1541

GROUND-WATER HYDROLOGY • WATER RIGHTS • GEOLOGIC ENGINEERING

RECEIVED
1971
Administration

April 21, 1971

Mr. Bobby D. Fleenor
Assistant Director
State of Idaho Department
Water Administration
Statehouse - Annex 2
Boise, ID 83707

Dear Bobby:

I am working for the South Board of Control with respect to their protest of application 55-7009. I would appreciate it if you would advise me as soon as the hearing date has been selected.

Sincerely,

Jack A. Barnett
Consultant

JAB:cww

55 7009

IN REPLY REFER TO:

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF INDIAN AFFAIRS
Western Shoshone Sub-Agency
Owyhee, Nevada 89832

April 14, 1971

Mr. Keith Higginson, Director
Idaho Department of Water Administration
Statehouse
Boise, Idaho 83707

Department of Water

Dear Mr. Higginson:

I have just been apprised of the proposed construction of a storage dam for irrigation and livestock on Shoo-fly Creek by the Jackson Ranches. This proposal is under Application for Water Permit #55-7009.

I believe this dam will utilize water rights which belong to the people of the Duck Valley Reservation. I have contacted the USBIA Solicitor and you should receive a formal protest from his office within the immediate future.

Sincerely,

James W Stevens

Assistant to the Superintendent

55 7009

March 31, 1971

Re: Application for Permit No. 55-7009 - Riddle Ranches, Inc.

Mr. Tom Cotton, Secty-Mgr.
South Board of Control and
Cam Irrigation District
Hansdale, Idaho 83628

Dear Mr. Cotton:

We are in receipt of your protest to issuance of a permit pursuant to the above referenced application.

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 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.

55 7009

The Department may reject an application and refuse issuance of a permit, partially approve the permit, approve the permit for a quantity of water less than applied for, or approve the permit subject to special conditions.

A permit issued by this office is subject to all prior water rights and does not in any way convey or establish 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 conference and/or hearing to discuss the matters of protest. Legal counsel is not mandatory at any proceeding before the department, although you may desire to employ an attorney in your behalf. If we may be of any assistance, please contact us.

Very truly yours,

BOBBY D. FLEENOR
Assistant Director

BDF:DR
Enc: Copy of protest

cc: Idaho Land & Appraisal Service

55 7009

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 conference and/or hearing to discuss the matters of protest. If we may be of further assistance, please contact us.

Very truly yours,

BOBBY D. FLEENOR
Assistant Director

BDF:DR

55 7009

March 31, 1971

Re: Application for Permit No. 55-7009

COPY

Riddle Ranches, Inc.
Riddle -via- Grasmere,
Idaho 83625

Gentlemen:

We have enclosed a copy of the protest filed against the issuance of a permit pursuant to your application for Permit No. 55-7009 by Mr. Tom Couton, Secty-Mgr., South Board Control and Gem Irrigation District, Homedale, Idaho.

You should be aware that 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 Department cannot allow a permit for irrigation purposes which would entail the use of more than a continuous flow of 0.02 cubic feet per second of water, or an annual amount of 5 acre feet of water per acre of land, unless the applicant can show that more is required due to soil or climate conditions. (Section 42-202, Idaho Code)

55 7009

Gem Irrigation District — Ridgeview Irrigation District

South Board of Control, Owyhee Project

Homedale, Idaho 83628

Phone 337-3760

Beverly Fisher
Treasurer

Tom Cotton
Secy.-Mgr.

March 30, 1971

Mr. Keith Higginson, Director
Idaho Dept. of Water Administration
Statehouse
Boise, Idaho 83707

Dear Mr. Higginson,

The Gem Irrigation District and the South Board of Control, Owyhee Project; wish to protest the following Notice of Application for Water Permit, application No. 55-7009.

The application is made in the name of Riddle Ranches, Inc., Riddle-via Grasmere, Idaho. The point of diversion is within the NE¼SW¼, Sec. 31, T. 13S., R. 2E., B.M., Owyhee County. It is for storage of 8,050 acre feet per anum of water from Shoo Fly Creek, tributary to East Fork of Owyhee River.

The Owyhee River and its tributaries are fully appropriated except for years when the Owyhee Reservoir fill and spills. In the past 25 years this fill and spill condition has happened seven times, including this year. Between the years 1959 through 1964 it did not fill at all.

Our storage certificate allows for 715,000 acre feet of live storage plus 420,000 acre feet of dead storage. The certificate for diversion allows for 1718 cubic feet per second.

Although the present and past two years exhibit exceptionally good water yield, we still feel that the past history of supply and use show that the river is fully appropiated and any additional diversion would be detrimental to the project water users.

Yours very truly,

Tom Cotton

TOM COTTON, Secty-Mgr.
South Board of Control and
Gem Irrigation District

55 7009

State of Idaho
Department of Water Resources

WATER RIGHT LICENSE

WATER RIGHT NO. 55-07009

CONDITIONS/REMARKS:

1. This water right is appurtenant to the described place of use.
2. This right is subject to all prior water rights and may be forfeited by five years of non-use.
3. Modifications to or variance from this license must be made within the limits of Section 42-222, Idaho Code, or the applicable Idaho law.
4. This right when combined with all other rights shall provide no more than .02 cfs per acre nor more than 3.0 afa per acre for the lands above.
5. This right is subject to prior storage rights in Owyhee Reservoir and to all prior rights on streams to which Shoofly Creek is tributary including the rights of the Indians. If adequate facilities are constructed by the Paiute & Shoshone Indians to use the waters of Blue Creek, the right holder may be required to allow the water to pass downstream.
6. The right holder shall allow employees of the Department of Water Resources and any appointed watermaster reasonable access to the dam for the purpose of supervising storage & use of the water.
7. In any given year that Owyhee Reservoir does not fill to its full capacity, the water stored by the right holder must be released and passed downstream unless the right holder can negotiate an agreement to compensate for the lost water. Such agreement could include payment to offset the increased cost of pumping Snake River water.

This license is issued pursuant to the provisions of Section 42-219, Idaho Code. Witness the seal and signature of the Director, affixed at Boise, this 23rd day of August, 1990.

Acting for R. Keith Higginson, Director

MICROFILMED
SEP 12 1990

State of Idaho
Department of Water Resources

WATER RIGHT LICENSE

WATER RIGHT NO. 55-07009

Priority: February 23, 1971 Maximum Storage Volume: 7020.0 AF

This is to certify, that RIDDLE RANCHES INC.
RIDDLE RT.
BRUNEAU, ID 836040000 has complied with the terms and conditions of the permit, issued pursuant to Application for Permit dated February 23, 1971; and has submitted Proof of Beneficial Use on November 27, 1987. An examination indicates that the works have a storage capacity of 7970.000 af of water from:

SHOOFLY CREEK tributary to **BLUE CREEK**

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

BENEFICIAL USE	PERIOD OF USE	RATE OF DIVERSION	ANNUAL VOLUME
IRRIGATION STORAGE	01/01 to 12/31		7020.0 AF
IRRIGATION FROM STORAGE	04/01 to 11/01		7020.0 AF
	Totals		7020.0 AF

LOCATION OF POINT(S) OF DIVERSION: NESW , Sec. 31, Township 13S, Range 02E
OWYHEE County

PLACE OF USE: IRRIGATION STORAGE

TWN	RGE	SEC		ACRES		ACRES		ACRES	TOTAL
14S	02E	14	NWSW	13	SWSW	26			39
		23	SWNE	40	SENE	40	NENW	8	
			NWNW	31	SWNW	39	SENW	37	
			NESE	40	NWSE	40	SWSE	40	
			SESE	36					351
		26	NENE	27	NWNE	40	SWNE	40	
			SENE	22	NENW	40	SENW	40	
			NESW	40	SESW	40	NESE	35	
			NWSE	40	SWSE	40			404
		35	NWNE	40	SWNE	40	NENW	35	
			NESW	40	SESW	40	NESE	40	
			NWSE	35					270

Total number of acres irrigated: 1064

PLACE OF USE: IRRIGATION FROM STORAGE, same as IRRIGATION STORAGE use

MICROFILMED
SEP 12 1990

State of Idaho
Department of Water Resources

RECEIVED
AUG 6 1990
Department of Water Resources

APPROVED

APPLICATION FOR AMENDMENT
(For Licensing Purposes)
WATER RIGHT NO. 55-07009

Date of Priority: February 23, 1971 Maximum Storage Volume: 7020.0 AF

Comes now RIDDLE RANCHES INC.
RIDDLE RT.
BRUNEAU, ID 836040000 and represents to the Director of the Idaho Department of Water Resources:

That he is the owner and holder of Permit to Appropriate the Public Waters of the State of Idaho No. 55-07009, and requests that the permit be changed as follows:

Source: **SHOOFLY CREEK** tributary to **BLUE CREEK**

BENEFICIAL USE	PERIOD OF USE	RATE OF DIVERSION	ANNUAL VOLUME
IRRIGATION STORAGE	01/01 to 12/31		7020.0 AF
IRRIGATION FROM STORAGE	04/01 to 11/01		7020.0 AF
	Totals		7020.0 AF

LOCATION OF POINT(S) OF DIVERSION: NESW , Sec. 31, Township 13S, Range 02E
OWYHEE County

PLACE OF USE: IRRIGATION STORAGE

TWN	RGE	SEC		ACRES		ACRES		ACRES	TOTAL
14S	02E	14	NWSW	13	SWSW	26			39
		23	SWNE	40	SENE	40	NENW	8	
			NWNW	31	SWNW	39	SENW	37	
			NESE	40	NWSE	40	SWSE	40	
			SESE	36					351
		26	NENE	27	NWNE	40	SWNE	40	
			SENE	22	NENW	40	SENW	40	
			NESW	40	SESW	40	NESE	35	
			NWSE	40	SWSE	40			404
		35	NWNE	40	SWNE	40	NENW	35	
			NESW	40	SESW	40	NESE	40	

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SEP 12 1990

PLACE OF USE: IRRIGATION STORAGE

TWN RGE SEC		ACRES	ACRES	ACRES	TOTAL
13S 01E 25	NWSE	35			270
			Total number of acres irrigated:		1064

PLACE OF USE: IRRIGATION FROM STORAGE, same as IRRIGATION STORAGE use

Permit holder asserts that no one will be injured by such change and that such change will be made at permit holder's own risk.

Signed at Boise, this 6 day of Aug, 1990.

Peter Swanson, Pres.
(Signature)

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SEP 12 1990

State of Idaho
Department of Water Resources

APPLICATION FOR AMENDMENT
(For Licensing Purposes)
WATER RIGHT NO. 55-07009

****

FOR DEPARTMENT USE ONLY #C017929

Preliminary check by SC Fee = $20.00✓ Receipted by KW Date 8-6-90

ACTION OF THE DEPARTMENT OF WATER RESOURCES

I, R. Keith Higginson, of the Department of Water Resources hereby approve the above Application for Amendment for Permit No. 55-07009 with the following;

CONDITIONS/REMARKS:

1. This water right is appurtenant to the described place of use.
2. This right is subject to all prior water rights and may be forfeited by five years of non-use.
3. Modifications to or variance from this license must be made within the limits of Section 42-222, Idaho Code, or the applicable Idaho law.
4. This right when combined with all other rights shall provide no more than .02 cfs per acre nor more than 3.0 afa per acre for the lands above.
5. This right is subject to prior storage rights in the Owyhee Reservoir.

Witness my hand this 17TH day of AUGUST, 1990.

Acting for R. Keith Higginson, Director

MICROFILMED
SEP 17 1990

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

IN THE MATTER OF APPLICATION FOR FOR PERMIT NO. 55-7009 IN THE NAME OF RIDDLE RANCHES, INC.	) ORDER WAIVING CONDITION) REQUIRING INSTALLATION OF) MEASURING DEVICES

This matter having come before the Department of Water Resources (Department), as the result of a request by William H. Tuller, engineer for Riddle Ranches, Inc., the Department Finds, Concludes, and Orders as follows:

FINDINGS OF FACT

1. Application to Appropriate Water No. 55-7009 was filed with the Department, and was protested by South Board of Control and Gem Irrigation District. A protest hearing was conducted. Representatives from Paiute and Shoshone Indian tribes were not protestants, but testified regarding water rights of the Duck Valley Indian Reservation.

2. Following the hearing, the Department issued a Memorandum Decision approving the application, but conditioning the approval that measuring devices approved by the Department capable of measuring inflow and discharge from the reservoir must be installed and maintained by the permit holder.

3. The decision also conditioned the permit as being subject to any reserved water right in the name of the Duck Valley Indian Reservation that may be established in the future.

4. On September 15, 1987, William H. Tuller, engineer for

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FEB 29 1988

Riddle Ranches, Inc., requested that the conditions requiring installation of inlet and outlet measuring devices at the impoundment proposed by Permit No. 55-7009 be waived. The reasons supporting the request were:

a. There is no established water district.

b. Impounded water is mainly spring run-off.

c. Shoofly Creek is an intermittent stream.

d. Access is limited.

e. The applicant is the only user of the impounded water.

5. Notice of the request for waiver of the inlet and outlet measuring devices was mailed to the Shoshone and Paiute tribes, Gem Irrigation District, and the South Board of Control. The parties were given until November 9, 1987, to comment on the request for waiver of the measuring device requirements.

6. The parties failed to respond by November 9, 1987.

7. The inflow-outflow measuring device requirement was imposed for the purpose of measuring natural inflow to the reservoir, and to accommodate releases of the natural flow measured by the outlet measuring device.

CONCLUSIONS OF LAW

1. Until the Department receives an objection from a water user claiming injury resulting from the permit holder's use, inlet and outlet measuring devices will not be required.

2. Right No. 55-7009 is subject to all prior rights, however, and measuring devices may be required in the future to

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FEB 29 1988

deliver natural flow rights to other right holders.

ORDER

IT IS HEREBY ORDERED that Paragraph 5 of the Order dated November 7, 1972, is WAIVED.

IT IS FURTHER ORDER, however, that a requirement for inlet and outlet measuring devices may be imposed in the future upon a determination by the Department that are necessary.

Dated this 25TH day of NOVEMBER, 1987.

R. KEITH HIGGINSON, Director
Department of Water Resources

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FEB 29 1988

CERTIFICATE OF MAILING

I hereby certify that on the 25th day of November, 1987, I mailed a true and correct copy, postage prepaid, of the Order Waiving Condition Requiring Installation of Measuring Devices to:

Riddle Ranches, Inc.
c/o Pete Jackson
Bruneau, ID 83604

William Tuller
327 North 27th Street
Boise, ID 83702-4797

South Board of Control
19 S.W. First
Homedale, ID 83628

Gem Irrigation District
119 S. First
Homedale, ID 83628

Shoshone/Paiute Tribes
P.O. Box 219
Owyhee, NV 89832

Jane L. Fox

JANE L. FOX, Receptionist

MICROFILMED

FEB 29 1988

Fo n 204
3 / 31

For Office Use Only	
Fee Received	15.00
Date	11-29-82
Receipt #	25301

RECEIVED
NOV 26 1982
Department of Water Resources

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

REQUEST FOR EXTENSION OF TIME

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

Riddle Ranches, Inc. (Name) of Riddle, Idaho via Bruneau, Idaho 83604 (Address)

State of _____, deposes and says.

That he is the holder, or the duly authorized agent of the holder*, of Permit to Appropriate the Public Water of the State of Idaho No 55-7009

That under the terms and conditions of said permit, work thereunder was required to be completed on or before December 1, 19 82

That he has heretofore performed the following work described under said permit: Design is complete. *(This must be filled out! If no work has been completed put none.)*
Site preparation consisting of removal of old embankment is complete. Construction of new embankment (earth fill dam) is approximately 30% completed. Outlet pipe is complete is complete except for headgate and tailpipe. Purchase of materials. Total cost to date is approximately Costing $ 80,000.00

Commenced Work 8ybee

That he is unable to complete the remainder of the work within the required time for the following reasons, to-wit:
Adverse weather and muddy conditions at the site limited actual construction time, thus it was not possible to complete the project in the time allowed. A flood washed out some of the work already completed and
(Continued Paragraph A, attached sheet.)

Wherefore, he asks that the Department of Water Resources extend the time for the completion of obligations under said permit to December 1, 19 87.
(1 yr minimum, 5 yrs maximum)

NOTE
AS OF JULY 1, 1980, THERE IS A $15 00 CHARGE FOR REQUESTS FOR EXTENSION OF TIME

Riddle Ranches Inc.
by Peter Jackson, Pres.
(Signature)*
**IF OTHER THAN HOLDER, Power of Attorney must be supplied*

ACTION OF THE DIRECTOR, DEPARTMENT OF WATER RESOURCES

IT IS HEREBY ORDERED that the above application for extension of time be APPROVED and the time within which to submit the statement of beneficial use is extended to December 1, 1987.

Signed this 9th day of December, 19 82

L. Glen Saxton
Chief, Operations Bureau

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RIDDLE RANCHES, INC.
Request for Extension of Time

Attached Sheet

Paragraph A:

therefore, it was necessary to reconstruct that portion of the project. Lack of material at the site caused design modification, which was also time consuming.

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STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

APPLICATION FOR EXTENSION OF TIME

State of Idaho)
County of ADA) Permit No. 55-7009

IDAHO LAND & APPRAISAL SERVICE for RIDDLE RANCHES, INC. (name) of RIDDLE via GRASMERE (address)

State of IDAHO, being first duly sworn, upon his oath deposes and says:

That he is the holder, or the duly authorized agent of the holder *, of Permit to Appropriate the Public Waters of the State of Idaho No. 55-7009.

That under the terms and conditions of said permit, work thereunder was required to be completed on or before 12/1/77, 19____.

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

Costing $____

That he is unable to complete the remainder of the work within the required time for the following reasons, to-wit: Right of Way over federal land was applied for March 23, 1971, and was not granted until August 19, 1977. Development of this water permit could not be commenced until approval of the right of way. See attached copy of grant.

Wherefore, he asks that the Department of Water Resources extend the time for the completion of obligations under said permit to December 1, 19 82.

POWER OF ATTORNEY NAMING IDAHO LAND & APPRAISAL SERVICE HAS ALREADY BEEN FILED WITH ORIGINAL APPLICATION.

Robert W. Smith (signature) *

Subscribed and sworn before me this 8th day of November, 19 77.

Laura J. Spangler

seal

Notary Public residing at Boise, ID

My bond expires 8/12/78

ACTION OF THE DIRECTOR OF THE DEPARTMENT OF WATER RESOURCES

IT IS HEREBY ORDERED that the above application for extension of time be APPROVED and the time within which to submit proof of beneficial use of water is extended to December 1, 1982.

Witness my hand this 21 day of November, 19 77.

Bob D. Fleenor
Chief, Operations Bureau

* IF OTHER THAN HOLDER, Power of Attorney must be supplied. Forms are available through the Department of Water Resources, Statehouse, Boise, Idaho 83720.

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT
Idaho State Office
Federal Building
550 W. Fort Street
P. O. Box 042
Boise, Idaho 38724

AUG 19 1977

DECISION
:
RIGHT-OF-WAY GRANTED

Details of Grant

Serial number of grant: I-4069

Name of grantee: Riddle Ranches, Inc.

Map showing the location and dimensions of grant:

Map designations: Bybee Dam and Reservoir

Date filed: March 23, 1971

Permitted use by grantee: Irrigation reservoir and dam

Authority for grant: P.L. 94-579 (Oct. 21, 1976) Title V, 90 Stat. 2743

Regulations applicable to grant:

Code reference: 43 CFR Parts 2800 and 2870

Date of grant: August 19, 1977

Expiration date of grant: 10 years

Rental:

Amount: $1,880 for 10 years

When payable by grantee: Advance rental paid for period of grant

Terms and Conditions of Grant

Pursuant to the authority vested in the undersigned by Order No. 701 of the Associate Director, Bureau of Land Management, dated July 23, 1964, (29 F. R. 10526), as amended, a right-of-way, the details of which are shown above, is hereby granted subject to the following terms and conditions:

1. All valid rights existing on the date of the grant.
2. All regulations specified above.
3. Filing of proof of construction within 5 years of the date of grant.
4. Further terms and conditions as follows:
   (a) Pursuant to 43 CFR 2801.1-5, the District Manager, Boise District Office, 230 Collins Road, Boise, Idaho, has the authority to conduct all business with the grantee with respect to use of lands and disposition of resources, and the grantee is requested to contact him prior to the beginning of construction.

   (b) Stipulations of Exhibits A and B attached hereto and made a part hereof.

Eugene E. Babin, Acting Chief
Branch of L&M Operations

Idaho Land & Appraisal Service

Real Estate Appraisers & Counselors
Land Management
Gas, Oil & Geothermal Filings

ROBERT W. SMITH, M A I.
STAN YOUNG, S.R.A.
LAURA J. SPANGLER
GERALD F THUMMEL
MARK W. RICHEY
JOE R. PAYNE

633 N. 4TH
P. O. BOX 1603
208 - 344-2547
BOISE, IDAHO 83701

September 6, 1977

TO WHOM IT MAY CONCERN:

This letter is for the purpose of clarifying who is eligible to sign those applications for water permit with Power of Attorney naming Idaho Land & Appraisal Service.

Idaho Land & Appraisal is a corporation, Robert W. Smith is Secretary and Shirley R. Smith is President. Either of us can sign as corporate officers. We both appoint Laura J. Spangler as agent to sign applications for water permit in our absence.

If you require any further clarification, please let us know.

Very truly,

IDAHO LAND & APPRAISAL SERVICE

Shirley R. Smith

Shirley R. Smith, President

Robert W. Smith, Secretary

Laura J. Spangler

Laura J. Spangler, Agent

BEFORE THE DEPARTMENT OF WATER ADMINISTRATION

OF THE

STATE OF IDAHO

IN THE MATTER OF APPLICATION FOR PERMIT NO. 55-7009 in the name of RIDDLE RANCHES, INC.	MEMORANDUM DECISION AND ORDER

Application for Permit No. 55-7009, filed by Riddle Ranches, Inc. came on regularly for hearing before the Department of Water Administration on November 23, 1971. The applicant was represented by Mr. William Ringert of the firm of Anderson, Kaufman, Anderson & Ringert. The protestant was represented by Mr. Maurice H. Greene.

The applicant seeks a permit to divert and store 8,050 acre feet of water annually from Shoofly Creek by construction of a dam within the NE¼SW¼ of Section 31, Township 13 South, Range 2 East,B.M., Owyhee County. The water will be stored from September 1 to July 1 of each year and will be released and used from April 1 to October 31 to irrigate 3,880 acres of land within Township 14 South, Ranges 1 and 2 East. The application was protested by the South Board of Control and Gem Irrigation District. A prehearing conference was held on July 29, 1971, at which time the parties agreed that the two points of contest were:

(1) That the water supply is insufficient for the purpose for which it is sought to be appropriated; and,

(2) That the proposed use is such that it will reduce the quantity of water available to existing water rights.

At the hearing, an additional point was raised regarding whether or not the water rights of the Paiute and Shoshone Indian tribes of the Duck Valley Indian Reservation could be considered in the proceeding. Representatives of the Department of the Interior, Bureau of Indian Affairs were present, but declined to participate in the proceedings except as witnesses for the protestant.

The Department took official notice of a report entitled Water Supply, Water Rights and Irrigation, Western Shoshone or Duck Valley Reservation, Nevada, Idaho, October, 1930, Volume II, by Charles A. Engle, an official publication of the Bureau of Indian Affairs. The Department also took official notice of the files of the Department, and more particularly of Permit No. 55-7002 previously issued to the applicant.

55 7009

After considering the testimony presented at the hearing and subsequent briefs and technical data submitted to the Department upon request, the Director of the Department of Water Administration hereby makes the following findings of fact, conclusions of law and order.

Findings of Fact

(1) Shoofly Creek is a tributary of Blue Creek which is, in turn, a tributary of the Owyhee River. At the present time, there is no definite channel of Shoofly Creek in its lower reaches, but testimony indicates that approximately 1,000 acre feet of water from Shoofly Creek would be tributary to Blue Creek in high run-off years.

Shoofly Creek has an average annual yield of only about 2,000 to 4,000 acre feet. Sufficient water to fill the proposed reservoir to its 9,000 acre feet total capacity would only be available about once in eleven to twelve years. For this reason, the project may be infeasible.

(2) Indians of the Duck Valley Indian Reservation have used water from Blue Creek for irrigation purposes for many years. It appears, however, that the efficiency of the irrigation using dikes to spread the water unevenly over the land may not be too high. The Indians have more irrigable land in the Blue Creek and Owyhee River Drainage than has actually been irrigated.

(3) The protestant, South Board of Control and Gem Irrigation District, receive water from the Owyhee Reservoir constructed by the U.S. Bureau of Reclamation. The project holds rights from the State of Oregon for a total active storage of 715,000 acre feet of water, dead storage of 420,000 acre feet and 1,718 second feet of direct flow diversion. The Owyhee Reservoir has filed to its full capacity and has spilled surplus inflows in 7 of the last 20 years and 17 of the 35 years in the 1936 to 1970 period. The total accumulated amount of water spilled in this 35 year period exceeds 6-1/2 million acre feet, or an average of 185,000 acre feet per year. The Owyhee Project obtains part of its water supply by pumping from the Snake River, and in dry years, when inflow to the reservoir is low, it is necessary to increase the amount of water pumped. Holdover storage is necessary in order to lessen the requirement for pumping and to provide water for the periods when inflow to the reservoir is less than the amount required to irrigate the project lands.

(4) Diversion of water by storage in the reservoir will affect the amount of water available in Blue Creek and the Owyhee River. To the extent that water from those streams is being applied to beneficial use, the storage will interfere with prior water rights. However, it appears that there are times when water may be di-

55 7009

verted as proposed by the applicant without affecting any existing water use.

Conclusions of Law

(1) The protestant, South Board of Control and Gem Irrigation District, is entitled to protection in their water supply against developments which would decrease inflow to the Owyhee Reservoir. However, because of the periods when the reservoir spills, water can be appropriated by others, provided proper conditions are included. These conditions should consider the periods of water spills as well as the availability of an alternate source (Snake River) to supply part of the water needed by the protestant.

(2) The Paiute and Shoshone Indians may be entitled to the use of water from Blue Creek and the Owyhee River. Such right has not been adjudicated and, therefore, its extent and applicability to Shoofly Creek is not known. In any event, the right is not likely to allow for the current wasteful and inefficient irrigation which is practiced along the creek. The Department has no authority in this proceeding to determine the extent of the Indian right and, therefore, cannot evaluate the extent to which water may be available for use by others.

Based on the foregoing, it is ordered that Application for Permit No. 55-7009 be and the same is hereby APPROVED subject to the following limitations and conditions:

(1) Storage and use of the waters of Shoofly Creek is subject to all prior water rights on streams to which it is tributary. This includes the rights of the Indians as well as the protestant's prior rights for storage in Owyhee Reservoir. In the event the Paiute & Shoshone Indians construct adequate facilities to use the waters of Blue Creek which would require these waters of Shoofly Creek, the applicant may be required to allow the water to pass on downstream.

(2) Water may be stored in the reservoir whenever available; however, in any given year, if the Owyhee Reservoir does not fill to its full capacity, the water stored in this proposed reservoir in that year must be released and passed on downstream past the applicant's ditches, unless the applicant can negotiate an agreement to compensate the protestant for the water lost. Such agreement could include payment to offset the increased cost of pumping Snake River water. If, in a given year, the Owyhee Reservoir fills to its full capacity, no water will be required to be released from the proposed reservoir to flow on downstream.

(3) Proof of construction of works and application of water to beneficial use shall be submitted to the Department of Water Administration on or before December 1, 1977. The Department will consider an extension of time beyond that date

only upon a showing of substantial progress toward construction of the dam in consideration of the above conditions of approval.

(4) The applicant shall allow employees of the Department of Water Administration, and any Watermaster appointed to regulate use of water under this permit, to have reasonable access to the dam for the purpose of supervising storage and use of this water.

(5) Measuring devices of a type approved by the Department of Water Administration capable of measuring the inflow to, the discharge from, and the water stored in the reservoir shall be installed and maintained by the applicant.

Dated this 7TH day of November, 1972.

R. KEITH HIGGINSON
Director

Identification No. 55-7009

Application No. _____

POWER OF ATTORNEY:
Idaho Land & Appraisal

STATE OF IDAHO
DEPARTMENT OF RECLAMATION
APPLICATION FOR PERMIT

APPROVED

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

1. Name of applicant Riddle Ranches, Inc.

   post office address Riddle via Grasmere, Idaho 83625

2 Source of water supply Shoo Fly Creek which is a tributary of East Fork of Owyhee

3 a. Location of point of diversion is NE ¼ of SW ¼ of Section 31 Township 13 S Range 2 E B.M. Owyhee County; additional points of diversion if any: _____

   b If water is not consumed, it will be discharged into _____ at a point in _____ ¼ of _____ ¼ of Section _____ Township _____ Range _____ B.M. _____

4 Water will be used for the following purposes:

   Amount 8,050 (~~cfs or~~ acre-feet per annum) for storage purpose from Sept. 1 to July 1 (both dates inclusive)

   Amount 8,050 (~~cfs or~~ acre-feet per annum) for irrigation purpose from April 1 to Oct. 31 (both dates inclusive)

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

5. Total quantity to be appropriated:

   a. 70.0 cubic feet per second and/or

   b. 8,050 acre feet per annum.

6 Proposed diverting works

   a Description of ditches, flumes, pumps, headgates, etc. plans to be submitted by Anderson & Kelly upon approval of application

   b Height of storage dam over 20 feet feet, active reservoir capacity 9,000 ± acre feet; total reservoir capacity 9,000± acre feet, materials used in storage dam. _____

   Period of year during which storage will occur _____ (Mo. Day) to _____ (Mo. Day) inclusive.

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

7 a Time required for the completion of the works and application of the water to the proposed beneficial use is 5 years

   b. Estimated construction cost is $_____.

8 Description of proposed uses:

   a If water is **not** for irrigation.

   (1) Give the place of use of water: _____ ¼ of _____ ¼ of Section _____ Township _____ Range _____ B M.

   (2) Amount of power to be generated _____ hp under _____ feet of head

   (3) List number of each kind of livestock to be watered _____

   (4) Name of municipality to be served _____, or number of families to be supplied with domestic water _____.

   (5) If water is to be used for other purposes describe. _____

55 7009

b. If water is for irrigation, indicate acreage in each subdivision in the tabulation below·

TWP	RANGE	SEC	NE¼				NW¼				SW¼				SE¼				TOTALS
			NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	

Total number of acres to be irrigated _____

c. Describe any other water rights used for the same purposes 8571 - 150 acres
13965 - 140 ac.

9. a. Who owns the property at the point of diversion BLM

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 right-of-way application to be filed

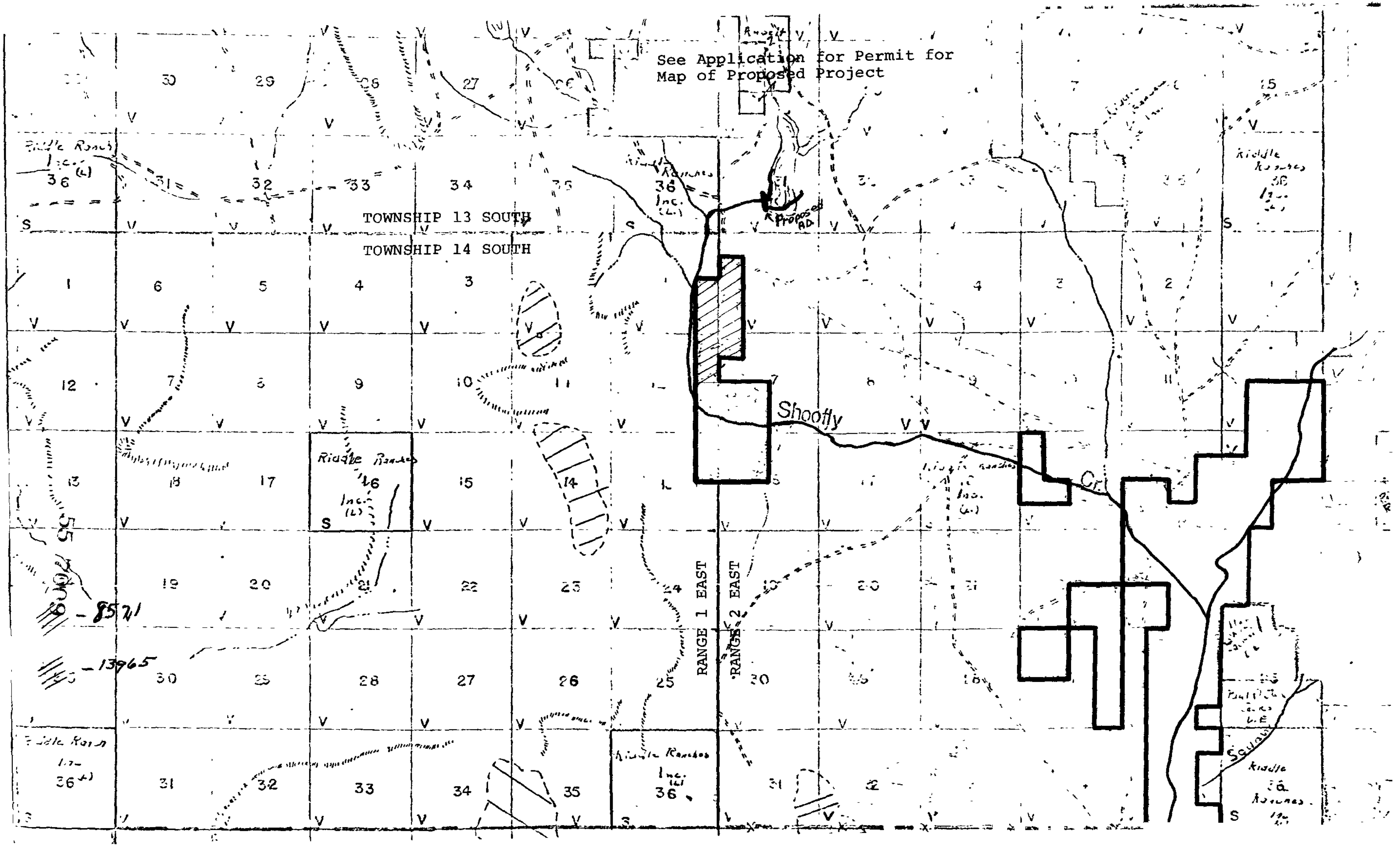
10. Remarks This application for 8,050 acre feet is in addition to the 950 acre feet already licensed with a priority of Oct. 21, 1912. The plans are to enlarge this storage dam to a total capacity of 9,000 acre feet more or less. This capacity is necessary to create an off-site spillway, for irrigation purposes, and for flood control.

55 7009

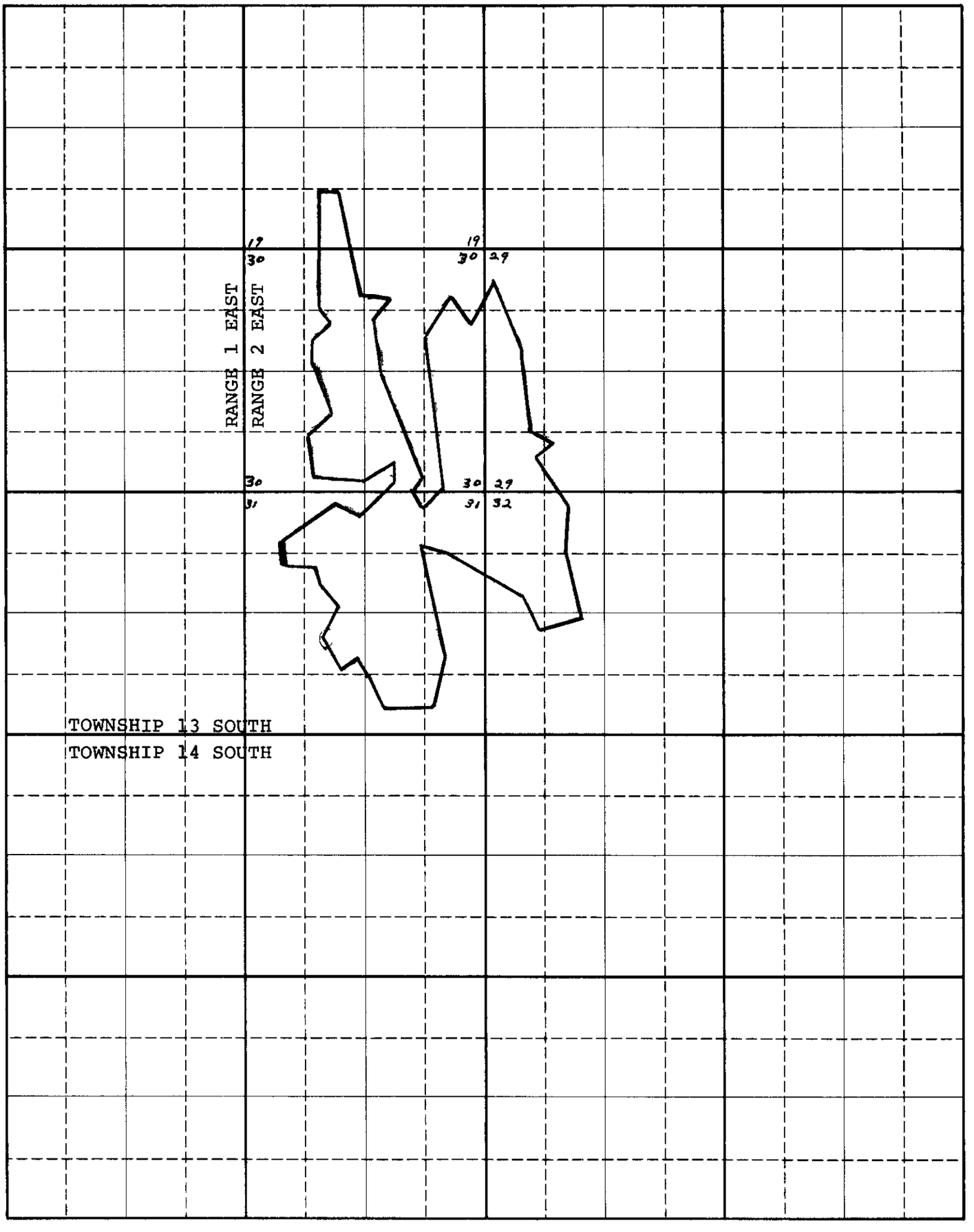
55 7069

Lands to be irrigated:

T 14 S, R 1 E	Sec.1	E½SE¼	80 ac.
	12	E½E½	160
	13	E½NE¼	80
T 14 S, R 2 E	Sec.6	SW¼NW¼, W½SW¼	120
	7	NW¼NW¼, SW¼	200
	12	SE¼, E½SW¼	240
	13	SW¼, NE¼, S½NW¼, NE¼NW¼	440
	14	SW¼, S½SE¼, NE¼SE¼, SE¼NE¼	320
	15	W½NW¼, N½SW¼	160
	18	NW¼	160
	22	SE¼	160
	23	N½, SE¼	480
	24	W½NW¼, NW¼SW¼	120
	26	NE¼, E½NW¼, E½SW¼, N½SE¼, SW¼SE¼	440
	27	E½E½, NW¼	320
	35	E½W½, W½E½, NE¼NE¼, SE¼SE¼	400
		Total	3,880


See Application for Permit for
Map of Proposed Project
TOWNSHIP 13 SOUTH
TOWNSHIP 14 SOUTH
RANGE 1 EAST
RANGE 2 EAST
Shoofly
Cr.
Proposed RD
Riddle Ranches Inc. (L)
Riddle Ranch Inc. (L)
55 7009 - 8521
- 13965

11. Map of proposed project:



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.

RIDDLE RANCHES, INC.

Harley M. McDowell
(Applicant)

55 7009

Received by [illegible] Date 2-23-71 Time 8:00 A

Preliminary check by [illegible] Fee $100.00

Receipted by [illegible] Date 2-24-71

Publication prepared by dr Date 3-10-71

Published in Owyhee Nugget at Marsing

Publication dates 3-18 & 3-25, 1971

Publication approved dr Date 3-30-71

Priority reduced to _____ Reason _____

Protests filed by. Tom Cotton, Secty-Mgr., South Board of Control and Gem Irri. Dist. 3-31-71

Copies of protests forwarded by dr

Hearing held by _____ Date _____

Recommended for approval denial by _____

ACTION OF STATE RECLAMATION ENGINEER

This is to certify that I have examined Application for Permit to appropriate the public waters of the State of Idaho No. 55-7009, 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 December 1, 1977.

   c. Other. Pursuant to Memorandum Decision and Order of this date.

2 Denial of said application is for the following reasons _____

Witness my hand this 7th day of November 1972.

[signature]
Director State Reclamation Engineer

55 7009

DEPARTMENT OF WATER ADMINISTRATION

STAFF ANALYSIS

Application No. 55-7009 Name Riddle Ranches, Inc.

Source Shoo Fly Creek

Point of Diversion NE¼SW¼, Sec. 31, T. 13 S, R. 2 E, B.M., Owyhee County

Quantity 8,050 acre-feet Use storage for irrigation Period Sept. 1 - July 1

Quantity 8,050 Use irrigation Period April 1 - Oct. 31

Quantity _____ Use _____ Period _____

Well Size _____ Diameter _____ Proposed Depth _____ Feet

Use 3,880 acres

Date Forwarded 3-11-71 Date Returned 4-21-71 Received by B.B.

COMMENTS: Storage during the spring months may interfere with prior rights on the creek. If this should occur sufficient water will have to be released to satisfy these rights.

RECOMMENDED:

Applied:	Qty. 8,050	Use Irr	Period April 1-Oct 31	AF/A		AF
	Qty.	Use	Period	AF/A		AF
	Qty.	Use	Period	AF/A		AF
Maximum:	Qty. 77.6 cfs	Use Irr	Period Open	AF/A	3.0	AF 11,640
	Qty.	Use	Period	AF/A		AF
	Qty.	Use	Period	AF/A		AF

ACTION: Approved X Denied _____

Conditions of approval or reason for denial: See Comments above

INVESTIGATIONS By Sherl H. Chapman Title WRIA II

Date 4/21/71

55 7009

PROOF OF PUBLICATION

STATE OF IDAHO
County of Owyhee } s.s.

I, RODNEY A. HAWES, being first duly sworn, on oath says that he is the Publisher of the OWYHEE NUGGET, a newspaper of general circulation, published weekly by Rodney A. Hawes, publisher and printer thereof, at Marsing, County of Owyhee, State of Idaho;

That the annexed notice was published in said newspaper once each week and every week for 2 consecutive weeks, the first publication being on the 18 day of March, 1971, and the last publication being on the 25 day of March, 1971;

That the said newspaper has been published continuously and uninterruptedly in said county during a period of more than seventy-eight consecutive weeks prior to the first publication of the attached notice.

Rodney A. Hawes
PUBLISHER

Subscribed and sworn to before me this 25 day of March 1971.

Keith Higginson
NOTARY PUBLIC

My commission expires 6-10-72

(SEAL)

[redacted]

Notice is hereby given that Riddle Ranches, Inc., Riddle—via — Grasmere, Idaho, has on February 23, 1971, submitted Application No. 55 - 7009 for a permit to store 8,050 acre feet per anum of water from Shoo Fly Creek, tributary to East Fork of Owyhee River, from September 1 to July 1, by means of a dam within the NE¼SW¼, Sec. 31, T. 13 S., R. 2 E., B. M., Owyhee County, to be diverted at the rate of 70.0 cubic feet per second and used from April 1 to Oct. 31 for the irrigation of 3,880 acres within the E½SE¼, Sec. 1; E½E½, Sec. 12; E½NE¼, Sec. 13; T. 14 S., R. 1 E., B. M., and SW¼NW¼, W½SW¼, Sec. 6; NW¼NW¼, SW¼, Sec. 7; SE¼, E½SW¼, Sec. 12; SW¼, NE¼, S½NW¼, NE¼NW¼, Sec. 13; SW¼, S½SE¼, NE¼-SE¼, SE¼NE¼, Sec. 14; W½-NW¼, N½SW¼, Sec. 15; NW¼, Sec. 18; SE¼, Sec. 22; N½, SE¼, Sec. 23; W½NW¼, NW¼-SW¼, Sec. 24; NE¼, E½NW¼, E½SW¼, N½SE¼, SW¼SE¼, Sec. 26, E½E½, NW¼, Sec. 27; E½W½, W½E½, NE¼NE¼, SE¼SE¼, Sec. 35; T. 14 S., R. 2 E., 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 April 5, 1971.

R. KEITH HIGGINSON
Director

Published in the Owyhee [redacted]

55 7009

RE[illegible]

[illegible] 1971

Department of Water Administration

STATE OF IDAHO

OFFICE OF STATE RECLAMATION ENGINEER

POWER OF ATTORNEY

The undersigned owner (s) of Permit (Application) No. attached of the State Reclamation Engineer of the State of Idaho hereby nominates and appoints IDAHO LAND & APPRAISAL SERVICE, whose address is P. O. BOX 1603, Boise, Idaho, as attorney-in-fact, with full authority to act for and on behalf of the undersigned in all matters pertaining to Application or Permit. Such acts shall include, but not be limited to the filing of applications, receiving of all notices, the signing and filing of applications for extension of time and for amendment of said Permit, and the submission of proofs of completion of works and beneficial use of water.

Dated this 27th day of January, 1971.

RIDDLE RANCHES, INC.

BY: Peter Jackson, Pres

STATE OF IDAHO)
) ss
County Ada)

On this 27th day of January 1971, personally appeared before me the signer (s) of the above instrument, who duly acknowledged to me that he (she) (they) executed the same.

Laura J. Spangler
Notary Public

My Commission expires:
8/12/74

55 7009

August 24, 1990

RIDDLE RANCHES INC.
RIDDLE RT.
BRUNEAU, ID 836040000

RE: PERMIT NO. 55-07009

Dear Permit Holder(s):

Enclosed herewith is a copy of the Water Right License issued on the above referenced permit along with a copy of your approved application for amendment.

Should you have any questions regarding these documents, please feel free to contact our office.

Sincerely,

JIM JOHNSON
Water Rights Supervisor

JJ:sc

Enclosure

MICROFILMED
SEP 12 1990

July 19, 1990

RIDDLE RANCHES INC.
RIDDLE RT.
BRUNEAU, ID 836040000

RE: PERMIT NO. 55-07009

Dear Permit Holder(s):

The above referenced water right is in the process of being licensed. However, before a license can be issued, your permit must be amended to correspond with the findings of the Department's field examiner.

The enclosed application for amendment contains information that will be included on the license when it is issued. Please review carefully and if you concur, sign the amendment and return with the $20.00 filing fee within 30 days.

If you do not concur with these findings or if you have any questions, please contact us within the 30-day period.

Sincerely,

JIM JOHNSON
Water Rights Supervisor

JJ:sc

Enclosure

MICROFILMED
SEP 12 1990

Form 219
6/86

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

RECEIVED
FEB 13 1990
Department of Water Resources

BENEFICIAL USE FIELD REPORT

A. GENERAL INFORMATION

Permit No. 55-7009

1. Owner: RIDDLE RANCHES, INC Phone No. 759-3298
   Current Address: RIDDLE ROUTE, BRUNEAU, ID. 83604
2. Accompanied by: PETER JACKSON EXAM. DATE: 6-24-88
   Address: SAME Phone No SAME
   Relationship to Permit Holder: OWNER
3. Source: SHOO FLY CREEK tributary to EAST FORK OF OWYHEE RIVER

B. OVERLAP REVIEW

1 Other water rights with same place of use: 55-7002 55-2035
☒ Copies Attached

2 Other water rights with same point of diversion. 55-2035 55-2211
☒ Copies Attached ☐ Copies of Field Exam's Attached

C. SYSTEM DESCRIPTION

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

RECEIVED
SEP 12 1990

Scale: 1" = _____.

PHOTOS NOT AVAILABLE

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

☒ Aerial Photo Attached AT EXAM TIME
(required for irrigation of 10 acres or more).

System Description (continued)

3 **Narrative:** Description (As operating at time of measurement. Indicate pressure, number of sprinklers, etc.)

The SYSTEM IS A STORAGE RESERVOIR WITH A GATED DISCHARGE INTO SHOOFLY CREEK. WATER IS RE-DIVERTED TO FLOOD IRRIGATE LANDS IN SEC 6 & 7 OF 14S, 2E AND SEC. 1 & 12 IN 14S, 1E. WATER IS COLLECTED BACK INTO SHOOFLY CREEK TO AGAIN BE REDIVERTED TO IRRIGATE LANDS IN SEC 14, 23, 26, AND 35 OF 14S, 2E THIS WATER CAN BE MINGLED WITH WATER FROM 55-7002 AT THE END OF SEC. 7; 14S, 2E.

See Remarks on page 4 for continuation

4. N/A.

Well or Diversion Identification No.*	Motor Make	Hp	Motor Serial No.	Pump Make	Pump Serial No. or Discharge Size

**Code to correspond with No. on map and aerial photo*

5 **Point(s) of Diversion:**

Ident. No.	Gov't. Lot	¼	¼	¼	Sec.	Twp.	Rge.	County	Method of Determination/Remarks
			NE	SW	31	13S	2E	OWYHEE	ORTHOPHOTOGRAPHIC QUADMAP

6. **Place(s) of Use:** Indicate Method of Determination

Twp.	Rge.	Sec.	NE¼				NW¼				SW¼				SE¼				Totals
			NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	
14S	1E	~~1~~													15			20	35 (LICENSED UNDER 55-2011)
		~~12~~	30			20													50
14S	2E	~~6~~							~~2~~			39	32						73 (LICENSED UNDER 55-2035)
		~~7~~						16											16
		14	EXCLUDED FROM SYSTEM									13	26						39
		23	~~40~~ ~~40~~		40	40	8	31	39	37					40	40	40	36	~~431~~ ~~351~~ less 80
		26	27	40	40	22	40			40	40			40	35	40	40		404
		35		40	40		35				40			40	40	35			270

~~TOTAL 1318~~

TOTAL ~~####~~ 1,064

MICROFILMED

Do not use this space SEP 12 1990

Do not use this space

D. FLOW MEASUREMENTS

☐ Additional Data Sheets Attached

1

Measurement Equipment	Type	Make	Model No.	Serial No.	Size	Calib. Date

2. **Measurements:**

IN STREAM STORAGE, NO MEASUREMENT REQ.. MEASUREMENT DEVICE REQUIREMENT WAIVED.

E. FLOW CALCULATIONS

☐ Additional Computation Sheets Attached

1 Measured Method:

N/A

2. Alternate Method for Checking Purposes:

F. PUMP EFFICIENCY DATA (Optional)

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

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

Water HP: (3) x (4) ÷ 8.8 = _____ (5)

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

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

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

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

MICROFILMED

SEP 1 2 1990

G. VOLUME CALCULATIONS

1. Volume Calculations for Irrigation:

V_{IR} = (Acres Irrigated) x (Irrigation Requirement) = _____

V_{DR} = [Diversion Rate (cfs)] x (Days in Irrigation Season) x 1.9835 = _____

V = Smaller of V_{IR} and V_{DR} = _____

2 Volume Calculations for Other Uses:

CURRENT CAPACITY: 7970 AF

LICENSED FOR: 950 AF

7020 A.F.

H. REMARKS AND OVERLAP REVIEW ANALYSIS

THIS PERMIT INCREASES THE ACREAGE IRRIGATED AND THE STORAGE CAPACITY OF THE RESERVOIR. 55-2211 AND 55-2035 ARE LICENSED FOR 950 AF. (RESERVOIR CAPACITY AT THAT TIME)

FOR LICENSING PURPOSES, THE 950AF IS EXCLUDED FROM THE PRESENT CAPACITY OF 7970 (FROM DAM INVENTORY).

FOR LICENSING PURPOSES ACREAGE UNDER 55-2211 AND 55-2035 ARE EXCLUDED FROM THIS RIGHT.

ACREAGE WAS DETERMINED THROUGH EVALUATION OF SOME PERSONAL AERIAL PHOTOS OF MR. JACKSON'S AND FIELD OBSERVATIONS OF IRRIGATED ACRES. INFO WAS TRANSFERED TO QUAD MAP, AND WITH FIELD NOTES ~~OF~~ ACREAGE WAS FOUND. ~~SHEET~~.

I. RECOMMENDATIONS

1. Recommended Amounts

Beneficial Use	Period of Use From	Period of Use To	Rate of Diversion Q (cfs)	Annual Volume V (afa)
STORAGE FOR IRRIGATION	9-1	7-1	NA	7020
IRRIGATION FROM STORAGE	4-1	10-31	NA	7020
		Totals:		7020 AFA

2. Recommended Amendments

☐ Change P.D. as reflected above ☐ Add P.D. as reflected above ☒ None

☐ Change P.U. as reflected above ☐ Add P.U. as reflected above ☐ Other

J. AUTHENTICATION

Field Examiner's Name KELLY K. CHRISTENSEN.

JFW 1/10/90

Signature Kelly K Christensen

Certification Date

Field Report Preparation Date 1-10-89

David R. Tuthill

PROFESSIONAL ENGINEER REGISTERED 3909 2/6/90 STATE OF IDAHO DAVID R. TUTHILL, JR.

CONSULTANT SEAL

K. Licensing recommendation shall be prepared by an Idaho Department of Water Resources employee on a computer printout attached hereto.

MICROFILMED

SEP 1 [illegible]

5. Point(s) of Diversion:

± 55-7009

	Ident. No.	Gov't. Lot	¼	¼	¼	Sec.	Twp.	Rge.	County	Method of Determination/Remarks
55	7009			NE	SW	31	13S	2E		

6. Place(s) of Use: Indicate Method of Determination

	Twp.	Rge.	Sec.	NE¼ NE¼	NE¼ NW¼	NE¼ SW¼	NE¼ SE¼	NW¼ NE¼	NW¼ NW¼	NW¼ SW¼	NW¼ SE¼	SW¼ NE¼	SW¼ NW¼	SW¼ SW¼	SW¼ SE¼	SE¼ NE¼	SE¼ NW¼	SE¼ SW¼	SE¼ SE¼	Totals	Acres Per Survey
55-7009	14S OK	1E	1													46			38	80	8050
	OK		12	38 40			38 40									40			40	160	
	out		13	40			40													80	
	14S OK	2E	6							43			39 40	33 40						120	
	OK		7					46 40				40	40	40	40					200	
	out	~3	12									40			40	40	40	40	40	240	
	out	~	13	40	40	40	40	40		40	40	40	40	40	40					440	
	OK	~	14				40					40	43 40	39 40	40	40	40	40	40	320	
	out		15						40	40		40	40							160	
	out		18					40	40	40	40									160	
	out		22													40	40	40	40	160	
	OK		23	40 OK	40 OK	40 OK	40	40	36 40	39 40	37 40	—	—	—	—	40 OK	40 OK	40 OK	40	480	
	out	1	24						40	40			40							120	
	OK		26	37 40	40 OK	40 OK	39 40	40 OK	—	—	40 OK	40 OK	—	—	40 OK	35 40	40 OK	40	—	440	
	out		27	40			40	40	40	40	40					40			40	320	
	OK		35	40	40 OK	40 OK	•	40	—	—	40	40	—	—	40	40	40	40	40	400	

0 — 35 • 40 40 40 35

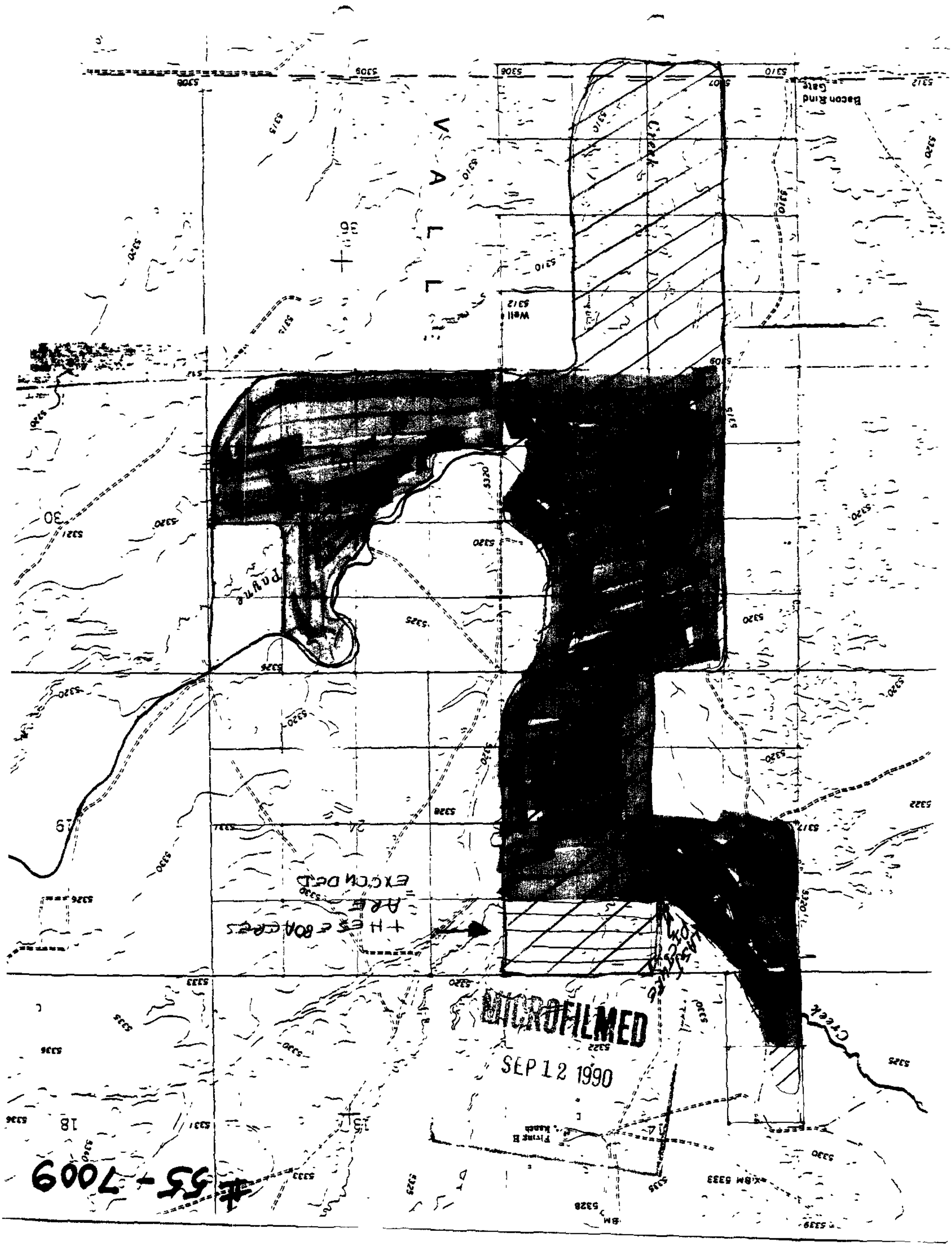
TOTAL ACRES 3880

FIELD NOTES ON ACRES FOUND.

Do not use this space

MICROFILMED

SEP 12 1990


MICROFILMED
SEP 12 1990
#55-7009

14S - 2E
5338
5330
5339
BM 5328
BM 5333
5333
15
14
Creek
5322
5329
5319
THESE 80
ARE
EXCLUDED
24
5328
5326
5320
27
25
5311
5309
Well
5312

#55-70C 2
JEEP TR
Reservoir
1E 2E
5430
5628
BM 5418
5407
BM 5442
BM 5433
5690
Spring
JEEP
JEEP
5528
ALL ACRES
PREVIOUSLY LICENSED
AND EXCLUDED FROM THIS
PERMIT. (55-7009
Lake
5732
5746
TRAIL
5508
5392
5229
Creek
5681
5410
JUNIPER
LAKE
5730
Yatahoney
Reservoir No 2
SEP 12 1990
5585
5742
5909
Yatahoney
Reservoir No 1
5551
35
36
42
11
12
8
14
13
18
17
23
19
20
4677
4676
4675
4674
4672

#55-7009

PICTURE TAKEN LOOKING SOUTH

55-7009

55-7002 [redacted]

← THIS ACREAGE EXCLUDED FROM 55-7009 AS IT WAS PREVIOUSLY LICENSED.

R1E R2E

360 000 FEET

Bybee Reservoir

JEEP TR

Shoofly Creek

Yatahoney Reservoir No 2

Yatahoney Reservoir No 1

Mud Flat

Flynn H

Corral

Spring

JEEP TRAIL

SEP 12 1990

#55-7009

LOOKING SOUTH FROM SE/NE/NW SEC 23 14S 2E.

MICROFILMED
SEP 12 1990

#55-7009

FROM DYKE AT P/D LOOKING SOUTH

LOOKING SOUTH FROM SW/NW SEC 6 14S, 2E

IRRIGATED ACRES IN SEC 6

MICROFILMED
SEP 12 1991

State of Idaho
DEPARTMENT OF WATER RESOURCES
WESTERN REGION, 2735 Airport Way, Boise, Idaho 83705 • (208) 334-2190

CECIL D. ANDRUS
Governor

R. KEITH HIGGINSON
Director

February 23, 1988

55-7009
Riddle Ranches, Inc.
Riddle Rt.
Bruneau, ID 83604

Dear Applicant(s):

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

Before a license can be issued, a field examination must be made by a representative of this Department. A field examiner will contact you to arrange to examine your system.

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

Sincerely,

Judy Pense
Secretary

/jp

MICROFILMED
SEP 12 1990

1/88

PROOF OF BENEFICIAL USE

ANALYSIS SHEET

Permit No. 55-7009 Date: 1-14-1988

General Considerations:
- Y Name same as permit
- Y Signature the same as permit holder
- Y Address change _____ If yes, prepare a data entry
- Y Proof received timely
- N/A Reinstated

Source of Water:
- Y Surface water
- — Groundwater
  - — 1. well log in file
  - _____ 2. drilling permit
    - _____ A. amount of drilling fee paid for proposed uses

Extent of Use and Rate of Diversion:
- Y Rate of diversion appropriate for uses
  - Y Is rate or volume and fee appropriate?
- Y Has permit holder indicated when water was first put to a beneficial use?

Measuring Device:
- _____ Is a measuring device or access port required?
- _____ Has one been installed?
- Y Waiver or modification of measuring device requested

Remarks: -
M. D. waived per order

N/A Priority Calculation:

Date proof received	_____	_____
Date proof due	_____	+_____
No. of days late		=_____
Priority date	_____	+_____
NEW PRIORITY DATE	_____	=_____

SEND FILES TO DATA ENTRY AND THEN TO MICROFILM

Form 217
03/86

RECEIVED
NOV 27 1987
Department of Water Resources
Western Regional Office

RECEIVED
NOV 30 1987
Department of Water Resources

For Office Use Only
Fee Received $600
Date 11/27/87
Receipt # 460232
Receipt by
Reviewed by
Sent to region

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

PROOF OF BENEFICIAL USE

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

Permit No. 55-7009

Name(s) of Permit Holder: Riddle Ranches Inc.

Post Office Address: Riddle Rt Bruneau Idaho 83604

Telephone No. 208-759-3298

Source of Water: Shoofly Creek

Extent of Use:

Domestic _____ (number of households) Stockwater _____ (number and type of stock)

Irrigation 3880 (acres) Other/Remark _____

Total rate and/or volume for which proof is submitted _____ cfs 8050 acre-feet

Show the date water was first diverted and beneficially used under this permit: March 1986.

Measuring Device: Required? X Yes __ No Fee enclosed $ 600 00
Installed? __ Yes __ No (See License Examination Fee Schedule)

REMOVAL HAS BEEN REQUESTED - REPLY IS PENDING JS - See order of 11-25-1987.
Flow Measurement Port: Required? __ Yes __ No
Installed? __ Yes __ No

Person to contact to accompany the Department representative during the field examination:

Peter Jackson (Name) 208-759-3298 (Telephone Number)

Riddle Ranches Bruneau Id 83604 (Address)

The above information is my true statement of the extent to which the above numbered permit has been developed and I relinquish any undeveloped portion of the permit to the state of Idaho.

MICROFILMED
FEB 29 1988

November 27, 1987 Date

Riddle Ranches Inc by Peter Jackson, Pres. Signature of Permit Holder (and title, if appropriate)

te of Idaho
DEPARTMENT OF WATER RESOURCES
STATE OFFICE, 450 W. State Street, Boise, Idaho

CECIL D. ANDRUS
Governor
R. KEITH HIGGINSON
Director

Mailing address:
Statehouse
Boise, Idaho 83720
(208) 334-4440

November 25, 1987

Riddle Ranches, Inc.
c/o Pete Jackson
Bruneau, ID 83604

Re: Application for Permit No. 55-7009

Dear Applicant:

Enclosed is a copy of the Order Waiving Condition Requiring Installation of Measuring Devices.

Please be advised that if you do not agree with the decision of the Department, you may within fifteen (15) days of receipt of the Order, request a hearing before the Director. Failure to timely petition the Director within fifteen days of the receipt of the Order may prevent you from further contesting the Order.

Sincerely,

Gary Spackman

GARY SPACKMAN, Supervisor
Water Allocation Section

GS:jf

CC: William Tuller

Enclosures

MICROFILMED
FEB 29 1988

State of Idaho
DEPARTMENT OF WATER RESOURCES
STATE OFFICE, 450 W. State Street, Boise, Idaho

CECIL D. ANDRUS
Governor

R. KEITH HIGGINSON
Director

Mailing address:
Statehouse
Boise, Idaho 83720
(208) 334-4440

October 13, 1987

Shoshone/Paiute Tribes
P.O. Box 219
Owyhee, NV 89832

Re: Permit for storage of water on Shoofly Creek No. 55-7009

To Whom It May Concern:

In 1972, the Department of Water Administration (now the Department of Water Resources) issued a permit to Riddle Ranches, Inc. to develop a storage facility for irrigation on Shoofly Creek, tributary to Blue Creek. The permit was issued following a hearing in which you participated. The permit to appropriate water was issued with various conditions as set forth in the Memorandum Decision and Order, dated November 7, 1972. One of the conditions provided that "measuring devices of a type approved by the Department of Water Administration capable of measuring the inflow to, the discharge from, and the water stored in the reservoir shall be installed and maintained by the applicant."

The Department of Water Resources has received a request from Pete Jackson, the owner of Riddle Ranches, requesting that the Department waive the condition requiring inflow and outflow measuring devices. The Department is considering the request, but will not rule without giving the parties to the initial action an opportunity to present their views.

The Department will withhold administrative consideration of the request to waive the measuring device requirements until November 9, 1987. We solicit your input on or before that date.

Sincerely,

Gary Spackman

Gary Spackman, Supervisor
Water Allocation Section

GS:jf

CC: William H. Tuller
Western Region
Riddle Ranches, Inc.

MICROFILMED
FEB 29 1988

State of Idaho
DEPARTMENT OF WATER RESOURCES
STATE OFFICE, 450 W. State Street, Boise, Idaho

CECIL D. ANDRUS
Governor
R. KEITH HIGGINSON
Director

Mailing address:
Statehouse
Boise, Idaho 83720
(208) 334-4440

October 13, 1987

Gem Irrigation District
119 S. First
Homedale, ID 83628

Re: Permit for storage of water on Shoofly Creek No. 55-7009

To Whom It May Concern:

In 1972, the Department of Water Administration (now the Department of Water Resources) issued a permit to Riddle Ranches, Inc. to develop a storage facility for irrigation on Shoofly Creek, tributary to Blue Creek. The permit was issued following a hearing in which you participated. The permit to appropriate water was issued with various conditions as set forth in the Memorandum Decision and Order, dated November 7, 1972. One of the conditions provided that "measuring devices of a type approved by the Department of Water Administration capable of measuring the inflow to, the discharge from, and the water stored in the reservoir shall be installed and maintained by the applicant."

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Sincerely,

Gary Spackman

Gary Spackman, Supervisor
Water Allocation Section

GS:jf

CC: William H. Tuller
Western Region
Riddle Ranches, Inc.

MICROFILMED
FEB 29 1988

State of Idaho
DEPARTMENT OF WATER RESOURCES
STATE OFFICE, 450 W. State Street, Boise, Idaho

CECIL D. ANDRUS
Governor

R. KEITH HIGGINSON
Director

Mailing address:
Statehouse
Boise, Idaho 83720
(208) 334-4440

October 9, 1987

South Board of Control
19 S.W. First
Homedale, ID 83628

Re: Permit for storage of water on Shoofly Creek No. 55-7009

To Whom It May Concern:

In 1972, the Department of Water Administration (now the Department of Water Resources) issued a permit to Riddle Ranches, Inc. to develop a storage facility for irrigation on Shoofly Creek, tributary to Blue Creek. The permit was issued following a hearing in which you participated. The permit to appropriate water was issued with various conditions as set forth in the Memorandum Decision and Order, dated November 7, 1972. One of the conditions provided that "measuring devices of a type approved by the Department of Water Administration capable of measuring the inflow to, the discharge from, and the water stored in the reservoir shall be installed and maintained by the applicant."

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Sincerely,

Gary Spackman

Gary Spackman, Supervisor
Water Allocation Section

GS:jf

CC: William H. Tuller
Western Region
Riddle Ranches, Inc.

MICROFILMED
FEB 29 1988

138963

CERTIFIED MAIL
September 30, 1987

RIDDLE RANCHES INC.
RIDDLE VIA
GRASMERE, ID 83625

PROOF DUE NOTICE

RE: Permit No. 55-7009

Dear Permit Holder:

One of the conditions of approval of the above referenced water permit was that proof of the extent of your beneficial use must be submitted to this office on or before December 1, 1987. (See last page of your approved permit or your last approved extension request.) Enclosed is a form which when accompanied by the license examination fee or a completed field examination report prepared by a certified water right examiner may be used to submit the required proof.

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

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

Sincerely,

RITA FLECK
Secretary/Records Manager

Enclosures

MICROFILMED

FEB 29 1988

INTER-DEPARTMENT MEMO — 1

FROM Mike Stubblefield

DATE 9/18/87

TO DAVE DNS ✓I concur → Gary Spackman

FILE NO. 55-7009

SUBJECT ATTACHED LETTER

I AGREE WITH THE ATTACHED LETTER AND RECOMMEND THE MEASURING DEVICE REQUIREMENT BE WAIVED. AS WE DISCUSSED, ONE STIPULATION TO THE WAIVER WOULD BE THAT ~~IF~~ THE DEPARTMENT MAY REQUIRE THE MEASURING DEVICES INSTALLED AT SOME FUTURE TIME IF DEEMED NECESSARY. ALSO, THE STAFF GAGE ON THE RESERVOIR WILL BE INSTALLED.

RECEIVED
SEP 18 1987
Department of Water Resources

Amr
SIGNATURE

MT ENGINEERS

Mc CARTER AND TULLER, INC. CONSULTING ENGINEERS

327 NORTH 27TH STREET • BOISE, IDAHO 83702-4797 • AREA CODE 208/344-0676

RECEIVED
SEP 16 1987
Department of Water Resources

September 15, 1987

RECEIVED
SEP 17 1987
Department of Water Resources
Western Regional Office

Mike Stubblefield
Department of Water Resources
Statehouse
Boise, Idaho 83720

Re: Bybee Dam ← File No. 55-7009
Riddle Ranches
Owyhee County

Dear Mr. Stubblefield:

Mr. Pete Jackson requests a waiver for requiring the installation of Parshall flumes at the inlet and outlet to the reservoir behind Bybee Dam for the following reasons:

1. There is no established water district.
2. The impounded water is mainly spring runoff.
3. Shoofly Creek is an intermittant stream.
4. The only access in the spring is by helicopter or horse back, making it impractical to get inflow records.
5. The applicant is the only user of the impounded water.

We would appreciate your consideration of this request, since completion of the dam and appurtenances is expected by this fall.

Yours very truly,

William H Tuller

William H. Tuller, P.E./L.S.

WHT:KMW
cc: Pete Jackson

RECEIVED
FEB 29 1988

December 17, 1982

Riddle Ranches, Inc.
Riddle, ID
via Bruneau, ID 83604

Gentlemen::

Re: Permit No. 55-7009

Enclosed is a copy of the approved request for extension of time. The time within which to submit the statement of beneficial use postcard is extended to December 1, 1987.
Sincerely,

RITA I. FLECK
Sr. Secretary

Enc: Extension of Time

MICROFILMED

State of Idaho
DEPARTMENT OF WATER RESOURCES
STATE OFFICE, 450 W. State Street, Boise, Idaho

JOHN V. EVANS
Governor

A. KENNETH DUNN
Director

Mailing address
Statehouse
Boise, Idaho 83720
(208) 334-4440

EXTENSION OF TIME

November 29, 1982

Joseph J. Thackaberry
6904 Overland Road
Boise, ID 83709

PERMIT NO. 55-7009, Riddle Ranches, Inc.

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

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

Enclosure is our receipt No. 25301.

Roberta Garrett
Records Supervisor

Enclosure

MICROFILMED

STATE OF IDAHO

DEPARTMENT OF WATER RESOURCES

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

38713

RIDDLE RANCHES INC.
RIDDLE VIA
GRASMERE, ID 83625

SEPTEMBER 30, 1982

DEAR PERMIT HOLDER:

ONE OF THE CONDITIONS OF APPROVAL OF YOUR WATER PERMIT NO. 55-7009 WAS THAT EVIDENCE OF THE EXTENT OF DEVELOPMENT MUST BE SUBMITTED TO THIS OFFICE ON OR BEFORE DECEMBER 01, 1982. (SEE LAST PAGE OF YOUR APPROVED PERMIT). ENCLOSED IS A POST CARD WHICH MAY BE USED TO SUBMIT THE REQUIRED PROOF OF BENEFICIAL USE.

IF YOU HAVE NOT FULLY COMPLETED YOUR PROJECT, AND YOU HAVE NOT PREVIOUSLY RECEIVED AN EXTENSION OF TIME, YOU MAY REQUEST AN EXTENSION OF TIME PROVIDED THE DELAY IS FOR REASONABLE CAUSE AS INDICATED IN SECTION 42-204, IDAHO CODE, AMENDED. IF YOU HAVE BEEN PREVENTED FROM PROCEEDING BY A GOVERNMENTAL AGENCY OR BY LITIGATION, MORE THAN ONE EXTENSION OF TIME CAN BE GRANTED.

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

SINCERELY,

RITA FLECK
SR. SECRETARY

ENC: 1

cc: Idaho Land and Appraisal Service

3/79

IDENT. NO. 55-7009

IDAHO DEPARTMENT OF WATER RESOURCES

WATER RIGHT DATA ENTRY LOG

Initials	Date	Item
		Original form entered
		Edit Report Correct
		Date Protested
		Date of Hearing
		Date Approved/Denied (Proof due date, stage and/or status, conditions of approval, water district)
		Record Verified
		Amendment Approved
		Extension Approved
		Partial Proof
		Proof Complete
		Field Exam Received
		Field Exam Accepted and changes entered
		License Signed
		Transfer Approved
clr	6-19-79	Keypunched by State Office

(3) In Conclusion of Law No. (1) in referring to reservoir spills, this should be interpreted to include all water which might be released from the reservoir for purposes other than irrigation. This would include waters released to provide flood control space or to maintain stream flow below the dam. If the total of such waters released would have filled the reservoir and caused it to spill, then we would consider the rights of the South Board of Control and the Gem Irrigation District as having been satisfied.

I hope these statements clarify any question you have concerning our decision.

Very truly yours,

R. KEITH HIGGINSON
Director

RKH:mjl

cc: Mr. Tom Cotton, Secretary-Manager
South Board of Control, Owyhee Project
Box 67
Homedale, Idaho 83628

Idaho Land & Appraisal
Box 1603
Boise, Idaho 83701

Mr. Jack A. Barnett
Executive Director
Idaho Water Users Association
Room 201, Idaho Building
Boise, Idaho 83701

Mr. Maurice H. Greene
Attorney for South Board of Control
Owyhee Project
2619 Camas Street
Boise, Idaho 83705

U. S. Department of the Interior
Office of the Solicitor
Room 410, Arizona Title Building Annex
135 North 2nd Avenue
Phoenix, Arizona 85003

U. S. Department of the Interior
Bureau of Indian Affairs
West Shoshone Sub-Agency
Owyhee, Nevada 89832

U. S. Bureau of Land Management
230 Collins Road
Boise, Idaho

November 24, 1972

Mr. William F. Ringert
Anderson, Kaufman, Anderson and Ringert
Lawyers
Idaho Building
Boise, Idaho 83701

Re: Application No. 55-7009, Riddle Ranches, Inc.

Dear Mr. Ringert:

You have asked for a clarification of three points included in our Memorandum Decision and Order dated November 7, 1972 concerning Application No. 55-7009, in the name of Riddle Ranches, Inc. I will be happy to clarify these three points, since there may be some misunderstanding concerning our intent as expressed by that order.

(1) The statement in Finding of Fact No. (1) that "the project may be infeasible" was not based upon the detailed engineering determination of feasibility. It was based entirely upon the estimates of water supply. We made no comparison between the cost of construction of the enlarged reservoir and the reservoir storage yield.

(2) In Finding of Fact No. (4), we indicated that storage of water in the reservoir would interfere with prior water rights when water is being applied to beneficial use. This is only true when the water supply is insufficient to satisfy those rights.

MISCELLANEOUS

November 21, 1977 Re: Permit No. 55-7009

Riddle Ranches, Inc.
Riddle via Grasmere, Idaho
83625

Gentlemen:

Enclosed is a copy of the approved application for extension of time in connection with the above referenced permit.

The time within which to submit proof of beneficial use of water has been extended to December 1, 1982.

Sincerely,

Jan Grover
Water Rights Supervisor

cc: Idaho Land & Appraisal Service

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
S[illegible]ouse
B[illegible], Idaho 83720

RECEIVED
MAR 25 [illegible]
Department of Water Resources

File in
55-7009

MAR 18 77
U.S. POSTAGE
13
PD METER 347867

384 1911

U.S. Department of the Interior
Office of the Solicitor
Room 410, Arizona Title Building Annex
135 North 2nd Avenue
Phoenix, AR 85003

Valley Bank Center
Suite 2080
201 N. Central Ave
85073

NOT DELIVERABLE
A[illegible]DDRESSED
UNABLE TO FORWARD
RETURN TO WRITER

PHOENIX AZ 85079
PM
21 MAR
1977

September 30, 1977 CERTIFIED MAIL 138976

Re: Permit No. 55-7009

Riddle Ranches, Inc.
Riddle via Grasmere, ID
83625

Gentlemen:

One of the conditions of approval of your water Permit No. 55-7009 (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 December 1, 1977. 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.

C. Stephen Allred

C. STEPHEN ALLRED
Director

CSA:jfr

Enc: Proof affidavit

cc: Idaho Land & Appraisal, 633 4th St., Boise, ID 83702

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

Cecil D. Andrus
Governor

R. Keith Higginson
Director

Statehouse
Boise, Idaho 83720
(208) 384-2215

March 18, 1977

Riddle Ranches, Inc.
Riddle via Grasmere, ID 83625

Gentlemen:

On November 7, 1972, I approved your application and issued permit 55-7009 for appropriation of water from Shoo Fly Creek through construction of a reservoir with a capability of 9,000 acre-feet. The Memorandum Decision which accompanied that approval imposed several conditions including the following:

> "(1) Storage and use of the waters of Shoo Fly Creek is subject to all prior water rights on streams to which it is tributary. This includes the rights of the Indians as well as the protestant's prior rights for storage in Owyhee Reservoir. In the event the Paiute and Shoshone Indians construct adequate facilities to use the water of Blue Creek which would require these waters of Shoo Fly Creek, the applicant may be required to allow the water to pass on downstream."

That condition was added as a means of protecting the Indians rights as well as to put you on notice that such rights existed and could be exercised at any time.

I have now received evidence that the Indians have expended several hundred thousand dollars in constructing diversions and storage dams since 1972. Due to the anticipated low runoff for 1977 and for all future years, it is necessary that your use of the reservoir be in full recognition of their entitlement.

You are, therefore, directed to bypass waters up to the entire inflow to the reservoir, if necessary, to meet the requirements of the Paiute and Shoshone Indians for irrigation and other purposes. Measuring devices of a type approved by this office shall be installed as necessary to determine the inflow and outflow of the reservoir pursuant to Section 42-702 and 42-703, Idaho Code.

I recommend that you attempt to reach a written agreement with the Indians concerning your respective rights and uses. Failure to do so can only lead to unnecessary and costly litigation.

Very truly yours,

R. KEITH HIGGINSON
Director

RKH/slg

CC: Shoshone-Paiute Tribes of the
Duck Valley Reservation
Bill Ringert
Tom Cotton
Idaho Land & Appraisal
Sherl Chapman
Maurice Greene
U.S. Department of the Interior
Office of the Solicitor, Phoenix
U.S. Department of the Interior
Bureau of Indian Affairs, Owyhee
U.S. Bureau of Land Management
Boise, Idaho

IN REPLY REFER TO:

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF INDIAN AFFAIRS
Eastern Nevada Agency
Owyhee, Nevada 89832

March 15, 1977

Mr. R. Keith Higginson, Director
State of Idaho
Department of Water Administration
619 State Street
Statehouse - Annex 2
Boise, Idaho 83720

Dear Mr. Higginson:

I would like to support the Tribe in their request to have waters which have been impounded on Shoo-Fly Creek under Permit 55-7009 released for beneficial use.

The Tribe have improved the water delivery cabacity in the Blue Creek Area by construction of diversion dams. This irrigation construction work was accomplished this past year under an EDA project.

If I can be of further assistance, please let me know.

Sincerely,

Superintendent

P. O. BOX 219 OWYHEE, NEVADA 89832 702 757-3161

RANGE IMPROVEMENT PROJECT - 1976
May - September 7,1976

Total Number of Reservoirs Repaired

1. Lamb Reservoir - repaired dike & watergate.
2. Unnamed resservoir east of Sheepcreek road - repaired dikes (left side)
3. " " " " " " "
4. Coyate res. dike (left)
* 5. New waterhole above Paradise Point.
* 6 " " east of Baconrind Gate(north end of reservation)
* 7. " " " " " (" " " ")
* 8. New dike for reservoir (north end of Pleasant Valley)
9. Bert Monday - repaired spillway(right side)
10. Reservoir (unnamed) north of Elpaso Road (washout center of dike)
11. " (") " " " " (" " " ")
12. Lower Antelope - spillway (left side)
13. Cleveland - Dike washout (3 places) deepened res.
14. Roger Smith - washout - (right side)
15. McNeilly - spillway (left side)
16. John Dick - spillway (right side)
17. Henry Thomas - dike washout (center)
18. State Line - spillway (left side)
19. West Boundry - spillway (left side)
20. Edison Thomas - spillway repaired
21. George Brady - spillway (left)
22. Louis Dave - spillway repaired
23. Guy manning - spillway (right side)
24. Isaac Thacker - spillway (left side)
25. Prentice - dike washout-center (gate)
26. Circle Creek - dike washout repaired
27. Rattlesnake - spillway (left side)
28. Rattlesnake spring (dug new waterhole)
29-33. Redug & built up dikes of 5 stock reservoirs along Blue Creek Canal running north to boundry fence.
* 34-42. Dug 9 new waterholes along Blue Creek & Miller Creek fence lines.
* 43-44. Dug 2 new Charcoal Pits in Jarvis Dry Lake between Blue Creek and Pleasant Valley.
* 45-48. Dug 4 new charcoal Pits in Pleasant Valley.
* 49-53. Dug 5 new waterholes in Pleasant Valley.

* New structures

P. O. BOX 219 OWYHEE, NEVADA 89832 702 757-3161

RANGE IMPROVEMENT PROJECT - 1976
May - September

APPROXIMATE MILAGE OF FENCE LINES REPAIRED ON THE DUCK VALLEY INDIAN RESERVATION.

September 21,1976

1. From the Sheepcreek (Whiterock) road down by the air-port to the west rimrock, approximately 6½ - 7 miles of fence with 5 gates repaired.
2. From Sheepcreek (Whiterock) road to the top of the rim above the China Dam cattleguard, approximately 7½ - 8 miles of fence with 15 gates repaired.
3. Ryegrass Trail Fences (4 sections) with 3 gates and approximately 1-1½ miles of fence repaired.
4. Damon Trail Fences (2 sections) approximately 1½-1½ miles of fence and 2 gates repaired
5. From highway #51 (north end of reservation) up the boundry line to the northeast corner and down to Black Canyon, approximately 7½-8 miles of fence with 1 gate repaired. (The Millercreek district ranchers did mos of this along with a Range Improvement crew.)
6. From the Bluecreek Bridge rim to the Owyhee River rim, approximately ½ mile of fence with 2 gates replaced with new fence materials.
7. Sections of fence along the Bluecreek rim, approximately ½-1 mile of fence with 1 gate repaired and replaced with new materials.
8. Bluecreek/Millercreek District Fence (running east to west) approximately 4 miles of fence with 5 gates replaced with new materials.
9. Millercreek District Fence (running south to north) approximately 6-6½ miles of fence with 4 gates replaced with new materials.
10. Bluecreek rim to Pleasant Valley (continuation of east to west) approximately 2-2½ miles of fence with 2 gates repaired.

* West rim and fence running east to west from sheepcreek cattleguard is next on the list for repairs. (Repaired 1 mi. East to west fence and m. of El Paso Rim)

* Total number of fence miles repaired and rebuilt - approximately 40 mi

* Total number of gates repaired and replaced - 40 gates.

Some of the wiretype gates will be replaced by metal gates and cattle-guards if we have time and funds this year.

No wells have been repaired because of the high cost of fixing them and finding parts for them.

77-SPR- 47

RESOLUTION OF THE SHOSHONE-PAIUTE TRIBES
OF THE DUCK VALLEY RESERVATION
OWYHEE, NEVADA 89832
(An Indian Chartered Corporation)

BE IT RESOLVED BY THE BUSINESS COUNCIL OF THE SHOSHONE-PAIUTE TRIBES OF THE DUCK VALLEY RESERVATION, THAT

WHEREAS, the water supply outlook for the Duck Valley Indian Reservation, as forecast by the National Weather Service, February 1, 1977, is 25%-50%, of average, and

WHEREAS, the Shoshone-Paiute Tribes are concerned over shortages of water on the Blue Creek drainage for livestock and irrigation purposes, and

WHEREAS, the repair of diversion structures (5) along the Blue Creek drainage on the reservation was made last year to facilitate beneficial use of water flow, and

WHEREAS, the impoundment of water in Shoofly Reservoir located within the NE/4 SW/4, Section 31, Township 13 South, Range Z East, B.M., under Permit No. 55-7009, filed by Riddle Ranches, Inc., with the Idaho Department of Water Administration, would reduce the amount of water available for irrigation and livestock purposes on the Blue Creek drainage of the Duck Valley Reservation, and

WHEREAS, the State of Idaho, Department of Water Administration's attention is directed to Part (1) Paragraph three, page 3, of Permit No. 55-7009, which states: "(1) Storage and use of the waters of Shoofly Creek is subject to all prior water rights on streams to which it is tributary. This includes the rights of the Indians as well as the protestants prior rights for storage in Owyhee Reservoir. In the event the Paiute and Shoshone Indians construct adequate facilities to use the waters of Blue Creek which would require these waters of Shoofly Creek, the applicant may be required to allow the water to pass on downstream."

NOW THEREFORE BE IT RESOLVED, that the State of Idaho, Department of Water Administration, cause that the applicant of Permit No. 55-7009, allow natural run-off waters to pass by Shoofly Reservoir and be allowed to flow downstream onto the Duck Valley Reservation, and cause the applicant to measure the inflow and outflow from that reservoir, and

BE IT FURTHER RESOLVED, that this Resolution in no way implies or grants the State of Idaho any jurisdiction, control or power over water rights of the Shoshone-Paiute Tribes on the Duck Valley Indian Reservation.

C E R T I F I C A T I O N

It is hereby certified that the foregoing resolution of the governing body of the Shoshone-Paiute Tribes of the Duck Valley Reservation, composed of a Chairperson and six members of whom 4, constituting a quorum were present at a meeting held on the 17 day of March 1977, and the foregoing resolution was accepted by an affirmative vote of 4 FOR; 0 AGAINST, pursuant to the authority contained under Article VI, Section 1 of the Shoshone-Paiute Constitution and By-Laws.

Marie Black
Tribal Secretary, Shoshone-Paiute Tribes

Laura Jaussaud
Chairman, Shoshone-Paiute Tribes

NEVADA IDAHO

DUCK VALLEY INDIAN RESERVATION

Shoshone-Paiute Tribes

P. O. BOX 219 OWYHEE, NEVADA 89832 702 757-3161

RANGE IMPROVEMENT PROJECT 07-31-00415

EXPENDITURE REPORT FOR PROJECT YEAR: 01 MAY 1976
20 NOVEMBER 1976

TOTAL EXPENDED: $169,480.23

LINE ITEM	BUDGET LINE ITEM	BUDGET	TOTAL EXPENDED	BALANCE
501	INTEREST EXPENSE	1,700	383.81	1,316.19
502	OTHER ADMIN EXPENSE	5,700	14,240.32	[8,540.32]
510	PROJECT INSPEC EXP	1,000	-0-	1,000.00
520	ADMIN LABOR EXP	106,740	31,271.50	9,068.25
521	PROJECT LABOR EXP	--	66,400.25	--
522	NON-LABOR EXPENSE	46,300	53,728.35	[7,428.35]
530	TRIBAL ADMIN EXP	8,560	3,816.00	4,744.00
	TOTAL	170,000	169,840.23	159.77

501 OTHER ADMINISTRATIVE EXPENSE

1ST NATIONAL BANK OF NEV., INTEREST ON REVOLVING CREDIT	383.81

502 OTHER ADMINISTRATIVE EXPENSE

INTERNAL REVENUE SERVICE, EMPLOYER'S FICA, 5.85%	2,432.18
SHO-PAI TRIBES, EMPLOYER'S FICA, 5.85%	2,423.89
NEVADA INDUSTRIAL COMMISSION, NIC PAYMENTS	7,162.95
HILLIARD SMITH, COVENANT RECORDING	10.00
SHO-PAI, REIMBURSEMENT, TRIP-EDA, SEATTLE	399.00
SHO-PAI, EMPLOYMENT SECURITY, ENDING 9-30-76	1,812.30
SUB-TOTAL	14,240.32

510 PROJECT INSPECTION FEE [1,000.00]

520 ADMINISTRATIVE LABOR EXPENSE

COORDINATOR	12,060.00
SUPERINTENDENT	7,831.50
SUPERVISORS	8,952.00
BOOKKEEPER	1,536.00
1ST RIP STAFF SALARY	892.00
SUB-TOTAL	31,271.50

SHOSHONE-PAIUTE TRIBES

RANGE IMPROVEMENT PROJECT 07-31-00415

EXPENDITURE REPORT FOR PROJECT YEAR: 01 MAY 1976 THROUGH 20 NOVEMBER 1976

CONTINUATION:

521	PROJECT LABOR EXPENSE	
	OPERATORS	7,867.50
	LABORERS	58,532.75
	SUB-TOTAL	66,400.25
522	NON-LABOR EXPENSE	
	BOISE BUILDING SUPPLY	26,390.08
	DAVE BACHANT	75.00
	CHARLES COLLINS	3.00
	FISHER'S OFFICE EQUIPMENT	12.32
	GEM STATE UTILITIES CORPORATION	107.14
	GOLDEN RULE STORES	55.57
	ALEXANDER GRANT, C . P . A .	66.52
	CORBIN HARNEY	12.00
	HAFER'S INC.	30.80
	IDAHO POWER COMPANY	53.15
	J. C. PENNY COMPANY	211.41
	DAVID JONES	500.00
	K-MART	318.84
	DON LAMBERTSEN	3,592.00
	MANNING'S TEXACO	888.41
	LINDSEY MANNING	5.00
	HUGH D. MC MULLEN	175.00
	OWYHEE POST OFFICE	26.00
	BRANCH OF RECORDS & DATA MANAGEMENT	84.38
	RIDDLE MERCANTILE	25.75
	SCISSON'S CHEVRON	34.82
	SHOSHONE-PAIUTE TRIBES	228.50
	HILLIARD SMITH	72.96
	SIDNEY SMITH	12.00
	STANDARD OIL COMPANY OF CALIFORNIA	3,258.41
	SOUTHWORTH'S DISCOUNT STATIONERS	276.23
	GREGORY THOMAS	19.45
	DELVIN THOMAS	74.25
	WESTERN AUTO ASSOCIATE STORES	120.26
	WESTERN EQUIPMENT COMPANY	16,955.90
	RODERIC WHITEROCK	43.20
	SUB-TOTAL	53,728.35

SHOSHONE-PAIUTE TRIBES

RANGE IMPROVEMENT PROJECT 07-31-00415

EXPENDITURE REPORT FOR PROJECT YEAR: 01 MAY 1976 THROUGH 20 NOVEMBER 1976

CONTINUATION

530 TRIBAL ADMINISTRATIVE EXPENSE

SHO-PAI COUNCIL & RIP STAFF MEETING	56.00
JOHN Q. RYAN AGENCY	375.00
ALEXANDER GRANT, C. P. A.	135.00
SHO-PAI TRIBES, EQUIPMENT RENTAL	3,250.00
SUB-TOTAL	3,816.08

P. O. BOX 219 OWYHEE, NEVADA 89832 702 757-3161

October 4,1976

Mark Smith, Director
U.S. Department of Commerce
Economic Development Administration
1700 Westlake Avenue North
Seattle, Washington 98109

Attn. Mr. George Bowlds, P.E.

Ref. Shoshone-Paiute Tribes
Range Improvement Proj.
07-31-00415

Dear George,

Enclosed you will find the Coordinators Monthly Project Report and the Financial Report of the Administrative and labor costs for the month of September 1976.

Sincerely,

Hilliard A. Smith

Hilliard A. Smith, Proj. Coordinator

P. O. BOX 219 OWYHEE, NEVADA 89832 702 757-3161

October 4,1976

Mark Smith,Director
U.S. Department of Commerce
Economic Development Administration
1700 Westlake Avenue North
Seattle, Washington 98109

Attn. Mr. George Bowlds

Re. Shoshone-Paiute Tribes
Range Improvement Project
07-31-00415

PROJECT COORDINATORS MONTHLY REPORT
RANGE IMPROVEMENT PROJECT
DUCK VALLEY INDIAN RESERVATION
OWYHEE, NEVADA 89832

Report # 5 - September 1976

Work on the Range Improvement Project for the month of September consisted of repair of approximately (9) miles of fence line with (9) gates; building (3) new stock reservoir dikes, (6) charcoal-pit type stock reservoirs and (9) round stock ponds to hold water; constructing 2 new cattleguards; working on the Shoshone-Paiute stock corrals putting in new boards, replacing (5) old wooden gates and repairing others (4).

For the first week of September we still had the D7-G Cat/Dozer on the project and got several new structures built before we had to let it go back to the company. We could have used it for at least two more weeks to complete several more new water reservoirs in the Northwest corner of the reservation but the Western Equipment Company that we were renting it from had already committed it to another outfit in Oregon for rent.

There was and still is much more that can be done and should be done on the reservation as far as reservoirs and ponds are concerned because of the dry summers and limited water supplies during the summer months. Up until now the cattle have had to walk for miles to water, but hopefully the reservoirs we have repaired and the new structures will fill this winter and next spring and preserve the runoff for the summer months.

The overall turnout of the rental dozer proved to be the best step we could have taken to get the job done quickly and efficiently, without any breakdowns and wast of time waiting for parts and labor. The Tribes dozer and other equipment would never have done the job especially in the mountainous areas where it was rough and rocky.

P. O. BOX 219 OWYHEE, NEVADA 89832 702 757-3161

October 4,1976

We put on two dozer operators and a helper and had two shifts a day so we could get more done in a shorter period of time. This worked out great and we got alot more done than if we would have had only one operator a day.

This also gave another one of the many heavy equipment operators on the reservation a job, that was out of a job at the time, and also his helper.

There are a number of men who are trained and experienced to drive and operate heavy equipment here on the reservation but because it is so far out, the chances of getting a job are slim since there aren't too many jobs (construction) going on here.

After we let the dozer go back to the company we used the operator as a third supervisor to start construction onthe cattleguards that the BIA supplied. This allowed us to keep his salary the same and use the men we had put on the project earlier. He also operated the backhoe-tractor to dig out the pits for the cattleguards. The other operator went back to a laborers position on one of the fencing crews.

We had a total of (32) men working on the project by putting on the additiona men back in July or the first part of August, and there were many more that came looking for a job every day. We have had three crews working during this month, two fencing crews and one cattleguard crew.

The cattleguard crew spent a great deal of their time preparing the forms and cutting the reinforcement bars which was necessary before they could begin pouring the cement. We used some of the cement that the BIA gave us and the gravel and sand we got at the river near town, so we didn't have to put out much for the supplies.

One of the fencing crews worked on the completion of a district fence running north and south in the Miller Creek District along Blue Creek rim to the boundry line, and repaired another fence running east to west into Pleasant Valley. They also rebuilt some sections of fence along another rim above Blue Creek, and repaired the fence across from Pleasant Valley running north and south along the El Paso rim. This totaled approximately (7) miles of new rebuilt fence and repair work.

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P. O. BOX 219 OWYHEE, NEVADA 89832 702 757-3161

October 4,1976

The reason we got more miles of fence completed this month was because some of the fence lines were in the valley where it was soft enough to drive the steel post into the ground quite rapidly. This doesn't take as much time as it does where the ground is rough and rocky up in the hills.

The second fencing crew spent about two weeks working on the stock corrals replacing 2x8x16 ft. boards, repairing wood gates, and replacing others with metal (Powder River) gates. They built approximately (2) miles of fence and put in wire stays on the fence line they had rebuilt earlier. They also spent some time working on the project trucks doing repair work and getting them tuned up and ready for cold weather.

There is still much more work to be done on the stock corrals replacing the broken boards and the ties (posts) that have rotted off at the ground level. The stock corrals play a big part in ranching on the reservation due to the fact that most of the ranchers use them when shipping their cattle to market in the fall. Right now they are getting ready to Buckaroo or roundup their cattle that have been in the mountains on summer range, and they will be using the corrals to do alot of their separating of cattle, and branding.

This month will probably be the last month that the laborers will be working on the project except for a couple of them to help the supervisors finish up on anything we haven't completed yet. There are a couple of fences that have to completed totaling about one to one and a half miles and the cattleguards have to be placed on the forms and anchored down, and the dirt replaced back in and around them.

We will also be returning materials that we borrowed from BIA such as steel posts, wire stays, clips, wood posts, and barbed wire. These supplies have to be returned because they were borrowed from another reservations stockpile, until we could get our own supplies ordered and shipped to us.

The two trucks we borrowed from BIA will also be returned along with the four pickup trucks we rented from the Tribes.

We should have everything pretty well finalized by the end of October with the audit and the book-work completed. The auditor or Certified Public Accountant has already checked our accountant books once and seemed pleased with them. There are only a couple of minor things that we have to get caught up with and they should be ready for audit.

P. O. BOX 219 OWYHEE, NEVADA 89832 702 757-3161

October 4,1976

The only thing that we didn't get to or do any work on was the wells and they were in such bad shape that we and BIA Range Conservationist felt it would cost too much to fix them, at least this year. However we do hope to have them repaired in the near future because they are needed for range improvement to help supply water for the cattle.

The original application called for (35) miles of fence lines to be repaired, (20) reservoirs and (4) springs to be repaired, (5) water wells and other improvements to reservation lands. Also it called for (1) Coordinator, (1) Superintendant, (1) dozer operator, (1) plumber, (2) truck drivers, and (17) laborers, for a total of 23 workers on the project.

We have repaired a total of (36) miles of fence in the last five months, repaired (28) stock reservoirs - built (25) new waterholes.(ponds,charcoal pits, springhead waterholes), plus the other things I have already mentioned. So we have actually done more than what was originally planned on the range improvement project for this year, except for the wells.

We had a total of (31) workers on the project consisting of (1) Coordinator, (1) project Superintendant, (3) supervisors, (2) dozer operators (one operator became a supervisor when the dozer went back to the company),(1) bookkeeper-accountant, and (24) laborers.

We won't be able to complete putting the cattleguards and gates and springhead materials,that BIA was suppling,in this year since we don't have the time or the money to do so. However these were extra supplies that we had not anticipated on utilizing, so we aren't hurting any by not getting all of completed. We have accomplished what the application called for and more.

The Tribal officials and BIA officials seem to be satisfied with the work that we have done, and the effort that the men put out to get the project completed before cold and snowy weather set in.

We are in hopes of being refunded for next year since there is much more that can be done to improve the range for ranching purposes.An even bigger project than we have had this year is needed to help round out and better the range program in this area.

Sincerely,
Hilliard A. Smith
Hilliard A. Smith, Project Coordinator

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

Cecil D. Andrus
Governor

R. Keith Higginson
Director

Statehouse
Boise, Idaho 83720
(208) 384-2215

March 18, 1977

Riddle Ranches, Inc.
Riddle via Grasmere, ID 83625

Gentlemen:

On November 7, 1972, I approved your application and issued permit 55-7009 for appropriation of water from Shoo Fly Creek through construction of a reservoir with a capability of 9,000 acre-feet. The Memorandum Decision which accompanied that approval imposed several conditions including the following:

> "(1) Storage and use of the waters of Shoo Fly Creek is subject to all prior water rights on streams to which it is tributary. This includes the rights of the Indians as well as the protestant's prior rights for storage in Owyhee Reservoir. In the event the Paiute and Shoshone Indians construct adequate facilities to use the water of Blue Creek which would require these waters of Shoo Fly Creek, the applicant may be required to allow the water to pass on downstream."

That condition was added as a means of protecting the Indians rights as well as to put you on notice that such rights existed and could be exercised at any time.

I have now received evidence that the Indians have expended several hundred thousand dollars in constructing diversions and storage dams since 1972. Due to the anticipated low runoff for 1977 and for all future years, it is necessary that your use of the reservoir be in full recognition of their entitlement.

You are, therefore, directed to bypass waters up to the entire inflow to the reservoir, if necessary, to meet the requirements of the Paiute and Shoshone Indians for irrigation and other purposes. Measuring devices of a type approved by this office shall be installed as necessary to determine the inflow and outflow of the reservoir pursuant to Section 42-702 and 42-703, Idaho Code.

I recommend that you attempt to reach a written agreement with the Indians concerning your respective rights and uses. Failure to do so can only lead to unnecessary and costly litigation.

Very truly yours,

R. KEITH HIGGINSON
Director

RKH/slg

CC: Shoshone-Paiute Tribes of the
Duck Valley Reservation
Bill Ringert
Tom Cotton
Idaho Land & Appraisal
Sherl Chapman
Maurice Greene
U.S. Department of the Interior
Office of the Solicitor, Phoenix
U.S. Department of the Interior
Bureau of Indian Affairs, Owyhee
U.S. Bureau of Land Management
Boise, Idaho

MICROFILMED

April 12, 1974

Re: Permit No. 55-8009

Bureau of Indian Affairs
Owyhee,
Nevada 89832

Gentlemen:

Pursuant to our telephone conversation of yesterday, we are enclosing a copy of the above referenced permit.

If you need further assistance concerning this permit, please contact us.

Sincerely,

BOBBY D. FLEENOR
Assistant Director

BDF:JC
Enclosure

MICROFILMED

November 24, 1972

Mr. William F. Ringert
Anderson, Kaufman, Anderson and Ringert
Lawyers
Idaho Building
Boise, Idaho 83701

Re: Application No. 55-7009, Riddle Ranches, Inc.

Dear Mr. Ringert:

You have asked for a clarification of three points included in our Memorandum Decision and Order dated November 7, 1972 concerning Application No. 55-7009, in the name of Riddle Ranches, Inc. I will be happy to clarify these three points, since there may be some misunderstanding concerning our intent as expressed by that order.

(1) The statement in Finding of Fact No. (1) that "the project may be infeasible" was not based upon the detailed engineering determination of feasibility. It was based entirely upon the estimates of water supply. We made no comparison between the cost of construction of the enlarged reservoir and the reservoir storage yield.

(2) In Finding of Fact No. (4), we indicated that storage of water in the reservoir would interfere with prior water rights when water is being applied to beneficial use. This is only true when the water supply is insufficient to satisfy those rights.

55 7009

(3) In Conclusion of Law No. (1) in referring to reservoir spills, this should be interpreted to include all water which might be released from the reservoir for purposes other than irrigation. This would include waters released to provide flood control space or to maintain stream flow below the dam. If the total of such waters released would have filled the reservoir and caused it to spill, then we would consider the rights of the South Board of Control and the Gem Irrigation District as having been satisfied.

I hope these statements clarify any question you have concerning our decision.

Very truly yours,

R. KEITH HIGGINSON
Director

RKH:mjl

cc: Mr. Tom Cotton, Secretary-Manager
South Board of Control, Owyhee Project
Box 67
Homedale, Idaho 83628

Idaho Land & Appraisal
Box 1603
Boise, Idaho 83701

Mr. Jack A. Barnett
Executive Director
Idaho Water Users Association
Room 201, Idaho Building
Boise, Idaho 83701

Mr. Maurice H. Greene
Attorney for South Board of Control
Owyhee Project
2619 Camas Street
Boise, Idaho 83705

U. S. Department of the Interior
Office of the Solicitor
Room 410, Arizona Title Building Annex
135 North 2nd Avenue
Phoenix, Arizona 85003

U. S. Department of the Interior
Bureau of Indian Affairs
West Shoshone Sub-Agency
Owyhee, Nevada 89832

U. S. Bureau of Land Management
230 Collins Road
Boise, Idaho

STATE OF IDAHO
DEPARTMENT OF WATER ADMINISTRATION

Cecil D Andrus
Governor

R. Keith Higginson
Director

Statehouse – Annex 2
Boise, Idaho 83707
(208) 384-2215

Water Rights Administration
Water Resource Investigations
Dam and Reservoir Safety
Water Well Drilling
Waste Disposal Wells
Stream Channel Protection

November 8, 1972

Re: Permit No. 55-7009

Riddle Ranches, Inc.
Riddle -via- Grasmere,
Idaho 83625

Gentlemen:

Enclosed please find a copy of your approved Application for Permit No. 55-7009 along with a copy of the Memorandum Decision and Order.

We direct your attention to the conditions of approval as listed in the Memorandum Decision and Order. Be sure to note that a special condition requiring measuring devices has been placed upon this permit. Enclosed you will find a letter describing different types of measuring devices accepted by this Department.

Sincerely,

Bobby D. Fleenor

BOBBY D. FLEENOR
Assistant Director

BDF:DR
Enclosures

cc: William F. Ringert
Idaho Land & Appraisal
Tom Cotton
Jack A. Barnett
Maurice H. Greene
U.S. Dept. of the Interior, Office of the Solicitor, Phoenix, Arizona
U.S. Dept. of the Interior, Bureau of Indian Affairs, Owyhee, Nevada
BLM, 230 Collins Road, Boise, Idaho

Enc: Copy of Memorandum Decision and Order

55 7009

March 10, 1971

Re: Application No. 55-7009 - Riddle Ranches, Inc.
57-7047 - Lodge Land & Livestock, Inc.

Owyhee Nugget
Marsing,
Idaho 83639

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 3-30-71 dw

DWM:DR
Enc: Legal notices (2)

55 7009

NOTICE OF APPLICATION FOR WATER PERMIT

Notice is hereby given that Riddle Ranches, Inc., Riddle -via- Grasmere, Idaho, has on February 23, 1971, submitted Application No. 55-7009 for a permit to store 8,050 acre feet per annum of water from Shoo Fly Creek, tributary to East Fork of Owyhee River, from Sept. 1 to July 1, by means of a dam within the NE¼SW¼ Sec. 31, T. 13S, R. 2E, B.M., Owyhee County, to be and used diverted at the rate of 70.0 cubic feet per second/from April 1 to Oct. 31 for the irrigation of 3,880 acres within the E½SE¼, Sec. 1; E½E½, Sec. 12; E½NE¼, Sec. 13; T. 14S, R. 1E, B.M. and SW¼NW¼, W½SW¼, Sec. 6; NW¼NW¼, SW¼, Sec. 7; SE¼, E½SW¼, Sec. 12; SW¼, NE¼, S½NW¼, NE¼NW¼, Sec. 13; SW¼, S½SE¼, NE¼SE¼, SE¼NE¼, Sec. 14; W½NW¼, N½SW¼, Sec. 15; NW¼, Sec. 18; SE¼, Sec. 22; N½, SE¼, Sec. 23; W½NW¼, NW¼SW¼, Sec. 24; NE¼, E½NW¼, E½SW¼, N½SE¼, SW¼SE¼, Sec. 26; E½E½, NW¼, Sec. 27; E½W½, W½E½, NE¼NE¼, SE¼SE¼, Sec. 35; T. 14S, R. 2E, 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 Dept. of Water Administration, Statehouse, Boise, Idaho, 83707, on or before April 5, 1971.

R. KEITH HIGGINSON

Director

Published in the Owyhee Nugget, Marsing, Idaho, on March 18 and March 25, 1971.

47 55

February 25, 1971

Idaho Land and Appraisal
Box 1603
Boise, Idaho 83701

Gentlemen:

Attached herewith is Departmental Receipt No. 5679 in the amount of ~~($20.00)~~ ~~($100.00)~~ $120.00 for Transfer and Application for Permit in the name of ~~Riddle Ranches~~, Inc. which was received in this office under the above date.

Very truly yours,

M. RUSSELL BOSCH
Administrative Assistant

MRB:ejv

Enclosure

55 7009

OCT 27 1930
56202

REPORT

WATER SUPPLY, WATER RIGHTS AND IRRIGATION WESTERN SHOSHONE OR DUCK VALLEY RESERVATION NEVADA - IDAHO

October, 1930

Volume II

Supplementary to Volume I of May, 1930

Charles A. Engle
Supervising Engineer

Department of Water Administration
PROTESTANT'S
Exhibit 23
Date Admitted

55 7009

WATER SUPPLY, WATER RIGHTS AND IRRIGATION

[illegible] INDIAN RESERVATION - NEVADA AND IDAHO

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WATER SUPPLY, WATER RIGHTS AND IRRIGATION

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55 7009

Irrigation
105596-15

DEPARTMENT OF THE INTERIOR

UNITED STATES INDIAN IRRIGATION SERVICE

IRRIGATION DISTRICT NO. 2

Salt Lake City, Utah October 23, 1930

Commissioner of Indian Affairs

Dear Sir:

In further reference to our letter of September 15 in response to office letter of above reference dated September 10, 1930, there is respectfully submitted herewith, as supplementary to, and amendatory of our report of May 21, 1930, entitled "Water Supply, Water Rights and Agricultural Conditions - Western Shoshone Indian Reservation" a further discussion of irrigation and water supply conditions on lands in and adjacent to the Western Shoshone Reservation of Idaho and Nevada, with a compilation of statements by Indians and other citizens and officials concerning these conditions, and including two maps illustrative of the matters discussed.

Very respectfully,

C. A. Engle

C. A. Engle
Supervising Engineer

55 7009

WATER SUPPLY, CROP YIELDS AND IRRIGATED

WESTERN SHOSHONE INDIAN RESERVATION - NEVADA AND IDAHO

General Description

The Duck Valley or Western Shoshone Indian Reservation, in Idaho and Nevada, was established by Executive Order of April 16, 1877. Additional lands, as indicated on Map I attached hereto, were added to the reservation by Executive Orders of May 4, 1886 and July 1, 1910. The present area of the reservation is 288,567.53 acres, of which 144,305.33 acres are in Idaho and 144,262.23 acres are in Nevada.

With the exception of an area of about 30,000 acres of level bottom land along the Owyhee River and Mud Creek which is considered irrigable, the reservation lands are hilly or mountainous and are fit only for grazing. 7,041 acres of this bottom land are now (1939) being irrigated by the Indians with a very inadequate water supply which generally fails entirely during the latter half of the irrigation season. If an adequate and dependable water supply were available it is believed the Indians would in time utilize the entire 30,000 acres of irrigable valley land.

There are 675 Indians of the Paiute and Shoshone tribes living on the reservation. There are 170 Indian families.

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WATER SUPPLY, WATER RIGHTS AND IRRIGATION

WESTERN SHOSHONE INDIAN RESERVATION _ NEVADA AND IDAHO

There are three streams from which it is feasibly possible to secure water for irrigation: (1) The Owyhee River, flowing from the southwest corner diagonally across the reservation and forming the water supply for the major part of the reservation; (2) Blue Creek, flowing from the north, entering the reservation about the center point of the northern boundary and emptying into the Owyhee River about the center of the reservation; (3) Mary's Creek, rising on the reservation and flowing in a northerly direction, leaving the reservation about the northeast corner and emptying into the Snake River.

Farming and Irrigation by Indians

Prior to the establishment of the reservation small bands of Paiute and Shoshone Indians were scattered about in Nevada, subsisting principally by farming. It is a fact as unquestionably established by the report of the Commissioner of Indian Affairs for 1875 that some of the Indians now living on the reservation, or their ancestors, were farming and irrigating some of the lands later included in the reservation as early as 1874. It is entirely probable that they were thus utilizing this land long prior to 1874. They were simply squatters, however, on the public domain, and both the land and water they had been using at various places were being rapidly taken away from them by White

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settlers. On August 24, 1877, the Indian Agent of the Western Shoshone Agency reported to the Commissioner of Indian Affairs, stating among other things:

> "The country is becoming more thickly settled by white people, and the patches of land, in many cases heretofore cultivated by the Indians, have been purchased from the Government by white men, and are now cultivated by them. In other cases the water heretofore used by the Indians for irrigating purposes has been taken from the streams above the Indian ranches, thus rendering them valueless, as nothing can be raised without irrigation.

It is reported that the Indians, in 18[illegible], were cultivating 225 acres; in 1881, 500 acres; in 1[illegible] they cultivated 3[illegible]0 acres and cut 1100 tons of wild hay; in 1[illegible] they cut 1[illegible]0 tons of hay; in 1905 they harvested 1400 tons of hay; in 1915 they cultivated about 350 acres of land and cut 4[illegible]00 tons of hay. In 1930 the Indians utilized 7,2[illegible]1 acres. They had 613 acres of alfalfa, 107 acres of grain, 3 acres of potatoes, 4,[illegible] acres of wild hay, and 1,[illegible]0 acres of irrigated pasture. All of the land now being utilized by the Indians, with the exception of about 1,[illegible] acres which are irrigated from Paradise, Miller and Jim Bell Creeks, (tributaries of Blue Creek) is irrigated from the Owyhee River. Practically all of the water (both flood and natural flow) originating in Blue Creek above the reservation is

55 7009

now used by White ranchers north of the reservation who have built reservoirs to control the flow.

Irrigation Upstream from Reservation

Owyhee River - From the most reliable information available the ranches now owned by Emory Johnson and D. Y. Reed, the two largest places on the Owyhee River above the reservation, were settled about 1867. The aggregate area of these ranches is approximately 1,700 acres, which is about one-half the area now irrigated on the upper Owyhee. The total area being irrigated in 1929 on the upper Owyhee was 3,457.58 acres. (See pages 56 and 57 of report of May, 1930.)

The major portion of the lands irrigated on the upper Owyhee River above the reservation was settled about 1867. The principal crop is wild hay, but a few small areas are devoted to alfalfa or timothy.

On pages 56 and 57 of the report of May, 1930, is given a list showing names and addresses of those claiming a water right or using water for irrigation on the upper Owyhee and its tributaries above the reservation and showing also the approximate date of settlement, the acreage being irrigated in 1929 and the source of water supply. A part of this information is also shown on the large map entitled "Western Shoshone or Duck Valley Indian Reser-

vation and Contiguous Territory" accompanying this report.

It will be noted that the total acreage irrigated on the upper Owyhee and tributaries above the reservation in 1929 was 3,457.58 acres. Apparently there was little or no irrigation by Whites in the upper Owyhee Valley prior to 1887. According to this record about 953.34 acres were being irrigated in 1887. Two of these ranches were established as recently as 1919.

There are no storage reservoirs of any consequence on the upper Owyhee or its tributaries.

Blue Creek - According to the survey made by James Young, there were being irrigated on Blue Creek above the reservation in 1929 a total of 2,547.34 acres, 2,[illegible] of which belong to the Blue Creek Land and Livestock Company.

The earliest settlement of these lands according to the most reliable information obtainable was in 1880. The earliest filing or permit (to use water) on Blue Creek on file in the Idaho State Engineer's office is permit No. 5512 by Joseph A. Sewell for 20 second feet. Application was filed November 30, 1909, and proof of beneficial use was made June 2[illegible], 1915. License was issued for 1[illegible].7 second-feet. (See page 90 of report of Nov, 1930.) Abstracts of the applications made and the permits issued by the Idaho State Engineer on Blue Creek and its trib-

taries above the reservation are given beginning on page 90 of Report of May, 1930. It will be noted that applications have been made for diverting from Blue Creek 142 second-feet and for storing 6,685 acre-feet.

There have been actually constructed by private parties on Blue Creek above the reservation six reservoirs having an aggregate capacity of 5,625 acre-feet, as follows:

Name of Reservoir	Date built	Capacity (acre-feet)
Blue Creek	1902	1,907
Little Blue Creek	1905	1,[illegible]
Payne Creek	About 1927	2[illegible]
Indian Creek	About 1927	60
Shoo-Fly Creek	About 1927	[illegible]
West Shoo-Fly Creek	1929	[illegible]
	Total	5,[illegible]

So many reservoirs have already been built on Blue Creek that all of them are not always filled, and it is seldom, even during the spring run-off, that water flows down this stream to the reservation.

There is included herewith (see pages 24 to 31) a list of homestead filings in Blue Creek Valley above the reservation. It will be noted that the earliest filing was made in 1890 and final certificate issued in 1897.

Parvis Creek - On this stream a small reservoir having a capacity of [illegible] acre-feet was built in 1904 for the irrigation of land in Blue Creek Valley above the reservation.

WATER SUPPLY, WATER RIGHTS AND IRRIGATION

WESTERN SHOSHONI INDIAN RESERVATION - NEVADA AND IDAHO

Irrigation Methods

It is the custom of white ranchers of this locality to begin irrigating with the start of spring run-off, which is often as early as April 1. Indians, however, seldom begin irrigating until about May 1, when a considerable part of the run-off has passed. No doubt hay production would be increased if the Indians would adopt the white man's plan.

Natural meadow or wild hay land produces about one-half to three-quarters tons of wild hay per acre. A mixture of timothy, clover and native grasses in the vicinity of Mountain City it is claimed produces two tons per acre.

Irrigation is begun with the first spring run-off (about April 1) and continued until the water supply is exhausted - about July 1 on the upper reaches of the streams and about August 1 at Mountain City and the reservation. On Duck and Van Horn Creeks some water is present throughout the season.

Due to inadequate and erratic water supply, irrigation methods of both whites and Indians are crude and wasteful. Irrigation is begun as early as water begins running in the spring and each irrigator attempts to put all the water possible on his land as long as any water is available. Usually there is little or no water available after July 1.

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WATER SUPPLY, WATER RIGHTS AND IRRIGATION

WESTERN SHOSHONE INDIAN RESERVATION - NEVADA AND IDAHO

Water Supply

Owyhee River - For the eleven year period 1914 to 1925 inclusive the maximum annual discharge of the Owyhee River near Owyhee, Nevada, (the Western Shoshone Reservation Indian Agency) was 150,000 acre-feet. The minimum annual discharge was 39,500 acre-feet, and the average annual discharge was 82,500 acre-feet. There were five years for which the annual discharge was less than the average.

During the same eleven year period the maximum run-off for October to May inclusive - usually considered as available for storage - was (for 1916-1917) 144,200 acre-feet; the minimum (1917-1918 and 1923-1924) was 33,000 acre-feet; and the average was 72,500 acre-feet. There were five years for which the run-off was less than the average.

Included herewith is a tabulation entitled "Summary of Daily Discharge, Owyhee River at Mountain City, Nevada for 1917 to 1927 inclusive," which shows the characteristics of the flow of this stream and emphatically indicates the necessity for storage.

WATER SUPPLY, WATER RIGHTS AND IRRIGATION

SUSTAINS SHOSHONE INDIAN RESERVATION - NEVADA AND IDAHO

Water Supply: Summary of Daily Discharge (March to September inclusive) Owyhee River at Mountain City, Nevada, for 1927, 1928 and 1929.

	1927	1928	1929
March			
Maximum flow (sec-ft)	311 on 21	1510 on 26	No record
Minimum flow (sec-ft)	55 on 20	40 on 1	" "
Mean flow (sec-ft)	120	408	" "
Below mean flow (das)	21	20	" "
Total (acre-feet)	7,380	25,100	(est) 5,600
April			
Maximum flow (sec-ft)	1060 on 28	401 on 1	633 on 30
Minimum flow (sec-ft)	249 on 1	290 on 23	149 on 10
Mean flow (sec-ft)	480	377	402
Below mean flow (das)	20	20	15
Total (acre-feet)	28,600	22,400	23,900
May			
Maximum flow (sec-ft)	896 on 2	622 on 1	706 on 1
Minimum flow (sec-ft)	282 on 31	130 on 31	190 on 31
Mean flow (sec-ft)	496	316	423
Below mean flow (das)	16	17	14
Total (acre-feet)	30,500	19,400	26,000
June			
Maximum flow (sec-ft)	323 on 11	121 on 1	186 on 2
Minimum flow (sec-ft)	59 on 30	15 on 27	29 on 30
Mean flow (sec-ft)	203	46	118
Below mean flow (das)	14	16	12
Total (acre-feet)	12,000	2,720	7,020
July			
Maximum flow (sec-ft)	50 on 1	26 on 1	26 on 1
Minimum flow (sec-ft)	12 on 21	6 on 18	3 on 30
Mean flow (sec-ft)	28	10	9
Below mean flow (das)	20	21	19
Total (acre-feet)	1,760	590	529
August			
Maximum flow (sec-ft)	15 on 1	8 on 3	5 on 8
Minimum flow (sec-ft)	9 on 27	3 on 18	2 on 29
Mean flow (sec-ft)	12	5	35
Below mean flow (das)	15	16	15
Total (acre-feet)	732	314	215
September			
Maximum flow (sec-ft)	12 on 29	7 on 23	5 on 25
Minimum flow (sec-ft)	6 on 8	2 on 12	2 on 1
Mean flow (sec-ft)	6.5	5	3.2
Below mean flow (das)	22	15	19
Total (acre-feet)	[illegible]	[illegible]	190

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Water Supply (continued)

Blue Creek and Mary's Creek - In view of the fact that the 2,547 acres are now being irrigated on this stream above the reservation and that this acreage exhausts the water supply ordinarily available, it seems reasonable to conclude that an equal area of reservation or Indian land can be irrigated with this supply provided it can be legally established that the Indians have a prior right to the waters of this stream. As a matter of fact it seems conservative to assume that with some improvement in irrigation methods an area of 3,000 acres might be irrigated with this supply, in combination with what water may be made available from Mary's Creek, and this estimate has been tentatively adopted for the purposes of this discussion.

There are, however, no feasible storage sites on Blue Creek or Mary's Creek, or any of their tributaries within the reservation, and all feasible storage sites on those streams outside the reservation have already been developed by private parties to such an extent that the spring floods, except in years of abnormal snow-fall, are insufficient to fill the existing reservoirs. In view of this situation, there would seem to be a question as to the procedure in the case of adjudication suit should

request for the Indians more than a prior right in the natural or uncontrolled flow of these streams during the irrigation season for the water necessary, or such part thereof as may be available, to irrigate the Indian lands tributary to these streams. If a storage right for the storage of water during the non-irrigation season, and the storage of surplus waters during the irrigation season should be requested and secured by decree, such storage right would apparently be useless unless one or more of the storage reservoirs already built by private parties is purchased or leased. It is of course possible that such purchase or lease might later be found feasible, as more of the existing reservoirs will in all probability be found worthless to their present owners in that event the government secures for the Indians a prior right in either or both the natural or uncontrolled flow during the irrigation season or the flow during the non-irrigation season.

As pointed out in the report of May, 1938, several Indian ranches formerly on Blue Creek have been abandoned for the reason that upstream development outside the reservation has eliminated the water supply.

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WATER SUPPLY, WATER RIGHTS AND IRRIGATION

WESTERN SHOSHONE INDIAN RESERVATION - NEVADA AND IDAHO

Water Requirement

Assuming a project as ultimately completed and utilized of 30,000 acres devoted to the crops named below, and requiring the quantities of water herein estimated, the total annual ultimate water requirement would be 90,000 acre-feet at the diversion point as follows:

30,000 acres	Acre-feet on land	Acre-feet at Diversion	Total
10,000 acres alfalfa and other cultivated crops	2.5	3.75	37,500
10,000 acres mixed barley	2.0	3.00	30,000
10,000 acres wild hay	1.5	2.25	22,500
			90,000

Monthly Distribution of Water Requirement

It is assumed in view of the data available that the water required for irrigation would need to be distributed approximately as follows:

Month	Acre-feet on land	Acre-feet at diversion (33 1/3 loss)	Total Required (Ac-ft.)
April	.20	.30	9,000
May	.70	.95	28,500
June	.90	.60	18,000
July	.60	.90	27,000
August	.30	.45	13,500
September	.20	.30	9,000
	2.00	3.00	90,000

The maximum monthly diversion (July) would represent an average flow at the diversion point of 450 acre-feet. In view of the sudden and erratic wide fluctuations in

stream-flow, it is advisable to design the irrigation system to make possible the diversion of at least 500 second-feet.

Water Available from Natural Flow

From the records available of the stream-flow of the Owyhee River, including the daily discharges for the months March to September inclusive for the years 1917 to 1929 inclusive as summarized in the tabulation attached hereto, it is estimated that ordinarily there will be available from the Owyhee River natural or uncontrolled flow during the irrigation season April 1 to September 30, 35,000 acre-feet. The quantities of water available from natural flow during the months when the stream-flow is appreciable for the years 1917 to 1929 inclusive as compared with the irrigation requirement for each month are as follows:

Month	(ac-ft) 1927	(ac-ft) 1923	(ac-ft) 1929	3-year average	Irrigation demand	Usable from natural flow
March	7,300	25,100	5,600	12,700		
April	20,000	22,400	23,200	21,900	9,000	9,000
May	30,500	12,400	20,400	21,100	13,500	13,500
June	12,000	2,700	7,000	7,300	12,000	7,300
	70,800	62,600	56,200			29,800

Amount of Storage Required

From a comparison of the seasonal distribution of Owyhee River stream-flow with that of the maximum

monthly distribution of water during the irrigation season, it is estimated that there will be required for the assumed ultimate development of 30,000 acres, approximately 65,000 acre-feet of storage for irrigation during the months June to September inclusive. Assuming the daily discharges of the Owyhee River at Mountain City for the years 1927, 1928 and 1929 as summarized in the attached tabulation entitled "Summary of Daily Discharge, Owyhee River at Mountain City, Nevada, for 1927 to 1929 inclusive" represents approximately average conditions, there would ordinarily be required from storage the following quantities of water for each of the months June to September inclusive:

June,	12,000 acre-feet
July,	27,000 acre-feet
August,	13,500 acre-feet
September,	6,500 acre-feet
Estimated total,	61,500 acre-feet

Available location of storage reservoirs

It is believed, in view of existing local conditions - water supply, available storage sites, and the desirability of having the reservoir or reservoirs as near the diversion as possible and within the reservation - that an effort should be made to provide all storage necessary on the Owyhee River, where it is fairly well developed

by the preliminary investigations thus far made, that one or more feasible storage sites exist and that the water supply, if and when conserved by storage, is in all probability adequate. If further investigations should indicate the necessity or desirability of storage on either Blue Creek or Mary's Creek, it is possible that one or more of the several small reservoirs already built by private parties might be purchased and improved.

Existing Irrigation Project

During the season of 1930 the Indians, with the inadequate post-season water supply available, made use of 7,541 acres of land. Of this 31½ acres were devoted to alfalfa, 107 acres to grain, 3 acres to potatoes and gardens, 4,873 acres to wild hay, and 1,560 acres consisted of sub-irrigated pasture. All of this land except the sub-irrigated pasture, viz: 5,981 acres, was irrigated from the existing irrigation system with water from the Owyhee River.

The present irrigation system is the outgrowth of the system of ditches that was first started by the Indians themselves, evidently as early as 1874 or earlier. In a report contained in the report of the Commissioner of Indian Affairs for 1877 it is stated:

WATER SUPPLY, WATER RIGHTS AND IRRIGATION

WESTERN SHOSHONE INDIAN RESERVATION - NEVADA AND IDAHO

> "They (the Indians) have built 3 miles of fences and dug 2 miles of water ditches and have 200 acres of wheat and barley in cultivation, also 25 acres of potatoes, turnips, peas, etc."

It is known that many of these ditches originally built by the Indians many years ago were later incorporated in the improvements to the irrigation system that were subsequently made by the government. Many of these early Indian ditches, as they were originally built, are still in use, and others have been enlarged and extended. It should also be stated that in early days as now many sloughs or old river channels were used as irrigation ditches.

There has been expended by the government to date (September 30, 1930) on the Western Shoshone Reservation Irrigation Project the sum of $[illegible],[illegible].23, of which $[illegible],[illegible]5.42 was for construction and $[illegible],[illegible]36.[illegible] for operation and maintenance.

The area now being utilized by the Indians is served by four principal canals or ditches, as follows:

1. The East Side or Agency Canal, diverting from the east bank of the Bruneau River near the quarter section corner between sections 35 and 36 of township 47 north, range 52 east, Mount Diablo Base and Meridian, Nevada, and extends in a north-westerly direction for a distance of six

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miles, and has five miles of laterals. Its capacity as originally designed is 50 second-feet. It now serves approximately 1,500 acres.

2. The West Side Canal is diverted from the west bank of the Owyhee River near the quarter section corner between sections 1 and 36 of townships 46 and 47 north, range 52 east, Mount Diablo Base and Meridian, Nevada, and extends in a westerly and southwesterly direction for about ten miles, and has about twenty miles of laterals. The originally designed capacity is 150 second feet. It now serves approximately 3,000 acres.

3. The Pleasant Valley East Side Canal is diverted from the east bank of the Owyhee River near the quarter corner between sections 9 and 16, township 16 south, range 2 east, Boise Base and Meridian, Idaho, and extends in a northwesterly direction for a distance of four miles. The originally designed capacity of this canal is 50 second-feet. It now serves approximately 300 acres.

4. The Pleasant Valley West Side Canal is diverted from the west bank of the Owyhee River near the quarter corner between sections 9 and 16, township 16 south, range 2 east, Boise Base and Meridian, Idaho, and extends in a westerly and northwesterly direction for five miles. The

originally designed capacity of this canal is 50 second-feet. It now serves 600 acres approximately.

All of these canals will have to be enlarged and extended to serve the total irrigable acreage if and when the project is ever completed.

Probable Extent and Use of Completed Project

This, of course, will largely be governed by the water rights that are eventually decreed for the use of the Indians as a result of the pronosed adjudication suit.

It is estimated on the basis of surveys and examinations thus far made that the acreage of irrigable and productive land that it is desirable to irrigate on the Western Shoshone Indian Reservation is 30,000, of which 22,000 acres is in the Oreana River Valley and 6,000 acres in the Blue Creek Valley. It is true that in the past we have usually given this estimate as 25,000 acres, practically all in the Oreana Valley, and including only a small area in the Blue Creek Valley, both because of some question as to the fertility of the soil and because of the apparent impossibility, or at least serious difficulty, of securing water for it, especially from Blue Creek, practically all of the available water supply from Blue Creek having been already conserved and put to use by White people

above the reservation. Recent observations indicate that the Blue Creek land is well adapted to the growth of wild hay, mixed meadow hay or grain and that the water requirement, because of the texture of the soil, will be low as compared with the Owyhee Valley, which in many instances is sandy or gravelly. Moreover, the White ranchers above the reservation are producing fairly good crops on this land along Blue Creek. In view of this it is concluded that some of the Owyhee Valley land heretofore considered as irrigable and included in former estimates should be eliminated and that we should include in our project the irrigable acreage of Blue Creek.

As to the duty of water, assuming that eventually we shall have a project of 30,000 acres, and assuming that when fully developed one-third of this area will be devoted to alfalfa requiring an estimated amount of 2½ acre-feet per acre on the land per season; that one-third of the area will be devoted to mixed meadow, that is, a mixture of timothy or red-top with the natural grasses, requiring an estimated amount of 2 acre-feet per acre per season on the land; and that one-third of the area will be devoted to wild or native grass hay, requiring 1.5 acre-feet per acre per season on the land, there would be required for

the 30,000 acres 60,000 acre-feet of water delivered to the land each season. Assuming a loss of 33 1/3 percent, there would be required 90,000 acre-feet annually or per irrigation season at the diversion point or in storage.

In view of the erratic flow of the stream, practically all the run-off occuring in March, April and May, it is my opinion that there will be required for the irrigation of 30,000 acres 3.0 acre-feet, or such part thereof as may be available from the natural or uncontrolled flow of the stream, that is, the normal and flood flow, supplemented by 65,000 acre-feet annually of storage. In making this statement I am certain that there would normally be able to accure 35,000 acre-feet per annum by diversion during the irrigation season from the normal or flood flow of the stream, thus requiring 65,000 acre-feet of storage to make up the requirement of 90,000 acre-feet per irrigation season.

In line with the foregoing proposal for an ultimate project of 30,000 acres (22,000 acres in the Owyhee Valley and 8,000 acres in Blue Creek Valley) the feasible acreage within the reservation as established April 16, 1877, is 22,000 acres in the Owyhee Valley and 1,000 acres in Blue Creek Valley. (Note - The other 7,000 acres in

Blue Creek Valley is included in the addition to the reservation made by Executive Order of May 4, 1886.)

The irrigable acreage within the reservation as established April 16, 1877, to be supplied from Owyhee River (direct diversion and reservoir) is estimated as 22,000 acres, all of which is in the Owyhee River Valley. If, however, we cannot legally take from the White water users on upper Blue Creek above the reservation water necessary for irrigating 1,000 acres of irrigable lands on Blue Creek, it would then be necessary also to serve this 1,000 acres of Blue Creek land from the Owyhee, making a total of 23,000 acres.

The irrigable area within the addition to the reservation made May 4, 1886, to be supplied from the Owyhee River (direct diversion and reservoir) is 5,000 acres. This statement is based on the assumption that of the 8,000 acres of irrigable land in Blue Creek Valley (7,000 acres of which is included in the addition to the reservation made in 1875 and 1,000 of which is in the original reservation) water from Blue Creek, provided we establish a legal right to it, will, when conserved by storage, serve only 3,000 acres, leaving 5,000 acres that would necessarily have to be served from the Owyhee River. If, however, be-

cause of the absence of feasible storage sites on Blue Creek, as suggested in the discussion of Water Supply (Blue Creek) a storage right is not claimed or decreed, then it will be necessary to irrigate all of the Blue Creek lands for a considerable part of each season with water from the Owyhee River.

To serve this proposed project of 30,000 acres, the Agency Canal (now serving 1,200 acres) would be enlarged and extended to serve 2,200 acres in the Owyhee Valley and to serve (either a part or all of the irrigation season, depending on the final outcome of the adjudication suit) the 5,000 acres of Blue Creek Valley land. The East Side Canal (now serving 3,000 acres) would be enlarged and extended to serve 17,500 acres in the Owyhee Valley. The Pleasant Valley East Side Canal (now serving 200 acres) would be enlarged and extended to serve 500 acres. The Pleasant Valley West Side Canal (now serving 600 acres) would be enlarged and extended to serve 1,600 acres.

In the following pages (pages 24 to 31) there is given a list of the homestead filings on Blue Creek Valley lands which were not included in the report of [illegible], 1930. Following this, on pages 32 to 42 inclusive is a compilation of statements by the Juvenile Court, and

by several of the Indians of the Western Shoshone or Duck Valley Reservation concerning the early agricultural and irrigation activities of the Indians, and the water supply. Following this, on pages 43 to 50 inclusive is a summary of excerpts taken from various official reports concerning the condition of the Indians at various times, and their progress in agriculture, irrigation and grazing. Following this, on pages 51 to 85 are fairly complete copies of the official reports from which the foregoing summary was made. Finally, at the end of this report, there are included two maps - one, a small map of the reservation, showing the lands set aside or reserved by each of the three Executive Orders of April 16, 1877, May 4, 1886 and July 1, 1910; and one showing the reservation and contiguous territory on which is shown the location and extent of the irrigated areas both in and outside of the reservation, as well as such other information of interest.

WATER SUPPLY [illegible] RESERVATION- NEVADA.

List of original filings on lands North of Duck Valley Reservation on Blue Creek and tributaries.

T. 13, South Range 3 East, Boise Meridian

Subdivision	Name of Applicant	No. of Application	Date of filing	Final cert. issued	Remarks
Lot 4, [illegible], [illegible], [illegible], [illegible] Sec.6; [illegible] Sec.17; Lot 1, [illegible], [illegible], Sec.16; [illegible], [illegible], Sec.19; [illegible], [illegible], [illegible], [illegible], Sec. 20	Latisha A. [illegible]		6-15-23	10-10-27	
	Fred [illegible]	024039	7-27-21	10-19-21	420 A
[illegible], [illegible], Lot 2, Sec. 18	Reza Yates	019528	4-7-11	12-26-16	156.51 A
[illegible], Lots 3 & 4 Sec. 18	George A. Yates	012026	6-11-12	12-26-16	156.59 A
[illegible], [illegible] [illegible], Sec. 19	William Brothers	016224	8-4-14	9-26-17	160 A
[illegible], [illegible] [illegible], Sec. 19	Fred F. Bolkman	016401	11-17-14	8-2-18	160 A
Lots 1,2,3 & 4, Sec.19	William Brothers	019360	6-12-1[illegible]		150.28 A
[illegible], [illegible], [illegible], Sec.20	George [illegible] Bertsoy	010419	[illegible]-22-11	4-[illegible]-15	160 A
[illegible], [illegible], Sec.20	" " "	017775	7-[illegible]-16	4-15-21	160 A
[illegible], [illegible], [illegible], [illegible], Sec.21; [illegible] Sec.23	" " "		10-11-22	4-1[illegible]-27	4[illegible] A
[illegible], [illegible], [illegible], [illegible] Sec. 29; [illegible], [illegible], [illegible], Sec. 30	Eva [illegible] James		10-11-22	4-14-27	640 A
[illegible], [illegible], Sec.30 [illegible] Sec. 29	Harris [illegible] Portlock	5135	4-10-01	5-25-07	160 A
[illegible], [illegible], [illegible] Sec. 31	Elmer Perjue	017774	6-10-15	[illegible]-6-1[illegible]	160 A
Lots 3 & 4, [illegible] Sec.30; [illegible] Sec. 31	John Bradley	019149	5-25-16	9-2-19	152.77 A
[illegible], [illegible], Sec. 30	Albert [illegible] Bradley	022046	8-4-17	9-1-21	
Lot 4, [illegible], [illegible] Sec. 31	S.F. [illegible]	[illegible]	11-4-11		115.[illegible]6 A
[illegible], Sec.31, [illegible], [illegible], Sec. 32	[illegible] Portlock	07[illegible]	11-10-0[illegible]	12-2[illegible]-14	[illegible] A

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WATER SUPPLY WESTERN DIVISION RECLAMATION- NEVADA.

List of original filings on lands North of Duck Valley Reservation on Blue Creek and tributaries.

Subdivision	Name of Applicant	No. of Appli-cation	Date of filing	Final cert. issued	Remarks
T. 13, North Range 1 East, Boise Meridian					
SE¼NE¼, NE¼SE¼, Sec. 31	S.P. Pac. RR	14 am S.	5-12-13		80 A
NE¼SW¼, Sec. 31	" " "	" "	6-2-13		
NW¼SE¼ Sec. 31, Lot 1, SE¼NE¼, Sec. 6, T.14 S. R.3 E.	No. Pac. RR		11-21-27		160.76 A

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WATER SUPPLY WESTERN SHOSHONE RESERVATION- NEVADA.

List of original filings on lands North of Duck Valley Reservation on Blue Creek and tributaries.

T. 14, South Range 3, East, Boise Meridian

Subdivision	Name of Applicant	No. of Application	Date of filing	Final cert. issued	Remarks
S½ Sec. 1	State of Idaho		1-12-21		320 A
S½ Sec. 2	" " "		1-12-21		320 A
Lot 2, Sec. 2,	N.P. R. R.		11-10-15		41.20 A
Lot 4, Sec. 3,	State of Idaho		11-10-17		41.27 A
[illegible] Sec. 3	" " "		3-25-21		320 A.
[illegible], Sec. 4;					
[illegible] Sec.5, [illegible], Sec.8	Cecilia Riddle	3020	4-24-08	11-14-14	320 A.
[illegible],					
Sec. 4,	Joe Patterson	014291		6-9-16	160 A
[illegible], Sec. 4	State of Idaho		11-10-17		40 A
Lots 1,2,3,4, [illegible], Sec.5	Solomon [illegible]	016944	8-3-16	4-15-21	324.34 A
[illegible], Sec.5; [illegible]					
Sec. 6,	Chell Towner	01[illegible]3	7-20-15	7-[illegible]-18	160 A
[illegible], Sec. 5	State of Idaho	023[illegible]	5-2[illegible]-19		120 A
Lots 2,3,6,7, [illegible],					
[illegible], Sec.6	S.P. Pac. [illegible]	011687	11-4-11	1-2[illegible]-13	313.52
Lot 1, [illegible] Sec.6, [illegible]					
Sec.31, [illegible]	N.P. [illegible]	015236	11-21-13		160.76 A
[illegible], Sec. 6	State of Idaho	0[illegible]	5-2[illegible]-19	2-2-[illegible]	40 A
Lot 1, Sec. 7	S.P. Pac. [illegible]	011[illegible]	11-4-11	1-2[illegible]-13	[illegible].39 A
[illegible], Lots 3 & 4, Sec.7	John A. [illegible]	01[illegible]46	6-10-19	7-1[illegible]-20	3[illegible].63
[illegible], Sec.8	Grant Riddle	[illegible]155	3-25-93	10-1[illegible]-97	160 A
[illegible] Sec.8; [illegible],					
[illegible], Sec.17,	Frank [illegible]. Riddle	1520	9-22-99	11-20-02	160 A
[illegible],					
[illegible], Sec. 8	Grant Riddle	3013	4-24-08	6-10-13	160 A
[illegible], Sec.8	Mable [illegible] Sturgis	010942	6-7-11		80
[illegible] Sec 9, (isolated tract)	Grant Riddle	014915	7-14-15		Sold under "C" of 5-15-15
[illegible] Sec.9, (" ")	Cecilia Riddle	013036	11-23-16	12-5-16	160 A
Secs. 10,11,12,15 & 16	State of Idaho				
[illegible], Sec.17	Frank [illegible]. Riddle	2708	7-7-91	9-9-97	160 A
[illegible], Sec. 17,					
[illegible], Sec. 8,	Frank [illegible]. Riddle	1520	9-22-99	11-20-02	160 A
[illegible]					
Sec.17; [illegible]					
Sec. 1[illegible],	Delia [illegible]. Riddle	010162	1-25-11	1[illegible]-2[illegible]-15	320 A

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WATER SUPPLY WESTERN SHOSHONE RESERVATION- NEVADA.

List of original filings on lands North of Duck Valley Reservation on Blue Creek and tributaries.

T. 14, South Range 3, East, Boise Meridian

Subdivision	Name of Applicant	No. of Application	Date of filing	Final cert. issued	Remarks
[illegible] Sec. 17	State of Idaho	023829	5-23-19		40 A
[illegible], Sec.17, [illegible]	Voyne F. Riddle	026031	2-13-22	10-6-24	120 A
Sec. 18	State of Idaho	023829	5-23-19		200 A
[illegible] 1&2, [illegible], Sec.12, T.14, [illegible]					
Sec.13, T.14, [illegible]	George [illegible]	01[illegible]45	10-3-1[illegible]	7-13-20	276.14 A
[illegible] Sec.19	George C. Riddle	01967	11-21-0[illegible]	11-5-15	160 A
[illegible], Sec.19,	[illegible] Roberts	017000	1-1[illegible]-15	5-23-1[illegible]	160 A
[illegible], Lots 3 & 4, Sec.19	Ruben F. Jones	017775	6-10-15	7-26-20	153.52 A
[illegible], Sec. 20	Harry S. Riddle	4875	10-6-00	10-4-07	160 A
[illegible], Sec. 20	" " "	0137) 1[illegible])	1-6-03	11-25-07	160 A
[illegible], Sec.20	Mary Riddle	07[illegible]	1[illegible]-1-0[illegible]	10-6-13	320 A
[illegible] Sec. 21	Augustus [illegible] Stone	4876	10-[illegible]	10-4-07	160 A
[illegible], Sec. 21	Richard B. Stone	0[illegible]) 1[illegible])	1-8-03	11-25-07	160 A
[illegible], Sec. 21	Augustus B. Stone	017749	6-8-18	3-5-21	160 A
[illegible], Sec.21; [illegible], Sec. 2[illegible]	Voyne F. Riddle	0[illegible]501	6-21-2[illegible]	10-6-24	520 A
[illegible], Sec.22; [illegible], Sec.23; [illegible], Sec. 2[illegible]	George F. Riddle	0[illegible]139	10-14-21	10-6-24	640 A
[illegible], Sec.23; [illegible] Sec.24; [illegible], Sec. 25;					
[illegible], Sec.26,	Karl F. Riddle	0[illegible]929	7-27-21	9-24-2[illegible]	640 A
[illegible], Sec. 25,	State of Idaho	025746	3-25-21		80 A
[illegible] " "	" " "	0[illegible]829	5-23-19		80 A
[illegible], Sec. 2[illegible]	J. [illegible] Hastings	017[illegible]6	7-6-15		160 A
[illegible] Sec.2[illegible]; [illegible], Sec.33	Ben Crabb	023[illegible]45	9-10-21	9-[illegible]-26	520 A
[illegible], Sec.29	George C. Riddle	01[illegible]) 1[illegible])	1-6-03	11-25-07	160 A
[illegible], Sec.29; [illegible] Sec.3[illegible]	Amelia Riddle	01973	11-23-0[illegible]	10-6-13	320 A
[illegible], Sec. 29	Ben Martin	01[illegible]121	8-13-15	7-[illegible]-1[illegible]	160 A
[illegible], Sec. 29	Daniel L. Savage	01[illegible]123	8-1[illegible]-1[illegible]	1-1[illegible]-13	160 A
[illegible], Lots 1[illegible], [illegible], Sec.30	Grace Stone	01977	11-23-[illegible]	10-6-13	[illegible] A
[illegible], Lot 3, Sec.30	Barbara A. Stone	07[illegible]	11-10-[illegible]	[illegible]-21-1[illegible]	160.66 A
Lots 1,2,3,4, [illegible], Sec. 31	Benjamin Martin	[illegible]	9-1[illegible]-21	1[illegible]-[illegible]-24	[illegible] A

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WATER SUPPLY WESTERN SHOSHONE RESERVATION- NEVADA.

List of original filings on lands North of Duck Valley Reservation on Blue Creek and tributaries.

T. 14, South Range 3, East, Boise Meridian

Subdivision	Name of Applicant	No. of Application	Date of filing	Final cert. issued	Remarks
S½NE¼,NW¼NE¼,Sec. 32; NW¼NE¼, Sec. 33	Richard R. Stone	3499	3-5-97	9-20-02	160 A
N½SE¼,SW¼SE¼,SW¼SW¼, Sec. 32	Ivan E. Avent	017572	5-17-15	11-3-19	160 A
S½NE¼,NW¼NE¼,N½SE¼,Sec. 32	Lizzie Avent	010346	5-2-11	9-3-22	200 A

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WATER SUPPLY WESTERN SHOSHONE RESERVATION-NEVADA.

List of original filings on lands North of Duck Valley Reservation on Blue Creek and tributaries.

T. 14, South Range 2, East, Boise Meridian

Subdivision	Name of Applicant	No. of Application	Date of filing	Final cert. issued	Remarks
Lots 5,6,& 7, Sec.6; Lot 1, Sec.7	Henry Hubelt	013048	8-3-16	4-21-24	
[illegible], Sec.12	Joseph A. Sewell	2157	12-7-04	10-3-10	160 A
[illegible], Sec. 12	S.F. Pac. RR.	011687	11-4-11	Approved 1-23-13	120 A
[illegible], Sec. 13	George V. Rude	1209	9-29-90	9-10-97	160 A
[illegible], Sec. 13	Jonas E. Sewell	8095	5-25-05	4-23-12	160 A
[illegible] Sec.13, [illegible], Sec.24	Clarence [illegible] Wilson	09480	5-5-10	2-11-15	120 A
[illegible], Sec. 13	John W. Simpson	022098	8-20-17	12-3-18	160 A
[illegible], Sec. 14,	George V. Rude	3091	11-22-90	10-16-97	160 A
[illegible], Sec. 14,	John Lindstrom	017717	6-9-15	8-15-21	160 A
[illegible], Sec. 15	Ray Weaver	017694	5-13-15	12-26-19	160 A
[illegible], Sec. 22	Walter [illegible] Hoyl	017617	5-20-15	3-20-20	160 A
[illegible], Sec.23,	Ross F. Black	2762	9-5-91	9-15-97	160 A
[illegible], Sec.23,	Robert J. [illegible]	3760	9-9-97	3-22-02	160 A
[illegible], Sec. 23	Ralph [illegible] Weaver	017616	5-20-15	2-12-20	160 A
[illegible] Sec. 24	Clarence [illegible] Wilson	09480	5-3-11	2-11-15	40 A
[illegible], Sec. 25	S.F. Pac. R.R.	011687	11-4-11	Approved 1-23-13	40 A
[illegible], Sec. 25	" " "	011303	8-7-11	Ditto	80 A
[illegible], Sec. 25	Susan Sewell	3019	4-24-08	5-21-12	320 A
[illegible], Sec. 27	Joseph [illegible] Kalb	019213	6-5-16	11-26-19	160 A
[illegible], Sec. 27	C. Elmer Johnson	019370	7-7-16		160 A
[illegible], Sec. 35	S.F. Pac. R.R.	011303	8-7-11	Approved 1-21-13	200 A
[illegible] Sec. 35	" " "	010207	2-6-11	Approved 8-13-11	200 A

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WATER SUPPLY WESTERN SHOSHONE RESERVATION- NEVADA.

List of original filings on lands North of Duck Valley Reservation on Blue Creek and tributaries.

T. 13, South Range 1, East, Boise Meridian

Subdivision	Name of Applicant	No. of Application	Date of filing	Final cert. issued	Remarks
[illegible], Sec. 13	Jean Etchechury	019614	9-1-16	12-7-21	160 A
[illegible], Sec. 13, [illegible] Sec. 13, [illegible] Sec. 19, T. 13, S.R. 2 [illegible]	" "	026993	11-21-23	7-8-24	484.87 A
[illegible]	Henry [illegible]. Ratelt	027257	4-8-25	11-13-29	640 A
[illegible], Sec. 26	No. Pacific R.R.	023320	12-1[illegible]-18	Act of 7-1-98	40 A

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WATER SUPPLY WESTERN SHOSHONE RESERVATION- NEVADA.

List of original filings on lands North of Duck Valley Reservation on Blue Creek and tributaries.

Subdivision	Name of Applicant	No. of Application	Date of filing	Final cert. issued	Remarks
[illegible], Sec.1, [illegible], Sec.12	Henriette Fubolt	023495	4-9-21	Incompl.	160 A
[illegible], Sec.12, [illegible], Sec. 13,					
[illegible], S.R.1, East, [illegible], Sec.7					
[illegible], Sec.18, T.14, [illegible]	[illegible]	025483	7-1[illegible]-21	7-6-26	493.51 A

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WESTERN SHOSHONE INDIAN RESERVATION, NEVADA - IDAHO

HISTORY OF IRRIGATION DEVELOPMENT

(Supplementary to Report of May 21, 1930)

Statements by Superintendent [illegible] McNeilly and Certain Indians of the Western Shoshone Agency.

Under date of September 29, 1930, Superintendent [illegible] McNeilly of Owyhee, Nevada, in compliance with a previous request, submitted to the Supervising Engineer the following:

Western Shoshone Agency
Owyhee, Nevada. Sept. [illegible], 1930

Mr. [illegible]
Supervising Engineer
Blackfoot, Idaho

Dear Sir:

In reply to your letter of August 15, 1930, with reference to information on the irrigated area at this agency since its establishment in 1877, I desire to submit the following:

I have taken and enclose herewith statements from the following Indians: [illegible] Thacker, John Blackhat, [illegible], [illegible] [illegible], [illegible], [illegible] and from Grant Riddle, local trader.

It appears that during the first ten years of the existence of this agency there were three separate and distinct communities, [illegible] and irrigating lands in common. The first of these was on the south side of the river about a mile from the present location of the agency. This consisted of a strip of land about eighty rods in width and extending from the northeast quarter of the northeast quarter, section [illegible], to the southeast quarter of the northeast quarter, section 27, township 47 [illegible], range [illegible] east [illegible]. The area of this tract is estimated by [illegible]

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WESTERN SHOSHONE INDIAN RESERVATION, NEVADA - IDAHO

HISTORY OF IRRIGATION DEVELOPMENT

who assisted in the cultivation of it at that time to be about [illegible] acres. This also compares fairly well with statements in the annual reports of the superintendent of that time. The crops cultivated on this area consisted mostly of wheat and barley. Some of these men state that they raised potatoes and other hardy vegetables, but most of them state that they raised only grain. The community consisted of about twenty families.

At about this same period a community of [illegible] ten or twelve families was irrigating lands on the north side of the river from two miles below the [illegible] location and lands extended from the northwest quarter of the southeast quarter, section 18, [illegible] to the south [illegible] of the [illegible] quarter of the [illegible] section [illegible], township [illegible] [illegible] of this tract [illegible] to have been approximately eighty [illegible] also [illegible] is [illegible] to have contained [illegible] and six families. [illegible] this [illegible] [illegible] appears to have been another tract [illegible] [illegible] under the [illegible] [illegible] twenty families.

[illegible] the period of the later eighties, [illegible] and a number of families [illegible] to cultivate a tract of land on the south side of the river but [illegible] five miles below the [illegible]. This tract [illegible] sections 16 and 17 [illegible] to about the [illegible] as shown above. The tract is estimated to have contained five or six families and to have been the [illegible] families. [illegible]

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HISTORY OF IRRIGATION DEVELOPMENT

communities, including perhaps a few more vegetables. All of these communities had location down the river on unfenced area where they went each summer and cut hay for their horses. At that time it appears that they did not own any cattle or other stock except their horses. You will notice that their statements are quite uniform to the effect that the river at that time always contained sufficient water for the irrigation of their fields, even through the months of July and August. Another point on which all of these statements seem to agree is that beginning with the years from 1900 to perhaps 1908 or 1910 it is the usual thing for the river to be [illegible] during July and August, there is, however, another question which I have put to each of these men and which I have not recorded, to the effect that the area irrigated has gradually increased from the opening of the reservation in 1878 up until the present time and that at no time during that period have they attempted to irrigate a larger acreage than at the present time.

There are set forth herewith certain statements taken from the various annual reports of early times which have some bearing on this same subject:

Annual report, August 1[illegible], 1878, by John [illegible]: "The [illegible] River, running through its center, gives ample water for irrigating purposes.

"Our prospects for heavy crops are most sanguine and an excellent feeling prevails among the Indians. They call it their home and feel it to be so. They have built about three miles of fence, due two miles of water ditches, and have 2[illegible] acres of wheat and barley under cultivation; also 25 acres of potatoes, turnips, [illegible], etc. Our harvest is just commencing, and if no early frost reaches us it will prove all that is anticipated."

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HISTORY OF IRRIGATION DEVELOPMENT

Annual report of 1885 by John S. Mayhugh:

"The amount of new fence built is about two miles and a half, which has added to the original tract enclosed about 250 acres, making the total amount of land enclosed from 750 to 800 acres, the most of which is used for hay and general farm purposes. Of this amount about 300 acres have been cultivated in wheat and barley."

Annual report, August 5, 1901, by Calvin Ashbury:

"The limited farming here was only fairly successful last year, as the supply of water was limited, resulting in a short hay crop and but little grain.

"We are constructing an irrigation ditch, which, when completed, will be of considerable benefit to them in the making of hay land, but to provide ample grain land a part at least of another ditch, estimates for which have been made, should be built at once. A communication on this subject has been sent."

Annual report, August 10, 1903, by Norton H. Miller:

"The Duck Valley ditch, which is now under construction, has furnished employment to all the Indians who were not at work elsewhere. The wages paid are 1.50 for laborers and 3.00 for man and team per day. The estimated cost of this ditch, with the laterals, is 10,367.33, and when completed will be the means of reclaiming 1,[illegible] acres of land that will be sowed to alfalfa at an early day.

"The Pleasant Valley ditch, East Side ditch and Duck Valley ditch will provide for the use of all the water from the east work of the [illegible] River, and when this water is all utilized we expect to see the income of these Indians from the sale of hay, grain and cattle correspondingly increased."

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HISTORY OF IRRIGATION DEVELOPMENT

Annual report, September 14, 1905, by Norton H. Miller:

"5,500 acres are fenced; 5,000 acres are under ditch, and 1,700 acres are in meadow, from which 1,[illegible] tons of hay was cut this season.

"The acreage of hay land has been considerably increased during the year and the completion of Duck Valley ditch has made 1,500 acres more hay land available, which, it is expected, will be platted and taken up by industrious heads of families and young men in time for them to prepare for next season's crop."

There is perhaps other information which we have omitted which you may consider essential and if so, will you please outline it for us and we will try to supply it for you.

Very sincerely yours,

(Signed) [illegible] Willy
Superintendent

Statements of certain Indians of Western Shoshone Reservation

Statement of Big Rick with reference to irrigation matters

Q. Please state your name and age.
A. Big Rick, and not known for sure. Was a young man when the reservation was set aside. (Census shows 74)
Q. When did you come to this reservation or to the location where the reservation now is?
A. I was born here and then when the reservation was set aside I lived on the south side of the river near where the agency is now.
Q. Did the community or group of families in which you lived cultivate some land on the south side of the river?
A. Yes, we farmed as a community.
Q. How many families were there in your community?
A. I think twenty or more.
Q. How many forties do you think you farmed?
A. I think four or five forties.

WESTERN SHOSHONE INDIAN [illegible], NEVADA - IDAHO

HISTORY OF IRRIGATION DEVELOPMENT

Q. What did you raise chiefly on this land?
A. Wheat and barley.
Q. At that time do you recall that the river was ever dry during July and August?
A. No, there was always water.
Q. As near as you can recall, when did the water in the river begin to be short during the summer?
A. I think twenty years or more.
Q. During the last ten years has the river usually been dry so that you could not get water out?
A. Yes.
Q. During the first ten years you farmed on the south side, were there any ranchers irrigating at Mountain City?
A. There were some families living there but they were [illegible] and did not use water.
Q. During the time you were living on the south side farming did you have wild hay lands elsewhere?
A. Yes, we went down the river and cut hay outside for our horses. We had practically no other stock.
Q. Where are you living at the present time?
A. Down the river from the agency about seven or eight miles.
Q. What are your water conditions there now?
A. We have only the spring floods. We cannot raise potatoes or gardens.
Q. About what time does this spring flood drop to where you cannot get water out of the river?
A. Usually the last part of May.
Q. Is there any other statement you wish to make?
A. No, that is all.

Witness to mark: [illegible] McNeilly
Owyhee, Nevada.

Big Dick — His [illegible] Mark

Statement of David [illegible] with reference to [illegible]:

Q. Please state your name and age.
A. David [illegible]. [illegible] eighty. I was a young man when the [illegible] treaty was signed.

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WESTERN SHOSHONE INDIAN RESERVATION, NEVADA - IDAHO

HISTORY OF IRRIGATION DEVELOPMENT

Q. How long have you lived on this reservation?
A. I think about 45 years.
Q. Where have you lived on the reservation?
A. On the south side of the river from three to eight miles from where the present agency is located.
Q. At that time did you live on your separate lands or did you live and work together in one community?
A. Some worked together and some separate.
Q. How many families were there in the Charley Thacker group where you lived?
A. Something over ten families.
Q. About how many forties did you have under cultivation in this group?
A. About five or six forties I think.
Q. At that time was there always water in the river during July and August?
A. Yes. I always had water in July. I raised potatoes.
Q. Did you raise potatoes enough for your family?
A. Yes. I raised enough for my family.
Q. About when did you first notice that the river water was getting low and that there was not enough water in the summer?
A. I had alfalfa but about the time Mr. Asbury was here it dried up and I lost all of it. (Supt's note - Mr. Asbury was Agent around 1900.)
Q. After this you found the water too low to raise grain, did you.
A. Yes, this land gradually dried up and it is not used at all now but has grown up to sage brush again.
Q. Now can you tell me where the boundary lines were to the Big Dick community field and about how many forties they were farming?
A. From where the old agency road is now to below Fred Jones place, and I think a forty wide. Probably five or six forties. (Supt's note - from this road to Fred Jones is the diagonal of five forties.)
Q. Did you cut wild hay on lands outside your fields?
A. We cut enough hay for our horses just out on the open range.

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HISTORY OF IRRIGATION DEVELOPMENT

Q. Any other statement you wish to make with reference to irrigation matters?
A. There are more ranches on the river above us now. I think that is why the water is short.

Witness to mark:

E. [illegible] McNeilly
Orkyse, Nevada

His
David Dave xxxxx
Mark

Statement of John Blackhat with reference to irrigation matters:

Q. State your name and age.
A. John Blackhat, age about 55. (Census shows 1870 as the date of birth.)
Q. How long have you lived on this reservation, John?
A. About forty years.
Q. During most of this time what part of the reservation have you lived on?
A. North of the agency about two or three miles on the north side of the river.
Q. During the first ten years you were on the reservation did you live on your individual lands, or did you live and work together?
A. Lived and worked together.
Q. How many families lived in your group?
A. About twelve families.
Q. About how many forties do you think were in actual cultivation at that time?
A. About eight forties.
Q. What did you grow on the land?
A. Wheat, barley and oats.
Q. Give the approximate extent of this field.
A. From where [illegible] now lives down to where Alfred Jack lives and this was a little more than one forty wide on the average.
Q. In addition to this was there another community above this where the agency now stands?
A. Yes.
Q. How many families do you think lived in this upper community?
A. I can remember about thirteen or fourteen families.
Q. About how many forties do you think this upper group had in actual cultivation.

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WESTERN SHOSHONE INDIAN RESERVATION, NEVADA - IDAHO

HISTORY OF IRRIGATION DEVELOPMENT

A. About seven or eight forties.
Q. During this first ten years you were on the reservation did you ever notice the river dry during the months of July and August?
A. No, there was always water in the river.
Q. What has been the condition during the last ten years?
A. The river usually dries up during the summer now.
Q. About when did you first notice that the river began to run short in the summer?
A. Since about the time Mr. Asbury was agent it began to dry up until lately there is no water.

Q. Has it been possible for you people on the north side of the river to grow grain or alfalfa or vegetables during the last twenty years?
A. A little.
Q. How many acres do you estimate is in actual cultivation on the north side of the river at the present time?
A. I think about twenty acres.
Q. During this first ten years on the reservation did you cut wild hay some where?
A. Yes, we cut on Blue Creek, on the river near the mouth of Blue Creek and in Pleasant Valley. This land was not fenced but we just cut along the slough and wherever we could find hay.
Q. Is there anything further you wish to add?
A. Nothing.

Witness to mark: John Blackhat His Mark

Owyhee, Nevada.

Owyhee, Nevada.
September 1[illegible], 1930

We the undersigned, Rose Harney and Old Man Roney, ages 65 and 72 respectively, state that we have lived on this reservation since it was established and in the community with Mr. Blackhat and that we have heard his statement read and to the know of our own knowledge that his statements are true.

Witness to both marks: Rose Harney His Mark

[illegible] Mc Silly

Old Man Roney His Mark

Owyhee, Nevada

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WESTERN SHOSHONE INDIAN RESERVATION, NEVADA - IDAHO

HISTORY OF IRRIGATION DEVELOPMENT

Statement of Charley Thacker with reference to irrigation matters:

Q. How old are you, Mr. Thacker?
A. I think about 78.
Q. When did you come to this reservation?
A. 1889.
Q. Where did you live when you first came to the reservation?
A. On the south side of the river some four or five miles from where the agency is now.
Q. Did you live all together in one community?
A. Yes, there were about ten families of us.
Q. Where did you farm?
A. From where my place is now up to where Jimmy Strawbrook lives and down to the river.
Q. About how many forties do you think you plowed?
A. About five or six forties.
Q. What did you raise?
A. Wheat, barley and some root crops.
Q. Did you use other lands for hay purposes in addition to what you have mentioned above?
A. Yes, but not much. We did not have hay lands fenced so just cut a little along the sloughs for our horses. We did not have any cattle.
Q. During the first ten years you were here did you ever see the river dry in the summer?
A. No.
Q. How is it now?
A. It is dry every summer.
Q. When did you first notice the river begin to get short?
A. After I had been here about ten years it began to get a little shorter every year.
Q. Any further statement you wish to make about the water situation?
A. No, only that we used to have plenty of water and now it is pretty short.

Witness to mark:
[illegible]
[illegible], Nevada.

Charley Thacker
His
[illegible]
Mark

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WESTERN SHOSHONE INDIAN RESERVATION, NEVADA - IDAHO

HISTORY OF IRRIGATION DEVELOPMENT

The following is a statement with reference to irrigation matters by Grant Riddle, (White man), a local trader, who has lived on or near the Western Shoshone Reservation for many years:

Q. Please state your name and age.
A. Grant Riddle, age 62.

Q. Have you lived the greater part of your life near the Western Shoshone Indian Reservation?
A. Yes. I lived at Whiterock, about twenty miles south, and then at Riddle, Idaho, about twenty miles north of the agency headquarters for thirty-five years.

Q. During that time have you been on the reservation frequently and do you know something of the irrigation activities of the Indians?
A. Yes, sir.

Q. Please state what your observations have been as to the quantity of land irrigated or the crops produced.
A. I know that the ditch on the north side of the river at that time was larger than it is now, that there was more water in the river and the ditches than there now and that the Indians were irrigating about twenty forties north of the river.

Q. When did you first notice that the water in the river was dropping down?
A. Well, I think it must have been around 1900.

Q. During the eighties and early nineties were there many ranches in the Mountain City district?
A. No, there were not over three or four ranches there at that time.

Q. Is there any other matter you wish to mention?
A. No, that is all.

([illegible])

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WESTERN SHOSHONE INDIAN RESERVATION, NEVADA - IDAHO

HISTORY OF IRRIGATION DEVELOPMENT

Excerpts from Reports of the Commissioner of Indian Affairs

Summary of Reports:

Indians were farming on lands now included in the Duck Valley or Western Shoshone Reservation in 1878 or earlier: This is established as a fact by statements made in the report of the United States Indian Agent of Nevada and contained in the annual report of the Commissioner of Indian Affairs for 1876, viz:

> "The Shoshone farms are located in Elko County in the northeastern part of Nevada. These farms were located about two years ago for the western band of Shoshones and have been put under cultivation in such extent as means and time would justify. Good progress has been made and it is desirable that a survey be made and the title of these lands guaranteed to the Indians residing thereon. . . .
>
> "Farming has been adopted for a livelihood by both the Pah-utes and Shoshones pretty generally upon these reserves and every year shows the gradual abandonment of the old nomadic custom. A large number upon each reserve can plow, drive teams, shop, mow, and in fact can do all manner of farm work and all have adopted citizens dress."

The following statements are from the report of the Farmer in Charge of the Western Shoshone Indians of Elko County, Nevada, dated August, 1876, and included in the report of the Commissioner of Indian Affairs for 1876:

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WESTERN SHOSHONE INDIAN RESERVATION, NEVADA - IDAHO

HISTORY OF IRRIGATION DEVELOPMENT

"Considerable suffering prevailed among the Indians last winter and spring in the vicinity of the trouble that occurred last spring (full particulars of which have been heretofore reported). The Indians were compelled to leave their ranches and homes and go to Deepcreek in Utah and remain there until after the excitement was over. They left most of their grain which they cached in the mountains. The most of their potatoes and their vegetables were not harvested at the time they left and were subsequently destroyed by cattle belonging to the whites. I was informed by Dr. [illegible] of [illegible] Valley that while the Indians were absent some White men had stolen considerable amounts of their grain, which rendered them destitute on their return. . . .

"The Indians who were forging throughout the eastern part of the state have been greatly annoyed during the past year by the most of land and water. The country is being fast settled up by White people and the patches of land heretofore cultivated by the Indians have in many instances been taken from them and in other cases water used for irrigating purposes has been taken from them and their crops have dried up and became worthless. . . .

"The Indians complain to me that the country is being fast settled up by the Whites and that in a very short time there will be no land for them and no place for them to go. . . ."

Conditions in 1977:

The following statements are taken from the report (dated August 24, 1977) of the United States Indian Agent, Western Shoshone Agency, Nevada, to the Commissioner of Indian Affairs and contained in the annual report of the Commissioner for 1977.

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WESTERN SHOSHONE INDIAN RESERVATION, NEVADA - IDAHO

HISTORY OF IRRIGATION DEVELOPMENT

"The Western Shoshone Indians under my charge have improved in civilized habits during the past year. Some of them are engaged in farming for themselves in different parts of eastern Nevada. Not as much farming has been done by them in the past year as in former years owing to the scarcity of land and water. . . . A good many ranches have, however, been cultivated by the Indians this year. The Western Shoshones generally have an inclination to be industrious. They are peaceable and well disposed toward the White people. Many of them have learned to work and make very good farm hands. . . .

". . . For several years past some of the most intelligent leading men of the Shoshones have been very anxious to have a tract of land situated in the northern part of the state and known as "Duck Valley" set apart as a reservation for them. . . .

"I received a communication from the Honorable Commissioner of Indian Affairs dated April [illegible], 1877, inclosing a copy of an executive order dated April 1[illegible], 1877, withdrawing a large tract of land in Duck Valley, being partly in Nevada and partly in Idaho, from the public domain from which to select a suitable reservation for the Western Shoshones. . . . I at once proceeded to that locality and was pleased to find 3[illegible] Indians camped on the proposed new reservation. . . . They were highly pleased with the country and with their future prospects.

Conditions in 1879:

The following statements, among others, are contained in the annual report of the Commissioner of Indian Affairs for 1879:

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WESTERN SHOSHONE INDIAN RESERVATION, NEVADA - IDAHO

HISTORY OF IRRIGATION DEVELOPMENT

"Our prospects for heavy crops are most sanguine and an excellent feeling prevails among the Indians. They call it their home and feel it to be so. They have built 3 miles of fence, dug 2 miles of water ditches and have 300 acres of wheat and barley under cultivation, also 25 acres of potatoes, turnips, peas, etc."

Conditions in 1880:

The following statements appear in the annual report of the Commissioner of Indian Affairs for 1880:

"In my farmer report I could only anticipate the results of our harvest for 1879, but the hope of a large crop was fully realized and early in September we had a grain sufficient to furnish flour for the 1880 Indians on the reserve. . .

". . . On the 19th (May) we put the plow at work, nearly five weeks later than the previous season, but having so many Indians willing to work, we soon had nearly 500 acres under cultivation, divided into five farms with an Indian farmer of their own selection for each. These farms are not of equal size, but 500 Indians (men) are divided among them according as they choose their leader. My farmer superintends the whole, governs the supply of water from the irrigating ditches and all is working well. It will be noticed that we have 300 more acres under cultivation this year than last."

Conditions in 1881:

The following statements are taken from the report of the Commissioner of Indian Affairs for 1881:

"I still have the pleasure of reporting progress. Five hundred acres ([illegible] of wheat and barley and 100 of potatoes and turnips) are

WESTERN SHOSHONE INDIAN RESERVATION, NEVADA - IDAHO

HISTORY OF IRRIGATION DEVELOPMENT

ready for harvest. We have a large quantity of hay, estimated at 1,000 ton, and we shall ask of the government this year nothing for cereals."

Conditions in 1882:

The following statements pertaining to irrigation and farming are taken from the report of the Commissioner of Indian Affairs for 1882:

"At or near the south or upper end of the reservation where the river discharges itself from the mountains, the Indians have constructed a dam and connected with it an irrigating ditch on the west side of the river. This ditch is some 3[illegible] to [illegible] miles in length and has a water carrying capacity of about [illegible] inches which will, if properly and economically used, irrigate about [illegible] acres of land. About [illegible] yards further down the river the Mission school boys erected a rude dam tapping it with a ditch on the east side of the river about one mile in length which has a carrying capacity of about [illegible] inches. . . . Notwithstanding the short crop of wheat, I am of the opinion that we shall have a sufficient amount of ore detuff to carry us over to the crop of 1883 including seed for next year's crop, having on hand [illegible] pounds surplus of wheat from the crop of 1881."

Conditions in 1883:

From report of Commissioner of Indian Affairs for 1883:

"The Indians of this reservation have been remarkably industrious and cheerful during the last year. They have repaired all of their old irrigating ditches and made crossings over the [illegible]. There has been plowed and sown about [illegible] acres of barley and wheat. . . . For the first time in the history of

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WESTERN SHOSHONE INDIAN RESERVATION, NEVADA - IDAHO

HISTORY OF IRRIGATION DEVELOPMENT

this reservation each lodge or family has planted and cultivated for themselves separate gardens consisting of lettuce, cabbage, radishes, onions, corn, parsnips, beets peas and potatoes. . . . Quite a number of the lodges have put up small stacks of hay from ten to twenty ton each, aggregating from 1[illegible]0 to 2[illegible]0 tons, for use of their cows and ponies during the severe portion of the winter. . . . In accordance with your instructions Mr. Levi Harris, Harry Doyle and David Coates, who were tenants-at-will within the limits of the reservation, were removed by the military authorities of the United States . . . on the 23rd and 24th of May, 1[illegible]."

Conditions in 1[illegible]:

The following statements are contained in report of the Commissioner of Indian Affairs for 1[illegible]:

"Nineteen families raised sufficient wheat to supply them with flour through the entire year, while 36 more families raised partly enough. . . About 1[illegible],000 pounds was raised, of which 2[illegible],000 pounds was sold to the whites, at an average of two cents per pound, while the remainder was fed at home and kept for seed. . . . Potatoes, turnips, rutabagas, carrots, parsnips, beets, peas, etc. were sold in considerable quantities but owing to the great extent of country over which the gardens were harvested, and the irregular harvesting of the crop, it was almost impossible to form an accurate estimate of the amount grown. . . . About 1100 tons of hay, mainly wild, were put up by and for the Indians. . . .

"The main diverting dam has been placed in thorough repair at a cost of [illegible] to the government. Dates have been placed in the

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WESTERN SHOSHONE INDIAN RESERVATION, NEVADA - IDAHO

HISTORY OF IRRIGATION DEVELOPMENT

main canal on the east side of the river which enables us to control the flow of water, while on the west side a main canal has been constructed about 4 miles in length by the Indians without any assistance from the Government, farms laid out and cross and distributing ditches made through the land. Another year this ditch will furnish water for 150 acres of land so long as water flows in the streams."

Conditions in 1896:

From report of the Commissioner of Indian Affairs for 1896:

"The wild hay crop this year was very abundant. It is estimated that nearly 3,000 tons of it will be stacked for their use during the coming winter."

Conditions in 1904:

The following statements are contained in the report of the Commissioner of Indian Affairs for 1904:

"These Indians have made an effort to improve their homes and are building substantial log houses, increasing their hay land and building dams and ditches to water their meadows better. As a result their hay crop is increasing from year to year and as there is a regular demand for all surplus at from [illegible] to [illegible] per ton in the stock, they are beginning to get on a permanent self-supporting basis. About [illegible] worth of hay and 3,000 worth of horses have been sold this year."

Conditions in 1905:

The following statements are contained in the report of the Commissioner of Indian Affairs for 1905:

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WESTERN SHOSHONE INDIAN RESERVATION, NEVADA - IDAHO

HISTORY OF IRRIGATION DEVELOPMENT

"The census taken June 30 shows a population of 516. Of this number 241 are Shoshones and 275 are Paiutes. Of this number 140 are of school age; 78 of which were in school here during the year and 15 are attending non-reservation schools.

"The reservation contains 312,330 acres, about 12,000 of which is level and suitable for cultivation, 5,500 acres are fenced, 5,000 acres are under ditch and 1,700 acres are in meadow, from which 1,800 tons of hay were cut this season. The Indians own 2,000 head of horses and 550 head of cattle. They have sold during the year about 1,000 horses, at an average of $6 per head.

Conditions in 1913:

The following statements are taken from a report dated July 15, 1913, by Superintendent of Irrigation Henry [illegible] Biotz, to Mr. [illegible] Wood, Chief Irrigation Engineer of the Bureau of Indian Affairs:

"At the point where the Owyhee River enters the valley are two diversions. The larger of these has a bottom width of [illegible] feet and banks five feet high, and extends westerly for about 2½ miles. The diversion is accomplished by means of a small rock and brush dam and is controlled by a set of wooden headgates. About a mile downstream the agency ditch takes out on the east side of the river and runs northerly through the agency, paralleling the hills. This ditch has ten foot bottom with banks three feet high. . . . There are about [illegible] acres of irrigated land on the reservation. In addition to this about 6,[illegible] acres of wild hay land are cut over every year. The Indians depend mainly upon their wild hay and cattle. . . . .

WESTERN SHOSHONE INDIAN RESERVATION, NEVADA - IDAHO.

HISTORY OF IRRIGATION DEVELOPMENT.

From Report of United States Indian Agent, Nevada, dated August 22, 1876, to Commissioner of Indian Affairs and contained in the Annual Report of Commissioner of Indian Affairs for 1876 (Pages 115 & 116).

"The Shoshone farms are located in Elko County, in the north-eastern part of the State, about 275 miles from Pyramid Lake. These farms were located about two years ago for the "western band of Shoshones," and have been put under cultivation in such an amount as means and time would justify. Good progress has been made, and it is desirable that a survey be made and the title of these lands guaranteed to the Indians residing thereon.

Fair crops have been raised upon the Pyramid Lake and Walpa River reservations and Shoshone farms this season, though the floods have destroyed the larger portion of the grain planted this spring, (more particularly Walker River reserve,) a thing liable to occur any year, and yet not occurring very often. This baffles all attempts to prevent, as no one can foresee the time of its coming; and yet with this adversity the Indians are hopeful for the future, and will, if encouraged, renew their efforts to repair the waste places and make new trials for success. Surely they deserve the greatest encouragement, for many persons much farther advanced in habits of industry would have been disheartened by the reverses which have befallen these reserves this season.

Farming is being adopted for a livelihood by both the Pah-Utes and Shoshones pretty generally upon these reserves, and every year shows the gradual abandonment of the old nomadic custom. A large number upon each reserve can plow, drive teams, chop, mow, and, in fact, can do all manner of farm-work, and all have adopted citizens' dress."

From Report of farmer in charge of the Western Shoshone Indians, Elko, Elko County, Nevada, dated, 1876, to Commissioner of Indian Affairs and contained in the Annual Report of Commissioner of Indian Affairs for 1876 (Pages 116, 117 and 118).

These Indians are peaceable, and some of them industrious and anxious to engage in civilized habits. Some are, however, very indolent. Some are engaged in farming small patches of land in different parts of Eastern Nevada for themselves; others are sometimes employed by the white people as servants on ranches and about houses, and as herders of stock, etc. Another class subsist as they can, by begging and gambling, and

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WESTERN SHOSHONE INDIAN RESERVATION, NEVADA - IDAHO

HISTORY OF IRRIGATION DEVELOPMENT.

sometimes hunting. The Indians under my charge have no reservation; they are generally destitute. They are scattered over a very large tract of country, and inhabit the following named counties in Nevada: Lander, Nye, White Pine, Eureka, Elko, and a part of Lincoln and Humboldt.

I find on close examination that the Western Shoshones number nearly 4,000 including some Cosh-Utes and other Indians near the line of Utah and Nevada. There are several small bands of Cosh-Utes, Utes, and a few Pah-Vants among the Shoshones of the eastern part of the State. These Indians claim to belong to no agency, and say they receive nothing from the Government. The Mormon people have frequently assisted them, and have a great influence over them as well as the Shoshones in that vicinity. Nearly all the Indians near the line of Utah and Nevada have been baptized by the Mormon people. The influence that people have over these Indians has been greatly increased in the past two years by the failure of the Government to provide for the relief of the suffering among the Indians.

The Indians under my charge have received little or no assistance from the Government during the past year. Considerable suffering prevailed among the Indians last winter and spring in the vicinity of the trouble that occurred last September, (full particulars of which have been heretofore reported.) The Indians were compelled to leave their ranches and homes and go to Deep Creek, in Utah, and remain there until after the excitement was over. They left most of their grain, which they cached in the mountains. The most of their potatoes and other vegetables were not harvested at the time they left, and were subsequently destroyed by cattle belonging to the whites. I was informed by Mr. A. S. Ichman, of Smiths Valley, that while the Indians were absent some white men had stolen a considerable amount of the grain belonging to the Indians, which rendered them destitute on their return; and winter set in upon them in this condition. These facts I reported to the Department, under date of December 2, 1875. The Indians above referred to have done considerable farming for themselves this year, without any assistance whatever from the Department. They had some trouble in obtaining seed, and not as much was done in the way of farming as would otherwise have been done. Many of the Indians in that vicinity are now destitute; some sickness prevails among them, and should be attended to.

The Indians who are farming throughout the eastern part of the State have been greatly annoyed during the past year by the want of land and water. The country is being fast settled up by white people; and the patches of land heretofore cultivated by the Indians, in many cases,

have been taken from them, and in other cases the water used for irrigating purposes has been taken from them, and their crops have dried up and become worthless. I have been frequently appealed to by the Indians to assist them in such cases, but in most instances it has been impossible for me to do so: the Indians being scattered over a very large tract of country, and I being entirely without means to use in their behalf. I have, however, succeeded in assisting them in some cases at my own expence.

The Indians complain to me that the country is being fast settled up by the whites, and that in a very short time there will be no land for them and no place for them to go, and that in most cases they have to work for the whites for anything they may see fit to give them, and that this state of affairs is growing worse instead of better. The most intelligent of them see the condition of affairs, and are anxious that something should be done, while others are indolent and ignorant, and care for nothing but the present.

Since the writing of this report I have been visited by a delegation of Indians from White Pine, (my former home.) Among them is an intelligent young chief by the name of Tau-vis, (good knife.) Captain Sam, another chief from the north side of the Central Pacific Railroad, is also present. In a conversation had with the former, he stated that he could not see what was to become of the Shoshones in his country: that the grass was all gone; the trees that bore pine-nuts were cut down and burned in the quartz-mills and other places; the grass-seed, heretofore used by them for food, was no more; the grass-land was all claimed by the whites, and the grass cut for hay before the seed was ripe; that the good land was or soon would be all claimed and cultivated by the white people; and that his Indians would soon be compelled to work for the ranchers for two bits (twenty-five cents) per day, or starve. He also states that himself and many others of his tribe are in favor of a tract of land being reserved for the Shoshones, that they may have some place for their future home; that if one place cannot be found large enough for them all, then locate three or four places, as the case may require; but to have these places as near together as possible, and as near to where there is grass and fish as can be found. Captain Sam states that he thinks such places can be found north of the railroad in his country, but does not know to what extent it is claimed by the whites. He states that he is anxious to go with me this Fall and ascertain if a place or places can be located suitable for a home for the Shoshones. Tau-vis and others also are anxious to go with me, and furnish their own horses.

The Indians state that in their opinion it will take some time to get all of the Shoshones to leave their present homes and locate in any

place or places suitable for them. Some of the old Indians are very superstitious about leaving the country formerly inhabited by their ancestors and where their relatives have died, believing, as they do, that, if they leave their old homes and die somewhere else, their spirits will be lost. Some of the old men have considerable influence, which will take some time to overcome, but which the young Indians think can be accomplished. I submit the above that the Indians' ideas of the situation may be made known. I speak the Shoshone language with a fluency nearly equal to themselves, and fully appreciate their feelings in regard to the matter.

Many of the Shoshones express an anxiety to learn to read and write, especially the young ones; they have improved in civilization during the past year, and will continue to do so if properly encouraged. I think that in time they can be made an industrious and self-supporting people. Some of the most ignorant and superstitious among the old ones will have to pass away before the foolish traditions now existing among them can be overcome; many of the young Indians are learning to speak English, and can be taught to read and write."

WESTERN SHOSHONE INDIAN RESERVATION, NEVADA - IDAHO

HISTORY OF IRRIGATION DEVELOPMENT.

From Report of United States Indian Agent Western Shoshone Agency, Nevada, dated August 24, 1877, to Commissioner of Indian Affairs and contained in the Annual Report of Commissioner of Indian Affairs for 1877 (Pages 151, 152 & 153).

"The Western Shoshone Indians under my charge have improved in civilized habits during the past year. Some of them are engaged in farming for themselves, in different parts of Eastern Nevada. Not as much farming has been done by them in the past year as in some former years, owing to the scarcity of land and water. The country is becoming more thickly settled by white people, and the patches of land, in many cases heretofore cultivated by the Indians, have been purchased from the Government by white men, and are now cultivated by them. In other cases the water heretofore used by the Indians for irrigating purposes has been taken from the streams above the Indian ranches, thus rendering them valueless, as nothing can be raised without irrigation. A good many ranches have, however, been cultivated by the Indians this year. The Western Shoshones generally have an inclination to be industrious. They are peaceable and well disposed toward the white people. Many of them have learned to work, and make very good farm-hands. Some of them can drive four and six horses. They can chop, mow, and, in fact, do all manner of farm-work. Some of the young Indians are learning to read and write, and are fast improving in civilization. On the other hand, there are many who are indolent and shiftless, and will not work as long as they can have something to eat.

I have visited a large portion of the country inhabited by the Western Shoshone and Bosh Ets Indians during the past year, and have taken great pains to ascertain their true condition, also to learn their wishes in regard to the future. For several years past some of the most intelligent leading men of the Shoshones have been very anxious to have a tract of land situated in the northern part of the State, known as Duck Valley, set apart as a reservation for them. I have several times informed the Department of the wishes of the Indians, and asked to be authorized to visit the country in question and ascertain whether it was suitable for a reservation or not. No steps were taken in regard to the matter, that I am aware of, until in March last. The Indians during the winter urged upon me to go with them to Duck Valley as soon as spring opened and see what I thought of the country, and report the result to the Department at Washington. This I agreed to do as soon as we could get through the mountains. During this time Col. .... Watkins, United States Indian Inspector, arrived here from Washington with

WESTERN SHOSHONE INDIAN RESERVATION, NEVADA - IDAHO

HISTORY OF INDIAN DEPREDATIONS.

instructions to examine into the condition of the Indians under my charge. He directed that some of the leading Indians should meet him here. I accordingly sent for Captain Sam, an intelligent Shoshone, and a number of others, who at once came. In an interview with Inspector Watkins the Indians laid this matter before him, interpreted by me. He authorized me to proceed to Duck Valley and make a careful examination of the country, and report the result to the honorable Commissioner of Indian Affairs. In obedience to his instructions, I started on the 15th of March, in company with Captain Sam and his nephew. The Indians furnished four horses for the occasion, two of which we used to pack our provisions, blankets, etc. I arrived at Duck Valley, and remained there some days, and carefully examined the country, in order that I might be able to make a correct report. After a thorough examination I considered the place suitable for a reservation for the Shoshones, and, in fact, better than I had expected to find. I returned, and on the 30th of March reported the matter to the honorable Commissioner of Indian Affairs, giving as full and correct a description of the country as I could, and respectfully asked that the same be reserved for the use and occupancy of the Western Shoshones, this being the only tract of land included in Nevada suitable for a reservation for them. In the early part of April I went south among the Shoshone and took the Indians in Nevada and Utah.

I received a communication from the honorable Commissioner of Indian Affairs, under date of April 2d, 1877, inclosing a copy of an executive order, dated April 16, 1877, setting apart a large tract of land in Duck Valley, being partly in Nevada and partly in Idaho, from the public domain, from which to select a suitable reservation for the Western Shoshones. Upon the receipt of these instructions, I sent for Indians representing different bands throughout the country, to go to Duck Valley with me for the purpose of examining the proposed reservation. Early in June I was informed that a large number of Indians were congregating in Duck Valley. Some of the white people became alarmed at the presence of so many Indians, and sent me word to that effect. I at once proceeded to that locality, and was pleased to find 300 Indians camped on the proposed new reservation. These Indians represented different bands throughout nearly every part of Western Nevada, and had gone there in obedience to my instructions. They were highly pleased with the country and their future prospects. As soon as I receive word I will go to Duck Valley and remain for farming only in the spring.

[illegible] INDIAN AGENCY, NEVADA - 1918.

HISTORY OF INCIDENT AT BATTLE MT.

It will take several years to congregate all the Western Shoshones on the reservation. A few of the old Indians throughout the eastern part of the State strongly oppose moving, stating that if they leave the home of their ancestors their spirits will be lost. These foolish ideas will, however, be overcome in time, but those Indians must for a while be handled carefully. Some of these old men and prophets have a great deal of influence over the Indians, and will oppose the move for a while. I think it would be best that the Indians who are farming in different parts of the State, and wish to remain on their ranches for another year, be allowed to do so. Some who have farms are anxious to leave them and go to the reservation where they can be assisted, and others prefer to remain where they are for the present. These Indians can be gathered in Duck Valley then can be cared for with the means now at the disposal of the Department for that purpose. The number can be greatly increased at any time.

In July last an excitement prevailed in the vicinity of Duck Valley, caused by a report being circulated that the Shoshones were about to join the Bannock Indians in Idaho, who were then at war with the white people. The whites settled with the family left Duck Valley, and for a while considerable excitement prevailed. Arms and ammunition were sent for by the white people to protect them against the Indians. I went to Duck Valley immediately to prevent trouble from occurring, if possible. On my arrival at the place of the so called trouble, I found that the reports were untrue and without foundation; that it would be nearly impossible to induce or even force the Shoshones to take up arms against their white neighbors. From what I am of the condition myself, I believe that some of the white men were more anxious for an Indian war than the Indians themselves. I submitted to the Department the full particulars of this affair in my report for July last."

WESTERN SHOSHONE INDIAN RESERVATION, NEVADA - IDAHO

HISTORY OF IRRIGATION DEVELOPMENT.

From Report of United States Indian Agent Western Shoshone Agency, Nevada, dated September 14, 1878, to Commissioner of Indian Affairs and contained in the Annual Report of Commissioner of Indian Affairs for 1878 (Pages 104 & 105).

"The Western Shoshone Indians are peaceable and most of them improving in civilization. They inhabit most of Eastern, Southeastern, and Northern Nevada, where a reservation has been selected for them. The Central Pacific Railroad divides the south and southeastern part of the country inhabited by these Indians from the northern part. Some of these Indians are migratory, shifting from place to place as they see fit; and others, most of whom are south of the railroad, reside permanently on little farms or ranches cultivated by them, except at some seasons of the year when they are engaged in hunting, gathering pine-nuts, etc.

Twenty-one of these ranches have been cultivated this year to an advantage, all but one of which are south of the railroad. Nearly all of the land so cultivated by Indians belongs to white people. In some cases the Indians pay for rent of the land in labor; in other cases their white friends charge them nothing. The Indians referred to are generally put to a great inconvenience in regard to the use of water, especially this season, which has been unusually dry. In such seasons the white people take the water in preference and the Indian crops suffer thereby. In examining closely into affairs south, I find that something must be done soon for these Indians for the reason that the white people who own the land cultivated by them are likely to take it at any time. In fact, I learn that several cases of this kind will probably occur next year. The Indians state to me that they feel "bad" when they look at the uncertainty of the future, which they fully appreciate. They state that they cannot see what is to become of them unless a suitable reservation is established.

A council was held with several chiefs and leading Indians from south of the railroad, among whom was old Pinoke (rope), who, before he became unable to act on account of age, was the recognized chief of all the Western Shoshones, and who even now retains great influence. His arguments were clear, sensible, and plain. He laid before me the present condition of affairs and asked me to do all in my power to improve their situation. He states that he will probably remain in Ruby Valley (which is season of as "south") the balance of his days, which can be but few; that he is, however, anxious that something be done for his people;

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that many years ago this country was valuable to them, there being plenty of game and other means of subsistence; that when the country first commenced to be settled by the whites they felt encouraged, because they thought the Indians would learn to farm the land to advantage, which would greatly improve their condition. He states that years ago the Shoshones were promised a reservation in Ruby Valley, but subsequently the same land was sold to the whites and nothing more was said about the reservation; and since that time all the valuable land, water, and timber in his country has been disposed of to the whites; that the game, heretofore in abundance, has disappeared; that some of the Indians have gone to farming and have greatly improved in civilized habits, notwithstanding the great disadvantages they have labored under, that is, the scarcity of water and the poor quality of land forced to be taken. He states that the Indians are scattered over a large tract of country; that while many of them, through being employed by the whites, have learned to farm and do almost all kinds of work and are now able to carry on a farm themselves, yet others have become demoralized and are now roaming vagabonds, living about mining camps and trading posts, subsisting upon refuse food thrown away by restaurants and boarding-houses; that they get drunk and commit all crimes among themselves; that their squaws are prostitutes; that loathsome diseases were spreading among them; that in consequence they were degenerating and would soon die off if something was not done to improve their condition. He strongly recommends, as the Duck Valley Reservation was the only land worth taking in the three which were set for the purpose, that every possible means be used to make it more attractive to the Indians, that in time all may be induced to go there and improve in civilization; those who have already learned to farm would have an example and encourage the others. Over 1,000 Shoshones are employed farming for themselves south."

WESTERN SHOSHONE INDIAN RESERVATION, NEVADA - IDAHO

HISTORY OF IRRIGATION DEVELOPMENT.

From Report of United States Indian Agency Western Shoshone Agency, Nevada, dated August 13, 1879, to Commissioner of Indian Affairs and contained in the Annual Report of Commissioner of Indian Affairs for 1879 (Page 111).

"Early in November you directed me to take charge of the Indians at Carlin Farms, and all other Shoshones, including a band of Gosh Utes that were living in Nevada. In carrying out these instructions I visited the different camps and informed them that the object of the government was to give them a home on the Duck Valley Reserve, where they would be supplied with farming utensils and grain for sowing and planting also wagons, oxen, etc., and during the fall and winter I would aid in their support from the annuity and supply goods received for that purpose. During the season from the 1st of November, 1878, to April, 1879, I relieved over 2,500 Indians of both sexes and all ages, having deposited goods at Tuscarora, Cornucopia, Carlin, and Elko for that purpose. In distributing the goods among them I became better acquainted with their wants and dispositions, and it gave me a better opportunity to explain the object of the government.

Early in March they called a council at Carlin, which was numerously attended. Two additional councils were called at Elko the following weeks, and the concentration of the tribe at Duck Valley fully discussed. The usual speeches of want of faith in the white man and regret at leaving their homes and the homes of their fathers, etc., were made. The Carlin Indians, who had been doing well on their farms, were reluctant to leave, and could not understand why the land which they had occupied for years, and which had been but lately discovered to have been sold to white citizens before the Indians' occupancy, could not be held by Washington, as they term the government, against all claimants. In explaining these objections satisfactorily and in overcoming the interference of the Horses and others, great difficulty was experienced, the main facts of which I reported at the time. About the 4th of April the Carlin Indians, accompanied by those of Elko, and joined en route by those north of the railroad under Captain Ram, arrived at Duck Valley, and lost no time in getting the plows into the soil of the reservation. By the 10th of May we had over 1,[illegible] on the ground, most of them showing a disposition to do the best they could. The season was late and cold, and sage-brush houses and wickiups afforded but little protection; but fed well by the Department, they persevered against all difficulties.

The Duck Valley Reserve, as set apart by President Hayes for the use of the Western Shoshones, has proved well suited for that purpose, both in regard to its distance from white settlements and the fertility of the soil. The Owyhee River, running through its center, gives ample water for irrigating purposes. The salmon ascending the river has aided us very much this season, and we hope in another year to utilize them as permanent food.

Our prospects for heavy crops are most sanguine, and an excellent feeling prevails among the Indians. They call it their home and feel it to be so. They have built about three miles of fence, dug two

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miles of water ditches, and have 300 acres of wheat and barley under cultivation; also 25 acres of potatoes, turnips, peas, etc. Our harvest is just commencing, and if no early frost reaches us, it will prove all that is anticipated".

From Report of United States Indian Agency Western Shoshone Agency, Nevada, dated August, 1920, to Commissioner of Indian Affairs and contained in the annual Report of Commissioner of Indian Affairs for 1920 (Pages 127 and 128).

"In my former report, I could only anticipate the results of our harvest for 1919, but the loss of a large crop was fully realized, and early in September we hauled grain sufficient to furnish flour for the 1,400 Indians on the reserve. A mill had been furnished us with which to grind the wheat and barley, and it was about all we could do to grind enough to keep us the supply, as we had to turn it with horse or Indian power. The winters are very severe, and for two months we were out of beef. Our cattle, not more than 10 of them suitable for beef, had been driven, under the care of Indian herdsmen, to the Humboldt Valley for winter pasture, and it was impossible to get them back when needed. Our work cattle, 15 in number, were sent there also, and I have had to report the loss of 3 of them to the department. In this connection it may not be out of place to mention that the loss of cattle, caused by the hard winter, and been great throughout Nevada, and was mentioned by the papers. With all the deprivation in consequence of the deep snow isolating the reserve from the settlements, no town being able to get in or out, the Indians remained contented.

Being under engagement to take their wheat, as far as it would go, for seed, and to replace it with flour, I was not able to get any hauled there until the 15th of May, and then the snow covered most of the road. On the 18th we put the plowmen at work, nearly five weeks later than the previous season; but, having so many Indians willing to work, we soon had 500 acres under cultivation, divided into five farms, with an Indian farmer of their own selection for each. These farms are not of equal size, but 500 Indians (men) are divided among them according to they choose their labor. My farmer superintends the whole, governs the supply of water from the irrigating ditches, and all is working well.

It will be noticed that we have 300 more acres under cultivation this year than last, and though late in sowing, nature seems to favor us, and if we have no early frosts, I think the department will be

WESTERN SHOSHONE INDIAN RESERVATION, NEVADA - IDAHO

HISTORY OF IRRIGATION DEVELOPMENT.

under no expense the coming year for either flour, barley, potatoes, or hay. With the heavy crop comes a new want, for we cannot grind it with horse or pony power, and in my estimate for the third quarter I have asked for a steam engine. We have the mill and smut machine, and, being 100 miles from the nearest flour mill, must depend on ourselves for grinding.

The Shoshones realize that they now have a home, and speak of it as such. The stock cattle lately received at the reserve, and the school-house now being erected, give them great satisfaction, and encourage this feeling. That the reservation is popular with the Indians is shown in the fact that early in February last, while the snow was 2 feet deep on the roads, 10[illegible] Indians arrived at the reserve, and said they had come to stay—it was their right, they said—and stated that they were from Paradise Valley, 150 miles from the reserve. Informed by the farmer in charge that we had no provisions for them, and what we had belonged to the Indians on the reserve, there not being enough to divide, they nevertheless remained, killed some of their ponies, and, with their roots and dried fish, managed to pass through the long winter. They are now cultivating one of the farms I have divided off, and will not suffer if their work will save them.

In my reports I have often mentioned the industry and perseverance of the Shoshones, their docility, and the respect shown the wishes of department and their agent; still they are but grown children, filled with superstition, to show which I will relate an incident. I was requested by the farmer to visit the reservation as soon as possible (last March) for the following reason, and lost no time in doing so: A medicine man of high repute had lost five of his patients in succession. The Indians met in council, decided that he must die, and after burning his insignia of office, comprising an otter skin, beaver tail, eagle feather, and snake rattles, left him to prepare for death. The farmer had forbidden them to execute their sentence until I came, and on my arrival I told them it must not be done, that it would displease their father in Washington, and that it was not acting as white men do. They acquiesced, and did as I told them, but do not employ the old man any more. The doctor had awaited his fate, not sparing to feel the sentence of death so much as the loss of snake rattle, beaver tail, etc., inherited, he told me, from his father and grandfather. He appeared to think that when he arrived at the "happy hunting-ground" they would want to know what he had done with them.

I have now about 2,500 Indians who look upon the reserve as their home, and some 500 more on the outside who come to me for assistance in cases of exigency. I think these numbers will not be increased much.

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WESTERN SHOSHONE INDIAN RESERVATION, NEVADA - IDAHO

HISTORY OF INDIAN DEVELOPMENT.

There are near 4,000 Indians belonging to this agency, but of these at least 1,000 are working on the valley farms of Nevada; some have small farms on government land, and others act as laborers for the inhabitants of the towns. Their labor is in demand, and I often receive solicitations from settlers to permit them to remain in their neighborhoods. I would suggest to the honorable Commissioner that this course might be adopted with safety in Nevada, and perhaps their civilization may be brought about more quickly in this manner than in any other".

You will observe that I think the self-supporting period in the history of the Western Shoshones formerly reached, and every year hereafter must lessen their calls on the department for supplies. I think we will have from 6,000 to 8,000 bushels of grain and 500 tons of hay this season. The potatoes have been touched by the frost, and we cannot now estimate either them or the turnips. As this is only the second year of the agency I feel satisfied, and hope the department will be also?

From Report of United States Indian Agent Western Shoshone Agency, Nevada, dated September 2, 1881, to Commissioner of Indian Affairs and contained in the Annual Report of Commissioner of Indian Affairs for 1881 (pages 133-133)

"I still have the pleasure of reporting progress. Five hundred acres (400 of wheat and barley, and 100 of potatoes and turnips) are ready for harvest. No frost has troubled us and the crickets which troubled us four years ago have not been seen since. We have a large quantity of hay estimated at one thousand tons, and we shall ask of the government this year nothing for cereals.

I wish that we could give Indians their lands in severalty. Whenever they have tried cultivation by themselves amongst the whites they have succeeded. Their labor is sought for by the ranchers and by many of the miners in preference. I have selected four settlements, one each in the following valleys: Clover, Ruby Hills, and Cherry, and at Mineral Hill, with plans. They have done well and are making a home. They average in each place about fifty souls. Their children attend the district schools with the whites, and the falling off of the practice of giving Indian names to their children was well shown in taking the census.

WESTERN SHOSHONE INDIAN RESERVATION, NEVADA - IDAHO

HISTORY OF IRRIGATION DEVELOPMENT.

From Report of United States Indian Agent Western Shoshone Agency, Nevada, dated September 20, 1882, to Commissioner of Indian Affairs and contained in the Annual Report of Commissioner of Indian Affairs for 1882 (Pages 119, 120 & 121).

"In my correspondence heretofore had with your honorable department touching other matters connected with this agency, I have foreshadowed the situation and condition of affairs of this agency as being in a most wretched and broken-up condition.

The causes that have led to the unfavorable results are not chargeable to the government, nor your honorable department, or the Indians, but have been due partly to mismanagement of its affairs by those in charge, and partly due to the unfavorable situation of the agency.

The selection of Duck Valley was most unfortunate on account of the severity of its climate, and other unfavorable surroundings. Geographically considered, the Western Shoshone Reservation is situated partly in the country of Elko, State of Nevada, and partly in the county of Owyhee, Idaho Territory, the major portion lying and being in the county of Elko, Nevada, and is about one hundred miles nearly due north from the town of Elko, on the line of the Central Pacific Railroad. Its altitude is given as 5,[illegible] feet above the level of the sea. The main or middle branch of the Owyhee River courses its way through the reservation a little west of due north. Duck Valley proper is situated a little east and west of due north and south, and is from 15 to 16 miles long, and about 1½ to 3 miles wide; that is, that portion fit for cultivation, hay, or pasture purposes. It is bounded on the east by a barren, basaltic mountain, most uninviting in appearance, yet in some portions of it further to the east considerable game is found; on the west by one vast desert, open plain, or low plateau, composed chiefly of lava rock cut up by deep gorges and canons, making portions of that country impassable except by Indians; on the south by mineralized spurs that come down from the main Bull Run mountains, which affords splendid pasture during the summer and fall; and on the north by a chain of small unimportant valleys, except for pasture, until you reach Bruneau Valley.

The high altitude of this reservation, the open country to the west and north, with prevailing cold winds from those directions during a greater portion of the winter, accompanied often by deep snows, make the winter season of the year exceedingly cold and undesirable for a place of permanent residence. The average winter commences about the 15th of November, and closes about the 15th to the [illegible]th of April, making a period of five months continuous winter.

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WESTERN SHOSHONE INDIAN RESERVATION, NEVADA - IDAHO

HISTORY OF IRRIGATION DEVELOPMENT.

The late frosts in the spring and the early frosts in the fall make the raising of a kernel crop every year very uncertain. Little or no crops can be raised unless irrigated; even a large portion of what is usually called natural hay land must be irrigated some to secure a good crop. There is some natural hay land lying along the banks of the river and sloughs that does produce a very fair crop of hay.

At or near the south or upper end of the reservation, where the river discharges itself from the mountains, the Indians have constructed a dam and connected with it an irrigating ditch on the west side of the river. This ditch is some 3½ to 4 miles in length, and of a water-carrying capacity of about 500 inches, which will, if properly and economically used, irrigate about 500 acres of land. About 400 yards further down the river the mission-school boys under the direction of James Willson, erected a rude dam, tapping it with a ditch on the east side of the river, of about 1 mile in length, and has a carrying capacity of about 30 inches. The water from this ditch is used for irrigating the school or reservation garden, which consists of some five acres or thereabouts. Still lower down the river and further northward is situated a dam belonging to Levi Harris, who takes water therefrom on the east side by means of ditch to irrigate his grain and hay crops. The total amount of water afforded by this river during the irrigating season of the year does not in my opinion exceed 1,200 inches (miner's measure), and consequently the amount of land that can be used for agricultural purposes cannot exceed 1,200 acres, as the amount of land cultivated is governed by the amount of water available. Mr. Levi Harris claims that his water-right is superior by reason of prior location and purchase to that now held and claimed by reservation; hence the adjudication of his claim to certain portions of land within the reservation limits should carry with it all his right, title, and interest, in and to all water-rights and water-privileges now held and claimed by him.

The breadth of land or acres planted in wheat and barley the present year does not equal that of 1901, there being about 40 acres in wheat and about 50 acres in barley. The yield will not exceed 600 pounds per acre for wheat and about 900 pounds per acre for barley. The chief causes for the meager amount of wheat and barley raised per acre were the lateness of the spring and the cold and unfavorable weather that followed during the month of May and early part of June. The small number of acres planted last spring is chiefly owing to the then unsettled condition of affairs at this agency, in consequence of the suspension of Agent Hoe during the early part of last winter, which led to a general overseeing of affairs of the reservation, and caused to the Indian mind a general uncertainty as to who had authority in the premises, and demoralized them for the time being; consequently they lost general interest in the work of the farm until late in the season. Notwithstanding the short crop of wheat, I am of the opinion

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that we shall have a sufficient amount of bread-stuff to carry us over to the crop of 1883, including seed for next year's crop, having on hand 48,000 pounds surplus of wheat from crop of 1881.

Owing to the fact that there were no seed potatoes preserved from last year's crop, or any purchased last spring, except $15 worth for the school, the crop of this valuable vegetable is very small; some three acres were planted, which will probably yield 6½ to 7 tons. There will also be about from 150 to 160 bushels of turnips, rutabages, carrots, and beets, inclusive; also some few cabbages. For the preservation of this vegetable crop I have caused to be erected a winter cellar, 14 by 18 feet, 6½ feet high.

The total amount of hay cut, gathered, and stacked is not more than 85 to 90 tons. A much larger amount could have been readily secured if we could have procured a hay-rake in time. The old one was too much broken to be repaired with the appliances on hand at the reservation, hence the most of the hay secured had to be gathered by hand with the old ordinary hand-rake, long ago gone into disuse. This, in connection with the fact that we were necessitated to go some 8 miles from the stable and corrals of the agency to cut and haul what hay we could gather, after the same had been run over and tramped down by cattle running at large, are the reasons why we have to-day but 85 to 90 tons of hay on the reservation."

From Report of United States Indian Agent Western Shoshone Agency, Nevada, dated August 20, 1883, to Commissioner of Indian Affairs and contained in the Annual Report of Commissioner of Indian Affairs for 1883 (Pages 111, 112, 113 & 114).

"Great progress has been made by the Indians of this reservations in the arts of industry. Full the major portion of the men are capable of performing almost every kind of farm work, some doing one kind of labor and others performing another according to their taste or talent. There are among them good teamsters and expert herders of horses, cattle, and sheep. They can plow, sow grain by hand, make and cultivate gardens, irrigate grain, mow, cure and stack hay, and cap, stack, and thrash grain, dig ditches, and make fence, build cellars and corrals, and chop and cord wood. As a matter of course it is understood that many of the Indians do this kind of work in a slow way, and while some are quite expert others are not so proficient from the want of longer experience or natural ability. I have some five or six Indians who make adobes, and one of the number can lay them almost as well as a white man.

The Indians of this reservation have been remarkably industrious and cheerful during the past year. They have repaired all of their

old irrigation ditches and made crossings over the same.

There has been plowed and sown about 230 acres of barley and wheat, of which amount there is about 80 acres of barley; but I regret to say that the total area of acres will not average a half crop, from the fact there is a local weed known as the tar weed which has taken possession of a large portion of the ground sown, and entirely kills all kinds of vegetables or growing crops that it comes in contact with; otherwise we should have had not less than 100 tons of wheat. I cannot now estimate with any degree of certainty as to the amount of wheat we may eventually realize from the present year's crop as we may encounter unfavorable weather before we shall have cut, thrashed, and housed the same; but with reasonable good luck we ought to have not less than 60 tons of wheat and 40 tons of barley.

For the first time in the history of this reservation each lodge or family has planted and cultivated a separate garden for themselves, consisting of lettuce, cabbage, radishes, onions, corn, turnips, parsnips, beets, pease, and potatoes, all of which were growing nicely and promised an abundance of garden vegetables for fall and winter use; but this high expectation of myself and the Indians has been blasted by the visitation of an immense band of grasshoppers, the vanguard arriving here about the 1st of August, eating everything green clear to the ground, except the potatoes, which they only partially attacked. The Indians feel discouraged, this being their first general effort at gardening. The Government furnishing last spring an abundance of all kinds of garden seeds, hence a general effort was made at gardening under the supervision of the farmer.

Quite a number of the lodges have put up small stacks or ricks of hay, from 10 to 20 tons each, aggregating from 190 to 200 tons, for the use of their cows and ponies during the most severe portion of the winter. The women of the most civilized lodges have so far advanced in the knowledge of household duties as to be able to make good, sweet butter and cheese; others are now following suit, and are breaking cows for that purpose.

In accordance with your instructions, Mr. Levi Harris, Harry Boyle, and David Coates, who were tenants-at-will upon the public domain, the same being within the limits of the reservation--occupying the most desirable portion of the reservation for the raising of grain and hay, and for pasture purposes--were removed by the military authorities of the United States, under charge of Lieutenant Brown, from Fort Halleck, Nev. The removal of the parties in question was effected on the 23d and 24th of May, 1883, who soon thereafter returned by permission for the purpose of taking and carrying away all of their personal and movable property. We are now in full possession and enjoyment of the reservation, a thing long desired by the Indians, and which has heretofore kept a large number from

locating here. The removal of these persons from the reservation and your recent order for the survey and establishment of the boundary lines of the same has elated the Indians at this timely act of justice towards them. They now feel as if this was their home, which inspires them with confidence in the good faith of the Government towards them. The number of Indians as permanent inhabitants thereof is about 350."

From Report of United States Indian Agent Western Shoshone Agency, Nevada, dated September 8, 1884, to Commissioner of Indian Affairs and contained in the Annual Report of Commissioner of Indian Affairs for 1884 (Page 128).

"The work of improvement in a general way has not been so great during the past year as the year preceding it, for the reason we have not erected any new buildings. But the general farm improvements have been more extensive than heretofore. We have had to clean out and to a great extent rebuild all of our irrigating ditches. In some places they were filled up with earth and debris during the past winter, by reason of rain and storm, and high-water during the spring. The same causes have in many places washed away our irrigating dams, almost entirely. When it is remembered that the rain and storm of the past winter did not entirely cease until the 24th of June it will be seen that while we had a great deal of work to do in making repairs upon our irrigating ditches and rebuilding our dams, with the almost insurmountable obstacle of high-water to contend with. Nevertheless we succeeded in making these repairs, and rebuilding 2½ miles of new wire fence, planting posts 6 feet apart with two strands of wire. To make the fence more complete and effective against horses and cattle we excavated a ditch along the line of the new fence on the outside; the ditch is about 2½ feet deep, and 30 inches wide at the top and 20 inches at the bottom."

WESTERN SHOSHONE INDIAN RESERVATION, NEVADA - IDAHO

HISTORY OF IRRIGATION DEVELOPMENT.

From Report of United States Indian Agent Western Shoshone Agency, Nevada, dated September 30, 1886, to Commissioner of Indian Affairs and contained in the Annual Report of Commissioner of Indian Affairs for 1886 (Pages 197 & 198).

"The system of Indian farming pursued on this reservation is by no means encouraging, as the result of the present year's farming indicates. The crop of wheat that has just been thrashed will yield about 25 tons, eight of which will be required to sow the next crop. This failure I attribute in a great measure to the continuous cultivating and seeding the same land from year to year, and never giving the land any rest. I estimate the number of acres under cultivation this year to be about two hundred and fifty.

The destitute Piutes, who were induced to settle on this reservation under promises made them that they would this fall be furnished by the Government with wagons and farming implements, I regret to say have become greatly demoralized and discontented since learning that Congress had failed to make the appropriation necessary for that purpose."

From Report of United States Indian Agent Western Shoshone Agency, Nevada, dated August 25, 1887, to Commissioner of Indian Affairs and contained in the Annual Report of Commissioner of Indian Affairs for 1887 (Page 165).

"The Indians of this agency have made commendable efforts in their agricultural pursuits the present year; they have worked with unusual industry and earnestness, and have nearly doubled the area under cultivation last year. They have paid more attention to improving their places and cultivating their gardens, and their crops would have been excellent, but, owing to the depredations of ground squirrels, their grain crops were nearly all destroyed in spite of their diligent efforts to protect them. I regret to state this serious loss will necessitate the purchase of flour required for subsistence of the Indians for the present year, also an outlay for seed wheat."

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WESTERN SHOSHONE INDIAN RESERVATION, NEVADA - IDAHO

HISTORY OF IRRIGATION DEVELOPMENT.

From Report of United States Indian Agent Western Shoshone Agency, Nevada, dated August 29, 1889, to Commissioner of Indian Affairs and contained in the Annual Report of Commissioner of Indian Affairs for 1889 (Page 252).

"At the beginning of the season the outlook for a large crop, both for the Government and for the Indians, was of a most promising character, but I am compelled to state that our hopes in this direction have been far from realized. Such another summer as the past one has been can not be recalled from the memory of the "oldest inhabitant." The Owyhee River (our main stream) ceased to flow on or about July 1, some time before the crops had matured, and the consequence has been that the grain along its course has shriveled to such an extent that the crops will yield hardly one-half of what they would have done had they been plentifully supplied with water. This is more unfortunate than it at first appears, for it not only deprives them of a vast amount of subsistence, but it will also probably deter quite a number of the Indians from engaging in agricultural pursuits next year, as their superstitious fears in matters of this kind are almost insurmountable.

In addition to the drought the Indians living at any considerable distance from the agency have suffered in no small degree from the ravages of ground squirrels. The Government crop has been thoroughly protected from this pest by the free use of strychnine, and even some of the Indians living around the agency have been induced to use the poison, but the majority of them refrain from doing so owing to the fact that the ground squirrels form one of their chief articles of diet in the summer time, and they don't care to take any such chances.

In regard to the water question, I desire to say that there is but one way to guard against such a calamity as has befallen us this summer, and that is to construct a reservoir, at some point where the river runs through the canon, which will hold water sufficient for irrigation purposes during the summer months. Of course this would involve the expenditure of a large sum of money, but I believe the benefit to be derived from such an undertaking would eventually be far in excess of the amount of money expended. It would throw under cultivation thousands of acres of valuable land which can not possible be irrigated under existing circumstances, and I now most cordially invite your attention to the subject."

WESTERN SHOSHONE INDIAN RESERVATION, NEVADA - IDAHO

HISTORY OF IRRIGATION DEVELOPMENT.

From Report of United States Indian Agent Western Shoshone Agency, Nevada, dated August 20, 1892, to Commissioner of Indian Affairs and contained in the Annual Report of Commissioner of Indian Affairs for 1892 (Pages 324-5).

"Agriculture.--Nineteen families raised sufficient wheat to supply them with flour through the entire year, while 36 more raised partly enough; 51,000 pounds of flour was made at the agency flour mill for the Indians. In addition to this about 25,000 pounds of wheat was sold to the whites, at an average of 2 cents per pound. Most of this wheat carried some smut, rendering it unfit for flour, which was caused by an insufficient supply of bluestone at seeding time. Also 15,000 pounds of bran, at 1 cent per pound, and 25,000 pounds of shorts, at 1½ cents per pound, was disposed of in the same way. About 150,000 pounds was raised, of which 100,000 pounds was sold to the whites at an average of 2 cents per pound, while the remainder was fed at home and kept for seed. Potatoes, turnips, ruta-bagas, carrots, parsnips, beets, pears, etc., were sown in considerable quantities, but owing to the great extent of country over which the little gardens were scattered and the irregular harvesting of the crop, it is almost impossible to farm anything like a correct estimate as to the amount grown, but quite a number of families had sufficient of their vegetables to last them through the winter. Cabbage has been a failure, from the fact that the Indian met with no success in propagating the plants. Try as I would, explain, and even make a hotbed for them, the result was always a flat failure. So this year I constructed a large hotbed at the agency, from which I distributed several thousand plants. The result is promising cabbage patches all over the reservation.

About 1,100 tons of hay, mainly wild, were put up by and for the Indians, a small part of which was traded off to the whites for stock, and sold to travelers for cash, but the main portion was fed to their own stock during the winter, all of which wintered well. As a stock-raiser the Indian will be soon a decided success. He has learned through sad experience that to turn his stock out to care for itself through our long winter is likely to leave him afoot in the spring, hence he works hard (and each year more intelligently) during the haying season to accumulate sufficient hay to feed his stock through the winter. He is on good terms with the white stockmen adjoining the reserve. They make camp together during the general round-up and deliver to each other their stray stock; no serious misunderstandings have taken place between them during the last three years. The whites have learned to respect the Indian for his simple honesty, and the saying is common among our white neighbors that if your stock strays to the reservation you are sure to get it. The Indian is equally fortunate, for no matter where his animals stray, the word never fails to reach us promptly telling its whereabouts.

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WESTERN SHOSHONE INDIAN RESERVATION, NEVADA - IDAHO

HISTORY OF IRRIGATION DEVELOPMENT.

Irrigation.--During the year a survey has been made for a storage dam across the Owyhee River, which when constructed, will make this valley one of the most valuable sections in the West. It will make farming permanent and safe, and have a tendency to break up the habit of roving, so prevalent among the Indians, which habit is disastrous to growing crops; but it is indulged in to a considerable extent owing to the uncertainty of water in sufficient quantities to mature crops. When he realizes that there is a certainty of an abundant supply to mature crops the value of taking care of what he plants will keep him at home.

The past winter was exceedingly wet and stormy, hence the natural flow of the river has been strong enough to irrigate such crops as have been planted. The main diverting dam has been placed in thorough repair, at a cost of $250 to the Government. Gates have been placed in the main canal on the east side of the river, which enables us to control the flow of the water; while on the west side a main canal has been constructed about 4 miles in length, by the Indians, without any assistance from the Government, farms laid out, and cross and distributing ditches made through the land. Another year this ditch will furnish water for 250 acres of land so long as water flows in the stream.

Land.--I would respectfully urge upon the Department the justice of making some arrangements in regard to the land whereby some of the more intelligent of these people can acquire homes, independence, and manhood. Some of these men ask me why they should build houses, roads, bridges, and set out trees, when some one else is likely to enjoy the benefits except themselves and children. Interested whites are, no doubt, responsible for these opinions, but their effect is pernicious, nevertheless, and can only be checked by putting them in position to acquire title to the land."

From Report of United States Indian Agent Western Shoshone Agency, Nevada, dated August 12, 1893, to Commissioner of Indian Affairs and contained in the Annual Report of Commissioner of Indian Affairs for 1893 (Page 212).

Agriculture.--Agriculture and stock-raising, aside from Government assistance, is the main dependence of these people for support, and in both branches fair progress has been made during the past year. Good crops of wheat, barley, potatoes, and cabbage were grown; also considerable quantities of small garden stuff (see statistics). With water properly stored for irrigation and a strong practical worker for agent, in a few years these people should be largely self-sustaining.

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WESTERN SHOSHONE INDIAN RESERVATION, NEVADA - IDAHO

HISTORY OF IRRIGATION DEVELOPMENT.

But their main dependence for a livelihood will be their stock; for aside from what they consume, there is no market for agricultural products. The silver mines, once the best market in the world for the products of the farm, are now deserted, so that the only show for these people to get any money is to lead the half-wild life of the vaquero. Their summer range is practically unlimited, while there are large natural meadows which furnish large quantities of hay for winter use.

Irrigation.--A short distance above the main dam across the river three large sloughs debouch to the west side, which carry a large body of water that is thrown back by the dam. These sloughs have been dammed and converted by a canal which concentrates the water in the outer slough, which is tapped by ditches for distribution over the land. Some new land was brought under cultivation this year, but additional work, for which detailed estimates have been made, must be done to render the dam safe from washing and complete the system."

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WESTERN SHOSHONE INDIAN RESERVATION, NEVADA - IDAHO

HISTORY OF IRRIGATION DEVELOPMENT.

From Report of United States Indian Agent Western Shoshone Agency, Nevada, dated September 28, 1896, to Commissioner of Indian Affairs and contained in the Annual Report of Commissioner of Indian Affairs for 1896 (Page 208).

"Owing to the mountainous character of the country, there is but a very small portion of the 256,000 acres on the reservation fit for agricultural purposes, but what little there is in the valleys and bottoms is good, so far as the character of the soil is concerned, and the crops raised thereon would be very abundant but for the shortness of the summer season and the loss of crops that occurs annually from frosts, due to the high altitude, and also to the fact that irrigation is absolutely essential to the raising of crops in this section of the country; and while there is an abundant supply of water for this purpose during the spring and early summer, the supply becomes very scarce before the crops reach maturity, so that every year more or less of a crop is allowed to dry up because of a scarcity of water.

This latter trouble could be remedied at comparatively little expense, in view of the benefits to be derived therefrom, as the principal stream of water that supplies the valley in which all the farms on the reservation are situated enters the valley out of a narrow canyon, and by building a dam across it at its mouth a reservoir sufficient to hold the bulk of the water that goes to waste in the spring and early summer could be made, and thereby secure enough water for irrigation to last throughout the entire summer.

Notwithstanding these serious drawbacks to agricultural production, coupled with the fact that white people in the adjacent country have abandoned all attempts at farming because of its profitlessness and loss resulting therefrom, the Indians persevere in their efforts at farming, and every year put out small crops of potatoes, barley, wheat, oats, garden stuff, etc., and expend as much, if not more, time, patience, and industry in the care of the same than most white men would particularly in view of the small returns and probable loss they will have for their trouble.

During the past spring the purchase of 3,000 pounds of alfalfa seed was authorized by the Department for distribution among the Indians. The seed was distributed among about 20 of the most deserving and industrious of them. It has made a good start and in all probability will result in a fine crop next year.

The wild hay crop this year was very abundent. It is estimated that nearly 3,000 tons of it will be stacked by the Indians for their use during the coming winter.

WESTERN SHOSHONE INDIAN RESERVATION, NEVADA - IDAHO

HISTORY OF IRRIGATION DEVELOPMENT.

The crops set out this year promise a fairly good harvest.

This reservation is peculiarly adapted to the successful raising of stock. The mountains and valleys produce an abundance of bunch grass and wild rye, and the country is full of small streams and springs, making this section a wonderfully fine grazing ground. The fact that ranchers in the surrounding country have taken up stock raising because they could not support themselves by farming should be sufficient proof that the Indians here can not become self-supporting by following the vocation of farmers, but that there is every possibility of their becoming so in a few years if they could be supplied with cattle, including some good breeding stock; for they are familiar with the proper ways of treating and handling stock, as many of them are almost constantly employed by ranchers in the care of their cattle and are considered good stock handlers by the, and particularly good as "vaqueros." It is to be most earnestly hoped that the Department will decide to issue stock to the Indians on this reservation, or else move them to a country where it is possible for an agriculturist to be self-supporting."

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55 7009

WESTERN SHOSHONE INDIAN RESERVATION, NEVADA - IDAHO

HISTORY OF IRRIGATION DEVELOPMENT.

From Report of United States Indian Agent Western Shoshone Agency, Nevada, dated August 12, 1897, to Commissioner of Indian Affairs and contained in the Annual Report of Commissioner of Indian Affairs for 1897 (Page 190).

"Only a very small portion of the reservation is fit for agricultural purposes, because of the mountainous character of the country, but what little there is in the valleys and bottoms is good so far as the character of the soil is concerned; but owing to the high altitude the climatic conditions are such and the water supply for irrigation so limited in July, August, and September that it is impossible for the Indians or white people to become self-supporting as agriculturists here. White people in the adjacent country have long since turned their attention to stock raising as the only means of being self-supporting in this section of country.

As has been stated in previous reports, these Indians should be moved to a different section of country if it is desired to make them self-supporting as agriculturists. The Indians here are good workers and understand irrigation and farming and are capable of making a living for themselves in a country where it is possible to raise good crops once in a while.

If the Indians are to be retained here they should be supplied with cattle and alfalfa seed and the lands fit for raising alfalfa fenced off and divided among them and a dam built at the head of the valley in which all the farms on the reservation are situated, for the purpose of holding enough of the water that goes to waste in spring to make irrigation possible during the summer months when water is most needed, it being impossible to raise anything here without irrigation. They could then come much nearer being able to do for themselves than they ever can under existing conditions.

This reservation is peculiarly adapted to the successful raising of stock. The mountains and valleys produce an abundance of bunch grass and wild rye, and the country is full of small streams and springs, making this section a wonderfully fine grazing ground. These Indians are familiar with the proper ways of treating and handling stock, as many of them are almost constantly employed by ranchers in the care of their cattle and are considered good stock handlers by them, and particularly good as "vaqueros." It is to be most earnestly hoped that the Department will decide to issue stock to the Indians on this reservation, or else move them to a country where it is possible for an agriculturist to be self-supporting.

These are simple, kind, and gentle people, and disturbances are not as frequent among them as they would be among an equal number of white

people dwelling together. They are willing workers, and whenever there is any work to be done that they are capable of doing they are desirous and anxious to do it. They have done all the work on the irrigating ditches, dams, etc., and freighted practically all the supplies from the railroad, a distance of 120 miles, 212,935 pounds, for which they received $4,072.46 in cash. No trouble whatever has been experienced from the lack of sufficient Indian help."

The alfalfa seed distributed among the Indians and planted in the spring of 1896 has done very well with but one or two exceptions. The Indians who have cattle and work and saddle horses have put up sufficient alfalfa and wild hay to keep their stock through the winter.

The crops set out this spring promise a fairly good harvest if not seriously affected by frosts or the scarcity of water before they are ready to be gathered.

The spring floods were unprecedentedly high this year and caused considerable damage to the ditch banks and dams, and to the bridges on the main road to the agency and to the road itself. While considerable work has already been done to repair the damage, there is still a great deal of work that ought to be done."

WESTERN SHOSHONE INDIAN RESERVATION, NEVADA - IDAHO

HISTORY OF IRRIGATION DEVELOPMENT.

From Report of United States Indian Agent Western Shoshone Agency, Nevada, dated August 18, 1899, to Commissioner of Indian Affairs and contained in the Annual Report of Commissioner of Indian Affairs for 1899 (Pages 240-241).

"Agriculture.--The crop of grain and hay is very much larger than that of 1898, being a greater breadth of land cultivated. The number of acres cultivated last year was 75, this year estimated at 150. No new land has been broken for the reason that there is more than sufficient land already broken. Barley is the principal crop raised, for the reason that it is hardier than wheat and is not affected by the frost so readily as wheat.

Several of the most advanced Indians have planted gardens, but this year has been unusually cold and the seeds rotted in the ground, ice having formed in June a quarter of an inch thick, and all during August has been cold, with frost killing all tender vegetation. However, there have been a few acres of wheat sown, but they have not done well. The present fall we expect to sow a large acreage, not less than 4,000 pounds of seed, which seed the Government has promised to furnish. Fall sowing of wheat matures in July, and rarely requires irrigation more than once or twice.

The present hay crop has been very large, and the Indians have cut and put up for winter purposes between 900 and 1,000 tons of good hay; 500 tons more of hay could have been secured if the Indians had had mowers to dothe work. We had only five mowers, three of which required almost daily repairing. Three of the Indians had mowers of their own, otherwise a large portion of their hay could not have been cut. There was 1,125 pounds of alfalfa seed sown by the Indians--the ground suitable for alfalfa was so wet that only that amount was sown. As timothy also does well on this reservation, I would suggest that timothy seed be furnished. The two mixed are believed to be the most nutritious for stock.

The attention of these Indians should be turned to the raising of stock, as that is always attended with success in this high, mountainous country. They have an immense acreage of pasturage, and with the great capacity of the valley land for hay several thousand head of cattle could be sustained on this reservation with great profit to the Indians. The Indians can not make a living any other way in this climate, where agriculture is so uncertain. The raising of wheat and barley has never been a great success. We are liable to experience a drought one year--perhaps two dry years in succession. There are other drawbacks to the grain crop. The squirrels often devour the grain crop in the early part of the season, and during the ripening period the

standing grain is visited by swarms of blackbirds. These and other conditions have much disheartened the Indians, and they of late years have not farmed as much as formerly.

I am constrained to reiterate my former recommendations that each head of a family should be supplied with at least two to three cows. These Indians are now aware of the value of milch cows and are beginning to see that the product of a cow goes a long way toward their support. They are thoroughly competent in every way to take care of their cattle, being fine stockmen and sought after by the whites to assist in herding and branding their cattle in the spring. If these people could be furnished stock to make a little start, I believe in the course of six years, in many instances, they would be self-supporting, as this reservation can not be excelled for the production of hay and pasture. Sheep would also do well, as the mountainous region, where sheep could be pastured, is well supplied with water".

From Report of United States Indian Agency Western Shoshone Agency, Nevada, dated August 1, 1900, to Commissioner of Indian Affairs and contained in the Annual Report of Commissioner of Indian Affairs for 1900 (Pages 283-284).

"This reservation is approximately 20 miles square, being on the Nevada and Idaho line, about half of the reservation being in each State. The elevation is some 6,000 feet and the country generally abounds in high and rocky hills, fit only for grazing land. The valley of the Owyhee River, known as Duck Valley, constitutes about one-fourth of the reservation. This valley yields a large quantity of wild and tame hay and includes a large tract of sagebrush land that would produce grain most years under irrigation.

This reservation was first set aside for Western Shoshone Indians in 1877 and an addition made to it for certain Paiute in 1886. There is now about an equal number of each tribe on the reservation, though they have intermarried until it is difficult to segregate them. There are some 450 Indians living here now and, perhaps, as many more scattered over the State, who are entitled to come here if they desire.

With comparatively few exceptions, these people are industrious and anxious to earn money. They own a few cattle (about 150 in the aggregate) and furnished some 10,000 pounds of beef from their own herds last year and will furnish something like the same amount this year. They formerly produced considerable grain, but the past few

years only a limited quantity. I hope to lend them to raise enough for their own use and to supply local demands. They can not raise grain to haul to market at a profit, as the cost of hauling would prevent their competing with points more accessible to the railroad.

The most promising means, and in fact the only promising means, of independence here is the raising of cattle. As a cattle country this is unsurpassed, as there is abundant range, sufficient hay land, and plenty of water to maintain enough cattle to make these people rich if they were once well started. We hope to get many of their horses sold from time to time and have the money thus derived put into cattle, as there is very little income from horses, and the same feed would keep cattle, which yield a large profit.

There are in contemplation two irrigating ditches, which if built will make tillable sufficient ground for all the grain and alfalfa they will care to raise, and with the ditches already in use will exhaust all the water that is available.

No allotments have been made here, and if they ever are made the surplus land should still be retained as tribal property and protected for their common range. There might be an advantage in allotting the hay and grain land, to give them the interest in improving it that should follow individual ownership."

From Report of United States Indian Agency Western Shoshone Agency, Nevada, dated August 5, 1901, to Commissioner of Indian Affairs and contained in the Annual Report of Commissioner of Indian Affairs for 1901 (Pages 278-9).

"The limited farming here was only fairly successful last year, as the supply of water was limited, resulting in a short hay crop and but little grain. The cattle have done well, as the mild winter made feeding unnecessary except for a short time, and the cattle stayed fat all winter. I desire to repeat that cattle raising is the only industry for which this reservation is well suited, as the high elevation and limited water supply making farming uncertain and the distance from market prevents selling farm products at a profit. We hope to have them produce wheat for their own bread and feed to supply local demands.

The lands here are not allotted, and when they are the remainder of the reservation should be retained as a common range and

to secure to them the little timber that is in the mountains. Otherwise they would be crowded out by the large cattle owners of the region.

The most encouraging characteristic of these people is their willingness to work whenever they see an opportunity to earn fair wages. They are in demand as sheep shearers, hay hands, ranch hands, vaqueros, and do all the freighting and irregular labor on the reservation. They earn several thousand dollars during the year, and work at such work with greater interest and regularity than at their farming, because the pay is more definite and in plainer view, it seems.

We are constructing an irrigation ditch, which, when completed, will be of considerable benefit to them in the making of hay land, but to provide ample grain land a part at least of another ditch, estimates for which have been made, should be built at once. A communication on this subject has been sent."

From Report of United States Indian Agency Western Shoshone Agency, Nevada, dated July 21, 1902, to Commissioner of Indian Affairs and contained in the Annual Report of Commissioner of Indian Affairs for 1902 (Page 249).

"The demand for laborers in sheep shearing, vaquero work, ranch work, haying and ditch work on and in the region of the reservation has been beyond our ability to supply most of the time since early spring. The Indians here are generally good workers and avail themselves of these opportunities very well in most cases, though there is room for improvement in some individuals yet.

They continue the effort to raise some grain in the face of dry seasons and the pests of squirrels that take the crops, and will have some wheat and barley, perhaps enough for local demands, and that is about all that can be raised with profit as we are too far from market to haul grain to the railroad. We have made some flour in the little old mill here the past two years and will continue to make up all the wheat offered, though we have no miller. We have succeeded in making a fair quality of flour.

The surest crop is hay, either alfalfa or wild hay of various kinds, or timothy; that also does well. There has been a good market

for the hay right in the stack from the neighboring ranchmen and the men who have grazing privileges leased.

In this connection will say that we are still leasing grazing privilege to some stock, and I think it a good thing so long as care is used not to overstock the range, as it gives an income from the range that should be invested in stock cattle and issued to deserving Indians to give them a start in the business, which is the only industry for which this country is well suited. This money should be invested each year as it comes in, so that it may be increasing and the Indians receiving the benefit of it instead of lying idle and no benefit to anyone. Authority was asked for such expenditure but it was refused for some reason, as it seems the policy of the office to allow it to remain idle, whereas it would double every three or four years if invested in cattle here."

WESTERN SHOSHONE INDIAN RESERVATION, NEVADA - IDAHO

HISTORY OF IRRIGATION DEVELOPMENT.

From Report of United States Indian Agent Western Shoshone Agency, Nevada, dated September 1, 1903, to Commissioner of Indian Affairs and contained in the Annual Report of Commissioner of Indian Affairs for 1903 (Page 211).

"This is a splendid stock country, being fine for grazing as well as for hay. A larger amount of hay has been harvested this season than ever before, and the surplus is being sold to cattlemen at from $6.50 to $10 per ton.

Several of the Indians have cattle of their own, but they have not nearly as many as could be advantageously cared for on the reservation. They have a good supply of work horses of a better grade than is generally found among white settlers. They also have thousands of Indian ponies that we are trying to dispose of this season, and if successful will advise the purchase of stock cattle with part of the proceeds.

The Duck Valley ditch, which is now under construction, has furnished employment to all the Indians who were not at work elsewhere. The wages paid are $1.50 for laborers and $3 for man and team per day. The estimated cost of this ditch, with the laterals, is $10,367.33, and when completed will be the means of reclaiming 1,500 acres of land that will be sowed to alfalfa at an early day.

The Pleasant Valley ditch, East Side ditch, and Duck Valley ditch will provide for the use of all the water from the East Fork of the Owyhee River, and when this water is all utilized we expect to see the income of these Indians from the sale of hay, grain, and cattle correspondingly increased."

From Report of United States Indian Agent Western Shoshone Agency, Nevada, dated September 10, 1904, to Commissioner of Indian Affairs and contained in the Annual Report of Commissioner of Indian Affairs for 1904 (Page 248).

"These Indians have made an effort to improve their homes and are building substantial log houses, inclosing more hay lands, and building dams and ditches to water their meadows better. As a result their hay crop is increasing from year to year, and as there is a regular demand for all surplus at from $8 to $10 per ton in the stack, they are beginning to get on a permanent self-supporting basis. About $4,000 worth of hay and $3,000 worth of horses have been sold this year.

WESTERN SHOSHONE INDIAN RESERVATION, NEVADA - IDAHO

HISTORY OF IRRIGATION DEVELOPMENT.

There is considerable demand for the ponies that are owned by the Indians, and while the price is small it is in proportion to the size of the ponies, and we are urging them to sell while there is a demand and put their money into cattle. The number of cattle owned by these Indians is gradually increasing. Some were bought during the year by individuals and 50 cows and calves purchased with grass money were issued to deserving heads of families, so that nearly every family who is prepared to care for cattle has a start. Several have broken cows that supply them with milk for the table."

From Report of United States Indian Agent Western Shoshone Agency, Nevada, dated September 14, 1905, to Commissioner of Indian Affairs and contained in the Annual Report of Commissioner of Indian Affairs for 1905 (Page 259).

"The census taken June 30 shows a population of 516. Of this number 241 are Shoshone and 275 are Paiutes. There are 268 males and 248 females. Of this number 140 are of school age; 78 of these were in school here during the year and 18 are attending nonreservation schools.

The reservation contains 312,320 acres, about 12,000 of which is level and suitable for cultivation; 5,500 acres are fenced; 5,000 acres are under ditch, and 1,700 acres are in meadow, from which 1,400 tons of hay was cut this season.

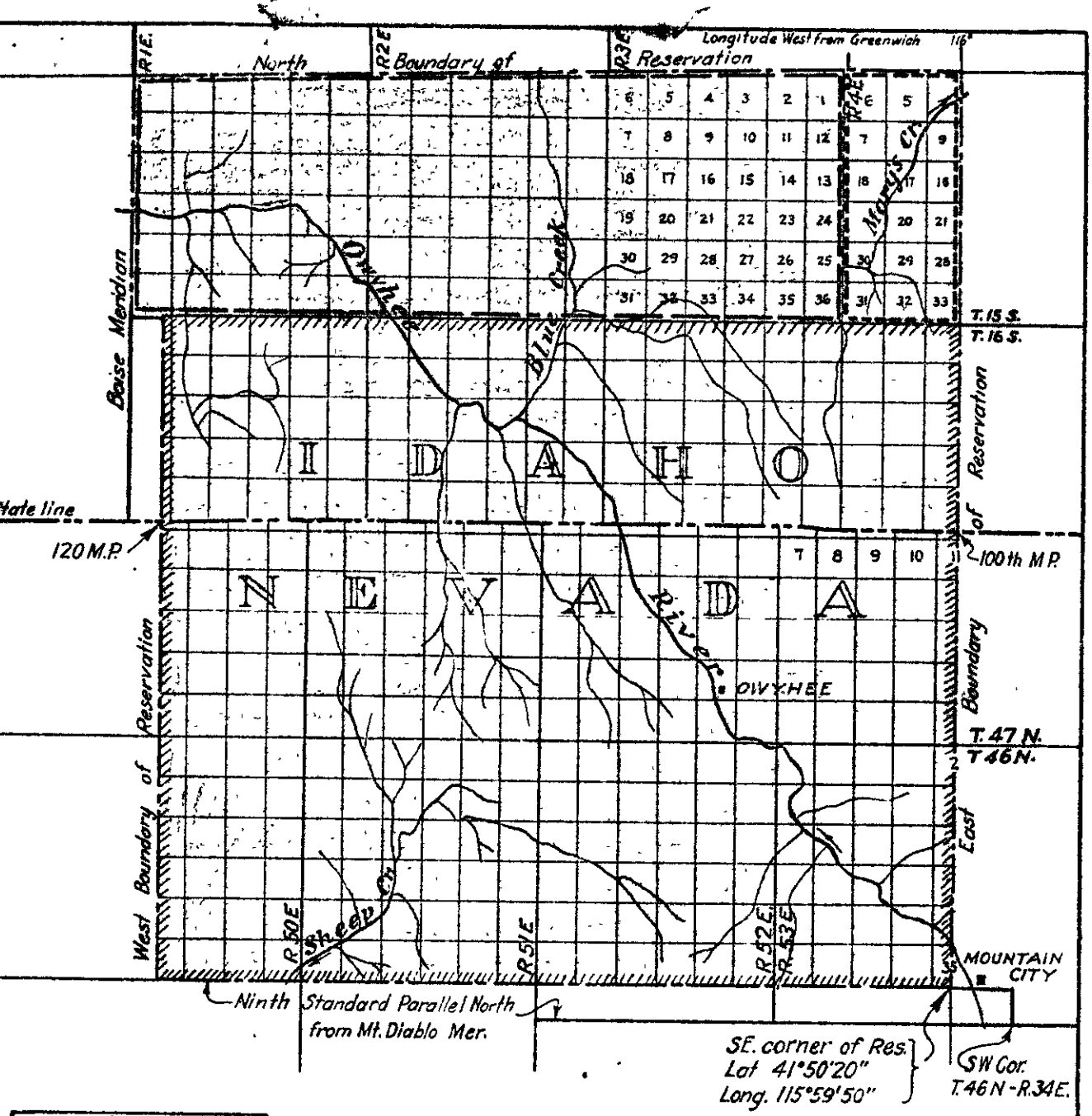
The Indians own 2,300 headof horses and 550 head of cattle. They sold during the year about 1,000 horses, at an average of $6 per head. They are selling their smaller horses only, and in this way expect to have a better gradeof horses, such as will be useful for saddle and work stock. They are taking more interest in cattle, and we hope they will soon have cattle to sell instead of Indian horses.

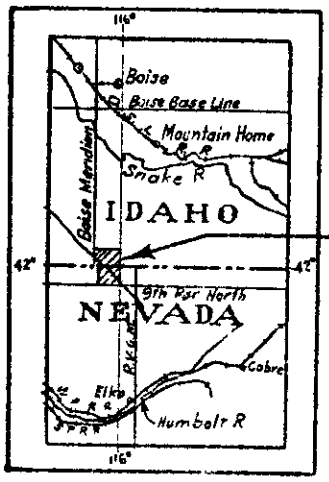
The acreage of hay land has been considerably increased during the year and the completion of the Duck Valley ditch has made 1,500 acres more hay land available, which, it is expected, will be platted and taken up by industrious heads of families and young men in time for them to prepare for next season's crop. The land covered by this ditch is adapted to alfalfa, two crops of which can be grown, with an average yield of 3 tons to the acre. If it were not for the numerous ground squirrels that infest the reservation, wheat and barley could be grown to an advantage; but until this pest can be exterminated it seems a waste of grain and labor to sow grain upon the reservation.

WESTERN SHOSHONE INDIAN RESERVATION, NEVADA - IDAHO

HISTORY OF IRRIGATION DEVELOPMENT.

The Indian hay meadows, a swamp of approximately 1,000 acres, situated in the northeast corner of the original reservation, could be made available for hay land, from which 700 or 800 tons of fine wild hay could be cut annually. To make this land available it would be necessary to construct two ditches to divert the waters of the two creeks which flow into the meadows. These ditches could be constructed at small cost. It would be necessary to do considerable work on the road connecting the meadows with the agency, for the reason that there is such a heavy snowfall in the vicinity of the meadows that it would be impracticable to winter stock there, and the hay would have to be brought into the valley near the agency."





Reservation as established by Executive order of April 16, 1877

Addition to Reservation by Executive order, May 4, 1886

Addition to Reservation by Executive order, July 1, 1910

Department of the Interior
United States Indian Irrigation Service
H V Clotts, Chief Engineer C.A Engle, Supervising Engineer

WESTERN SHOSHONE OR DUCK VALLEY INDIAN RESERVATION - IDAHO & NEVADA

SHOWING

AREAS RESERVED BY VARIOUS EXECUTIVE ORDERS

Scale, 1 inch = 4 miles
Blackfoot, Idaho, April, 1929

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REPORT

WATER SUPPLY, WATER RIGHTS

AND IRRIGATION

WESTERN SHOSHONE OR DUCK VALLEY RESERVATION

NEVADA - IDAHO

October, 1930

Volume II

Supplementary to Volume I of May, 1930

Charles A. Engle
Supervising Engineer

Department of Water Administration
PROTESTANT'S
Exhibit 23
Date Admitted

55 7009
Whole book filmed

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[illegible] INDIAN [illegible] – [illegible]

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DEPARTMENT OF THE INTERIOR

UNITED STATES INDIAN IRRIGATION SERVICE

IRRIGATION DISTRICT NO. 2

Salt Lake City, Utah   October 23, 1930

Commissioner of Indian Affairs

Dear Sir:

In further reference to our letter of September [illegible] in response to Office letter of above [illegible] 20, 19[illegible], there is respectfully submitted [illegible] to, [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] of the [illegible].

Very respectfully,

[illegible]

[illegible]

[illegible]

[illegible] - [illegible]

General Description

The Duck Valley or Western Shoshone Indian Reservation, in Idaho and Nevada, was established by Executive Order of April 16, 1877. Additional lands, as indicated on Map I attached hereto, were added to the reservation by Executive Orders of May 4, 1886 and July 1, 1910. The present area of the reservation is [illegible] acres, of which [illegible] acres are in Idaho and [illegible] acres are in Nevada.

With the exception of an area of about [illegible] acres of level bottom land along the Owyhee River and Blue Creek which is considered irrigable, the [illegible] are hilly or mountainous and are fit only for grazing. 7,[illegible] acres of this bottom land are now ([illegible]) being irrigated by the Indians with a very inadequate water supply which generally fails entirely during the latter half of the irrigation season. If an adequate and dependable water supply was available it is believed the Indians would in time utilize the entire [illegible] acres of irrigable valley land.

There are [illegible] Indians of the Sainte and Shoshone tribes living on the reservation. There are [illegible] Indian families.

WATER SUPPLY, WATER RIGHTS AND IRRIGATION

[illegible] INDIAN RESERVATION _ NEVADA AND [illegible]

There are three streams from which it is feasibly possible to secure water for irrigation: (1) The Cayhee River, flowing from the southwest corner diagonally across the reservation and forming the water supply for the major part of the reservation; (2) Blue Creek, flowing from the north, entering the reservation about the center point of the northern boundary and emptying into the Cayhee River about the center of the reservation; (3) [illegible] Creek, rising on the reservation and flowing in a northerly direction, leaving the reservation about the northeast corner and emptying into the Snake River.

[illegible]

Prior to the establishment of the reservation small bands of Paiute and [illegible] Indians were scattered about in Nevada, subsisting principally by farming. It is a fact as unquestionably established by the report of the Commissioner of Indian Affairs for 1874 that some of the Indians now living on the reservation, or their ancestors, were farming and irrigating some of the lands later included in the reservation as early as 1874. It is entirely probable that they were [illegible] long prior to 1874. They were slightly [illegible], however, on the [illegible], and both the [illegible] [illegible]

[illegible]

[illegible]

settlers. On August [illegible], 1877, the Indian Agent of the Western Shoshone Agency reported to the Commissioner of Indian Affairs, stating among other things:

> "The country is becoming more thickly settled by white people, and the patches of land, in many cases heretofore cultivated by the Indians, have been purchased from the Government by white men, and are now cultivated by them. In other cases the water heretofore used by the Indians for irrigating purposes has been taken from the streams above the Indian ranches, thus rendering them valueless, as nothing can be raised without irrigation.

It is reported that the Indians, in 1[illegible], were cultivating [illegible] acres; in 1881, 500 acres; in 1[illegible] they cultivated [illegible] acres and cut 110[illegible] tons of [illegible]; in 1[illegible] they cut 1[illegible] tons of hay; in 1[illegible] they harvested 1[illegible] tons of hay; in 1915 they cultivated about [illegible] acres of land and cut [illegible] tons of hay. In 1[illegible] the Indians utilized 7,[illegible] acres. They had [illegible] acres of [illegible], [illegible] acres of grain, 3 acres of potatoes, [illegible] acres of [illegible] hay, and [illegible] acres of [illegible]. All of the land [illegible] utilized by the Indians, with the exception of about [illegible] acres which are [illegible], [illegible], (without [illegible]) [illegible] river. Practically all [illegible] (the [illegible]) [illegible]

now used by White ranchers north of the reservation who have built reservoirs to control the flow.

Irrigation Upstream from Reservation

Owyhee River - From the most reliable information available the ranches now owned by Emory Johnson and [illegible], the two largest places on the Owyhee River above the reservation, were settled about 1[illegible]7. The aggregate area of these ranches is approximately 1,7[illegible] acres, which is about one-half the area [illegible] irrigated on the upper Owyhee. The total area being irrigated in 1[illegible] on the [illegible] was 3,[illegible].5[illegible] acres. ([illegible] of report of [illegible], 1930.)

The major portion of the lands irrigated on the upper Owyhee River above the reservation was settled about 1[illegible]7. The principal crop is wild hay, but a few small areas are devoted to alfalfa or timothy.

[illegible] of the report of [illegible], [illegible], is given a list [illegible] and [illegible] of those [illegible] water right or [illegible] for irrigation on the upper Owyhee and its tributaries above the reservation and [illegible] the appropriation date of [illegible], the [illegible] being irrigated in [illegible] of water [illegible]. [illegible]

vation and Contiguous Territory" accompanying this report.

It will be noted that the total acreage irrigated on the upper Cayhee and tributaries above the reservation in 19[illegible] was 3,[illegible]57.5[illegible] acres. Apparently there was little or no irrigation by Whites in the upper Cayhee Valley prior to 1[illegible]7. According to this record about 95[illegible].[illegible] acres were being irrigated in 1[illegible]7. Two of these ranches were established as recently as 19[illegible].

There are no storage reservoirs of any consequence on the upper Cayhee or its tributaries.

[illegible] - According to the survey made by [illegible] Young, there were being irrigated on [illegible] above the reservation in 19[illegible] total of [illegible] acres, [illegible] of which belong to the [illegible] and [illegible].

The earliest settlement of these lands according to the most reliable information [illegible] was in 19[illegible]. The earliest filing on permit (to use [illegible]) on [illegible] on file in the [illegible] State Engineer's office is permit No. [illegible] by [illegible] for [illegible] second feet. Application was filed [illegible], 19[illegible], and proof of [illegible] was made [illegible], 1919. [illegible] for 1[illegible].7 second-feet. ([illegible] of [illegible], 19[illegible].) [illegible]

[illegible]

[illegible]

taries above the reservation are given beginning on page 90 of Report of May, 1930. It will be noted that applications have been made for diverting from Blue Creek 142 second-feet and for storing 6,605 acre-feet.

There have been actually constructed by private parties on Blue Creek above the reservation six reservoirs having an aggregate capacity of 5,625 acre-feet, as follows:

Name of Reservoir	Date built	Capacity (acre-feet)
Blue Creek	[illegible]	[illegible]
Little Blue Creek	[illegible]	[illegible]
[illegible]	About [illegible]	[illegible]
Indian Creek	About [illegible]	[illegible]
Three-Ply Creek	About [illegible]	[illegible]
East Three-Ply Creek	[illegible]	[illegible]
	Total	[illegible]

To many reservoirs have already been built on Blue Creek that all of them are not always filled, and it is seldom, even during the spring run-off, that water flows down this stream to the reservation.

There is included herewith (see pages 24 to 31) a list of homestead filings in Blue Creek Valley above the reservation. It will be noted that the earliest filing was made in [illegible] and final certificate issued in [illegible]. [illegible]

WATER SUPPLY, WATER RIGHTS AND IRRIGATION

[illegible] INDIAN RESERVATION - NEVADA AND IDAHO

Irrigation Methods

It is the custom of White ranchers of this locality to begin irrigating with the start of spring run-off, which is often as early as April 1. Indians, however, seldom begin irrigating until about May 1, when a considerable part of the run-off has passed. No doubt hay production would be increased if the Indians would adopt the White man's plan.

Natural meadow or wild hay land produces about one-half to three-quarters tons of wild hay per acre. A mixture of timothy, clover and redtop on lands in the vicinity of Mountain City it is claimed produces two tons per acre.

Irrigation is begun with the first spring run-off (about April 1) and continued until the water supply is exhausted - about July 1 on the upper reaches of the streams and about August 1 at Mountain City and the reservation. On Trail and Van Duzer Creeks some water is present three hundred [illegible].

Due to [illegible] and erratic water supply, irrigation methods of both Whites and Indians are [illegible] and [illegible]. [illegible] running in the spring [illegible] to [illegible] [illegible] July 1.

[illegible], [illegible] AND [illegible]

[illegible] - [illegible] AND [illegible]

Water Supply

Owyhee River - For the eleven year period 1914 to 1925 inclusive the maximum annual discharge of the Owyhee River near Owyhee, Nevada, (the Western Shoshone Reservation Indian Agency) was 1[illegible],[illegible] acre-feet. The minimum annual discharge was 3[illegible],[illegible] acre-feet, and the average annual discharge was [illegible],[illegible] acre-feet. There were five years for which the annual discharge was less than the average.

During the same eleven year period the maximum run-off for October to May inclusive - usually considered as available for storage - was (for 1916-1917) [illegible] acre-feet; the minimum (1917-1918 and 1920-1921) was 3[illegible],[illegible] acre-feet; and the average was 7[illegible],[illegible] acre-feet. There were five years for which the run-off was less than the average.

Included herewith is a tabulation entitled "Summary of Daily Discharge, Owyhee River at Mountain City, Nevada for 1927 to 1[illegible] inclusive," which shows the [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible].

WATER UTILITY, CITY PLANT AND EQUIPMENT

SCHEDULE SHOWING DAILY WATER CONSUMPTION - GALLONS AND COSTS

Table No. 1: Summary of Daily Discharge (March to October Inclusive) Orifice Mixer at Fountain City, Nevada, for 1927, 1928 and 1929.

	1927	1928	1929
March			
Maximum flow (000-00)	311 on 21	1520 on 26	No record
Minimum flow (000-00)	55 on 30	40 on 1	" "
Mean flow (000-00)	120	400	" "
Below mean flow (day)	21	20	" "
Total (0000-0000)	7,300	25,100	(est) 5,000
April			
Maximum flow (000-00)	1000 on 26	471 on 1	633 on 30
Minimum flow (000-00)	21) on 1	220 on 23	140 on 10
Mean flow (000-00)	480	377	402
Below mean flow (day)	20	20	19
Total (0000-0000)	20,000	22,400	25,000
May			
Maximum flow (000-00)	546 on 2	620 on 1	736 on 1
Minimum flow (000-00)	222 on 31	150 on 31	100 on 31
Mean flow (000-00)	456	310	424
Below mean flow (day)	16	17	14
Total (0000-0000)	30,000	19,000	20,000
June			
Maximum flow (000-00)	333 on 11	171 on 1	161 on 2
Minimum flow (000-00)	99 on 30	15 on 27	90 on 30
Mean flow (000-00)	263	96	118
Below mean flow (day)	14	15	12
Total (0000-0000)	14,000	2,700	7,000
July			
Maximum flow (000-00)	60 on 1	26 on 1	26 on 1
Minimum flow (000-00)	10 on 21	6 on 13	9 on 30
Mean flow (000-00)	22	10	15
Below mean flow (day)	21	15	16
Total (000-0000)	1,700	300	500
August			
Maximum flow (000-00)	21 on 1	9 on 1	8 on 2
Minimum flow (000-00)	7 on 19	3 on 13	3 on 30
Mean flow (000-00)	12	5	5
Below mean flow (day)	15	14	15
Total (000-0000)	700	200	250
September			
Maximum flow (000-00)	10 on 10	4 on 21	4 on 1
Minimum flow (000-00)	5 on 1	3 on 1	3 on 30
Mean flow (000-00)	7	3	4
Below mean flow (day)	15	15	15
Total (000-0000)	300	100	100

WATER SUPPLY, WATER RIGHTS AND IRRIGATION

WEST PEAK OF INDIAN RESERVATION - NEVADA AND IDAHO

Water Supply (continued)

Blue Creek and Mary's Creek - In view of the fact that the 2,547 acres are now being irrigated on this stream above the reservation and that this acreage exhausts the water supply ordinarily available, it seems reasonable to conclude that an equal area of reservation or Indian land can be irrigated with this supply providing it can be legally established that the Indians have a prior right to the waters of this stream. As a matter of fact it seems conservative to assume that with some improvement in irrigation methods an area of 3,[illegible] acres might be irrigated with this supply, in combination with that water may be made available from Mary's Creek, and this estimate has been tentatively adopted for the purposes of this discussion.

There are, however, no feasible storage sites on Blue Creek or Mary's Creek, or any of their tributaries within the reservation, and all feasible storage sites on these streams outside the reservation have already been developed by private parties to such an extent that the spring floods, except in years of abnormal snow-fall, are [illegible] to fill the existing reservoirs. [illegible] this [illegible], [illegible] [illegible]

request for the Indians more than a prior right in the natural or uncontrolled flow of these streams during the irrigation season for the water necessary, or such part thereof as may be available, to irrigate the Indian lands tributary to these streams. If a storage right for the storage of water during the non-irrigation season, and the storage of surplus waters during the irrigation season should be requested and secured by decree, such storage right would apparently be useless unless one or more of the storage reservoirs already built by priv to parties is purchased or leased. It is of course possible that such purchase or lease might later be found feasible, as some of the existing reservoirs will in all probability be found worthless to their present owners in the event the government secures for the Indians a prior right in either or both the natural or uncontrolled flow during the irrigation season or the flow during the non-irrigation season.

As pointed out in the report of May, [illegible], several Indian ranches formerly on Blue Creek have been abandoned for the reason that upstream development outside the reservation has exhausted the water supply.

WATER SUPPLY, WATER RIGHTS AND IRRIGATION

[illegible] INDIAN RESERVATION - NEVADA AND IDAHO

Water Requirement

Assuming a project as ultimately completed and utilized of 30,000 acres devoted to the crops named below, and requiring the quantities of water herein estimated, the total annual ultimate water requirement would be 90,000 acre-feet at the diversion point as follows:

30,000 acres	Acre-feet on land	Acre-feet at Diversion	Total
10,000 acres alfalfa and other cultivated crops	2.5	3.75	37,500
10,000 acres mixed meadow	2.0	[illegible]	[illegible]
10,000 acres wild hay	1.5	2.25	[illegible]
			[illegible]

Monthly Distribution of Water Requirement

It is assumed in view of the data available that the water required for irrigation would need to be distributed approximately as follows:

Month	Acre-feet on land	Acre-feet at Diversion (33 % loss)	Total Required (Ac-ft.)
April	.20	.30	[illegible]
May	.30	[illegible]	[illegible]
June	[illegible]	[illegible]	[illegible]
July	[illegible]	[illegible]	[illegible]
August	[illegible]	[illegible]	[illegible]
September	[illegible]	[illegible]	[illegible]
	[illegible]	[illegible]	[illegible]

The maximum monthly diversion (July) would require an average flow at the diversion point of [illegible] acre-feet. In view of the sudden and erratic wide fluctuations in

stream-flow, it is advisable to design the irrigation system to make possible the diversion of at least 500 second-feet.

Water Available from Natural Flow

From the records available of the stream-flow of the Owyhee River, including the daily discharges for the months March to September inclusive for the years 1927 to 1929 inclusive as summarized in the tabulation attached hereto, it is estimated that ordinarily there will be available from the Owyhee River natural or uncontrolled flow during the irrigation season April 1 to September 30, 25,000 acre-feet. The quantities of water available from natural flow during the months when the stream-flow is appreciable for the years 1927 to 1929 inclusive as compared with the irrigation requirement for each month are as follows:

Month	(ac-ft) 1927	(ac-ft) 1928	(ac-ft) 1929	3-Year average	Irrigation demand	Usable from natural flow
March	7,300	25,100	5,600	12,700		
April	[illegible]	[illegible]	[illegible]	[illegible]	9,000	[illegible]
May	[illegible]	[illegible]	[illegible]	[illegible]	13,500	[illegible]
June	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
	[illegible]	[illegible]	[illegible]			[illegible]

Amount of Water to Required

From a comparison of the seasonal distribution of Owyhee River stream-flow with that of the required

monthly distribution of water during the irrigation season, it is estimated that there will be required for the assumed ultimate development of 30,000 acres, approximately 65,000 acre-feet of storage for irrigation during the months June to September inclusive. Assuming the daily discharges of the Owyhee River at Mountain City for the years 1927, 1928 and 1929 as summarized in the attached tabulation entitled "Summary of Daily Discharge, Owyhee River at Mountain City, Nevada, for 1927 to 1929 inclusive" represents approximately average conditions, there would ordinarily be required from storage the following quantities of water for each of the months June to September inclusive:

June,	12,000 acre-feet
July,	27,000 acre-feet
August,	13,500 acre-feet
September,	[illegible] acre-feet
Estimated total,	61,500 acre-feet

Probable Location of Storage Reservoirs

It is believed, in view of existing local conditions - water supply, available storage sites, and the desirability of having the reservoir or reservoirs as near the diversion as possible and within the reservation - that an effort [illegible] to provide all storage necessary on the Owyhee River, [illegible] it is fairly well demonstrated

by the preliminary investigations thus far made, that one or more feasible storage sites exist and that the water supply, if and when conserved by storage, is in all probability adequate. If further investigations should indicate the necessity or desirability of storage on either Blue Creek or Mary's Creek, it is possible that one or more of the several small reservoirs already built by private parties might be purchased and improved.

Existing Irrigation Project

During the season of 1930 the Indians, with the inadequate post-season water supply available, made use of 7,241 acres of land. Of this 613 acres were devoted to alfalfa, 107 acres to grain, 3 acres to potatoes and gardens, 4,876 acres to wild hay, and 1,640 acres consisted of sub-irrigated pasture. All of this land except the sub-irrigated pasture, viz: 5,[illegible]1 acres, was irrigated from the existing irrigation system with water from the Owyhee River.

The present irrigation system is the outgrowth of the system of ditches that was first started by the Indians themselves, evidently as early as 1874 or earlier. In a report contained in the report of the Commissioner of Indian Affairs for 1878 it is stated:

WATER SUPPLY, [illegible] AND IRRIGATION

[illegible] INDIAN RESERVATION — [illegible] AND IDAHO

"They (the Indians) have built 3 miles of fences and cut 2 miles of water ditches and have [illegible] acres of wheat and barley in cultivation, also 25 acres of potatoes, turnips, peas, etc."

It is known that many of these ditches originally built by the Indians many years ago were later incorporated in the improvements to the irrigation system that were subsequently made by the government. Many of these early Indian ditches, as they were originally built, are still in use, and others have been enlarged and extended. It should also be stated that in early days [illegible] sloughs or old river channels were used as irrigation ditches.

There has been expended by the government to date (September 30, 1930) on the [illegible] Reservation Irrigation Project the sum of [illegible], of which [illegible] was for construction and [illegible] for operation and maintenance.

The [illegible] now being utilized by the Indians is served by four principal canals or ditches, as follows:

1. [illegible] side of Agency [illegible], diverting from the [illegible] bank of the [illegible] River near the quarter section corner between sections [illegible] and 36 of township 47 north, [illegible]

miles, and has five miles of laterals. Its capacity as originally designed is 50 second-feet. It now serves approximately 1,[illegible]00 acres.

2. The West Side Canal is diverted from the west bank of the Bruneau River near the quarter section corner between sections 1 and 36 of townships 46 and 47 north, range 52 east, Mount Diablo Base and Meridian, Nevada, and extends in a westerly and southwesterly direction for about ten miles, and has about twenty miles of laterals. The originally designed capacity is 150 second feet. It now serves approximately 3,[illegible] acres.

3. The Pleasant Valley East Side Canal is diverted from the east bank of the Bruneau River near the quarter corner between sections 9 and 16, township 16 south, range 2 east, Boise Base and Meridian, Idaho, and extends in a northwesterly direction for a distance of four miles. The originally designed capacity of this canal is 50 second-feet. It now serves approximately 3[illegible]0 acres.

4. The Pleasant Valley West Side Canal is diverted from the west bank of the Bruneau River near the quarter corner between sections 9 and 16, township 16 south, range 2 east, Boise Base and Meridian, Idaho, and extends in a westerly and northwesterly direction for [illegible] miles. The

originally designed capacity of this canal is 50 second-feet. It now serves 600 acres approximately.

All of these canals will have to be enlarged and extended to serve the total irrigable acreage if and when the project is ever completed.

Probable Extent and Plan of Completed Project

This, of course, will largely be governed by the water rights that are eventually decreed for the use of the Indians as a result of the proposed adjudication suit.

It is estimated on the basis of surveys and examinations thus far made that the acreage of irrigable and productive land that it is desirable to irrigate on the Western Shoshone Indian Reservation is 30,000, of which 22,000 acres is in the Owyhee River Valley and 6,000 acres in the Blue Creek Valley. It is true that in the past we have usually given this estimate as 25,000 acres, practically all in the Owyhee Valley, and including only a small area in the Blue Creek Valley, both because of some question as to the fertility of the soil and because of the apparent impossibility, or at least seeming difficulty, of securing water for it, especially from Blue Creek, practically all of the available water supply from Blue Creek having been already conserved and put to use by white people

above the reservation. Recent observations indicate that the Blue Creek land is well adapted to the growth of wild hay, mixed meadow hay or grain and that the water requirement, because of the texture of the soil, will be low as compared with the Owyhee Valley, which in many instances is sandy or gravelly. Moreover, the White ranchers above the reservation are producing fairly good crops on this land along Blue Creek. In view of this it is concluded that some of the Owyhee Valley land heretofore considered as irrigable and included in former estimates should be eliminated and that we should include in our project the irrigable acreage of Blue Creek.

As to the duty of water, assuming that eventually we shall have a project of 30,000 acres, and assuming that when fully developed one-third of this area will be devoted to alfalfa requiring an estimated amount of 2½ acre-feet per acre on the land per season; that one-third of the area will be devoted to mixed meadow, that is, a mixture of timothy or red-top with the natural grasses, requiring an estimated amount of 2 acre-feet per acre per season on the land; and that one-third of the area will be devoted to wild or native grass hay, requiring 1.5 acre-feet per acre per season on the land, there would be required for

the 30,000 acres 60,000 acre-feet of water delivered to the land each season. Assuming a loss of 33 1/3 percent, there would be required 90,000 acre-feet annually or per irrigation season at the diversion point or in storage.

In view of the erratic flow of the streams, practically all the run-off occurring in March, April and May, it is my opinion that there will be required for the irrigation of 30,000 acres 500 second-feet, or such part thereof as may be available from the natural or uncontrolled flow of the stream, that is, the normal and flood flow, supplemented by 65,000 acre-feet annually of storage. In making this statement I am assuming that we would normally be able to secure 35,000 acre-feet per season by diversion during the irrigation season from the normal or flood flow of the streams, thus requiring 65,000 acre-feet of storage to make up the requirement of 90,000 acre-feet per irrigation season.

In line with the foregoing proposal for an ultimate project of 30,000 acres (29,000 acres in the Gaylord Valley and 1,000 acres in Blue Creek Valley) the irrigable acreage within the reservation as established April 15, 1877, is 22,000 acres in the Gaylord Valley and 1,000 acres in Blue Creek Valley. (Note - the other 7,000 acres in

Blue Creek Valley is included in the addition to the reservation made by Executive Order of May 4, 1936.)

The irrigable acreage within the reservation as established April 16, 1877, to be supplied from Owyhee River (direct diversion and reservoir) is estimated as 22,000 acres, all of which is in the Owyhee River Valley. If, however, we cannot legally take from the White Rock area on upper Blue Creek above the reservation water necessary for irrigating 1,000 acres of irrigable land on Blue Creek, it would then be necessary also to serve this 1,000 acres of Blue Creek land from the Owyhee, making a total of 23,000 acres.

The irrigable area within the addition to the reservation made May 4, 1936, to be supplied from the Owyhee River (direct diversion and reservoir) is 5,000 acres. This statement is based on the assumption that of the 8,000 acres of irrigable land in Blue Creek Valley (7,000 acres of which is included in the addition to the reservation made in 1936 and 1,000 of which is in the original reservation) water from Blue Creek, asserted to establish a legal right to it, will, when conserved by storage, serve only 3,000 acres, leaving 5,000 acres that would normally have to be served from the Owyhee River. If, however, be-

cause of the absence of feasible storage sites on Blue Creek, as suggested in the discussion of Water Supply (Blue Creek) a storage right is not claimed or decreed, then it will be necessary to irrigate all of the Blue Creek lands for a considerable part of each season with water from the Owyhee River.

To serve this proposed project of 30,000 acres, the Agency Canal (now serving 1,500 acres) would be enlarged and extended to serve 2,000 acres in the Owyhee Valley and to serve (either a part or all of the irrigation season, depending on the final outcome of the adjudication suit) the 8,000 acres of Blue Creek Valley land. The West Side Canal (now serving 3,000 acres) would be enlarged and extended to serve 17,500 acres in the Owyhee Valley. The Pleasant Valley East Side Canal (now serving 300 acres) would be enlarged and extended to serve 500 acres. The Pleasant Valley West Side Canal (now serving 600 acres) would be enlarged and extended to serve 1,000 acres.

In the following pages (pages 24 to 31) there is given a list of the homestead filings on Blue Creek Valley lands which was not included in the report of May, 1[illegible]. Following this, on pages 32 to 40 inclusive is a compilation of statements by the [illegible] and

by several of the Indians of the Western Shoshone on Duck Valley Reservation concerning the early agricultural and irrigation activities of the Indians, and the water supply. Following this, on pages 43 to 50 inclusive is a summary of excerpts taken from various official reports concerning the condition of the Indians at various times, and their progress in agriculture, irrigation and grazing. Following this, on pages 51 to 85 are fairly complete copies of the official reports from which the foregoing summary was made. Finally, at the end of this report, there are included two maps - one, a portion of the reservation, showing the lands set aside or reserved by each of the three Executive Orders of April 15, 1877, May 4, 1886 and July 1, 1910; and one showing the reservation and contiguous territory on which is shown the location and extent of the irrigated areas both in and outside of the reservation, as well as such other information of interest.

WATER SUPPLY PAPER [illegible] NEVADA.

List of original filings on lands North of Dark Valley Reservation on Blue Creek and tributaries.

Subdivision	Name of Applicant	No. of applic.	Date of filing	Final cert. issued	Remarks
Lot 4, [illegible], Sec.3; [illegible] Sec.17; Lot 1, [illegible] Sec.16; [illegible], W 1, Sec.13; [illegible], Sec. 20	Letitia A. Emerson		6-15-23	12-10-27	
[illegible], Lot 2, Sec. 15	Fred J. Kellamp	02[illegible]3	7-31-21	10-15-21	4.0 A
[illegible], Lots 3 & 4 Sec. 11	Lena Yates	010583	4-7-11	12-[illegible]	156.31 A
[illegible], Sec. 17	George A. Yates	013426	6-11-12	12-25-16	155.5) A
[illegible], Sec. 19	William Brothers	016824	6-4-14	9-25-17	160 A
Lots 1,2,3 & 4, Sec.19	Fred F. Kellam	016491	11-17-14	8-6-17	160 A
[illegible], Sec.20	William Brothers	013930	6-13-14		159.23 A
[illegible], Sec.20	George M.Berkley	013819	3-30-11	9-4-19	160 A
[illegible], Sec.21;W [illegible] Sec.23	" " "	013775	7-25-15	4-15-21	160 A
[illegible], Sec. 20; [illegible] Sec.32	" " "		10-11-22	4-14-27	4.0 A
[illegible], Sec.30	Eva M. Jones		10-11-22	4-14-27	640 A
[illegible], Sec. 29	Harris M.Portlock	5135	4-12-31	5-15-37	160 A
[illegible], Sec. 31	Glenn Bergin	017774	6-12-16	7-6-17	160 A
[illegible], Sec. 31	John Twitty	020147	5-16-20	8-2-19	156.77 A
[illegible], Sec. 30	Albert W. Twitty	020346	8-24-17	9-14-21	
Lot 4, [illegible], Sec. 31	U.S. Gen. Land Off.	Mon.	11-4-11		115.75 A
[illegible], Sec. 31, [illegible] Sec. 32	Nevada Consolidated	03[illegible]	11-12-0[illegible]	12-24-[illegible]	7.0 A

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WATER SUPPLY SYSTEMS CHOSHONE RESERVATION- NEVADA.

List of original filings on lands North of Duck Valley Reservation on Blue Creek and tributaries.

T. 11, South Range 3 East, Boise Meridian

Subdivision	Name of Applicant	No. of Application	Date of Filing	Final cert. issued	Remarks
[illegible], Sec. 31	S.F. Pac. RR	Idaho S.	5-12-13		80 A
[illegible], Sec. 31	" " "	" "	6-2-13		
[illegible] Sec. 31, Lot 1, [illegible], Sec. 6, T. 14 S. R. 3 E.	No. Pac. RR		11-21-29		160.76 A

WATER SUPPLY BULLETIN NO. FORT HALL RESERVATION- WYOD.

List of original filings on Lands North of Duck Valley Reservation on Pine Creek and tributaries.

T. 11 S., R. 3 E., Boise Meridian

Subdivision	Name of Applicant	Rec. of Applic.	Date of filing	Final certs. issued	Remarks
SE¼ Sec. 1	State of Idaho		1-12-21		320 A
SW¼ Sec. 2	" " "		1-12-21		320 A
Lot 2, Sec. 2,	U.S.A. R. R.		11-12-15		41.80 A
Lot 4, Sec. 3,	State of Idaho		11-12-27		41.27 A
[illegible] Sec. 3	" " "		3-25-21		320 A.
[illegible] Sec. 4;					
[illegible] Sec.8	[illegible] Little	3020	4-24-03	11-24-15	320 A.
[illegible]					
Sec. 9,	Joe Patterson	12431		6-3-16	160 A
[illegible] Sec. 8	State of Idaho		11-12-27		40 A
Lots 1,2,3,4, [illegible] Sec.5	Idaho Coal	01639	6-3-15	4-19-21	324.36 A
[illegible] Sec.5; [illegible]					
Sec. 6,	Noell Brown	01333	7-22-15	7-24-15	160 A
[illegible] Sec. 5	State of Idaho	23420	5-27-19		160 A
Lots 2,3,6,7, [illegible]					
[illegible] Sec.6;	U.S. Nav. Pet.	01637	11-24-11	1-27-13	314.52
Lot 1, [illegible] Sec.6, [illegible]					
Sec.31,E.½, [illegible]	U.S. of	01926	11-22-13		160.75 A
[illegible], Sec. 6	St. Bd. of Idaho	02322	5-25-15	8-28-20	80 A
Lot 1, Sec. 7	U.S. Nav. Pet.	01403	11-4-11	1-27-13	33.32 A
[illegible] Lots 3 E½,Sec.7	John A. Barnes	01756	6-10-13	7-11-20	314.03
[illegible] Sec.8; [illegible]	Bruce Little	1153	3-27-03	10-12-07	160 A
[illegible] Sec.8; [illegible]					
[illegible] Sec.17,	Frank T. Little	1570	3-24-03	11-30-07	160 A
[illegible]					
[illegible] Sec. 5	Orin Little	3018	4-21-03	6-10-15	160 A
[illegible] Sec.6	Idaho Interiors	01934	6-7-11		80
[illegible] Sec 9,(Isol-ted tract):	Orin Little	01919	7-24-15		Paid entry "24" of 6-5-15
[illegible] Sec.9,(" "):	Orin Little	01936	11-22-16	12-3-16	160 A
[illegible] 12,11,13,14	St. Bd. of Idaho				
[illegible] Sec.1/:	Orin Little	2178	7-7-21	9-3-27	160 A
[illegible] Sec. 4,					
[illegible] Sec. 8,	Orin T. Little	1520	3-21-03	11-27-07	160 A
[illegible]					
[illegible]					
[illegible] Sec. 1,	Julia A. Hall	01915	1-15-13	1-23-13	311 A

WATER SUPPLY [illegible] RESERVATION- NEVADA.

List of original filings on lands North of Duck Valley Reservation on Blue Creek and tributaries.

T. 14, South Range 3, East, Boise Meridian

Subdivision	Name of Applicant	No. of Application	Date of filing	Final cert. issued	Remarks
[illegible] Sec. 17	State of Idaho	023829	5-23-19		40 A
[illegible], Sec. 17, [illegible]	Wayne F. Riddle	026031	2-13-22	10-6-24	120 A
Sec. 18	State of Idaho	023829	5-23-19		200 A
[illegible] 1&2, [illegible], Sec. 12, T. 14, [illegible]					
Sec. 13, T. 14, [illegible]	George [illegible]	01[illegible]	10-3-1[illegible]	7-13-[illegible]	276.14 A
[illegible] Sec. 19	George C. Riddle	01967	11-[illegible]-[illegible]	11-[illegible]-19	160 A
[illegible], Sec. 19,	[illegible] Roberts	017[illegible]	1-1[illegible]-15	5-2[illegible]-1[illegible]	160 A
[illegible], Lots 3 & 4, Sec. 19	Robert C. Jones	017775	6-1[illegible]-15	7-[illegible]-[illegible]	15[illegible].[illegible] A
[illegible], Sec. 20	Harry C. Riddle	4475	10-6-[illegible]	10-4-07	160 A
[illegible], Sec. 20	" " "	0137) 1[illegible])	1-[illegible]-03	11-[illegible]-07	160 A
[illegible], Sec. 20	Mary Riddle	07[illegible]	1[illegible]-[illegible]	10-6-13	[illegible] A
[illegible] Sec. 21	Augustus [illegible] Stone	4[illegible]	10-[illegible]	10-4-07	160 A
[illegible], Sec. 21	Richard B. Stone	0173) 1[illegible])	1-[illegible]-03	11-[illegible]-07	160 A
[illegible], Sec. 21	Augustus [illegible] Stone	017[illegible]	[illegible]	[illegible]-[illegible]	160 A
[illegible], Sec. 21; [illegible], Sec. [illegible]	Wayne L. Riddle	026[illegible]	6-21-2[illegible]	10-6-[illegible]	[illegible] A
[illegible], Sec. 23; [illegible], Sec. 23; [illegible], Sec. 25	George F. Riddle	[illegible]	10-1[illegible]-21	10-6-[illegible]	[illegible] A
[illegible], Sec. 25,	[illegible] Riddle	[illegible]	7-[illegible]-21	[illegible]	[illegible] A
[illegible], Sec. 25,	State of Idaho	[illegible]	[illegible]		[illegible] A
[illegible] " "	" " "	[illegible]	5-[illegible]-19		80 A
[illegible], Sec. 2[illegible]	J. [illegible]	017[illegible]	7-[illegible]-15		160 A
[illegible], Sec. 3[illegible]	[illegible]	[illegible]	9-1[illegible]-[illegible]	9-[illegible]-26	[illegible] A
[illegible], Sec. 29	George C. Riddle	01[illegible]) 1[illegible])	1-[illegible]-03	11-[illegible]-07	160 A
[illegible], Sec. 29; [illegible] Sec. 31	Amelia Riddle	[illegible]	11-[illegible]	10-6-13	[illegible] A
[illegible], Sec. [illegible]	[illegible]	[illegible]	[illegible]	7-[illegible]	[illegible]
[illegible], Sec. [illegible]	[illegible]	[illegible]	[illegible]	1-1[illegible]	[illegible]
[illegible], Lots 1[illegible], Sec. 30	[illegible]	01[illegible]	11-[illegible]	1[illegible]	[illegible]
[illegible], Lot 3, Sec. 30	[illegible]	[illegible]	11-[illegible]	[illegible]	1[illegible] A
[illegible], Sec. 31	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]

WATER SUPPLY WESTERN OREGON RESERVATION- NEVADA.

List of original filings on lands North of Duck Valley Reservation on Blue Creek and tributaries.

T. 14, South Range 3, East, Boise meridian

Subdivision	Name of Applicant	No. of Application	Date of filing	Final cert. issued	Remarks
S½NE¼, NE¼NE¼, Sec. 32; NW¼NE¼, Sec. 33	Richard R. Stone	3[illegible]	3-5-97	9-[illegible]-02	1[illegible]0 A
N½SE¼, SW¼SE¼, SE¼SW¼, Sec. 32	Ivan [illegible] Avent	017572	5-17-1[illegible]	[illegible]-3-19	160 A
S½NE¼, NW¼NE¼, N½SW¼, Sec. 32	Mattie Avent	01[illegible]	5-[illegible]-11	9-[illegible]-22	[illegible] A

WATER SUPPLY [illegible] SPECIALIZING STATION-UTAH.

List of original filings on Trails North of Dunn Valley Reservation on Blue Creek and tributaries.

T. N., [illegible] Salt Lake Meridian

Subdivision	Name of Applicant	No. of Application	Date of filing	Final cert. issued	Remarks
Lots 5,6,& 7,Sec.6; Lot 1,Sec.7:	Henry Imbelt	01[illegible]	8-3-15	4-21-[illegible]	
[illegible], Sec.12	Jos. A. L. Jarrell	0[illegible]	12-7-04	10-3-10	1.0 A
NE¼SE¼, SW¼NE¼, Sec. 12	S.P. Res. Co.	011507	11-4-11	Approved: 1-23-13	120 A
SE¼NE¼,NE¼SE¼, Sec. 12,	George V. Nate	180	3-23-09	9-11-07	160 A
NW¼, S½NE¼, Sec. 13	Jos. A. Jarrell	0[illegible]	5-[illegible]-05	[illegible]-12	160 A
[illegible] Sec.13,S½N½, Sec.24	[illegible] A. Wilson	0[illegible]	5-5-10	6-11-[illegible]	1.0 A
SW¼, Sec. 13	Jos. A. Gibson	0[illegible]	[illegible]-17	12-3-13	160 A
S½S½, [illegible] N½S½, Sec. 18,	George V. Nate	1[illegible]	11-22-[illegible]	12-12-[illegible]7	160 A
SW¼, Sec. 14,	John [illegible]ston	[illegible]1/17	6-3-15	6-[illegible]-21	160 A
[illegible]½, [illegible]½, Sec. 15	R.P. Res.Co.	0[illegible]	5-[illegible]-15	[illegible]-[illegible]-1[illegible]	160 A
[illegible], Sec. 22	Walter [illegible]. Hall	0[illegible]	[illegible]-[illegible]-15	[illegible]-[illegible]-20	160 A
[illegible], [illegible], N½NE¼, Sec.23,	Rose B. Nash	[illegible]	[illegible]-[illegible]	3-15-[illegible]7	160 A
[illegible], [illegible], [illegible], Sec.23,	Tabere J. [illegible]ston	[illegible]	[illegible]-[illegible]7	[illegible]-21-[illegible]	160 A
[illegible], Sec. 23	[illegible]. [illegible]	0[illegible]	5-[illegible]-15	[illegible]-[illegible]-[illegible]	160 A
[illegible], Sec. 25	[illegible] . Nash	[illegible]	[illegible]-11	[illegible]-16-1[illegible]	40 A
[illegible], Sec. 26	S.P. Res. Co.	0[illegible]	11-[illegible]-11	Approved: 1-[illegible]-13	40 A
[illegible], Sec. 26	" " "	011303	6-7-11	[illegible]	80 A
[illegible], [illegible], [illegible], Sec. 26	Susan Powell	[illegible]	[illegible]-[illegible]-[illegible]	5-[illegible]-1[illegible]	320 A.
N½, Sec. 27	Joseph B. Nate	0[illegible]	[illegible]-[illegible]-15	11-[illegible]-13	320 A
[illegible], [illegible], Sec. 27	C. Elmer Johnson	0[illegible]	7-7-16		160 A
[illegible], [illegible], [illegible], Sec. 35	S.P. R.R. Co.	011[illegible]	6-7-11	Approved: 1-[illegible]-13	200 A
[illegible], [illegible] SE¼, [illegible] N½ Sec. 35	" " "	01[illegible]	8-6-11	Approved: 4-[illegible]-11	200 A

WATER SUPPLY [illegible] DUCK VALLEY RESERVATION- NEVADA.

List of original filings on lands North of Duck Valley Reservation on Blue Creek and tributaries.

T. 13. North Range 1. East, Boise Meridian

Subdivision	Name of Applicant	No. of Application	Date of filing	Final cert. issued	Remarks
[illegible], Sec. 13	Jean Etchechury	013614	9-1-16	12-7-21	160 A
[illegible], Sec. 13, [illegible] Sec. 12, [illegible] Sec. 19, T. 13, [illegible]	" "	026033	11-21-23	7-8-24	424.67 A
[illegible], Sec. 26	Henry [illegible] Pusolt	027257	4-[illegible]	11-13-29	640 A
[illegible], Sec. 26	[illegible] Pacific R.R.	[illegible]	12-1[illegible]-10	Act of 7-[illegible]-38	40 A

WATER SUPPLY [illegible] RESERVATION- NEVADA.

List of original filings on lands North of Duck Valley Reservation on Blue Creek and tributaries.

[illegible] 14, North Range 1, East, Paiute Meridian

Subdivision	Name of Applicant	No. of Application	Date of filing	Final cert. issued	Remarks
[illegible], Sec.1, [illegible], Sec.12	Henriette [illegible]	025495	4-9-21	Incompl.	160 A
[illegible], Sec.12, [illegible], Sec. 13,					
[illegible], S.R.1, East, [illegible], Sec.7					
[illegible], Sec.16, T.14, S.R.2 [illegible]	[illegible]	02[illegible]3	7-1[illegible]-21	7-6-26	493.51 A

HISTORY OF [illegible] INDIAN RESERVATION, NEVADA - IDAHO

[illegible]

(Supplementary to Report of May 21, 1930)

Statements by Superintendent [illegible] and [illegible]

Under date of December 29, 1930, Superintendent [illegible] of Owyhee, Nevada, in compliance with a previous request, submitted to the Supervising Engineer the following:

Western Shoshone Agency
Owyhee, Nevada. Dec. [illegible], 1930.

Mr. C. A. Engle
Supervising Engineer
Blackfoot, Idaho

Dear Sir:

In reply to your letter of [illegible], with reference to information on the [illegible] of this agency since its establishment in 1877, I desire to submit the following:

I have taken [illegible] statements from the following Indians: [illegible] Tuncker, John [illegible], [illegible], [illegible], Big [illegible] and [illegible] Middle, Total [illegible].

It appears that during the first ten years of the existence of the agency there were [illegible] communities, [illegible] in [illegible]. The first of these was on the north side of the river [illegible] the site of the [illegible]. [illegible]

[illegible] INDIAN RESERVATION, [illegible] – [illegible]

HISTORY OF IRRIGATION DEVELOPMENT

who assisted in the cultivation of it at that time to be about [illegible] acres. This also compares fairly well with statements in the annual reports of the superintendent of that time. The crops cultivated on this area consisted mostly of wheat and barley. Some of these men state that they raised potatoes and other hardy vegetables, but most of them state that they raised only grain. The community consisted of about twenty families.

At about this same period a community of perhaps ten or twelve families was [illegible] lands on the north side of the river from two miles below the present agency location and [illegible] from the northwest corner of the southeast quarter of section [illegible], down to the south [illegible] of the northwest quarter of the [illegible] township [illegible] [illegible]

[illegible]

WESTERN SHOSHONE INDIAN RESERVATION, NEVADA - IDAHO

HISTORY OF IRRIGATION DEVELOPMENT

communities, including perhaps a few more vegetables. All of these communities had location down the river on unleased area where they went each summer and cut hay for their horses. At that time it appears that they did not own any cattle or other stock except their horses. You will notice that their statements are quite uniform to the effect that the river at that time always contained sufficient water for the irrigation of their fields, even through the months of July and August. Another point on which all of these statements seem to agree is that beginning with the years from 1905 to about 1908 or 1910 it is the usual thing for the river to be dry during July and August. There is, however, another question which I have put to each of these men and which I have not answered, in that it is evident that the area irrigated has gradually increased from the [illegible] of the reservation in 1877 up until the present time [illegible] here they attempted to irrigate a larger acreage than at the present time.

There are set forth herewith certain statements taken from the various annual reports of early times which have some bearing on this subject:

Annual report, August 1?, 18??, by John [illegible]: "The [illegible] given [illegible] center, gives ample water for irrigating purposes.

"[illegible] prospects for heavy crops are most [illegible] [illegible] [illegible] [illegible] [illegible] 25 acres of [illegible] [illegible] [illegible] [illegible]."

WESTERN SHOSHONE INDIAN RESERVATION, NEVADA - IDAHO

HISTORY OF IRRIGATION DEVELOPMENT

Annual report of 1895 by John S. Mayhugh:
"The amount of new fence built is about two miles and a half, which has added to the original tract enclosed about [illegible] acres, making the total amount of land enclosed from 75[illegible] to 800 acres, the most of which is used for hay and general crop purposes. Of this amount about [illegible] acres have been cultivated in wheat and barley."

Annual report, August 5, 1901, by Calvin Asbury:
"The Indians farming here were only fairly successful last year, as the supply of water was limited, resulting in a short hay crop and but little grain.
"We are now extending an irrigation ditch, which, when completed, will be of considerable benefit to them in the raising of hay [illegible], but to provide ample grain land a [illegible] of another ditch, estimates for which have been made, should be built at once. A communication on this subject has been made."

Annual report, August 20, 1903, by Horton H. Miller:
"The Duck Valley ditch, which is now under construction, has furnished employment to all the Indians who were not at work elsewhere. The wages paid are 1.50 for laborers and 3.00 for man and team per day. The estimated cost of this ditch, with the laterals, is 10,357.55, and when completed will be the means of reclaiming 3,[illegible] acres of land that will be used to alfalfa at an early day.
"The [illegible] ditch, [illegible] ditch and the [illegible] ditch will provide for the use of all the water [illegible] of the [illegible], and when this work is all [illegible] an amount [illegible] of [illegible] in [illegible] the [illegible] of hay, [illegible] and cattle [illegible]."

[illegible]

[illegible] report, [illegible] 1[illegible], 19[illegible], by [illegible] ton [illegible]

"[illegible] acres [illegible] [illegible] acres [illegible], from which [illegible] out this season.

[illegible] of [illegible] has been [illegible] [illegible] and the completion [illegible] [illegible] will [illegible] by [illegible] of [illegible] to pre-pare for [illegible]."

[illegible]

[illegible]

([illegible]) [illegible]

[illegible]

[illegible]

[illegible] - [illegible]

[illegible]

Q. What did you raise chiefly on this land?
A. Wheat and barley.
Q. At that time do you recall that the river was ever dry during July and August?
A. No, there was always water.
Q. As near as you can recall, when did the water in the river begin to be short during the summer?
A. I think twenty years or more.
Q. During the last ten years has the river usually been dry so that you could not get water out?
A. Yes.
Q. During the first ten years you farmed on the south side, were there any ranchers irrigating at Mountain City?
A. There were some families living there but they were [illegible] and did not use water.
Q. During the time you were living on the south side farming did you have wild hay lands elsewhere?
A. Yes, we went down the river and cut hay outside for our horses. We had practically no other stock.
Q. [illegible] at the present time.
A. [illegible] the river from the agency about [illegible] or eight miles.
Q. What are your water conditions there now?
A. We have only the [illegible] floods. We can not raise potatoes or gardens.
Q. About what time does this spring flood drop to where you can not get water out of the river?
A. Usually the last part of May.
Q. Is there any other statement you wish to make?
A. No, that is all.

Witness to mark: [illegible]
[illegible]
[illegible], Nevada.

[illegible]

[illegible]

[illegible] NEVADA – [illegible]

[illegible]

Q. How long have you lived on this reservation?
A. I think about 45 years.
Q. Where have you lived on the reservation?
A. On the south side of the river from three to eight miles from where the present agency is located.
Q. At that time did you live on your separate lands or did you live and work together in the community?
A. [illegible] together and [illegible].
Q. How many families were there in the [illegible] where you lived?
A. [illegible] over [illegible] families.
Q. About how many families did you have water cultivation [illegible]?
A. About five or six families I think.
Q. At that time was there [illegible] in the river during July and August?
A. Yes, [illegible] water in July. I raised potatoes.
Q. Did you raise [illegible] for your family?
A. Yes, I raised [illegible] for my family.
Q. [illegible]
A. I had [illegible] but [illegible] the [illegible] came [illegible] and I lost all of it. (Clerk's note – [illegible] 1900.)
Q. After this you found the water too low to raise grain, did you.
A. Yes, [illegible] dried up and it is not until [illegible] up to [illegible] again.
Q. [illegible] you tell me about the boundary lines [illegible] community field and about [illegible]?
A. [illegible] (Clerk's note – [illegible].)
Q. [illegible]
A. [illegible]

[illegible] INDIAN RESERVATION, NEVADA - [illegible]

[illegible]

Q. Any other statement you wish to make with reference to irrigation matters?
A. There are more ranches on the river above us now. I think that is why the water is short.

Witness to mark:

[illegible] Dave — His [illegible] Mark

[illegible] McNeilly
[illegible], Nevada

Statement of John Blackhat with reference to irrigation matters:

Q. State your name and age.
A. John Blackhat, age about 55. (Census shown 1870 as the [illegible] of birth.)
Q. How long have you lived on this reservation, John?
A. About forty years.
Q. During most of this time what part of the reservation have you lived on?
A. North of the agency about two or three miles on the north side of the river.
Q. During the first ten years you were on the reservation, did you live on your individual lands, or did you live and work together?
A. Lived and worked together.
Q. How many families lived in your group?
A. About twelve families.
Q. About how many [illegible] do you think were in actual [illegible] that time?
A. About [illegible] families.
Q. What did you grow on the land?
A. [illegible], barley and oats.
Q. Give the approximate extent of this field.
A. [illegible] to where [illegible] little more than one [illegible].
Q. [illegible] community [illegible]
A. Yes.
Q. [illegible] in this [illegible]
A. [illegible]
Q. [illegible]

[illegible] INDIAN RESERVATION, NEVADA - [illegible]

[illegible]

A. About seven or eight forties.
Q. During this first ten years you were on the reservation did you ever notice the river dry during the months of July and so on?
A. No, there was always water in the river.
Q. What has been the condition during the last ten years?
A. The river usually dries up during the summer now.
Q. About when did you first notice that the river began to run short in the summer?
A. Since about the time Mr. [illegible] was agent it began to dry up until lately there is no water.

Q. Has it been possible for you people on the north side of the river to grow grain or alfalfa or vegetables during the last twenty years?
A. A little.
Q. How many acres do you estimate is in actual cultivation on the north side of the river at the present time?
A. I think about twenty acres.
Q. During this first ten years on the reservation did you cut [illegible]?
A. Yes, we cut on [illegible], on the river near the mouth of [illegible] and in [illegible] Valley. This land was not fenced but we just cut along the [illegible] and wherever we could find hay.
Q. Is there anything further you wish to add?
A. Nothing.

Witness to mark: [illegible] His [illegible]

[illegible], Nevada.

[illegible], Nevada.
September [illegible], 1930

We the undersigned, [illegible] and [illegible], ages 65 and 72 respectively, state that we have lived on this reservation since it was established and in the community [illegible]. [illegible]

Witness to both marks: [illegible] His [illegible]

*

[illegible] INDIAN RESERVATION, NEVADA - IDAHO

[illegible] OF IRRIGATION DEVELOPMENT

Statement of Charley Thacker with reference to irrigation [illegible]

Q. How old are you, Mr. Thacker?
A. I think about 7[illegible].
Q. When did you come to this reservation?
A. [illegible].
Q. Where did you live when you first came to the reservation?
A. On the south side of the river some four or five miles from where the agency is now.
Q. Did you live all together in one community?
A. Yes, there were about ten families of us.
Q. Where did you farm?
A. From where my place is now up to where Jimmy Strawbrook lives and down to the river.
Q. About how many [illegible] do you think you plowed?
A. About five or six [illegible].
Q. What did you raise?
A. [illegible]
Q. [illegible]
A. Yes, but not much. [illegible] had [illegible] fenced [illegible] a little along the slough for our horses. [illegible] cattle.
Q. During the first ten years you were here did you ever see the river dry in the summer?
A. No.
Q. How is it now?
A. It is dry every [illegible].
Q. When did you first notice the river begin to get [illegible]?
A. After [illegible] about ten years it began to get a little [illegible] every year.
Q. [illegible] you wish to [illegible] about the water [illegible]
A. No, only that we used to have plenty of water and now it is pretty short.

Witness to mark [illegible] Charley Thacker [illegible]
[illegible]
[illegible]

[illegible] INDIAN RESERVATION, NEVADA - [illegible]

[illegible]

The following is a statement with reference to irrigation matters by Grant Riddle, (White man), a local trader, who has lived on or near the Western Shoshone Reservation for many years:

Q. Please state your name and age.
A. Grant Riddle, age [illegible].

Q. Have you lived the greater part of your life near the Western Shoshone Indian Reservation?
A. Yes. I lived at [illegible], about twenty miles south, and then at Riddle, Idaho, about twenty miles south of the agency headquarters for thirty-five years.

Q. During that time have you been on the reservation [illegible] and do you have [illegible] of the irrigation activities of the Indians?
A. Yes, sir.

Q. Please state what your observations have been as to the quantity of land irrigated or the crops produced.
A. I have [illegible] the ditch on the north side of the river at that time [illegible] that there was more water in the river and the ditches [illegible] that the Indians were irrigating about [illegible] north of the river.

Q. When did you first notice that the water in the river was dropping down?
A. [illegible], I think it must have been around 1900.

Q. During the [illegible] and early [illegible] were there many [illegible] in the [illegible] district?
A. [illegible], there were not [illegible] three or [illegible] there at that time.

Q. [illegible]
A. [illegible]

[illegible]

[illegible]

[illegible]

Excerpts from Reports of the Commissioner of Indian Affairs Summary of Remarks

Indians were farming on lands now included in the Duck Valley or Western Shoshone Reservation in 1871 or earlier: This is established as a fact by statements made in the report of the United States Indian Agent of Nevada and contained in the annual report of the Commissioner of Indian Affairs for 1875, viz:

> "The Shoshone farms are located in Elko County in the northeastern part of Nevada. These farms were located about two years ago for the western band of Shoshones and have been put under cultivation in such extent as means and time would justify. Good progress has been made and it is desirable that a survey be made and the title of these lands surrendered to the Indians residing thereon. . . .
>
> "Farming has been adopted for a livelihood by both the Pah-utes and Shoshones pretty generally upon these reserves and every year shows the gradual abandonment of the old nomadic custom. A large number upon each reserve can plow, drive teams, chop, [illegible], and in fact can do all manner of farm work and all have adopted citizens dress."

The following statements are from the report of the Farmer in Charge of the Western Shoshone Indians of Elko County, Nevada, dated August, 1875, and included in the report of the Commissioner of Indian Affairs for 1875:

[illegible] OF INDIAN [illegible], [illegible] - [illegible]

[illegible]

"Considerable suffering prevailed among the Indians last winter and spring in the vicinity of the trouble that occurred last spring (full particulars of which have been heretofore reported). The Indians were compelled to leave their ranches and homes and go to [illegible] in Utah and remain there until after the excitement was over. They left [illegible] of their grain which they cached in the mountains. The most of their [illegible] and [illegible] were not harvested at the time they left and were [illegible] destroyed by cattle belonging to the whites. I was informed by [illegible] of [illegible] Valley that while the Indians were absent [illegible] had [illegible] amounts of their grain, which rendered them destitute on their return. . . .

"The Indians [illegible] the earlier part of [illegible] [illegible] by the [illegible] of land and water. The [illegible] settled up by white people and the [illegible] of land heretofore cultivated by the Indians have in many instances been taken from them, and [illegible] water used for irrigating purposes has been taken from them and their crops have dried up and become worthless. . . .

"The Indians complain to me that the country is being [illegible] by the whites and that in a very short time there will be no land for them [illegible] for them to go. . . ."

[illegible]

The following statements are taken from the report ([illegible], 1877) of the United States Indian Agent, [illegible], Nevada, to the Commissioner of [illegible] Annual report of the [illegible] 1877.

[illegible] SHOSHONE INDIANS [illegible], NEVADA - IDAHO

[illegible]

"The Western Shoshone Indians under my charge have improved in civilized habits during the past year. Some of them are engaged in farming for themselves in different parts of eastern Nevada. Not so much farming has been done by them in the past year as in former years owing to the scarcity of land and water. . . . A good many gardens have, however, been cultivated by the Indians this year. The Western Shoshones generally have an inclination to be industrious. They are peaceable and well disposed toward the white people. [illegible] of them have learned to work and make very good farm hands. . . .

". . . For several years past some of the most intelligent headmen of the Shoshones have been very anxious to have a tract of land situated in the northern part of the state and known as Duck Valley set apart as a reservation for them. . . .

"I received a communication from the Honorable Commissioner of Indian Affairs dated April [illegible], 1877, inclosing a copy of an executive order dated April 16, 1877, withdrawing a large tract of land in Duck Valley, being partly in Nevada and partly in Idaho, from the public [illegible] [illegible] reservation for the Western Shoshones. . . . I am [illegible] Indians [illegible] on the [illegible]. . . . They [illegible] with their future prospects.

Conditions in 1878

The following, among others, are contained in the annual report of the Commissioner of Indian Affairs for 1878:

[illegible] STUDY OF INDIAN RESERVATION, NEVADA - [illegible]

[illegible] IRRIGATION [illegible]

"Our prospects for heavy crops are most flattering and an excellent feeling prevails among the Indians. They call it their home and feel it to be so. They have built 3 miles of fence, dug 2 miles of water ditches and have 200 acres of wheat and barley under cultivation, also 25 acres of potatoes, turnips, peas, etc."

Conditions in 187[illegible].

The following statements appear in the annual report of the Commissioner of Indian Affairs for 187[illegible]:

"In my former report I could only anticipate the results of the harvest for 187[illegible], but the hope of a large crop was fully realized and early in September we had grain sufficient to furnish flour for the 1000 Indians on the reserve. . .

". . . On the [illegible] (Nov) we put the plow at work, twenty five teams [illegible] the previous season, but [illegible] to work, we soon had nearly 300 acres under cultivation, divided into five [illegible] with an Indian [illegible] of their own [illegible] for each. [illegible] their leader. [illegible] the whole [illegible] the supply of water from the [illegible] ditches [illegible] working well. [illegible] acres under cultivation [illegible] this year [illegible]."

Conditions in 187[illegible]

The following statements are taken from the report of the Commissioner of Indian Affairs for 187[illegible]:

[illegible]

[illegible] INDIAN RESERVATION, [illegible] - [illegible]

[illegible] OF [illegible]

ready for harvest. We have a large quantity of hay, estimated at 1,000 ton, and we shall ask of the government this year nothing for cereals."

Conditions in [illegible]

The following statements pertaining to irrigation and farming are taken from the report of the Commissioner of Indian Affairs for [illegible]:

"At or near the south or upper end of the reservation where the river discharges itself from the mountains, the Indians have constructed a dam and connected with it an irrigating ditch on the east side of the river. The ditch is [illegible] in length and has a [illegible] of about [illegible] inches [illegible], [illegible] and [illegible] of land. [illegible] the river the Indian school have erected a rude dam tapping it with a ditch on the east side of the river about one mile in length which has a carrying capacity of about [illegible] inches. . . . Notwithstanding the short crop of wheat, [illegible] of the [illegible] we shall have a sufficient amount of [illegible] to [illegible] to the crop of [illegible] including [illegible] for next year's crop [illegible] surplus of [illegible] from the crop of [illegible]."

[illegible]

The Report of Commissioner of Indian Affairs for [illegible]:

"The Indians of this reservation have been [illegible] [illegible] of [illegible] [illegible]

[illegible] INDIAN [illegible], [illegible] - [illegible]

[illegible]

this reservation each lodge or family has planted and cultivated for themselves separate gardens consisting of lettuce, cabbage, radishes, onions, corn, pumpkins, beets, peas and potatoes. . . . Quite a number of the lodges have put up small stacks of hay from ten to twenty tons each, aggregating from [illegible] to [illegible] tons, for use of their cows and ponies during the severe portion of the winter. . . . [illegible] within the limits of the reservation, were [illegible] by the [illegible] authorities of the United States . . . on the [illegible] of [illegible], 1[illegible]."

Condition in 1[illegible]:

The following [illegible] are contained in report of the Commissioner of Indian Affairs for 1[illegible]:

"[illegible] families raised sufficient wheat to supply them with flour through the entire year, while [illegible] more families raised nearly enough. . . . About 1[illegible],[illegible]00 pounds was raised, of which [illegible],000 pounds was sold to the [illegible], at an average of [illegible] cents per pound, while the remainder was fed at home and kept for seed. . . . [illegible] turnips, rutabagas, cabbage, pumpkins, beets, peas, etc. were raised in considerable quantities but owing to the great extent of country over which the gardens were harvested, and the irregular [illegible] of the crop, it was [illegible] . . . [illegible] tons of hay [illegible] for the Indians. . . .

[illegible]

[illegible] INDIAN [illegible], [illegible]

[illegible] OF IRRIGATION [illegible]

main canal on the east side of the river which enables us to control the flow of water, while on the west side a main canal has been constructed about 4 miles in length by the Indians without any assistance from the Government. [illegible] laid out and cross and distributing ditches made through the land. Another year this ditch will furnish water for [illegible] acres of land so long as water flows in the streams."

Conditions in [illegible]

From report of the Commissioner of Indian Affairs for [illegible]:

"The wild hay crop this year was very abundant. It is estimated that nearly 3,[illegible] tons of it will be needed for their use during the coming winter."

Conditions in [illegible]

The following statements are contained in the report of the Commissioner of Indian Affairs for [illegible]:

"These Indians [illegible] made an effort to [illegible] their [illegible] and have built [illegible] for [illegible] [illegible] and building [illegible] ditches [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] of [illegible] this year."

Conditions in [illegible]

The following statements are contained in the report of the Commissioner of Indian Affairs for [illegible]

WESTERN SHOSHONE INDIAN RESERVATION, NEVADA – IDAHO

HISTORY OF IRRIGATION DEVELOPMENT

"The census taken June 30 shows a population of 515. Of this number [illegible] are Shoshones and 275 are Paiutes. Of this number 1[illegible]0 are of school age; 74 of which were in school here during the year and 13 are attending non-reservation schools.

"The reservation contains 31[illegible],320 acres, about 12,[illegible]00 of which is level and suitable for cultivation, 5,500 acres are fenced, 5,[illegible]00 acres are under ditch and 1,700 acres are in meadow, from which [illegible] tons of hay were cut this season. The Indians own 2,[illegible] head of horses and [illegible]00 head of cattle. They have sold during the year about 1,000 horses, at an average of 15 per head".

Conditions in 1913.

The following statements are taken from a report dated July 15, 1913, by Superintendent of Irrigation Henry W. Dietz, to Mr. W. M. Reed, Chief Irrigation Engineer of the Bureau of Indian Affairs:

"At the point where the Owyhee River enters the valley are two diversions. One of these has a bottom width of [illegible] feet and banks five feet high, and extends westerly for about [illegible] miles. [illegible] ... [illegible] . . . [illegible] . . . . . .

WESTERN SHOSHONE INDIAN RESERVATION, NEVADA - IDAHO.

HISTORY OF IRRIGATION DEVELOPMENT.

From Report of United States Indian Agent, Nevada, dated August 22, 1876, to Commissioner of Indian Affairs and contained in the Annual Report of Commissioner of Indian Affairs for 1876 (Pages 115 & 116).

"The Shoshone farms are located in Elko County, in the northeastern part of the State, about 275 miles from Pyramid Lake. These farms were located about two years ago for the "western band of Shoshones," and have been put under cultivation in such an amount as more and time would justify. Good progress has been made, and it is desirable that a survey be made and the title of these lands guaranteed to the Indians residing thereon.

Fair crops have been raised upon the Pyramid Lake and Reese River reservations and Shoshone farms this season, though the floods have destroyed the larger portion of the grain planted this spring, (more particularly Walker River reserve,) a thing liable to occur any year, and yet not occurring very often. This baffles all attempts to prevent, as no one can foresee the time of its coming; and yet with this adversity the Indians are hopeful for the future, and will, if encouraged, renew their efforts to repair the waste places and make new trials for success. Surely they deserve the greatest encouragement, for many persons much further advanced in habits of industry would have been disheartened by the reverses which have befallen these reserves this season.

Farming is being adopted for a livelihood by both the Pah-Utah and Shoshonee pretty generally upon these reserves, and every year shows the gradual abandonment of the old nomadic custom. A large number upon each reserve can plow, drive team, chop, mow, and, in fact, can do all manner of farm-work, and all have adopted citizens' dress."

From Report of Farmer in charge of the Western Shoshone Indians, Elko, Elko County, Nevada, dated, 1876, to Commissioner of Indian Affairs and contained in the Annual Report of Commissioner of Indian Affairs for 1876 (Pages 116, 117 and 118).

These Indians are peaceable, and some of them industrious and anxious to engage in civilized habits. Others, however, very indolent. Some are employed in farming small patches of land in different parts of Eastern Nevada for themselves; others are partially employed by the white people as servants, on ranches and about houses, and in herders of stock, etc. Another class subsist as they can, by beg-ing and gambling, and

WESTERN SHOSHONE INDIAN RESERVATION, NEVADA - IDAHO

HISTORY OF IRRIGATION DEVELOPMENT.

sometimes hunting. The Indians under my charge have no reservation; they are generally destitute. They are scattered over a very large tract of country, and inhabit the following named counties in Nevada: Lander, Nye, White Pine, Eureka, Elko, and a part of Lincoln and Humboldt.

I find on close examination that the Western Shoshones number nearly 4,000 including some Gosh-Utes and other Indians near the line of Utah and Nevada. There are several small bands of Gosh-Utes, Utes, and a few Pah-Vants among the Shoshones of the eastern part of the State. These Indians claim to belong to no agency, and say they receive nothing from the Government. The Mormon people have frequently assisted them, and have a great influence over them as well as the Shoshones in that vicinity. Nearly all the Indians near the line of Utah and Nevada have been baptized by the Mormon people. The influence that people have over these Indians has been greatly increased in the past two years by the failure of the Government to provide for the relief of the suffering among the Indians.

The Indians under my charge have received little or no assistance from the Government during the past year. Considerable suffering prevailed among the Indians last winter and spring in the vicinity of the trouble that occurred last September, (full particulars of which have been heretofore reported.) The Indians were compelled to leave their ranches and homes and go to Deep Creek, in Utah, and remain there until after the excitement was over. They left most of their grain, which they cached in the mountains. The most of their potatoes and other vegetables were not harvested at the time they left, and were subsequently destroyed by cattle belonging to the whites. I was informed by Mr. A. S. Lehman, of Snake Valley, that while the Indians were absent some white men had stolen a considerable amount of the grain belonging to the Indians, which rendered them destitute on their return; and winter set in upon them in this condition. These facts I reported to the Department, under date of December 2, 1875. The Indians above referred to have done considerable farming for themselves this year, without any assistance whatever from the Department. They had some trouble in obtaining seed, and not as much was done in the way of farming as would otherwise have been done. Many of the Indians in that vicinity are now destitute; some sickness prevails among them, and should be attended to.

The Indians who are farming throughout the eastern part of the State have been greatly annoyed during the past year by the want of land and water. The country is being fast settled up by white people; and the patches of land heretofore cultivated by the Indians, in many cases,

have been taken from them, and in other cases the water used for irrigating purposes has been taken from them, and their crops have dried up and become worthless. I have been frequently appealed to by the Indians to assist them in such cases, but in most instances it has been impossible for me to do so: the Indians being scattered over a very large tract of country, and I being entirely without means to use in their behalf. I have, however, succeeded in assisting them in some cases at my own expense.

The Indians complain to me that the country is being fast settled up by the whites, and that in a very short time there will be no land for them and no place for them to go, and that in most cases they have to work for the whites for anything they may see fit to give them, and that this state of affairs is growing worse instead of better. The most intelligent of them see the condition of affairs, and are anxious that something should be done, while others are indolent and ignorant, and care for nothing but the present.

Since the writing of this report I have been visited by a delegation of Indians from Battle Mtns, (my former home.) Among them is an intelligent young chief by the name of Temoke, (good knife.) Captain Sam, another chief from the north side of the Central Pacific Railroad, is also present. In a conversation had with me former, he stated that he could not see what was to become of the Shoshones in his country: that the grass was all gone; the trees that have grass-seeds were cut down and burned in the quartz-mills and other places; the grass-seed, heretofore used by them for food, was no more; the grass-land was all claimed by the whites, and the grass cut for hay before the seed was ripe; that the good land was or soon would be all claimed and cultivated by the white people; and that his Indians would soon be compelled to work for the whites for two bits (twenty-five cents) per day, or starve. He also states that himself and many others of his tribe are in favor of a tract of land being reserved for the Shoshones, that they may have some place for their future home; that if one place cannot be found large enough for them all, then locate three or four places, as the case may require: but to have these places as near together as possible, and as near to where there is grass and flies as can be found. Captain Sam states that he thinks such places can be found north of the railroad in his country, but does not know to what extent it is claimed by the whites. He states that he is anxious to go with me this Fall and ascertain if a place or places can be located suitable for a home for the Shoshones. Temoke and others also are anxious to go with me, and furnish their own horses.

The Indians state that in their opinion it will be best time to get all of the Shoshones to have their permanent homes and locate in my

place or places suitable for them. Some of the old Indians are very superstitious about leaving the country formerly inhabited by their ancestors and where their relatives have died, believing, as they do, that, if they leave their old homes and die somewhere else, their spirits will be lost. Some of the old men have considerable influence, which will take some time to overcome, but which the young Indians think can be accomplished. I submit the above that the Indians' ideas of the situation may be made known. I speak the Shoshone language with a fluency nearly equal to themselves, and fully appreciate their feelings in regard to the matter.

Many of the Shoshone children are anxious to learn to read and write, especially the young ones; they have improved in civilization during the past year, and will continue to do so if properly encouraged. I think that in time they can be made an industrious and self-supporting people. Some of the most ignorant and superstitious among the old ones will have to pass away before the foolish traditions now existing among them can be overcome; many of the young Indians are learning to speak English, and can be taught to read and write."

WESTERN SHOSHONE INDIAN RESERVATION, NEVADA - IDAHO

HISTORY OF IRRIGATION DEVELOPMENT.

From Report of United States Indian Agent Western Shoshone Agency, Nevada, dated August 24, 1877, to Commissioner of Indian Affairs and contained in the Annual Report of Commissioner of Indian Affairs for 1877 (Pages 151, 152 & 153).

"The Western Shoshone Indians under my charge have improved in civilized habits during the past year. Some of them are engaged in farming for themselves, in different parts of Eastern Nevada. Not as much farming has been done by them in the past year as in some former years, owing to the scarcity of land and water. The country is becoming more thickly settled by white people, and the patches of land, in many cases heretofore cultivated by the Indians, have been purchased from the Government by white men, and are now cultivated by them. In other cases the water heretofore used by the Indians for irrigating purposes has been taken from the streams above the Indian ranches, thus rendering them valueless, as nothing can be raised without irrigation. A good many patches have, however, been cultivated by the Indians this year. The Western Shoshones generally have an inclination to be industrious. They are peaceable and well disposed toward the white people. Many of them have learned to work, and make very good farm-hands. Some of them can drive four and six horses. They can chop, mow, and, in fact, do all manner of farm-work. Some of the young Indians are learning to read and write, and are fast improving in civilization. On the other hand, there are many who are indolent and shiftless, and will not work as long as they can have something to eat.

I have visited a large portion of the country inhabited by the Western Shoshone and Goshute Indians during the past year, and have taken great pains to ascertain their true condition, also to learn their wishes in regard to the future. For several years past some of the most intelligent leading men of the Shoshones have been very anxious to have a tract of land situated in the northern part of the State, [illegible] Valley, [illegible] as a reservation for them. I have several times informed the Department of the wishes of the Indians, and asked to be authorized to visit the country in question and ascertain whether it was suitable for a reservation or not. No steps were taken in regard to the matter, that I am aware of, until in March last. The Indians during the winter urged upon me to go with them to Duck Valley as soon as spring opened and see what I thought of the country, and report the result to the [illegible] at Washington. This I agreed to do as soon as we could get through the mountains. During this time Col. [illegible], United States Indian Inspector, arrived here from Washington with

[illegible] VALLEY INDIAN RESERVATION, NEVADA - IDAHO

[illegible]

instructions to examine into the condition of the Indians under my charge. He directed that some of the leading Indians should meet him here. I accordingly sent for Captain Sam, an intelligent [illegible], and a number of others, who at once came. In an interview with Inspector [illegible] the Indians laid this matter before him, interpreted by me. He authorized me to proceed to Duck Valley and make a careful examination of the country, and report the result to the Honor the Commissioner of Indian Affairs. In obedience to his instructions, I started on the [illegible] of March, in company with Captain Sam and his nephew. The Indians furnished four horses for the occasion, two of which we used to pack our provisions, blankets, etc. I arrived at Duck Valley, and remained there some days, and carefully examined the country, in order that I might be able to make a correct report. After a thorough examination I considered the place suitable for a reserve [illegible] for the [illegible], and, in fact, better than I had expected to find. I returned, and on the [illegible] of March reported the matter to the honorable Commissioner of Indian Affairs, giving as full and correct a description of the country as I could, and respectfully asked that the same be reserved for the use and occupancy of the Western Shoshones, this being the only tract of land [illegible] I had found suitable for a reservation for them. In the early part of April I went south among the Shoshone and Goshute Indians in Nevada and Utah.

I received a communication from the honorable Commissioner of Indian Affairs, under date of April [illegible], 1877, inclosing a copy of an executive order, dated April [illegible], 1877, withdrawing a large tract of land in Duck Valley, lying partly in Nevada and partly in Idaho, from the public domain, for the purpose of a suitable reservation for the Western Shoshones. Upon the receipt of these instructions, I sent for Indians [illegible] throughout the country, to go to Duck Valley with me for the purpose of examining the proposed reservation. Early in June I was informed that a large number of Indians were camped [illegible] in Duck Valley. Some of the white [illegible] became alarmed at the presence of so many Indians, and sent [illegible] to that place. I at once proceeded to that locality, and was pleased to find the Indians [illegible] [illegible]. These Indians [illegible] [illegible]

[illegible]

[illegible]

It will take several years to congregate all the Indians in the house on the reservation. A few of the old Indians throughout the southern part of the State strongly object moving, stating that if they leave the home of their ancestors their spirits will be lost. These foolish ideas will, however, be overcome in time, but these Indians want for a while to handle carefully. Some of these old men and prophets have a great deal of influence over the Indians, and will do and live here for a while. I think it would be best that the Indians who are farming in different parts of the State, and wish to remain on their allotments for another year, be allowed to do so. Some who have farms are anxious to leave them and go to the reservation where they can be isolated, and others prefer to remain where they are for the present. These Indians can be gathered in very few days when a call for them to do so is issued at the direction of the Commissioner for that purpose. The number can be greatly increased at any time.

In July last an epidemic prevailed in the vicinity of Fort Hall, caused by a severe hail storm which destroyed the crops. Many chose to join the Fort Hall Indians in Idaho, and many chose to remain with the white people. The white people in the vicinity of Fort Hall, and for a wide considerable extent, were likewise severely injured. Some relief supplies were sent for by the white people to relieve their distress, but the Indians refused to touch it, they having already so severely suffered from starvation, if possible. On my arrival at the place of the crop failure, I found that the rewards were offered for information leading to the arrest of the parties who had set fire to the grass adjacent to the crops of the white settlers. Two days after my arrival, I found the parties who had set fire to the grass, and they were arrested and placed in jail. They were tried at the September term of the District Court, and convicted, and sentenced to the penitentiary for one year each. They were pardoned by the Governor of the State of Idaho, on the 25th day of December, 1894, and returned to their homes on the reservation. Their pardon was granted on account of the severe punishment they had already received in the loss of their crops, and the fact that they had been in jail during the entire winter, and the Governor thought that they had been sufficiently punished for the crime committed. I am satisfied that they will not be guilty of any further offenses of this character.

The Indians have been very peaceable and quiet during the past year, and have made considerable progress in farming and stock raising. Their crops were very good, and they have sufficient to subsist upon during the coming winter. They have also sufficient seed grain for the coming year. Their stock is in good condition, and they have sufficient hay to winter it. They have also cut and put up a large amount of hay for sale to the settlers in the vicinity of the reservation, which will bring them in a considerable amount of money.

Their crops are now all harvested, and they are now engaged in threshing their grain. They have been very successful in their farming operations this year, and have raised enough to subsist upon for the coming year, and have a considerable surplus to sell. They have also been very successful in their stock raising operations, and have increased their herds very much during the past year. They have also been very successful in their hay cutting operations, and have put up a large amount of hay for sale to the settlers in the vicinity of the reservation, which will bring them in a considerable amount of money.

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[illegible] RESERVATION, NEVADA – IDAHO

[illegible]

From Report of United States Indian Agent Western Shoshone Agency, Nevada, dated September 1[illegible], 18[illegible], to Commissioner of Indian Affairs and contained in the Annual Report of Commissioner of Indian Affairs for 18[illegible] (pages [illegible] & 10[illegible]).

"The Western Shoshone Indians are peaceable and most of them improving in civilization. They inhabit most of Eastern, Southeastern, and Northern Nevada, where [illegible] has been [illegible] for them. The Central Pacific Railroad divides the south and southeastern part of the country inhabited by these Indians from the northern part. Some of these Indians are migratory, shifting from place to place as they see fit; and others, most of whom are north of the railroad, reside [illegible] on little farms or ranches cultivated by them, [illegible] of the year when they are engaged in hunting, gathering pine-nuts, etc.

Twenty-one of these ranches have been cultivated this year to an advantage, all but one of which are north of the railroad. [illegible] of the land so cultivated by Indians belongs to white people. In some cases the Indians pay for rent of the land in labor; in other cases their white friends charge them nothing. The Indians referred to are generally put to a great disadvantage in regard to the use of water, especially this season, which has been unusually dry. In such cases the white people take the water [illegible] and the Indians suffer thereby. [illegible] I think something must be done soon for these Indians for the reason that the white people who own the land cultivated by them are likely to take it at any time. In fact, [illegible] They state that they [illegible] a suitable reservation is established.

[illegible]

[illegible] - 1880

[illegible]

that many years ago this country was valuable to them, there being plenty of game and other means of subsistence; that when the country first commenced to be settled by the whites they felt encouraged, because they thought the Indians would learn to farm the land to advantage, which would greatly improve their condition. He states that years ago the [illegible] were promised a reservation in [illegible] Valley, but subsequently the same land was sold to the whites and nothing more was said about the reservation; and states that now all the valuable land, water, and timber in the country has been disposed of to the whites; that [illegible], has [illegible] that some of the Indians have gone to farming and have greatly improved in civilized habits, notwithstanding the great disadvantages they have labored under, that is, the scarcity of water and the poor quality of land forced to be taken. He states that his Indians are scattered over a large tract of country; that while many of them, through being employed by the whites, have learned to farm and to almost all kinds of work and are now able to carry on a farm themselves, yet others have [illegible] on [illegible], [illegible] and [illegible] crimes among themselves; that [illegible] that [illegible] were [illegible] in consequence they [illegible] reservation and would [illegible] improve their condition. He strongly recommends [illegible] Valley reservation was the only land [illegible] for the purpose, that every possible means be used to make it attractive to the Indians, that in time all may be induced to go there and improve in civilization; those who have already learned to farm would serve as an example [illegible] and encourage the balance. Over 1,000 [illegible] are employed farming for [illegible]."

WESTERN SHOSHONE INDIAN RESERVATION, NEVADA - IDAHO

[illegible] OF INDIAN DEVELOPMENT.

From Report of United States Indian Agency Western Shoshone Agency, Nevada, dated [illegible] 187[illegible], to Commissioner of Indian Affairs and contained in the Annual Report of Commissioner of Indian Affairs for 1877 (Page [illegible]).

"Early in November you directed me to take charge of the Indians at Carlin Farms, and all other Shoshones, including a band of [illegible] Utes that were living in Nevada. In carrying out these instructions I visited the different camps and informed them that the object of the government was to give them a home on the Duck Valley Reserve, where they would be supplied with farming utensils and grain for sowing and planting, also [illegible], etc., and during the fall and winter I would aid in their support from the annuity and supply goods received for that purpose. During the season from the 1st of November, 1876, to April, 1877, I collected over 2,500 Indians of both sexes and all ages, having [illegible] goods at [illegible], Tuscarora, Carlin, and [illegible] for that purpose. In distributing the goods among them I became better acquainted with their wants and dispositions, and it gave me a better opportunity to explain the object of the government.

Early in March they called a council at Carlin, which was numerously attended. Two additional councils were called at [illegible] the following week, and the [illegible] of the [illegible] fully discussed. [illegible] their homes and the homes of their fathers, etc., were made. The Carlin Indians, who had been [illegible] on their farms, were reluctant to leave, and could not [illegible] the land which they had [illegible] and which had been [illegible] before the Indians' occupancy, [illegible] the government [illegible]. In explaining [illegible] and in counteracting the [illegible] of the [illegible] and others, great difficulty was experienced, the main facts of which I reported at the time. About the [illegible] of April the Carlin Indians, accompanied by those of [illegible], and joined en route by those north of the railroad [illegible], arrived at Duck Valley, and lost no time in [illegible] the soil of the reservation. By the [illegible] of [illegible] over [illegible] on the ground, most of them showing a disposition to go to work [illegible]. The [illegible] was late and cold, and [illegible] they had little protection; but fed well by the government, they persevered against all difficulties.

The Duck Valley Reserve, as set apart by President Hayes for the use of the Western Shoshones, is [illegible] well suited for that purpose, both in regard to its [illegible] and the fertility of the soil. [illegible] to utilize them as permanent [illegible].

[illegible] it [illegible] three miles of [illegible]

[illegible], NEVADA – IDAHO

[illegible]

miles of water ditches, and have 300 acres of wheat and barley under cultivation; also [illegible] acres of potatoes, turnips, peas, etc. Our harvest is just commencing, and if no early frost reaches us, it will prove all that is anticipated".

From Report of United States Indian Agency Western Shoshone Agency, Nevada, dated August, [illegible], to Commissioner of Indian Affairs and contained in the Annual Report of Commissioner of Indian Affairs for [illegible] ([illegible]).

"In my former report, I could only anticipate the results of our harvest for [illegible], but [illegible] fully realized, [illegible] grain sufficient to furnish [illegible]. A mill [illegible] wheat and barley, and [illegible] all we could do to grind enough [illegible] turn [illegible] [illegible] cattle [illegible] 10 of them [illegible] [illegible] Indians received [illegible].

[illegible]

[illegible], NEVADA – IDAHO

[illegible]

under no expense the coming year for either flour, barley, potatoes, or hay. With the heavy crop comes a new want, for we cannot grind it with horse or pony power, and in my estimate for the third quarter I have asked for a steam engine. We have the mill and smut machine, and, being 150 miles from the nearest flour mill, must depend on ourselves for grinding.

The Shoshones realize that they now have a home, and speak of it as such. The store-house [illegible] at the agency, and the schoolhouse now being erected, give them great satisfaction, and encourage this feeling. That the reservation is popular with the Indians is shown in the fact [illegible], while the agent was [illegible] on the road, 100 Indians arrived at the reserve, [illegible] and stated that they were from [illegible] Valley, 300 miles from the reserve. Informed by the farmer in charge that he had no provisions for them, [illegible] to the Indians on the reserve, [illegible] not being enough to divide, [illegible] some of their ponies, [illegible] to pass through the long winter. They are now cultivating [illegible] I have divided off, and will not suffer if their work will save them.

In my reports I have often mentioned the [illegible] of the [illegible], their [illegible] the wishes of the department. In [illegible] they are but grown children, filled with [illegible], to show [illegible]. I was requested by the [illegible] to visit the reservation as soon as possible [illegible] for the following reason, [illegible] five of his patients in succession. [illegible]

[illegible]

[illegible] INDIAN RESERVATION, NEVADA - 19[illegible]

HISTORY OF [illegible] DEVELOPMENT.

There are near 4,000 Indians belonging to this agency, but of these at least 1,000 are working on the valley farms of Nevada; some have small farms on government land, and others act as laborers for the inhabitants of the towns. Their labor is in demand, and I often receive solicitations from settlers to permit them to remain in their neighborhoods. I would suggest to the honorable Commissioner that this course might be adopted with safety in Nevada, and perhaps their civilization may be brought about more quickly in this manner than in any other".

You will observe that I think the self-supporting period in the history of the western Shoshones formerly reached, and every year hereafter must lessen their calls on the department for supplies. I think we will have from 6,000 to 8,000 bushels of grain and 500 tons of hay this season. The potatoes have been touched by the frost, and we cannot now estimate either them or the turnips. As this is only the second year of the agency I feel satisfied, and hope the department will be also?

From Report of United States Indian Agent Western Shoshone Agency, Nevada, dated September 2, 1881, to Commissioner of Indian Affairs and contained in the Annual Report of Commissioner of Indian Affairs for 1881 (pages 132-133)

"I still have the pleasure of reporting progress. Five hundred acres (400 of wheat and barley, and 100 of potatoes and turnips) are ready for harvest. No frost has troubled us and the crickets which troubled us four years ago have not been seen since. We have a large quantity of hay estimated at one thousand tons, and we shall ask of the government this year nothing for cereals.

I wish that we could give Indians their lands in severalty. Whenever they have tried cultivation by themselves amongst the whites they have succeeded. Their labor is sought for by the ranchers and by many of the miners in preference. I have assisted four settlements, one each in the following valleys: Fiover, [illegible], and Charity, and at [illegible], with plows. They have done well and are making a [illegible]. They average in each class about fifty souls. Their children attend the district schools with the whites, and the falling off of the practice of giving Indian names to their children was well shown in taking the census."

[illegible] CONDITION OF [illegible] AGENCY, NEVADA - 1932

REPORT OF INSPECTION ATTACHED.

From Report of United States Indian Agent Western Shoshone Agency, Nevada, dated Ely, Nev. Oct 20, 1932, to Commissioner of Indian Affairs and contained in the Annual Report of Commissioner of Indian Affairs for 1932 (pages 119, 120 & 121).

"In my correspondence heretofore had with your honorable department touching other matters connected with this agency, I have foreshadowed the situation and condition of affairs of this agency as being in a most watchful and backing-up condition.

The causes that have led to the unfavorable results are not chargeable to the government, nor your honorable department, or the Indians, but have been due partly to mismanagement of the affairs by those in charge, and partly due to the unfavorable situation of the agency.

The selection of Duck Valley was most unfortunate on account of the severity of its climate, and other unfavorable surroundings. Geographically considered, the Western Shoshone Reservation is situated mostly in the county of Elko, State of Nevada, and mostly in two county of Owyhee, Idaho - Nevada, the major portion lying and being in the county of Elko, Nevada, and is about one hundred miles north from the town of Elko, on the line of the Central Pacific Railroad. The altitude is given as 5,400 feet above the level of the sea. The main or middle branch of the Owyhee River crosses the Duck Valley reservation a little east of the north and south, and is said to be fifteen feet deep, and about 50 yards wide; that is, that portion for cattle use, but, of course, narrower. It is [illegible] to be crossed by a narrow, dangerous mountain, most unreliable in appearance, yet in some portions of it during the most dangerous parts is found to be used by the most daring, even plain, as the channel, caused by the [illegible] of the country traversable roads, by land and on the water by steamboat, which afforded a chance of produce during the summer and fall; and on the north, by a chain of small mountains, except for pasture, until you reach Owyhee Valley.

The high altitude of this country is, for open country in the most cold winds, with very little [illegible] from the mountains [illegible] other portion of the State, and cold winds by the [illegible] of the mountains [illegible] to the [illegible] of April, and [illegible] to [illegible]

WESTERN SHOSHONE INDIAN RESERVATION, NEVADA - IDAHO

[illegible] OF IRRIGATION [illegible].

The late frost in the spring and the early frosts in the fall make the raising of a cereal crop every year very uncertain. Little or no crops can be raised unless irrigated, and even a large portion of what is usually called natural hay land must be irrigated some to secure a good crop. There is some natural hay land lying along the banks of the river and sloughs that does produce a very fair crop of hay.

At or near the south or upper end of the reservation, where the river discharges itself from the mountains, the Indians have constructed a dam and connected with it an irrigating ditch on the west side of the river. This ditch is some 3½ to 4 miles in length, and of a water-carrying capacity of about 500 inches, which will, if properly and economically used, irrigate about 500 acres of land. About 800 yards further down the river the same Indians have [illegible] the direction of [illegible], erected a [illegible] dam, [illegible] it with a ditch on the east side of the river, of about [illegible] mile in length, and has a carrying capacity of about [illegible] inches. The water from this ditch is used for [illegible] [illegible] [illegible] which consists of [illegible] [illegible] [illegible] river and [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] water [illegible] on the [illegible] by means of ditches to irrigate his grain and hay crops. The total amount of water afforded by this river during the irrigating season of the year does not in my opinion exceed [illegible] inches [illegible], and consequently the amount of land that can be used for agricultural purposes cannot exceed [illegible] acres, as the amount of land cultivated is governed by the amount of water available. [illegible] claims that his water-right is an [illegible] by [illegible] of water [illegible] and [illegible] to that now held and claimed by [illegible] [illegible] [illegible] [illegible] to certain portions of land within the reservation limits should carry with it all his rights, title, and interest, in and to all water-rights and water-privileges now held and claimed by him.

The [illegible] of land [illegible] planted in wheat and barley the present year does not equal [illegible] of [illegible], there being about [illegible] acres in wheat and [illegible] acres in barley. The yield will not exceed [illegible] pounds per acre for wheat and about [illegible] pounds per acre for barley. The chief causes for the [illegible] of wheat and barley raised per acre were the late [illegible] of the spring and the cold and unfavorable weather that followed during the month of May and early part of June. The small number of acres planted last spring is [illegible] owing to the [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible]

[illegible]

that we shall have a sufficient amount of bread-stuff to carry us over to the crop of 1883, including seed for next year's crop, having on hand 45,000 pounds surplus of wheat from crop of 1881.

Owing to the fact that there were no seed potatoes preserved from last year's crop, or any purchased last spring, except $15 worth for the school, the crop of this valuable vegetable is very small; some three acres were planted, which will probably yield 6½ to 7 tons. There will also be about from 150 to 160 bushels of turnips, rutabages, carrots, and beets, inclusive; also some few cabbages. For the preservation of this vegetable crop I have caused to be erected a winter cellar, 14 by 18 feet, 6½ feet high.

The total amount of hay cut, gathered, and stacked is not more than 85 to 90 tons. A much larger amount could have been readily secured if we could have procured a hay-rake in time. The old one was too much broken to be repaired with the appliances on hand at the reservation, hence the most of the hay secured had to be gathered by hand with the old ordinary hand-rake, long ago gone into disuse. This, in connection with the fact that we were necessitated to go some 8 miles from the stable and corrals of the agency to cut and haul what hay we could gather, after the same had been run over and tramped down by cattle running at large, are the reasons why we have to-day but 85 to 90 tons of hay on the reservation."

From Report of United States Indian Agent Western Shoshone Agency, Nevada, dated August 20, 1883, to Commissioner of Indian Affairs and contained in the Annual Report of Commissioner of Indian Affairs for 1883 (Pages 111, 112, 113 & 114).

"Great progress has been made by the Indians of this reservations in the arts of industry. Full the major portion of the men are capable of performing almost every kind of farm work, some doing one kind of labor and others performing another according to their taste or talent. There are among them good teamsters and expert herders of horses, cattle, and sheep. They can plow, sow grain by hand, make and cultivate gardens, irrigate grain, mow, cure and stack hay, and cap, stack, and thrash grain, dig ditches, and make fence, build cellars and corrals, and chop and cord wood. As a matter of course it is understood that many of the Indians do this kind of work in a slow way, and while some are quite expert others are not so proficient from the want of longer experience or natural ability. I have some five or six Indians who make adobes, and one of the number can lay them almost as well as a white man.

The Indians of this reservation have been remarkably industrious and cheerful during the past year. They have repaired all of their

old irrigation ditches and made crossings over the same.

There has been plowed and sown about 230 acres of barley and wheat, of which amount there is about 80 acres of barley; but I regret to say that the total area of acres will not average a half crop, from the fact there is a local weed known as the tar weed which has taken possession of a large portion of the ground sown, and entirely kills all kinds of vegetables or growing crops that it comes in contact with; otherwise we should have had not less than 100 tons of wheat. I cannot now estimate with any degree of certainty as to the amount of wheat we may eventually realize from the present year's crop as we may encounter unfavorable weather before we shall have cut, thrashed, and housed the same; but with reasonable good luck we ought to have not less than 60 tons of wheat and 40 tons of barley.

For the first time in the history of this reservation each lodge or family has planted and cultivated a separate garden for themselves, consisting of lettuce, cabbage, radishes, onions, corn, turnips, parsnips, beets, pease, and potatoes, all of which were growing nicely and promised an abundance of garden vegetables for fall and winter use; but this high expectation of myself and the Indians has been blasted by the visitation of an immense band of grasshoppers, the vanguard arriving here about the 1st of August, eating everything green clear to the ground, except the potatoes, which they only partially attacked. The Indians feel discouraged, this being their first general effort at gardening. The Government furnishing last spring an abundance of all kinds of garden seeds, hence a general effort was made at gardening under the supervision of the farmer.

Quite a number of the lodges have put up small stacks or ricks of hay, from 10 to 20 tons each, aggregating from 190 to 200 tons, for the use of their cows and ponies during the most severe portion of the winter. The women of the most civilized lodges have so far advanced in the knowledge of household duties as to be able to make good, sweet butter and cheese; others are now following suit, and are breaking cows for that purpose.

In accordance with your instructions, Mr. Levi Harris, Harry Boyle, and David Coates, who were tenants-at-will upon the public domain, the same being within the limits of the reservation--occupying the most desirable portion of the reservation for the raising of grain and hay, and for pasture purposes--were removed by the military authorities of the United States, under charge of Lieutenant Brown, from Fort Halleck, Nev. The removal of the parties in question was effected on the 23d and 24th of May, 1873, who soon thereafter returned by permission for the purpose of taking and carrying away all of their personal and movable property. We are now in full possession and enjoyment of the reservation, a thing long desired by the Indians, and which has heretofore kept a large number from

locating here. The removal of these persons from the reservation and your recent order for the survey and establishment of the boundary lines of the same has elated the Indians at this timely act of justice towards them. They now feel as if this was their home, which inspires them with confidence in the good faith of the Government towards them. The number of Indians as permanent inhabitants thereof is about 350."

From Report of United States Indian Agent Western Shoshone Agency, Nevada, dated September 8, 1884, to Commissioner of Indian Affairs and contained in the Annual Report of Commissioner of Indian Affairs for 1884 (Page 126).

"The work of improvement in a general way has not been so great during the past year as the year preceding it, for the reason we have not erected any new buildings. But the general farm improvements have been more extensive than heretofore. We have had to clean out and to a great extent rebuild all of our irrigating ditches. In some places they were filled up with earth and debris during the past winter, by reason of rain and storm, and high-water during the spring. The same causes have in many places washed away our irrigating dams, almost entirely. When it is remembered that the rain and storm of the past winter did not entirely cease until the 24th of June it will be seen that while we had a great deal of work to do in making repairs upon our irrigating ditches and rebuilding our dams, with the almost insurmountable obstacle of high-water to contend with. Nevertheless we succeeded in making these repairs, and rebuilding 2½ miles of new wire fence, planting posts 6 feet apart with two strands of wire. To make the fence more complete and effective against horses and cattle we excavated a ditch along the line of the new fence on the outside; the ditch is about 2½ feet deep, and 30 inches wide at the top and 20 inches at the bottom."

WESTERN SHOSHONE INDIAN RESERVATION, NEVADA - IDAHO

HISTORY OF IRRIGATION DEVELOPMENT.

From Report of United States Indian Agent Western Shoshone Agency, Nevada, dated September 30, 1886, to Commissioner of Indian Affairs and contained in the Annual Report of Commissioner of Indian Affairs for 1886 (Pages 197 & 193).

"The system of Indian farming pursued on this reservation is by no means encouraging, as the result of the present year's farming indicates. The crop of wheat that has just been thrashed will yield about 25 tons, eight of which will be required to sow the next crop. This failure I attribute in a great measure to the continuous cultivating and seeding the same land from year to year, and never giving the land any rest. I estimate the number of acres under cultivation this year to be about two hundred and fifty.

The destitute Piutes, who were induced to settle on this reservation under promises made them that they would this fall be furnished by the Government with wagons and farming implements, I regret to say have become greatly demoralized and discontented since learning that Congress had failed to make the appropriation necessary for that purpose."

From Report of United States Indian Agent Western Shoshone Agency, Nevada, dated August 25, 1887, to Commissioner of Indian Affairs and contained in the Annual Report of Commissioner of Indian Affairs for 1887 (Page 165).

"The Indians of this agency have made commendable efforts in their agricultural pursuits the present year; they have worked with unusual industry and earnestness, and have nearly doubled the area under cultivation last year. They have paid more attention to improving their places and cultivating their gardens, and their crops would have been excellent, but, owing to the depredations of ground squirrels, their grain crops were nearly all destroyed in spite of their diligent efforts to protect them. I regret to state this serious loss will necessitate the purchase of flour required for subsistence of the Indians for the present year, also an outlay for seed wheat."

WESTERN SHOSHONE INDIAN RESERVATION, NEVADA - IDAHO

HISTORY OF IRRIGATION DEVELOPMENT.

From Report of United States Indian Agent Western Shoshone Agency, Nevada, dated August 29, 1889, to Commissioner of Indian Affairs and contained in the Annual Report of Commissioner of Indian Affairs for 1889 (Page 252).

"At the beginning of the season the outlook for a large crop, both for the Government and for the Indians, was of a most promising character, but I am compelled to state that our hopes in this direction have been far from realized. Such another summer as the past one has been can not be recalled from the memory of the "oldest inhabitant." The Owyhee River (our main stream) ceased to flow on or about July 1, some time before the crops had matured, and the consequence has been that the grain along its course has shriveled to such an extent that the crops will yield hardly one-half of what they would have done had they been plentifully supplied with water. This is more unfortunate than it at first appears, for it not only deprives them of a vast amount of subsistence, but it will also probably deter quite a number of the Indians from engaging in agricultural pursuits next year, as their superstitious fears in matters of this kind are almost insurmountable.

In addition to the drought the Indians living at any considerable distance from the agency have suffered in no small degree from the ravages of ground squirrels. The Government crop has been thoroughly protected from this pest by the free use of strychnine, and even some of the Indians living around the agency have been induced to use the poison, but the majority of them refrain from doing so owing to the fact that the ground squirrels form one of their chief articles of diet in the summer time, and they don't care to take any such chances.

In regard to the water question, I desire to say that there is but one way to guard against such a calamity as has befallen us this summer, and that is to construct a reservoir, at some point where the river runs through the agency, which will hold water sufficient for irrigation purposes during the summer months. Of course this would involve the expenditure of a large sum of money, but I believe the benefit to be derived from such an undertaking would eventually be far in excess of the amount of money expended. It would throw under cultivation thousands of acres of valuable land which can not possible be irrigated under existing circumstances, and I now most cordially invite your attention to the subject."

WESTERN SHOSHONE INDIAN RESERVATION, NEVADA - IDAHO

HISTORY OF IRRIGATION DEVELOPMENT.

From Report of United States Indian Agent Western Shoshone Agency, Nevada, dated August 20, 1892, to Commissioner of Indian Affairs and contained in the Annual Report of Commissioner of Indian Affairs for 1892 (Pages 324-5).

"Agriculture.--Nineteen families raised sufficient wheat to supply them with flour through the entire year, while 36 more raised partly enough; 51,000 pounds of flour was made at the agency flour mill for the Indians. In addition to this about 25,000 pounds of wheat was sold to the whites, at an average of 2 cents per pound. Most of this wheat carried some smut, rendering it unfit for flour, which was caused by an insufficient supply of bluestone at seeding time. Also 15,000 pounds of bran, at 1 cent per pound, and 25,000 pounds of shorts, at 1½ cents per pound, was disposed of in the same way. About 150,000 pounds was raised, of which 100,000 pounds was sold to the whites at an average of 2 cents per pound, while the remainder was fed at home and kept for seed. Potatoes, turnips, ruta-bagas, carrots, parsnips, beets, pears, etc., were sown in considerable quantities, but owing to the great extent of country over which the little gardens were scattered and the irregular harvesting of the crop, it is almost impossible to form anything like a correct estimate as to the amount grown, but quite a number of families had sufficient of their vegetables to last them through the winter. Cabbage has been a failure, from the fact that the Indian met with no success in propagating the plants. Try as I would, explain, and even make a hotbed for them, the result was always a flat failure. So this year I constructed a large hotbed at the agency, from which I distributed several thousand plants. The result is promising cabbage patches all over the reservation.

About 1,100 tons of hay, mainly wild, were put up by and for the Indians, a small part of which was traded off to the whites for stock, and sold to travelers for cash, but the main portion was fed to their own stock during the winter, all of which wintered well. As a stock-raiser the Indian will be soon a decided success. He has learned through sad experience that to turn his stock out to care for itself through our long winter is likely to leave him afoot in the spring, hence he works hard (and each year more intelligently) during the haying season to accumulate sufficient hay to feed his stock through the winter. He is on good terms with the white stockmen adjoining the reserve. They make camp together during the general round-up and deliver to each other their stray stock; no serious misunderstandings have taken place between them during the last three years. The whites have learned to respect the Indian for his simple honesty, and the saying is common among our white neighbors that if your stock strays to the reservation you are sure to get it. The Indian is equally fortunate, for no matter where his animals stray, the word never fails to reach us promptly telling its whereabouts.

WESTERN SHOSHONE INDIAN RESERVATION, NEVADA - IDAHO

HISTORY OF IRRIGATION DEVELOPMENT.

Irrigation.--During the year a survey has been made for a storage dam across the Owyhee River, which when constructed, will make this valley one of the most valuable sections in the West. It will make farming permanent and safe, and have a tendency to break up the habit of roving, so prevalent among the Indians, which habit is disastrous to growing crops; but it is indulged in to a considerable extent owing to the uncertainty of water in sufficient quantities to mature crops. When he realizes that there is a certainty of an abundant supply to mature crops the value of taking care of what he plants will keep him at home.

The past winter was exceedingly wet and stormy, hence the natural flow of the river has been strong enough to irrigate such crops as have been planted. The main diverting dam has been placed in thorough repair, at a cost of $250 to the Government. Gates have been placed in the main canal on the east side of the river, which enables us to control the flow of the water; while on the west side a main canal has been constructed about 4 miles in length, by the Indians, without any assistance from the Government, farms laid out, and cross and distributing ditches made through the land. Another year this ditch will furnish water for 250 acres of land so long as water flows in the stream.

Land.--I would respectfully urge upon the Department the justice of making some arrangements in regard to the land whereby some of the more intelligent of these people can acquire homes, independence, and manhood. Some of these men ask me why they should build houses, roads, bridges, and set out trees, when some one else is likely to enjoy the benefits except themselves and children. Interested whites are, no doubt, responsible for these opinions, but their effect is pernicious, nevertheless, and can only be checked by putting them in position to acquire title to the land."

From Report of United States Indian Agent Western Shoshone Agency, Nevada, dated August 12, 1893, to Commissioner of Indian Affairs and contained in the Annual Report of Commissioner of Indian Affairs for 1893 (Page 212).

Agriculture.--Agriculture and stock-raising, aside from Government assistance, is the main dependence of these people for support, and in both branches fair progress has been made during the past year. Good crops of wheat, barley, potatoes, and cabbage were grown; also considerable quantities of small garden stuff (see statistics). With water properly stored for irrigation and a strong practical worker for agent, in a few years these people should be largely self-sustaining.

WESTERN SHOSHONE INDIAN RESERVATION, NEVADA - IDAHO

HISTORY OF IRRIGATION DEVELOPMENT.

But their main dependence for a livelihood will be their stock; for aside from what they consume, there is no market for agricultural products. The silver mines, once the best market in the world for the products of the farm, are now deserted, so that the only show for these people to get any money is to lead the half-wild life of the vaquero. Their summer range is practically unlimited, while there are large natural meadows which furnish large quantities of hay for winter use.

Irrigation.--A short distance above the main dam across the river three large sloughs debouch to the west side, which carry a large body of water that is thrown back by the dam. These sloughs have been dammed and converted by a canal which concentrates the water in the outer slough, which is tapped by ditches for distribution over the land. Some new land was brought under cultivation this year, but additional work, for which detailed estimates have been made, must be done to render the dam safe from washing and complete the system."

WESTERN SHOSHONE INDIAN RESERVATION, NEVADA - IDAHO

HISTORY OF IRRIGATION DEVELOPMENT.

From Report of United States Indian Agent Western Shoshone Agency, Nevada, dated September 23, 1896, to Commissioner of Indian Affairs and contained in the Annual Report of Commissioner of Indian Affairs for 1896 (Page 203).

"Owing to the mountainous character of the country, there is but a very small portion of the 256,000 acres on the reservation fit for agricultural purposes, but what little there is in the valleys and bottoms is good, so far as the character of the soil is concerned, and the crops raised thereon would be very abundant but for the shortness of the summer season and the loss of crops that occurs annually from frosts, due to the high altitude, and also to the fact that irrigation is absolutely essential to the raising of crops in this section of the country; and while there is an abundant supply of water for this purpose during the spring and early summer, the supply becomes very scarce before the crops reach maturity, so that every year more or less of a crop is allowed to dry up because of a scarcity of water.

This latter trouble could be remedied at comparatively little expense, in view of the benefits to be derived therefrom, as the principal stream of water that supplies the valley in which all the farms on the reservation are situated enters the valley out of a narrow canyon, and by building a dam across it at its mouth a reservoir sufficient to hold the bulk of the water that goes to waste in the spring and early summer could be made, and thereby secure enough water for irrigation to last throughout the entire summer.

Notwithstanding these serious drawbacks to agricultural production, coupled with the fact that white people in the adjacent country have abandoned all attempts at farming because of its profitlessness and loss resulting therefrom, the Indians persevere in their efforts at farming, and every year put out small crops of potatoes, barley, wheat, oats, garden stuff, etc., and expend as much, if not more, time, patience, and industry in the care of the same than most white men would particularly in view of the small returns and probable loss they will have for their trouble.

During the past spring the purchase of 3,000 pounds of alfalfa seed was authorized by the Department for distribution among the Indians. The seed was distributed among about 20 of the most deserving and industrious of them. It has made a good start and in all probability will result in a fine crop next year.

The wild hay crop this year was very abundant. It is estimated that nearly 3,000 tons of it will be stacked by the Indians for their use during the coming winter.

WESTERN SHOSHONE INDIAN RESERVATION, NEVADA - IDAHO

HISTORY OF IRRIGATION DEVELOPMENT.

The crops set out this year promise a fairly good harvest.

This reservation is peculiarly adapted to the successful raising of stock. The mountains and valleys produce an abundance of bunch grass and wild rye, and the country is full of small streams and springs, making this section a wonderfully fine grazing ground. The fact that ranchers in the surrounding country have taken up stock raising because they could not support themselves by farming should be sufficient proof that the Indians here can not become self-supporting by following the vocation of farmers, but that there is every possibility of their becoming so in a few years if they could be supplied with cattle, including some good breeding stock; for they are familiar with the proper ways of treating and handling stock, as many of them are almost constantly employed by ranchers in the care of their cattle and are considered good stock handlers by the, and particularly good as "vaqueros." It is to be most earnestly hoped that the Department will decide to issue stock to the Indians on this reservation, or else move them to a country where it is possible for an agriculturist to be self-supporting."

WESTERN SHOSHONE INDIAN RESERVATION, NEVADA - IDAHO

HISTORY OF IRRIGATION DEVELOPMENT.

From Report of United States Indian Agent Western Shoshone Agency, Nevada, dated August 12, 1897, to Commissioner of Indian Affairs and contained in the Annual Report of Commissioner of Indian Affairs for 1897 (Page 190).

"Only a very small portion of the reservation is fit for agricultural purposes, because of the mountainous character of the country, but what little there is in the valleys and bottoms is good so far as the character of the soil is concerned; but owing to the high altitude the climatic conditions are such and the water supply for irrigation so limited in July, August, and September that it is impossible for the Indians or white people to become self-supporting as agriculturists here. White people in the adjacent country have long since turned their attention to stock raising as the only means of being self-supporting in this section of country.

As has been stated in previous reports, these Indians should be moved to a different section of country if it is desired to make them self-supporting as agriculturists. The Indians here are good workers and understand irrigation and farming and are capable of making a living for themselves in a country where it is possible to raise good crops once in a while.

If the Indians are to be retained here they should be supplied with cattle and alfalfa seed and the lands fit for raising alfalfa fenced off and divided among them and a dam built at the head of the valley in which all the farms on the reservation are situated, for the purpose of holding enough of the water that goes to waste in spring to make irrigation possible during the summer months when water is most needed, it being impossible to raise anything here without irrigation. They could then come much nearer being able to do for themselves than they ever can under existing conditions.

This reservation is peculiarly adapted to the successful raising of stock. The mountains and valleys produce an abundance of bunch grass and wild rye, and the country is full of small streams and springs, making this section a wonderfully fine grazing ground. These Indians are familiar with the proper ways of treating and handling stock, as many of them are almost constantly employed by ranchers in the care of their cattle and are considered good stock handlers by them, and particularly good as "vaqueros." It is to be most earnestly hoped that the Department will decide to issue stock to the Indians on this reservation, or else move them to a country where it is possible for an agriculturist to be self-supporting.

These are simple, kind, and gentle people, and disturbances are not as frequent among them as they would be among an equal number of white

people dwelling together. They are willing workers, and whenever there is any work to be done that they are capable of doing they are desirous and anxious to do it. They have done all the work on the irrigating ditches, dams, etc., and freighted practically all the supplies from the railroad, a distance of 120 miles, 212,935 pounds, for which they received $4,072.46 in cash. No trouble whatever has been experienced from the lack of sufficient Indian help."

The alfalfa seed distributed among the Indians and planted in the spring of 1896 has done very well with but one or two exceptions. The Indians who have cattle and work and saddle horses have put up sufficient alfalfa and wild hay to keep their stock through the winter.

The crops set out this spring promise a fairly good harvest if not seriously affected by frosts or the scarcity of water before they are ready to be gathered.

The spring floods were unprecedentedly high this year and caused considerable damage to the ditch banks and dams, and to the bridges on the main road to the agency and to the road itself. While considerable work has already been done to repair the damage, there is still a great deal of work that ought to be done."

[illegible] RESERVATION, NEVADA - IDAHO

[illegible] DEVELOPMENT.

From Report of [illegible] Indian Agent Western Shoshone Agency, Nevada, [illegible] 1[illegible], to Commissioner of Indian Affairs and contained [illegible] Report of Commissioner of Indian Affairs for [illegible] (Reg. [illegible] 6-241).

"Agriculture [illegible] and hay is very much larger than that of [illegible] greater breadth of land cultivated. The number of acres cultivated last year was 75, this year estimated at 150. [illegible] for the reason that there is more than sufficient land [illegible]. Barley is the principal crop raised, for [illegible] it is hardier than wheat and is not affected by the [illegible] as wheat.

Several of the [illegible] Indians have planted gardens, but this year has been [illegible] and the seeds rotted in the ground, ice having formed [illegible] of an inch thick, and all during August has been cold, [illegible] killing all tender vegetation. However, there have been [illegible] of wheat sown, but they have not done well. [illegible] to sow a large acre [illegible] not less than 4,[illegible] which seed the Government has promised to furnish. [illegible] matures in July, and rarely requires irrigation more than [illegible].

The present hay crop has been very large, and the Indians have cut and put up [illegible] between 900 and 1,000 tons of good hay; 500 tons more of hay [illegible] have been secured if the Indians had had mowers to [illegible] Only five mowers, three of which [illegible] of the Indians and [illegible] of their hay [illegible] cut. [illegible] seed [illegible] the Indians [illegible] only [illegible] I would suggest that timothy seed be [illegible]. The [illegible] are believed to be the most nutritious for stock.

The attention of these Indians should be turned to the raising of stock, as that is [illegible] success in this high, mountainous country. [illegible] of pasturage, and with the great capacity of the valley [illegible] several thousand head of cattle could be [illegible] with great profit to the Indians. The Indians [illegible] living any other way in this climate, where [illegible]. The raising of wheat and barley has never been [illegible] a drought one year [illegible] dry years in succession. There are other drawbacks to the grain crop. [illegible] often [illegible] the grain crop in the early part of the season, and during [illegible] the

standing grain is visited by swarms of blackbirds. These and other conditions have much disheartened the Indians, and they of late years have not farmed as much as formerly.

I am constrained to reiterate my former recommendations that each head of a family should be supplied with at least two to three cows. These Indians are now aware of the value of milch cows and are beginning to see that the product of a cow goes a long way toward their support. They are thoroughly competent in every way to take care of their cattle, being fine stockmen and sought after by the whites to assist in herding and branding their cattle in the spring. If these people could be furnished stock to make a little start, I believe in the course of six years, in many instances, they would be self-supporting, as this reservation can not be excelled for the production of hay and pasture. Sheep would also do well, as the mountainous region, where sheep could be pastured, is well supplied with water".

From Report of United States Indian Agency Western Shoshone Agency, Nevada, dated August 1, 1900, to Commissioner of Indian Affairs and contained in the Annual Report of Commissioner of Indian Affairs for 1900 (Pages 283-284).

"This reservation is approximately 20 miles square, being on the Nevada and Idaho line, about half of the reservation being in each State. The elevation is some 6,000 feet and the country generally abounds in high and rocky hills, fit only for grazing land. The valley of the Owyhee River, known as Duck Valley, constitutes about one-fourth of the reservation. This valley yields a large quantity of wild and tame hay and includes a large tract of sagebrush land that would produce grain most years under irrigation.

This reservation was first set aside for Western Shoshone Indians in 1877 and an addition made to it for certain Piute in 1886. There is now about an equal number of each tribe on the reservation, though they have intermarried until it is difficult to segregate them. There are some 450 Indians living here now and, perhaps, as many more scattered over the State, who are entitled to come here if they desire.

With comparatively few exceptions, these people are industrious and anxious to earn money. They own a few cattle (about 150 in the aggregate) and furnished some 10,000 pounds of beef from their own herds last year and will furnish something like the same amount this year. They formerly produced considerable grain, but the past few

years only a limited quantity. I hope to lead them to raise enough for their own use and to supply local demands. They can not raise grain to haul to market at a profit, as the cost of hauling would prevent their competing with points more accessible to the railroad.

The most promising means, and in fact the only promising means, of independence here is the raising of cattle. As a cattle country this is unsurpassed, as there is abundant range, sufficient hay land, and plenty of water to maintain enough cattle to make these people rich if they were once well started. We hope to get many of their horses sold from time to time and have the money thus derived put into cattle, as there is very little income from horses, and the same feed would keep cattle, which yield a large profit.

There are in contemplation two irrigating ditches, which if built will make tillable sufficient ground for all the grain and alfalfa they will care to raise, and with the ditches already in use will exhaust all the water that is available.

No allotments have been made here, and if they ever are made the surplus land should still be retained as tribal property and protected for their common range. There might be an advantage in allotting the hay and grain land, to give them the interest in improving it that should follow individual ownership."

From Report of United States Indian Agency Western Shoshone Agency, Nevada, dated August 5, 1901, to Commissioner of Indian Affairs and contained in the Annual Report of Commissioner of Indian Affairs for 1901 (Pages 278-9).

"The limited farming here was only fairly successful last year, as the supply of water was limited, resulting in a short hay crop and but little grain. The cattle have done well, as the mild winter made feeding unnecessary except for a short time, and the cattle stayed fat all winter. I desire to repeat that cattle raising is the only industry for which this reservation is well suited, as the high elevation and limited water supply making farming uncertain and the distance from market prevents selling farm products at a profit. We hope to have them produce wheat for their own bread and feed to supply local demands.

The lands here are not allotted, and when they are the remainder of the reservation should be retained as a common range and

to secure to them the little timber that is in the mountains. Otherwise they would be crowded out by the large cattle owners of the region.

The most encouraging characteristic of these people is their willingness to work whenever they see an opportunity to earn fair wages. They are in demand as sheep shearers, hay hands, ranch hands, vaqueros, and do all the freighting and irregular labor on the reservation. They earn several thousand dollars during the year, and work at such work with greater interest and regularity than at their farming, because the pay is more definite and in plainer view, it seems.

We are constructing an irrigation ditch, which, when completed, will be of considerable benefit to them in the making of hay land, but to provide ample grain land a part at least of another ditch, estimates for which have been made, should be built at once. A communication on this subject has been sent."

From Report of United States Indian Agency Western Shoshone Agency, Nevada, dated July 21, 1902, to Commissioner of Indian Affairs and contained in the Annual Report of Commissioner of Indian Affairs for 1902 (Page 243).

"The demand for laborers in sheep shearing, vaquero work, ranch work, haying and ditch work on and in the region of the reservation has been beyond our ability to supply most of the time since early spring. The Indians here are generally good workers and avail themselves of these opportunities very well in most cases, though there is room for improvement in some individuals yet.

They continue the effort to raise some grain in the face of dry seasons and the pests of squirrels that take the crops, and will have some wheat and barley, perhaps enough for local demands, and that is about all that can be raised with profit as we are too far from market to haul grain to the railroad. We have made some flour in the little old mill here the past two years and will continue to make up all the wheat offered, though we have no miller. We have succeeded in making a fair quality of flour.

The surest crop is hay, either alfalfa or wild hay of various kinds, or timothy; that also does well. There has been a good market

for the hay right in the stack from the neighboring ranchmen and the men who have grazing privileges leased.

In this connection will say that we are still leasing grazing privilege to some stock, and I think it a good thing so long as care is used not to overstock the range, as it gives an income from the range that should be invested in stock cattle and issued to deserving Indians to give them a start in the business, which is the only [illegible] for which this country is well suited. This money should be in[illegible] each year as it comes in, so that it may be increasing and the Indians receiving the benefit of it instead of lying idle and no benefit to anyone. Authority was asked for such expenditure but it was refused for some reason, as it seems the policy of the office to allow it to remain idle, whereas it would double every three or four years if invested in cattle here."

WESTERN SHOSHONE INDIAN RESERVATION, NEVADA - IDAHO

HISTORY OF IRRIGATION DEVELOPMENT.

From Report of United States Indian Agent Western Shoshone Agency, Nevada, dated September 1, 1903, to Commissioner of Indian Affairs and contained in the Annual Report of Commissioner of Indian Affairs for 1903 (Page 211).

"This is a splendid stock country, being fine for grazing as well as for hay. A larger amount of hay has been harvested this season than ever before, and the surplus is being sold to cattlemen at from $6.50 to $10 per ton.

Several of the Indians have cattle of their own, but they have not nearly as many as could be advantageously cared for on the reservation. They have a good supply of work horses of a better grade than is generally found among white settlers. They also have thousands of Indian ponies that we are trying to dispose of this season, and if successful will advise the purchase of stock cattle with part of the proceeds.

The Duck Valley ditch, which is now under construction, has furnished employment to all the Indians who were not at work elsewhere. The wages paid are $1.50 for laborers and $3 for man and team per day. The estimated cost of this ditch, with the laterals, is $10,367.33, and when completed will be the means of reclaiming 1,500 acres of land that will be sowed to alfalfa at an early day.

The Pleasant Valley ditch, East Side ditch, and Duck Valley ditch will provide for the use of all the water from the East Fork of the Owyhee River, and when this water is all utilized we expect to see the income of these Indians from the sale of hay, grain, and cattle correspondingly increased."

From Report of United States Indian Agent Western Shoshone Agency, Nevada, dated September 10, 1904, to Commissioner of Indian Affairs and contained in the Annual Report of Commissioner of Indian Affairs for 1904 (Page 248).

"These Indians have made an effort to improve their homes and are building substantial log houses, inclosing more hay lands, and building dams and ditches to water their meadows better. As a result their hay crop is increasing from year to year, and as there is a regular demand for all surplus at from $8 to $10 per ton in the stack, they are beginning to get on a permanent self-supporting basis. About $4,000 worth of hay and $3,000 worth of horses have been sold this year.

WESTERN SHOSHONE INDIAN RESERVATION, NEVADA - IDAHO

HISTORY OF IRRIGATION DEVELOPMENT.

There is considerable demand for the ponies that are owned by the Indians, and while the price is small it is in proportion to the size of the ponies, and we are urging them to sell while there is a demand and put their money into cattle. The number of cattle owned by these Indians is gradually increasing. Some were bought during the year by individuals and 50 cows and calves purchased with grass money were issued to deserving heads of families, so that nearly every family who is prepared to care for cattle has a start. Several have broken cows that supply them with milk for the table."

From Report of United States Indian Agent Western Shoshone Agency, Nevada, dated September 14, 1905, to Commissioner of Indian Affairs and contained in the Annual Report of Commissioner of Indian Affairs for 1905 (Page 259).

"The census taken June 30 shows a population of 516. Of this number 241 are Shoshone and 275 are Paiutes. There are 268 males and 248 females. Of this number 140 are of school age; 78 of these were in school here during the year and 18 are attending nonreservation schools.

The reservation contains 312,320 acres, about 12,000 of which is level and suitable for cultivation; 5,500 acres are fenced; 5,000 acres are under ditch, and 1,700 acres are in meadow, from which 1,400 tons of hay was cut this season.

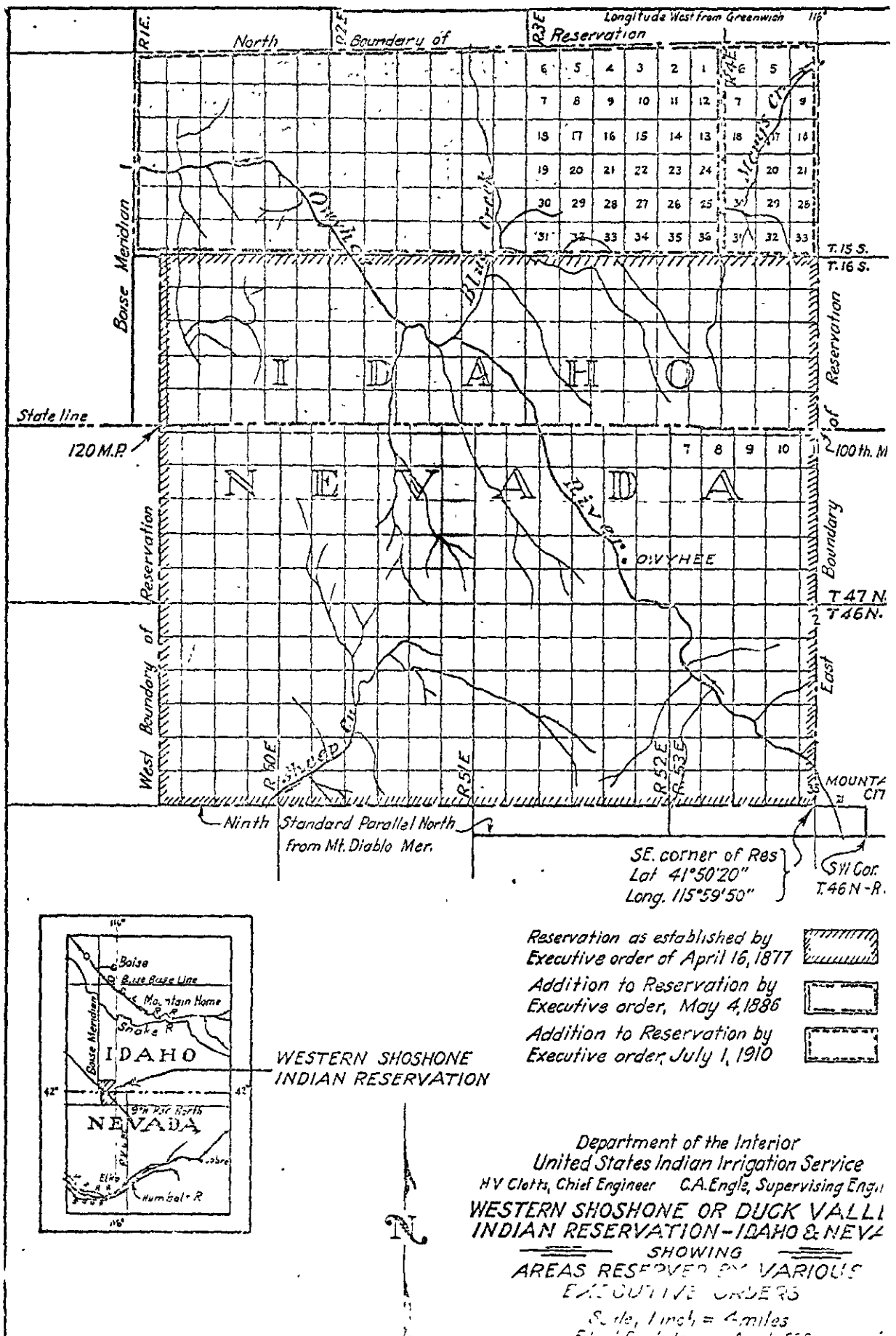
The Indians own 2,300 head of horses and 550 head of cattle. They sold during the year about 1,000 horses, at an average of $6 per head. They are selling their smaller horses only, and in this way expect to have a better grade of horses, such as will be useful for saddle and work stock. They are taking more interest in cattle, and we hope they will soon have cattle to sell instead of Indian horses.

The acreage of hay land has been considerably increased during the year and the completion of the Duck Valley ditch has made 1,500 acres more hay land available, which, it is expected, will be platted and taken up by industrious heads of families and young men in time for them to prepare for next season's crop. The land covered by this ditch is adapted to alfalfa, two crops of which can be grown, with an average yield of 3 tons to the acre. If it were not for the numerous ground squirrels that infest the reservation, wheat and barley could be grown to an advantage; but until this pest can be exterminated it seems a waste of grain and labor to sow grain upon the reservation.

WESTERN SHOSHONE INDIAN RESERVATION, NEVADA - IDAHO

HISTORY OF IRRIGATION DEVELOPMENT.

The Indian hay meadows, a swamp of approximately 1,000 acres, situated in the northeast corner of the original reservation, could be made available for hay land, from which 700 or 800 tons of fine wild hay could be cut annually. To make this land available it would be necessary to construct two ditches to divert the waters of the two creeks which flow into the meadows. These ditches could be constructed at small cost. It would be necessary to do considerable work on the road connecting the meadows with the agency, for the reason that there is such a heavy snowfall in the vicinity of the meadows that it would be impracticable to winter stock there, and the hay would have to be brought into the valley near the agency."



Department of the Interior
United States Indian Irrigation Service
H V Clotts, Chief Engineer C.A. Engle, Supervising Engr.

WESTERN SHOSHONE OR DUCK VALLEY INDIAN RESERVATION - IDAHO & NEVADA

SHOWING
AREAS RESERVED BY VARIOUS
EXECUTIVE ORDERS

Scale, 1 inch = 4 miles

S—1143

UNITED STATES

DEPARTMENT OF THE INTERIOR

INDIAN IRRIGATION SERVICE

SUPERVISING ENGINEER

REPORT

WATER SUPPLY, WATER RIGHTS & AGRICULTURAL CONDITIONS WESTERN SHOSHONE OR DUCK VALLEY RESERVATION. NEVADA - IDAHO.

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Provided for by Act of Congress of March 4, 1929.

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Charles A. Engle,
Supervising Engineer.

- - - - - - -

May- 1930.

Department of Water Administration
PROTESTANT'S
Exhibit 22
Date Admitted

55 709

REPORT OF WATER SUPPLY, WATER RIGHTS AND AGRICULTURAL CONDITIONS - WESTERN SHOSHONE RESERVATION, NEVADA - IDAHO.

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REPORT OF WATER SUPPLY, WATER RIGHTS AND AGRICULTURAL CONDITIONS - WESTERN SHOSHONE RESERVATION, NEVADA - IDAHO.

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REPORT OF WATER SUPPLY, WATER RIGHTS AND AGRICULTURAL CONDITIONS - WESTERN SHOSHONE RESERVATION, NEVADA - IDAHO.

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Other reports on the same subject:

H. T. Johnson. June 1, 1916.

C. A. Engle, January 9, 1924.

E. E. McNeilly. July 26, 1929.

55 7009

DEPARTMENT OF THE INTERIOR

UNITED STATES INDIAN IRRIGATION SERVICE

IRRIGATION DISTRICT NO. 2

Blackfoot, Idaho May 21, 1930

Commissioner of Indian Affairs

Dear Sir:

There is respectfully submitted herewith a report entitled "Water Supply, Water Rights and Agricultural Conditions - Western Shoshone Indian Reservation" prepared under my supervision by Instrumentman James Young and Assistant Engineer Paul F. Henderson, embodying the results of surveys and investigations made by Mr. Young during the summer of 1929 for the purpose of determining conditions relating to water supply, water rights, agriculture and grazing on the Western Shoshone or Duck Valley Indian Reservation, of Idaho and Nevada. An appropriation of $3,500 for this work was made by the Second Deficiency Act, fiscal year 1929, approved March 4, 1929, and general instructions covering the work to be done are contained in Office Letter Irrigation, of March 18, 1929.

It is hoped that the report will be found to meet with the approval of the Office.

Very respectfully,

C. A. Engle

C. A. Engle
Supervising Engineer

55 7069

REPORT ON WATER SUPPLY, WATER RIGHTS AND AGRICULTURAL CONDITIONS - WESTERN SHOSHONE RESERVATION, NEVADA - IDAHO

Synopsis

The Western Shoshone or Duck Valley Reservation is located partly in Nevada and partly in Idaho, the State line passing through the center of the Reservation. The total area of the Reservation is 321,920 acres, of which 25,000 acres are susceptible of irrigation, and 5,780 acres are under the present constructed ditches, consisting of about fifty miles of poorly constructed canals and laterals, in a very bad state of repair.

The Reservation was established by Executive Orders of April 16, 1877, May 4, 1886 and July 1, 1910. Authority was granted on March 18, 1929, to expend during the fiscal years 1929 and 1930, $3,500 from the fund "Survey of Water Supply, Western Shoshone Reservation, Nevada" for the purpose of making a water supply adjudication survey. This survey was made during the summer of 1929 by Instrumentman James Young under the supervision of C. A. Engle, Supervising Engineer. The total construction cost of this project to June 30, 1929, was $47,932.08, and the total operation and maintenance cost to the same date was $26,884.34, with $352.99 for Chief Engineer's office charges. The only employee of the Indian Irrigation Service is an Indian ditchrider employed during the irrigation season.

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WATER SUPPLY REPORT - WESTERN SHOSHONE RESERVATION - NEVADA

The population of the reservation is 675 Indians of the Western Shoshone and Paiute Tribes, all of whom are employed in stock raising. However, owing to the very limited water supply, the Indians, almost without exception, are unable to raise enough hay for the necessary winter feeding to sustain a herd of sufficient size for the Indians to be self-supporting, and they are required to obtain work outside of the reservation to make a living. These Indians are unusually industrious and energetic, and if a sufficient water supply was made available would immediately increase the present irrigated area of 5,731 acres sufficiently to raise enough hay to sustain a herd of stock of sufficient size to make themselves independent of help from the outside.

Owing to the fact that the reservation is 110 miles from the nearest railroad shipping point, stock raising is the only industry that can be developed. The grazing land available on the reservation and the adjacent Humboldt National Forest Reserve is sufficient for the summer feeding of the stock necessary to support these Indians, as the number of White-owned stock permitted to run on this area during the summer will attest.

There are three streams crossing the reservation and supplying water to this section of the country.

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ATER SUPPLY REPORT - WESTERN SHOSHONE RESERVATION - NEVADA

(1) The Owyhee River, flowing from the southwest corner diagonally across the reservation and forming the water supply for the major part of the reservation. (2) Blue Creek, flowing from the north, entering the reservation about the center point of the northern boundary and emptying into the Owyhee River about the center of the reservation. (3) Mary's Creek, rising on the reservation and flowing in a northerly direction, leaving the reservation about the northeast corner and emptying into the Snake River.

The lands above the reservation on the first two of the above streams have been gradually settling up and the individual irrigation projects developing and expanding until practically all of the water in the streams flowing into the reservation is diverted, leaving but very little water for the Indians to irrigate their hay meadows with. In the case of Blue Creek the water has been entirely used up by the white farmers above the reservation, thereby forcing three Indian families to abandon the ranches upon which they had made their homes for several years. The white men living on this drainage area have constructed a number of reservoirs which have taken even the flood flow of this stream during the early spring run-off, so that practically no water reaches the reservation from this source at the present time. The

lands on the upper Owyhee River above the reservation, while not having been developed as yet to a point where all the water is used, is fast reaching the point where the only water left for the Indians, even at the flood stages of the stream in the early spring, is the water rising on the reservation itself. For this reason an early adjudication of the water rights on these streams is necessary to the very existance of the Indians living on the reservation.

Even though the water rights in this section are adjudicated and the Indians reserved all of the water due them, the supply will still be insufficient to raise enough hay to support a herd of stock of sufficient size to make the Indians self-sustaining, without storage to supply water during the latter part of the summer. The water supply in the streams is entirely exhausted by the first of July and sometimes as early as the 15th of May, and for this reason storage is a necessity. All of the possible reservoir sites were investigated in connection with this survey, and only two were found to be feasible, one is on the Owyhee River just below where Reed Creek flows into the River, and the other is on Shoo Fly Creek, a tributary of Flue Creek. The flow in Flue Creek can be augmented by diverting water from Three Forks Creek (Mary's Creek) in section 36, town-

55 [illegible]9

ship 15 south, range 3 east, and carrying the water across a saddle in section 25, township 15 south, range 3 east, to be released at the head of Mud Creek, where it would then flow down that creek to Blue Creek.

Storage may be obtained in a reservoir on Choo Fly Creek in the northeast corner of township 14 south, range 1 east, to supply water to the lands lying along Blue Creek during the latter part of the summer. This would allow the farms to be again taken up that the Indians were forced to abandon because of the cutting off of their water supply through the building of the reservoirs on Blue Creek north of the reservation, as well as permit the rest of the 1,000 acres of irrigable lands lying along this creek on the reservation to be irrigated. The water supply for this possible reservoir site will have to be investigated more closely before any actual work is done at this point, but the preliminary work that was done in connection with the preparation of this report indicated that there was a sufficient water supply for the estimated 8,250 acre-foot storage available at this point. The estimated cost of this storage is $44,505, or $5.33 per acre-foot.

The Reed Creek reservoir site on the Owyhee River is about three miles upstream from the upper Duck Valley

55 7099

diversion in section 7, township 46 north, range 53 east. The run-off records of the Owyhee River kept by the U.S.G.S. since 1915 show that there is an ample supply of water for a 25,000 acre-foot storage which is available at this point. Preliminary costs were worked up for a dam at this site taken from the cross sections and the test pit made in connection with this report. The preliminary investigations at this damsite indicate the presence of a fault in the valley so that a complete inspection of the foundation will have to be made before any final plans can be worked up on this site. However, it is believed that a good foundation can be obtained at this site without an excessive expenditure of money. Preliminary estimates of costs were worked up on a dam having a crest elevation at 5550 feet, approximately 100 feet above the floor of the valley. The spillway for the dam would be through a natural saddle in the ridge to the south of the dam which would require but very little work owing to the fact that the bottom would be in solid rock and the waste waters carried by the spillway would be released into a side draw which empties into the river several hundred feet below the dam site. The proposed dam section has a three to one upstream slope with a two to one downstream slope, the upstream slope being protected by an eighteen inch layer of dumped riprap. A sec-

tion of the dam is shown on a drawing accompanying this report. The preliminary estimate of cost for this dam is $295,449.00, and as 25,000 acre-feet of water will be impounded, this is at the rate of $11.82 per acre-foot.

Recommendations

As a result of the water supply studies made on the Western Shoshone Reservation, it is recommended that the following be done:

1. Immediate action be started to adjudicate the water rights on all streams forming a water supply for the Indians.

2. That final plans and investigations be started on the Reed Creek Reservoir Site.

3. That definite information as to the run-off of Bloo Fly Creek be obtained at the proposed reservoir site.

4. That the diversion of the waters from Three Forks Creek be made and the canal constructed to carry the water over to the head of Mud Creek.

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REPORT OF WATER SUPPLY, WATER RIGHTS AND AGRICULTURAL CONDITIONS - WESTERN SHOSHONE RESERVATION, NEVADA - IDAHO

Indian Lands

Location

The Dunk Valley Reservation is located in Nevada and Idaho, the boundary line of these two states cutting through it approximately midway north and south. The reservation lies within townships 46 and 47 north, ranges 51 to 53 east, Mount Diablo Meridian in Nevada, and in townships 15 and 16 south, ranges 1 to 4 east, Boise Meridian in Idaho.

The total area of the reservation is 321,920 acres, of which approximately 25,000 acres are irrigable, lying in the upper Owyhee Valley, Pleasant Valley and the Blue Creek Valley. The major portion of the irrigable area lies in the Upper Owyhee Valley (23,500 acres) approximately 17,000 acres of this area being in Nevada and 4,500 acres in Idaho. Pleasant Valley, or the lower Owyhee Valley, contains approximately 2,500 acres of irrigable land, all of which is in Idaho and susceptible of irrigation from the Owyhee River. There is an area of approximately 1,000 irrigable acres in Blue Creek Valley, a part of which was formerly irrigated but which has been abandoned through lack of water supply due to the construction of reservoirs above the reservation. The balance of the area on the reservation,

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especially the mountainous portion which comprises about one-third of the total area, is adapted only to the grazing of stock.

History

The reservation was established by Executive Orders of April 16, 1877, May 4, 1886 and July 1, 1910. Previous to the order of 1877, establishing the portion in Nevada, the Annual Report of the Commissioner for 1876 contained the following:

> "The Shoshone farms are located in Elko County, in the northeastern part of the State, about 275 miles from the Pyramid Lake reserve. These farms were located about two years ago, for the western band of Shoshones and have been put under cultivation in such an amount as means and time would justify. Good progress has been made, and it is desirable that a survey be made and the title of these lands guaranteed to the Indians residing thereon."

Following is the Executive Order of April 16, 1877, (Indian Affairs, Laws and Treaties, Vol. 1, Page 866);

> "It is hereby ordered that the following described tract of country, situated partly in the Territory of Idaho and partly in the State of Nevada, be, and the same hereby is, withdrawn from the public domain, to-wit: Commencing at the one hundredth mile post of the survey of the north boundary of Nevada, thence due north to the intersection of the north boundary of township 16 south of Boise

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base line in Idaho; thence due west to a point due north of the one hundred and twentieth mile post of said survey of the north boundary of Nevada; thence due south to the ninth standard parallel north of the Mount Diablo base line in Nevada; thence due east to a point due south of the place of beginning, thence north to the place of beginning. And the above named tract of land is hereby set apart as a reservation for the Western Shoshone Indians, subject to such modifications of boundary as a location of limits shall determine."

Executive Order of May 4, 1886, follows: (Indian Affairs Laws and Treaties, Vol. 1, Page 866.)

"It is hereby ordered that the following described land in the Territory of Idaho, viz: Township 15 South, Ranges 1, 2 and 3 East of the Boise Meridian, be, and the same are hereby withdrawn from sale and settlement and set apart as an addition to the Duck Valley Reservation, for the use and occupation of the Ruby Cape band of Piutes and such other Indians as the Secretary of the Interior may see fit to settle thereon;

Provided, however, that any tract or tracts of land within said townships, the title to which has passed out of the United States, or to which valid homestead or preemption rights have attached under the laws of the United States, prior to this date, are hereby excluded from the operation of this order."

Executive Order of July 1, 1910, follows: (Indian Affairs Laws and Treaties, Vol. 3, Page 679.)

"It is hereby ordered that the following described lands in the State of Idaho, viz: All that part of township 15 south, range 4 east, Boise Meridian

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> lying and being west of a line formed by extending the east boundary line of the Duck Valley Indian Reservation through the said township, be, and the same are hereby withdrawn from settlement, entry and sale, and set apart as an addition to the Duck Valley Indian Reservation: Provided, that nothing herein shall affect any existing valid rights of any person to the lands described."

Authorization of Adjudication and Water Supply Survey

Authority was granted on March 18, 1929, to expend during the fiscal years 1929 and 1930 the sum of $3,500 from the fund "Survey of Water Supply, Western Shoshone Reservation, Nevada, 1929 - 1930" for the purpose of making a detailed survey of the water supply for the Western Shoshone or Duck Valley Indian Reservation, situated in the States of Nevada and Idaho.

James Young, who made the adjudication surveys on the Blackfoot River in connection with the Fort Hall Project, was assigned to this work and began on July 6, 1929, with a party of three men, the field work necessary in connection with the report and continued until November 5, 1929, when he returned to the district office at Blackfoot, Idaho, to prepare the report. This survey was conducted with the assistance of and under the direct supervision of the Supervising Engineer, C. A. Engle.

WATER SUPPLY REPORT - WESTERN SHOSHONE RESERVATION - NEVADA

Scope of Surveys

The field work in connection with this survey consisted of making an irrigated land survey on the Owyhee River and tributaries and of all lands irrigated and affecting the water supply of the Indians on the Western Shoshone Reservation; also surveys and estimates of costs on all reservoirs owned and operated by private individuals or corporations in the Blue Creek section north of the reservation and tributary to the Owyhee River; current water meter measurements on the Owyhee River and tributaries; cultural survey of lands utilized by the Indians on the reservation; preliminary investigation of possible reservoir sites on the Owyhee River and tributaries; and the gathering of economic data pertaining to the Indians residing on the Duck Valley Reservation.

Shipping Points

The nearest railroad or shipping points for the reservation are Mountain Home, Idaho, 110 miles north on the Union Pacific Railway, and Elko, Nevada, 110 miles to the south on the Southern Pacific and Western Pacific Railways. The roads from the reservation to both Mountain Home and Elko are only partially improved and are impassable for long periods in the winter and are frequently impassable for

short periods of time during the summer. Freight and supplies are usually hauled to the reservation by wagon or truck from Mountain Home, Idaho.

Population

The population of the reservation is 675 Indians of the Western Shoshone and Paiute Tribes. Allotments have not been regularly made, but many Indian families have been given tentative allotments of forty acres each, and some of these are very well improved with fairly good buildings and with the land in a fair state of cultivation. All of the land being farmed on the reservation at the present time is being farmed by Indians.

Irrigable Area

Although the reservation includes an ultimate irrigable area of 25,000 acres, only 5,730 acres are susceptible of irrigation from the system as constructed at the present time, the water for which is supplied by the Reese River. As a result of the increasing agricultural development in the valleys above the reservation, the water supply available for the irrigation of the Indian lands, except for a few weeks during the early part of the irrigation season, is very inadequate. The stream flow of the Reese River at the Indian diversion works is occasionally as low as three second-feet in the months of July, August and September.

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Present Irrigation System

The existing irrigation system, consisting of fifty miles of canals and laterals, is very poorly constructed and, as the result of several floods, is in a very bad state of repair. This system was begun in 1901, and has been gradually extended, partially by donations of Indian labor and partially by the expenditure of Congressional appropriations. The only permanent structure of note in the entire lateral and canal system is a reinforced concrete headgate at the head of the main canal on the west side of the river. Considerable trouble has been experienced each year from high water during the early spring run-off near the heading of the main canal. It is believed that this is due principally to the restricted channel caused by overhanging willows and an occasional dam of driftwood partially obstructing the channel. The main canal has sufficient capacity for all the lands now served by it, having a bottom width of eight feet and three foot banks. When the water supply gets low, generally about the first of July, and only a few second-feet can be diverted from the river, the growth of moss in the canal becomes a source of trouble. The laterals are in a very bad state of repair. Mr. Tom Premo, Indian ditchrider, is quoted as our authority for the statement that no maintenance work has been done on the lateral system since its construction, excepting

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occasional work done by the individual Indians. Practically all of the laterals have become grown up with grass and willows to such an extent that their capacity has been reduced at least fifty percent. This has resulted in the ditchrider not being able to deliver the amount of water that he should in the early part of the season when there is a plentiful supply. On one of those laterals (Guy Manning and others) there are fifteen water users and the ditchrider states that he is unable to deliver more than two irrigation streams through this lateral regardless of the supply at the main canal headgate.

The total cost of the construction of the present irrigation system to June 30, 1929, was $47,932.08 and the total cost of operation and maintenance to the same date was $6,004.34 and $352.07 for Chief Engineer's office charges. Owing to the fact that no permanent allotments have been made on this reservation, there have been no operation and maintenance collections. The Indian Irrigation Service does not keep a regular employee on the reservation. Tom Premo, an Indian ditchrider, is employed during the irrigation season and what little maintenance work is attempted is done by this Indian and some irregular labor as required from time to time, working under the direction of the Supervising Engineer of District No. 2 and the Superintendent of the reservation, Mr. E. E. McNeilly.

WATER SUPPLY REPORT - WESTERN SHOSHONE RESERVATION - NEVADA

Possible Irrigation on Mary's Creek

Mary's Creek rises on the reservation and is formed by the confluence of three small streams in section 30, township 16 south, range 4 east, Boise Meridian. As this creek is not a tributary of the Owyhee River, an investigation was made to determine if there were any lands within the reservation and adjacent to this stream that could be irrigated by direct diversion. There is a tract of land located in sections 4 and 9, township 16 south, range 4 east, containing approximately 400 acres, known as Indian Meadows, that could be irrigated from this stream. However, this tract would require very little irrigation as it is a natural wild hay meadow and is sub-irrigated. On October 18, 1939, there was flowing in the stream entering the meadow approximately two and one-half second feet of water, but at the lower end of the meadow where the stream bed leaves the meadow it was entirely dry. In 1926 Hugh Thomas, an Indian, cut hay from this meadow and wintered his cattle there but he lost about fifty percent of his herd, and the experiment was not repeated. Whether the death of the stock was due to a lack of nutritive value of the hay or the extreme cold weather, or a combination of both, is not known. There can be no doubt that the winters in this vicinity would be very severe and the lack of proper shelter would cause heavy losses in the herd of

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anyone attempting to winter stock at this place. The elevation of the meadow is approximately 6,600 feet and when winter has set in, owing to the heavy snowfall, it is an impossibility to get the stock out to a lower level. The distance from these meadows to Miller Creek, the nearest point where there is an Indian settlement, is approximately fourteen miles. The road between these points traverses a series of ridges of a lave rock formation and is extremely rough, so that the cutting of hay and hauling to the lower valley for sale or other use is precluded. As it has already been proven by actual experiment that the wintering of stock at the Indian Meadows is unsuccessful, it is believed that the irrigation of any of the land in this vicinity should be discouraged, and that it is adapted only to the summer grazing of stock.

Grazing Activities

On account of its location and the climatic conditions, the only profitable industry on this reservation is that of stock raising, and these Indians have shown considerable aptitude in this industry. They have, however, reached the limit of expansion in the livestock industry that is possible with their present water supply, for unless they can grow a sufficient amount of hay upon which to winter their livestock, the stock industry is not profitable.

WATER SUPPLY REPORT - WESTERN SHOSHONE RESERVATION - NEVADA

The cattle sales shown in the crop report for 1923 are reported by Superintendent E. E. McNeilly to have been double what they should be, for the reason that the Indians did not have sufficient hay to winter their cattle, and thus were obligated to sell many of them. The amount of hay actually harvested during the season of 1928, including both wild meadow and alfalfa hay, was 1400 tons less than the amount harvested during 1927. It is reported that the Indians have 2,000 head of cattle and 1,100 head of sheep. Although they have sold 1,000 head of horses during the past year, they still have too many horses. As indicated in the crop report, 2,066 tons of hay, including alfalfa hay and wild or native meadow hay, were harvested during 1928. This is not sufficient for the stock the Indians have, and as a result they are spending from $2,000 to $6,000 every year for hay. It is apparent that under these conditions they cannot increase the amount of stock they now have, even though the range land on the reservation would easily support three times the amount of stock which the Indians are grazing upon it during the summer months. Enough hay for the necessary winter feeding can be easily raised for additional stock by the construction of a storage reservoir and the extension of the canal and lateral system and the adjudication of the water rights.

WATER SUPPLY REPORT - WESTERN SHOSHONE RESERVATION - NEVADA

These Indians are unusually energetic and industrious and it is the judgment of Superintendent McNeilly and others that they would immediately increase their irrigated area to twice the present area if the irrigation system were extended and they were assured of an adequate all-season water supply.

All of the Indians residing on the tentative allotments cut and stack all the grass suitable for hay on their respective allotments, the amount, of course, varying with the water supply. This amount of hay is insufficient in practically every case to maintain a herd of cattle large enough to produce a sufficient revenue to offset their living expenses, and they are compelled to seek work outside of the reservation. The employment of these Indians on the large ranches in the vicinity of Whitereck and Duckwater, Nevada, and the Blue Creek ranch north of the reservation is directly in line with the work which they would do for themselves if they were assured of a sufficient water supply, consisting of the shearing of sheep in the early summer and later in the year working in the hay fields and the roundup of cattle for the large cattle companies. While engaged in this work for wages outside of the reservation, the irrigation of their allotments on the reservation is neglected, which reduces the amount of hay produced. Their employment as

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sheep shearers is especially detrimental to their farming operations on the reservation, as this employment comes at the season when they should be busy irrigating their wild meadow lands, as that is practically the only period when the water supply is plentiful.

It is the custom for all the White farmers on the Reese River watershed to start irrigating immediately with the melting of snow in the early spring, which in some years is as early as the last of March. This custom, however, according to information received from Superintendent McNeilly and Ditchrider Tom Preno, is not practiced by the Indians of the reservation, as they seldom begin the irrigation of their meadow lands before the first of May, when a considerable part of the spring run-off has already passed their lands. No doubt the production of their meadow lands would be considerably increased if the Indians could be educated into the idea of beginning their irrigating operations earlier in the season. However, much increase in the production of their meadow lands with their present water supply could not possibly reach a point where those Indians would be self sustaining from their farming operations alone. If the Indians could be assured of a plentiful water supply for the irrigation of the proposed irrigable area of 15,000 acres, the grazing privileges of White owners of cattle for

approximately 7,000 head could be cancelled and by increasing their own herds the same number the Indians of the Reservation could be come self sustaining and independent of outside employment.

The future welfare and the prosperity of these Indians, in fact their very existence, demands: (1) That the water rights of the streams in which the Indians are interested be adjudicated; and (2) That a storage reservoir for the impounding of flood waters for use during the latter part of the irrigation season be constructed. Conditions seem to indicate that in delaying these two measures the Government is failing to carry out its duties and responsibilities as guardian of the Indians of this reservation.

Crop Statistics

A survey was made of the area being utilized by the Indians on the reservation. Each forty acre tract was visited and the name of the Indian farming each and the estimated number of acres which he had in each crop was tabulated. The results of this work are shown on the following sheets.

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Results of Farming and Grazing Operations in 1928.

Crop	Acres	Total Yield	Yield Per Acre	Unit Value	Value Per Acre	Total Value
Alfalfa	213	673 tn	3.11	$16.00	$ 31.00	$ 6,730.00
Mid hay	5,318	1,903 tn	.37	8.00	2.95	15,764.00
Barley	10	4,900 lb	490.00	.02	9.80	98.00
Oats	5	2,970 lb	594.00	.025	14.85	74.25
Meat	60	40,880 lb	681.00	.025	17.02	1,021.20
Potatoes	10	30,000 lb	3,000.00	.03	90.00	900.00
Vegetables	8				500.00	4,000.00
Totals	5,616					$28,587.45

Other Income Aside from Agriculture

Wool sale	$ 22,293.84	Per family	$ 159.24
Sale of cattle on permit	26,295.00	Per family	187.81
Sheep sale (wool & lambs)	3,710.00	Per family	26.50
Outside labor (estimated)	45,020.00	Per family	321.00
	$ 97,[illegible]	Per family	$ 694.[illegible]
Farm crops	28,587.45	Per family	204.19
Total Income	$ 1[illegible]	Per family	$ [illegible]

(Only six families are actually engaged in the sheep industry, while the average shown is for the whole tribe.)
Note: No land is leased. All farming is done by the Indians themselves.

Comparative Crop Data - 1925 to 1928 inclusive.

Year	Miles Canal Operated	Farm Units Served	Total O. & M. Costs	Acres Irrigated	Value Crops Per Acre	Total Value	Heads of Families Farming	Population
1925		97		5,760	5.10	29,325.00	103	500
1926	22	97	2,000.00	5,700	3.00	17,000.00	110	515
1927	22	97	1,900.00	5,731	5.49	31,679.33	110	521
1928	22	97	6,[illegible].34	5,616	5.09	28,587.45	115	675

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WATER SUPPLY REPORT - WESTERN SHOSHONE RESERVATION - NEVADA

Summary of Cultivated Area by Indians
Western Shoshone Reservation (1929)

Township & Range	Wild Hay	Alfalfa	Grain	Potatoes	Pasture (fenced)
Boise Meridian, Idaho					
15[illegible] 1E	169				
15[illegible] 3E	551				
16[illegible] 2E	2,117				880
16[illegible] 3E	290	5			
Mt. Diablo Meridian, Nevada					
4[illegible] 52E	131	71	20		
47[illegible] 51E	63				40
47[illegible] 52E	1,557	537	87	3	720
Total	4,678	613	107	3	1,640

Area Cultivated by Indians (1929)

Name	Sec.	Sub-division	Wild Hay	Alfalfa	Grain	Potatoes	Remarks
[illegible] 47 [illegible], R. 52 E.							
[illegible] Pines	2	Lots 3 and 4	43	d			
[illegible] Patt	4	Lot 2	13	d			
[illegible] Bacon	4	Lot 3	28	d			
[illegible] Tom Bacon	4	Lot 4	25	d			
[illegible]rs)	(5	Lot 4					
[illegible] Black	(6	Lot 1	25	d			
[illegible] Shoshone [illegible] (see)	7	[illegible]					Pasture

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WATER SUPPLY REPORT - WESTERN SHOSHONE RESERVATION - NEVADA

Area Cultivated by Indians (1929) (continued)

Name	Sec.	Sub-division	Wild Hay	Alfalfa	Grain	Potatoes	Remarks
T. 47 N., R. 52 E.							
Tom Thacker	8	SE SW					Pasture
Jno Black (Dec) (Mrs)	8	NW NW					Pasture
John Black (Mrs)	8	NE NW					Pasture
Alfred Jack	9	NE NW	35				
Alfred Jack	9	NW NE	35				
School No 1 (Mrs)	9	NE NE					
Old Man Boney	9	SE NE	35				
Old Man Boney	9	SW NE	35				
Mary S Boney	9	SE NW	35				
Ben Boney	9	NW SE	35				
Hirum Price (Mrs)	9	NE SE	35				
Sam Charles	9	SW SE					Pasture
Sam Charley (Mrs)	9	SE SE	35				
Hirum Price (Mrs)	10	NW SW	30				
Sam Charley	10	SW SW	35				
Emma Sam Grover	11	N½ NW	43				
Cleveland (Mrs) Grover	11	S½ NW	14				
Cleveland	11	N½ SW	29				
Alex Cleveland	11	S½ SW	14				
Lottie Jones (Mrs)	15	NE NW	35				
John Blackhat	15	NW NW	35				

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WATER SUPPLY REPORT - WESTERN SHOSHONE RESERVATION - NEVADA

Area Cultivated by Indians (1929) (continued)

Name	Sec.	Sub-division	Wild Hay	Alfalfa	Grain	Potatoes	Remarks
T. 47 N., R. 52 E.							
John Harney	15	SW NW	15				
Amy Price	15	SE NW	30				
Bert Harney	15	NW SE	35				
Aubrey Harney	15	SE SE	20				
Carie Jones (Mrs)	15	SW SE	35				
Rose Harney	16	NE SW	35				
Dave Humpy	15	NW SW	20				
Rose Harney	15	SE SW	30		4		
Sam Charles	16	NE NE	25				
John Blackhat	16	NW NE	15	6	11		
Oakley Dutch (Mrs)	16	SW NE	20		4		
Jim Cackey	16	SE NE	10				
Jim Cackey	16	NE SW	8				
Jim Strasbuck	16	NW SW	15				
Arthur Hooper	16	SE SW	10				
Charles Thacker	17	NW NE	17				
Frank Marsh	17	SE NE					Pasture
David Dave	18	NW SE	35				
Louie Dave	18	SW SE	35				
Cora Prior	18	SE SE	35				
Alex LaMoe	22	NW NW					Pasture

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Area Cultivated by Indians (1939) (continued)

Name	Sec.	Sub-division	Wild Hay	Alfalfa	Other Crops	Remarks
T. 47 N., R. 52 E.						
Mrs. Alex McKee (Dec'd)	22	NE NE	35			
Harry Thacker	22	NW NE				Pasture
Alex McKee	22	NE NW				Pasture
Charles McKee (Dec'd)	22	SE NE	35			
Charles McKee	22	SE NE				Pasture
Charles Cooley	22	NE SE	30			
Custer John (Dec'd)	23	NW SW	30			
Custer John	23	NE SW	10			
Mrs. John Adams (Mrs) George Washington	23	SE SW	20			
	23	SW SW	35			
Agency	26	NW NW				
Agency	26	SW NE				
Agency	26	NE SE				
Agency	26	NW SW				
Agency	26	SW NW				
John Adams	26	NW NW	20			
Joe Atkins (Dec'd)	26	NE NW	10			
Phillip Harney	26	SW NW	10			
Herman Prior	26	NW SW	20			
Anna Prior	26	NW SW		25		

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[illegible] SUPPLY REPORT - WESTERN SHOSHONE RESERVATION - NEVADA

Area Cultivated by Indians (1929) (continued)

Name	Sec.	Sub-division	Wild Hay	Alfalfa	Grain	Potatoes	Remarks
T.47 N., R. 52 E.							
Chester Arthur (Mrs)	26	SE SW	25				
Frank Smith	26	SW SE	30				
Frank Smith	26	SE SE	10				
Fred Jones (Mrs)	27	SW NE		6	3		
Charles Humpy	27	SE NE					Pasture
Harley Tom	27	SE SE	15				
Frank Snodgrass (Harry Ebo Minors.)	27	SE SW		23			
Frank Snodgrass (Harry Ebo Minors.)	27	SW SW		12			
John Keller	27	NW SW		20			
David Dave (Mrs)	28	SE SE			10		
Harry Marsh	28	SW SE					Pasture
Harry Marsh (Mrs)	28	SE SW					Pasture
[illegible] Hooper	28	NW SW		15			
[illegible] Hooper	28	NW SW		3			
Mrs. Fitz Smith	28	SW SW	4	4			
Francis Charles	33	NE NW		4	7		
Fitz Smith (Mrs)	33	NW NE		4	7		
Harry Charles (Mrs)	33	NE NW		25			
[illegible] Romo	33	SE NE		14	9		
[illegible] Jones	33	[illegible] NE		3			

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WATER SUPPLY REPORT - WESTERN SHOSHONE RESERVATION - NEVADA

Area Cultivated by Indians (1929) (continued)

Name	Sec.	Subdivision	Wild Hay	Alfalfa	Grain	Potatoes	Remarks
T. 47 N., R. 52 E.	35	All	640				
George B. Hull (Mrs)	35	NW NE	20				
John Paradiso	35	NE NE		4			
Donald Boney	35	SE NE				1	
Mrs. Frank Dutch	35	SW NE	8	3		1	
Anna Henry	35	E½ SE					Pasture
Bob Ruby	35	NW SE		20			
Mrs. Bob Ruby	35	SW SE		10			
Mike Mingo	35	NE SW		8			
Mrs. Mike Mingo (Mrs)	35	SE SW		6			
Dula Gilbert	35	SW SW		10			
Alex Gilbert	35	NW SW		10			
Total			1557	537	187	3	

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WATER SUPPLY REPORT - WESTERN SHOSHONE RESERVATION - NEVADA

Area Cultivated by Indians (1929) (continued)

Name	Sec.	Sub-division	Wild Hay	Alfalfa	Grain	Potatoes	
T. 46 N., R. 52 E.							
George Brady	2	NE NE			5		
Howard Bacon	2	NW NE		12	10		
Maggie Camp	2	NE NW		7			
James Howard	2	NW NW		20			
Tom Prentice	2	SW NW		4	5		
Maggie Cap (Mrs)	2	N½ SW	32				
Howard Bacon	2	S½ SW	24				
James B. Hall (Mrs)	3	NE NE	30	2			
James B. Hall	3	SE NE					Uncultivated
Vaquero Bob	3	SW NE	20				
Mrs. Bob Jones	3	NW NE	12				
Bob Jones	3	NE NW		26			
Walter McIntosh	4	E½ SW	13				
Total			131	71	20		

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WATER SUPPLY REPORT - WESTERN SHOSHONE RESERVATION - NEVADA

Area Cultivated by Indians (1929) (continued)

Name	Sec.	Sub-division	Wild Hay	Alfalfa	Grain	Potatoes	Remarks
T. 47 N., R. 51 E.							
John Paradise	1	Lots 1 & 2)					
John Paradise (Mrs.)	12	N½ NE)	63				
John Paradise	12	SE NE					Pasture 40

Area Cultivated by Indians (1929) (continued).

T. 16 S., R. 3 E.							
James Bell	5	W½ NW)					
James Bell	6	NW¼)					
James Bell	6	SE NW)	75				
Dick Stanley	6	N½ NW					
Dick Stanley	6	NW NE					
Dick Stanley	31	S½ SW	44				T. 15 S.R.3 E.
Willie Wines	28	Lots 2-3-4					
Willie Wines	28	N½ SW					
Willie Wines	28	S½ NW	71	5			
Hank Thomas	30	Lot 6	15				
Hank Thomas	30	SE NW	10				
Mrs. Hank Thomas	30	Lot 7	10				
Clara Gibson	30	NE SW	20				

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WATER SUPPLY REPORT - WESTERN SHOSHONE RESERVATION - NEVADA

Area Cultivated by Indians (1929) (continued)

Name	Sec.	Sub-division	Wild Hay	Alfalfa	Grain	Potatoes	Remarks
T. 16 S., R. 3 E.							
George Bacon	30	NW SE	15				
George Bacon	30	Lot 10	20				
George Bacon	30	Lot 11	10				
Total							

Area Cultivated by Indians (1929) (continued)

T. 15 S., R. 3 E.							
Mrs. Joe Anderson	17	NW NW	40				
Mrs. Grant Kelley	17	SW NW	40				
Grant Kelley	17	SE NW	40				
Joe Anderson	17	NE SW	10				
Bob Wilson	17	NW SW	20				
Sam Little	19	NW NE	20				
Mrs. Sam Little	19	SW NE	20				
Minnie Damon	29	SW SW	25				
Charles Damon, Jr.	29	SE SW	25				
Mrs. Ed Bitt	29	SW SE	15				
Maggie Roberts	30	SE SW	20				
Bob Roberts	30	SW SE	20				
Arthur Yakima	30	SE SE	25				

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WATER SUPPLY REPORT - WESTERN SHOSHONE RESERVATION - NEVADA

Area Cultivated by Indians (1929) (continued)

Name	Sec.	Sub-division	Wild Hay	Alfalfa	Grain	Potatoes	Remarks
T. 15 S., R. 3 E.							
Charles Damon	31	NE NE	33				
Joe Paddy	31	SE NE	38				
Ed Bitt	31	NE SE	7				
John Damon	32	NW NW	38				
School # 3	32	NE NW	15				
Willie Paddy	32	SE NW	32				
Nat Paddy (Mrs)	32	SW NW	30				
Arthur Yakima	32	NW SW	20				
Daisy Thomas	32	NE SW	15				
Total			551				

Area Cultivated by Indians (1929) (continued)

T. 15 S., R. 4 E.							
Ralph Jim	31	N½ NW					
Ralph Jim	31	NW NE	40				
Anna Price	31	SW NE	40				
Sarah Willie	31	SE NW	15				
John Willie	31	W½ SW					

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WATER SUPPLY REPORT - WESTERN SHOSHONE RECLAMATION - NEVADA

Area Cultivated by Indians (1929) (continued)

Name	Sec.	Sub-division	Irrigable	Cultivated	Remarks.
T. 15 S., R. 1 E.					
John Willie	31	SE NW	40		
Minnie John	31	NE SE	4		
Mrs. Dr. Howard	31	SE SE	30		
Total			150		

Area Cultivated by Indians (1929) (continued)

T. 16 S., R. 2 E.						
Margorie Sam	5	NW NE				Pasture
Willie Pretty	5	NW SW	4			
Minnie McKee	5	SW SW	40			
Minnie McKee	5	SE SW				Pasture
Grealy Estate	5	SW SE	10			
Grealy Estate	5	SE SE	10			
Minnie Howard (Mrs)	5	NE NW	36			
Lillian John	6	NW NE	40			
Saul Charles	6	SW NE	20			
Mrs. Kit Peaty	6	SW NW				Pasture
Lillian John	6	NW NW	40			
Willie George	6	SW NW	30			

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WATER SUPPLY REPORT - WESTERN SHOSHONE RESERVATION - NEVADA

Area Cultivated by Indians (1929) (continued)

Name	Sec.	Sub. division	Wild Hay	Alfalfa	Grain	Potatoes	Remarks
T. 16 S., R. 2 E.							
Ollie Dodge	6	SW NW	20				
Ollie Dodge	6	NW NW	20				
Ona Pretty	6	NE SW					Pasture
Ona Pretty	6	NW SE	20				
Willie Pretty	6	NE SE	40				
John Dodge	6	SW SE	30				
Jim Howard	6	SE SE	40				
Jim Humpy	7	NE NE	30				
Harry Thomas	7	SE NE					Pasture
Total			450				

Area Cultivated by Indians (1929) (continued)

T. 16 S. R. 2 E.							
Black Johnny	8	NW NW	35				
Black Johnny	8	NE NW	10				
--- Sope	8	SW NW	20				
[illegible] Thomas	8	SE NW					Pasture
[illegible]ly Estate	8	NW NE					Pasture
Grace Humpy	8	NE NE	40				

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Area Cultivated by Indians (1929) (continued)

Name	Sec.	Sub-division	Wild Hay	Alf-alfa	Grain	Pota-toes	Remarks
T. 16 S., R. 2 E.							
Josh Thomas	8	SW NE					Pasture
Josh Thomas	8	SE NE					Pasture
Josh Thomas	8	NW SE					Pasture
Josh Thomas	8	NE SE					Pasture
[illegible] Little	8	SE SE					Pasture
John Little	8	SW SE					Pasture
--- Sope	3	NE SW	20				
--- Sope	8	NW SW					Pasture
Dottie Jim	9	NW NW	40				
[illegible]rlin George	9	SW NW	15				
[illegible]rlin George	9	NW SW					Pasture
[illegible] Chew	~~10~~ 4	SE NW	30				
[illegible]lly Chew	~~10~~ 6	NW SE	15				
[illegible]sie Chew	~~10~~ 5	SW NW	35				
Susie Chew	10	NW SW	15				
Charlie Mundy	17	NW NE					Pasture
Bert Mundy (Dec)	17	NW NW					Pasture
Charlie Mundy	17	SW NW	25				
Irene Mooney(Dec)	14	SW SW	60				Not Cut 1929

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WATER SUPPLY REPORT - WESTERN SHOSHONE RESERVATION - NEVADA

Area Cultivated by Indians (1929) (continued)

Name	Sec.	Sub-division	Wild Hay	Alfalfa	Grain	Potatoes	
T. 16 S., R. 2 E.							
Mrs. Sam Harney (Dec.)	a ¼14	SE SW	30				Not cut 1929
Henry Been	15	SE NE	3				
Simon Been	15	NE SE	35				
Minnie Marsh	15	SE SE	35				
Hugh Prior	15	SW SE	35				
Harry Thomas	15	SE SW	10				
Harry Thomas	22	NE NW	20				
Harry Thomas	22	SE NW	10				
Harry Prior	22	NW NE	35				
Mary Ann Thomas	22	NE NE	35				
Jessie Thomas	22	SE NE	35				
Allen Hank	22	SW NE	35				
Mrs. Charles Hank	22	NW SE	30				
Billy Smith	22	NE SE	38				
Frank Jess	23	NW NW	35				
Mrs. Maggie Dick	23	ND NW	25				
Mrs. Frank Jess	23	SE NW	35				
Frank Jess	23	SW NW	35				
Dick Dick	a 23	NW NE					Pasture

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WATER SURVEY REPORT - WESTERN SHOSHONE RESERVATION - NEVADA

Area Cultivated by Indians (1929) (continued)

Name	Sec.	Sub-division	Hay	Alfalfa	Grain	Roots	Remarks
T. 16 N., R. 2 E.							
Dutch Pete	23	NE NE	30				
John Teller	23	SE NE	35				
Big Dick	23	SW NE	30				
William Teller	23	NE SE	38				
William Ross Dick	23	NW SE	10				
Mrs. Jerry White	23	SW SE	35				
Frank Boney	23	SE SE	25				
Mrs. Wm. Ross Dick	23	NE SW	30				
Joe Sam	23	NW SE	35				
Rosa Mingo	23	SW SW	35				
Jerry White	23	SE SW	35				
Mrs. Jim Blaine	24	NW NW	30				
Josh Thomas	24	SE NW					Pasture
Josh Thomas	24	SW NE					Pasture
Josh Thomas	24	NW SE					Pasture
Josh Thomas	24	NE SW	20				
Mrs. William Teller	24	NW SW	30				
Anna Teller (Dec.)	24	SW SW	35				
Henry Thomas	24	SW SE	25				
Tolle Dean	24	SE SE	30				

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WATER SUPPLY REPORT - WESTERN SHOSHONE RESERVATION - NEVADA

Area Cultivated by Indians (1929) (continued)

Name	Sec.	Sub-division	Wild Hay	Alfalfa	Grain	Potatoes	Remarks
T. 15 N., R. 8 E.							
Annie Sugar	25	NW NW					Pasture
Dick Caskey	25	NE NW	25				
Mrs. Dick Caskey	25	SE NW	35				
Tom Marsh	25	SW NW	35				
Mamie Gibson	25	NW NE	10				
Mrs. John Wiley	25	NE NE	30				
Stanley Gibson	25	SW NE	15				
John Wiley	25	SE NE	15				
Dave Shaw	25	NW SE	35				
Jack Sims	25	Lot 3	20				
Joe Sims	25	NE SW	35				
Mrs. Joe Sims	25	Lot 2	28				
Addie Adams	25	NW SW	30				
Addie Adams	25	Lot 1	10				
Total			2117				580 Pasture

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REPORT OF WATER SUPPLY, WATER RIGHTS AND AGRICULTURAL CONDITIONS - WESTERN SHOSHONE RESERVATION, NEVADA - IDAHO

Non-Indian Areas.

A detailed survey was made of all lands on the streams contributing to the water supply for the Indians above the reservation, with a view to determing what water rights, if any, existed, and what crops were raised, how the water was used in irrigation and whether or not any method of measuring the water was used.

There are three streams on the reservation which may be used for irrigation purposes: The Owyhee River, flowing from the southeast corner diagonally across the reservation; Blue Creek flowing into the reservation from the north and emptying into the Owyhee River almost in the center of the reservation, and Mary's Creek rising on the reservation and flowing out the northwest corner of the reserve to the Snake River.

Upper Owyhee River and Tributaries.

According to information obtained from the owners of the two largest holdings in this basin, Emory Johnson and R. Y. Reed, their lands were settled upon about the year 1887. These holdings were situated above the proposed Wild Horse Reservoir site and when the sage brush is removed the land irrigated grass grows up forming a natural meadow.

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these two ranches contain approximately 1700 acres of irrigated meadow land, comprising about 50% of the irrigated land on the Owyhee River above the Reservation.

Several of the appropriators of water on the upper Owyhee River and tributaries are owners of lands lying within the boundary of the Humboldt National Forest and it is only of recent date, the earliest about the year 1916 that patents have been issued although some of the land was settled upon as early as 1887.

Practically the entire area of irrigated land is devoted to the raising of hay. A few settlers have attempted to raise gardens, potatoes, etc., but owing to the high altitude, (approximately 6000 feet) and the consequent short growing season, the acreage planted to gardens and other crops is negligible.

The average production of the combined area of the two ranches owned by Mr. Reed and Mr. Johnson is approximately ½ ton per acre. Mr. Johnson harvested in 1928 a total of 536 tons of hay on his area of 909 acres of meadow land or approximately 0.60 tons per acre. The production on the Reed ranch would probably fall short of ½ ton per acre due to a shorter water supply than for the Johnson ranch.

The production on lands in the vicinity of Mountain City, Nev., is however, much heavier than for that near the

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headwaters of the river due in part to a more dependable water supply but principally due to the quality of hay raised which is of the tame variety, such as a mixture of timothy, clover and redtop. On the Homer Andrae, the Jarvis and Blunk ranches located on Van Duzer Creek, the production claimed is two tons per acre.

Water Supply.

From all the information obtainable, the waters of the Owyhee River and tributaries above the reservation have not been adjudicated and very few filings have been made of record. The major portion of the lands irrigated were first settled upon about the year 1869 and settlers were probably not at that time required to make a filing for the appropriation of water for irrigation. The early settlers occupied portions of the unsurveyed public domain and appropriated the water necessary for the irrigation of their lands and have been required to file upon the water thus used. The recent investigation has proven that the limit has about been reached and no further development will be made on account of the limited water supply now available. On the date of the first visit to the lands in the upper Owyhee River Valley, in connection with the securing of data for this report, (August 19, 1920) the Owyhee River and all tributary streams were

practically dry and there was no water available for irrigation on that date. The only exception was Trail and Van Duzer Creeks which are fed from springs and the stream flow remains fairly steady during the summer months.

Irrigation methods.

Practically all of the irrigated area is watered by means of ditches diverted from the several streams. The ditches, in most instances, are very small, the capacity being obtained by the steep grade, in some cases running as high as 100 feet per mile. No even grade has been established for any of these ditches but they merely follow the natural slope of the narrow valleys through which they run and at the foot of the steep side hill slope. The irrigation of the meadow is commenced as early in the Spring as possible or as soon as the snow starts to melt. This is continued throughout the season or until the supply becomes exhausted. This date usually occurs about July 1 of each year, on the upper reaches of the river and about August 1, on the river in the vicinity of Mountain City, Nev., On Trail Creek and Van Duzer Creek, however some water is available for irrigation throughout the entire irrigation season.

Of the several water users interrogated, there were none that could answer or would attempt to estimate the quantity

of water used per acre in the irrigation of their lands or of the total amount used. They merely stated that they commenced as early in the spring as they could, using all the water they could carry through their ditches and continued throughout the season or as long as the water was available.

Principal Industry.

The principal industry in this locality is the raising of cattle, the raising of hay being merely in connection with, and secondary to the raising of cattle. The hay cut from these lands is used in the feeding of cattle during the winter months, each individual limiting the number of cattle in his herd according to the amount of hay harvested.

Humboldt National Forest.

The Humboldt National Forest has an area of approximately 1195 square miles or 764,800 acres. This Forest Reserve adjoins the Duck Valley Reservation on the South and East. It is situated in Elko County, Nevada, and includes a mountainous section on the headwaters of the Owyhee River, Mary's Creek, Jarbige Creek, South Ford of the Owyhee, North Fork of the Humboldt, Bruneau and Salmon Rivers. It

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affords one of the best grazing sections in the Western country and is especially adopted to the grazing of cattle. In the Autumn of each year, cattle are rounded up and driven directly off the range and sold for beef. Not only does the Reserve afford excellent pasturage for stock, but it has not been allowed to become over-stocked, thus becoming a permanent source of revenue to the U. S. Forest Service as well as to those to whom permits are issued.

All persons grazing stock on the Humboldt National Forest are required to submit to the Forest Supervisor a list of the number of acres irrigated by them and a permit to graze stock on the Forest Reserve is issued in accordance with their statement. This statement is required in order to show that they are in a position to winter the number of stock that is allotted to them by the Supervisor.

The following is a list of names of those grazing stock on the forest reserve and the number of irrigated acres as filed by them with the Forest Supervisor, also the acres irrigated by each, according to survey made in 1929.

WATER SUPPLY REPORT - WESTERN SHOSHONE CONSERVATION - NEVADA

List of Grazing Permits Issued.

Name	Number of acres irrigated by each owner as submitted to Humboldt Nat'l Forest Supervisor	Number of acres irrigated by same parties according to Survey in 1939.	Remarks.
C. T. Woodward Homer Andreo	65 400	439.70	Transferred to Homer Andreo
Clayton Belcher	80	63.00	
W. W. Elsberry John Crossby	50 100	186.67	Transferred to John Crossby
Emery Johnson	400	369.00	
Nevada Corporation	1000	9.33	Total area listed.
The Moffatt Company	150	55.33	
R. Y. Reed	1000	748.34	
Ball Gustafson	80	27.00	
Manuel Vega	200	146.34	
F. W. Davidson	40	43.35	
Harry Irland	50	6.60	
George A. Nelson	70	68.00	
L. L. Peck	100	100.00	
Jarvis & Blunk	90	80.00	
W. A. Schlaj	37	18.67	
T. B. Stinton	200	159.00	
Tom Stinton	100	93.00	
J. C. Taylor	100	57.67	

*1000 acres represents the total each owner by the Nevada Corporation

WATER SUPPLY REPORT - WESTERN SHOSHONE RESERVATION - NEVADA

List of Homestead Entries on the Humboldt National Forest Reserve.

No. of H. E.	Name of Applicant	Acres	No. Pat.	Date	Name Present Owner	Remarks.
72	James T. Martin	141.80	548433	10-2-16	T. B. Stinton	
63	Heirs of Anna McGinnes	121.09	888690	12-6-22	" " "	
54	John Angell	159.63	633855	7-9-18	" " "	
68	Helen J. McGinnes, widow	115.39	889691	12-6-22	" " "	
74	Sarah Ann Irland	133.00	544738	9-5-16	Homer Andrae	
236	Leon L. Peck					Incomplete
169	Hugo A. Schlag	153.90	882796	10-11-22		
204	George A. Nelson	90.16	897374	2-26-23		
93	" " "	58.91	584594	Not given		
73	Jose M. Teixeira	159.07			J. G. Taylor	Incomplete
81	Edward B. Butler	156.22	544739	9-5-16	John Crossby	
71	Joseph R. Paleni	159.87	548480	10-2-16	" "	
167	Amos J. Roach	98.19	896841	2-20-23		
76	Thomas Stinton	145.49	883382	10-16-22		
203	Harry R. Irland					Incomplete
39	Katherine J. Rutherford	85.13	540328	7-28-16	P. W. Davidson	
77	James M. Brown	159.99	595970	8-8-17	Homer Andrae	
75	Leon F. Loenans	62.46	714313	8-8-17	" "	

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WATER SUPPLY - REPORT WESTERN SHOSHONE RESERVATION - NEVADA

No. of A. E.	Name of Applicant	Acres	No. Pat	Date	Name Present Owner	Remarks.
202	William W. Elsberry	157.49	848122	2-9-22		
2986) 4070)	Emil Gustafson	120.00	848121	2-9-22	John Crossby	
63	James F. Riordan	159.44	Not given	5-17-17	Jarvis & Blunk	
2712	Clayton Belcher	160.71	" "	10-28-21		
	Eugene Cluff	160	801611	4-1-21	Clayton Belcher	
	S.F.P.R.R.	40.61		9-5-08	W.T. Jenkins Sheep Co.	Lot 2. Sec. 4, 44N 55E. Sec's. 32 & 33, T. 45 N. R. 55 E.
	Harry Parker		714512	10-22-19	" " "	

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WATER SUPPLY REPORT - WESTERN SHOSHONE RESERVATION - NEVADA.

Blue Creek and Tributaries.

North of the reservation, there is an irrigated area of 2548 acres which is irrigated from several streams as follows:

1225 acres irrigated from Blue Cr. and Reservoir and Little Blue Cr. and Reservoir.

642 acres irrigated from Payne Creek & Reservoir.

619 acres irrigated from Mary's Creek Reservoir.

62 acres irrigated from Indian Creek & Reservoir.

The greater portion of this irrigated land is owned by The Blue Creek Land & Livestock Company whose headquarters are located at Elko, Nev.

The earliest settlement of these lands dates back to 1890. In 1898 Joseph A. Sewell purchased all lands and water rights excepting those belonging to the Riddle Brothers of Riddle, Idaho, which were purchased about the year 1924 by the Sewell interests with the exception of the land and water rights of Frank W. Riddle who retains title to his land and 1/7 interest in the Mary's Creek reservoir, and direct diversion and reservoir rights on Payne Creek, a tributary of Blue Creek.

The Sewell interests, after the death of Joseph A. Sewell and his wife, have combined their interests and formed a corp-

oration, known as the Blue Creek Land & Livestock Company, having headquarters in Elko, Nevada. Charles Sewell is President and Hazel Sewell is Secretary of the Company.

This Company claims ownership of 17,000 acres of land which includes approximately 2100 acres of meadow land of which 500 acres are of mixed meadow, that is, tame grasses sown in the wild meadow, and 1600 acres of wild hay meadow. They also have a lease on 2,500 acres of grazing land from the State of Idaho and claim to own 14,000 head of sheep and 2,500 head of cattle. Practically their entire head of cattle is grazed on the Duck Valley Reservation.

In the early development of these lands it was soon realized that the water supply was inadequate and steps were taken to control the supply and conserve it by the building of reservoirs. A reservoir was constructed by the Riddle Brothers on Mary's Creek, beginning about the year 1904, on lands that were made an addition to the Duck Valley Reservation in 1910. Joseph A. Sewell begun the construction of a reservoir on Blue Creek in the year 1905. Right of way for a reservoir, by H. S. Portlock, on Little Blue Creek, was approved January 22, 1910, and whose interest was later purchased by the Sewell interests.

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WATER SUPPLY REPORT - WESTERN SHOSHONE RESERVATION - NEVADA.

In 1925, Frank W. Riddle begun the construction of a reservoir on Payne Creek in order to conserve the supply from that source and which enables him to irrigate later in the season, when needed the most. It is stated by the owners of these lands and no doubt is a fact that the lands would be of little value without stored water. The runoff occurs early in the spring, generally the latter part of March or early part of April and is of short duration, the runoff on Little Blue Creek especially which is said to last for only a few days.

Application for the construction of a reservoir was made by Henry Rubelt on Shoo Fly Creek, a tributary of Blue Creek with a subsequent proof of construction accepted February 14, 1921. Another dam for a reservoir was constructed by him in 1929, on West Fork of Shoo Fly Creek. Mr. Rubelt irrigates an area of mixed hay meadow of approximately 200 acres and is situated approximately 6 miles upstream on Shoo Fly Creek from its confluence with Blue Creek. It is stated that only during extreme high water in the early spring does the stream flow of Shoo Fly Creek reach the channel of Blue Creek and for that reason the irrigated area is not included in the total irrigated area of Blue Creek and tributaries, neither is the water of Shoo Fly Creek considered in the water supply.

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REPORT OF WATER SUPPLY, WATER RIGHTS AND AGRICULTURAL CONDITIONS - WESTERN SHOSHONE RESERVATION , NEVADA - IDAHO

Water Adjudication.

The survey party arrived too late in the season to obtain hydrometric information of much value in determining the total water supply, however, the fact was established that although 1929 was above an average water year and the streams held up later in the season than usual, the supply was practically exhausted on July 1st.

On July 9, 1929, the entire flow of the Owyhee River at the main canal headgate (which is the upper diversion for the reservation) amounted to 23 second-feet and on July 21, 6 second-feet. When the river falls off to the point where only a few second-feet can be diverted, the water is used in the irrigation of potatoes, gardens and small fruits and results in the loss of the second cutting of alfalfa meadows and in the partial and sometimes the total loss of grain crops. The year 1929, being above an average water year, the greater portion of the alfalfa meadows were cut over the second time, the yield of course being only about one-third of the production from the first cutting. Some grain fields were not reaped nor

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cut for hay, but were left for pasture. This loss in grain production and the second cutting of alfalfa, due solely to an insufficient water supply, is very discouraging to the Indians. With approximately 720 acres in alfalfa and grain and a total water supply in the river of only 6 second-feet, it is very evident of what the final outcome will be. There is no question but that a too great acreage of these crops are planted, for the water supply available.

With an assured water supply, however, this acreage could be greatly increased and also the lands now planted to alfalfa would probably double their present production. Those Indians residing on allotments where wild hay is grown, are loath to plow up any portion of their meadow land for the planting of grain or even for gardens on account of the uncertain water supply. On account of the distance from a market grain could not be grown successfully on this reservation from a commercial standpoint, even with an assured water supply, but sufficient grain could be grown to supply the local demand and with a flour mill already built, there would be no necessity of buying and freighting in flour from a distant market. Potatoes, vegetables and small fruits such as berries of all kinds

can be grown successfully on this reservation and a sufficient quantity of these could be grown to supply the local demand, which in the aggregate is no small item.

It is stated by both Indians and Whites, and is undoubtedly true that for the past five years the range on the reservation has been overgrazed and should be reduced approximately 2000 head. With this reduction made it would still leave the Indians with range enough for approximately 9000 head of cattle and horses which would insure each Indian on the reservation an independent living.

That these Indians would welcome an opportunity to become self-supporting can be proven by their resourcefulness in the face of very discouraging conditions. One Indian has a small concrete reservoir, the water supply for which is supplied from a well and pumped into the reservoir by means of a windmill, with which he irrigates a garden and several varieties of berries. Several instances were noted where gardens and strawberry beds were irrigated from water drawn from wells with a rope and bucket. These particular instances of course, are where the water supply had become entirely exhausted and was a last resort in order to keep alive the plant growth.

WATER SUPPLY REPORT - WESTERN SHOSHONE RESERVATION - NEVADA

It is shown by the annual reports with reference to this reservation, that the average production of hay from the wild meadow lands on the reservation is less than one-half ton per acre. In direct contrast to this is the production from the Blue Creek ranch above the reservation and the meadow lands in the vicinity of Riddle Post Office which are watered from Payne Creek and from Mary's Creek reservoir, which are claimed to have an average of one ton per acre for all meadow lands, which includes the strictly wild meadow and wild meadow mixed with tame grasses. The difference in the production is accounted for by the fact that the lands above the reservation have a sufficient water supply while on the reservation the water supply is entirely exhausted in some years as early as May 15. It is stated that efforts have been made heretofore to increase the production of the wild meadow lands on the reservation, by sowing tame grasses, such as timothy, redtop and clover on the wild meadow land, but invariably, when a shortage of water occurred, the tame grasses would die out as the tame grass cannot withstand a drought as well as the wild grass. After repeated trials, and when it appeared to be useless the experiments have been abandoned. There is no doubt but that the production could be greatly increased by this method, but it would

require sufficient water throughout the entire irrigation season, in order to produce the results desired.

On the lands owned by Homer Andrae and by Jarvis and Blunk, on Van Duzer Creek a tributary of the Owyhee River, situated about 8 miles above Mountain City, the production claimed from these ranches is an average of two tons per acre. Their meadows, however, have been sown to a mixture of tame grasses, viz., timothy, redtop and clover and the production claimed, is believed to be approximately correct.

It was stated by Mr. Grant Riddle, who formally owned an interest in lands near the Riddle Post Office, (which have been sold to the Blue Creek Land & Livestock Company) that some of the land in the near vicinity of the agency, which has a good drainage slope, could be made to produce just as much as the Van Duzer Creek lands, providing water conditions were the same.

With the tendency to increase the irrigated area, not only on Blue Creek, but also, on the upper River and tributaries, which has a far more direct bearing on the water supply for the Indians, as the River at the present time is practically their only source of supply, these

unsatisfactory and discouraging conditions are rapidly becoming worse, making it more and more difficult for the Indians to make a living. It is believed that a considerable portion of the new irrigated area on the Upper Owyhee River has been placed under irrigation subsequent to the farming operations of the Indians on the reservation. It is readily apparent, therefore, that steps should be taken to remedy this situation and that the adjudication of the waters of these streams should be no longer delayed.

There can be no doubt but that the ownership of the major portion of the lands on Blue Creek and also on the Upper River, and the appropriation of water therefor, is of long standing, and their rights should be recognized, but the rights of the Indians, also, should be established, for, if not, with the constant tendency to increase the irrigated area outside of the reservation, the time will soon come when all the water the Indians will have left will be the water rising within the reservation.

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REPORT OF WATER SUPPLY, WATER RIGHTS AND AGRICULTURAL CONDITIONS - WESTERN SHOSHONE RESERVATION, NEVADA - IDAHO.

Water Supply Blue Creek.

On July 26, 1929, an investigation was made of the stream flow entering the reservoirs in private ownership north of the reservation as follows:

Blue Creek above "Sewell" reservoir 3/5 second-foot (Est.)

Little Blue Creek above "Sewell" reservoir. None.

Indian Creek above "Sewell" reservoir. None.

Mary's Creek supply ditch, Sewell and Riddle Res. None.

Payne Creek above Riddle reservoir 2/5 second-foot. (Est.)

On July 13 and 15, 1929, when the outlet gates were closed at the above named reservoirs, the reservoirs on Mary's, Payne and Indian Creeks were practically dry, but the Blue Creek reservoir contained an approximate storage of 827 acre-feet and the Little Blue Creek reservoir contained an approximate storage of 354 acre-feet. It was stated by Charles Sewell, President of the Blue Creek Land & Livestock Company, that it was their custom, when there was any storage left in their reservoirs at the beginning of the haying season, to release this water for the irrigation of their meadow lands after the hay had been removed, to increase the

productivity of the meadow in the following year.

A ditch on the East side of Blue Creek was in the course of construction during the latter part of 1929, to increase the supply for a part of the lands now being irrigated and also to bring other lands under irrigation which have not heretofore been irrigated.

While no doubt this Company have complied with the State laws with reference to water filing and development of storage, and the large sum they have expended in the protection of their own water rights, there can be no question but that it has been detrimental to the Indians on the Duck Valley Reservation. The lands (approximately 200 acres) which were farmed by Indians about 17 years ago, have become worthless for the raising of hay which was formerly cut from these lands, and it has also decreased the pasturage value of all the lands adjacent to Blue Creek on the reservation.

Three Indian farms on Blue Creek have been abandoned for the past 17 years or since the construction of the reservoirs on Blue and Little Blue Creek. Upon the occasion of the visit to these lands, there were no fences, these having been removed several years ago, but there was evidence of an old well and of a cabin. Also along the course of

WATER SUPPLY REPORT - WESTERN SHOSHONE RESERVATION - NEVADA

Blue Creek there still remained portions of several earth and rock dams which had been placed across the creek channel, to cause the stream to overflow its banks and flood the adjoining hay land. This tract is now returning to its natural state (sage brush) and in a few years, if the present conditions continue, all evidence of a hay meadow will have been obliterated. An occasional spear of grass commonly growing in a wild hay meadow was visible and there is no doubt that with the water which formerly came down the course of Blue Creek that these lands would again become productive. There is no boubt that the abandonment of these farms was caused by the loss in productivity which can not be attributed to anything exceeding shortage of water, due to the holding back of the flood waters of Blue Creek and Little Blue Creek in the reservoirs on these streams.

Statement of Guy Manning (Indian) on former operations by Indians on Blue Creek.

"Bob Roberts, harvested approximately 25 tons of hay, about 19 or 20 years ago and abandoned the place about 2 years later on account of lack of water for irrigation, due to the construction of the "Sewell" reservoir.

Jimmie Thomas, harvested approximately 50 or 60

tons of hay, and abandoned his place 2 Or 3 years later than Roberts, hoping that water would again come down Blue Creek as formerly. Thomas had, at the time he lived on Blue Creek about 150 head of cattle and as a consequence of shortage of hay, a part of his herd died from starvation and he was forced to see the balance of his herd at a sacrifice, and was, at the time of abandonment of his place, practically bankrupt.

Billie Bell, who lived between Roberts and Thomas, left at practically the same time and for the same reason. In addition to the above 3 residents, who had their places fenced and harvested hay therefrom, hay was cut outside the fences on the open range, but that all ceased with the construction of the above named reservoir."

Although the Blue Creek Land & Livestock Company either own or lease the land along Blue Creek and to the reservation line, no hay was cut in 1929 to within a point approximately 2 miles north of the reservation line. The land adjacent to Blue Creek from this point to the reservation line is a grass meadow but evidently for the lack of water it did not produce grass sufficient to justify the expense of mowing, although in former years a portion of this area has been mown over.

WATER SUPPLY REPORT - WESTERN SHOSHONE RESERVATION - NEVADA

It is very evident that it is the intention of the Blue Creek Land & Livestock Company to increase the area of their meadow land, for they are now compelled to buy considerable hay for the wintering of the stock now owned by them, and the fact that they expended approximately $1800 in the enlargement and reconstruction of the Little Blue Creek reservoir.

It is therefore apparent that the adjudication of the waters of Blue Creek and tributaries should no longer be delayed. Providing the rights of those now using all of the waters of Blue Creek above the reservation are upheld by the Court, the only relief left for the Indians would be the development by the Government of a storage reservoir.

REPORT OF WATER SUPPLY, WATER RIGHTS AND AGRICULTURAL CONDITIONS - WESTERN SHOSHONE RESERVATION, NEVADA - IDAHO.

Reservoirs Owned and Operated by Private Parties.

Reservoir on Mary's Creek. (Riddle Reservoir).

This reservoir lies almost wholly within the Duck Valley Reservation, the dam being outside of the North reservation boundary line and near the Northeast corner of the reservation. The reservoir is situated in Sections 4 and 5, T. 15 S., R. 4 E., within the reservation, and a very small portion of the reservoir including the dam is in Section 32, T. 14 S. R. 4 E., outside of the reservation.

Mr. Frank W. Riddle of Riddle, Idaho, the present owner of an 1/7 interest in the "Riddle" reservoir, and one of the original builders, stated that the dam for the reservoir was begun in about the year 1904, but according to the records in the U. S. Land Office at Blackfoot, Idaho, (these records having been transferred from the Boise, Idaho, Land Office, the Boise Office being abolished about the year 1924), the first survey was run June 15 to 18, 1906. Survey papers for the reservoir and canals were filed in the U. S. Land Office at Boise, Idaho, on January 29th, 1907. Right of way for the reservoir and canals were approved by the Commissioners letter "F" February 7, 1908. The reservoir lies within that portion of the reservation that was establish-

ed on July 1, 1910. The reservoir rights, therefore, antedate the establishment of that addition to the reservation.

The principal source of water supply is from Mary's Creek and is carried through a ditch 5 feet wide on the bottom with a 2.5 foot bank on the lower side and will safely carry water to a depth of 1.8 feet, having an approximate capacity of 16 second-feet. The ditch is about 1½ miles long and for the greater part of the way is along the steep hill of a narrow box canyon and for a considerable distance was blasted through the solid lava rock. In several places a masonry retaining wall was build for the lower bank, 2 feet thick and 3 feet high. There are several sections of this wall totaling several hundred feet in length. Owing to the expensive nature of the work in constructing the supply ditch from Mary's Creek, the cost per acre-foot of water stored is extremely high. Mr. Frank W. Riddle states that the supply ditch from Mary's Creek cost originally about $11,000 and was later reconstructed at an additional cost of $5,000 or a total outlay of $16,000. Reconstruction consisted of replacing wooden flumes with heavy masonry retaining walls.

The ditch is in a very bad state of repair, due

principally to large boulders becoming loosened on the steep hill side along the course of the ditch and rolling down, obstructing the channel.

The reservoir has not been filled to capacity during the past four years, said to be due to negligence on the part of the man in charge in not getting the water started through the supply ditch soon enough in the spring of the year. Mr. Riddle stated that water should be started through the ditch supplying the reservoir about the middle of March and continuing until needed by the farmers living further down the stream, owing to a prior water right. Mr. Riddle also stated that the reservoir permit calls for a storage right of 4000 acre feet and a diversion right from Mary's Creek of 20.3 second feet and a diversion right of 3 second feet from Alder Creek. The runoff from Alder Creek drains directly into the reservoir.

The reservoir and canal rights were purchased by the Sewell interests about the year 1925, Mr. Frank P. Riddle, however, retaining a 1/7 interest for the irrigation of lands in sections 16-17-18 and 13, in T. 14 N. R. 5 E.

The water is released through a pipe under the dam and runs through a ditch 10 feet wide on the bottom and having a water depth of one foot, approximately North for a

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distance of 1½ miles where it falls over a lava cliff about 40 feet in height and then continues in a northwesterly direction for approximately ½ mile to a saddle in the divide separating the water sheds of the Bruneau and Owyhee Rivers. It is there turned loose and follows a natural water course to a short distance from the point of use, and is diverted through small ditches to the lands irrigated in Sections 13-17-18-19-20-21 and 29, T. 14 S. R. 3 E.

The following are notes by I. F. Shaffner, Licensed Surveyor, who made original survey of reservoir in 1906.

Dam, height	19 feet
Length on top	831 feet
Length on bottom	200 feet
Area of reservoir	126.79 Acres
Capacity of reservoir	1240 acre feet.

The following are notes on reservoir made at time of survey in 1929.

Dam, height	16 feet
Length on top	879 feet
Crown of reservoir	10 feet
Area in acres	130
Capacity of reservoir in acre feet	971

ATER SUPPLY REPORT - WESTERN SHOSHONE RESERVATION- NEVADA

stimated cost of "Riddle" reservoir.

mbankment	10833 Cu.yds @ 40¢	$4333.20
iprap	2325 Sq.yds @ $1.25	2906.25
utlet gate and pipe		1000.00
upply ditch (Information from F. W. Riddle)		11000.00
upply ditch (Reconstruction)		5000.00
utlet ditch (approximately 1½ miles		2500.00
ngineering and contingencies 20%		5347.90
Total		32087.35
ost per acre foot of storage		33.05

Blue Creek Reservoir.

This reservoir is situated in sections 2 and 11, T. 13, S., R. 2 E., and covers an area when filled to capacity of 163 acres. It is owned by the Blue Creek Land & Livestock Company, successors to Joseph a Sewell and wife, both of whom are now deceased. It is claimed that construction was begun about the year 1909, which is probably correct, as the records show that application for right of way for reservoir was filed by Joseph A. Sewell on Oct. 21, 1905. The dam has a crest length of 973 feet, is of the earth and loose rock type and has an emergency spillway at the South-West end of the dam. It also has a concrete structure spill-

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way about midway of the dam. The elevation of the bottom of the spillway is about,6 feet below the high water mark in the reservoir and is built with the idea of controlling the top six feet of water in the reservoir, allowing this amoung to be drawn off without opening the outlet gate. The water when released through this spillway, spills over a lava rock ledge at a point about 200 feet Southwest of the outlet pipe under the dam and in the original stream channel of Blue Creek. This structure is in a bad state of repair, the side walls being braced with timbers in order to keep the cracked and broken walls from falling in. Its location (midway of the dam) has endangered the dam, which is likely to be washed out should the reservoir be filled to capacity and the intention of the present owners is to abandon this spillway, fill in the opening and relocate the spillway around the Southwest end of the dam where there is a natural spillway over a lava rock ledge and where it should have been originally placed. A masonry outlet was built in the creek bed, having a dimension of 1.5 x 3.5 feet and about 125 feet long. The control for this outlet is a very crude affair, having a vertical lift,making it necessary to build a raft to reach it, which was probably the reason for placing the spillway gate at its present location as they could draw off the top 6 feet of water without the opening of the outlet gate.

The water stored in this reservoir is released at the dam, allowed to flow down the stream channel of Blue Creek and is diverted from the Creek approximately 5 miles below the reservoir in the NE¼ of the SW¼ of Section 30, T. 13 S. R. 5 E. for the irrigation of lands along the course of Blue Creek.

At this point there are two ditches, one on each side of the stream, the one on the East side having a bottom width of 3 feet and having an approximate length of one mile. The ditch on the West side has a bottom width of 8 feet and an approximate length of 1½ miles. These are the only ditch diversion on Blue Creek and the area irrigated from these two ditches amounts to approximately 160 acres. Owing to the flat slope through which Blue Creek flows, which is only about two feet per mile, the method of irrigation consists principally of the placing of a succession of temporary brush and manure dams across the stream channel causing the banks to overflow and spread out over the meadows.

It is the intention of the Blue Creek Land & Livestock Company to construct, during the fall of 1929, a large ditch on the east side of Blue Creek, going farther up the stream from the present diversion to irrigate new lands along the east side of the Creek.

Blue Creek Reservoir.

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WATER SUPPLY REPORT - WESTERN SACRAMENTO INVESTIGATION - NEVADA

Area	163 Acres
Capacity	1907 Acre feet
Length of dam on top	973 feet
Maximum fill	26 feet
Crown	10 feet

Estimated Cost.

Embankment	14520 Cu. yds @ 40¢	5,808.00
Riprap	2439 Sq. yds @ $1.25	3,048.25
Spillway or high water diversion		300.00
Outlet to reservoir		1,000.00
Engineering and contingencies 20%		2,059.35
Total		$12,355.10
Cost per acre-foot of storage		$6.48

Little Blue Creek Reservoir.

This reservoir is located in Sections 16 and 17, T. 13, S. R. 8 E. B. M., on Little Blue Creek. The dam is in Section 17 and was originally built in 1909, according to the information obtainable, which is probably correct. The records in the State Engineer's office at Boise, Idaho, show that an application was made for 25 second feet of the waters of Little Blue Creek, December 28, 1908, by Harris Northcut and P. Shattuck. One third interest was retained by Harris Northcut June 2, 1910 and a 2/3 interest was con-

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veyed to Sarah M. Portlock January 27, 1914. All interests were conveyed to J. A. Sewell July 18, 1923. Certificate was issued on September 26, 1914 for 9.6 second-feet and proof of beneficial use due January 2, 1918. The records from the State Engineer's office at Boise, Idaho, show that this permit has not been completed. Right of way for reservoir on Little Blue Creek, in Sections 16 and 17 was approved by the General Land Office, Washington, D. C., Jan. 22, 1910.

The dam as originally built by Portlock was a low dam having a spillway at the north end which has now been abandoned and filled in. The dam was approximately 300 feet in length and about 20 feet high. The reservoir was claimed to have had a capacity of 600 acre-feet, but probably was not that large.

The original dam was reconstructed in 1928 by the Blue Creek Land & Livestock Company, the present owners and now has a maximum fill of 34 feet and has a total length of 1182 feet. Approximately 27,000 cuyds, of fill was added to the embankment, which was contracted for at the price of §8¢ per cuyd., but the contractor could not meet his payments for labor and was forced to abandon the contract, the Company finishing the job. Considerable difficulty was experienced in getting material to place in the dam within a reasonable haul which caused the failure of the contractor. Some of this

material was hauled a distance of 1500 feet. The dam is constructed of earth and loose rock and the spillway was blasted through solid rock, near the Southwest end of the dam. The dam has a crown of 10 feet and was supposed to have a free board of five feet, but it now has only approximately three feet at the lowest point due to the settlement of the embankment since completion. The outlet is placed in the original creek bed and the outlet gate is controlled by a wheel and screw lifting device placed on the inclined face of the dam. The rod operating the gate is carried up the face of the dam in a pipe which is bedded in concrete supports spaced approximately 10 feet apart.

Rock riprap 1½ feet thick was let by contract at $2.50 per cubic yard. Approximately 859 cubic yards of rock was placed on the face of the dam at an approximate cost of $2146.75, the contractor finishing the job at the contract price.

The water released at the dam flows down the channel of Little Blue Creek for approximately 3 miles to its junction with Blue Creek about one mile above the Blue Creek Land and Livestock Company's diversion on Blue Creek, the water being used to augment the supply from the Blue Creek reservoir and to irrigate lands owned by the Company lying along the course of Blue Creek.

WATER SUPPLY REPORT - WESTERN SHOSHONE RESERVATION - NEVADA

Little Blue Creek reservoir after reconstruction:

Area	159 acres
Capacity	1908 acre-feet
Length of dam on top	1182 feet
Maximum fill	34 feet
Crown	10 feet

Estimated Cost:

Embankment 52711 cu. yds. @ 40¢		$21,084.40
Riprap 1½ thick, 858.7 cu. yds. @ $2.50		2,146.75
Spillway Excavation class 3		534.00
Outlet to reservoir		1,000.00
Eggineering and contingencies	20%	4,953.05
		$29,718.20
Cost per acre-foot of storage		$15.57

Payne Creek Reservoir.

This reservoir lies in Sections 27 and 34, T. 13, S. R. 3 E., on Payne Creek, a tributary of Blue Creek and is owned by Frank W. Riddle of Riddle, Idaho. The dam is located 3,370 feet East and 3,255 feet North of the SW corner of Sec. 32. The reservoir has an approximate area at high water mark of 34 acres and an approximate capacity

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of 220 acre-feet.

Payne Creek and Payne Creek Reservoir is the principal source of water supply for the lands owned and irrigated by Mr. Riddle in Sections 17, 18 and 19, T. 14, S. R. 3 E.

Mr. Riddle filed application for a reservoir permit to store 1200 acre-feet of the waters of payne Creek August 18, 1925, work to be completed September 3, 1930. The dam for this reservoir has been completed for the storage of approximately 220 acre-feet, with the exception of the placing of riprap on the face of the dam. This lack of riprap has resulted in considerable damage to the dam from erosion by wave action. An outlet is built in the original creek channel and the spillway is located at the North end of the dam but was evidently excavated to a too great depth as there is a sand bag dam approximately 3 feet in heigath placed across this spillway to raise the water in the reservoir above the spillway level.

The water released from the reservoir flows down the channel of Payne Creek approximately 1½ miles to where it is diverted from the Creek in the SE¼ of the NE¼ of Section 4, T. 14, S. R. 3 E., through a ditch 3 feet wide on the bottom, 4 miles long and having an approximate grade of 5 feet per mile and an approximate length of 4 miles.

WATER SUPPLY REPORT - WESTERN SHOSHONE RESERVATION - NEVADA

Payne Creek Reservoir:

Area	34 acres
Capacity	220 acre-feet
Length of dam on top	240 feet
Maximum fill	21 feet
Crown	12 feet.

Estimated cost:

Embankment 6000 cu. yds @ 40¢	$2400.00
Retaining wall 90 Sq. yds @ $3.00	270.00
Spillway	200.00
Outlet to reservoir	750.00
Cost to date	3620.00
Work necessary to complete:	
Riprap 1100 sq. yds. @ $1.25	1375.00
Engineering & contingencies 20%	999.00
Total	5994.00
Cost per acre-foot of storage	27.25

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WATER SUPPLY REPORT - WESTERN SHOSHONE RESERVATION - NEVADA

Indian Creek Reservoir.

The Blue Creek Land and Livestock Company are the owners of a small reservoir, located in Section 28, T. 14 S., R. 3 E., having an area of approximately 15 acres and having an approximate capacity of 60 acre feet, which is filled from a supply ditch diverted from Indian Creek in the NE¼ of the NE¼ of Section 33, T. 14 S., R. 3 E. The water is carried through this ditch for approximately ½ mile and is used both as a supply ditch and a direct diversion, irrigating approximately 62 acres of wild meadow hay land in Sections 32 and 33, T. 14 S., R. 3 E.

Indian Creek rises on the reservation near the NE corner of T. 15 S. R. 3 E., and leaving the reservation near the South ¼ corner of Section 36, T. 14 S., R. 3 E., flowing in a general Northwesterly direction to a point near the NE corner of Section 33, where it turns in a Southwesterly direction, re-entering the reservation near the corner of Sections 4 and 5 T. 15, S., R. 3 E., and continues in a Southwesterly direction on the reservation, emptying into Blue Creek. Indian Creek is entirely dry during the latter part of the summer and were it not for the small reservoir the water supply would not be sufficient to irrigate the small tract of 62 acres which it now serves.

WATER SUPPLY REPORT - WESTERN SHOSHONE RESERVATION - NEVADA

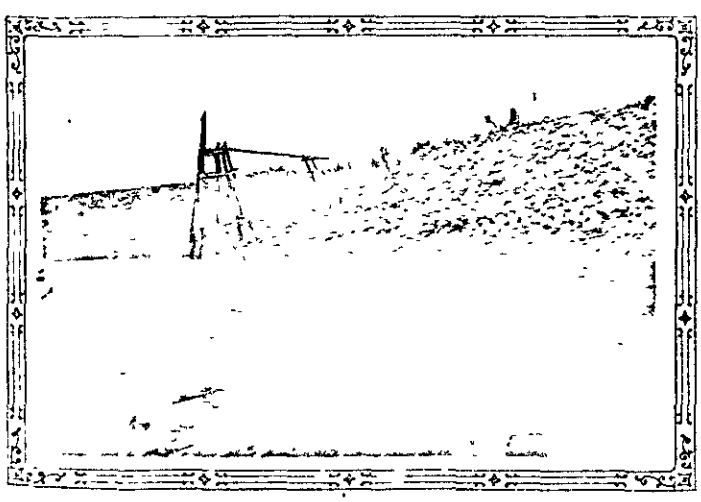
Notes on Indian Creek Reservoir and estimate of cost:

Area	15 acres
Capacity	60 acre-feet
Length of dam on top	310 feet
Maximum fill	10 feet
Crown	8 feet

Estimate of cost:

Embankment 2774 cu. yds. @ 40¢		1109.60
Outlet to reservoir		100.00
Supply ditch to reservoir		100.00
Engineering and contingencies	20%	261.90
Total		$1571.50
Cost per acre-foot of storage		26.19

List of photographs Taken.



Mary's Creek Reservoir Dam showing control for outlet ditch. Reservoir practically empty, July -12, 1929. Outlet gate closed July 12, 1929.

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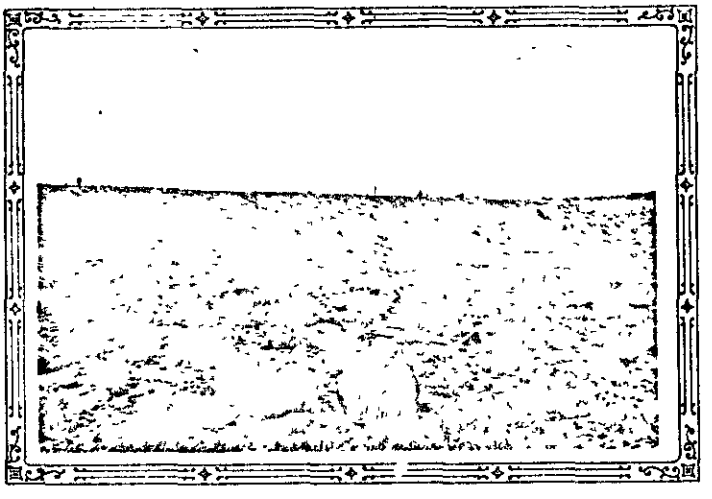
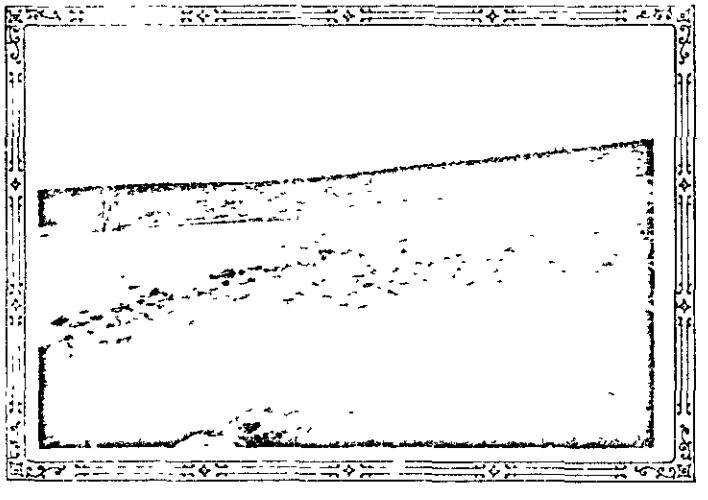
WATER SUPPLY - [illegible] SHOSHONE RESERVATION - NEVADA



Mary's Creek Reservoir Dam, Facing North or Upstream. July 12, 1939.



Mary's Creek Reservoir Dam, Showing central gate for outlet ditch, July 12, 1939.

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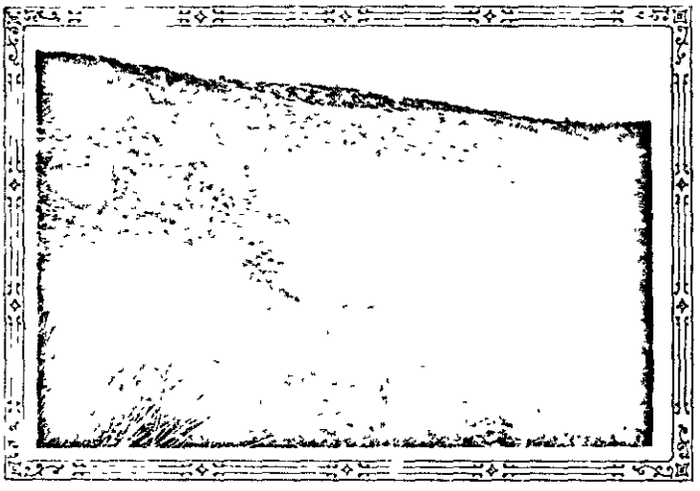
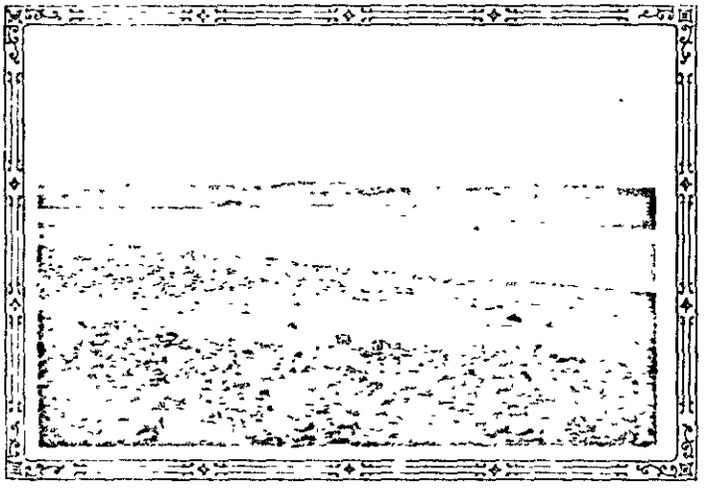
WATER SUPPLY - WESTERN SHOSHONE RESERVATION - NEVADA



General view of Supply ditch for Marys Creek Reservoir, July 12, 1929.



General view of reservoir on Little Blue Creek, July 13, 1929.

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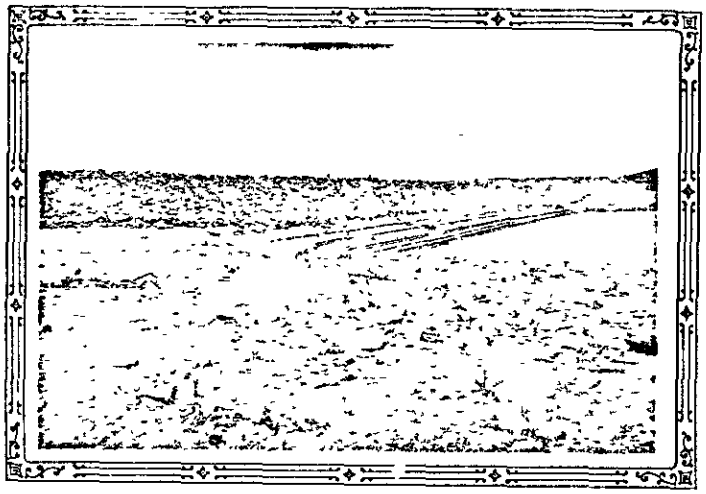
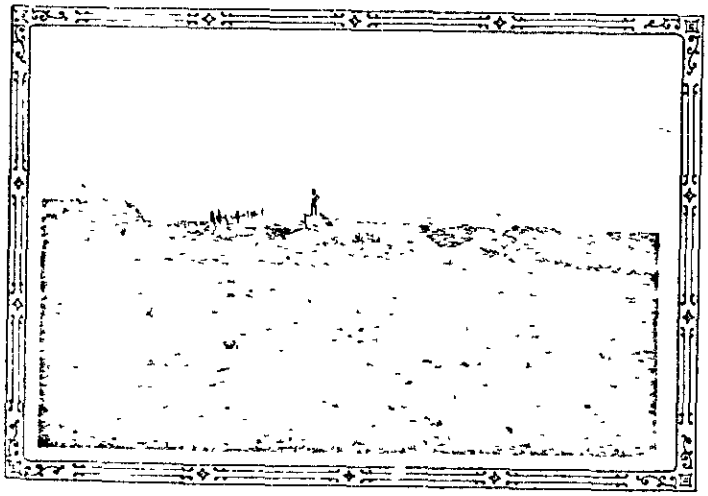
SUPPLY - WESTERN SHOSHONE RESERVATION - NEVADA



General view of dam on Little Blue Creek, facing west, July 13, 1929.



Spillway near Southeast end of dam on Little Blue Creek, July 13, 1929.

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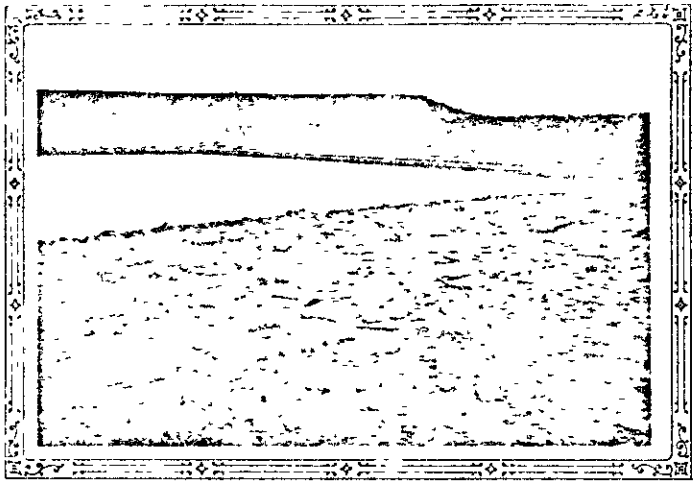
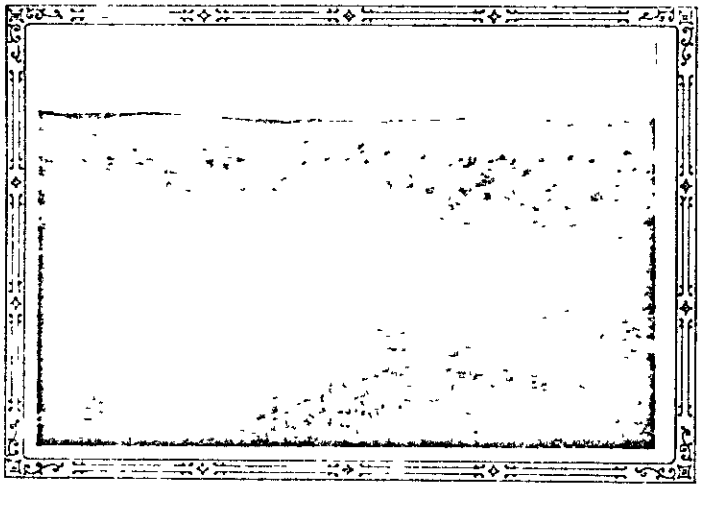
SUPPLY - EASTERN SHOSHONE RESERVATION - NEVADA



General view of dam on Little Blue Creek facing Northeast or upstream. July 13, 1929.



General view of dam on Little Blue Creek facing downstream. July 13, 1929.

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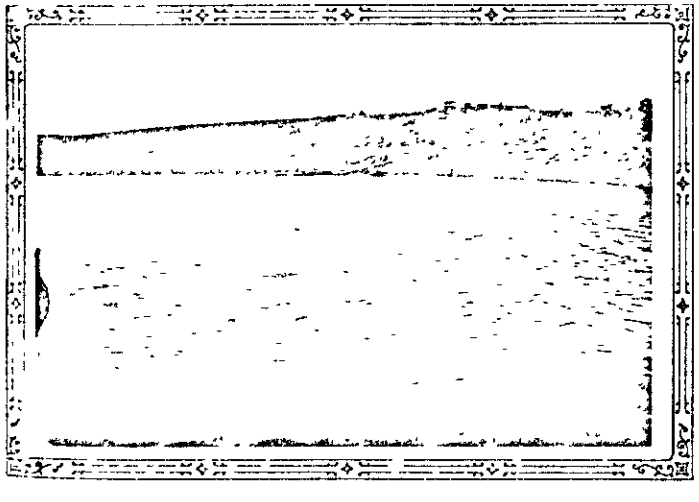
R SUPPLY - WESTERN SHOSHONE RESERVATION - NEVADA

General view of Blue Creek Reservoir

July 18, 1929.



Blue Creek dam facing down stream showing control for outlet to reservoir

July 18, 1929.

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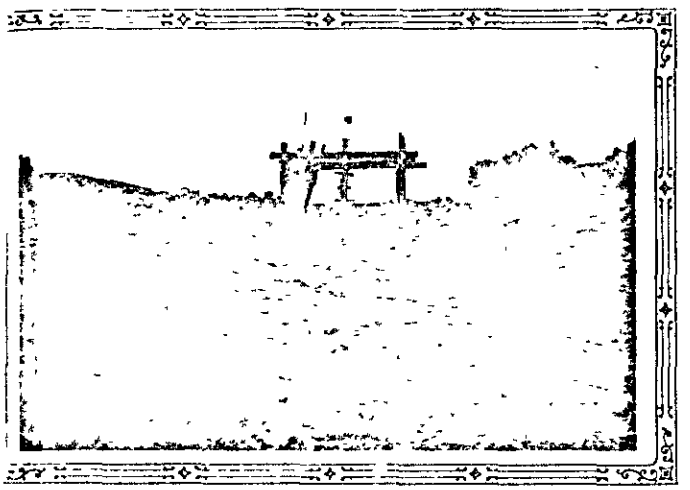
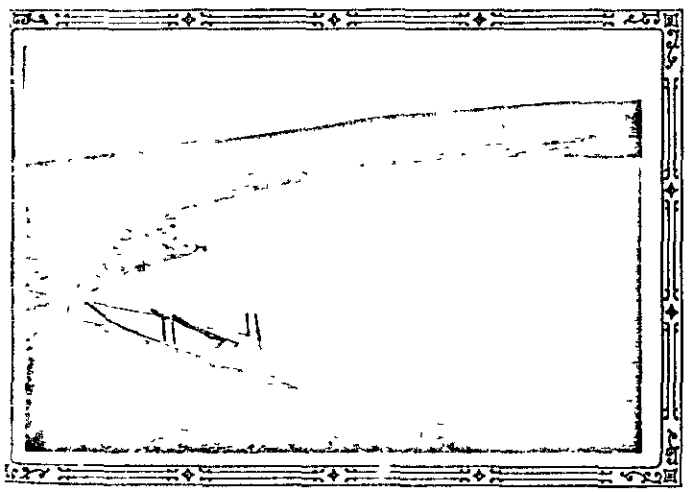
WATER SUPPLY- WESTERN SHOSHONE RESERVATION - NEVADA



Spillway structure or high water diversion. Blue Creek Reservoir. Structure in bad order and will probably be abandoned in 1930.
July 18, 1929.



General view Payne Canon Reservoir owned by Frank W. Riddle.
July 18, 1929.

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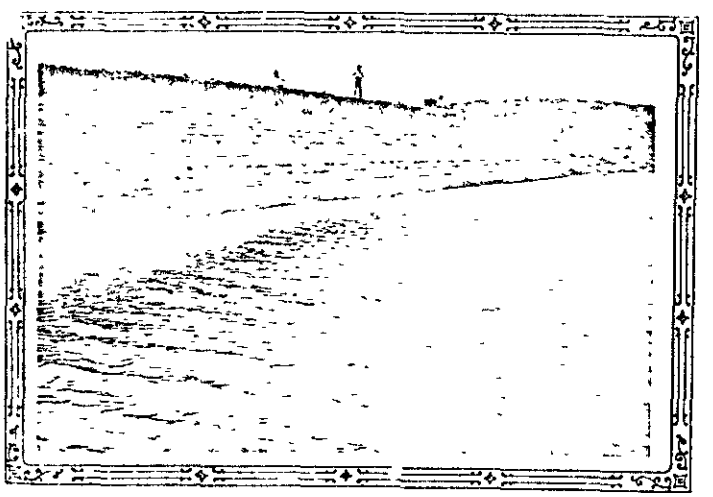
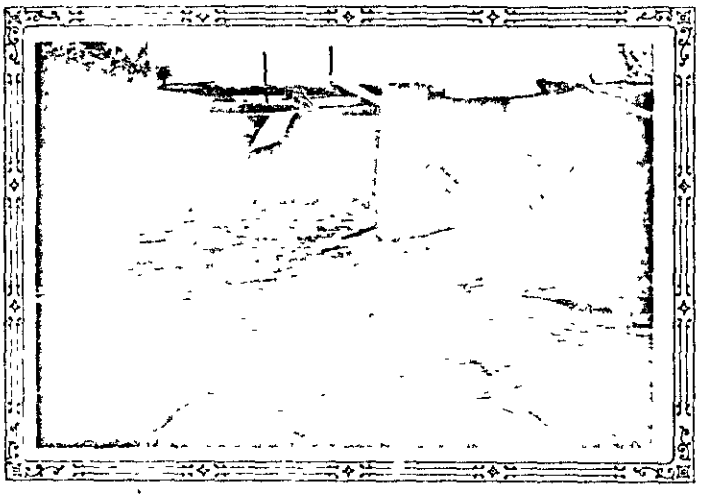
ER DUPREY - WESTERN SHOSHONE RESERVATION - NEVADA

Spillway, Payne Creek Reservoir, showing sand bag dike to increase the capacity of the reservoir July 18, 1929.

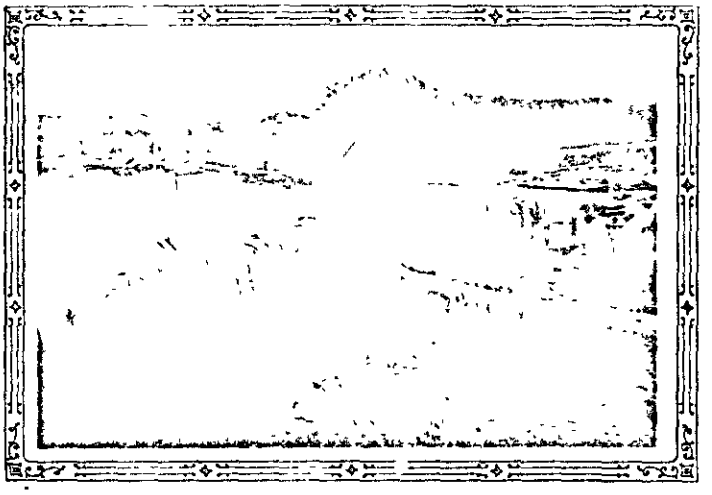


Payne Creek dam from upstream side showing effect of erosion on account of dam not being rip-rapped. July 18, 1929.

WATER SUPPLY - WESTERN SHOSHONE RESERVATION - NEVADA

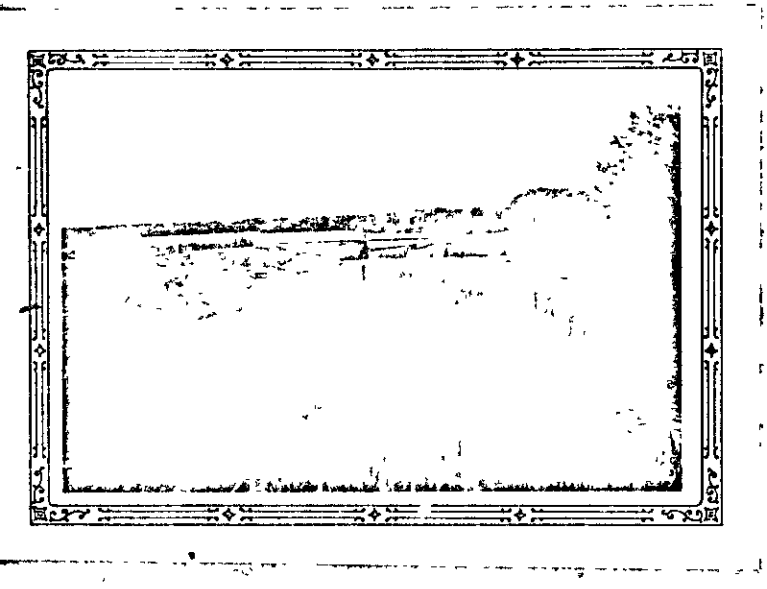


Blue Creek Land & Livestock Company's diversion on Blue Creek from down stream side.



Blue Creek Land & Livestock Company's diversion on Blue Creek Looking downstream. Ditch at right of willows. July 13,1929.

WATER SUPPLY - WESTERN SHOSHONE RESERVATION - NEVADA



Blue Creek Land & Livestock Company's diversion on Blue Creek looking North or upstream. Ditch diversion in center of picture.

July 13, 1929.

Names and Addresses of Parties Claiming a Water Right on the Upper Owyhee River & Tributaries.

Name	Source of Water Supply	Areas Irrigated 1929	Approx. date of settlement	Address
Harry Erland	Trail Creek	6.00	1919	Mountain City, Nev.
Dozer Andrea	Trail and Van Duzer Creeks.	420.70	1889	" " "
J. G. Taylor	Trail Creek	57.67	1889	Lovelock, Nev.
Jarvis & Blunk	Van Duzer Creek	80.00	1887	Bert Jarvis-Owyhee, Nev.
T. B. Stinton	Owyhee River, Van Duzer & Slaughter House	152.00	Not known	Ernest Blunk-Mountain City, Nev.
John Crosby	Van Duzer, Chicken & California Creek	1[illegible].67	1889	" " "
Hugo A. Schlag	California Creek	1[illegible].67	1912	" " "
Tom Stinton	" "	9[illegible].00	Early 80's	" " "
[illegible] David on	Owyhee River	4[illegible]	" "	" " "

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WATER SUPPLY - WESTERN SHOSHONE RESERVATION - NEVADA

Name	Source of Water Supply	Areas Irrigated 1920	Approx. date of settlement	Address
L. L. Peck	Owynee River & Allegheny Creek	108.00	1897	Mountain City, Nev.
George A. Nelson	Mill Creek	60.00	1900	" " "
R. Y. Reed	Deep, Clear and Lake Creeks	746.34	1887	North Fork Nev.
Emil Gustofsen	Deep Creek	27.00	1887	" " "
Manuel Vega	Jack & Crooked Creeks.	146.34	1897	" " "
Emory Johnson	Deep & Hot Creeks	909.00	1914	" " "
Kearns Corporation	Owynee River, Warm and Penrod Creeks	8.33	Not Known	Salt Lake City, Utah
Pedro Mendive	Penrod Creek	64.00	1897	North Fork Nev.
W. T. Jenkins Sheep Co.	Pearman & Warm Creeks.	91.27	Not Known	Battle Mountain, Nev.
Clayton Belcher	Warm & Chicken Creeks.	65.00	1919	North Fork, Nev.
Guy Buster	Hay Meadow Creek	16.00	Not Known	" " "
Sam Baker	" " "	39.33	1914	" " "
*Joseph Baker (Dec.)	Martin Creek	15.00	1914	" " "
The Moffatt Co.	Gold Creek	53.33	Not Known	San Francisco Cal.
Gold Creek Ranger Station	Martin Canyon Cr.	30.00		
		3457.56		
*Jesse F. Baker				North Fork, Nev.

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List of Irrigated Lands, North of Reservation (Blue Creek)

No. of Acres.	Name of Owner	
1324.67	Blue Creek Land & Livestock Company.	Blue Creek and Res., Little Blue Creek & Reservoir.
298.33	" " " " "	Payne Creek
505.00	" " " " "	Mary's Creek Reservoir.
82.00	" " " " "	Indian Creek & Reservoir.
2030.00		
315.67	Frank S. Riddle	Payne Creek & Reservoir.
213.67	" " "	
	(Leased from State of Idaho)	Mary's Creek Reservoir.
487.34		
2547.31	Total acreage irrigated, North of Reservation, in 1939.	

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WATER SUPPLY PROJECT - WESTERN SHOSHONE RESERVATION - NEVADA.

List of Defendant Corporations, proposed Adjudication Suit, Owyhee River and Tributaries.

Name of Corporation	Name of Officer	Title	Address
Kearns Corporation	T. L. Crotsenu	Director	Unknown
" "	L. A. Bruno	"	"
" "	C. H. Blasko	"	"
" "	W. T. Mathews	Resident Agent	Elko, Nev.
T. T. Jenkins Corporation	Edith Jenkins, widow.	Director	Battle Mountain, Nev.
" " " "	T. T. Jenkins	"	" " "
" " " "	Thomas Nelson	"	Stonehouse, Nev.
The H.Leffut Company	. H. Leffut	President	San Francisco, Cal.
" " " "	George P.Andrews	Secretary	" " "
" " " "	George Calvin	Agent	Elko, Nev.
The Blue Creek Land & Livestock Company	Charles A. Tuttell	President.	Elko, Nev.
	Hazel M. Tuttell	Secretary	" "

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WATER SUPPLY - WESTERN SHOSHONE RESERVATION - NEVADA

Abstract of Permits on Blue Creek & Tributaries.

Blue Creek:

Permit No. 5512.

Applicant Joseph A. Sewell

Amount claimed 20 second-feet.

Diversion N 8°23'W and 2133 feet distant from ¼ cor. to Secs. 30 & 31, T. 13, S., R. 3 E.

Application filed November 30, 1909.

Proof of completion of works made November 20, 1913 and certificate issued.

Proof of beneficial use made June 28, 1915.

License issued for 18.7 second-feet.

Permit No. 8905.

Applicant J. A. Sewell.

Amount claimed 20 second-feet.

Diversion N 8°23'W and 2133 feet distant from the South ¼ corner of Sec. 30, T. 13, S., R. 3 E.

Application filed November 15, 1912.

Proof of completion of works made December 11, 1915 and certificate issued.

Proof of beneficial use made July 31, 1922.

License issued for 19.5 second-feet.

WATER SUPPLY - WESTERN SHOSHONE RESERVATION - NEVADA.

Permit No. R-45

Applicant Jos. C. Strickland.

Amount claimed 100 acre-feet.

Diversion SW¼ SE¼, Sec. 32, T. 11 S., R. 2 E.

Application filed October 20, 1916.

Proof of completion of works made October 27, 1921 and certificate issued.

Proof of beneficial use due December 23, 1921 but not made.

Permit No. 12709.

Applicant Jos. C. Strickland.

Amount claimed 4 second-feet.

Diversion S½ SE¼, Sec. 32, T. 11, S., R. 2 E.

Application filed October 20, 1916.

Proof of completion of works made October 27, 1921 and certificate issued.

Proof of beneficial use made December 9, 1921.

License issued for 3.36 second-feet.

Conveyed to Domingo Monosterio January 19, 1920.

Permit No. 14892.

Applicant George Haase.

Amount claimed .8 second-foot.

WATER SUPPLY - WESTERN SHOSHONE RESERVATION - NEVADA.

ermit No. 14892 Cont'd:

iversion NE¼ NW¼, Sec. 7, T. 14 S., R. 3 E.

Application filed August 11, 1920.

Proof of completion of works made August 30, 1920 and certificate issued.

Proof of beneficial use made February 24, 1921.

License issued for .1 second-foot.

ittle Blue Creek, tributary to Blue Creek.

ermit No. 4249.

pplicants Harris Portlock and P. Shattuck.

Amount claimed 25 second-feet.

Diversion S½ SW¼ Sec. 20, T. 13 S., R. 3 E.

Application filed December 28, 1908.

Proof of completion of works made January 23, 1914 and certificate issued.

Proof of beneficial use due January 2, 1918, but not made.

Conveyed to Harris Portlock June 2, 1909.

2/3 Interest conveyed to Sarah M. Portlock January 27,1914.

All conveyed to J. A. Sewell of Owyhee, Nevada, July 18, 1923.

ermit No. 11025.

pplicant Geo. R. Bertschy.

Amount claimed 2 second-feet.

WATER SUPPLY - WESTERN SHOSHONE RESERVATION - NEVADA

Diversion SW¼ NE¼ Sec. 20, T. 13 S., R. 3 E.

Application filed February 12, 1915.

Proof of completion of works not made.

Proof of beneficial use due March 6, 1920, but not made.

Cancelled November 15, 1927.

Little Blue Creek:

Permit No. 11342.

Applicant Geo. M. Bertschy.

Amount claimed 2 second-feet.

DiversionNW¼ NE¼ Sec. 20, T. 13 S., R. 3 E.

Application filed June 12, 1915.

Proof of completion of works made June 21, 1917 and certificate issued.

Proof of beneficial use due July 17, 1919, but not made.

Permit No. 12639.

Applicant Grant Riddle.

Amount claimed .8 second-foot.

Diversion SW¼ NE¼ Sec. 1, T. 13, S., R. 3 E.

Work to be completed November, 11, 1918, but proof not made.

Proof of benefitial use due November 11, 1921 but not made.

Cancelled January 12, 1928.

WATER SUPPLY - WESTERN SHOSHONE RESERVATION - NEVADA

hoo Fly Creek, tributary to Blue Creek:

Permit No. 8571.

Applicant H. E. Rubelt.

Amount claimed 3.0 second-feet.

Diversion NE¼ NE¼ Sec. 1, T. 14, S., R. 1 E.

Application filed July 31, 1912.

Proof of completion of works made October 16, 1917 and certificate issued.

Proof of beneficial use made August 24, 1919.

License issued for 3.0 second-feet.

Permit No. 13965.

Applicant Henrietta Rubelt.

Amount claimed 3.0 second-feet.

Diversion NE¼ NE¼ Sec. 1, T. 14 S., R. 1 E.

Application filed April 7, 1919.

Proof of completion of works made October 2, 1919 and certificate issued.

Proof of beneficial use made November 15, 1919.

License issued for 2.8 second-feet.

Permit No. 12123.

Applicants Frank W. Riddle and W. E. Wines.

16.7 second-feet.
Amount claimed 4175 Acre-feet.

Diversion SE¼ SE¼ Sec. 10, T. 14, S., R. 2 E.

Application filed March 8, 1916.

Work to be completed May 18, 1921.

Proof of completion of works not made.

Proof of beneficial use due May 18, 1927, but not made.

Permit No. R-381.

Applicant Frank W. Riddle.

Amount claimed 4175 acre-feet.

Diversion NW¼ NW¼ Sec. 17, T. 14 S., R. 2 E.

Application filed October 20, 1925.

Work to be completed November 23, 1930.

Proof of beneficial use due November 23, 1936.

Permit No. 16391.

Applicant Frank W. Riddle.

Amount claimed 16.7 second-feet.

Diversion SE¼ SE¼ SE¼ SW¼, Sec. 10, T. 14 S., R. 2 E.

Application filed October 20, 1925.

Work to be completed November 23, 1930.

Proof of beneficial use due November 23, 1936.

In addition to the above, application for Right of Way

for a reservoir on Shoo Fly Creek was made by Henry E. Rubelt, which was approved by the Commissioner of the General Land Office June 22, 1908.

Commissioners Letter "F" of February 14, 1921, accepts proof of construction. This reservoir was constructed and has been in operation for several years. Its estimated capacity is 930 acre-feet and estimated cost $10,000.

Note: The above application does not appear of record in the office of Commissioner of Reclamation at Boise, Idaho.

West Shoo Fly Creek, tributary to Shoo Fly Creek:

Permit No. 13334.

Applicant Henry Rubelt.

Amount claimed 1.4 second-feet.

Diversion NW¼ SE¼ Sec. 26, T. 13, S., R. 1. E.

Application filed November 24, 1917.

Proof of completion of works made November 30, 1920 and certificate issued.

Proof of beneficial use made November 10, 1921.

License issued for 1.1 second feet.

Permit No. R-431.

Applicant Henry E. Rubelt.

WATER SUPPLY - WESTERN SHOSHONE RESERVATION - NEVADA.

Amount claimed 280 acre-feet.

Diversion SE¼ SE¼, Sec. 22, T. 13, S., R. 1 E.

Application filed July 3, 1928.

Work to be completed July 5, 1933.

Proof of beneficial use due July 5, 1933.

Note: Work was completed in 1929,

Indian Creek, tributary to Blue Creek:

Permit No. 16723.

Applicant, Blue Creek Land & Livestock Company.

Amount claimed 3 second-feet.

Diversion NE¼ NE¼ Sec. 33, T. 14 S., R. 3 E.

Application filed July 27, 1927.

Work to be completed July 30, 1930.

Proof of beneficial use due July 30, 1932.

Payne Creek, tributary to Blue Creek:

Permit No. 7421.

Applicant Cecelia and Grant Riddle.

Amount claimed 9.6 second-feet.

Diversion NE¼ SE¼ Sec. 4 T., 14 S., R. 3 E.

Application filed March 6, 1911.

Proof of completion of works made June 10, 1913.

WATER SUPPLY- WESTERN SHOSHONE RESERVATION - NEVADA.

Proof of beneficial use made June 19, 1915.

License issued for 3.8 second-feet.

it No. 8920.

icant - Crace Stout.

Amount claimed 2.0 second-feet.

Diversion NW¼ NE¼ Sec. 30, T. 14 S., R. 3 E.

Application filed November 6, 1912.

Proof of completion of works made November 9, 1914,

and certificate issued.

Proof of beneficial use due December 14, 1915, but was

not made.

nit No. R-376.

.icant Frank W. Riddle.

Amount claimed 1200 Acre-feet.

Diversion S½ NE¼ Sec. 34, T. 13 S., R. 3 E.

Application filed August 18, 1925.

Work to be completed September 3, 1930.

Proof of beneficial use due September 3, 1935.

nit No. 11264.

licant Solomon K. Imel.

WATER SUPPLY - WESTERN SHOSHONE RESERVATION - NEVADA.

Amount claimed 6.4 second-feet.

Diversion NE¼ SE¼, Sec. 4, T. 14 S., R. 3 E.

Application filed May 18, 1915.

Proof of completion of works made June 2, 1919 and certificate issued.

Proof of beneficial use made July 20, 1922.

License issued for 3.3 second-feet.

Permit No. 16341.

Applicant Frank W. Riddle.

Amount claimed 25.2 second-feet.

Diversion SE¼ NE¼ Sec. 4 T. 14 S., R. 3 E.

Application filed August 18, 1925.

Work to be completed September 3, 193[illegible].

Proof of beneficial use due September 3, 1935.

Conveyed to Alvin Tindall.

Mary's Creek, tributary to Burneau River;
Permit No. 117[illegible].

Applicant Duck Valley Irrigation Company.

Amount claimed 2[illegible].3 second-feet from Mary's Creek and 2 second-feet from Alder Springs.

Diversion SE¼ SE¼ Section 8, T. 15 S., R. 4 E.

Application filed March 16, 1905.

Proof of completion of works made September 12,

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WATER SUPPLY - WESTERN SHOSHONE RESERVATION - NEVADA.

1911 and Certificate issued.

Proof of beneficial use made March 11, 1913.

License issued for 28.8 second-feet.

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REPORT OF WATER SUPPLY, WATER RIGHTS AND AGRICULTURAL CONDITIONS- WESTERN SHOSHONE RESERVATION, NEVADA - IDAHO.

Investigation of Reservoir Sites.

During the course of the adjudication survey in 1929, an investigation was made of all reservoir sites as described in the report by H. T. Johnson, Assistant Engineer, under date of June, 1916, and an examination was also made of several sites that were not included in Mr. Johnson's report.

These examinations were rather hasty owing to the limited time allowable for this work and were strictly of a preliminary nature. The deciding factor, of course, in not spending a great deal of time in the investigation of reservoir sites was the fact that this survey was an adjudication survey only and was to be confined to work having a direct bearing on the subject.

The fact is, however, that the question of storage does have a direct bearing on the subject, for the reason that, regardless of the result found from the adjudication survey and the outcome of the adjudication suit following, it still remains the duty of the government to provide storage in order to supply sufficient water for irrigation. For this reason several days were spent in making a rather hasty examination of the several proposed reservoir sites in order to

discuss in a general way the favorable or unfavorable points of each proposed site.

In discussing the several proposed reservoir sites it it is fitting that the sites as described in the "Johnson" report of June, 1916, should be included in this report for comparison.

Mary Creek Storage Reservoir possibilities.

There are two possible reservoir sites on the upper reaches of the Mary's Creek watershed. One of these is at the Indian Meadows with the dam located at the lower end of the meadow. The other is the Three Creeks Reservoir site in the SE¼, Sec. 30, T. 15 S., R. 4 E.

The watershed above the Three Creeks site has an area of approximately 27 square miles. Below this site the stream enters a narrow canyon thru which it flows for about 5 miles to the edge of the reservation. About 3 miles below the reservoir site, most of the waters are diverted to the Riddle reservoir which stores water for a private irrigation company to irrigate land in Duck Valley approximately 4 miles north of the reservation.

The Indian Meadows site drains an area of approximately 10 square miles and would be used as a supplemental supply for the Three Forks reservoir. No detailed survey was made of the dam sites as the preliminary investigation showed

the proposed storage to be infeasible for three reasons:

(1). The scant and uncertain water supply.

(2). The inacessibility of the locality during the early Spring, when the dam and diversion works would necessarily require some attention.

(3). The excessive cost of diverting the water to the point of use.

An investigation was also made of the plan to augment the water supply of the Miller and Blue Creek sections by building a reservoir near the head waters of Mud or Dry Creek, the supply for which, to be obtained from a ditch diverted from Three Forks Creek forming part of Mary's Creek and carried to a saddle in the divide separating the Owyhee and Bruneau Rivers water sheds, situated in the Southwest quarter of Sec. 25, T. 15, S., R. 3 E., where it would be released and would then flow down the Mud Creek drainage basin for approximately 1½ miles and empty into the proposed reservoir at the head of Mud Creek. The plan was to thus create a storage reservoir to supply irrigation water, after the natural flow had become entirely exhausted, for lands in the vicinity of Miller Creek. However, the length of dam required to store any appreciable amount of water at this point, would make the cost prohibitive for the small amount

of storage obtained. It is believed, however, that the ditch diverting water from Three Forks Creek to the Owyhee River water shed should be built as the water obtained from this source would well repay the cost of construction. This would require a ditch approximately 1½ miles in length and practically all of the ditch would be in earth excavation. The stream was flowing approximately 2½ second feet when the survey was made and according to Willie Pete, the Indian guide accompanying the party, that is approximately the normal flow throughout the summer months after the Spring runoff. The ditch should be built large enough to carry the principal part of the Spring runoff and after being carried to the saddle in the divide separating the Owyhee and Bruneau River water sheds the diverted water would easily be diverted to either Mud Creek or Papoose Creek, according to which of these streams would have the lowest conveyance losses. The water thus obtained would be used to augment the supply obtained from Miller Creek which is insufficient to properly irrigate the lands under this stream, especially during the months of June and July.

It is believed, therefore, that Mary's Creek or Three Forks Creek as it is locally known, which is really the headwaters of Mary's Creek, should be considered as a part of the water supply for the Indians.

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WATER SUPPLY REPORT - WESTERN SHOSHONE RESERVATION - NEVADA

Upper Owyhee River.

In the discussion of this subject it will be noted that the figures given in the Johnson report of the runoff from the Owyhee River watershed were computed, by proportion, from the runoff records of a station located approximately 200 miles downstream from the Owyhee, Nevada, station and that the runoff figures as given in the Johnson report are far in excess of the actual runoff for these stations in the years following 1916. A copy of the run-off records as given in the Water Supply papers of the U. S. Geological Survey is found with this section of the report.

At the time of the preparation of the Johnson report the gaging stations had just been established and information of much value was unobtainable. It is possible, also, that at the time the runoff was greater than it now is, or has been, from 1916 to 1920.

In the fall of 1915, a gaging station was established on the Owyhee River, which is known as the Cold Creek Station and is situated a short distance upstream from the Wild Horse Damsite. This station is still in its original location but gage readings were discontinued about 1923.

The gaging station known as the Owyhee, Nevada station was situated on the Owyhee River approximately midway between

Mountain City and Owyhee, Nov., and on the reservation. This station was established about January 1914, and continued until some time during the summer of 1926, when it was washed out by a cloud burst and has never been replaced.

A vertical staff gage was set in the Owyhee River near Mountain City in 1926 and readings have been made daily and records kept of this station since that time. This station is a temporary one as no gage house was built, neither was any provision made for the meter measurement of the stream which up to the present time must be done by wading.

A fairly complete record of the runoff at these stations have been obtained during the period 1915-1925, and, it is believed, that the average runoff at these stations during the above mentioned period will approximately represent the average runoff to be expected in future years.

Wild Horse Reservoir Site.

The water supply for the Wild Horse Reservoir as described in the Johnson report is placed at an average annual runoff of 45000 acre feet, with a minimum runoff of 28,600 acre-feet. As stated previously, this figure was an estimate based upon a proportional area in the water shed with a station located approximately 200 miles down stream from the

WATER SUPPLY REPORT - WESTERN SHOSHONE RESERVATION - NEVADA

Duck Valley Reservation.

By referring to the table of the runoff of the Owyhee River at the Gold Creek station, (near the Wild Horse Damsite) for the ten year period 1916-1925, it is noted that the average runoff of the river at this station is 39,900 acre-feet, but the minimum runoff fell to 15,300 acre-feet, and there were four years during the ten year period that the runoff fell below 30,000 acre-feet.

Gage readings at this station were discontinued in 1926, and no records are available for this station since that time, but Mr. Emory Johnson, who formerly read the gage for the U.S.G.S., is authority for the statement that the snowfall above this station during the past four years has been far below the average of the preceeding ten years average. He stated that the road between his ranch, (which is within the proposed reservoir) and Elko, has been open to auto travel practically all winter during the past four winters.

It is stated in the Johnson report that the meadow land within the reservoir site amounts to 174 acres. This amount has been increased in the 14 years since 1915 until in 1929 it amounted to approximately 900 acres, practically all of which is on the ranch now owned by Emory Johnson. In addition to the irrigated area of 900 acres of meadow land within the proposed site, the Kearns Corporation are the owners

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of 1000 acres, situated at the lower end of the proposed reservoir and immediately above the dam site, several hundred acres of which are susceptible of irrigation, upon which ditches have been constructed, but are not being irrigated, evidently for the reason of a deficient water supply, as only about 10 acres of meadow are cut over each year, and from which approximately 2 tons of hay is harvested, sufficient only, for the feeding of saddle horses during the fall roundup. The lands are used as fall pasturage and the holding of cattle while being rounded up and driven off the nearby Forest Reserve. As these lands are situated at the extreme lower end of the upper river basin and the water supply is practically exhausted in July and for the balance of the season, there is not a sufficient water supply for these lands. The ditches that have been constructed upon these lands appear to have been abandoned with the exception of a ditch diverted from Penrod Creek from which the 10 acres of meadow are irrigated. In the purchase of right of way for the reservoir, however, this company would probably insist that they should be paid a fair price for their irrigable lands regardless of the water supply.

The estimated cost in 1915 for right of way for the reservoir was $27,000.00. However, it is believed that the

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cost per right of way for this reservoir in 1929 would amount to approximately $70,000.00. Mr. Emory Johnson, who is irrigating the 900 acres of wild hay meadow at the site practically all of which would be submerged, has stated that he has a standing offer of $46,000.00 for his ranch, and he no doubt would expect the full value of his ranch in the event that a dam was built at the Wild Horse damsite, as the land on his ranch that would not be submerged would be of little value.

It is believed that a reservoir located at the Wild Horse Site is infeasible for the following reasons:

(1) It would be necessary in delivering the stored water to the point of use, to pass several diversions, diverting water from the river between the reservoir site and the irrigated lands on the reservation, which is always an objectionable feature in the delivery of water.

(2) The excessive cost of right of way which it is estimated to be $70,000.00, which if expended in the construction of a dam would pay a considerable part of the total cost.

(3) As a result of an inadequate water supply, it is extremely doubtful if sufficient storage for the reservation could be obtained at this location even by building a reservoir large enough to afford a carry over capacity, expecially when one dry year succeeds another as in the case of 1918-1919-

and 1920, when the total runoff of the storage periods- Oct. - May inclusive, for the three years amounted to only 71,700 acre-feet and evaporation and seepage losses would further reduce this amount. Again in the years 1923 and 1924, when there were two dry years in succession, the total runoff of the storage period for the two years amounted to a total of 32,000 acre-feet or barely enough for one season.

Rattlesnake Reservoir Site.

This site is situated about 12 miles southeast of the reservation, the dam would be located a short distance below the confluence of Allegheny Creek and the Owyhee River. At this point, a dam 70 feet high and 700 feet long would provide a storage capacity of 6000 acre-feet. Besides on the small capacity of a reservoir at this site, there would be approximately 110 acres of hay meadow land submerged, requiring the purchase of a right of way, which added to the cost of construction of a dam, would probably make the cost per acre-foot of storage, prohibitive. The principal reason, however, against a reservoir being built at this point is the small capacity, and for that reason, is believed to be infeasible.

WATER SUPPLY REPORT - NORTHERN SHOSHONE RESERVATION - NEVADA

"Sheony Point" Reservoir Site.

This is a damsite for a reservoir on the Owyhee River approximately ½ mile Southeast of the Mountain City Ranger Station, at what is locally known as "Sheony Point." This point is approximately 2 miles downstream from the Rattlesnake damsite and was evidently not considered by Mr. Johnson, at least, it was not described by him. A preliminary examination of this site developed the fact that, the same objections that apply to the Rattlesnake Site, would apply to the "Sheony Point" Site. There would be approximately 150 acres of hay meadow land submerged, making the cost for right of way too expensive, coupled with the small capacity of the reservoir, which was estimated to be approximately the same as the Rattlesnake site, or 6000 acre-feet. To obtain this amount of storage would require a dam 70 feet in height, 300 feet in length at 10 feet above bottom of river, 500 feet in length at 40 feet above the bottom of the river and 1140 feet long at 70 feet high.

Reed Creek Reservoir Site.

This site has been described in the Johnson report and was unfavorably reported on by him for the reason of an excessive cost of the dam. This appeared to be the only objection he had to offer and can be the only possible objection to this site at the present time.

WATER SUPPLY REPORT - WESTERN SHOSHONE RESERVATION - NEVADA

It is shown by the U.S.G.S. records that there is a safe annual supply for the storage contemplated (25,000 acre-feet) as all years of record 1915-1929, have exceeded this amount at the Owyhee, Nev., station. The station is located above several side streams emptying into the river, which would considerably increase the amount as shown at the gaging station. Another reason which is considered favorable to its selection as a reservoir site for the storage of water for the reservation is its location, which is approximately 3 miles upstream from the Duck Valley main canal diversion, the reservoir lying entirely within the Indian Reservation.

A natural spillway is located in a saddle approximately 650 feet from the Southwest end of the dam and it would cost only a small amount to construct a spillway at this point, as the rock out-crop indicates that it is but a short distance below the surface to solid rock and the waters flowing through the spillway would be carried down a natural draw emptying into the river several hundred feet below the dam. The rock surface is exposed at both ends of the damsite and the rock at the Southwest end of the damsite appears to be of a basalt formation and is exposed the entire distance down the side hill slope from the top of the ridge to the waters edge. This outcrop is also seen in the bed of the river at about

elevation 5446.5 . At the Northeast end of the damsite, a rock ledge is exposed all the way from the floor of the valley to a height 50 feet or more above the top of the proposed dam. At the base of this slope a rock cliff rises almost vertical for 50 feet or more above the floor of the valley. A testhole was dug at a point approximately 50 feet from the base of this cliff and with the following result:

Elevation floor of valley	5456.0
Earth and silt to	5446.5
Sand and fine gravel to	5444.8
Course gravel and large boulders	5435.4
Soft substance having a resemb-	5432.4
lance to the rock cliff nearby. (disintegrated rhyolite).	

A bar was driven through this soft material from elevation 5435.4 to 5432.4 or a distance of 3 feet, the material appearing to become harder with depth.

The dimensions of the test hole was 3 x 5 feet and it was necessary to place cubbing as the digging proceeded, to prevent the sides from caving in. Considerable difficulty was experienced in getting rid of the seepage water which flowed in from all sides as the digging proceeded and increased in volume with the increase in depth. It was found necessary to install a pump in order to keep the water out as

the digging proceeded. It was also noted that the gravel boulders increased in size in proportion to the depth. At the depth of 20.6 feet below the floor of the valley (or elevation 5435.4 feet) a soft and apparently impervious material was encountered.

This material is apparently a deposity of ground rhyolite, which outcrops a little further downstream or it might have been a deposity resulting from wind erosion. All of the particles in the deposit are small angular pieces of rhyolite, not deposited by water which would have made the particles rounded instead of angular.

From all appearances, there is a fault running up the valley. The rock or southern part of the valley is a basalt and the rock on the north side is a granite, a rock of entirely different texture. It might have been, but hardly probable, that the test pit was put down at just the right point to strike this fault, in which case the material in the bottom of the pit might be the crushed and ground rock made by the movement of the rock masses at the fault.

Time and money would not permit the digging of another test pit, however from the investigations which it was possible to make under the prevailing conditions the writer is led to believe that a good foundation can be obtained without an excessive expense. A complete investigation will, of course,

have to be made of the foundation conditions by drilling before any final plans can be worked up for a dam at this site.

Preliminary costs were worked up on a section for a dam as shown on the drawing found with this report. The itemized cost is as follows, for a dam 100 feet high and impounding 25,000 acre-feet of water at spillway elevation.

Cost of Dam. Reed Creek - Western Shoshone.

Embankment 417,000 c.y. @ 40¢ -	$166,800.00
Puddle Core 54,150 c.y. @ 10¢-	5,415.00
Excavation Corewall common 2450 @ $1.00 -	2,450.00
S. R. 70 c.y. @ $10.00	700.00
Tunnel - Bypass and Outlet.	
Tunnel and Shaft 1100 c.y. @ $10.00	11,000.00
Concrete 225 c.y @ 35.00	7,875.00
Gates and Hoists	5,000.00
Corewall Concrete 546 C.y. @ 35.00	19,110.00
Rip Rap Dumped.	
10,070 c.y. @ $2.25	22,657.50

WATER SUPPLY REPORT - WESTERN SHOSHONE RESERVATION - NEVADA.

Cutoff wall.

13,000 c.y. @40¢	5,200/00
	246,207.50
20% Engr. Super. & Contingencies.	49,241.50
	295,449.00

25,000 acre-feet storage $11.82 per acre-foot.

Upper Skull Creek Reservoir site.

This reservoir site is located in the S. E. quarter of Section 6, T. 46, N. R. 53 E., on the Owyhee River and is approximately midway between the Skull Creek and Reed Creek sites, being located approximately one mile downstream from the Reed Creek site and one mile upstream from the Skull Creek site.

A cliff or ledge of rhyolite rock is exposed at both ends of the damsite which extends to the floor of the valley, but across the valley the bedrock probably lies at a considerable depth below the surface. No test pits were dug to determine this depth as the method used in obtaining this information at the Reed Creek damsite proved to be both slow and expensive on account of the large volume of water encountered at the water surface level of the river, which increased as the test pit was deepened. It is believed however, that a good founda-

tion will be found at approximately 30 feet below the average surface of the ground in the floor of the valley.

A survey was made for a dam, the crest of which would be at an elevation of 5525 feet or 80 feet in height and having a bottom length of 420 feet and a length at the crest of 860 feet. Such a dam would impound a total of 16,300 acre-feet of water at water surface elevation of 5515 or 10 feet below the crest of the dam.

In order to construct a reservoir at this point with a capacity of 25,000 acre-feet, it would be necessary to build a much higher dam than the one contemplated and surveyed, the cost of which, it is believed, would be prohibitive.

The following is storage capacity table for "Upper Skull Creek Reservoir Site" for a dam 80 feet in height and 860 feet in length.

Elevation of Contour.	Area in Acres.	Capacity in Acre-feet.
5445	0.0	
5450	21	53
5455	63	210
5460	91	385
5465	112	508
5470	152	660
5475	183	838

WATER SUPPLY REPORT - WESTERN SHOSHONE RESERVATION - NEVADA.

Elevation of Contour.	Area in Acres.	Capacity in Acre-feet.
5480	212	988
5485	245	1143
5490	279	1310
5495	327	1515
5500	375	1755
5505	438	2033
5510	496	2335
5515	535	2583
	Total	16,316

Skull Creek Site.

Excerpt from report by H. T. Johnson, June 1, 1916.

"The first storage proposition investigated for the project was the Skull Creek site. The damsite is located just below the mouth of Skull Creek about a mile and a half above where the Owyhee enters the valley, and about three quarters of a mile above the Duck Valley ditch diversion. According to reports on this, a dam 70 feet high, and 850 feet long with a ten foot free-board will store 8,500 acre-feet of water. As the south side of the damsite has a very flat slope the volume of the dam would be greatly increased by a small increase in height. Except on the north side there is no rock in evidence. From the surrounding topography the

pervious material would seem to extend to a considerable depth in the bottom of the valley. There is a large drainage area at this point, (approximately 450 square miles), but the cost of storing the amount of water required would be prohibitive."

No further investigation of this site was made in 1929 for the reason that a dam 850 feet in length and 70 feet in height would store only 8500 acre-feet of water, which is less than 1/3 of the amount required for the project.

Shoo Fly Creek Reservoir Site.

A preliminary survey was made to determine the capacity of a reservoir site on Shoo Fly Creek, a tributary of Blue Creek, approximately 6 miles north of the reservation. This site is located in four townships as follows: Section 31, T. 13, S., R. 2 E.; Section 36, T. 13 S., R. 1 E.; Sections 1 and 12 T. 14 S., R. 1 E.; Sections 6 and 7, T. 14 S., R. 2 E.

This reservoir would cover, at the 25 foot contour, an area of 573 acres and would have a capacity of 6800 acre-feet. This would require a dam 35 feet high, 170 feet long on the bottom, 550 feet long on top, with a ten foot crown and five foot free board, having a slope on the upstream side of 2½ to 1 and a slope of 2 to 1 on the down stream side.

55 7009

WATER SUPPLY REPORT - WESTERN SHOSHONE RESERVATION - NEVADA.

The reservoir would submerge approximately 200 acres of wild hay meadow belonging to Henry E. Rubelt and Henrietta Rubelt (man and wife), the balance of the flooded area having a vegetation which is principally sage brush and some wild grasses and fit only for pasture.

In addition to this reservoir there are two reservoirs built by the Rubelt's, one on Shoo Fly Creek, upstream from this site, which is now in operation and has a capacity of 930 acre-feet and another on West Shoo Fly Creek, the construction of which was finished in 1929, and has a capacity of 600 acre-feet. In the event that a reservoir was constructed which would submerge the Rubelt ranch, it would no doubt be necessary to purchase the storage rights of the Rubelts' as the storage reservoirs now owned by them would be of no value to them without their meadow lands.

It was stated by Mr. Rubelt that the water shed of the two creeks above named contained an area of 70 square miles and the runoff was sufficient to fill the three reservoirs to capacity each year. It is not known if this is true or not as no records are available of the runoff at this point which occurs in the early spring and lasts but a few days. When the flow of Shoo Fly Creek is at flood height, a considerable quantity of water finds its way to the Blue Creek channel.

WATER SUPPLY REPORT - WESTERN SHOSHONE RESERVATION - NEVADA.

The following is an estimate of cost for storage on Shoo Fly Creek:

Embankment 31679 cu.yds. @ 40¢	$12671.60
Riprap 3354 Sq.yds. @ $1.25	4192.50
Outlet tunnel	3000.00
Engineering and incidentals, 25%	4966.00
Right of way, 200 acres of meadow land @ $50.00	10000.00
Estimated cost of Rubelt reservoir on Shoo Fly Creek	7231.55
" " " " reservoir on West Shoo Fly Creek	2500.00
Total	$4,4,561.65

Estimated capacity proposed reservoir, Shoo Fly Creek 6818 Ac.-ft.

Capacity of Rubelt Reservoir on Shoo Fly Creek 930 " "

Capacity of Rubelt Reservoir on West Shoo Fly Creek 600 " "

8348

Cost per acre-foot of storage $5.33

While it is not known whether there is sufficient runoff to fill the three reservoirs on Shoo Fly Creek or not, it is believed to be worthy of investigation and if it is found

that the runoff justifies the construction of a reservoir on this stream, the lands in the Blue Creek and Lower Owyhee valleys could be irrigated to the extent of at least 2500 acres, and would solve the problem of a water supply for these lands at a comparatively low cost of $5.33 per acre-foot of storage.

By referring to the abstract of permits on Shoo Fly Creek it is shown that Frank W. Riddle has filed an application for reservoir permit on this stream and that completion of work is due November 23, 1936. This permit is evidently in good standing but so far as known no work has been done and it is probable that a relinquishment of the Riddle rights can be obtained at a small cost.

Name of Reservoir	Present Owner	Area in Acres	Capacity in Acre-feet	Estimated Cost	Estimated Cost per acre-foot.
Mary's Creek	Blue Creek Land & Livestock Co.,6/7 Int; Frank W.Riddle 1/7 Interest.	130	971	$32.087.35	$33.05
" "					
Blue Creek	Blue Creek Land & Livestock Company	163	1907	12,236.10	6.42
Little Blue Creek	" " "	159	1908	29,718.20	15.57
Indian Creek	" " "	15	60	1,571.50	26.19
Payne Creek	Frank W. Riddle	34	220	5,994.00	27.25
	Total	501	5066	81,607.15	108.48
	Average cost per acre-foot				16.11

123

55 7000

(Approximately midway between Mountain City & Owyhee)
(U.S.G.S. Water Supply Papers.)

Year.	Oct.	Nov.	Dec.	Jan.	Feb.	March	April.	May	June	July	Aug.	Sept.	Total
1914-15	*1120	*1270	*1230	*1230	*1420	*7640	15400	14700	6310	1010	552	546	52400
1915-16	1120	1270	1360	1540	3550	19100	46300	25600	10300	2700	861	678	11400
1916-17	1470	**1500	*1230	*1230	*1110	*6800	*35000	68900	27200	3730	1030	827	150000
1917-18	1060	1190	1230	1230	1110	6030	12700	9040	4500	581	363	504	39500
1918-19	965	393	922	1230	833	4610	35600	21600	3870	922	615	893	73000
1919-20	*1000	1180	1270	*1230	*1110	*4000	**31000	34600	**7450	*1240	*700	*700	85500
1920-21	*1000	*1200	*1230	*1230	*1110	*5000	**46000	*31800	**10000	*1000	**800	*600	101000
1921-22	922	1310	1630	1230	1110	3730	217000	61000	15500	1760	965	589	111000
1922-23	1230	1320	1230	1230	1110	2390	13500	11600	9040	1180	689	649	45200
1923-24	1440	1420	1230	1230	1150	2680	21100	7690	1170	166	123	173	39600
1924-25	719	1300	1350	1230	5360	11600	43500	23100	5590	1240	504	482	96000

*Estimated full month. (Av. 11 yrs., 82,500)

**Estimated for part of month.

124

55 7009

(U.S.G.S. Water Supply Papers.)

Year.	Oct.	Nov.	Dec.	Jan.	Feb.	March.	April	May	Total
1914-15	*1120	*1270	*1230	*1230	*1420	*7640	15400	14700	44000
1915-16	1120	1270	1360	1540	3550	19100	46300	25600	99800
1916-17	1470	**1200	*1230	*1230	*2150	*12000	**56000	68900	144200
1917-18	1060	1190	1230	1230	1110	6030	12700	9040	33600
1918-19	965	893	922	1230	833	4610	35600	21600	66800
1919-20	*1000	1180	1270	*1230	*1110	*4000	**31000	34600	75400
1920-21	*1000	*1200	*1230	*1230	*1110	*5000	**46000	*26000	82800
1921-22	922	1310	1630	1230	1110	3730	21700	61000	92600
1922-23	1230	1320	1230	1230	1110	2390	15500	11600	33600
1923-24	1440	1420	1230	1230	1150	2680	21100	7690	37900
1924-25	719	1300	1350	1230	5360	11600	43500	23100	88200

*Estimated, full month.

**Estimated for part of month.

125 55 7009

Total Runoff in Acre Feet, Owyhee River, Cold Creek Station

(U.S.G.S. Water Supply Papers).

Year.	Oct.	Nov.	Dec.	Jan.	Feb.	March	April	May	June	July	Aug.	Sept.	Total
1914-15													
1915-16	*400	*400	*500	*600	*750	*4860	24900	9350	2710	609	183	262	45500
1916-17	442	*400	*500	*600	*750	*4860	25000	36500	8090	733	155	250	78300
1917-18	552	655	701	607	389	2740	5510	2750	1080	95	61	161	15300
1918-19	296	329	369	492	389	922	17300	6700	1090	246	184	239	28600
1919-20	307	595	738	739	575	1540	13100	13400	2070	283	123	357	33800
1920-21	1250	845	461	307	706	4860	24600	21200	5010	738	234	375	61600
1921-22	590	378	*450	*370	*800	*4800	12000	20200	4830	375	277	262	56000
1922-23	394	482	430	369	533	504	6600	4520	3480	596	320	286	18300
1923-24	553	500	369	369	345	615	12500	2160	274	191	123	155	18200
1924-25	535	857	609	492	2500	4750	23200	7500	1520	474	270	321	43100

*Estimated.

55 7009

126

Runoff in Acre Feet, Owyhee River, Gold Creek Station,

for Storage period, Oct - May inclusive, 1915-1925.

Year.	Oct.	Nov.	Dec.	Jan.	Feb.	March	April	May	Total
1915-16	*400	*400	*500	*600	*760	*4850	24900	9350	41800
1916-17	442	*400	*500	*600	*760	*4860	25000	36500	69100
1917-18	552	655	701	607	389	2740	5510	2750	13900
1918-19	896	329	369	492	389	922	17300	6700	26800
1919-20	607	695	733	738	575	1540	13100	13400	31000
1920-21	1250	845	461	307	766	4860	24600	21200	54300
1921-22	590	578	*450	*370	*500	*4800	12000	30900	50300
1922-23	394	485	430	369	333	504	6600	4520	13600
1923-24	563	500	369	345	615	615	12500	2130	18400
1924-25	535	857	609	492	2300	4750	23200	7500	40400

127 55 7009

Total Runoff in Acre Feet, Owyhee River, Mountain City, Nevada.

(Unpublished Records. U.S.G.S.)

Year.	Oct.	Nov.	Dec.	Jan.	Feb.	March	April	May	June	July	Aug.	Sept.	Total
1926-27	*600	**1000	928	738	1900	7380	28600	30500	12100	1750	732	506	86700
1927-28	1070	1810	2150	1540	1440	25100	22400	19400	2720	590	314	280	78800
1928-29	646	797	615	615	555	5600	23900	26000	7020	529	215	190	66700

*Estimated, full month.

**Estimated for part of month.

128 55 7049

(... Liquidated Records ...)

Day	Oct.	Nov.	Dec.	Jan.	Feb.	March	April	May	June	July	Aug.	Sept.
1		|	22	↑	↑	121	249	895	273	90	15	8
2		|	19	|	|	90	315	856	265	60	15	8
3		|	20	|	|	65	405	755	245	64	13	8
4		|	21	|	|	90	357	665	253	55	13	8
5		|	18	|	|	90	357	627	253	55	12	8
6		|	19	|	|	90	418	559	231	41	12	7
7		|	16	|	|	90	500	622	232	28	12	7
8		|	↑	|	|	115	573	631	273	32	12	6
9		|	|	|	|	95	555	521	255	26	10	7
10		|	|	|	|	90	359	437	261	38	12	8
11		|	|	|	13	55	505	531	303	38	12	8
12		|	|	|	|	90	330	377	290	35	13	8
13		|	|	|	|	90	269	455	252	22	14	8
14		|	|	12	|	120	237	455	249	18	15	8
15		11	|	|	|	118	311	516	220	18	15	8

55 7009

Daily Discharge in Second-feet of Swyles River at Mountain City, Nov., for the year ending Sept. 30, 1927.
(From Unpublished records U.S.G.S.)

(Continued)

Day	Oct.	Nov.	Dec.	Jan.	Feb.	March	April	May	June	July	Aug.	Sept.
16		12	14			90	520	573	209	18	15	9
17		26				99	265	535	198	16	13	9
18		12				90	203	508	179	15	12	8
19		16				64	298	542	176	15	12	8
20		21				55	269	563	157	13	12	8
21		21			50	74	294	471	149	12	12	9
22		18				99	355	304	138	12	12	9
23		16				113	471	382	142	13	11	9
24		15				149	600	342	113	15	10	9
25		15				149	788	298	113	16	10	9
26		15			138	172	920	298	113	15	10	9
27		16			121	168	1050	255	108	13	9	9
28		15			95	198	1060	342	104	13	9	10
29		18				201	980	346	108	15	9	12

6004 55 130

Daily Discharge in Second-Feet of Owyhee River at Mountain City, Nev., for the year ending Sept. 30, 1927.
(From Unpublished records U.S.G.S.)

(Continued)

Day	Oct.	Nov.	Dec.	Jan.	Feb.	March	April	May	June	July	Aug.	Sept.
30		24	↓	↓		249	953	367	90	15	9	12
31						511		292		15	9	
		271	460	372	958	3735	14308	15365	6000	851	369	254
Nov 15-30												
Mean		16.9	15.1	[illegible]	[illegible]	120	480	496	203	28.4	11.9	8.5
Acre Feet		538	920	750	1,900	7380	28,500	30,500	12,000	17,500	732	506

320 days Mean 135
Acre Feet 65,700.

731

55 7049

Run off in Acre-feet of Orphee River at Mountain City, Nev.,
for the Storage period Oct -- May inclusive.
(from Unpublished records U.S.C.S.)

Year.	Oct.	Nov.	Dec.	Jan.	Feb.	March	April	May	Total
1926-27	7600	1000	928	748	1900	7385	28600	20500	71646
1927-28	1070	1510	2150	1540	1440	25100	22400	19400	74910
1928-29	645	797	615	615	555	5600	23900	26000	58728

55 7009

Daily Discharge in second-feet, of Owyhee River at Mountain City, Nev., for the year ending Sept. 30, 1928.
(From Unpublished records U.S.G.S.)

Day	Oct.	Nov.	Dec.	Jan.	Feb.	March	April	May	June	July	Aug.	Sept.
1	16	24	64				481	622	121	26	7	4
2	16	24	74			40	471	573	117	24	7	4
3	16	24	69				382	521	108	20	8	4
4	16	23	64				423	447	95	16	8	4
5	16	23				69	306	364	74	15	8	3
6	16	23				74	351	391	55	13	8	3
7	16	22				85	320	433	55	12	8	3
8	16	22				108	311	457	50	12	8	3
10	15	23				179	329	423	43	10	7	3
9	16	22				142	307	447	46	11	7	4
11	15	24				384	333	457	46	9	8	3
12	15	24				418	324	423	46	8	7	2
13	15	24			23	311	309	377	46	8	6	3

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65 2009

Daily Discharge in second-feet of Truckee River at Mountain City, Nev., for the period ending Sept. 30, 1913.
(Area Unpublished records U.S.G.S.)

(Continued)

Day	Oct.	Nov.	Dec.	Jan.	Feb.	March	April	May	June	July	Aug.	Sept.
14	15	25			25	260	333	348	43	8	6	5
15	15	26				190	315	311	46	7	5	4
16	15	26				163	329	282	41	7	4	5
17	15	27	20	25		209	304	261	40	6	4	5
18	15	26				249	335	237	38	6	3	6
19	16	26				330	331	229	35	6	4	6
20	15	27				405	320	225	32	6	4	6
21	16	28				476	311	221	29	7	4	6
22	16	32				573	303	213	26	6	4	6
23	16	30				573	290	205	24	6	4	6
24	16	32				611	304	198	21	6	4	6
25	16	30				1310	351	198	18	6	4	6
26	24	29				1510	447	190	16	6	4	6
27	24	32				1070	405	173	15	6	4	6

1354

55 1009

Daily Discharge in second-feet, of Owyhee River at Mountain City, Nev., for the year ending Sept. 30, 1928.
(From Unpublished records U.S.G.S.)

(Continued)

Day	Oct.	Nov.	Dec.	Jan	Feb.	March	April	May	June	July	Aug.	Sept.
28	25	33				830	521	153	15	6	4	7
29	26	90				661	558	142	15	6	4	7
30	25	80				600	573	133	16	6	4	6
31	24					605		130		6	4	
Total	539	914	1081	775	725	12633	11237	9790	1372	297	171	141
Mean	17.4	30.5	34.9	Est. 25	Est. 25	408	377	316	45.7	9.6	5.1	4.7
Acre-Feet	1070	1810	2150	1540	1440	25,100	22,400	19,400	2720	590	314	280

Mean 109

Acre-Feet 78,800

135

55 7009

(From Unpublished records U.S.G.S.)

Day	Oct.	Nov.	Dec.	Jan.	Feb.	March	April	May	June	July	Aug.	Sept.
1	8	13					249	706	183	26	3	2
2	8	13				10	271	595	186	24	3	2
3	9	14					286	568	183	20	4	2
4	9	14					364	616	168	18	4	2
5	9	14					333	563	172	16	4	2
6	9	15					229	471	164	15	4	2
7	9	15					190	466	153	13	4	2
8	9	15				25	213	457	142	12	5	2
9	9	15					194	481	142	12	4	3
10	9	15					149	471	145	10	4	3
11	9	15					157	405	168	9	4	3
12	10	15			10		149	433	161	8	4	3
13	10	15		10			176	466	134	7	4	3
14	10	15					198	461	121	7	3	3
15	10	15					286	452	126	6	3	3

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55 7069

[illegible]
For the Year ending Sept. [illegible]
(From Unpublished records U.S.G.S.)

(Continued)

Day	Oct.	Nov.	Dec.	Jan.	Feb.	March	April	May	June	July	Aug.	Sept.
16	10	14					423	442	164	6	3	3
17	11	14					563	437	164	5	3	3
18	11						630	428	134	4	4	3
19	12		10				611	414	113	4	4	3
20	12					95	633	395	104	4	4	4
21	12					377	616	377	90	4	4	4
22	12					311	627	382	64	4	4	4
23	12					176	600	359	64	4	3	4
24	12	12				172	521	346	59	4	3	4
25	12					164	526	337	55	4	3	4
26	12					155	542	320	46	4	3	4
27	12					149	537	329	41	4	3	4
28	12					138	552	283	25	4	3	5
29	12					190	584	245	32	4	2	5
30	12					241	633	213	29	3	2	5
31	13					229		190		3	2	

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Daily Discharge in [illegible]
For the year ending Sept. 30, 1929.
(From Unpublished records U.S.G.S.)

(Continued.)

Day	Oct.	Nov.	Dec.	Jan.	Feb.	March	April	May	June	July	Aug.	Sept.
Total	323	403	310	310	280	2825	12050	13111	3542	268	107	93
Mean	105	13.4	10	10	10	91.1	402	423	118	8.6	3.5	3.2
Acre-Feet.	646	797	615	615	555	5600	23900	26000	7020	529	215	190

Mean 92.1

Acre-Feet 66,700

55 7070

138

5-1143

UNITED STATES

DEPARTMENT OF THE INTERIOR

INDIAN IRRIGATION SERVICE

SUPERVISING ENGINEER

REPORT

WATER SUPPLY, WATER RIGHTS & AGRICULTURAL CONDITIONS WESTERN SHOSHONE OR DUCK VALLEY RESERVATION. NEVADA - IDAHO.

- - - - - - - - - - - - - - - - - - - -

Provided for by Act of Congress of March 4, 1929.

- - - - - - - - - - - -

Charles A. Engle,
Supervising Engineer.

- - - - - - - -

May- 1930.

pg. 60

Department of Water Administration
PROTESTANT'S
Exhibit 22
Date Admitted

55 7009
Book entirely filmed

REPORT OF WATER SUPPLY, WATER RIGHTS AND AGRICULTURAL CONDITIONS - WESTERN SHOSHONE RESERVATION, NEVADA - IDAHO.

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REPORT OF WATER SUPPLY, WATER RIGHTS AND AGRICULTURAL CONDITIONS - WESTERN SHOSHONE RESERVATION, NEVADA - IDAHO.

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REPORT OF WATER SUPPLY, WATER RIGHTS AND AGRICULTURAL CONDITIONS - WESTERN SHOSHONE RESERVATION, NEVADA - IDAHO.

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Other reports on the same subject:

H. T. Johnson. June 1, 1916.

C. A. Engle, January 9, 1924.

E. E. McNeilly. July 26, 1929.

DEPARTMENT OF THE INTERIOR

UNITED STATES INDIAN IRRIGATION SERVICE

IRRIGATION DISTRICT NO. 2

Blackfoot, Idaho, May 21, 1930

Commissioner of Indian Affairs

Dear Sir:

There is respectfully submitted herewith a report entitled "Water Supply, Water Rights and Agricultural Conditions - Western Shoshone Indian Reservation" prepared under my supervision by Instrumentman James Young and Assistant Engineer Paul F. Henderson, embodying the results of surveys and investigations made by Mr. Young during the summer of 1929 for the purpose of determining conditions relating to water supply, water rights, agriculture and grazing on the Western Shoshone or Duck Valley Indian Reservation, of Idaho and Nevada. An appropriation of $3,500 for this work was made by the Second Deficiency Act, fiscal year 1929, approved March 4, 1929, and general instructions covering the work to be done are contained in Office Letter Irrigation, of March 18, 1929.

It is hoped that the report will be found to meet with the approval of the Office.

Very respectfully,

C. A. Engle

C. A. Engle
Supervising Engineer

REPORT ON WATER SUPPLY, WATER RIGHTS AND AGRICULTURAL CONDITIONS - WESTERN SHOSHONE RESERVATION, NEVADA - IDAHO

Synopsis

The Western Shoshone or Duck Valley Reservation is located partly in Nevada and partly in Idaho, the State line passing through the center of the Reservation. The total area of the Reservation is 321,920 acres, of which 25,000 acres are susceptible of irrigation, and 5,780 acres are under the present constructed ditches, consisting of about fifty miles of poorly constructed canals and laterals, in a very bad state of repair.

The Reservation was established by Executive Orders of April 16, 1877, May 4, 1886 and July 1, 1910. Authority was granted on March 18, 1929, to expend during the fiscal years 1929 and 1930, $3,500 from the fund "Survey of Water Supply, Western Shoshone Reservation, Nevada" for the purpose of making a water supply adjudication survey. This survey was made during the summer of 1929 by Instrumentman James Young under the supervision of C. A. Engle, Supervising Engineer. The total construction cost of this project to June 30, 1929, was $47,932.08, and the total operation and maintenance cost to the same date was $26,884.34, with $352.99 for Chief Engineer's office charges. The only employee of the Indian Irrigation

WATER SUPPLY REPORT - WESTERN SHOSHONE RESERVATION - NEVADA

The population of the reservation is 675 Indians of the Western Shoshone and Paiute tribes, all of whom are employed in stock raising. However, owing to the very limited water supply, the Indians, almost without exception, are unable to raise enough hay for the necessary winter feeding to sustain a herd of sufficient size for the Indians to be self-supporting, and they are required to obtain work outside of the reservation to make a living. These Indians are unusually industrious and energetic, and if a sufficient water supply was made available would immediately increase the present irrigated area of 6,731 acres sufficiently to raise enough hay to sustain a herd of stock of sufficient size to make themselves independent of help from the outside.

Owing to the fact that the reservation is 110 miles from the nearest railroad shipping point, stock raising is the only industry that can be developed. The grazing land available on the reservation and the adjacent Humboldt National Forest Reserve is sufficient for the summer feeding of the stock necessary to support these Indians, as the number of White-owned stock permitted to run on this area during the winter will attest.

There are three streams crossing the reservation that supply water to this section of the country.

WATER SUPPLY REPORT - WESTERN SHOSHONE RESERVATION - NEVADA

(1) The Owyhee River, flowing from the southwest corner diagonally across the reservation and forming the water supply for the major part of the reservation. (2) Blue Creek, flowing from the north, entering the reservation about the center point of the northern boundary and emptying into the Owyhee River about the center of the reservation. (3) Mary's Creek, rising on the reservation and flowing in a northerly direction, leaving the reservation about the northeast corner and emptying into the Snake River.

The lands above the reservation on the first two of the above streams have been gradually settling up and the individual irrigation projects developing and expanding until practically all of the water in the streams flowing into the reservation is diverted, leaving but very little water for the Indians to irrigate their hay meadows with. In the case of Blue Creek the water has been entirely used up by the white farmers above the reservation, thereby forcing three Indian families to abandon the meadows upon which they had cut their hay for several years. The white men living on the drainage area have constructed a number of reservoirs which have taken over the flood flow of this stream during the early spring run-off, so that practically no water reaches the reservation during the course of the present time. The

lands on the upper Owyhee River above the reservation, while not having been developed as yet to a point where all the water is used, is fast reaching the point where the only water left for the Indians, even at the flood stages of the stream in the early spring, is the water rising on the reservation itself. For this reason an early adjudication of the water rights on these streams is necessary to the very existence of the Indians living on the reservation.

Even though the water rights in this section are adjudicated and the Indians received all of the water due them, the supply will still be insufficient to raise enough hay to support a herd of stock of sufficient size to make the Indians self-sustaining, without storage to supply water during the latter part of the summer. The water supply in the streams is entirely exhausted by the first of July and sometimes as early as the 15th of May, and for this reason storage is a necessity. All of the possible reservoir sites were investigated in connection with this survey, and only two were found to be feasible, one is on the Owyhee River just below where Reed Creek flows into the River, and the other is on Rhoe Ily Creek, a tributary of Pine Creek. The flow in Pine Creek can be augmented by diverting water from Three Bear's Creek (Mary's Creek) in section 23, town-

ship 15 south, range 3 east, and carrying the water across a saddle in section 25, township 15 south, range 3 east, to be released at the head of Mud Creek, where it would then flow down that creek to Blue Creek.

Storage may be obtained in a reservoir on Shoo Fly Creek in the northeast corner of township 14 south, range 1 east, to supply water to the lands lying along Blue Creek during the latter part of the summer. This would allow the farms to be again taken up that the Indians were forced to abandon because of the cutting off of their water supply through the building of the reservoirs on Blue Creek north of the reservation, as well as permit the rest of the 1,000 acres of irrigable lands lying along this creek on the reservation to be irrigated. The water supply for this possible reservoir site will have to be investigated more closely before any actual work is done at this point, but the preliminary work that was done in connection with the preparation of this report indicated that there was a sufficient water supply for the estimated 8,250 acre-foot storage available at this point. The estimated cost of this storage is $44,505, or $5.33 per acre-foot.

The Reed Creek reservoir site on the Owyhee River is about three miles upstream from the upper Duck Valley

diversion in section 7, township 46 north, range 53 east. The run-off records of the Owyhee River kept by the U.S.G.S. since 1915 show that there is an ample supply of water for a 25,000 acre-foot storage which is available at this point. Preliminary costs were worked up for a dam at this site taken from the cross sections and the test pit made in connection with this report. The preliminary investigations at this damsite indicate the presence of a fault in the valley so that a complete inspection of the foundation will have to be made before any final plans can be worked up on this site. However, it is believed that a good foundation can be obtained at this site without an excessive expenditure of money. Preliminary estimates of costs were worked up on a dam having a crest elevation at 5530 feet, approximately 100 feet above the floor of the valley. The spillway for the dam would be through a natural saddle in the ridge to the south of the dam which would require but very little work owing to the fact that the bottom would be in solid rock and the waste waters carried by the spillway would be released into a side draw which empties into the river several hundred feet below the dam site. The pre-[illegible] dam section has a three to one upstream slope with a [illegible] to one downstream slope, the upstream slope being pro-[illegible] by [illegible] eighteen inch layer of dressed riprap. A sec-

tion of the dam is shown on a drawing accompanying this report. The preliminary estimate of cost for this dam is $295,449.00, and as 25,000 acre-feet of water will be impounded, this is at the rate of $11.82 per acre-foot.

Recommendations

As a result of the water supply studies made on the Western Shoshone Reservation, it is recommended that the following be done:

1. Immediate action be started to adjudicate the water rights on all streams forming a water supply for the Indians.

2. That final plans and investigations be started on the Reed Creek Reservoir Site.

3. That definite information as to the run-off of Shoo Fly Creek be obtained at the proposed reservoir site.

4. That the diversion of the waters from Three Forks Creek be made and the canal constructed to carry the water over to the head of Reed Creek.

REPORT OF WATER SUPPLY, WATER RIGHTS AND AGRICULTURAL CONDITIONS - WESTERN SHOSHONE RESERVATION, NEVADA - IDAHO

Indian Lands

Location

The Duck Valley Reservation is located in Nevada and Idaho, the boundary line of these two states cutting through it approximately midway north and south. The reservation lies within townships 46 and 47 north, ranges 51 to 55 east, Mount Diablo Meridian in Nevada, and in townships 15 and 16 south, ranges 1 to 4 east, Boise Meridian in Idaho.

The total area of the reservation is 291,000 acres, of which approximately 25,000 acres are irrigable, lying in the Upper Owyhee Valley, Pleasant Valley and the Blue Creek Valley. The major portion of the irrigable area lies in the Upper Owyhee Valley (22,500 acres) approximately 17,000 acres of this area being in Nevada and 4,500 acres in Idaho. Pleasant Valley, or the lower Owyhee Valley, contains approximately 2,500 acres of irrigable land, all of which is in Idaho and susceptible of irrigation from the Owyhee River. There is an area of approximately 1,000 irrigable acres in Blue Creek Valley, a part of which was formerly irrigated but which has been abandoned through lack of water supply due to the construction of reservoirs above the reservation. The balance of the area on the reservation,

especially the mountainous portion which comprises about one-third of the total area, is adapted only to the grazing of stock.

History

The reservation was established by Executive Orders of April 16, 1877, May 4, 1886 and July 1, 1910. Previous to the order of 1877, establishing the portion in Nevada, the Annual Report of the Commissioner for 1876 contained the following:

> "The Shoshone farms are located in Elko County, in the northeastern part of the State, about 275 miles from the Pyramid Lake reserve. These farms were located about two years ago, for the western band of Shoshones and have been put under cultivation in such an amount as means and time would justify. Good progress has been made, and it is desirable that a survey be made and the title of these lands guaranteed to the Indians residing thereon."

Following is the Executive Order of April 16, 1877, (Indian Affairs, Laws and Treaties, Vol. 1, Page 866);

> "It is hereby ordered that the following described tract of country, situated partly in the Territory of Idaho and partly in the State of Nevada, be, and the same hereby is, withdrawn from the public domain, to-wit: Commencing at the one hundredth mile post of the survey of the north boundary of Nevada, thence due north to the [illegible] of the north boundary of township 15 south of [illegible]

base line in Idaho; thence due west to a point due north of the one hundred and twentieth mile post of said survey of the north boundary of Nevada; thence due south to the ninth standard parallel north of the Mount Diablo base line in Nevada; thence due east to a point due south of the place of beginning, thence north to the place of beginning. And the above named tract of land is hereby set apart as a reservation for the Western Shoshone Indians, subject to such modifications of boundary as a location of limits shall determine."

Executive Order of May 4, 1886, follows: (Indian Affairs Laws and Treaties, Vol. 1, Page 866.)

"It is hereby ordered that the following described land in the Territory of Idaho, viz: Township 16 South, Ranges 1, 2 and 3 East of the Boise Meridian, be, and the same are hereby withdrawn from sale and settlement and set apart as an addition to the Duck Valley Reservation, for the use and occupation of the Ruby Cape band of Piutes and such other Indians as the Secretary of the Interior may see fit to settle thereon;

Provided, however, that any tract or tracts of land within said townships, the title to which has passed out of the United States, or to which valid homestead or preemption rights have attached under the laws of the United States, prior to this date, are hereby excluded from the operation of this order."

Executive Order of July 1, 1910, follows: (Indian Affairs Laws and Treaties, Vol. 3, Page 670.)

"It is hereby ordered that the following described lands in the State of Idaho, viz: All that part of Township 15 South, Range 4 East, Boise Meridian

lying and being west of a line formed by extending the east boundary line of the Duck Valley Indian Reservation through the said township, be, and the same are hereby withdrawn from settlement, entry and sale, and set apart as an addition to the Duck Valley Indian Reservation: Provided, That nothing herein shall affect any existing valid rights of any person to the lands described."

Authorization of Adjudication and Water Supply Survey

Authority was granted on March 18, 1929, to expend during the fiscal years 1929 and 1930 the sum of $3,500 from the fund "Survey of Water Supply, Western Shoshone Reservation, Nevada, 1929 - 1930" for the purpose of making a detailed survey of the water supply for the Western Shoshone or Duck Valley Indian Reservation, situated in the States of Nevada and Idaho.

James Young, who made the adjudication surveys on the Blackfoot River in connection with the Fort Hall Project, was assigned to this work and began on July 8, 1929, with a party of three men, the field work necessary in connection with the report and continued until November 8, 1929, when he returned to the district office at Blackfoot, Idaho, to prepare the report. This survey was conducted with the assistance of and under the direct supervision of the Supervising Engineer, C. A. Engle.

WATER SUPPLY REPORT - WESTERN SHOSHONE RESERVATION - NEVADA

Scope of Surveys

The field work in connection with this survey consisted of making an irrigated land survey on the Owyhee River and tributaries and of all lands irrigated and affecting the water supply of the Indians on the Western Shoshone Reservation; also surveys and estimates of costs on all reservoirs owned and operated by private individuals or corporations in the Mud Creek section north of the reservation and tributary to the Owyhee River; current water meter measurements on the Owyhee River and tributaries; cultural survey of lands utilized by the Indians on the reservation; preliminary investigation of possible reservoir sites on the Owyhee River and tributaries; and the gathering of economic data pertaining to the Indians residing on the Duck Valley Reservation.

Shipping Points

The nearest railroad or shipping points for the reservation are Mountain Home, Idaho, 110 miles north on the Union Pacific Railway, and Elko, Nevada, 110 miles to the south on the Southern Pacific and Western Pacific Railways. The roads from the reservation to both Mountain Home and Elko are only partially improved and are impassable for long periods in the winter and are frequently impassable for

short periods of time during the summer. Freight and supplies are usually hauled to the reservation by wagon or truck from Mountain Home, Idaho.

Population

The population of the reservation is 675 Indians of the Western Shoshone and Paiute Tribes. Allotments have not been regularly made, but many Indian families have been given tentative allotments of forty acres each, and some of these are very well improved with fairly good buildings and with the land in a fair state of cultivation. All of the land being farmed on the reservation at the present time is being farmed by Indians.

Irrigable Area

Although the reservation includes an ultimate irrigable area of 25,000 acres, only 5,700 acres are susceptible of irrigation from the system as constructed at the present time, the water for which is supplied by the Duck River. As a result of the increasing agricultural development in the valleys above the reservation, the water supply available for the irrigation of the Indian lands, except for a few weeks during the early part of the irrigation season, is very inadequate. The stream flow of the Duck River at the Indian diversion dams is occasionally as low as three second-feet in the months of July, August and September.

WATER SUPPLY REPORT - WESTERN SHOSHONE RESERVATION - NEVADA

Present Irrigation System

The existing irrigation system, consisting of fifty miles of canals and laterals, is very poorly constructed and, as the result of several floods, is in a very bad state of repair. This system was begun in 1901, and has been gradually extended, partially by donations of Indian labor and partially by the expenditure of Congressional appropriations. The only permanent structure of note in the entire lateral and canal system is a reinforced concrete headgate at the head of the main canal on the west side of the river. Considerable trouble has been experienced each year from high water during the early spring run-off near the heading of the main canal. It is believed that this is due principally to the restricted channel caused by overhanging willows and an occasional dam of driftwood partially obstructing the channel. The main canal has sufficient capacity for all the lands now served by it, having a bottom width of eight feet and three foot banks. When the water supply gets low, generally about the first of July, and only a few second-feet can be diverted from the river, the growth of moss in the canal becomes a source of trouble. The laterals are in a very bad state of repair. Mr. Tom Irene, Indian ditchrider, is quoted as authority for the state that no maintenance work has been done on the lateral system since its construction, excepting

occasional work done by the individual Indians. Practically all of the laterals have become grown up with grass and willows to such an extent that their capacity has been reduced at least fifty percent. This has resulted in the ditchrider not being able to deliver the amount of water that he should in the early part of the season when there is a plentiful supply. On one of these laterals (Coy Manning and others) there are fifteen water users and the ditchrider states that he is unable to deliver more than two irrigation streams through this lateral regardless of the supply at the main canal headgate.

The total cost of the construction of the present irrigation system to June 30, 1929, was $47,932.08 and the total cost of operation and maintenance to the same date was $36,834.34 and $352.07 for Chief Engineer's office charges. Owing to the fact that no permanent allotments have been made on this reservation, there have been no operation and maintenance collections. The Indian Irrigation Service does not keep a regular employee on the reservation. Tom Promo, an Indian ditchrider, is employed during the irrigation season and what little maintenance work is attempted is done by this Indian and some irregular labor as required from time to time, working under the direction of the Supervising Engineer of District No. 2 and the Superintendent of the reservation, W. M. L. McNeilly.

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Possible Irrigation on Mary's Creek

Mary's Creek rises on the reservation and is formed by the confluence of three small streams in section 29, township 15 south, range 4 east, Boise Meridian. As this creek is not a tributary of the Owyhee River, an investigation was made to determine if there were any lands within the reservation and adjacent to this stream that could be irrigated by direct diversion. There is a tract of land located in sections 4 and 9, township 16 south, range 4 east, containing approximately 400 acres, known as Indian Meadows, that could be irrigated from this stream. However, this tract would require very little irrigation as it is a natural wild hay meadow and is sub-irrigated. On October 18, 1939, there was flowing in the stream entering the meadow approximately two and one-half second feet of water, but at the lower end of the meadow where the stream bed leaves the meadow it was entirely dry. In 1936 Hugh Thomas, an Indian, cut hay from this meadow and wintered his cattle there but he lost about fifty percent of his herd, and the experiment was not repeated. Whether the death of the stock was due to a lack of nutritive value of the hay or the extreme cold weather, or a combination of both, is not known. There can be no doubt that the winters in this vicinity would be very severe and the lack of proper shelter would cause heavy losses in the herd of

anyone attempting to winter stock at this place. The elevation of the meadow is approximately 6,600 feet and when winter has set in, owing to the heavy snowfall, it is an impossibility to get the stock out to a lower level. The distance from these meadows to Miller Creek, the nearest point where there is an Indian settlement, is approximately fourteen miles. The road between these points traverses a series of ridges of a lava rock formation and is extremely rough, so that the cutting of hay and hauling to the lower valley for sale or other use is precluded. As it has already been proven by actual experiment that the wintering of stock at the Indian Meadows is unsuccessful, it is believed that the irrigation of any of the land in this vicinity should be discouraged, and that it is adapted only to the summer grazing of stock.

Farming Activities

On account of its location and the climatic conditions, the only profitable industry on this reservation is that of stock raising, and these Indians have shown considerable aptitude in this industry. They have, however, reached the limit of expansion in the livestock industry that is possible with their present water supply, for unless they can grow a sufficient amount of hay upon which to winter their livestock, the stock industry is not profitable.

The cattle sales shown in the crop report for 1928 are reported by Superintendent E. E. McNeilly to have been double what they should be, for the reason that the Indians did not have sufficient hay to winter their cattle, and thus were obligated to sell many of them. The amount of hay actually harvested during the season of 1928, including both wild meadow and alfalfa hay, was 1400 tons less than the amount harvested during 1927. It is reported that the Indians have 2,000 head of cattle and 1,100 head of sheep. Although they have sold 1,000 head of horses during the past year, they still have too many horses. As indicated in the crop report, 2,056 tons of hay, including alfalfa hay and wild or native meadow hay, were harvested during 1928. This is not sufficient for the stock the Indians have, and as a result they are spending from $2,000 to $3,000 every year for hay. It is apparent that under these conditions they cannot increase the amount of stock they now have, even though the range land on the reservation would easily support three times the amount of stock which the Indians are now keeping upon it during the summer months. Enough hay for the necessary winter feeding can be easily raised for additional stock by the construction of a storage reservoir and the extension of the canal and lateral system and the rehabilitation of the water rights.

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Those Indians are unusually energetic and industrious and it is the judgment of Superintendent McNeilly and others that they would immediately increase their irrigated area to twice the present area if the irrigation system were extended and they were assured of an adequate all-season water supply.

All of the Indians residing on the tentative allotments cut and stack all the grass suitable for hay on their respective allotments, the amount, of course, varying with the water supply. This amount of hay is insufficient in practically every case to maintain a herd of cattle large enough to produce a sufficient revenue to offset their living expenses, and they are compelled to seek work outside of the reservation. The employment of these Indians on the large ranches in the vicinity of Whiterock and Duckwater, Nevada, and the Blue Creek ranch north of the reservation is directly in line with the work which they would do for themselves if they were assured of a sufficient water supply, consisting of the shearing of sheep in the early summer and later in the year working in the hay fields and the roundup of cattle for the large cattle companies. While engaged in this work for wages outside of the reservation, the irrigation of their allotments on the reservation is neglected, which reduces the amount of hay produced. Their employment as

sheep shearers is especially detrimental to their farming operations on the reservation, as this employment comes at the season when they should be busy irrigating their wild meadow lands, as that is practically the only period when the water supply is plentiful.

It is the custom for all the White farmers on the Owyhee River watershed to start irrigating immediately with the melting of snow in the early spring, which in some years is as early as the last of March. This custom, however, according to information received from Superintendent Donnelly and Ditchrider Tom Premo, is not practiced by the Indians of the reservation, as they seldom begin the irrigation of their meadow lands before the first of May, when a considerable part of the spring run-off has already passed their farms. No doubt the production of their meadow lands could be considerably increased if the Indians could be educated into the idea of beginning their irrigating operations earlier in the season. However, such increase in the production of their meadow lands with their present water supply could not possibly reach a point where these Indians would be self sustaining from their farming operations alone. If the Indians could be assured of a plentiful water supply for the irrigation of the proposed irrigable area of 13,000 acres, the grazing privileges of White owners of cattle for

approximately 7,000 head could be cancelled and by increasing their own herds the same number the Indians of the Reservation could be come self sustaining and independent of outside employment.

The future welfare and the prosperity of these Indians, in fact their very existence, demands: (1) That the water rights of the streams in which the Indians are interested be adjudicated; and (2) That a storage reservoir for the impounding of flood waters for use during the latter part of the irrigation season be constructed. Conditions seem to indicate that in delaying these two measures the Government is failing to carry out its duties and responsibilities as guardian of the Indians of this Reservation.

Crop Statistics

A survey was made of the area being utilized by the Indians on the reservation. Each forty acre tract was visited and the name of the Indian farming each and the estimated number of acres which he had in each crop was tabulated. The results of this work are shown on the following sheets.

Other Income Aside from Agriculture

[illegible] sale	$ 22,[illegible].84	Per family	$ 15[illegible].24
[illegible] of cattle on permit	2[illegible],[illegible].00	Per family	187.81
[illegible] sale (wool & lambs)	[illegible],[illegible].00	Per family	26.50
[illegible] labor (estimated)	[illegible].00	Per family	[illegible].00
	$ 97,[illegible]	Per family	$ [illegible]
[illegible] crops	[illegible]	Per family	[illegible].19
[illegible] income	$ [illegible]	Per family	$ [illegible]

([illegible] only six families are actually engaged in the sheep industry, [illegible] the average shown is for the whole tribe.)
[illegible]: No land is leased. All farming is done by the Indians [illegible]selves.

Comparative Crop Data - 1925 to 1928 inclusive.

Year	Miles Canal Operated	Farm Units Served	Total O. & M. Costs	Acres Irrigated	Value Crops Per Acre	Total Value	Heads of Families Farming	Population
[illegible]		97		5,750	6.10	29,[illegible].00	100	500
[illegible]	22	97	2,000.00	5,700	3.00	17,000.00	110	515
[illegible]	[illegible]	97	1,[illegible].00	[illegible]	[illegible]	21,[illegible].00	110	[illegible]

WATER SUPPLY REPORT - WESTERN SHOSHONE RESERVATION - NEVADA

Summary of Cultivated Area by Indians
Western Shoshone Reservation (1929)

Township & Range	Wild Hay	Alfalfa	Grain	Potatoes	Pasture (fenced)
Boise Meridian, Idaho					
16S 18E	169				
15S 2E	851				
13S 2E	2,117				880
14S 3E	290	6			
Mt. Diablo Meridian, Nevada					
42N 52E	131	71	20		
47N 51E	65				40
47N 52E	1,557	537	87	3	720
Total	4,670	613	107	3	1,640

Area Cultivated by Indians (1929)

Name	Sec.	Fractional Division	Wild Hay	Alfalfa	Grain	Potatoes	Remarks
T. 47 N., R. 52 E.							
[illegible]	2	Lots 3 and 4	45 a				
[illegible]	4	Lot 2	14 a				
[illegible]	4	Lot 3	28 a				
[illegible]	4	Lot 4	25 a				
[illegible]	(5	Lot 4					
[illegible]	(6	Lot 1	25 a				
[illegible]	7	NE NE					Pasture

WATER SUPPLY REPORT - WESTERN SHOSHONE RESERVATION - NEVADA

Area Cultivated by Indians (1929) (continued)

Name	Sec.	Sub-division	Wild Hay	Alfalfa	Grain	Potatoes	Remarks
T. 47 N., R. 52 E.							
Tom Thacker	8	SE SW					Pasture
Jno Black (Dec) (Mrs)	8	NW NW					Pasture
John Black (Mrs)	8	NE NW					Pasture
Alfred Jack	9	NE NW	35				
Alfred Jack	9	NW NE	35				
School No 1 (Mrs)	9	NE NE					
Old Man Boney	9	SE NE	35				
Old Man Boney	9	SW NE	35				
Mary S Boney	9	SE NW	35				
Ben Boney	9	NW SE	35				
Hirum Price (Mrs)	9	NE SE	35				
Sam Charles	9	SW SE					Pasture
Sam Charley (Mrs)	9	SE SE	35				
Hirum Price (Mrs)	10	NW SW	30				
Sam Charley	10	SW SW	35				
Mrs Sam Grover	11	N½ NW	43				
Cleveland (Mrs) Grover	11	S½ NW	14				
Cleveland	11	N½ SW	29				
Alex Cleveland	11	S½ SW	14				
Annie Jones (Mrs)	15	NE NW	35				
John Blackhat	15	NW NW	35				

WATER SUPPLY REPORT - WESTERN SHOSHONE RESERVATION - NEVADA

Area Cultivated by Indians (1929) (continued)

Name	Sec.	Sub-division	Wild Hay	Alfalfa	Grain	Potatoes	Remarks
T. 47 N., R. 52 E.							
John Harney	15	SW NW	15				
Amy Price	15	SE NW	30				
Bert Harney	15	NW SE	35				
Aubrey Harney	15	SE SE	20				
Marie Jones (Mrs)	15	SW SE	35				
Rose Harney	15	NE SW	35				
Dave Humpy	15	NW SW	20				
Rose Harney	15	SE SW	30		4		
Sam Charles	16	NE NE	35				
John Blackhat	16	NW NE	15	6	11		
Wesley Dutch (Mrs)	16	SE NE	20		4		
Jim Caskey	16	SE SW	10				
Jim Caskey	16	NE SW	8				
Jim Strambuck	16	NW SW	15				
Arthur Hooper	16	SE SW	10				
Charles Thacker	17	NW NE	17				
Frank Marsh	17	SE NE					Pasture
David Dave	18	NW SE	35				
Rollo Dave	18	SW SE	35				
Cora Prior	18	SE SE	35				
Alex McKee	22	NW NW					Pasture

WATER SUPPLY REPORT - WESTERN SHOSHONE RESERVATION - NEVADA

Area Cultivated by Indians (1929) (continued)

Name	Sec.	Sub-division	Wild Hay	Alfalfa	Potatoes	Remarks
T. 47 N., R. 53 E.						
Mrs. Alex McKee (Mrs)	22	NE NW	35			
Harry Thacker	22	NW NE				Pasture
Alex McKee	22	NE NE				Pasture
Charles McKee (Mrs)	22	SW NE	35			
Charles McKee	22	SE NE				Pasture
Charles Caskey	23	NE SE	30			
Custer John (Mrs)	23	NW SW	30			
Custer John	25	NE SW	10			
Mrs. John Adams (Mrs) George	23	SW SW	20			
Washington	23	SE SW	35			
Agency	26	NW NE				
Agency	26	SW NE				
Agency	26	NW SE				
Agency	26	NE SW				
Agency	26	SE NW				
John Adams	23	NE NW	30			
Joe Atkins (Mrs)	23	NW NW	10			
Pauline Harney	23	SW NW	10			
[illegible]	26	NW SW	20			
[illegible]	[illegible]	[illegible]		[illegible]		

AIR SUPPLY REPORT - WESTERN SHOSHONE RESERVATION - NEVADA

Area Cultivated by Indians (1929) (continued)

Name	Sec.	Sub-division	Wild Hay	Alfalfa	Grain	Potatoes	Remarks
T.47 N., R. 52 E.							
Chester Arthur (Mrs)	26	SE SW	25				
Frank Smith	26	SW SE	30				
Frank Smith	26	SE SE	10				
Fred Jones (Mrs)	27	SW NE		6	5		
Charles Humpy	27	SE NE					Pasture
Harley Tom	27	SE SE	15				
Frank Snodgrass (Harry Rho Minors.)	27	SE SW		25			
Frank Snodgrass (Harry Rho Minors.)	27	SW SW		12			
John Toller	27	NW SE		20			
David Dave (Mrs)	28	SE SE			10		
Harry Marsh	28	SW SE					Pasture
Harry Marsh (Mrs)	28	SE SW					Pasture
[illegible] Cooper	28	NE SW		15			
[illegible] Cooper	28	NW SW		5			
Mrs. Fitz Smith	28	SW SW	4	4			
Francis Charles	33	NE NW		4	7		
Fitz Smith (Mrs)	33	NW NE		4	7		
[illegible] Charles (Mrs)	33	NE NW		25			
[illegible]	33	SW NE		[illegible]	9		

WATER SUPPLY REPORT - WESTERN SHOSHONE RESERVATION - NEVADA

Area Cultivated by Indians (1929) (continued)

Name	Sec.	Subdivision	Wild Hay	Alfalfa	Grain	Potatoes	Remarks
T. 47 N., R. 52 E.	34	All	640				—
George B. Hull (Mrs)	35	NW NE	20				
John Paradiso	35	NE NE		4			
Donald Bonoy	35	SE NE				1	
Mrs. Frank Dutch	35	SW NE	8	3		1	
Anna Henry	35	N½ SE					Pasture
Bob Ruby	35	NW SE		20			
Mrs. Bob Ruby	35	SW SE		10			
Mike Mingo	35	NE SW		8			
Mrs. Mike Mingo (Mrs)	35	SE SW		6			
Lela Gilbert	35	SW SW		10			
Alex Gilbert	35	NW SW		10			
Total			1557	537	187	3	

WATER SUPPLY REPORT - WESTERN SHOSHONE RESERVATION - NEVADA

Area Cultivated by Indians (1929) (continued)

Name	Sec.	Sub-division	Wild Hay	Alfalfa	Grain	Potatoes	
T. 46 N., R. 52 E.							
George Brady	2	NE NE			5		
Howard Bacon	2	NW NE		12	10		
Maggie Camp	2	NE NW		7			
James Howard	2	NW NW		20			
Tom Prentice	2	SW NW		4	5		
Maggie Cap (Mrs)	2	N½ SW	32				
Howard Bacon	2	S½ SW	24				
James B. Hall (Mrs)	3	NE NE	30	2			Uncultivated
James B. Hall	3	SE NE					
Vaquero Bob	3	SW NE	20				
Mrs. Bob Jones	3	NW NE	12				
Bob Jones	3	NE NW		26			
Walter McIntosh	4	E½ SW	13				
Total			131	71	20		

WATER SUPPLY REPORT - WESTERN SHOSHONE RESERVATION - NEVADA

Area Cultivated by Indians (1929) (continued)

Name	Sec.	Sub-division	Wild Hay	Alfalfa	Grain	Potatoes	Remarks
T. 47 N., R. 51 E.							
John Paradise	1	Lots 1 & 2)					
John Paradise	12	N½ NE)	65				
(Mrs.) John Paradise	12	SE NE					Pasture 40

Area Cultivated by Indians (1929) (continued).

T. 16 S., R. 3 E.							
James Bell	5	W½ NW)					
James Bell	6	NW					
James Bell	6	SE NW)	75				
Dick Stanley	6	N½ NW					
Dick Stanley	6	NW NE					
Dick Stanley	31	S½ SW	44				T. 16 S.R.3 E.
Willie Wines	28	Lots 2-3-4					
Willie Wines	28	N½ SW					
Willie Wines	28	S½ NW	71	5			
Hank Thomas	30	Lot 6	15				
Hank Thomas	30	SE NW	10				
Mrs. Hank Thomas	30	Lot 7	10				
Mary Gibson	20	[illegible]	93				

WATER SUPPLY REPORT - WESTERN SHOSHONE RESERVATION - NEVADA

Area Cultivated by Indians (1929) (continued)

Name	Sec.	Sub-division	Wild Hay	Alfalfa	Grain	Potatoes	Remarks
T. 16 S., R. 3 E.							
George Bacon	30	NW SE	15				
George Bacon	30	Lot 10	20				
George Bacon	30	Lot 11	10				
Total							

Area Cultivated by Indians (1929) (continued)

T. 15 S., R. 3 E.							
Mrs. Joe Anderson	17	NW NW	40				
Mrs. Grant Kelley	17	SW NW	40				
Grant Kelley	17	SE NW	40				
Joe Anderson	17	NE SW	10				
Bob Wilson	17	NW SW	20				
Sam Little	19	NW NE	20				
Mrs. Sam Little	19	SW NE	20				
Minnie Damon	29	SW SW	25				
Charles Damon, Jr.	29	SE SW	25				
Mrs. Ed Bitt	29	SW SE	15				
Maggie Roberts	30	SE SW	20				
Bob Roberts	30	SW SE	20				
Arthur Yahime	30	SE SE	25				

WATER SUPPLY REPORT - WESTERN SHOSHONE RESERVATION - NEVADA

Area Cultivated by Indians (1929) (continued)

Name	Sec.	Sub-division	Wild Hay	Alfalfa	Grain	Potatoes	Remarks
T. 15 S., R. 3 E.							
Charles Damon	31	NE NE	39				
Joe Paddy	31	SE NE	38				
Ed Bitt	31	NE SE	7				
John Damon	32	NW NW	38				
School # 3	32	NE NW	15				
Willie Paddy	32	SE NW	32				
Nat Paddy	32	SW NW	30				
(Mrs) Arthur Yakima	32	NW SW	20				
Daisy Thomas	32	NE SW	15				
Total			551				

Area Cultivated by Indians (1929) (continued)

T. 15 S., R. 4 E.							
Ralph Jim	31	N½ NW					
Ralph Jim	31	NW NE	40				
Anna Price	31	SW NE	40				
Sarah Willie	31	SE NW	15				
John Willie	31	W½ SW					

WATER SUPPLY REPORT - WESTERN SHOSHONE RESERVATION - NEVADA

Area Cultivated by Indians (1929) (continued)

Name	Sec.	Sub-division	Wild Hay	Alfalfa	Grain	Potatoes	Remarks.
T. 15 S., R. 1 E.							
John Willie	31	SW NW	40				
Minnie John	31	NE SE	4				
Mrs. Dr. Howard	31	SE SE	30				[illegible]
Total			150				

Area Cultivated by Indians (1929) (continued)

T. 16 S., R. 2 E.							
Marjorie Sam	5	NW NW					Pasture
Willie Pretty	5	NW SW	4				
Jimmie McKee	5	SW SW	40				
Jimmie McKee	5	SE SE					Pasture
Freely Estate	5	SW SE	10				
Freely Estate	5	SE SE	10				
[illegible] Howard (Mrs.)	5	NW NE	30				
William John	5	NE NE	40				
[illegible] Charles	6	SW NE	20				
[illegible] Nat Sally	6	SE NE					Pasture
[illegible] John	6	NW NW	40				
[illegible]	6	[illegible]	[illegible]				

WATER SUPPLY REPORT - WESTERN SHOSHONE RESERVATION - NEVADA

Area Cultivated by Indians (1929) (continued)

Name	Sec.	Subdivision	Wild Hay	Alfalfa	Grain	Potatoes	Remarks
T. 16 S., R. 2 E.							
Ollie Dodge	6	SW NW	20				
Ollie Dodge	6	NW NW	20				
Ona Pretty	6	NE SW					Pasture
Ona Pretty	6	NW SE	20				
Willie Pretty	6	NE SE	40				
John Dodge	6	SW SE	30				
Jim Howard	6	SE SE	40				
Jim Humpy	7	NE NE	30				
Larry Thomas	7	SE NE					Pasture
Total			450				

Area Cultivated by Indians (1929) (continued)

T. 16 S. R. 2 E.							
Black Johnny	6	NW NW	35				
Black Johnny	8	NE NW	10				
--- Sope	8	SW NW	20				
[illegible] Thomas	8	SE NW					Pasture
[illegible] Estate	8	NW NE					Pasture
[illegible] Humpy	8	NE NE	40				

WATER SUPPLY REPORT - WESTERN SHOSHONE RESERVATION - NEVADA

Area Cultivated by Indians (1929) (continued)

Name	Sec.	Sub-division	Wild Hay	Alf-alfa	Grain	Potatoes	Remarks
T. 16 S., R. 2 E.							
Josh Thomas	8	SW NE					Pasture
Josh Thomas	8	SE NE					Pasture
Josh Thomas	8	NW SE					Pasture
Josh Thomas	8	NE SE					Pasture
[illegible] Little	8	SE SE					Pasture
John Little	8	SW SE					Pasture
--- Sope	8	NE SW	20				
--- Sope	8	NW SW					Pasture
Bettie Jim	9	NW NE	40				
Carlin George	9	SW NE	15				
Carlin George	9	NW SW					Pasture
Billy Shaw	~~16~~	SE NW	30				
Billy Shaw	~~16~~	NE NW	15				
Susie Shaw	~~20~~	SW NW	25				
Susie Shaw	20	NW SW	15				
Charlie Mundy	17	NW NE					Pasture
[illegible] Mundy (Ave)	17	NW NE					Pasture
[illegible] Mundy	17	SE NE	25				Not out 1929
[illegible]	[illegible]	[illegible]	[illegible]				

WATER SUPPLY REPORT - WESTERN SHOSHONE RESERVATION - NEVADA

Area Cultivated by Indians (1929) (continued)

Name	Sec.	Sub-division	Wild Hay	Alfalfa	Grain	Potatoes	
T. 16 S., R. 2 E.							
Mrs. Sam Harney (Dec.)	14 a	SE SW	30				Not cut 1929
Henry Been	15	SE NE	3				
Simon Been	15	NE SE	35				
Minnie Marsh	15	SE SE	35				
Hugh Prior	15	SW SE	35				
Harry Thomas	15	SE SW	10				
Harry Thomas	22	NE NW	20				
Harry Thomas	22	SE NW	10				
Harry Prior	22	NW NE	35				
Mary Ann Thomas	22	NE NE	35				
Jessie Thomas	22	SE NE	35				
Allen Hank	22	SW NE	35				
Mrs. Charles Hank	22	NW SE	30				
Billy Smith	22	NE SE	38				
Frank Jess	23	NW NW	35				
Mrs. Maggie Dick	23	NE NW	25				
Mrs. Frank Jess	23	SE NW	35				
Frank Jess	23	SW NW	35				
Dick	23 a	NW NE					Pasture

WATER SUPPLY REPORT - WESTERN SHOSHONE RESERVATION - NEVADA

Area Cultivated by Indians (1929) (continued)

Name	Sec.	Sub-division	Wild Hay	Alfalfa	Grain	Potatoes	Remarks
T. 16 S., R. 2 E.							
Dutch Pete	d 23	NE NE	30				
John Teller	23	SE NE	35				
Big Dick	23	SW NE	30				
William Teller	23	NE SE	38				
William Ross Dick	23	NW SE	10				
Mrs. Jerry White	23	SW SE	35				
Frank Boney	23	SE SE	25				
Mrs. Wm. Ross Dick	23	NE SW	30				
Joe Sam	23	NW SW	35				
Rosa Mingo	23	SW SW	35				
Jerry White	23	SE SW	35				
Mrs. Jim Blaine	24	SW NW	30				
Josh Thomas	24	SE NW					Pasture
Josh Thomas	24	SW NE					Pasture
Josh Thomas	24	NW SE					Pasture
Josh Thomas	24	NE SW	20				
Mrs. William Teller	24	NW SW	30				
Anna Teller (Dec.)	24	SW SW	35				
Harry Thomas	24	SW SW	25				
[illegible]	24	[illegible]	30				

[illegible] - [illegible] RESERVATION - NEVADA

Area Cultivated by Indians (1929) (continued)

Name	Sec.	Sub-division	Wild Hay	Alfalfa	Grain	Potatoes	Remarks
T. 15 [illegible], R. 8 E.							
Annie Sugar	25	NW NW					Pasture
Dick Caskey	25	NE NW	35				
Mrs. Dick Caskey	25	SE NW	35				
Tom Marsh	25	SW NW	35				
Mamie Gibson	25	NW NE	10				
Mrs. John Wiley	25	NE NE	30				
Stanley Gibson	25	SW NE	15				
John Wiley	25	SE NE	15				
Dave Shaw	25	NW SE	35				
Jack Sims	25	Lot 3	20				
Joe Sims	25	NE SW	35				
Mrs. Joe Sims	25	Lot 2	28				
Addie Adams	25	NW SW	20				
Addie Adams	25	Lot 1	10				
Total			[illegible]				[illegible] Pasture

REPORT OF WATER SUPPLY, WATER RIGHTS AND AGRICULTURAL CONDITIONS - WESTERN SHOSHONE RESERVATION, NEVADA - IDAHO

Non-Indian Areas.

A detailed survey was made of all lands on the streams contributing to the water supply for the Indians above the reservation, with a veiw to determing what water rights, if any, existed, and what crops were raised, how the water was used in irrigation and whether or not any method of measuring the water was used.

There are three streams on the reservation which may be used for irrigation purposes: The Owyhee River, flowing from the southeast corner diagonally across the reservation; Blue Creek flowing into the reservation from the north and emptying into the Owyhee River almost in the center of the reservation, and Mary's Creek rising on the reservation and flowing out the northwest corner of the reserve to the Snake River.

Upper Owyhee River and Tributaries.

According to information obtained from the owners of the two largest holdings in this basin, Emory Johnson and R. Y. Reed, their lands were settled upon about the year 1887. These holdings were situated above the proposed Wild Horse Reservoir site and when the sage brush is removed the land irrigated grass grows up forming a natural meadow.

Those two ranches contain approximately 1700 acres of irrigated meadow land, comprising about 50% of the irrigated land on the Owyhee River above the Reservation.

Several of the appropriators of water on the upper Owyhee River and tributaries are owners of lands lying within the boundary of the Humboldt National Forest and it is only of recent date, the earliest about the year 1915 that patents have been issued although some of the land was settled upon as early as 1887.

Practically the entire area of irrigated land is devoted to the raising of hay. A few settlers have attempted to raise gardens, potatoes, etc., but owing to the high altitude, (approximately 6000 feet) and the consequent short growing season, the acreage planted to gardens and other crops is negligible.

The average production of the combined area of the two ranches owned by Mr. Reed and Mr. Johnson is approximately ½ ton per acre. Mr. Johnson harvested in 1923 a total of 538 tons of hay on his area of 903 acres of meadow land or approximately 0.60 tons per acre. The production on the Reed Ranch would probably fall short of ½ ton per acre due to a shorter water supply than for the Johnson ranch.

The production on lands in the vicinity of Mountain

headwaters of the river due in part to a more dependable water supply but principally due to the quality of hay raised which is of the tame variety, such as a mixture of timothy, clover and redtop. On the Homer Andrae, the Jarvis and Blunk ranches located on Van Duzer Creek, the production climed is two tons per acre.

Water Supply.

From all the information obtainable, the waters of the Owyhee River and tributaries above the reservation have not been adjudicated and very few filings have been made of record. The major portion of the lands irrigated were first settled upon about the year 1867 and settlers were probably not at that time required to make a filing for the appropriation of water for irrigation. The early settlers occupied portions of the unsurveyed public domain and appropriated the water necessary for the irrigation of their lands and have been required to file upon the water thus used. The recent investigation has proven that the limit has about been reached and no further development will be made on account of the limited water supply now available. On the date of the first visit to the lands in the upper Owyhee River Valley, in connection with the securing of data for this report, (August 19, 1940) the Owyhee River and all tributary streams were

practically dry and there was no water available for irrigation on that date. The only exception was Trail and Van Duzer Creeks which are fed from springs and the stream flow remains fairly steady during the summer months.

Irrigation methods.

Practically all of the irrigated area is watered by means of ditches diverted from the several streams. The ditches, in most instances, are very small, the capacity being obtained by the steep grade, in some cases running as high as 100 feet per mile. No even grade has been established for any of these ditches but they merely follow the natural slope of the narrow valleys through which they run and at the foot of the steep side hill slope. The irrigation of the meadow is commenced as early in the Spring as possible or as soon as the snow starts to melt. This is continued throughout the season or until the supply becomes exhausted. This date usually occurs about July 1 of each year, on the upper reaches of the river and about August 1, on the river in the vicinity of Mountain City, Nev., On Trail Creek and Van Duzer Creek, however some water is available for irrigation throughout the entire irrigation season.

Of the several water users interrogated, there were none that could answer or would attempt to estimate the quantity

of water used per acre in the irrigation of their lands or of the total amount used. They merely stated that they commenced as early in the spring as they could, using all the water they could carry through their ditches and continued throughout the season or as long as the water was available.

Principal Industry.

The principal industry in this locality is the raising of cattle, the raising of hay being merely in connection with, and secondary to the raising of cattle. The hay cut from these lands is used in the feeding of cattle during the winter months, each individual limiting the number of cattle in his herd according to the amount of hay harvested.

Humboldt National Forest.

The Humboldt National Forest has an area of approximately 1195 square miles or 764.800 acres. This Forest Reserve adjoins the Duck Valley Reservation on the South and East. It is situated in Elko County, Nevada, and includes a mountainous section on the headwaters of the Owyhee River, Mary's Creek, Jarbige Creek, South Ford of the Owyhee, South Fork of the Humboldt, Bruneau and Salmon Rivers. It

affords one of the best grazing sections in the Western country and is especially adopted to the grazing of cattle. In the Autumn of each year, cattle are rounded up and driven directly off the range and sold for beef. Not only does the Reserve afford excellent pasturage for stock, but it has not been allowed to become over-stocked, thus becoming a permanent source of revenue to the U. S. Forest Service as well as to those to whom permits are issued.

All persons grazing stock on the Humboldt National Forest are required to submit to the Forest Supervisor a list of the number of acres irrigated by them and a permit to graze stock on the Forest Reserve is issued in accordance with their statement. This statement is required in order to show that they are in a position to winter the number of stock that is allotted to them by the Supervisor.

The following is a list of names of those grazing stock on the forest reserve and the number of irrigated acres as filed by them with the Forest Supervisor, also the acres irrigated by each, according to survey made in 1929.

WATER SUPPLY REPORT - WESTERN SHOSHONE RESERVATION - NEVADA

List of Grazing Permits Issued.

Name	Number of Areas irrigated by each owner as submitted to Humboldt Nat'l Forest Supervisor	Number of areas irrigated by same parties according to Survey in 1929.	Remarks.
C. T. Woodward	65		Transferred to Homer Andrae
Homer Andrae	400	423.70	
Clayton Belcher	80	63.00	
W. W. Elsberry	50		Transferred to John Crossby
John Crossby	100	166.67	
Emory Johnson	400	309.00	
Kearns Corporation	1000	9.33	Total area listed.
The Moffatt Company	160	55.35	
R. Y. Reed	1000	748.34	
Emil Gustofson	20	27.00	
Manuel Vega	200	146.54	
R. W. Davidson	40	49.33	
Harry Irland	50	6.50	
George A. Nelson	70	60.00	
L. L. Peck	100	100.00	
Jarvis & Bluck	90	80.00	
N. A. Schlag	35	12.67	
T. B. Stinton	200	250.00	
Tom Stinton	100	9[illegible].00	
J. [illegible]	100	[illegible]	

WATER SUPPLY REPORT - WESTERN SHOSHONE RESERVATION - NEVADA

List of Homestead Entries on the Humboldt National Forest Reserve.

No. of H. E.	Name of Applicant	Acres	No. Pat	Date	Name Present Owner	Remarks
72	James T. Martin	141.80	548433	10-2-16	T. B. Stinton	
63	Heirs of Anna McGinnes	121.09	888690	12-6-22	" " "	
54	John Angell	159.63	639855	7-9-18	" " "	
68	Helen J. McGinnes, widow	115.39	889691	12-6-22	" " "	
74	Sarah Ann Irland	138.00	544758	9-5-16	Homer Andrae	
256	Leon L. Peck					Incomplete
169	Hugo A. Schlag	153.90	832796	10-11-22		
204	George A. Nelson	90.16	897374	2-26-23		
93	" " "	58.91	884594	Not given		
73	Jose M. Teixeira	159.07			J. G. Taylor	Incomplete
81	Edward B. Butler	156.22	544739	9-5-16	John Crossby	
71	Joseph R. Paloni	159.87	548480	10-2-16	" "	
167	Amos J. Roach	98.19	896841	2-20-23		
76	Thomas Stinton	145.49	883582	10-15-22		
203	Harry R. Irland					Incomplete
89	Katherine J. Rutherford	85.13	540528	7-28-16	P.W.Davidson	
77	James M. Brown	159.99	595970	8-3-17	Homer Andrae	
75	Leon F. Leonens	62.46	714315	8-8-17	" "	

WATER SUPPLY - REPORT WESTERN SHOSHONE RESERVATION - NEVADA

No. of W. R.	Name of Applicant	Acres	No. Pat.	Date	Name Present Owner	Remarks.
202	William W. Elsberry	157.49	843122	2-9-22		
(03936) (04070)	Emil Gustafson	120.00	843121	2-9-22	John Crossby	
63	James F. Riordan	159.44	Not given	5-17-17	Jarvis & Blunk	
03712	Clayton Belcher	160.71	" "	10-28-21		
	Eugene Cluff	160	801611	4-1-21	Clayton Belcher	
	S.F.P.R.R.	40.61		9-5-08	W.T. Jenkins Sheep Co.	Lot 2. Sec. 4, 44N 55E. Sec's. 32 & 33, 9.45 N. R. 55 E.
	Harry Parker		714512	10-22-19	" " "	

WATER SUPPLY REPORT - WESTERN SHOSHONE RESERVATION - NEVADA.

Blue Creek and Tributaries.

North of the reservation, there is an irrigated area of 2548 acres which is irrigated from several streams as follows:

1225 acres irrigated from Blue Cr. and Reservoir and Little Blue Cr. and Reservoir.

642 acres irrigated from Payne Creek & Reservoir.

619 acres irrigated from Mary's Creek Reservoir.

62 acres irrigated from Indian Creek & Reservoir.

The greater portion of this irrigated land is owned by The Blue Creek Land & Livestock Company whose headquarters are located at Elko, Nev.

The earliest settlement of those lands dates back to 1890. In 1898 Joseph A. Sewell purchased all lands and water rights excepting those belonging to the Riddle Brothers of Riddle, Idaho, which were purchased about the year 1924 by the Sewell interests with the exception of the land and water rights of Frank W. Riddle who retains title to his land and 1/7 interest in the Mary's Creek reservoir, and direct diversion and reservoir rights on Payne Creek, a tributary of Blue Creek.

The Sewell interests, after the death of Joseph A. Sewell and his wife, have combined their interests and formed a corp-

oration, known as the Blue Creek Land & Livestock Company, having headquarters in Elko, Nevada. Charles Sewell is President and Hazel Sewell is Secretary of the Company.

This Company claims ownership of 17,000 acres of land which includes approximately 2100 acres of meadow land of which 500 acres are of mixed meadow, that is, tame grasses sown in the wild meadow, and 1600 acres of wild hay meadow. They also have a lease on 2,500 acres of grazing land from the State of Idaho and claim to own 14,000 head of sheep and 2,500 head of cattle. Practically their entire head of cattle is grazed on the Duck Valley Reservation.

In the early development of these lands it was soon realized that the water supply was inadequate and steps were taken to control the supply and conserve it by the building of reservoirs. A reservoir was constructed by the Riddle Brothers on Mary's Creek, beginning about the year 1904, on lands that were made an addition to the Duck Valley Reservation in 1910. Joseph A. Sewell begun the construction of a reservoir on Blue Creek in the year 1905. Right of way for a reservoir, by H. S. Portlock, on Little Blue Creek, was approved January 22, 1910, and whose interest was later purchased by the Sewell interests.

WATER SUPPLY REPORT - WESTERN SHOSHONE RESERVATION - NEVADA.

In 1925, Frank W. Riddle begun the construction of a reservoir on Payne Creek in order to conserve the supply from that source and which enables him to irrigate later in the season, when needed the most. It is stated by the owners of these lands and no doubt is a fact that the lands would be of little value without stored water. The runoff occurs early in the spring, generally the latter part of March or early part of April and is of short duration, the runoff on Little Blue Creek especially which is said to last for only a few days.

Application for the construction of a reservoir was made by Henry Rubelt on Shoo Fly Creek, a tributary of Blue Creek with a subsequent proof of construction accepted February 14, 1921. Another dam for a reservoir was constructed by him in 1929, on West Fork of Shoo Fly Creek. Mr. Rubelt irrigates an area of mixed hay meadow of approximately 200 acres and is situated approximately 6 miles upstream on Shoo Fly Creek from its confluence with Blue Creek. It is stated that only during extreme high water in the early spring does the stream flow of Shoo Fly Creek reach the channel of Blue Creek and for that reason the irrigated area is not included in the total irrigated area of Blue Creek and tributaries, neither is the water of Shoo Fly Creek considered in the water supply.

REPORT OF WATER SUPPLY, WATER RIGHTS AND AGRICULTURAL CONDITIONS - WESTERN SHOSHONE RESERVATION , NEVADA - IDAHO

Water Adjudication.

The survey party arrived too late in the season to obtain hydrometric information of much value in determining the total water supply, however, the fact was established that although 1929 was above an average water year and the streams held up later in the season than usual, the supply was practically exhausted on July 1st.

On July 9, 1929, the entire flow of the Owyhee River at the main canal headgate (which is the upper diversion for the reservation) amounted to 23 second-feet and on July 21, 6 second-feet. When the river falls off to the point where only a few second-feet can be diverted, the water is used in the irrigation of potatoes, gardens and small fruits and results in the loss of the second cutting of alfalfa meadows and in the partial and sometimes the total loss of grain crops. The year 1929, being above an average water year, the greater portion of the alfalfa meadows were cut over the second time, the yield of course being only about one-third of the production from the first cutting. Some grain fields were not reaped nor

cut for hay, but were left for pasture. This loss in grain production and the second cutting of alfalfa, due solely to an insufficient water supply, is very discouraging to the Indians. With approximately 720 acres in alfalfa and grain and a total water supply in the river of only 6 second-feet, it is very evident of what the final outcome will be. There is no question but that a too great acreage of these crops are planted, for the water supply available.

With an assured water supply, however, this acreage could be greatly increased and also the lands now planted to alfalfa would probably double their present production. Those Indians residing on allotments where wild hay is grown, are loath to plow up any portion of their meadow land for the planting of grain or even for gardens on account of the uncertain water supply. On account of the distance from a market grain could not be grown successfully on this reservation from a commercial standpoint, even with an assured water supply, but sufficient grain could be grown to supply the local demand and with a flour mill already built, there would be no necessity of buying and freighting in flour from a distant market. Potatoes, vegetables and small fruits such as berries of all kinds

can be grown successfully on this reservation and a sufficient quantity of these could be grown to supply the local demand, which in the aggregate is no small item.

It is stated by both Indians and Whites, and is undoubtedly true that for the past five years the range on the reservation has been overgrazed and should be reduced approximately 2000 head. With this reduction made it would still leave the Indians with range enough for approximately 9000 head of cattle and horses which would insure each Indian on the reservation an independent living.

That these Indians would welcome an opportunity to become self-supporting can be proven by their resourcefulness in the face of very discouraging conditions. One Indian has a small concrete reservoir, the water supply for which is supplied from a well and pumped into the reservoir by means of a windmill, with which he irrigates a garden and several varieties of berries. Several instances were noted where gardens and strawberry beds were irrigated from water drawn from wells with a rope and bucket. Those particular instances of course, are where the water supply had become entirely exhausted and was a last resort in order to keep alive the plant growth.

WATER SUPPLY REPORT - WESTERN SHOSHONE RESERVATION - NEVADA

It is shown by the annual reports with reference to this reservation, that the average production of hay from the wild meadow lands on the reservation is less than one-half ton per acre. In direct contrast to this is the production from the Blue Creek ranch above the reservation and the meadow lands in the vicinity of Riddle Post Office which are watered from Payne Creek and from Mary's Creek reservoir, which are claimed to have an average of one ton per acre for all meadow lands, which includes the strictly wild meadow and wild meadow mixed with tame grasses. The difference in the production is accounted for by the fact that the lands above the reservation have a sufficient water supply while on the reservation the water supply is entirely exhausted in some years as early as May 15. It is stated that efforts have been made heretofore to increase the production of the wild meadow lands on the reservation, by sowing tame grasses, such as timothy, redtop and clover on the wild meadow land, but invariably, when a shortage of water occurred, the tame grasses would die out as the tame grass cannot withstand a drought as well as the wild grass. After repeated trials, and when it appeared to be useless the experiments have been abandoned. There is no doubt but that the production could be greatly increased by this method, but it would

require sufficient water throughout the entire irrigation season, in order to produce the results desired.

On the lands owned by Homer Andrae and by Jarvis and Blunk, on Van Duzer Creek a tributary of the Owyhee River, situated about 8 miles above Mountain City, the production claimed from these ranches is an average of two tons per acre. Their meadows, however, have been sown to a mixture of tame grasses, viz., timothy, redtop and clover and the production claimed, is believed to be approximately correct.

It was stated by Mr. Grant Riddle, who formally owned an interest in lands near the Riddle Post Office, (which have been sold to the Blue Creek Land & Livestock Company) that some of the land in the near vicinity of the agency, which has a good drainage slope, could be made to produce just as much as the Van Duzer Creek lands, providing water conditions were the same.

With the tendency to increase the irrigated area, not only on Blue Creek, but also, on the upper River and tributaries, which has a far more direct bearing on the water supply for the Indians, as the River at the present time is practically their only source of supply, these

unsatisfactory and discouraging conditions are rapidly becoming worse, making it more and more difficult for the Indians to make a living. It is believed that a considerable portion of the new irrigated area on the Upper Cheyenne River has been placed under irrigation subsequent to the farming operations of the Indians on the reservation. It is readily apparent, therefore, that steps should be taken to remedy this situation and that the adjudication of the waters of these streams should be no longer delayed.

There can be no doubt but that the ownership of the major portion of the lands on Blue Creek and also on the Upper River, and the appropriation of water therefor, is of long standing, and their rights should be recognized, but the rights of the Indians, also, should be established, for, if not, with the constant tendency to increase the irrigated area outside of the reservation, the time will soon come when all the water the Indians will have left will be the water rising within the reservation.

productivity of the meadow in the following year.

A ditch on the East side of Blue Creek was in the course of construction during the latter part of 1923, to increase the supply for a part of the lands now being irrigated and also to bring other lands under irrigation which have not heretofore been irrigated.

While no doubt this Company have complied with the State laws with reference to water filings and development of storage, and the large sum they have expended in the protection of their own water rights, there can be no question but that it has been detrimental to the Indians on the Duck Valley Reservation. The lands (approximately 200 acres) which were farmed by Indians about 17 years ago, have become worthless for the raising of hay which was formerly cut from these lands, and it has also decreased the pasturage value of all the lands adjacent to Blue Creek on the reservation.

Large Indian farms on Blue Creek have been abandoned for the past 17 years or since the construction of the reservoirs on Blue and Little Blue Creek. Upon the occasion of the visit to these lands, there were no fences, these having been removed several years ago, but there was evidence of an old well and of a cabin. Also along the course of

WATER SUPPLY REPORT - WESTERN SHOSHONE RESERVATION - NEVADA

Blue Creek there still remained portions of several earth and rock dams which had been placed across the creek channel, to cause the stream to overflow its banks and flood the adjoining hay land. This tract is now returning to its natural state (sage brush) and in a few years, if the present conditions continue, all evidence of a hay meadow will have been obliterated. An occasional spear of grass commonly growing in a wild hay meadow was visible and there is no doubt that with the water which formerly came down the course of Blue Creek that these lands would again become productive." There is no boubt that the abandonment of these farms was caused by the loss in productivity which can not be attributed to anything excepting shortage of water, due to the holding back of the flood waters of Blue Creek and Little Blue Creek in the reservoirs on these streams."

Statement of Guy Manning (Indian) on former operations by Indians on Blue Creek.

"Bob Roberts, harvested approximately 25 tons of hay, about 19 or 20 years ago and abandoned the place about 2 years later on account of lack of water for irrigation, due to the construction of the "Sc[illegible]ll" reservoir.

Jimmie Thomas, harvested approximately 50 or 60

tons of hay, and abandoned his place 2 Or 3 years later than Roberts, hoping that water would again come down Blue Creek as formerly. Thomas had, at the time he lived on Blue Creek about 150 head of cattle and as a consequence of shortage of hay, a part of his herd died from starvation and he was forced to see the balance of his herd at a sacrifice, and was, at the time of abandonment of his place, practically bankrupt.

Billie Boll, who lived between Roberts and Thomas, left at practically the same time and for the same reason. In addition to the above 3 residents, who had their places fenced and harvested hay therefrom, hay was cut outside the fences on the open range, but that all ceased with the construction of the above named reservoir."

Although the Blue Creek Land & Livestock Company either own or lease the land along Blue Creek and to the reservation line, no hay was cut in 1929 to within a point approximately 2 miles north of the reservation line. The land adjacent to Blue Creek from this point to the reservation line is a grass meadow but evidently for the lack of water it did not produce grass sufficient to justify the expense of mowing, although in former years a portion of this area has been mown over.

WATER SUPPLY REPORT - WESTERN SHOSHONE RESERVATION - NEVADA

It is very evident that it is the intention of the Blue Creek Land & Livestock Company to increase the area of their meadow land, for they are now compelled to buy considerable hay for the wintering of the stock now owned by them, and the fact that they expended approximately $1800 in the enlargement and reconstruction of the Little Blue Creek reservoir.

It is therefore apparent that the adjudication of the waters of Blue Creek and tributaries should no longer be delayed. Providing the rights of those now using all of the waters of Blue Creek above the reservation are upheld by the Court, the only relief left for the Indians would be the development by the Government of a storage reservoir.

REPORT OF WATER SUPPLY, WATER RIGHTS AND AGRICULTURAL CONDITIONS - WESTERN SHOSHONE RESERVATION, NEVADA - IDAHO.

Reservoirs Owned and Operated by Private Parties.

Reservoir on Mary's Creek. (Riddle Reservoir).

This reservoir lies almost wholly within the Duck Valley Reservation, the dam being outside of the North reservation boundary line and near the Northeast corner of the reservation. The reservoir is situated in Sections 4 and 5, T. 15 S., R. 4 E., within the reservation, and a very small portion of the reservoir including the dam is in Section 32, T. 14 S. R. 4 E., outside of the reservation.

Mr. Frank W. Riddle of Riddle, Idaho, the present owner of an 1/7 interest in the "Riddle" reservoir, and one of the original builders, stated that the dam for the reservoir was begun in about the year 1904, but according to the records in the U. S. Land Office at Blackfoot, Idaho, (these records having been transferred from the Boise, Idaho, Land Office, the Boise Office being abolished about the year 1924), the first survey was run June 15 to 18, 1906. Survey papers for the reservoir and canals were filed in the U. S. Land Office at Boise, Idaho, on January 29th, 1907. Right of way for the reservoir and canals were approved by the Commissioners letter "P" February 7, 1903. The reservoir lies within that portion of the reservation that was establish-

ed on July 1, 1910. The reservoir rights, therefore, antedate the establishment of that addition to the reservation.

The principal source of water supply is from Mary's Creek and is carried through a ditch 5 feet wide on the bottom with a 2.5 foot bank on the lower side and will safely carry water to a depth of 1.8 feet, having an approximate capacity of 16 second-feet. The ditch is about 1½ miles long and for the greater part of the way is along the steep hill of a narrow box canyon and for a considerable distance was blasted through the solid lava rock. In several places a masonry retaining wall was build for the lower bank, 2 feet thick and 3 feet high. There are several sections of this wall totaling several hundred feet in length. Owing to the expensive nature of the work in constructing the supply ditch from Mary's Creek, the cost per acre-foot of water stored is extremely high. Mr. Frank W. Riddle states that the supply ditch from Mary's Creek cost originally about $11,000 and was later reconstructed at an additional cost of $5,000 or a total outlay of $16,000. Reconstruction consisted of replacing wooden flumes with heavy masonry retaining walls.

The ditch is in a very bad state of repair, due

principally to large boulders becoming loosened on the steep hill side along the course of the ditch and rolling down, obstructing the channel.

The reservoir has not been filled to capacity during the past four years, said to be due to negligence on the part of the man in charge in not getting the water started through the supply ditch soon enough in the spring of the year. Mr. Riddle stated that water should be started through the ditch supplying the reservoir about the middle of March and continuing until needed by the farmers living further down the stream, owing to a prior water right. Mr. Riddle also stated that the reservoir permit calls for a storage right of 4000 acre feet and a diversion right from Mary's Creek of 40.0 second feet and a diversion right of 2 second feet from Alder Creek. The runoff from Alder Creek drains directly into the reservoir.

The reservoir and canal rights were purchased by the Sewell Interests about the year 1915, Mr. Frank F. Riddle, however, retaining a 1/2 interest for the irrigation of lands in sections 16-17-18 and 19, in T. 14 N., R. 5 E.

The water is released through a pipe under the dam and runs through a ditch 10 feet wide on the bottom and having a water depth of one foot, approximately north one a

distance of 1½ miles where it falls over a lava cliff about 40 feet in height and then continues in a northwesterly direction for approximately ½ mile to a saddle in the divide separating the water sheds of the Bruneau and Owyhee Rivers. It is there turned loose and follows a natural water course to a short distance from the point of use, and is diverted through small ditches to the lands irrigated in Sections 13-17-18-19-20-21 and 29, T. 14 S. R. 3 E.

The following are notes by I. F. Shaffner, Licensed Surveyor, who made original survey of reservoir in 1906.

Dam, height	19 feet
Length on top	831 feet
Length on bottom	200 feet
Area of reservoir	126.79 Acres
Capacity of reservoir	1240 acre feet.

The following are notes on reservoir made at time of survey in 1939.

Dam, height	16 feet
Length on top	879 feet
Crown of reservoir	10 feet
Area in acres	130
Capacity of reservoir in acre feet	971

ATER SUPPLY REPORT - WESTERN SHOSHONE RESERVATION- NEVADA

Estimated cost of "Riddle" reservoir.

Embankment	10833 Cu.yds @ 40¢	$4333.20
Riprap	2325 Sq.yds @ $1.25	2906.25
Outlet gate and pipe		1000.00
Supply ditch (Information from F. W. Riddle)		11000.00
Supply ditch (Reconstruction)		5000.00
Outlet ditch (approximately 1½ miles		2500.00
Engineering and contingencies 20%		5347.90
Total		32087.35
Cost per acre foot of storage		33.05

Blue Creek Reservoir.

This reservoir is situated in sections 2 and 11, T. 13, S., R. 2 E., and covers an area when filled to capacity of 163 acres. It is owned by the Blue Creek Land & Livestock Company, successors to Joseph a Sewell and wife, both of whom are now deceased. It is claimed that construction was begun about the year 1909, which is probably correct, as the records show that application for right of way for reservoir was filed by Joseph A. Sewell on Oct. 21, 1905. The dam has a crest length of 975 feet, is of the earth and loose rock type and has an emergency spillway at the South-west end of the dam. It also has a concrete structure spill-

way about midway of the dam. The elevation of the bottom of the spillway is about,6 feet below the high water mark in the reservoir and is built with the idea of controlling the top six feet of water in the reservoir, allowing this amoung to be drawn off without opening the outlet gate. The water when released through this spillway, spills over a lava rock ledge at a point about 200 feet Southwest of the outlet pipe under the dam and in the original stream channel of Blue Creek. This structure is in a bad state of repair, the side walls being braced with timbers in order to keep the cracked and broken walls from falling in. Its location (midway of the dam) has endangered the dam, which is likely to be washed out should the reservoir be filled to capacity and the intention of the present owners is to abandon this spillway, fill in the opening and relocate the spillway around the Southwest end of the dam where there is a natural spillway over a lava rock ledge and where it should have been originally placed. A masonry outlet was built in the creek bed, having a dimension of 1.5 x 3.5 feet and about 125 feet long. The control for this outlet is a very crude affair, having a vertical lift,making it necessary to build a raft to reach it, which was probably the reason for placing the spillway gate at its present location as they could draw off the top 6 feet of water without the opening of the outlet gate.

WATER SUPPLY REPORT - WESTERN SHOSHONE RESERVATION - NEVADA

The water stored in this reservoir is released at the dam, allowed to flow down the stream channel of Blue Creek and is diverted from the Creek approximately 5 miles below the reservoir in the NE¼ of the SW¼ of Section 30, T. 13 S. R. 5 E. for the irrigation of lands along the course of Blue Creek.

At this point there are two ditches, one on each side of the stream, the one on the East side having a bottom width of 3 feet and having an approximate length of one mile. The ditch on the West side has a bottom width of 8 feet and an approximate length of 1½ miles. These are the only ditch diversion on Blue Creek and the area irrigated from these two ditches amounts to approximately 160 acres. Owing to the flat slope through which Blue Creek flows, which is only about two feet per mile, the method of irrigation consists principally of the placing of a succession of temporary brush and manure dams across the stream channel causing the banks to overflow and spread out over the meadows.

It is the intention of the Blue Creek Land & Live-stock Company to construct, during the fall of 1929, a large ditch on the east side of Blue Creek, going farther up the stream from the present diversion to irrigate new lands along the east side of the Creek.

Blue Creek Reservoir.

WATER SUPPLY REPORT - [illegible] RESERVATION - NEVADA

Area	163 Acres
Capacity	1907 Acre feet
Length of dam on top	973 feet
Maximum fill	26 feet
Crown	10 feet

Estimated Cost.

Embankment	14520 Cu. yds @ 40¢	5,848.00
Riprap	2439 Sq. yds @ $1.25	3,048.25
Spillway or high water diversion		300.00
Outlet to reservoir		1,000.00
Engineering and contingencies 20%		2,0[illegible].35
	Total	$12,[illegible].10
Cost per acre-foot of storage		$6.42

Little Blue Creek Reservoir.

This reservoir is located in Sections 16 and 17, T. 13, S. R. 5 E. B. M., on Little Blue Creek. The dam is in Section 17 and was originally built in 1909, according to the information obtainable, which is probably correct. The records in the State Engineer's office at Boise, Idaho, show that an application was made for 25 second feet of the waters of Little Blue Creek, [illegible] by [illegible] [illegible] and [illegible] [illegible]. One third interest was retained by [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible]

veyed to Sarah M. Portlock January 27, 1914. All interests were conveyed to J. A. Sewell July 18, 1923. Certificate was issued on September 26, 1914 for 9.6 second-feet and proof of beneficial use due January 2, 1918. The records from the State Engineer's office at Boise, Idaho, show that this permit has not been completed. Right of way for reservoir on Little Blue Creek, in Sections 16 and 17 was approved by the General Land Office, Washington, D. C., Jan. 22, 1910.

The dam as originally built by Portlock was a low dam having a spillway at the north end which has now been abandoned and filled in. The dam was approximately 300 feet in length and about 20 feet high. The reservoir was claimed to have had a capacity of 600 acre-feet, but probably was not that large.

The original dam was reconstructed in 1928 by the Blue Creek Land & Livestock Company, the present owners and now has a maximum fill of 34 feet and has a total length of 1182 feet. Approximately 27,000 cuyds, of fill was added to the embankment, which was contracted for at the price of 38¢ per cuyd., but the contractor could not meet his payments for labor and was forced to abandon the contract, the Company finishing the job. Considerable difficulty was experienced in getting material to place in the dam within a reasonable haul which caused the failure of the contractor. Some of this

material was hauled a distance of 1500 feet. The dam is constructed of earth and loose rock and the spillway was blasted through solid rock, near the Southwest end of the dam. The dam has a crown of 10 feet and was supposed to have a free board of five feet, but it now has only approximately three feet at the lowest point due to the settlement of the embankment since completion. The outlet is placed in the original creek bed and the outlet gate is controlled by a wheel and screw lifting device placed on the inclined face of the dam. The rod operating the gate is carried up the face of the dam in a pipe which is bedded in concrete supports spaced approximately 10 feet apart.

Rock riprap 1½ feet thick was let by contract at $2.50 per cubic yard. Approximately 859 cubic yards of rock was placed on the face of the dam at an approximate cost of $2146.75, the contractor finishing the job at the contract price.

The water released at the dam flows down the channel of Little Blue Creek for approximately 3 miles to its junction with Blue Creek about one mile above the Blue Creek Land and Livestock Company's diversion on Blue Creek, the water being used to augment the supply from the Blue Creek reservoir and to irrigate lands owned by the Company lying along the course of Blue Creek.

Little Blue Creek reservoir after reconstruction:

Area	159 acres
Capacity	1908 acre-feet
Length of dam on top	1182 feet
Maximum fill	34 feet
Crown	10 feet

Estimated Cost:

Embankment 52711 cu. yds. @ 40¢		$21,084.40
Riprap 1½ thick, 858.7 cu. yds. @ $2.50		2,146.75
Spillway Excavation class 3		534.00
Outlet to reservoir		1,000.00
Engineering and contingencies	20%	4,953.05
		$29,718.20
Cost per acre-foot of storage		$15.57

Payne Creek Reservoir.

This reservoir lies in Sections 27 and 34, T. 13, S. R. 3 E., on Payne Creek, a tributary of Blue Creek and is owned by Frank W. Riddle of Riddle, Idaho. The dam is located 3,370 feet East and 3,255 feet North of the SW corner of Sec. 32. The reservoir has an approximate area at high water mark of 34 acres and an approximate capacity

of 220 acre-feet.

Payne Creek and Payne Creek Reservoir is the principal source of water supply for the lands owned and irrigated by Mr. Riddle in Sections 17, 18 and 19, T. 14, S. R. 3 E.

Mr. Riddle filed application for a reservoir permit to store 1200 acre-feet of the waters of payne Creek August 18, 1925, work to be completed September 3, 1930. The dam for this reservoir has been completed for the storage of approximately 220 acre-feet, with the exception of the placing of riprap on the face of the dam. This lack of riprap has resulted in considerable damage to the dam from erosion by wave action. An outlet is built in the original creek channel and the spillway is located at the North end of the dam but was evidently excavated to a too great depth as there is a sand bag dam approximately 3 feet in heighth placed across this spillway to raise the water in the reservoir above the spillway level.

The water released from the reservoir flows down the channel of Payne Creek approximately 1½ miles to where it is diverted from the Creek in the SE¼ of the NE¼ of Section 4, T. 14, S. R. 3 E., through a ditch 3 feet wide on the bottom, 4 miles long and having an approximate grade of 5 feet per mile and an approximate length of 4 miles.

WATER SUPPLY REPORT - WESTERN SHOSHONE RESERVATION - NEVADA

Payne Creek Reservoir:

Area	34 acres
Capacity	220 acre-feet
Length of dam on top	240 feet
Maximum fill	21 feet
Crown	12 feet.

Estimated cost:

Embankment 6000 cu. yds @ 40¢	$2400.00
Retaining wall 90 Sq. yds @ $3.00	270.00
Spillway	200.00
Outlet to reservoir	750.00
Cost to date	3620.00
Work necessary to complete:	
Riprap 1100 sq. yds. @ $1.25	1375.00
Engineering & contingencies 20%	999.00
Total	5994.00
Cost per acre-foot of storage	27.25

WATER SUPPLY REPORT - WESTERN SHOSHONE RESERVATION - NEVADA

Indian Creek Reservoir.

The Blue Creek Land and Livestock Company are the owners of a small reservoir, located in Section 28, T. 14 S., R. 3 E., having an area of approximately 15 acres and having an approximate capacity of 60 acre feet, which is filled from a supply ditch diverted from Indian Creek in the NE¼ of the NW¼ of Section 33, T. 14 S., R. 3 E. The water is carried through this ditch for approximately ½ mile and is used both as a supply ditch and a direct diversion, irrigating approximately 62 acres of wild meadow hay land in Sections 32 and 33, T. 14 S., R. 3 E.

Indian Creek rises on the reservation near the NE corner of T. 15 S. R. 3 E., and leaving the reservation near the South ¼ corner of Section 36, T. 14 S., R. 3 E., flowing in a general Northwesterly direction to a point near the NE corner of Section 33, where it turns in a Southwesterly direction, re-entering the reservation near the corner of Sections 4 and 5 T. 15, S., R. 3 E., and continues in a Southwesterly direction on the reservation, emptying into Blue Creek. Indian Creek is entirely dry during the latter part of the summer and were it not for the small reservoir the water supply would not be sufficient to irrigate the small tract of 62 acres which it now serves.

WATER SUPPLY REPORT - [illegible] RESERVATION - NEVADA

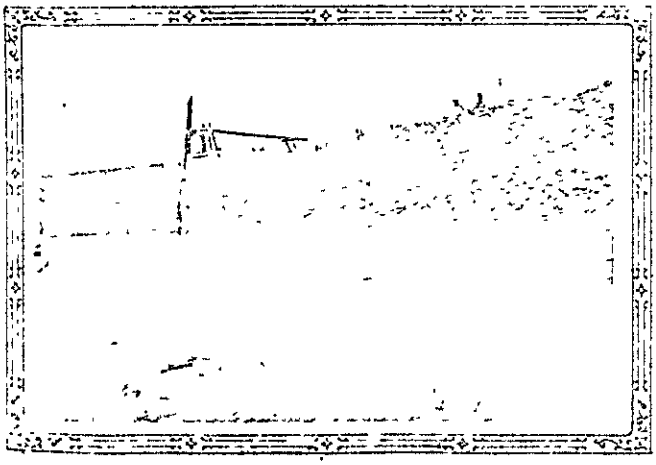
Notes on Indian Creek Reservoir and estimate of cost:

Area	15 acres
Capacity	60 acre-feet
Length of dam on top	310 feet
Maximum fill	10 feet
Crown	8 feet

Estimate of cost:

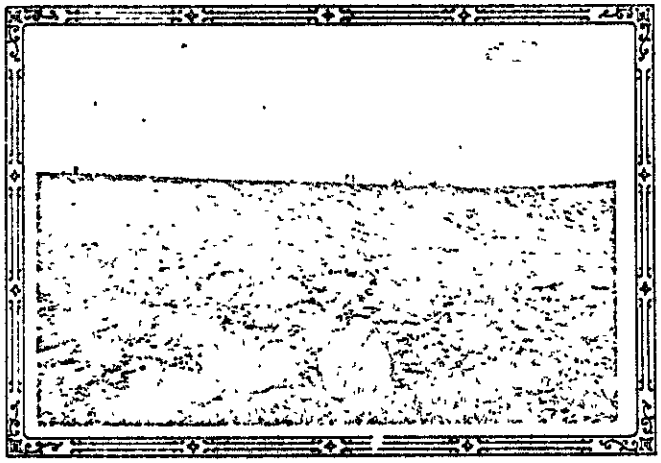
Embankment 2774 cu. yds.	40¢	1109.60
Outlet to reservoir		100.00
Supply ditch to reservoir		100.00
Engineering and contingencies	20%	261.90
Total		$1571.50
Cost per acre-foot of storage		26.19

List of photographs taken.



Mary's Creek Reservoir
Dam showing control
for outlet ditch. Reservoir practically empty,
July 12, 1929. Outlet
gate closed July 12, 1929.

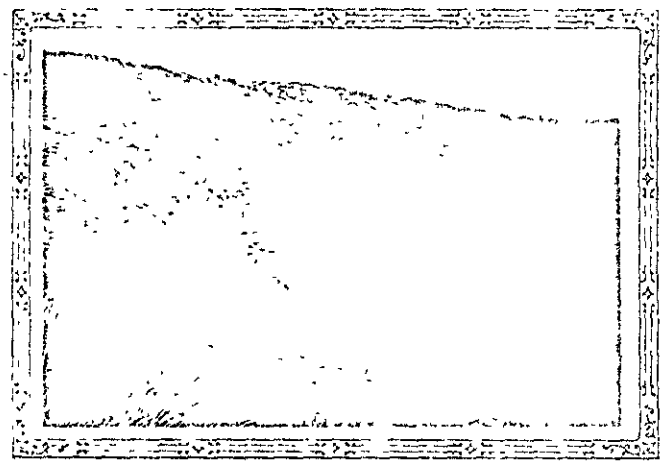
WATER SUPPLY - WESTERN SHOSHONE RESERVATION - NEVADA



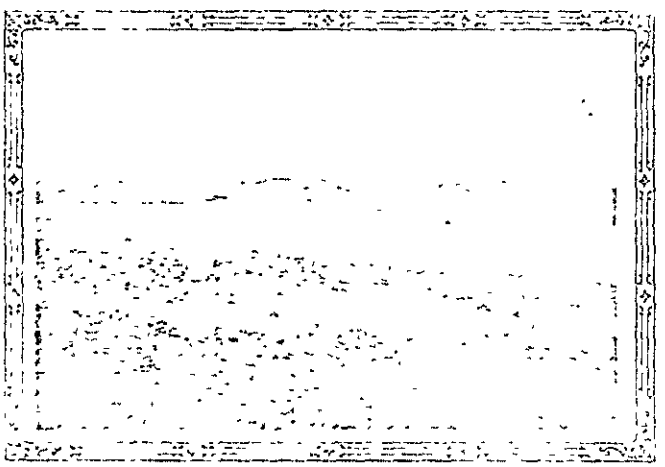
Mary's Creek Reservoir Dam, Facing South or Upstream, July 12, 1929.

Mary's Creek Reservoir Dam, Showing central gate for outlet ditch, July 12, 1929.

WATER SUPPLY & WESTERN SHOSHONE RESERVATION - NEVADA

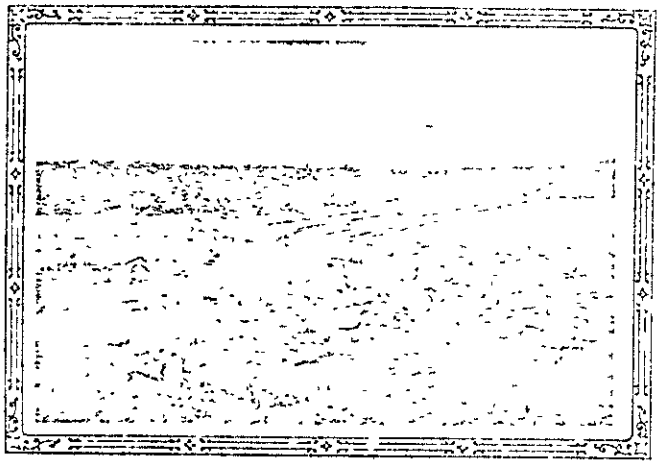


General view of Supply ditch for Marys Creek Reservoir, July 12m 1929.

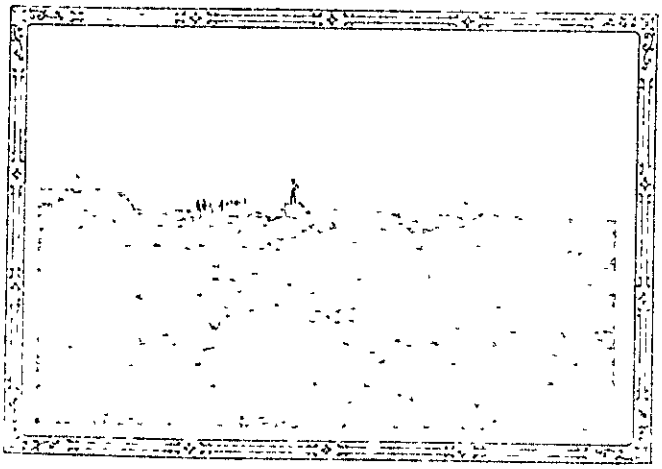


General view of reservoir on Little Blue Creek, July 13, 1929.

SUPPLY - WATER AND POWER RESOURCES - NEVADA

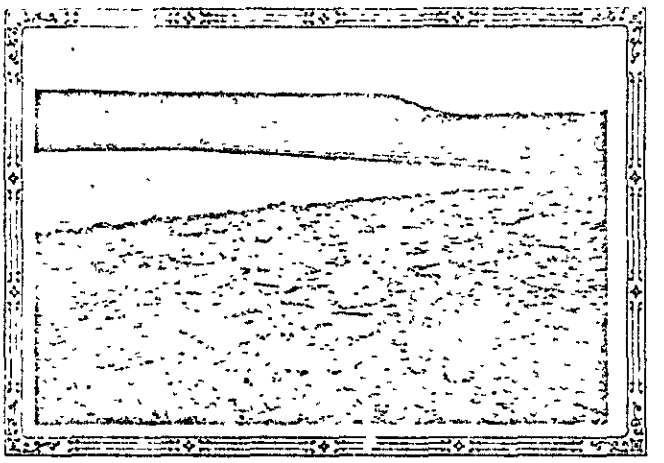


General view of dam on Little Blue Creek, facing west, July 13, 1939.



Spillway near Southeast end of dam on Little Blue Creek, July 13, 1939.

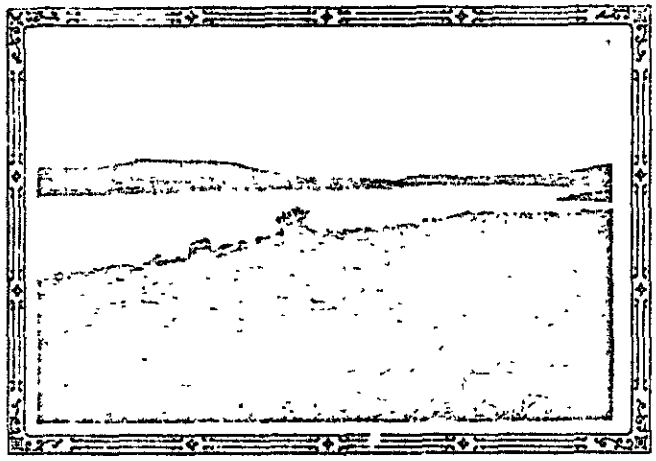
WATER SUPPLY - WESTERN SHOSHONE RESERVATION - NEVADA



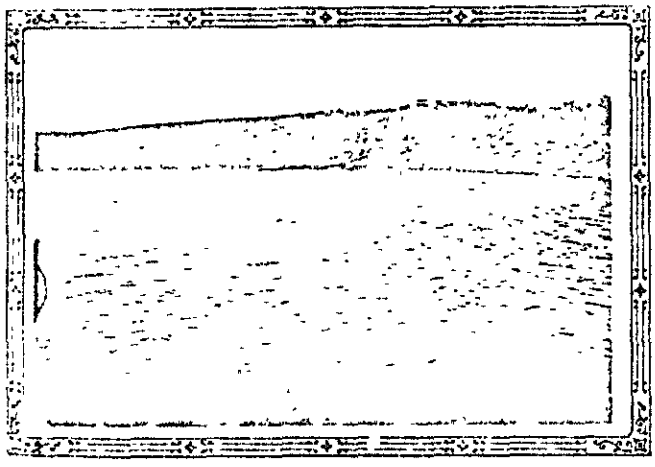
General view of dam on Little Blue Creek facing Northeast or upstream. July 13, 1929.

General view of dam on Little Blue Creek facing downstream. July 13, 1929.

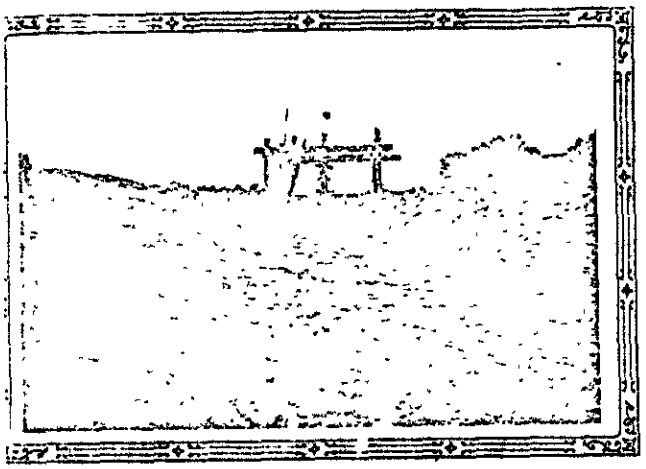
R SUPPLY - WESTERN SHOSHONE RESERVATION - NEVADA



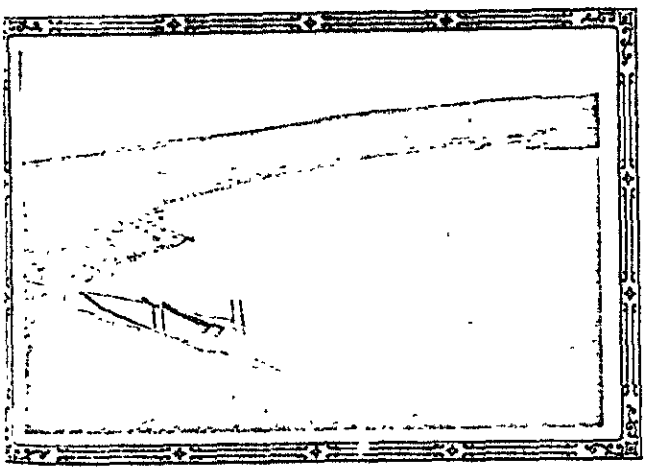
General view of Blue Creek Reservoir July 18, 1929.



Blue Creek dam facing down stream showing control for outlet to reservoir July 18, 1929.



Spillway structure on high water diversion. Blue Creek Reservoir. Structure in bad order and will probably be abandoned in 1930.
July 18, 1929.

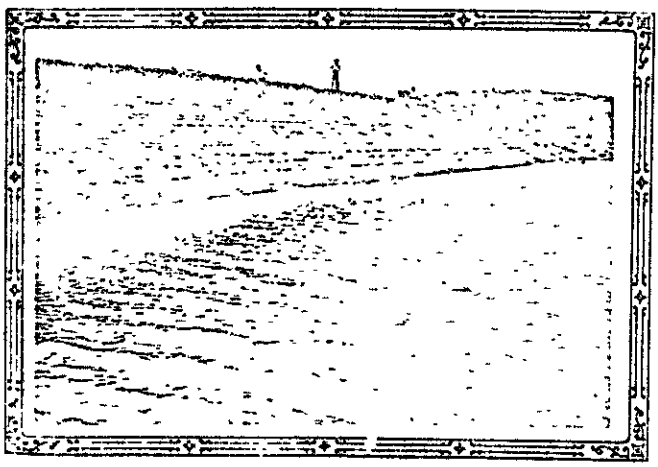


General view Payne Creek Reservoir owned by Frank W. Riddle.
July 18, 1929.

ER SUPPLY - WESTERN SHOSHONE RESERVATION - NEVADA.

Spillway, Payne Creek Reservoir, showing sand bag dike to increase the capacity of the reservoir

July 18, 1929.



Payne Creek dam from upstream side showing effect of erosion on account of dam not being rip-rapped.

July 18, 1929.

WATER SUPPLY - WESTERN SHOSHONE RESERVATION - NEVADA

Blue Creek Land & Livestock Company's diversion on Blue Creek from down stream side.

Blue Creek Land & Livestock Company's diversion on Blue Creek Looking downstream. Ditch at right of willows. July 13,1929.

WATER SUPPLY - [illegible] RESERVATION - NEVADA

Blue Creek Land & Livestock Company's diversion on Blue Creek looking North or upstream. Ditch diversion in center of picture.

July 13, 1929.

Names and Addresses of Parties Claiming a Water Right on the Upper Owyhee River & Tributaries.

Name	Source of Water Supply	Areas Irrigated 1929	Approx. date of settlement	Address
Harry Irland	Trail Creek	6.00	1910	Mountain City, Nev.
Homer Andrea	Trail and Van Duzer Creeks.	420.70	1899	" " "
J. C. Taylor	Trail Creek	57.[illegible]7	18[illegible]	Lovelock, Nev.
Jarvis & Blunk	Van Duzer Creek	80.00	1[illegible]7	Bert Jarvis-Owyhee, Nev.
T. R. Stinton	Owyhee River, Van Duzer & Slaughter Robbs	150.00	Not known	Robert Blunk-Mountain City Nev.
John Crosby	Van Duzer, Chicken & California Creek	1[illegible].[illegible]7	18[illegible]	" " "
Hugo A. [illegible]	California Creek	1[illegible].[illegible]7	1912	" " "
Tom Stinton	" "	9[illegible].00	Early 80's	" " "
[illegible]	Owyhee River	[illegible]	" "	" " "

WATER SUPPLY - WESTERN SHOSHONE RESERVATION - NEVADA

Name	Source of Water Supply	Areas Irrigated 1920	Approx. date of settlement	Address
L. L. Peck	Owyhee River & Allegheny Creek	100.00	1897	Mountain City, Nev.
George A. Nelson	Mill Creek	60.00	1900	" " "
R. Y. Reed	Deep, Clear and Lake Creeks	746.84	1897	North Fork Nev.
Emil Gustofson	Deep Creek	27.00	1897	" " "
Manuel Vega	Jack & Crooked Creeks.	146.34	1897	" " "
Emory Johnson	Deep & Hot Creeks	900.00	1914	" " "
Kearns Corporation	Owyhee River, Warm and Penrod Creeks	6.33	Not Known	Salt Lake City, Utah
Pedro Mendive	Penrod Creek	64.00	1897	North Fork Nev.
W. T. Jenkins Sheep Co.	Pomeran & Warm Creeks.	91.27	Not Known	Battle Mountain, Nev.
Clayton Belcher	Warm & Chicken Creeks.	60.00	1919	North Fork, Nev.
Guy Baxter	Hay Meadow Creek	16.00	Not Known	" " "
Sam Baker	" " "	39.33	1914	" " "
*Joseph Baker (Dec.)	Martin Creek	16.00	1914	" " "
Moffatt Co.	Gold Creek	53.33	Not Known	San Francisco Cal.
Gold Creek Ranger Station	Martin Canyon Cr.	30.00		
		3437.55		
*Jesse F. Baker				North Fork, Nev.

WATER SURVEY - WESTERN SHOSHONE IRRIGATION - NEVADA

List of Irrigated Lands, North of Reservation (Blue Creek)

No. of Acres.	Name of Owner	
1224.67	Blue Creek Land & Live-stock Company.	Blue Creek and Res., Little Blue Creek & Reservoir.
293.33	" " " " "	Payne Creek
505.00	" " " " "	Mary's Creek Reservoir.
82.00	" " " " "	Indian Creek & Reservoir.
2000.00		
243.67	Frank M. Riddle	Payne Creek & Reservoir.
113.67	" " "	
389.34	(Leased from State of Idaho)	Mary's Creek Reservoir.
2547.31	Total acreage irrigated, North of Reservation, in 1929.	

WATER SUPPLY REPORT - WESTERN SHOSHONE RESERVATION - NEVADA.

List of Defendant Corporations, proposed Adjudication Suit, Owyhee River and Tributaries.

Name of Corporation	Name of Officer	Title	Address
Kearns Corporation	T. L. Croteau	Director	Unknown
" "	M. A. Brose	"	"
" "	C. H. Blaske	"	"
" "	W. T. Mathews	Resident Agent	Elko, Nev.
W. T. Jenkins Corporation	Edith Jenkins, widow.	Director	Battle Mountain, Nev.
" " " "	R. T. Jenkins	"	" " "
" " " "	Thomas Nelson	"	Stonehouse, Nev.
The H. Moffat Company	W. H. Moffat	President	San Francisco, Cal.
" " " "	George W. Andrews	Secretary	" " "
" " " "	George Calvin	Agent	Elko, Nev.
The Blue Creek Land & Livestock Company	Charles A. Towell	President.	Elko, Nev.
	Hazel H. Towell	Secretary	" "

WATER SUPPLY - WESTERN SHOSHONE RESERVATION - NEVADA

Abstract of Permits on Blue Creek & Tributaries.

Blue Creek:

Permit No. 5512.

Applicant Joseph A. Sewall

Amount claimed 20 second-feet.

Diversion N 8°23'W and 2133 feet distant from ¼ cor. to Secs. 30 & 31, T. 13, S., R. 3 E.

Application filed November 30, 1909.

Proof of completion of works made November 20, 1913 and certificate issued.

Proof of beneficial use made June 28, 1915.

License issued for 18.7 second-feet.

Permit No. 8905.

Applicant J. A. Sewoll.

Amount claimed 20 second-feet.

Diversion N 8°23'W and 2133 feet distant from the South ¼ corner of Sec. 30, T. 13, S., R. 3 E.

Application filed November 15, 1912.

Proof of completion of works made December 11, 1915 and certificate issued.

Proof of beneficial use made July 31, 1922.

License issued for 19.5 second-feet.

WATER SUPPLY - WESTERN SHOSHONE RESERVATION - NEVADA.

Permit No. R-45

Applicant Jos. C. Strickland.

Amount claimed 100 acre-feet.

Diversion SW¼ SE¼, Sec. 32, T. 11 S., R. 2 E.

Application filed October 20, 1916.

Proof of completion of works made October 27, 1921 and certificate issued.

Proof of beneficial use due December 23, 1921 but not made.

Permit No. 12709.

Applicant Jos. C. Strickland.

Amount claimed 4 second-feet.

Diversion SW¼ SE¼, Sec. 32, T. 11, S., R. 2 E.

Application filed October 20, 1916.

Proof of completion of works made October 27, 1921 and certificate issued.

Proof of beneficial use made December 9, 1921.

License issued for 3.36 second-foot.

Conveyed to Domingo Monosterio January 19, 1920.

Permit No. 14892.

Applicant George Haase.

Amount claimed .8 second-foot.

WATER SUPPLY - WESTERN SHOSHONE RESERVATION - NEVADA.

ermit No. 14892 Cont'd:

iversion NE¼ NW¼, Sec. 7, T. 14 S., R. 3 E.

Application filed August 11, 1920.

Proof of completion of works made August 30, 1920 and certificate issued.

Proof of beneficial use made February 24, 1921.

License issued for .1 second-foot.

ittle Blue Creek, tributary to Blue Creek.

ermit No. 4249.

pplicants Harris Portlock and P. Shattuck.

Amount claimed 25 second-feet.

Diversion SW¼ SW¼ Sec. 20, T. 15 S., R. 3 E.

Application filed December 28, 1908.

Proof of completion of works made January 23, 1914 and certificate issued.

Proof of beneficial use due January 2, 1918, but not made.

Conveyed to Harris Portlock June 2, 1909.

2/3 Interest conveyed to Sarah M. Portlock January 27,1914.

All conveyed to J. A. Sewell of Owyhee, Nevada, July 18, 1923.

ermit No. 11023.

pplicant Geo. R. Bertschy.

Amount claimed 2 second-feet.

WATER SUPPLY - WESTERN SHOSHONE RESERVATION - NEVADA

Diversion SW¼ NE¼ Sec. 20, T. 13 S., R. 3 E.

Application filed February 12, 1915.

Proof of completion of works not made.

Proof of beneficial use due March 6, 1920, but not made.

Cancelled November 15, 1927.

Little Blue Creek:

Permit No. 11342.

Applicant Geo. M. Bertschy.

Amount claimed 2 second-feet.

DiversionNW¼ NE¼ Sec. 20, T. 13 S., R. 3 E.

Application filed June 12, 1915.

Proof of completion of works made June 21, 1917 and certificate issued.

Proof of beneficial use due July 17, 1919, but not made.

Permit No. 12639.

Applicant Grant Riddle.

Amount claimed .8 second-foot.

Diversion SW¼ NE¼ Sec. 1, T. 13, S., R. 3 E.

Work to be completed November, 11, 1918, but proof not made.

Proof of beneficial use due November 11, 1921 but not made.

Cancelled

WATER SUPPLY - WESTERN SHOSHONE RESERVATION - NEVADA

Shoo Fly Creek, tributary to Blue Creek:

Permit No. 8571.

Applicant H. E. Rubelt.

Amount claimed 3.0 second-feet.

Diversion NE¼ NE¼ Sec. 1, T. 14, S., R. 1 E.

Application filed July 31, 1912.

Proof of completion of works made October 16, 1917 and certificate issued.

Proof of beneficial use made August 24, 1919.

License issued for 3.0 second-feet.

Permit No. 13965.

Applicant Henrietta Rubelt.

Amount claimed 3.0 second-feet.

Diversion NE¼ NE¼ Sec. 1, T. 14 S., R. 1 E.

Application filed April 7, 1919.

Proof of completion of works made October 2, 1919 and certificate issued.

Proof of beneficial use made November 15, 1919.

License issued for 2.8 second-feet.

Permit No. 12123.

Applicants Frank W. Riddle and W. E. Wines.

16.7 second-feet.
Amount claimed 4175 Acre-feet.

Diversion SE¼ SE¼ Sec. 10, T. 14, S., R. 2 E.

Application filed March 8, 1916.

Work to be completed May 18, 1921.

Proof of completion of works not made.

Proof of beneficial use due May 18, 1927, but not made.

Permit No. R-381.

Applicant Frank W. Riddle.

Amount claimed 4175 acre-feet.

Diversion NW¼ NW¼ Sec. 17, T. 14 S., R. 2 E.

Application filed October 20, 1925.

Work to be completed November 23, 1930.

Proof of beneficial use due November 23, 1936.

Permit No. 16391.

Applicant Frank W. Riddle.

Amount claimed 16.7 second-feet.

Diversion SE¼ SW¼, Sec. 10, T. 14 S., R. 2 E.

Application filed October 20, 1925.

Work to be completed November 23, 1930.

Proof of beneficial use due November 23, 1936.

In addition to the above, application for Right of Way

WATER SUPPLY - WESTERN SHOSHONE RESERVATION - NEVADA

for a reservoir on Shoo Fly Creek was made by Henry E. Rubelt, which was approved by the Commissioner of the General Land Office June 22, 1908.

Commissioners Letter "F" of February 14, 1921, accepts proof of construction. This reservoir was constructed and has been in operation for several years. Its estimated capacity is 930 acre-feet and estimated cost $10,000.

Note: The above application does not appear of record in the office of Commissioner of Reclamation at Boise, Idaho.

West Shoo Fly Creek, tributary to Shoo Fly Creek:

Permit No. 13334.

Applicant Henry Rubelt.

Amount claimed 1.4 second-feet.

Diversion NW¼ SE¼ Sec. 26, T. 13, S., R. 1. E.

Application filed November 24, 1917.

Proof of completion of works made November 30, 1920 and certificate issued.

Proof of beneficial use made November 10, 1921.

License issued for 1.1 second feet.

Permit No. R-431.

Applicant Henry E. Rubelt.

WATER SUPPLY - WESTERN SHOSHONE RESERVATION - NEVADA.

Amount claimed 280 acre-feet.

Diversion SE¼ SE¼, Sec. 22, T. 13, S., R. 1 E.

Application filed July 3, 1928.

Work to be completed July 5, 1933.

Proof of beneficial use due July 5, 1933.

Note: Work was completed in 1929,

Indian Creek, tributary to Blue Creek;

Permit No. 16723.

Applicant, Blue Creek Land & Livestock Company.

Amount claimed 3 second-feet.

Diversion NE¼ NE¼ Sec. 33, T. 14 S., R. 3 E.

Application filed July 27, 1927.

Work to be completed July 30, 1930.

Proof of beneficial use due July 30, 1932.

Payne Creek, tributary to Blue Creek;

Permit No. 7421.

Applicant Cecelia and Grant Riddle.

Amount claimed 9.6 second-feet.

Diversion NE¼ SE¼ Sec. 4 T., 14 S., R. 3 E.

Application filed March 6, 1911.

Proof of completion of works made June 10, 1913.

WATER SUPPLY- WESTERN SHOSHONE RESERVATION - NEVADA.

Proof of beneficial use made June 19, 1915.

License issued for 3.8 second-feet.

mit No. 8920.

licant - Grace Stout.

Amount claimed 2.0 second-feet.

Diversion NW¼ NE¼ Sec. 30, T. 14 S., R. 3 E.

Application filed November 6, 1912.

Proof of completion of works made November 9, 1914, and certificate issued.

Proof of beneficial use due December 14, 1915, but was not made.

mit No. R-376.

licant Frank W. Riddle.

Amount claimed 1200 Acre-feet.

Diversion SW¼ NE¼ Sec. 34, T. 13 S., R. 3 E.

Application filed August 18, 1925.

Work to be completed September 3, 1930.

Proof of beneficial use due September 3, 1935.

mit No. 11264.

plicant Solomon R. Imel.

WATER SUPPLY - WESTERN SHOSHONE RESERVATION - NEVADA.

Amount claimed 6.4 second-feet.

Diversion NE¼ SE¼, Sec. 4, T. 14 S., R. 3 E.

Application filed May 18, 1915.

Proof of completion of works made June 2, 1919 and certificate issued.

Proof of beneficial use made July 20, 1922.

License issued for 3.5 second-feet.

Permit No. 16341.

Applicant Frank W. Riddle.

Amount claimed 23.2 second-feet.

Diversion SE¼ NE¼ Sec. 4 T. 14 S., R. 3 E.

Application filed August 18, 1925.

Work to be completed September 3, 1930.

Proof of beneficial use due September 3, 1935.

Conveyed to Alvin Tindall.

Mary's Creek, tributary to Burneau River;
Permit No. 1175.

Applicant Duck Valley Irrigation Company.

Amount claimed 27.3 second-feet from Mary's Creek and 2 second-feet from Alder Springs.

Diversion SE¼ SE¼ Section 8, T. 13 S., R. 4 E.

Application filed March 16, 1905.

WATER SUPPLY - WESTERN SHOSHONE RESERVATION - NEVADA.

1911 and Certificate issued.

Proof of beneficial use made March 11, 1913.

License issued for 28.8 second-feet.

REPORT OF WATER SUPPLY, WATER RIGHTS AND AGRICULTURAL CONDITIONS- WESTERN SHOSHONE RESERVATION, NEVADA - IDAHO.

Investigation of Reservoir Sites.

During the course of the adjudication survey in 1929, an investigation was made of all reservoir sites as described in the report by H. T. Johnson, Assistant Engineer, under date of June, 1916, and an examination was also made of several sites that were not included in Mr. Johnson's report.

These examinations were rather hasty owing to the limited time allowable for this work and were strictly of a preliminary nature. The deciding factor, of course, in not spending a great deal of time in the investigation of reservoir sites was the fact that this survey was an adjudication survey only and was to be confined to work having a direct bearing on the subject.

The fact is, however, that the question of storage does have a direct bearing on the subject, for the reason that, regardless of the result found from the adjudication survey and the outcome of the adjudication suit following, it still remains the duty of the government to provide storage in order to supply sufficient water for irrigation. For this reason several days were spent in making a rather hasty examination of the several proposed reservoir sites in order to

discuss in a general way the favorable or unfavorable points of each proposed site.

In discussing the several proposed reservoir sites it it is fitting that the sites as described in the "Johnson" report of June, 1916, should be included in this report for comparison.

Mary Creek Storage Reservoir possibilities.

There are two possible reservoir sites on the upper reaches of the Mary's Creek watershed. One of these is at the Indian Meadows with the dam located at the lower end of the meadow. The other is the Three Creeks Reservoir site in the SE¼, Sec. 30, T. 15 S., R. 4 E.

The watershed above the Three Creeks site has an area of approximately 27 square miles. Below this site the stream enters a narrow canyon thru which it flows for about 5 miles to the edge of the reservation. About 3 miles below the reservoir site, most of the waters are diverted to the Riddle reservoir which stores water for a private irrigation company to irrigate land in Duck Valley approximately 4 miles north of the reservation.

The Indian Meadows site drains an area of approximately 10 square miles and would be used as a supplemental supply for the Three Forks reservoir. No detailed survey was made of the dam sites as the preliminary investigation showed

the proposed storage to be infeasible for three reasons:

(1). The scant and uncertain water supply.

(2). The inaccessibility of the locality during the early Spring, when the dam and diversion works would necessarily require some attention.

(3). The excessive cost of diverting the water to the point of use.

An investigation was also made of the plan to augment the water supply of the Miller and Blue Creek sections by building a reservoir near the head waters of Mud or Dry Creek, the supply for which, to be obtained from a ditch diverted from Three Forks Creek forming part of Mary's Creek and carried to a saddle in the divide separating the Owyhee and Bruneau Rivers water sheds, situated in the Southwest quarter of Sec. 25, T. 15, S., R. 3 E., where it would be released and would then flow down the Mud Creek drainage basin for approximately 1½ miles and empty into the proposed reservoir at the head of Mud Creek. The plan was to thus create a storage reservoir to supply irrigation water, after the natural flow had become entirely exhausted, for lands in the vicinity of Miller Creek. However, the length of dam required to store any appreciable amount of water at this point, would make the cost prohibitive for the small amount

of storage obtained. It is believed, however, that the ditch diverting water from Three Forks Creek to the Owyhee River water shed should be built as the water obtained from this source would well repay the cost of construction. This would require a ditch approximately 1½ miles in length and practically all of the ditch would be in earth excavation. The stream was flowing approximately 2½ second feet when the survey was made and according to Willie Pete, the Indian guide accompanying the party, that is approximately the normal flow throughout the summer months after the Spring runoff. The ditch should be built large enough to carry the principal part of the Spring runoff and after being carried to the saddle in the divide separating the Owyhee and Bruneau River water sheds the diverted water would easily be diverted to either Mud Creek or Papoose Creek, according to which of these streams would have the lowest conveyance losses. The water thus obtained would be used to augment the supply obtained from Miller Creek which is insufficient to properly irrigate the lands under this stream, especially during the months of June and July.

It is believed, therefore, that Mary's Creek or Three Forks Creek as it is locally known, which is really the headwaters of Mary's Creek, should be considered as a part of the

WATER SUPPLY REPORT - WESTERN SHOSHONE RESERVATION - NEVADA

Upper Owyhee River.

In the discussion of this subject it will be noted that the figures given in the Johnson report of the runoff from the Owyhee River watershed were computed, by proportion, from the runoff records of a station located approximately 200 miles downstream from the Owyhee, Nevada, station and that the runoff figures as given in the Johnson report are far in excess of the actual runoff for these stations in the years following 1918. A copy of the run-off records as given in the Water Supply papers of the U. S. Geological Survey is found with this section of the report.

At the time of the preparation of the Johnson report the gaging stations had just been established and information of much value was unobtainable. It is possible, also, that at the time the runoff was greater than it now is, or has been, from 1918 to 1920.

In the fall of 1915, a gaging station was established on the Owyhee River, which is known as the Cold Creek Station and is situated a short distance upstream from the Wild Horse Damsite. This station is still in its original location but gage readings were discontinued about 1933.

The gaging station known as the Owyhee, Nevada station was situated on the Owyhee River approximately midway between

Mountain City and Owyhee, Nev., and on the reservation. This station was established about January 1914, and continued until some time during the summer of 1926, when it was washed out by a cloud burst and has never been replaced.

A vertical staff gage was set in the Owyhee River near Mountain City in 1926 and readings have been made daily and records kept of this station since that time. This station is a temporary one as no gage house was built, neither was any provision made for the meter measurement of the stream which up to the present time must be done by wading.

A fairly complete record of the runoff at those stations have been obtained during the period 1915-1925, and, it is believed, that the average runoff at these stations during the above mentioned period will approximately represent the average runoff to be expected in future years.

Wild Horse Reservoir Site.

The water supply for the Wild Horse Reservoir as described in the Johnson report is placed at an average annual runoff of 45000 acre feet, with a minimum runoff of 28,600 acre-feet. As stated previously, this figure was an estimate based upon a proportional area in the watershed with a station located approximately 200 miles down stream from the

WATER SUPPLY REPORT - WESTERN SHOSHONE RESERVATION - NEVADA

Duck Valley Reservation.

By referring to the table of the runoff of the Owyhee River at the Gold Creek station, (near the Wild Horse Damsite) for the ten year period 1916-1925, it is noted that the average runoff of the river at this station is 39,900 acre-feet, but the minimum runoff fell to 15,3006 acre-feet, and there were four years during the ten year period that the runoff fell below 30,000 acre-feet.

Gage readings at this station were discontinued in 1926, and no records are available for this station since that time, but Mr. Emory Johnson, who formerly read the gage for the U.S.G.S., is authority for the statement that the snowfall above this station during the past four years has been far below the average of the preceeding ten years average. He stated that the road between his ranch, (which is within the proposed reservoir) and Elko, has been open to auto travel practically all winter during the past four winters.

It is stated in the Johnson report that the meadow land within the reservoir site amounts to 174 acres. This amount has been increased in the 14 years since 1915 until in 1929 it amounted to approximately 900 acres, practically all of which is on the ranch now owned by Emory Johnson. In addition to the irrigated area of 900 acres of meadow land within the proposed site, the Kearns Corporation are the owners

of 1000 acres, situated at the lower end of the proposed reservoir and immediately above the dam site, several hundred acres of which are susceptible of irrigation, upon which ditches have been constructed, but are not being irrigated, evidently for the reason of a deficient water supply, as only about 10 acres of meadow are cut over each year, and from which approximately 2 tons of hay is harvested, sufficient only, for the feeding of saddle horses during the fall roundup. The lands are used as fall pasturage and the holding of cattle while being rounded up and driven off the nearby Forest Reserve. As these lands are situated at the extreme lower end of the upper river basin and the water supply is practically exhausted in July and for the balance of the season, there is not a sufficient water supply for these lands. The ditches that have been constructed upon these lands appear to have been abandoned with the exception of a ditch diverted from Penrod Creek from which the 10 acres of meadow are irrigated. In the purchase of right of way for the reservoir, however, this company would probably insist that they should be paid a fair price for their irrigable lands regardless of the water supply.

The estimated cost in 1915 for right of way for the reservoir was $27,000.00. However, it is believed that the

cost per right of way for this reservoir in 1929 would amount to approximately $70,000.00. Mr. Emory Johnson, who is irrigating the 900 acres of wild hay meadow at the site practically all of which would be submerged, has stated that he has a standing offer of $46,000.00 for his ranch, and he no doubt would expect the full value of his ranch in the event that a dam was built at the Wild Horse damsite, as the land on his ranch that would not be submerged would be of little value.

It is believed that a reservoir located at the Wild Horse Site is infeasible for the following reasons:

(1) It would be necessary in delivering the stored water to the point of use, to pass several diversions, diverting water from the river between the reservoir site and the irrigated lands on the reservation, which is always an objectionable feature in the delivery of water.

(2) The excessive cost of right of way which it is estimated to be $70,000.00, which if expended in the construction of a dam would pay a considerable part of the total cost.

(3) As a result of an inadequate water supply, it is extremely doubtful if sufficient storage for the reservation could be obtained at this location even by building a reservoir large enough to afford a carry over capacity, especially when one dry year succeeds another as in the case of 1910-1919-

and 1920, when the total runoff of the storage periods- Oct. - May inclusive, for the three years amounted to only 71,700 acre-feet and evaporation and seepage losses would further reduce this amount. Again in the years 1923 and 1924, when there were two dry years in succession, the total runoff of the storage period for the two years amounted to a total of 32,000 acre-feet or barely enough for one season.

Rattlesnake Reservoir Site.

This site is situated about 12 miles southeast of the reservation, the dam would be located a short distance below the confluence of Alleghany Creek and the Owyhee River. At this point, a dam 70 feet high and 700 feet long would provide a storage capacity of 6000 acre-feet. Besides on the small capacity of a reservoir at this site, there would be approximately 110 acres of hay meadow land submerged, requiring the purchase of a right of way, which added to the cost of construction of a dam, would probably make the cost per acre-foot of storage, prohibitive. The principal reason, however, against a reservoir being built at this point is the small capacity, and for that reason, is believed to be infeasible.

WATER SUPPLY REPORT - WESTERN SHOSHONE RESERVATION - NEVADA

"Sheeny Point" Reservoir Site.

This is a damsite for a reservoir on the Owyhee River approximately ½ mile Southeast of the Mountain City Ranger Station, at what is locally known as "Sheeny Point." This point is approximately 2 miles downstream from the Rattlesnake damsite and was evidently not considered by Mr. Johnson, at least, it was not described by him. A preliminary examination of this site developed the fact that, the same objections that apply to the Rattlesnake Site, would apply to the "Sheeny Point" Site. There would be approximately 150 acres of hay meadow land submerged, making the cost for right of way too expensive, coupled with the small capacity of the reservoir, which was estimated to be approximately the same as the Rattlesnake site, or 6000 acre-feet. To obtain this amount of storage would require a dam 70 feet in height, 300 feet in length at 10 feet above bottom of river, 500 feet in length at 40 feet above the bottom of the river and 1140 feet long at 70 feet high.

Reed Creek Reservoir Site.

This site has been described in the Johnson report and was unfavorably reported on by him for the reason of an excessive cost of the dam. This appeared to be the only objection he had to offer and can be the only possible objection to this site at the present time.

WATER SUPPLY REPORT - WESTERN SHOSHONE RESERVATION - NEVADA

It is shown by the U.S.G.S. records that there is a safe annual supply for the storage contemplated (25,000 acre-feet) as all years of record 1915-1929, have exceeded this amount at the Owyhee, Nev., station. The station is located above several side streams emptying into the river, which would considerably increase the amount as shown at the gaging station. Another reason which is considered favorable to its selection as a reservoir site for the storage of water for the reservation is its location, which is approximately 3 miles upstream from the Duck Valley main canal diversion, the reservoir lying entirely within the Indian Reservation.

A natural spillway is located in a saddle approximately 650 feet from the Southwest end of the dam and it would cost only a small amount to construct a spillway at this point, as the rock out-crop indicates that it is but a short distance below the surface to solid rock and the waters flowing through the spillway would be carried down a natural draw emptying into the river several hundred feet below the dam. The rock surface is exposed at both ends of the damsite and the rock at the Southwest end of the damsite appears to be of a basalt formation and is exposed the entire distance down the side hill slope from the top of the ridge to the waters edge. This outcrop is also seen in the bed of the river at about

elevation 5446.5 . At the Northeast end of the damsite, a rock ledge is exposed all the way from the floor of the valley to a height 50 feet or more above the top of the proposed dam. At the base of this slope a rock cliff rises almost vertical for 50 feet or more above the floor of the valley. A testhole was dug at a point approximately 50 feet from the base of this cliff and with the following result:

Elevation floor of valley	5456.0
Earth and silt to	5446.5
Sand and fine gravel to	5444.8
Course gravel and large boulders	5435.4
Soft substance having a resemblance to the rock cliff nearby. (disintegrated rhyolite).	5432.4

A bar was driven through this soft material from elevation 5435.4 to 5432.4 or a distance of 3 feet, the material appearing to become harder with depth.

The dimensions of the test hole was 3 x 5 feet and it was necessary to place cubbing as the digging proceeded, to prevent the sides from caving in. Considerable difficulty was experienced in getting rid of the seepage water which flowed in from all sides as the digging proceeded and increased in volume with the increase in depth. It was found necessary to install a pump in order to keep the water out as

the digging proceeded. It was also noted that the gravel boulders increased in size in proportion to the depth. At the depth of 20.6 feet below the floor of the valley (or elevation 5435.4 feet) a soft and apparently impervious material was encountered.

This material is apparently a deposity of ground rhyolite, which outcrops a little further downstream or it might have been a deposity resulting from wind erosion. All of the particles in the deposit are small angular pieces of rhyolite, not deposited by water which would have made the particles rounded instead of angular.

From all appearances, there is a fault running up the valley. The rock or southern part of the valley is a basalt and the rock on the north side is a granite, a rock of entirely different texture. It might have been, but hardly probable, that the test pit was put down at just the right point to strike this fault, in which case the material in the bottom of the pit might be the crushed and ground rock made by the movement of the rock masses at the fault.

Time and money would not permit the digging of another test pit, however from the investigations which it was possible to make under the prevailing conditions the writer is led to believe that a good foundation can be obtained without an excessive expense. A complete investigation will, of course,

have to be made of the foundation conditions by drilling before any final plans can be worked up for a dam at this site.

Preliminary costs were worked up on a section for a dam as shown on the drawing found with this report. The itemized cost is as follows, for a dam 100 feet high and impounding 25,000 acre-feet of water at spillway elevation.

Cost of Dam. Reed Creek - Western Shoshone.

Embankment 417,000 c.y. @ 40¢ -	$166,800.00
Puddle Core 54,150 c.y. @ 10¢-	5,415.00
Excavation Corewall common 2450 @ $1.00 -	2,450.00
S. R. 70 c.y. @ $10.00	700.00
Tunnel - Bypass and Outlet.	
Tunnel and Shaft 1100 c.y. @ $10.00	11,000.00
Concrete 225 c.y @ 35.00	7,875.00
Gates and Hoists	5,000.00
Corewall Concrete 546 C.y. @ 35.00	19,110.00
Rip Rap Dumped.	
10,070 c.y. @ $2.25	22,657.50

WATER SUPPLY REPORT - WESTERN SHOSHONE RESERVATION - NEVADA.

Cutoff wall.

13,000 c.y. @40¢ 5,200/00

246,207.50

20% Engr. Super. & Contingencies. 49,241.50

295,449.00

25,000 acre-feet storage $11.82 per acre-foot.

Upper Skull Creek Reservoir site.

This reservoir site is located in the S. E. quarter of Section 6, T. 46, N. R. 53 E., on the Owyhee River and is approximately midway between the Skull Creek and Reed Creek sites, being located approximately one mile downstream from the Reed Creek site and one mile upstream from the Skull Creek site.

A cliff or ledge of rhyolite rock is exposed at both ends of the damsite which extends to the floor of the valley, but across the valley the bedrock probably lies at a considerable depth below the surface. No test pits were dug to determine this depth as the method used in obtaining this information at the Reed Creek damsite proved to be both slow and expensive on account of the large volume of water encountered at the water surface level of the river, which increased as the test pit was deepened. It is believed however, that a good founda-

tion will be found at approximately 30 feet below the average surface of the ground in the floor of the valley.

A survey was made for a dam, the crest of which would be at an elevation of 5525 feet or 80 feet in height and having a bottom length of 420 feet and a length at the crest of 860 feet. Such a dam would impound a total of 16,300 acre-feet of water at water surface elevation of 5515 or 10 feet below the crest of the dam.

In order to construct a reservoir at this point with a capacity of 25,000 acre-feet, it would be necessary to build a much higher dam than the one contemplated and surveyed, the cost of which, it is believed, would be prohibitive.

The following is storage capacity table for "Upper Skull Creek Reservoir Site" for a dam 80 feet in height and 860 feet in length.

Elevation of Contour.	Area in Acres.	Capacity in Acre-feet.
5445	0.0	
5450	21	53
5455	63	210
5460	91	385
5465	112	508
5470	152	660
5475	183	838

WATER SUPPLY REPORT - WESTERN SHOSHONE RESERVATION - NEVADA.

Elevation of Contour.	Area in Acres.	Capacity in Acre-feet.
5480	212	988
5485	245	1143
5490	279	1310
5495	327	1515
5500	375	1755
5505	438	2033
5510	496	2335
5515	535	2583
	Total	16,316

Skull Creek Site.

Excerpt from report by H. T. Johnson, June 1, 1916.

"The first storage proposition investigated for the project was the Skull Creek site. The damsite is located just below the mouth of Skull Creek about a mile and a half above where the Owyhee enters the valley, and about three quarters of a mile above the Duck Valley ditch diversion. According to reports on this, a dam 70 feet high, and 850 feet long with a ten foot free-board will store 8,500 acre-feet of water. As the south side of the damsite has a very flat slope the volume of the dam would be greatly increased by a small increase in height. Except on the north side there is no rock in evidence. From the surrounding topography the

pervious material would seem to extend to a considerable depth in the bottom of the valley. There is a large drainage area at this point, (approximately 450 square miles), but the cost of storing the amount of water required would be prohibitive."

No further investigation of this site was made in 1929 for the reason that a dam 850 feet in length and 70 feet in height would store only 8500 acre-feet of water, which is less than 1/3 of the amount required for the project.

Shoo Fly Creek Reservoir Site.

A preliminary survey was made to determine the capacity of a reservoir site on Shoo Fly Creek, a tributary of Blue Creek, approximately 6 miles north of the reservation. This site is located in four townships as follows: Section 31, T. 13, S., R. 2 E.; Section 36, T. 13 S., R. 1 E.; Sections 1 and 12 T. 14 S., R. 1 E.; Sections 6 and 7, T. 14 S., R. 2 E.

This reservoir would cover, at the 25 foot contour, an area of 573 acres and would have a capacity of 6800 acre-feet. This would require a dam 35 feet high, 170 feet long on the bottom, 550 feet long on top, with a ten foot crown and five foot free board, having a slope on the upstream side of 2½ to 1 and a slope of 2 to 1 on the down stream side.

WATER SUPPLY REPORT - WESTERN SHOSHONE RESERVATION - NEVADA.

The reservoir would submerge approximately 200 acres of wild hay meadow belonging to Henry E. Rubelt and Henrietta Rubelt (man and wife), the balance of the flooded area having a vegetation which is principally sage brush and some wild grasses and fit only for pasture.

In addition to this reservoir there are two reservoirs built by the Rubelt's, one on Shoo Fly Creek, upstream from this site, which is now in operation and has a capacity of 930 acre-feet and another on West Shoo Fly Creek, the construction of which was finished in 1929, and has a capacity of 600 acre-feet. In the event that a reservoir was constructed which would submerge the Rubelt ranch, it would no doubt be necessary to purchase the storage rights of the Rubelts' as the storage reservoirs now owned by them would be of no value to them without their meadow lands.

It was stated by Mr. Rubelt that the water shed of the two creeks above named contained an area of 70 square miles and the runoff was sufficient to fill the three reservoirs to capacity each year. It is not known if this is true or not as no records are available of the runoff at this point which occurs in the early spring and lasts but a few days. When the flow of Shoo Fly Creek is at flood height, a considerable quantity of water finds its way to the Blue Creek channel.

WATER SUPPLY REPORT - WESTERN SHOSHONE RESERVATION - NEVADA.

The following is an estimate of cost for storage on Shoo Fly Creek:

Embankment 31679 cu.yds. @ 40¢	$12671.60
Riprap 3354 Sq.yds. @ $1.25	4192.50
Outlet tunnel	3000.00
Engineering and incidentals, 25%	4966.00
Right of way, 200 acres of meadow land @ $50.00	10000.00
Estimated cost of Rubelt reservoir on Shoo Fly Creek	7231.55
" " " " reservoir on West Shoo Fly Creek	2500.00
Total	$4,4,561.65

Estimated capacity proposed reservoir, Shoo Fly Creek 6818 Ac.-ft.

Capacity of Rubelt Reservoir on Shoo Fly Creek 930 " "

Capacity of Rubelt Reservoir on West Shoo Fly Creek 600 " "

8348

Cost per acre-foot of storage $5.33

While it is not known whether there is sufficient runoff to fill the three reservoirs on Shoo Fly Creek or not, it is believed to be worthy of investigation and if it is found

that the runoff justifies the construction of a reservoir on this stream, the lands in the Blue Creek and Lower Owyhee valleys could be irrigated to the extent of at least 2500 acres, and would solve the problem of a water supply for these lands at a comparatively low cost of $5.33 per acre-foot of storage.

By referring to the abstract of permits on Shoo Fly Creek it is shown that Frank W. Riddle has filed an application for reservoir permit on this stream and that completion of work is due November 23, 1935. This permit is evidently in good standing but so far as known no work has been done and it is probable that a relinquishment of the Riddle rights can be obtained at a small cost.

...s of Reservoir	Present Owner	Area in Acres	Capacity in Acre-feet	Estimated Cost	Estimated Cost per acre-foot.
...ple's Creek	Blue Creek Land & Livestock Co.,6/7 Int: Frank W.Riddle 1/7 Interest.	130	971	$32.087.35	$33.05
"					
...Blue Creek	Blue Creek Land & Livestock Company	163	1907	12,236.10	6.42
...k to Blue Creek	" " "	159	1908	29,718.20	15.57
...Lost Creek	" " "	15	60	1,571.50	26.19
...Creek	Frank W. Riddle	34	220	5,994.00	27.25
	Total	501	5066	81,607.15	103.48
	Average cost per acre-foot				16.11

(Approximately midway between Mountain City & Owyhee)
(U.S.G.S. Water Supply Papers.)

Year	Oct.	Nov.	Dec.	Jan.	Feb.	March	April.	May	June	July	Aug.	Sept.	Total
[illegible]	*1120	*1270	*1230	*1230	*1420	*7640	15400	14700	6310	1010	552	546	52400
[illegible]	1120	1270	1360	1540	3550	19100	46300	25600	10300	2700	861	678	11400
[illegible]	1470	**1500	*1230	*1230	*1110	*6800	*35000	68900	27200	8730	1030	827	150000
[illegible]	1060	1190	1230	1230	1110	6030	12700	9040	4500	581	363	504	39500
[illegible]	965	893	922	1230	833	4610	35600	21600	3870	628	615	893	73000
[illegible]	*1060	1180	1270	*1230	*1110	*4000	**31000	34600	**7450	*1240	*700	*700	85500
[illegible]	*1000	*1200	*1230	*1230	*1110	*5000	**46000	*31800	**10000	*1000	**800	*600	101000
[illegible]	820	1310	1630	1230	1110	3730	217000	61000	15500	1760	965	589	111000
[illegible]	1230	1320	1230	1230	1110	2390	13500	11600	9040	1180	689	649	45200
[illegible]	1440	1420	1230	1230	1150	2680	21100	7690	1170	166	123	173	39600
[illegible]	719	1300	1350	1230	5360	11600	43500	23100	5590	1240	504	482	96000

*Estimated full month. (Av. 11 yrs., 82,500)

**Estimated for part of month.

(U.S.G.S. Water Supply Papers.)

[illegible]	Oct.	Nov.	Dec.	Jan.	Feb.	March.	April	May	Total
1914-15	*1120	*1270	*1230	*1230	*1420	*7640	15400	14700	44000
[illegible]	1120	1270	1360	1540	3550	19100	46300	25600	99000
[illegible]	1470	**1200	*1230	*1230	*2150	*12000	**56000	68900	144200
[illegible]	1060	1190	1230	1230	1110	6030	12700	9040	33600
[illegible]	965	893	922	1230	833	4610	35600	21600	66300
[illegible]	*1000	1120	1270	*1230	*1110	*4000	**31000	34600	75400
[illegible]	*1000	*1200	*1230	*1230	*1110	*5000	**46000	*26000	82800
[illegible]	922	1310	1630	1230	1110	3730	21700	61000	92600
[illegible]	1230	1320	1230	1230	1110	2390	15500	11600	35600
[illegible]	1440	1420	1230	1230	1150	2680	21100	7690	37900
[illegible]	719	1300	1350	1230	5360	11600	43500	23100	88200

*[illegible]ed, full month.

** Established for part of month.

Total Amount in Acre Feet, Owyhee River, Gold Creek Station

(U.S.G.S. Water Supply Papers).

Year.	Oct.	Nov.	Dec.	Jan.	Feb.	March	April	May	June	July	Aug.	Sept.	Total
1914-15													
1915-16	*400	*400	*500	*600	*760	*4060	24900	9350	2710	609	183	262	[illegible]
1916-17	442	*400	*500	*600	*760	*4860	25000	36500	8090	733	155	250	[illegible]
1917-18	552	655	701	607	589	2740	5510	2750	1080	95	61	161	[illegible]
1918-19	296	329	369	492	589	922	17300	6700	1090	246	184	259	[illegible]
1919-20	307	595	758	758	575	1540	13100	13400	2070	283	123	357	[illegible]
1920-21	1250	845	451	307	766	4860	24600	21200	6010	738	254	375	[illegible]
1921-22	500	378	*450	*370	*800	*4800	12000	30900	4630	375	277	208	[illegible]
1922-23	394	483	430	569	533	504	6600	4520	3480	596	320	286	[illegible]
1923-24	553	500	309	369	545	615	12500	2160	274	191	183	159	[illegible]
1924-25	535	857	609	498	2500	4750	23200	7500	1520	474	270	382	[illegible]

*Estimated.

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Runoff in Acre Feet, Owyhee River, Gold Creek Station.

for Storage period, Oct - May inclusive, 1915-1925.

[illegible]	Oct.	Nov.	Dec.	Jan.	Feb.	March	April	May	Total
[illegible]	*400	*400	*500	*600	*760	*4860	24900	9350	41800
[illegible]	442	*400	*500	*600	*760	*4860	25000	36500	69100
[illegible]	562	655	701	607	389	2740	5510	2750	15900
[illegible]	896	833	809	492	389	923	17300	6700	28800
[illegible]	807	695	753	738	575	1540	13100	13400	31000
[illegible]	1350	845	461	307	766	4860	24600	21200	54800
[illegible]	590	578	*450	*370	*800	*4800	12000	30900	50300
[illegible]	394	403	430	369	353	504	6600	4520	13600
[illegible]	553	830	369	345	615	615	12500	2150	18400
[illegible]	585	857	609	492	2300	4750	23200	7500	40400

Total Runoff in Acre Feet, Clyde River, Mountain City, Nevada.

(Unpublished Records, U.S.G.S.)

	Oct.	Nov.	Dec.	Jan.	Feb.	March	April	May	June	July	Aug.	Sept.	Total
[illegible]	600	**1000	920	738	1900	7330	28600	50500	12100	1750	732	508	86700
[illegible]	1070	1810	2150	1540	1440	25100	22400	19400	2720	590	314	280	78800
[illegible]	640	707	615	615	555	5600	23000	26000	7020	529	215	190	66700

*Estimated, full month.

**Estimated for part of month.

(From [illegible] U. S. G. S.)

[illegible]	[illegible]	Nov.	Dec.	Jan.	Feb.	March	April	May	June	July	Aug.	Sept.
1			22			121	249	895	273	90	15	8
2			13			90	315	836	235	80	15	8
[illegible]			20			85	405	759	245	64	13	8
			21			90	337	685	253	56	13	8
			18			80	337	627	253	55	12	8
			19			90	418	589	251	41	12	7
			15			90	500	622	282	28	12	7
						115	573	611	273	32	12	6
						95	526	521	265	25	10	7
						90	559	437	261	28	12	8
[illegible]					12	85	555	391	303	38	12	8
[illegible]						90	370	377	290	35	13	8
[illegible]						90	269	465	283	22	14	8
[illegible]				12		130	237	465	249	18	15	8
[illegible]		11				115	311	526	220	18	15	8

Daily Discharge in Second-Feet of Owyhee River at Mountain City, Nev., for the year ending Sept. 30, 1927.
(From Unpublished records U.S.G.S.)

(Continued)

Day	Oct.	Nov.	Dec.	Jan.	Feb.	March	April	May	June	July	Aug.	Sept.
16		12	14			90	520	573	209	18	15	9
17		26				99	265	595	198	16	13	9
18		12				90	208	568	179	15	12	8
19		16				64	298	542	176	15	12	8
20		21				55	269	568	157	13	12	8
21		21			50	74	294	471	149	12	12	9
22		18				99	355	364	138	12	12	9
23		16				115	471	382	142	13	11	9
24		15				149	600	342	115	15	10	9
25		15				149	788	298	113	16	10	9
26		15			188	172	920	298	113	15	10	9
27		16			121	168	1050	355	108	13	9	9
28		15			95	196	1060	342	104	13	9	10
29		18				201	980	346	108	15	9	12

[illegible]ly Discharge in Second-feet of Coyhee River at Mountain City, Nev., for the year ending Sept. 30, 1927.
(From Unpublished records U.S.G.S.)

[illegible])

Day	Oct.	Nov.	Dec.	Jan.	Feb.	March	April	May	June	July	Aug.	Sept.
30		24	↓	↓		240	955	367	93	15	9	12
31						311		282		15	9	
		271	469	372	958	3735	14333	15363	6000	831	369	254
Nov 15 [illegible]												
[illegible]		16.5	15.1	[illegible]	[illegible]	120	450	496	203	26.4	11.9	8.5
Acre	[illegible]	338	923	750	1.900	7380	28.500	30,500	12,000	17,500	732	506

320 days Mean 135
Acre Feet 65,700.

Run off in Acre-Feet of Orphee River at Mountain City, Nev.,
for the Storage period Oct -- May inclusive.
(From Unpublished records U.S.G.S.)

Year.	Oct.	Nov.	Dec.	Jan.	Feb.	March	April	May	Total
[illegible]-27	*600	*1000	928	738	1900	7330	28600	30500	71646
[illegible]-28	1070	1310	2150	1340	1440	25100	22400	19400	74010
[illegible]-29	646	797	615	615	555	5600	23900	26000	58728

Daily Discharge in second-feet, of Owyhee River at Mountain City, Nev., for the year ending Sept. 30, 1928.
(From Unpublished records U.S.C.S.)

Day	Oct.	Nov.	Dec.	Jan.	Feb.	March	April	May	June	July	Aug.	Sept.
1	16	24	64				481	622	121	26	7	4
2	16	24	74			40	471	575	117	24	7	4
3	16	24	69				382	521	103	20	8	4
4	16	23	64				423	447	95	16	8	4
5	16	23				69	386	364	74	15	8	3
6	16	23				74	351	391	55	13	8	3
7	16	22				83	320	433	55	12	8	3
8	16	22				108	311	437	50	12	8	3
10	15	23				179	339	423	43	10	7	3
9	16	22				142	307	447	46	11	7	4
11	15	24				384	353	457	46	9	3	3
12	15	24				418	324	423	46	8	7	2
13	15	24			25	311	339	377	46	8	6	3

1928

Daily Discharge in Second-feet, of Truckee River at Mountain City, Nev., for the year ending Sept. 30, 1908.
(From Unpublished records U.S.G.S.)

(Duplicate)

Day	Oct.	Nov.	Dec.	Jan.	Feb.	March	April	May	June	July	Aug.	Sept.
14	15	25			25	239	333	346	43	6	6	3
15	13	26				190	315	311	46	7	5	4
16	15	25				163	329	282	41	7	4	5
17	15	27	30	25		269	364	251	40	6	4	5
18	15	26				239	365	257	38	6	3	6
19	16	23				358	331	229	35	6	4	6
20	15	27				405	330	225	32	6	4	6
21	15	28				476	311	231	29	7	4	6
22	16	33				573	303	213	26	6	4	6
23	16	30				576	290	205	24	6	4	6
24	16	32				631	334	198	21	6	4	6
25	16	30				1510	351	198	18	6	4	6
26	24	29				1510	447	190	16	6	4	6
27	24	33				1070	435	176	15	6	4	6

Daily Discharge in second-feet, of Owyhee River at Mountain City, Nev., for the year ending Sept. 30, 1928.
(From Unpublished records U.S.G.S.)

[illegible]

[illegible]y	Oct.	Nov.	Dec.	Jan	Feb.	March	April	May	June	July	Aug.	Sept.
[illegible]	[illegible]	35				830	521	155	15	6	4	7
[illegible]	[illegible]	99				661	560	142	15	6	4	7
[illegible]	[illegible]	80				600	573	133	16	6	4	6
[illegible]	[illegible]					605		130		6	4	
[illegible]	[illegible]	914	1091	715	725	12633	11297	9790	1372	297	171	141
[illegible]	[illegible]	30.5	34.9	Est.25	Est.25	408	377	316	45.7	9.6	5.1	4.7
[illegible]	[illegible]	1810	2150	1540	1440	25,100	28,400	19,400	2720	590	314	280

Mean 109

Acre-Feet 78,800

(From Unpublished records U.S.G.S.)

Day	Oct.	Nov.	Dec.	Jan.	Feb.	March	April	May	June	July	Aug.	Sept.
1	8	13					249	706	183	26	3	2
2	8	13				10	271	595	186	24	3	2
3	9	14					286	568	183	20	4	2
4	9	14					364	616	168	18	4	2
5	9	14					333	563	172	16	4	2
6	9	15					229	471	164	15	4	2
7	9	15					190	466	153	13	4	2
8	9	15				25	213	457	142	12	5	2
9	9	15					194	481	142	12	4	3
10	9	15					149	471	145	10	4	3
11	9	15					157	405	168	9	4	3
12	10	15			10		149	433	161	8	4	3
13	10	15		10			176	436	134	7	4	3
14	10	15					198	461	121	7	3	3
15	10	16					286	452	126	6	3	3

Daily Discharge in ... for the year ending Sept. 30, 1930.
(From Unpublished records U.S.G.S.)

(Continued)

Day	Oct.	Nov.	Dec.	Jan.	Feb.	March	April	May	June	July	Aug.	Sept.
16	10	14					425	442	164	6	3	3
17	11	14					563	457	164	5	3	3
18	11						636	428	134	4	4	3
19	12		10				611	414	113	4	4	3
20	12					93	633	396	104	4	4	4
21	12					577	616	377	90	4	4	4
22	12					311	627	382	64	4	4	4
23	12					176	600	359	64	4	3	4
24	12	12				172	581	346	59	4	3	4
25	12					164	536	327	55	4	3	4
26	12					153	542	320	46	4	3	4
27	12					142	537	339	41	4	3	4
28	12					138	552	238	35	4	3	5
29	12					100	584	245	32	4	2	5
30	12					241	633	213	29	3	2	5
31	13					239		190		3	2	

Daily Discharge in [illegible]
For the year ending Sept. 30, 1929.
(From Unpublished records U.S.G.S.)

(Continued.)

Day	Oct.	Nov.	Dec.	Jan.	Feb.	March	April	May	June	July	Aug.	Sept.
Total	326	402	310	310	280	2825	12050	13111	3542	268	107	96
Mean	105	13.4	10	10	10	91.1	402	423	118	8.6	3.5	3.2
Acre-Feet.	646	797	615	615	555	5600	23900	26000	7020	529	215	190

Mean 92.1

Acre-Feet 66,700

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did the Northern Paiutes—the fisheaters—who took the famous Lahanton cutthroat trout from the Truckee River and Pyramid Lake—their species destroyed by the Bureau of Reclamation.

4. The Indian *Winters Doctrine Rights* to the use of water in the streams or lakes which arise upon, border, traverse or underlie their Reservations, have been accorded by the Supreme Court and other courts a prior, paramount and superior status on the streams for the present and future economic development of the Western Reservations.

5. By the Constitution of the United States there was created a relationship between the Nation and the American Indians of transcendent dignity. That relationship of great dignity had its genesis in the policies adhered to by the European sovereigns who colonized this Continent and it was firmly established during the harsh and bitter years of the Revolutionary War and the years which were to ensue prior to and including the adoption of the Constitution.

6. It has been declared that the relationship existing between the American Indians and the Nation "resembles that of a ward to his guardian"—a trust relationship with all of the express and implied obligations stemming from it Only the uninformed ascribe to that trust a demeaning connotation in regard to the American Indians.

7. Great stress must be applied to the nature of the Indian trust property, including Indian rights to the use of water.

(a) It is *private property*, legal title to which is held by the United States in trust for the American Indians as beneficial holders of equitable title.

(b) Indian property is *not public property* as is the other property of the Nation.

8. Plenary power and responsibility under the Commerce Clause of the Constitution reside with the Congress to effectuate the trust relationship between the United States and the American Indians.

9. Congress is likewise invested by the Constitution with plenary power over the "public lands," all other lands, all rights to the use of water, title to which resides in the Nation. These lands and rights to the use of water are to be administered for the Nation as a whole. It is imperative that the nature of the right, title, interests and obligations of the Nation in regard to these properties held in trust for the Nation as a whole be sharply distinguished from the lands and rights to the use of water of the American Indians.

10. Congress in the exercise of its plenary power over the Nation's lands and rights to the use of water has invested the Department of the Interior with broad authority to administer, develop, sell, dispose of, and otherwise to take all required action respecting those lands and rights to the use of water. Agencies within the Department of the Interior carrying out the will of Congress in regard to those properties held for the public as a whole include but are not limited to: The Bureau of Reclamation, Bureau of Land Management, National Park Service, Bureau of Outdoor Recreation and the agencies generally responsible for the propagation and protection of fish and wildlife.

11. Administrators, engineers, scientists, within the Department of the Interior, all acting within the scope of the authority vested in the Secretary of the Interior, are:

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(1) Charged with the responsibility of fulfilling the Nation's trust status in regard to the Indian lands and rights to the use of water, which, as stated, are private in character, to be administered solely for the benefit of the Indians;

(2) Charged with the responsibility of administering lands and rights to the use of water claimed in connection with reclamation projects, administration of grazing districts, and other land uses requiring the exercise of rights to the use of water; fish and wildlife projects, recreational areas and other activities, all of which require rights in the streams.

12. (a) Lawyers in the Department of the Interior directly responsible to the Solicitor, in whom resides the obligation of performing the "legal" work for that Department; all of the agencies of it, including the Bureau of Indian Affairs, Indians and Indian Tribes, are constantly confronted with the sharp conflicts of interests between the Indian land and rights to the use of water, and the numerous other agencies referred to that likewise make claims to those waters and contest the rights and claims of the Indians to them;

(b) Lawyers in the Department of Justice directly responsible to the Attorney General, the Nation's chief law officer, have the responsibility:

(1) To defend, protect, preserve and have adjudicated, title to the lands of the Indians and their rights to the use of water, and otherwise to act as lawyers for the trustee obligated to perform with the fullest degree of loyalty to the Indians;

(2) To proceed as an adversary against the Indian claims for the seizure of their lands and rights to the use of water, seeking to limit or otherwise defeat the claims of the Indians predicated upon the laws which other attorneys of the Justice Department are required effectively to espouse and advocate on behalf of the Indians;

(3) To perform legal services in regard to lands and rights to the use of water in streams and other water sources where the Indian rights are in conflict with claims of other agencies of the United States.

13. Both the administrators of the Department of the Interior and the lawyers of both Interior and Justice owe the highest degree of ethical, moral, loyal and equitable performance of their trust obligations to the American Indians. They are charged, moreover—as professionals—with the highest degree of care, skill and diligence in executing their broad assignments for the protection, preservation, administration and legal duties respecting Indian trust properties including, but not limited to, the invaluable Indian *Winters Doctrine Rights* to the use of water.

14. Conflicting responsibilities, obligations, interests, claims, legal theories—indeed, philosophies—oftentimes prevent the Interior and Justice Department administrators, planners, engineers and lawyers from fulfilling the trust obligation [which the Nation owes] to the American Indians in regard to natural resources, particularly in the complex and contentious field of Indian rights to the use of water in the arid and semiarid regions of western United States. Failure by those Departments, agencies and personnel to fulfill the Nation's obligation to protect and preserve Indian rights to the use of water

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includes, but most assuredly is not limited to: (a) Lack of knowledge of the existence, or the nature, measure and extent of those rights to the use of both surface and ground waters—refusal to recognize Indian rights are private rights to be administered separate, apart and independent of the "public rights" of the Nation as a whole in identically the same manner as other private rights are protected and preserved; (b) Lack of timely action to preserve, protect, conserve and administer those rights; (c) Inability or reluctance at the decisional level to insist upon recognition and preservation of Indian rights to the use of water when to do so would prevent the construction—and/or administration in the manner desired—of a reclamation or other project conflicting with the Indians for water, the supply of which is insufficient; (d) Attempted subordination, relinquishment, or conveyance of Indian rights to the use of water which are in conflict with other claims, Federal, State or local; (e) Failure to assert rights, interests and priorities of the Indians on a stream or project when to do so would limit the interests of non-Indians; (f) Opening Reservations to non-Indian occupancy with the seizure of Indian land and rights to the use of water, with or without the payment of just compensation; (g) The imposition of servitudes, easements, and illegal occupancy or use of Indian lands and rights to the use of water.

15. Economic development of the American Indian Reservations in western United States, due largely to conflicting interests within the Interior and Justice Departments, or vacillating policies—a natural consequence of conflicting interests, responsibilities, and obligations within the Federal Establishment—has been (a) prevented by the abridgment or loss of Indian rights to the use of water; (b) intentionally prevented in whole or in part, or deferred in whole or in part, by the refusal to permit development of Indian lands with rights to the use of water.

16. Irreparable damage to the American Indians in western United States has ensued by reason of the consequences flowing from the conflicts described above. The Indians have suffered from extreme poverty, with the attendant ills of malnutrition, high infant mortality rate, reduced life expectancy, disease, and the shattering loss of human dignity which stems from poverty and deprivation of the necessities of life.

Conclusion

Economic development of the American Indian Reservations in western United States will continue to be prevented or severely curtailed in the absence of drastic changes in the laws and policies which would eliminate conflicting rights, responsibilities and obligations which presently exist among the several agencies of the National Government, all as reviewed in the accompanying memorandum and the summary set forth above

Recommendation

Congress should enact legislation which would place in an agency independent from the Department of the Interior and the Department of Justice the full responsibility for the protection, preservation, administration, development, adjudication, determination, and control, including but not limited to all legal services required in connection with them, of the lands and rights to the use of water of the American Indian Reservations in western United States

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In furtherance of economic development of the American Indian Reservations in western United States it is imperative that there be undertaken an inventory of all of the Indian rights to the use of water in the streams and other sources of water arising upon, bordering upon, traversing or underlying their lands. This inventory should be undertaken with the objective of ascertaining, to the extent possible, the existence, character and measure of the rights as they relate to the present and future development of the Reservations. It is equally important to determine the highest and best use which can be made of these invaluable rights to the use of water and to chronicle those rights as they relate to each water source, indicating the highest and best present use to which they may be applied. They should likewise be evaluated from the standpoint of their maximum potential in the future by reason of the fact that those rights must be exercised in perpetuity and in contemplation of the ever-changing environment of western United States with its increasing population and water demands.

There follows the memorandum on which the preceding summary, conclusion and recommendation are predicated:

* * * * * * *

Foreword

In the arid and semiarid western United States, where most Indian reservations are located, water is a critical catalyst for all economic development. Without it, soil remains untilled, minerals remain in place, and habitation itself is difficult. Suffice to say, without water reservation lands or any other lands are virtually without economic value.

The main thrust of this paper is that non-Indian demands on an already limited water supply have severely impaired the economic growth potential for many reservations. Moreover, non-Indian interests have made, and are making, claims on water which, it is believed, belongs to Indians. That non-Indian claims on such water are usually successful is due in large measure to the effectiveness with which such interests influence the workings of the Federal Government—which in fact is charged to protect Indian rights and to support and encourage Indian development.

To fully understand the abridgement or loss of Indian water rights requires an understanding of the legal aspects of:

1. the Nation's trust relationship with the Indians and Indian Tribes;
2. the character of Indian rights to use of water.

Because rights to water are inextricably related to reservation lands, Indian titles to land and the use of water are discussed together.

I. Federal Expressions of Intent Concerning Indian Properties and Natural Resources

On September 12, 1968, Senate Majority Leader Mansfield placed in the Congressional Record Concurrent Resolution No. 11 entitled

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"National American Indian and Alaska Natives Policy Resolution," [1] together with excerpts from Report No 1535, explaining the purpose of the resolution. The report [2] stated that: "The resolution would assure our Indian citizens that Federal programs * * * will be concentrated where the problems are most acute—on the reservations," and further that it is the "sense of Congress that Indian and Alaska native trust property continue to be protected; * * * that efforts be continued to develop natural resources."

Explicitly, the Concurrent Resolution states that:

> "American Indian and Alaska native property will be protected; that Indian culture and identity will be respected; * * * that continued efforts will be directed to maximum development of natural resources."

This Resolution clearly attempts to establish Federal commitment to, and recognition and protection of Indian and native Alaskan rights to their natural resources.

During the presidential campaign of 1968 President Richard M. Nixon stated:

> "Historically, these Native Americans * * * have been deprived of their ancestral lands and reduced by unfair federal policies and demeaning paternalism to the status of powerless wards of a confused 'great white father.' " [3]

To correct the injustices of the past, President Nixon continued, "My administration will promote the economic development of the reservation by offering economic incentives to private industry to provide opportunities for Indian employment and training."

In announcing national goals for the American Indian, former President Johnson said that our goal must be:

"Freedom of choice: An opportunity to remain in their homelands, if they choose, without surrendering their dignity * * *." [4]

There is a long history of similar Congressional and Executive declarations More than a decade ago, in a case where Federal actions contradicted such declarations, a U.S. circuit judge observed:

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[1] *Cong Rec.* (Sept. 12, 1968) S. p. 10634.

NATIONAL AMERICAN INDIAN AND ALASKA NATIVES POLICY RESOLUTION

The concurrent resolution (S Con. Res. 11) National American Indian and Alaska natives policy resolution was considered, and agreed to, as follows.

* * * * * * *

Resolved by the Senate (the House of Representatives concurring), That it is the sense of the Congress that—

(1) the deplorable conditions of American Indians and Alaska natives can only be alleviated through a sustained, positive, and dynamic Indian policy with the necessary constructive programs and services directed to the governing bodies of these groups for application in their respective communities, offering self-determination and self-help features for the people involved; and that our Government's concern for its Indian citizens be formalized in a new national Indian policy so that beneficial effects may be continued until the day when the Nation's moral and legal obligations to its first citizens—the American Indians—are fulfilled;

* * * * * * *

(d) American Indian and Alaska native property will be protected, that Indian culture and identity will be respected; that the necessary technical guidance and assistance will be given to insure future economic independence, that continued efforts will be directed to maximum development of natural resources, * * *

[2] *Cong Rec* (Sept. 12, 1968) S. p. 10634.
[3] Statement by Richard M Nixon on September 27, 1968.
[4] 114 *Cong. Rec.* No 36 (March 6, 1968), pp. S 2311-2316.

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> "The numerous sanctimonious expressions to be found in the acts of Congress, the statement of public officials, and the opinions of courts respecting 'the generous and protective spirit which the United States properly feels toward its Indian wards,' * * * and the 'high standards for fair dealing required of the United States in controlling Indian affairs,' are but demonstrations of a gross national hypocrisy." [5]

A primary objective of this study is to demonstrate how the expression of the highest ideals by the Congress and the Executive have fallen far short of accomplishment by reason of policies and conflicts between agencies and personnel of the Federal Government To that end it is important to understand how those ideals developed and the constitutional basis for those concepts which lends substance to them. It should also be realized, however, that this Nation with its Old World background has failed to recognize that Indians and native Alaskans have values which all too often have been frustrated or totally suppressed.

I. Rapport of American Indians With Their Homeland Must Not Be Ignored in Economic Development of Reservations

A man's heart is where his treasure lies. Frequently the American Indians occupying Reservations view their natural resources as a treasure, and seek to avoid destructive exploitation. Failure to take cognizance of the Indians' concept of nature and their relationship with the lands they and their ancestors occupied is to ignore a crucial aspect of any development program and to impair potential economic development.

The rapport between the Indians and the land is difficult to understand, much less describe. In a materialistic society the affinity between the Indians and their mountains, lakes, and rivers has been all too frequently disregarded.

The Mission Range, its streams and beauty have a worth to the Flathead Tribes that cannot be measured. Mohave Indians have names for all parts of their valley and segments of the Colorado River which traverses it. A map recently prepared designating those areas in the valley and segments of the River with Mohave names. and interpretations, goes far in explaining the Indian attachment to it. History records the resolute rejection by most Mohaves to move them from their core homeland. Like the White Mountain Apaches who revere sections of their forests, the mountains surrounding Mohave Valley are frequently referred to by the Indians in spiritual terms. The great wilderness on the slopes of Mount Adams has a meaning to the Yakimas understood only in the Long House.

Law is reflective of the mentality which formulates it. Hence the law applied to the Indian lands and rights to the use of water does not embrace intangibles. However, economic development need not connote smoke stacks, filthy air and water. To the fullest extent possible economic development should take cognizance of the special identification of the American Indians with their lands, lakes, and

[5] Judge Pope in his first opinion in *United States* v. *Ahtanum Irrigation District*, 236 F 2d 321, 338 (CA9, 1956). Appellees' cert. denied 352 U S. 988 (1956), 330 F. 2d 897 (1965); 338 F. 2d 307, Cert. denied 381 U.S. 924 (1965).

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[6] *National Geographic*
[7] *A History of the Pima I*
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streams. If economic development simply submerges Indians in the so-called main stream of society, the present efforts most assuredly will have failed.

III. Throughout Their History American Indians Have Used the Waters of Their Rivers, Lakes and Streams for Sustenance and Shaped Their Lives to the Environment

As reviewed above, the Concurrent Resolution 11 expresses the "sense of Congress that Indian and Alaska native trust property continue to be protected; * * * that efforts be continued to develop [their] natural resources."

The Executive pronouncements mentioned above fully recognize and would implement the means for the protection of trust property including the natural resources, thus aiding the economic development of the Indian Reservations. The meaning of the term trust property, the legal aspects of it, what gave rise to it, and the activities required in the administration of that trust property are crucial to this consideration. Antecedent to that phase of the consideration, brief reference will be made to Indian use of the waters of the rivers, lakes and streams and their adjustment to the frequently harsh environment in which they lived by reason of that use.

This Nation's history following the War of Independence, with the accession of huge land areas from France, Great Britain, Spain and Mexico, lends meaning to the "trust" to which Congress makes reference in Concurrent Resolution 11. Virtually all of the lands acquired by the Nation were occupied by Indians and Indian Tribes who in good conscience must be recognized as the original owners of the land. However, the character of that ownership differed widely from that which stringent Anglo-Saxon law would accord recognition. Most of the lands acquired by the United States west of the Mississippi River are arid and semiarid. Agriculture, at the time of acquisition and now, could be successful only through irrigation. Earliest history describes the use of water by the Indians. No single resource was more important to the Indians of the southwest in particular, and western Indians in general. It was, in fact, an ingredient without which life could not prevail. However, it was a great deal more than that.

When an indigenous people called the Hohokams occupied the lands in the Gila and Salt River Valleys over two thousand years ago, they diverted water by means of canals which even now are recognized as highly refined engineering accomplishments. They long ago demonstrated that water applied to the land was essential if communities were to be maintained and have more than a rudimentary culture. They demonstrated the need for economic development which they undertook as a means of survival.[6]

Arizona's former Senator Hayden devoted much time to the history of the Pima and Maricopa Indians.[7] In great detail he chronicles the use of Gila River water by the Pima and Maricopa Indians. The first description of the Indian diversion and use of water in modern times,

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[6] *National Geographic Magazine*, May 1967, Vol. 131, No. 5, pp 670 et seq.
[7] *A History of the Pima Indians and the San Carlos Irrigation Project*, 89th Congress, 1st Session, Document No. 11, first printed in 1924 reprinted in 1965.

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he reports, came from Father Kino, a Jesuit Missionary who visited the Pimas in 1687. The Missionary refers to the "very great aqueduct" constructed by the Indians to conduct Gila River water across great distances to irrigate large acreages of their river bottom lands.

The Pima and Maricopa Indians in Arizona had been a flourishing community of great magnitude. The Spaniards described it as it existed near the end of the seventeenth century and marveled at the Indian economic development. They observed the adjustment made by the Indians to a desert environment which, without water, produced a most meager subsistence. A half-century later another Spanish Missionary was to report the Pima and Maricopa communities still undisturbed by non-Indian intrusion. He described results of their use of Gila River water: [8] "All these settlements on both banks of the river and on its islands have much green land. The Indians sow corn, beans, pumpkins, watermelons, cotton from which they make garments, * * *." Wheat was also raised, according to the report.

A hundred years later the industrious Pimas and Maricopas continued to amaze soldiers, travelers, trappers, and explorers with their agricultural practices, their use of water, and the produce that supplied not only Indians but many others taking the southern route west. A short half century was to elapse before the seizure of Indian land and water was well under way, and in another twenty-five years the wanton divestiture of the Indian land and water was far advanced.

Like the Arizona Indians, the Pueblos of the Rio Grande Valley adjusted to a desert environment by using water to promote agricultural development.

Mohaves, Yumas, and Chemehuevis likewise adapted their lives to the surrounding desert by occupying the lands on both sides of the Colorado River. In the "Great Colorado Valley," as early explorers referred to it, the Spanish soldiers and Missionaries first encountered these Indians. Later, Lieutenant Ives in his 1858 explorations on the Colorado River reported the Quechan Indians using water to raise their crops. Of the Mohaves, Ives said: "It is somewhat remarkable that these Indians should thrive so well upon the diet to which they are compelled to adhere. There is no game in the valley. The fish are scarce and of inferior quality. They subsist almost exclusively upon beans and corn, with occasional water-melons and pumpkins, and are probably as fine a race, physically, as there is in existence." [9] Those Mohave crops were raised by Indians who planted the lush river bottoms as soon as the perennial overflow had receded, thus using the natural irrigation furnished by the Colorado River.

Importance of the rivers to the indigenous cultures in western United States is not limited to agriculture. In the vast desert areas of the present State of Nevada the Northern Paiutes long prior to Fremont's discovery of Pyramid Lake in 1844 depended upon fish taken from the lake and the Truckee River as a primary source of sustenance.[10] Fisheries to the Indians of the Northwest "were not much less necessary to the existence of the Indians than the atmos-

[8] Ibid. *A History of the Pima Indians* * * *, p. 9.
[9] *Mohave Tribe of Indians* * * * v *United States of America*, 7 Ind Cl. Comm. 219, Finding 12(a), and sources relied upon.
[10] *Popular Science Monthly*, Vol 58, 1900-1901, pp. 505-514.

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phere they breathed." [11] Salmon and other fish taken from the Columbia River were always an important item of trade among the Indians as reported by Lewis and Clark.[12]

It is significant when transition from their traditional way of life was forced upon the Western Indians, they relied upon their streams and rivers as a source of sustenance. The Yakimas, in their transition from a nation given largely to hunting and fishing, were the first in the State of Washington to undertake to irrigate their meager gardens. That change came about under the direction of missionaries who attempted to assist in the economic development of the lands to which the Yakimas were restricted.[13]

And, of course, rivers were not only the source of sustenance for the American Indians; they were the arteries of crude commerce and travel.

It is upon that background that the legal characteristics of Indian rights to the use of water will be discussed. From that background it should be clear that water was and is as necessary a part of Indian life as the land which they occupied.

IV. Legal Aspects of Indian Rights to the Use of Water

American Indians probably did not give thought to the nature of the right to divert and to use water or the right of fishery. Indeed, the concept of title to land and the bundle of rights which constitute it was wholly foreign to them. Under those circumstances it is not surprising that the history of the transactions between the United States Government and the Indians is infamous, often involving outright swindling of Indians out of properties of immense value. In entering into treaties and agreements, whatever means were used, the Indians were totally innocent of the principles of conveyancing the formulation of written conventions. As a consequence they had little knowledge, if any, of the terms under the law which would be required to protect their interests. From an examination of the complex documents which they were required to execute, it is manifest that the Indians did not and could not know the legal implications flowing from those treaties and agreements.

(a) *Indian Winters Doctrine Rights to the use of water:*

The *Winters Doctrine* as enunciated by the courts is based upon the law, equity, history and good conscience. Factually the decision giving rise to that doctrine is very simple.

The Fort Belknap Indian Reservation in the State of Montana is the meager residue of a vast area once guaranteed to the Indians by the 1855 Treaty with the Blackfeet.[14] In 1874 the original area established by the Treaty was sharply constricted.[15] By an agreement in 1888 the Indians were limited to a small semiarid acreage which could be made habitable only by means of irrigation. The north boundary of the Reservation was the center of the Milk River, a tributary of the Missouri.

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[11] *United States* v. *Winans*, 198 U.S. 371, 381 (1904).
[12] See *Journals of Lewis and Clark*, Bernard DeVoto, pp. 259 et seq.
[13] "* * * Ahtanum [Creek] was the cradle and proving ground of irrigation in the State of Washington * * * " *Yakima Valley Catholic Centennial*, the Beginning of Irrigation in the State of Washington.
[14] 11 Stat. 657.
[15] For a full factual and procedural review refer to *Winters* v. *United States*, 143 Fed. 740, 741 (C.A.9, 1906), *Winters* v. *United States*, 148 Fed. 684 (C.A.9, 1906).

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In 1889 water was diverted from the Milk River to irrigate lan... within the Fort Belknap Reservation. Upstream from the Indi... diversion Winters and other defendants, non-Indians, constructe... dams, diversion works, and other structures which prevented th... waters of the Milk River from flowing down to the Indian irrigati... project. An action to restrain the Winters diversion was initiated i... the federal district court, and an injunction ensued. From that in... junction Winters appealed. In sustaining the injunction, the Court of Appeals for the Ninth Circuit declared:

> "In conclusion, we are of opinion that the court below did not err in holding that, "when the Indians made the treaty granting rights to the United States, they reserved the right to use the waters of Milk River" at least to the extent reasonably necessary to irrigate their lands. The right so reserved continues to exist against the United States and its grantees, as well as against the state and its grantees." [16]

Thus it was the Indians granting to the United States; it was the Indians reserving to themselves that which was not granted—the rights to the use of water of the Milk River to the extent required for their properties.

The concept that the Indians granted title to the United States, and not the converse, is important in regard to the nature of the title of the Indians. It is reflective of the rationale of the *Winans Decision* rendered by the Supreme Court two years earlier. There the Court had before it the fishery provisions of the Treaty of June 9, 1855, between the United States and the Confederated Tribes of Yakima Indians.[17] By that document the Indians retained the "exclusive right of taking fish in all the streams where running through or bordering" their Reservation; "also the right of taking fish at all usual and accustomed places" on and off the Reservation. Patents were issued by the United States to lands along the Columbia River from which the Yakimas had traditionally fished. Those patents did not include any reference to the Indian Treaty fishing rights and the owners of the land denied that the lands thus patented were subject to those rights of fishery. Moreover, the State of Washington had issued to the owners of the land licenses to operate fishing wheels which, it was asserted, "necessitates the exclusive possession of the space occupied by the wheels." [18]

Rejecting the contentions of the land owners that the Yakima fishing rights in the Columbia River had been abrogated by the issuance of the patents, the Court declared:

> "The right to resort to the fishing places in controversy was a part of larger rights possessed by the Indians * * * which were not much less necessary to the existence of the Indians than the atmosphere they breathed. New conditions came into existence, to which those rights had to be accommodated. Only a limitation of them, however, was necessary and intended, not a taking away."

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[16] *Winters* v. *United States*, 143 Fed. 740, 749 (CA9, 1906).
[17] *United States* v. *Winans*, 198 U.S. 371 (1904).
[18] *Id.* at 380 (1904).

Having thus appraised the Yakima Treaty, the Court then pronounced the crux of the decision:

> "* * * the treaty was not a grant of rights to the Indians, but a grant of rights from them [to the United States] a reservation of those not granted." [19]

The Court further observed that: "the right [of fishing] was intended to be continuing against the United States and its grantees as well as against the State and its grantees." [20]

Thus, the nature of the title of the Indians under the Treaties between them and the United States was cast in the correct light. Indian title does not stem from a *conveyance to them*. Rather, the title which resides in them to their lands, their rights to the use of water, their rights of fishery, their timber—all interests in real property and natural resources were *retained by them* when they granted away title to vast areas which had been theirs.

Those pronouncements by the Supreme Court declared in advance of the *Winters Decision* are fundamental precepts of the law, recognizing that rights of fishery are interests in real property subject to protection under the Constitution.[21]

Yet today, as they have for generations past, the Yakimas still struggle to maintain their rights of fishery. They are also seeking to revive salmon runs destroyed by power and other developments on the Columbia River.

On appeal, the *Winters* case presented two basic problems to the Supreme Court for resolution. (1) Were rights to the use of water in the Milk River reserved for the Fort Belknap Indian land, though no mention of those rights is contained in the Treaty of October 17, 1855, the Act of 1874, or the Agreement of 1888; (2) assuming those rights were reserved for the Indian lands, was there a divestiture of them upon the admission of Montana into the Union? [22]

In rendering its keystone opinion the Supreme Court analyzed with care the relationship between the United States and the Indians, together with the objectives of the Agreement of 1888, in which the Indians ceded away a vast tract of land, retaining for themselves only a vestige of that which they formerly occupied. The Court then addressed itself to the untenable position of the non-Indians:

> "The lands [retained by the Indians] were arid and, without irrigation, were practically valueless. And yet, it is contended,

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[19] *Ibid.* p. 381 (1904).

[20] *Ibid.* 381-382

[21] In considering the legal aspects of the property interests of the American Indians in the rivers, streams and lakes, it is emphasized that of necessity there has been applied principles of law which differ radically from the Indians' aboriginal view in regard to natural resources Apparently title to the right of fishery as this Nation's jurisprudence developed had no place in the Indians' concept of taking fish from the streams where and when they could At a very early date in the evolution of Anglo-Saxon law the right of fishery—akin to rights to the use of water as that law was much later to evolve—was a right in real property, a part and parcel of the land abutting upon or traversed by a stream or lake.

In Thompson on Real Property, per ed., vol 1, sec 250, this statement appears "It is held that fishing rights are incorporeal hereditaments since they issue out of, * * * or are annexed to things corporeal "

It is also stated in 22 Am. Jur., Fish and Fisheries, sec. 7 "The right to fish at a certain place is a property right constitutionally protected from confiscatory legislation, * * * It is an interest in real estate in the nature of an incorporeal hereditament, * * *."

The nature of the right of fishery is recognized in California Code, Civil, sec 801, which is in part "The following land burdens, or servitudes upon land, may be attached to other land as incidents or appurtenances, and are then called easements: * * * (2) The right of fishing, * * *." That principle was likewise recognized by the Supreme Court of the State of Oregon in the case of *Hume* v *Rogue River Packing Co* 51 Ore. 237, 92 Pac 1065 (1907), where it is stated that the right of fishery is a right in real property and not a personal right

[22] *Winters* v. *United States*, 207 U S. 564, 575 et seq (1907).

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> the means of irrigation were deliberately given up by the Indians and deliberately accepted by the Government. * * * The Indians had command of the lands and the waters—command of all their beneficial use, whether kept for hunting, "and grazing roving herds of stock," or turned to agriculture and the arts of civilization. Did they give up all this? Did they reduce the area of their occupation and give up the waters which made it valuable or adequate?"

Answering the question which it had propounded, the Court declared:

> "If it were possible to believe affirmative answers, we might also believe that the Indians were awed by the power of the Government or deceived by its negotiators. Neither view is possible. The Government is asserting the rights of the Indians."[23]

The Court reiterated the basic tenents of the *Winans* case—that the Indians, not the United States, were the grantors. Cogently the Court inquired: Did the Indians grant and the United States accept all of the Indian rights to the use of water without which the lands were uninhabitable? It rejected that proposition out of hand as being without merit. Likewise significant was the Court's observation that as the owners of the land and waters the Indians could use them for hunting, grazing, or, in the words of the Court, for "agriculture and the arts of civilization." The Court found no words of limitation upon the uses to which the Indians could apply their water rights.

Turning to the part-legal, part-political question—of Montana's jurisdiction over the Indian rights to the use of water, the Supreme Court had this to say:

> "The power of the Government to reserve the waters and exempt them from appropriation under the state laws is not denied, and could not be. *The United States* v. *The Rio Grande Ditch & Irrigation Co.*, 174 U.S. 690, 702; *United States* v. *Winans*, 198 U.S. 371. That the Government did reserve them we have decided, and for a use which would be necessarily continued through years. This was done May 1, 1888, and it would be extreme to believe that within a year Congress destroyed the reservation and took from the Indians the consideration of their *grant, leaving them a barren waste*—took from them the means of continuing their old habits, yet did not leave them the power to change to new ones."[24]

The crucial aspect of the character of the Indian title is thus clear: (1) By the Agreement of 1888 the Indians reserved to themselves the rights to the use of water in the Milk River although that Agreement made no mention of rights of that nature; (2) the Indian rights thus reserved were not open to appropriation under the laws of the State of Montana upon its admission into the Union, but rather were exempt from the operation of those laws The full import of the *Winters* and *Winans* decisions are central to the discussion that follows.

(b) *Winters Doctrine Rights are part and parcel of the land itself—interests in real property:*

The decisions rendered by the Court of Appeals for the Ninth Circuit and the Supreme Court are based on the concept of a grant

[23] Ibid., 207 U.S. 564, 576 (1907)
[24] *Ibid.*, 207 U.S. 564, 577 (1907).

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from the Indians *to* the national government. They chronicle the successive transactions pursuant to which Indian domains, once embracing large segments of the present State of Montana, were diminished to a small area made habitable only by the availability of water.

The Yakimas' rights of fishery under their Treaty of 1855 are, under the *Winans* holding, interests in real property—part and parcel of the land itself. In the *Ahtanum* cases,[25] the Court of Appeals, considering that Treaty, applied the same principles to the water rights in Ahtanum Creek which the northern boundary of the Yakima Reservation.

In the first *Ahtanum* decision, the Court of Appeals discussed the nature and characteristics of the Indian *Winters Doctrine Rights* in the following terms:

> "That the Treaty of 1855 reserved rights in and to the waters of this stream for the Indians, is plain from the decision in *Winters* * * *. In the Winters case, as here, the reservation was created by treaty; the reserved lands were a part of a much larger tract which the Indians had the right to occupy; and the lands were arid and without irrigation practically valueless. * * * This court, in its decision (143 F. 740, 746), which the Supreme Court was affirming, had said: "We are of opinion that it was the intention of the treaty to reserve sufficient waters of Milk River, as was said by the court below, 'to insure to the Indians the means wherewith to irrigate their farms', and that it was so understood by the respective parties to the treaty at the time it was signed." [26]

Continuing to define and declare the extent of the *Winters Doctrine Rights*, the court states:

> "* * * [i]t must be borne in mind, as the Supreme Court said of this very treaty, that 'the treaty was not a grant of rights to the Indians, but a grant of rights from them—a reservation of those not granted.' United States v. Winans, 198 U.S 371, 381. Before the treaty the Indians had the right to the use not only of Ahtanum Creek but of all other streams in a vast area. The Indians did not surrender any part of their right to the use of Ahtanum Creek regardless of whether the Creek became the boundary or whether it flowed entirely within the reservation." [27]

Having reviewed in detail the manner in which the Yakimas had reserved their *Winters Doctrine Rights*, the court applied to them the principles governing interests in realty:

> "This is a suit brought by the United States as trustee for the Yakima tribe of Indians to establish and quiet title to the Indians' right to the use of the waters of Ahtanum creek in the State of Washington, * * *." [28]

With further reference to the nature of the rights and the action brought to have them determined, the Court states:

> "The suit [to protect the Yakima rights], like other proceedings designed to procure an adjudication of water rights, was in its purpose and effect one to quiet title to realty." [29]

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[25] See footnote 5 above.
[26] *United States* v. *Ahtanum Irrigation District*, 236 F. 2d 321, 325 (CA9, 1956).
[27] Ibid., 236 F 2d 321, 326.
[28] Ibid , 236 F. 2d 321, 323.
[29] *Ibid* , 236 F 2d 321, 339.

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Those rulings in regard to the characteristics of the *Winters Doctr... Rights* to the use of water as being interests in real property, compo... fully with the *Powers Decision* rendered by the Supreme Co... respecting the *Winters Doctrine Rights* of the Crow Indians.[30] There a... several aspects of the *Powers Decision* that are of importance to t... Indians in addition to it being a precedent respecting the nature of t... *Winters Doctrine Rights*. The decision arose from an attempt to enjo... the use of water by a non-Indian, who had succeeded to the title to land from an Indian allottee. The Court upheld the lower court's refusal to grant the injunction, specifically declaring—in keeping with sound principles of real estate conveyancing—that the non-Indian succeeded to "some portion of tribal waters," adding this most important caveat when consideration is given to the implications of the *Powers Decision:*

> "We *do not* consider the extent or precise nature of respondents' [non-Indian] rights in the water. The present proceeding [being an action to enjoin, not, as in *Ahtanum*, to quiet title] is not properly framed to that end." [31]

It is elemental that rights to the use of water are interests in real property.[32] Likewise elemental is the principle that a right to the use of water is usufructuary and does not relate to the corpus of the water itself.[33] Those principles are, of course, applicable to the *Winters Doctrine Rights*.

As interests in real property *Winters Doctrine Rights* are entitled to be protected, and the obligation to protect them against abridgement and loss is identical with the obligations respecting the land itself. This concept goes far towards the elimination of the confusion which has on occasion arisen respecting the course which must be pursued in the exercise and protection of them.

(c) *The measure of Indian rights to the use of water for the present and future economic development of their Reservations:*

The success of any program in furtherance of development in the western United States is, of necessity, predicated not only upon a *present* firm supply of water but likewise upon a firm supply in the *future*. In the application of the *Winters Doctrine* the courts recognized that the Indians would of necessity need additional quantities of water to meet their future needs:

> "What amount of water will be required for these purposes may not be determined with absolute accuracy at this time; but the policy of the Government to reserve whatever water of Birch Creek may be reasonably necessary, not only for present uses, but for future requirements, is clearly within the terms of the treaties as construed by the Supreme Court in the Winters Case." [34]

In keeping with the declaration that the Indians had rights in the

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[30] *United States* v. *Powers*, 305 U.S. 527, 533 (1939).
[31] *Ibid*., 305 U.S. 527, 533 (1939).
[32] Wiel, *Water Rights in the Western States*, 3d ed., vol. 1, sec. 16, pp. 20, 21, sec. 283, pp. 298-300; sec. 285, p. 301. *United States* v. *Chandler-Dunbar Water Power Co.*, 229 U.S. 53, 73 (1913). *Ashwander* v. *TVA*, 297 U.S. 288, 330 (1936).
[33] *Fuller* v. *Swan River Placer Mining Co.*, 12 Colo. 12, 17; 19 Pac. 836 (1898). *Wright* v. *Best*, 19 Cal. 2d 368, 121 P. 2d 702 (1942). *Sowards* v. *Meagher*, 37 Utah 212, 108 Pac. 1112 (1910). See also *Lindsey* v. *McClure*, 136 F. 2d 65, 70 (C.A. 10, 1943).
[34] *Conrad Investment Company* v. *United States*, 161 Fed. 829 (CA9, 1908).

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stream to meet their present and future needs, the Court of Appeals approved the means provided in the decree entered by the lower court in these terms:

> "It is further objected that the decree of the Circuit Court provides that, whenever the needs and requirements of the complainant for the use of the waters of Birch creek for irrigating and other useful purposes upon the reservation exceed the amount of water reserved by the decree for that purpose, the complainant may apply to the court for a modification of the decree. This is entirely in accord with complainant's rights as adjudged by the decree. Having determined that the Indians on the reservation have a paramount right to the waters of Birch Creek, it follows that the permission given to the defendant to have the excess over the amount of water specified in the decree should be subject to modification, should the conditions on the reservation at any time require such modification." [35]

The same principle was declared by the Supreme Court in *Arizona* v. *California*.[36] There the Court, relying upon the *Winters* decision, stated that the quantities of water reserved for the Indians were sufficient "to make those reservations livable." [37] In sustaining the Report of the Special Master, the Court said:

> "* * * We also agree with the Master's conclusion as to the quantity of water intended to be reserved. He found that the water was intended to satisfy the future as well as the present needs of the Indian Reservations and ruled that enough water was reserved to irrigate all the practicably irrigable acreage on the reservations." [38]

It is important that the Supreme Court not only declared that the *Winters Doctrine* comprehends water for future needs to make "livable" the Reservations then under consideration which it described as being comprised of "hot, scorching sands", but also accepted those criteria as a means—though in no sense the exclusive means—of measuring the rights to the use of water which were in fact reserved: "We have concluded * * * that the only feasible way by which reserved water for the reservations can be measured is irrigable acreage." [39]

When the United States petitioned to intervene in *Arizona v. California*—thus eliminating the objection to jurisdiction for want of indispensable parties—the irrigable acreage criterion was tendered to the Court as the best measure of rights claimed for the particular Reservations involved.

The Supreme Court also adopted a different criterion from that used in connection with the Indian Reservations. It stated:

> "* * * the United States intended to reserve water sufficient for the future requirements of the Lake Mead National Recreation Area, the Havasu Lake National Wildlife Refuge, the Imperial National Wildlife Refuge and the Gila National Forest." [40]

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[35] *Conrad Investment Company* v *United States*, 161 Fed. 829, 835 (CA9, 1908).
[36] 373 U.S. 546 (1962).
[37] Ibid., 373 U.S. 546, 599.
[38] *Arizona* v *California*, United States Intervener, 373 U.S. 546, 600 (1962).
[39] Ibid., 373 U.S. 546, 601.
[40] Ibid., 373 U.S. 546, 601 (1962).

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There are numerous Reservations, all of which according to th Supreme Court must be "livable" by the Indians who reside on ther These Reservations vary from those situated on Puget Sound to thos in the desert areas of southwestern United States. The quantities water required in the humid regions differ widely from the "hot scorching sands" to which the Court made reference. Similarly th water requirements will differ dependent upon the use to which th waters are to be applied in the economic development of each Reserva tion.

(d) *Indian Winters Doctrine Rights, like the lands of which they ar a part, may be used for any beneficial purpose:*

Potential for economic development of the Indian Reservations is inextricably related to the legal title to the right to divert and use water. Those Reservations were established in perpetuity as a "home and abiding place" for the Indians. In the words of the Supreme Court, "It can be said without overstatement that when the Indians were put on these reservations they were not considered to be located in the most desirable area of the Nation." [41] Most of them were established during times when this Nation was experiencing great changes economically and socially. Changes were anticipated and changes came about and the process of change continues. From a predominantly rural culture geared to the cultivation of the soil, this nation has developed into an urban and industrial country.

Changes have likewise come about concerning the American Indians' occupation of Reservations which were established by treaty and agreement between the Indians and the national government Reservations were likewise established unilaterally by Executive Orders and congressional enactments. At the time of their establishment those Reservations were primarily suitable for farming and livestock raising. Coinciding with the shift of our national economy, the Reservations have changed. Some, including the Pueblos of New Mexico and the Salt River Indian Reservation in Arizona, are close to and are rapidly becoming a part of urban areas.

Concomitant with the changes in land uses are changes in water uses. With prescience the Supreme Court in *Winters*, in 1907, stated:

> "The Indians had command of the lands and the waters—command of all their beneficial use, whether kept for hunting, 'and grazing roving herds of stock,' or turned to agriculture and the arts of civilization." [42]

That conclusion is the key to economic development on the Reservations. Having retained the title to lands, they retained all incidents of that title, including but not limited to rights to the use of water. Title to those rights were free of limitations on the purposes to which they could be applied. In *Conrad Investment Company*, the court referred to the fact there was vested in the Indians the rights to use the streams to meet future developments "for irrigating and other useful purposes."

In the second *Ahtanum* decision the court reviewed the main precepts of the *Winters Doctrine* in these terms:

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[41] Ibid., 373 U.S. 546, 598
[42] *Winters v. United States*, 207 U.S. 564, 576 (1907).

> "This court held that by reason of the rule laid down in Winters * * * and other decisions of this court applying the rule of the Winters case, including Conrad Inv. Co. * * *
>
> *All of the waters of Ahtanum Creek*, or so much thereof as could be *beneficially used* on the Indian Reservation were, by virtue of the treaty, reserved for use by the Indian tribe upon their lands." [43] (Emphasis supplied)

Adopting a practice seldom pursued, the Court of Appeals formulated the decree and directed its entry, which, based upon the facts, adjudged that "after the tenth day of July in each year, [the date when water becomes in short supply] *all* the waters of Ahtanum Creek shall be available to, and subject to diversion by, the plaintiff [United States of America] for use on Indian Reservation lands south of Ahtanum Creek, *to the extent that the said water can be put to a beneficial use.*" [44] (Emphasis supplied.)

Pertinency must be attributed to the fact that in *Arizona* v. *California*, as reviewed above—rights were declared to have been reserved for the widely disparate present and "future requirements" of a National (1) recreation area; (2) wild life refuge; and (3) national forest.

Economic development of Indian Reservations, as stated above, must be geared to land and water use. Hence the authority to decide the uses becomes important. It is, of course, an elemental proposition of constitutional law that there resides with the Congress of the United States, pursuant to the Commerce Clause, the plenary power and authority to conduct Indian affairs.[45] At a relatively early date in the nation's history the Supreme Court observed that "This power must be considered as exclusively vested in Congress * * *." [46] A concomitant Constitutional proviso—that "The Congress shall have Power to dispose of and make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States" must also be considered.[47] It is equally applicable to the Indian lands and rights to the use of water [48] as it is to lands the government holds for the benefit of the people as a whole.

It is pertinent at this juncture to set forth this caveat:

> Although the constitution is the source of authority for the administration of Indian lands and water rights, those property interests are private, not public in nature. The precepts of the law which govern their administration are thus vastly different from those which govern "public" lands administered by various other agencies of the federal government.

(e) *Application of the Winters Doctrine to Treaty, Executive Order and Congressional Act Reservations*

In the *Walker River* case [49] the federal court had before it Indian claims to the use of water, Neither a treaty nor an agreement between

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[43] *United States* v. *Ahtanum Irrigation District*, 330 F. 2d 897, 899 (CA9, 1964).
[44] Ibid., 330 F. 2d 897, 15 (CA9, 1964).
[45] Constitution of the United States, 1787, Article I, Sec. 8, Cl. 3 "Section 8 The Congress shall have Power: "To regulate Commerce with foreign nations, and among the several States, and with the Indian Tribes; * * *"
[46] *Worcester* v. *Georgia*, 31 U. S. 515, 559, 580-581 (1832)
[47] Constitution of the United States, 1787, Article IV, Section 3, Cl. 2
[48] *Arizona* v. *California*, 373 U. S. 546, 597-598 (1963).
[49] *United States* v. *Walker River Irr. Dist.* 104 F. 2d 334, 336 (CA9, 1939)

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the government and the Indians was involved, for the Walker River Indian Reservation had been created in 1859 by departmental action subsequently approved by an Executive Order.

In *Walker River* the court alluded to the fact that in *Winters* the Treaty was emphasized.[50] That the Indians had not retained any rights to the use of water in the Walker River did not alter the court's decision. Rather it declared: "The power of the Government to reserve the waters to the Indians and thus exempt them from subsequent appropriation by others is beyond debate." [51] In rejecting the alleged difficulties the non-Indian claimants would experience if the rights of the Indians were recognized, the court states: "The settlers who took up lands in the valleys of the stream were not justified in closing their eyes to the obvious necessities of the Indians already occupying the reservation below." Thus the decree in favor of the Indians by the court below was sustained.

Adhering to the same principles of the powers of the National Government to reserve rights to the use of water for the Indians, as reviewed above, the Supreme Court declared:

> "They [cases relating to the ownership of beds of navigable streams] do not determine the problem before us and cannot be accepted as limiting the broad powers of the United States to regulate navigable waters under the Commerce Clause and to regulate government lands under Art. IV, Sec. 3 of the Constitution. We have no doubt about the power of the United States under the clauses to reserve water rights for its reservations and its properties." [52]

From the legal standpoint there is a substantial difference between the rights, title to which resided in the Indians and which they retained by Treaty or agreement, from those, title to which was in the United States, but passed to the Indians when their Reservations were created by Congress or Executive Order. Indian rights to the use of water under Treaties are immemorial in character having always resided in the Indians. Where Congress or the Executive granted title to the Indians those titles are from the United States subject to any interests outstanding when title was conveyed to the Indians. That difference—immemorial Indian title or invested Indian title—does not, it is believed, have bearing upon the economic development of the Reservations.

From the standpoint of this consideration—the need for rights to the use of water if the Indian Reservations are to have economic growth and establish a viable community—the question of immemorial title retained by the Indians or title vested by the United States in the Indians, is not of too great importance. Comment is warranted, however, as to the capricious course of conduct which was adhered to in connection with the dealings with the Indians. It is, of course, manifest that the immemorial title is of greater value than the invested title from the United States because the latter title could be subject to other outstanding interests which is not true in regard to the treaty rights. An example of that capriciousness has had far-reaching effect upon the rights and interests of the Mohaves and the

[50] Ibid., 104 F.2d 334, 336
[51] Ibid., 104 F.2d 334, 336
[52] *Arizona v. California*, 373 U.S. 546, 598 (1962).

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Colorado River Tribes of the Colorado River Indian Reservation.[53] Colonel Poston, in 1865 a Member of Congress but formerly a Superintendent of Indian Affairs for the Arizona Territory, presented a graphic description of the course which was adopted in regard to the previously proud and self-sufficient Yumas, Mohaves, and other Colorado River Indians. Quite obviously he gave no thought to the legal implications flowing from his patronizing attitude towards those Indians, however benign his approach to them may have been. Those Indians had been reduced to begging for food by reason of the fact, in the words of Colonel Poston, that they had "been robbed of their lands and their means of subsistence * * *." [54] He recited that as a representative of the United States "* * * I did not undertake to make a written treaty" with them because "* * * I considered that the Government was able and willing to treat them fairly and honestly * * *." In their dire distress he pointed out that the Yumas, Mohaves and other Indians "there assembled were willing, for a small amount of beef and flour, to have signed any treaty which it had been my pleasure to write." Because he would attempt to obtain from a "magnanimous Government some relief from their desperate circumstances," he asked those Indians to abandon "* * * all the one hundred and twenty thousand square miles, full of mines and rich enough to pay the public debt of the United States" and to "confine themselves to the elbow of the Colorado River, not more than seventy-five thousand acres." That action resulted in the extinguishment of the Mohave title with the attendant loss of invaluable lands and rights to the use of water and an ensuing history of contradictions, discriminations and travail.

(f) *Indian Winters Doctrine Rights as distinguished from riparian rights*

Economic development on the Indian Reservations has been keyed throughout this consideration to *Winters Doctrine* rights to the use of water. The location of Indian Reservations and competition to meet present and future requirements necessitates reference to the individual, corporation, municipal, and quasi-municipal rights under the doctrine of prior appropriation. *Winters Doctrine* rights have been referred to as immemorial in character, prior and paramount, or in similar terms, according to the Indians preferential status on streams. Indian rights, having been retained by the Indians or invested in them antecedent to settlement of the lands in the Western United States, demonstrate the coalescence of history and the law. Those water rights were never opened by the Congress to private acquisition.

(1) *The doctrine of prior appropriation:*

Title to most of the Western United States—land, water rights, minerals, timber and all natural resources originally resided in the national government. Miners came to the harsh environment of the West exploring for precious minerals. Then, as now, water was the

[53] See 7 *Ind Cl Comm Finding* 25(a) et seq., how the Mohaves, Yumas and others were deprived of the benefits of treaties, is as follows

"25. (a) No treaty was ever made between the United States and the Mohave Tribe for the purpose of extinguishing the Indian title in said tribe to the lands it exclusively used and occupied The lands found herein to have been exclusively used and occupied by the Mohave were located in what are now the states of California, Nevada and Arizona."

[54] *Cong Globe*, 38th Congress, 2d Sess , March 2, 1865, p 1320.

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key to economic development. Without it gold remained in the granite and in the gravel. As a consequence, water was diverted out of the streams to the mine locations, frequently long distances at great costs of money, time and effort. The mining and water diversion were accomplished with the knowledge and acquiescence of the Government of the United States.

Violence is very much a part of the history of water law in the West. As law and order came to the Old West, there grew up in the mining districts the precept that the "First in time" was "first in right" on the streams of the public domain.

In 1866 the Congress, considering the nation's western lands, took cognizance of the laws of the mining States, which by that time had come into the Union, and declared:

> "Whenever, by priority of possession, rights to the use of water for mining, agricultural, manufacturing, or other purposes, have vested and accrued, and the same are recognized and acknowledged by the local customs, laws, and the decisions of courts, the possessors and owners of such vested rights shall be maintained and protected in the same; * * *." [55]

In 1870 there was further Congressional recognition of the rights to the use of water exercised pursuant to State law by enactment of the following language:

> "All patents granted, or preemption or homesteads allowed, shall be subject to any vested and accrued water rights, or rights to ditches and reservoirs used in connection with such water rights, as may have been acquired under or recognized by this section." [56]

Thus the patentee took his title from the nation subject to privately acquired rights in the streams on the "public land." [57]

In the 1877 Desert Land Act, Congress, to foster economic development of the arid public land, having provided for diversion and use of water under specified conditions, declared that:

> "* * * all surplus water over and above such actual appropriation and use, together with the water of all lakes, rivers, and other sources of water supply upon the public lands and not navigable, shall remain and be held free for the appropriation and use of the public for irrigation, mining, and manufacturing purposes subject to existing rights." [58]

In summarizing the legal consequences flowing from the Acts of 1866, 1870 and 1877, the Supreme Court declared:

> "As the owner of the public domain, the government possessed the power to dispose of land and water thereon together, or to dispose of them separately, (Howell v. Johnson, C.C. 89 Fed. 556, 558. The fair construction of [the Desert Land Act of 1877] is that Congress intended to establish the rule that for the future the land should be patented separately; and that all non-navigable

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[55] Act of July 26, 1866, Ch. 262 Sec. 9, 14 Stat 253
[56] Act of July 9, 1870, Ch 235, Sec 17, 16 Stat 218
[57] Act of July 9, 1870, Ch 235, Sec 17, 16 Stat. 218. *Note:* The quotations are from 43 U S C. 661 in which the Acts of 1866 and 1870 are in part codified. See in regard to the preceding review: *Jennison v Kirk*, 98 U.S. 453 (1878). *California-Oregon Power Co v. Beaver Portland Cement Co*. 295 U S 142 (1935); *Federal Power Comm v Oregon*, 349 U S 435 (1955)
[58] Act of March 3, 1877, Ch 107, Sec 1, 19 Stat 377.

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waters thereon should be reserved for the use of the public under the laws of the states and territories named." [59]

When the Supreme Court declared that the National Government as owner of the public lands had the power to dispose of those lands and water rights separately—as Congress did by the Acts of 1866, 1870 and 1877—it relied upon the decision of *Howell* v. *Johnson* involving water rights acquired in a stream in Wyoming which traversed public lands.

"The rights of plaintiff do not, therefore, rest upon the laws of Wyoming, but upon the laws of congress.

"The legislative enactment of Wyoming was only a condition which brought the law of congress into force. The national government is the proprietor and owner of all the land in Wyoming and Montana which it has not sold or granted to some one competent to take and hold the same. Being the owner of these lands, it [the United States] has the power to sell or dispose of any estate therein or any part thereof. The water in an innavigable stream flowing over the public domain is a part thereof, and the national government can sell or grant the same, or the use thereof, separate from the rest of the estate, under such conditions as may seem to it proper." [60]

The doctrine of prior appropriation has been well stated in these terms:

"* * * To appropriate water means to *take* and *divert* a specified quantity thereof and put it *to beneficial use* in accordance with the laws of the State where such water is found, and, by so doing, to acquire under such laws, a vested right to *take* and *divert* from the same source, and to use and consume the same quantity of water *annually forever, subject only to the right of prior appropriations. * * * the perfected vested right to appropriate water flowing * * * cannot be acquired without the performance of physical acts through which the water is and will in fact be diverted to beneficial use.*" [61] (Emphasis supplied.)

(11) *Indian Winters Doctrine Rights differ drastically from common law riparian rights:*

Unsuited to the semiarid regions of the west and incompatible with the monopolistic aspects of the doctrine of prior appropriation, the common law doctrine of riparian rights—a product of a more

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[59] *California Oregon Power Co.* v *Beaver Portland Cement Co*, 295 U S 142, 163-64 (1935).

[60] *Howell* v. *Johnson*, 89 Fed 556, 558 (D. Mont 1898) State court decisions appear generally in accord with this pronouncement

Smith v. *Denniff*, 24 Mont. 20, 21, 60 Pac. 398 (1900). See also *Story* v *Woolverton*, 31 Mont. 346, 353-54, 78 Pac 589, 590 (1904)

Benton v *Johncox*, 17 Wash 277, 289, 49 Pac. 495, 499 (1897) "The government, being the sole proprietor, had the right to permit the water to be taken and diverted from its riparian lands, * * *"

LeQuime v. *Chambers*, 15 Idaho 405, 98 Pac 415 (1908).

Luz v *Haggin*, 89 Cal 255, 338, 10 Pac 674, 721 (1886) "It has never been held that the right to appropriate waters on the public lands of the United States was derived directly from the state of California as the owner of innavigable streams and their beds, and, since the act of congress granting or recognizing a property in the waters actually diverted and usefully applied on the public lands of the United States, *such rights have always been claimed to be derogated by private persons under the act of congress, from the recognition accorded by the act, or from the acquiescence of the general government in previous appropriations made with its presumed sanction and approval*" (Emphasis supplied).

Morgan v. *Shaw*, 47 Ore 333, 337, 83 Pac 534, 535 (1906).

Hough v. *Porter*, 51 Ore 318, 391; 95 Pac. 732, 98 Pac. 1083, 1092 (1908, 1909).

2 Kinney, *Irrigation and Water Rights*, 1118 (2d ed. 1912), reiterates that proposition. From this latter source, at 692-93, this statement is taken

"The Government is still the owner of the surplus of the waters flowing upon the public domain * * * It therefore follows, as the result of the ownership by the United States of the waters flowing upon the public domain, that any dedication by a State of all the waters flowing within its boundaries to the State or to the public amounts to but little in the face of any claim which may be made by the Government, *at least* to all the surplus or unused waters within such State."

[61] *Arizona* v. *California*, 283 U.S. 423 (1931).

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humid, less harsh environment than that of Western United States—was rejected by the States of Arizona, Colorado, Idaho, Montana, Nevada, New Mexico, Utah, and Wyoming. Water law is generally the outgrowth of experience, not logic, and where logic purported to override experience, as in California, Oregon and other states, which adhere to even greatly modified concepts of riparian principles together with the doctrine of prior appropriation, confusion has ensured. In a recent California proceeding the principles of the *Winters Doctrine* were applied to Indian and Federal rights to both surface and ground waters. The principles of privately owned riparian rights were applied to surface waters, principles respecting correlative privately owned rights were likewise applied to ground waters, and the principles respecting appropriative rights were applied to both surface and ground waters.[62]

This case suggests the difficult but imperative, immediate need of enforcing the *Winters Doctrine* rights of the American Indians if economic development on their Reservations is not to be totally stifled in areas comparable to Southern California.

A riparian right is held and exercised correlatively with all other riparian owners as "a tenancy in common and not a separate or severable estate." [63] Obviously the concept of the "reserved right" in the Indians is wholly at variance with the limitations which are present in a tenancy in common. Further, "a riparian owner has no right to any mathematical or specific amount of the waters of a stream as against other like owners." [64] That aspect of the riparian right results from the fact that those rights are held correlatively with all other riparians. As a consequence the quantity of water riparian owners may use must be "reasonable" in the light of the claims of all other riparians. Reasonableness is, of course, a variant depending upon the supply of water, the demands which differ from day to day, and a multitude of other factors.[65]

Equally at odds with the concept of *Winters Doctrine* rights is the limitation upon the exercise of rights riparian in character: " 'Land which is not within the watershed of the river is not riparian thereto, and is not entitled, as riparian land, to the use or benefit of the water from the river, although it may be part of an entire tract which does extend to the river * * *.' " [66] There is, of course, no legal basis for any limitation of *Winters Doctrine* rights to the watershed in which the Indian land is situated. Moreover, State law could not thus restrict the power of Congress over the properties of the nation.[67]

It is pertinent at this phase of the consideration to turn to the state law governing water rights of private persons and briefly to discuss the exemption of Indian water rights from those laws.

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[62] *United States* v *Fallbrook Public Utility District*, 101 F Supp 298 (S D Cal 1951); 108 F. Supp 72 (1952), 109 F Supp. 28 (1952); 110 F Supp. 767 (1953), 202 F 2d 942 (9th Cir. 1953), 165 F. Supp 806 (1958), 193 F Supp 342 (1961). Reversed in part and affirmed in part, 347 F 2d 48 (9th Cir 1965). Noteworthy is the fact that on May 8, 1963, a final judgment was entered decreeing, in effect, every right and interest of Fallbrook Public Utility District subject and subordinate to the prior rights of the United States.

[63] *Seneca Consolidated Gold Mines Co.* v *Great Western Power Co of California*, 209 Cal 206, 287 Pac 93, 98 (1930).

[64] *Prather* v *Hoberg*, 24 Cal 2d 549, 150 P. 2d 405, 410 (1944).

[65] Hutchins, *The California Law of Water Rights* 218 (1956)

[66] Ibid., page 202.

[67] *United States* v. *San Francisco*, 310 U.S. 16 (1940).

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(g) *Federal-State relationship and economic development of Indian lands:*

Judicial recognition of Indian *Winters Doctrine* rights is as broad as the Western United States and it has been applied to a vast variety of circumstances. It is of prime importance to the economic development of American Indian Reservations.[68] Equally important is the fact that the American Indian Reservations are at the headwaters of, border upon, or are traversed by the major interstate stream systems in the West. For a variety of reasons, moreover, Indian water rights have remained unexrecised to a very large extent. Sharp competition exists now—and will be accentuated with expanded economic development on the Reservations—between the vested Indian rights to the use of water and those claimed by individuals or corporations, public or private, asserted under State law.

Based upon sound logic, legal precedent, and expressed language upon which the States were admitted to the Union, the states and those claiming under them may not interfere with the rights of the American Indians. In practice the converse has prevailed.

Immunity of Indian *Winters Doctrine* rights from state interference or seizure has been guaranteed in a variety of ways. The State of Washington's Enabling Act and Constitution specifically provide that: "Indian lands shall remain under the absolute jurisdiction and control of the Congress of the United States * * *." [69] Concerning identical provisions in the Montana Enabling Act and Constitution, the Court of Appeals for the Ninth Circuit has unequivocally declared that the state laws respecting the appropriation of water rights would have no application to the Flathead Indian Reservation.[70] That same court later specifically rules as follows on the subject:

> "Rights reserved by treaties such as this are not subject to appropriation under state law, nor has the state power to dispose of them." [71]

In regard to water rights for lands withdrawn by the United States, the Supreme Court has declared: "the Acts of July 26, 1866, July 9, 1870, and the Desert Land Act of 1877" opening surplus rights to the use of water to appropriation "* * * are not applicable to the reserved lands and waters here involved." [72] Having thus ruled, the Supreme Court then proceeded to set forth the legal distinction between Indian lands and withdrawn lands, upon which the Pelton Project for the generation of electricity was to be located, and "public lands" to which the Desert Land Act of 1877 is applicable, by stating that the former "are not unqualifiedly subject to sale and disposition * * *." [73]

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[68] *Winters* v. *United States*, 207 U S. 564 (1907), affirming the Court of Appeals for the Ninth Circuit, 143 Fed 740; 148 Fed 684. *United States* v. *Powers*, 305 U S. 527 (1939), affirming 94 F 2d 783 *Arizona* v. *California*, United States, Intervener, 373 U.S 546 (1962) *United States* v. *Walker River Irrigation District, et al.*, 104 F. 2d 334 (CA9, 1939). *Conrad Investment Co.* v. *United States*, 161 Fed. 829 (CA9, 1908) *United States* v *McIntyre*, 101 F. 2d 650 (CA9, 1939) *Skeem* v. *United States*, 273 Fed. 93 (CA9, 1921). *United States* v. *Ahtanum Irrigation District*, 236 F. 2d 321, (CA9. 1956). Appellees' cert denied 352 U.S. 988 (1956); 330 F. 2d 897 (1965), 338 F. 2d 307, Cert denied 381 U.S 924 (1965)

[69] Enabling Act, Sec. 4, second subdivision; Constitution of the State of Washington, Article XXIV, second subdivision.

[70] *United States* v. *McIntire*, 101 F. 2d 650 (CA9, 1939).

[71] *United States* v. *Ahtanum Irrigation District* 236 F. 2d 321, 328 (CA9, 1956).

[72] *Federal Power Commission* v. *Oregon*, 349 U.S. 435, 445 (1956).

[73] Ibid, 349 U.S. 435, 448.

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It will be recalled that the Court in *Winters* declared emphatically that the power of the nation under the Constitution "* * * to reserve the waters and exempt them from appropriation under the state laws is not denied and could not be * * *." [74]

Title to water rights, although stemming from the Constitution itself and fully recognized by the courts, does not in any sense guarantee to the American Indians that those rights cannot be taken from them. Far from humorous is the description of State permits to appropriate rights to the use of water as "hunting licenses." A permit to appropriate, for example, in California "* * * is * * * no assurance of a water supply * * *." [75]

However, "surplus" waters in a stream frequently are diverted and used, and economies are built upon those waters quite aside from the fact that the "surplus" is actually water the rights to which reside in the Indians. Constitutional law, ethics, and good conscience become mere technicalities to be avoided or ignored under the circumstances. To the holder of the permit from the State to appropriate water rights—although it is subject to vested rights—the existence of a surplus, though it may be momentary, allows him to expend money to develop its use with the hope that time will come to his aid as a barrier to the Indians recovering the waters to which they are justly entitled. As a consequence of actual practice, as distinguished from legal niceties, the American Indians' rights to the use of water are being rapidly eroded away by those claiming under the guise of compliance with State law. They eloquently prove a Western truism about water, however harsh and cynical it may be—"use it or lose it."

ECONOMIC DEVELOPMENT OF AMERICAN INDIAN RESERVATIONS MUST BE EFFECTUATED WITHIN THE PURVIEW OF THE CONSTITUTIONAL RELATIONSHIP BETWEEN THE NATION AND THE INDIANS

(a) *American history as it relates to the American Indians and the economic development of their Reservations:*

When the European culture encountered indigenous inhabitants of the Americas it is difficult to perceive the disparity which existed between them. From the outset the then great Continental powers, though desirous of occupying the lands loosely held by the Indians, did not deny that the Indians had rights to those lands. Rather, Spain acknowledged their ownership of the lands that they occupied and refused to enslave them. The Dutch and early colonists respected the Indian rights, treating with them as the owners of their lands.[76] It is, of course, a historical fact that William Penn took cognizance of the rights of the Indians and paid them for their properties.

It is clear that the European and Indian mores did not preclude efforts to resolve amicably the differences between the invaders of the land and its occupants. The English generally entered into treaties with the Indians in the territory which they occupied. As the Supreme Court observed of Britain's historical policy with the Indians: "This was the settled state of things when the war of our revolution commenced." [77]

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[74] See supra, p. 14, footnote 15 et seq., particularly pp. 20–21 footnote 21.
[75] California's *"Rules and Regulations"* governing appropriation of rights to the use of water.
[76] *Federal Indian Law*, page 164.
[77] *Worcester v. Georgia*, 31 U. S. 515, 548 (1832).

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History also records that the Colonies, in their rebellion against Great Britain desired most assiduously to avoid conflict with the Indians and conducted negotiations with them with that end in mind. Thus the original relationship between the former Colonies in revolt and the Indians was not that of a superior power enforcing its will upon the Indians. The basic objective was to placate a war-like people which might very well measure the difference between success and failure, victory or defeat. During the Revolutionary War the United States entered into numerous treaties with the Indians, among them being the "Articles of Agreement and Confederation with the Delaware Nation." [78] One objective of and need for the treaty was declared in the treaty itself:

> "And whereas the United States are engaged in a just and necessary war, in defence and support of life, liberty and independence, against the King of England and his adherents, * * *." [79]

Continuing, the treaty recites that the "said King" was maintaining posts and forts throughout the lands of the Delawares and the United States was in need of access across the lands of the Delaware Nation. Provision was also made in the document pursuant to which the Delawares were to assist the struggling nation in its war against Great Britain and "to join the troops of the United States aforesaid, with such a number of their best and most expeart warriors as they can spare, consistent with their own safety, and act in concert with them, * * *." [80]

In consideration of the very valuable assistance accorded to it, the United States covenanted to—

> "guarantee to the aforesaid nation of Delawares, and their heirs, all their teritoreal rights in the fullest and most ample manner, as it hath been bounded by former treaties, as long as they the said Delaware nation shall abide by, and hold fast the chain of friendship now entered into." [81]

Casting the arrangement in its proper perspective, this nation and the Indians referred to themselves in the treaty as "the contracting parties." No guardian and ward relationship there; rather a covenant for mutual assistance and recognition.

Similar treaties were entered into during the period when the Articles of Confederation were in force and effect.[82] After the adoption of the Constitution of the United States in 1787 numerous other treaties were entered into with the Indians, many of them involving lands in Western United States. A review of those treaties, many of which were contemporaneous with the adoption of the Constitution, is instructive as to the relationship between the nation and the Indians at the time and provides the correct perspective of that relationship. Frequently the arrangement between the United States and the Indians was denominated "A Treaty of Peace and Friendship" as with the "Creek Nation." [83]

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[78] 7 Stat. 13 et seq.
[79] Article III.
[80] Article III
[81] Article VI
[82] Schmeckebier, The Office of Indian Affairs—U.S. Government Service Monograph No 48, page 14 Fort Stanwix, with the Six Nations (7 Stat L , 15) Fort McIntosh, with the Delawares, Wyandots, Chippewas, and Ottawas (7 Stat. L 16), Hopewell, with the Cherokees (7 Stat L. 18), Hopewell, with the Choctaws (7 Stat. L., 21), Hopewell with the Chickasaws (7 Stat L , 24), Mouth of the Great Miami, with the Shawnees (7 Stat. L., 24); Fort Harmar, with the Wyandots, Delawares, Ottawas, Chippewas, Potawatomi, Sauk, and Six Nations (7 Stat L., 18, 33).
[83] 7 Stat 35 et seq

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Violations of the treaties by the United States does not detract from the nature of the covenants when they were effectuated by the parties to them. Those violations caused consternation to President Washington during his incumbency.[84] For almost one hundred years the government and the Indian Tribes were to negotiate and attempt to resolve their differences by mutual agreements.

From those treaties, some of which are cited above, it is evident that the economic development of the United States and of the Indians were the expressed objectives. It is clear beyond question that the National policy was to create a continuing obligation to the Indians in consideration of their relinquishment of vast areas of invaluable land, water rights, forests, and other natural resources which contributed so abundantly to the affluence of the United States.

It was on that background that the Nation formulated its policy with the American Indians. Altruism undoubtedly was an ingredient giving rise to that policy. However, peace and trade with the Indians—need for domestic tranquillity—far outweighed the benign attitude toward the Indians which is frequently attributed to the Nation's founding fathers—in a word, they were practical in their efforts to survive during the formative period.

(b) *It is the Constitution which established the Nation's relationship with the Indians—the courts have interpreted it as constituting the Nation a guardian and the Indians the wards under a trust responsibility:*

Under the Articles of Confederation the provision was made that

> "The United States in Congress assembled shall also have the sole and exclusive right and power of regulating * * * the trade and managing all affairs with the Indians, not members of any of the States, provided that the legislative right of any State within its own limits be not infringed or violated * * *."[85]

James Madison in the *Federalist* pointed out the anomaly created by the last quoted vague and uncertain provision, in urging the adoption of the New Constitution.[86]

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[84] Schmeckebier, *The Office of Indian Affairs—U.S. Government Service Monograph No. 48*, pages 20-21.
"Serious and earnest comments on Indian affairs appear in all of Washington's messages; some relate to aggressions of the Indians, but more are devoted to the necessity of legislation to curb the unlawful practices of the whites. In the annual address of November 6, 1792, after referring to the war in the region north of the Ohio and to Cherokee depredations on the Tennessee, the President referred to the frontier situation as follows:

"'I cannot dismiss the subject of Indian affairs without again recommending to your consideration the expediency of more adequate provision for giving energy to the laws throughout our interior frontier and for restraining the commission of outrages upon the Indians, without which all pacific plans must prove nugatory. To enable, by competent rewards, the employment of qualified and trusty persons to reside among them as agents would also contribute to the preservation of peace and good neighborhood. If in addition to these expedients an eligible plan could be devised for promoting civilization among the friendly tribes and for carrying on trade with them upon a scale equal to their wants and under regulations calculated to protect them from imposition and extortion, its influence in cementing their interest with ours could not but be considerable.'

"In the annual address of December 3, 1793, another plea was made for the regulation of trade 'conducted without fraud, without extortion, with constant and plentiful supplies, with a ready market for the commodities of the Indians and a stated price for what they give in payment and receive in exchange.'"

[85] Articles of Confederation, 1777, Article IX.

[86] *Federalist and Other Constitutional Papers*, Scott, page 236.
"The regulation of commerce with the Indian tribes, is very properly unfettered from two limitations in the Articles of Confederation, which render the provision obscure and contradictory. The power is there restrained to Indians, not members of any of the States, and is not to violate or infringe the Legislative right of any State within its own limits. What description of Indians are to be deemed members of a State, is not yet settled; and has been a question of frequent perplexity and contention in the Federal councils. And how the trade with Indians, though not members of a State, yet residing within its Legislative jurisdiction, can be regulated by an external authority without so far intruding on the internal rights of legislation, is absolutely incomprehensible. This is not the only case, in which the Articles of Confederation have inconsiderately endeavored to accomplish impossibilities, to reconcile a partial sovereignty in the Union, with complete sovereignty in the States, to subvert a mathematical axiom, by taking away a part, and letting the whole remain."

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In lieu of the wholly objectionable language of the Articles of onfederation, this provision was adopted as a part of the Constitution of the United States of America: "Section 8: The Congress shall have Power: "To regulate Commerce with foreign nations, and among the several States, and with the Indian Tribes; * * *." [87] All doubts as to the plenary power of the nation in regard to its relationship with the Indians are swept away by that clause.

Also contemporaneous with that delegation by the states to the new nation of all power and authority in Indian matters, is this reflection of federal policy as enunciated in the "Ordinance of 1787: The Northwest Territorial Government":

> "* * * The utmost good faith shall always be observed towards the Indians; their lands and property shall never be taken from them without their consent; and in their property, rights, and liberty they never shall be invaded or disturbed, unless in just and lawful wars authorized by Congress; but laws founded in justice and humanity shall, from time to time, be made, for preventing wrongs being done to them, and for preserving peace and friendship with them." [88]

From the shaky first steps of sovereignty the nation was to progress and to become stronger. It was no longer seeking, as it did with the Delawares, a propitious arrangement which was of mutual assistance to the "contracting" parties. Force rather than diplomacy became the method with which to transact business with the indigenous "savages". It became increasingly clear that the reciprocity between the nation and the Indians was no longer of paramount importance. Nevertheless, until relatively recent times it was propitious for the nation to come to terms with embattled Indian Tribes and in return for the lands seized from them to guarantee economic development in regard to the vestige of lands left to them.

A half century after the adoption of the Constitution Chief Justice Marshall labored greatly in an effort to analyze what he termed the "anomalous * * * character * * *," of the Nation's relationship with the Indians. He determined that an Indian Tribe was neither a state nor a foreign nation when the Cherokees sought to invoke against Georgia the Court's jurisdiction.[89] On the subject of that relationship

> "The condition of the Indians in relation to the United States is, perhaps, unlike that of any other two people in existence. In general, nations not owning a common allegiance, are foreign to each other. The term *foreign* nation is, with strict propriety, applicable by either to the other. But the relation of the Indians to the United States is marked by peculiar and cardinal distinctions which exist nowhere else."

He then summarized as follows:

> "* * * *their relation to the United States resembles that of a ward to his guardian.*" [90] (Emphasis supplied)

he stated:

Repeatedly the Supreme Court would express the thought:

> "The relation of the Indian tribes living within the borders of the United States, both *before* and *since* the Revolution, to the

[87] Constitution of the United States of America, 1787, Article I, Sec. 8, Cl. 3.
[88] See Article III.
[89] *Cherokee Nation* v. *Georgia*, 30 U.S. 1, 15 (1831).
[90] Ibid , 30 U S. 1, 17 (1831).

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people of the United States *has always* been an anomalous one and of a complex character." [91] (Emphasis supplied.)

More recently Mr. Justice Murphy, speaking for the Supreme Court, said:

"'* * * this Court has recognized the distinctive obligation of trust incumbent upon the Government in its dealings with these dependent and sometimes exploited people.'" [92]

The Constitutional obligation here involved has also been referred to as "the generous and protective spirit which the United States properly feels towards its Indian wards." [93] In keeping with that platitude the Court has alluded to the "high standards for fair dealing required of the United States in controlling Indian affairs." [94]

Failure of the United States to fulfill its obligation as a trustee is one of the gravest difficulties in regard to the economic development of the American Indian Reservations. Through the dissipation of the remaining assets of the Indians by the failure of the nation to fulfill that obligation the hope of economic development becomes increasingly remote.

"'From the very beginnings of this nation, the chief issue around which federal Indian policy has revolved has been, not how to assimilate the Indian nations whose lands we usurped, but how best to transfer Indian lands and resources to non-Indians.'" [95]

(c) *Standard of diligence required of the United States in administering Indian rights to the use of water in furtherance of economic development of Indian Reservations:*

Performance in the fulfillment of the nation's trust responsibility to the Indians is, of course, the crux of the matter. In this section the criteria in establishing the care, diligence and skill to be required of the nation, its agencies and personnel in protecting, preserving and administering Indian lands and rights to the use of water will be briefly reviewed.

It is basic that:

"The trustee [guardian] is under a duty to the beneficiary [ward] in administering the trust to exercise such care and skill as a man of ordinary prudence would exercise in dealing with his own property, and if the trustee has greater skill—[here engineers, hydrologists, soil scientists, contract negotiators, administrators, lawyers]—than that of a man of ordinary prudence, he is under a duty to exercise such skill as he has." [96]

An important concomitant proposition is that, *the guardian is under a duty to the ward affirmatively "to take and keep control of the trust property."* [97] He is, moreover, to the extent of his capacities "* * * under a duty to the beneficiary to use reasonable care and skill to preserve the trust peoperty" [98] It is instructive to turn to the timber blowdown *Menominee Case* in Wisconsin. There Congress in its consent that the National Government could be sued, declared, among other things:

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[91] *United States* v *Kagama*, 118 U.S. 391 (1886)
[92] *Seminole Nation* v *United States*, 316 U S 286 (1942).
[93] *Oklahoma Tax Commission* v *United States*, 319 U S 598 607 (1943).
[94] *United States* v *Tillamooks*, 329 U S 40, 47 (1946)
[95] *United States* v *Ahtanum Irrigation District*, 236 F 2d 321, 337 and footnote 23 (CA9, 1956)
[96] American Law Institute, *Restatement, Trusts*, Section 174
[97] Ibid. Section 175
[98] American Law Institute, *Restatement, Trusts*, Section 176.

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> "At the trial of said suit the court shall apply as respects the United States the same principles of law as would be applied to an ordinary fiduciary and shall settle and determine the rights thereon both legal and equitable of said Menominee Tribe against the United States notwithstanding lapse of time or statute of limitations." [99]

From the findings, conclusions and the judgment in that decision it is evident that the broad precepts of the law reviewed above were applied to the United States of America.

In a companion case, the court observed as to the performance of the trust responsibility owing by the United States to the Indians:

> "We further think that the provision of Section 3 of the jurisdictional act concerning the principles applicable to an 'ordinary fiduciary' add little to the settled doctrine that the United States, as regards its dealings with the property of the Indians, is a trustee." [100]

Moreover,

> "Where discretion is conferred upon the trustee with respect to the exercise of a power, its exercise is not subject to control by the court, except to prevent an abuse by the trustee of his discretion" [101]

From that same source are taken the criteria set forth below, which determine whether the trustee has fulfilled his obligation.[102] Full consideration of those principles goes far in establishing the nature of the nation's obligations to the Indians.

Concerning exercise of administrative discretion, one scholar wrote:

> "To the extent to which the trustee has discretion, the court will not control his exercise of it as long as he does not exceed the limits of the discretion conferred upon him. The court will not substitute its own judgment for his." [103]

It is important to observe that the courts are explicit in the manner in which the trustee must perform:

> "Even where the trustee has discretion, however, the court will not permit him to abuse the discretion. This [exercise of discretion] ordinarily means that so long as he acts not only in good faith and from proper motives, but also within the bounds of a reasonable judgment, the court will not interfere; but the court will interfere when he acts outside the bounds of a reasonable judgment." [104]

Perhaps the most basic concept of the trust obligation of the National Government to the American Indians is that it must exercise the highest degree of fidelity to them It has been declared in regard to the loyalty of the guardian to the ward that, "The trustee is under

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[99] *The Menominee Tribe of Indians* v *The United States*, 101 Ct. Cls. 22 23 (1944).
[100] Ibid., 101 Ct Cls 10 19 (1944).
[101] American Law Institute, *Trusts*, Section 187, page 479
[102] "In determining the question whether the trustee is guilty of an abuse of discretion in exercising or failing to exercise a power, the following circumstances may be relevant (1) the extent of the discretion intended to be conferred upon the trustee by the terms of the trust, (2) the purposes of the trust, (3) the nature of the power (4) the existence or nonexistence, the definiteness or indefiniteness, of an external standard by which the reasonableness of the trustee's conduct can be judged, (5) the motives of the trustee in exercising or refraining from exercising the power, (6) the existence or nonexistence of an interest in the trustee conflicting with that of the beneficiaries" (American Law Institute, Trusts, Section 187, pp 480-481)
[103] III Scott on *Trusts*, 3d ed., Sect on 187, p 1501
[104] III Scott on *Trusts*, 3d ed., Section 187, p. 1501.

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a duty to the beneficiary to administer the trust solely in the interest of the beneficiary." [105] Recently one court declared that the United States owed "the most exacting fiduciary standards" with respect to the Indians, even if it should prefer to pursue other interests.[106] Under no circumstances can the United States in furtherance of its other obligations, act in competition with the Indians or in derogation of their rights.[107]

Freedom in the exercise of discretion is the key for the care, skill and diligence required for the proper performance by the United States, Trustee, in regard to the administration of lands and rights to the use of water for the economic development of the Indian Reservations. Sharp constriction of that freedom of discretion by reason of laws now in force gravely impairs the activities of the officials and agencies charged with the obligation of fulfilling the trust responsibilities to the Indians. That constraining influence upon the economic development of Indian Reservations is considered below.

CONFLICTING RESPONSIBILITIES UNDER THE LAW GRAVELY IMPAIR THE PRESERVATION, PROTECTION, ADJUDICATION AND ADMINISTRATION OF INDIAN LANDS AND WATER RIGHTS BY THE SECRETARY OF THE INTERIOR AND THE ATTORNEY GENERAL

(a) *Economic development of Indian lands and water rights within the purview of the Constitution:*

The trust responsibility of the United States to the Indians must be fulfilled within the purview of the Constitution. Though in theord the plenary power over Indian *Winters Doctrine* rights was delegateg to the Nation, in actuality the authority of the states or those claiming rights to the use of water under them have a very real and far-reachiny impact upon Indian rights.[108]

Inherent, though not explicitly declared in the Constitution, is the doctrine of the separation of powers among the three great branches of the Federal Government, the Executive, the Legislative and the Judicial. The checks and balances stemming from that separation of powers in the field of water resources are very real.

(i) *Congress has invested the Secretary of the Interior and the Commissioner of Indian Affairs with the power and obligation to exercise the functions of the Executive Branch of the Government in fulfilling the trust relationship of the Nation with the Indians:*

Executive power to administer the trusteeship discussed above is vested almost exclusively with the Secretary of the Interior. There resides in the Secretary of the Interior broad powers of administration, including but not limited to, the authority to issue required regulations, to direct the officers and agents of the Department in fulfillment of legal responsibilities and otherwise to carry out the will of Congress.[109] Congress has, moreover, "charged" the Secretary of the

[105] American Law Institute. *Trusts*, Section 170
[106] *Navajo Tribe of Indians* v. *United States*, 364 F. 2d 320, 322 (Ct. Cls 1966).
[107] American Law Institute. *Trusts*, Section 170, p. 431 et seq.
[108] See Indian *Winters Doctrine Rights* as distinguished from riparian rights above, page 37
[109] 5 U S.C. 22.

Interior "with the supervision of public business relating to the following subjects: * * * 10. Indians * * *." [110] Congress has likewise provided that: "The Commissioner of Indian Affairs shall, under the direction of the Secretary of the Interior, and agreeably to such regulations as the President may prescribe, have the management of all Indian affairs and of all matters arising out of Indian relations." [111]

Sweeping nature of the powers of the Secretary of the Interior and the Commissioner of Indian Affairs is evidenced by the rules and regulations which have been promulgated, now are in force and effect.[112]

Economic development of American Indian Reservations in western United States through the exercise of Indian rights to the use of water is provided for in detail in those rules and regulations.[113] Those rights are presently exercised in connection with irrigation, fishing,[114] power development,[115] recreation, and numerous other uses.

(ii) *Congress has invested the Secretary of the Interior and the Commissioner of Reclamation with the power and authority to construct and administer reclamation projects to irrigate arid and semiarid lands in western United States, and other purposes:*

In furtherance of making habitable the arid and semiarid "public land" in western United States, the Congress in 1902 adopted the Reclamation Act.[116] Pursuant to that Act "The Secretary of the Interior is authorized to perform any and all acts and to make such rules and regulations as may be necessary and proper for the purpose of carrying out the provisions" of the Reclamation Act. Congress likewise, under that Act established the office of the Commissioner of Reclamation.[117] Numerous acts amendatory of the original Reclamation Act and supplementary to it have been passed by the Congress. For example, in 1939 the Secretary was authorized to build projects "to furnish water for municipal water supply" and other purposes, including but not limited to industrial uses.[118]

Broad authorization for the construction of projects of great magnitude has been granted to the Secretary of the Interior, including the Missouri River, Colorado River, Columbia River, and Rio Grande Basins. In each of those vast drainage areas are located numerous American Indian Reservations, the economic development of which is geared to the availability of water for agriculture, industry, recreation, and all other uses.

(iii) *Solicitor's Office: Lawyer for Bureau of Indian Affairs; Bureau of Reclamation; other Bureaus administered by the Secretary of the Interior:*

Congress has declared that: "The legal work of the Department of the Interior shall be performed under the supervision and direction of the Solicitor of the Department of the Interior, who shall be ap-

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[110] 5 U.S.C. 485
[111] 25 U.S.C. 2; See also 25 U.S.C. 1, 1A.
[112] Title 25 Code of Federal Regulations, Indians.
[113] 25 C.F.R. 191.1 et seq.
[114] 25 C.F.R. 89.1
[115] 25 C.F.R. 231.1 et seq.
[116] See 43 U.S.C. 371 et seq.
[117] 43 U.S.C. 373a: "General authority of the Secretary of the Interior * * * * * Commissioner of Reclamation, appointment
"Under the supervision and direction of the Secretary of the Interior, the reclamation of arid lands, under the Act of June 17, 1902 and Acts amendatory thereof and supplementary thereto, shall be administered by a Commissioner of Reclamation who shall be appointed by the President"
[118] See 43 U.S.C. 485 et seq.

pointed by the President with the advice and consent of the Senate." [119] Associate Solicitors for the Bureau of Indian Affairs, the Bureau of Reclamation, Bureau of Land Management, and others, are under the immediate direction and responsible to the Solicitor of the Department of the Interior.

(b) *Congress has constituted the Attorney General as the chief law officer of the United States to protect Indian rights on the one hand and defend the U.S. against Indian claims on the other.*

The Attorney General, and more precisely, members of the Justice Department Lands Division, represent the American Indians in actions to preserve, protect, and adjudicate their rights to the use of water. Moreover, the Attorney General, through the Department's Lands Division, represents the United States against the Indians in their actions for compensation before the Indian Claims Commission,[120] and before the Court of Claims or in the United States District Courts.

(c) *Antipodal positions which Interior must take in administering streams in which Indian rights conflict with Reclamation and other projects:*

There are no major interstate stream systems—indeed, there are few tributaries of major streams—where there are not agencies in the Interior Department competing with Indians for a supply of water which is inadequate to meet all present and future demands. Because of the magnitude of its projects, the Bureau of Reclamation is the chief competitor with the Indians for that insufficient supply. Politically oriented and powerfully backed, the Bureau of Reclamation has taken and continues to take from the American Indians throughout western United States rights to the use of water for the projects which it builds. Satellite agencies of Reclamation join forces with it in this uneven struggle with the Indians [121]

The confrontation of the agencies competing for the always short supply of water is far-reaching and gives rise to results which frequently are disastrous to the Indians. A legal impasse is created by efforts to fully support the *Winters Doctrine Rights* of the Indians as enunciated by the courts. The Bureau of Reclamation could not countenance it. To force payment to the Indians for the rights which have been seized for Reclamation Projects goes far beyond the power of the Solictor—indeed, the tenuous basis of project financial feasibility might well collapse. It is in a milieu of contradictions in law, policies, and administration that the Solicitor and his staff undertake to represent the American Indians. In their struggle to protect the last vestige of their heritage in the streams of western United States, the American Indians are confronted with a coalescence of forces far beyond the control of those who are charged with the legal responsibilities for protecting their interests. It is not an overstatement to declare that the Solicitor's representative are frequently professional victims of a system ill suited to protect much less advocate the Indian interests.

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[119] 43 U S C 1455
[120] 25 U.S.C. 70, 25 U.S.C 70 w.
[121] Numerous agencies, Fish and Wild Life, Recreation, National Parks, Bureau of Land Management all participate in the developments undertaken on the stream systems by the Bureau of Reclamation.

(d) *Conflicts within Justice Department respecting the American Indian rights to the use of water comparable to those within Interior:*

In fulfilling the responsibilities and exercising the powers conferred by Congress upon it concerning the American Indian rights to the use of water, the conflicts confronting the Department of Justice are similar—sometimes more severe—than those confronting the Department of the Interior. Charged with the obligation of prosecuting suits to protect and have Indian rights declared, that agency is likewise charged with the obligation of representing the United States when Indians seek restitution for seizure of their rights by other agencies of the government Thus attorneys in the Department of Justice have actually been engaged in preparing to defend against claims asserted by the Indians simultaneously with another group of attorneys in the same division preparing to try suits to protect those Indian rights. As a consequence the attorneys acting on behalf of the fiduciary are confronted in the same office with the attorneys defending against the claims, thus presenting the irreconcilable conflict which could never prevail in a private law office.

When Indian rights to the use of water are being adjudicated on streams upon which the Bureau of Reclamation likewise is asserting claims, the Justice Department attorneys are confronted with perplexing, if not impossible circumstances, in representing the Indians and at the same moment representing the chief opponents of those Indian claims. Loss to the Indians, either actually through the form of the decree or subsequently the interpretation of it, starkly outlines the impossible situation in which the American Indians seek to have their rights preserved.

In the light of the preceding review there is a grave question whether the trust responsibility owing to the American Indians in regard to the economic development of their Reservations can be fulfilled by the Nation under the existing laws and administration.

ANALYSIS OF FEDERAL PERFORMANCE OF ITS TRUST RESPONSIBILITY TO INDIANS REGARDING WATER RIGHTS

Throughout this phase of the consideration an effort has been made to select and review representative areas throughout western United States to demonstrate the problem of protecting and preserving Indian *Winters Doctrine* rights. Without water in the arid and semiarid regions any program of economic development on the Indian Reservations must fail. Characteristic examples of the problem, which is widespread throughout the country, will be briefly discussed as they relate to the subject.

I. Yakimas' Struggle To Preserve Their Rights to the Use of Water in Ahtanum Creek

(a) *Yakimas' immemorial rights:*

Few cases are better documented than that involving the struggle of the Yakimas and the Bureau of Indian Affairs to protect and preserve the rights of the Indians in Ahtanum Creek. The Ahtanum Creek is often considered the cradle of irrigation in the State of Washington.[122] There the Yakimas first irrigated their gardens in the late 1840's.

[122] See above, footnote 13.

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In 1855 the Yakimas entered into their Treaty with the United States and Ahtanum Creek was constituted the northern boundary of their Reservation. In the early 1860's lands north of the Creek were patented and early settlers occupied them. Without water neither the lands of the Indians south of the stream nor the non-Indian lands north of it could be successfully cultivated.

By the turn of the century the Indians had, by their own efforts, constructed several small ditches irrigating approximately 1,200 acres; the non-Indians by innumerable small diversions, irrigated an estimated 4,800 acres. Conflicts among the non-Indians over their respective rights in Ahtanum Creek gave rise to adjudications among themselves—not with the Indians.[123] Serious conflicts between the Yakimas and the non-Indians developed shortly after 1900.

The first record of a request to the Justice Department to protect the Yakimas' rights was August 23, 1906.[124] Almost a half century was to elapse before any action was taken. It is a history replete with evasions of responsibilities stemming from conflicts within the Federal Government, and with politically powerful non-Indian land owners.[125] During this period invaluable land of the Yakimas was to lie idle or only partially cultivated due to the diversion of water by non-Indians.

(b) *Conflicts within Interior between Bureau of Indian Affairs and Bureau of Reclamation in regard to claims of the Yakimas*

In 1906 the Bureau of Reclamation undertook the construction of the Yakima Reclamation Project. Ahtanum Creek is a tributary of the Yakima River from which the Reclamation Project was to receive its water supply. Reclamation officials were gravely concerned over the conflict between the Indians and non-Indians because it might interfere with the project they wished to build.[126] Chief among Reclamation's concerns were the principles of law the Bureau of Indian Affairs desired to rely upon to defend the Indian claims. Reflective of the agonizing impasse between contesting Bureaus within the Interior Department not only as to the rights to the use of water but as to the theory of law which would obtain, in this statement:

> "The Reclamation Service is endeavoring to build up the theory of appropriative rights as the most safe and most equitable guide for its operations. * * * It is understood that the Indian Bureau proposes to defend its water rights on Ahtanum Creek on the common law doctrine of riparian rights. *For one department of the Government to thus assume a position directly antagonistic to that assumed by another department of Government, it seems to me must prove embarrassing, particularly in view of the fact that the Reclamation Service is appealing to the various state legislatures to adopt an irrigation code based upon the doctrine of appropriation.*" [127] (Emphasis supplied)

That statement evidences the grave character of the conflict between two Bureaus functioning within the Department of the Interior. Rationale of that statement sixty years later is repeated and

[123] *Benton* v. *Johncox*, 17 Wash. 277; 49 Pac 495 (1897), In re Ahtanum Creek, 139 Wash. 84; 245 Pac 758 1926

[124] Letter from Acting Secretary of the Interior to the Attorney General.

[125] For review of the documentation in regard to the procrastination and the reasons for it, a chronicle of the documents on the subject is set forth in 236 F 2d 321. 328 et seq.

[126] Letter October 7, 1907 to the Secretary of the Interior from Indian Service Engineer Code

[127] Letter October 1, 1907 from Reclamation District Engineer to Supervising Engineer

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reaffirmed today as the Bureau of Indian Affairs and the Indians themselves seek to protect their interests against the steady encroachment upon the Indians' rights by the Bureau of Reclamation.

(c) *Winters Doctrine enunciated and applied by the Judiciary; circumvented by the Executive Departments:*

In 1907 the Supreme Court enunciated the *Winters Doctrine*.[128] In 1908 the Court of Appeals for the Ninth Circuit in the case of *Conrad Investment Company* v. *United States*, in applying the *Winters Doctrine*, declared that the Indian rights to the use of water could be exercised "* * * not only for present uses, but for future requirements" on the Reservations, insuring economic development to meet increased needs.[129]

Consternation flowed from the pronouncement of the *Winters Doctrine* and its application in *Conrad*. That consternation was expressed, oddly enough, [130] by the Chief Engineer of the then Indian Service in carrying out an investigation which he was directed to undertake by the Secretary of the Interior. Having referred to the fact that the United States Attorney, as directed by "Washington" had postponed the litigation which was intended to protect the Indian rights in the stream, he recommended a settlement of the dispute, stating among other things:

> "The Reclamation Engineers in charge of the Yakima Project are very anxious that litigation may be avoided on the Ahtanum, fearing that * * * litigation * * * might stop all Reclamation work." [131]

He added that the *Winters Doctrine* might make a settlement difficult "in view of the recent Montana decisions, especially that of the United States vs Conrad Investment Co. * * *". Continuing, this investigator for the Secretary declared:

> "To a layman, it seems that, as between the early white settler, who has made prior and beneficial use of the waters of a boundary stream, and the Government, which, as guardian of the Indians' water rights, had *not* done so, the latter would be the party to make restitution to the Indians."

Code's letter to the Secretary of the Interior is reflective of the gravity of the situation facing the American Indians. As an employee of the Department of the Interior he was requested to investigate a conflict between the Indians and non-Indians. Recognizing the failure of the Department of the Interior to fulfill its trust responsibility to the Indians and to protect their rights, he recommended an abandonment of those rights to the non-Indians. He, moreover, concurred in the postponement of the initiation of proceedings by the Justice Department. Code's course of conduct was but one phase of an unconscionable course of conduct by two major Departments of the Federal Government which failed to protect the Indian interests in clear violation of their obligations.

[128] See above, footnote 22, et seq.
[129] See above, footnote 34, et seq
[130] It is of interest that Chief Engineer Code in regard to the Salt River Indian Reservation and Camp McDowell Indian Reservation, similarly was a party to seeking to deprive the Indians of the benefits of the Winters Doctrine. The infamous *Kent Decree* on the Salt River entered in 1910 is a part of Code's failure properly to assert the Indian rights. His activities have also been found in various other areas. His is but an example of employees in the Department of the Interior who totally ignore the fact that the Indians are entitled to protection in their claimed rights.
[131] Letter dated October 17, 1907, from Chief Engineer Code to the Secretary of the Interior.

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(d) *The Interior Department attempts to give 75% of Indian Ahtanum Creek water to non-Indians and retain 25% for the Yakimas:*

Confronted with conflicts between the Indians and the non-Indians, obviously fearful that the Indian interests might prevail, pressured by the Bureau of Reclamation, and indeed, guided by the Chief Engineer of the Indian Service, the Secretary of the Interior by an agreement dated May 8, 1908, purported to grant to the non-Indians 75% of the Ahtanum Creek waters and to retain 25% for the Indians. Years were to pass before the Indians were informed of the greeement.

Repeated efforts were made by the Yakimas and the Bureau of Indian Affairs to seek redress for the great wrong thus perpetrated against the Indians. In 1915 the United States constructed the Ahtanum Indian Irrigation Project. Its benefits to the Indians were minimal due to the fact that after approximately July 10 of each year the non-Indians under the 1908 agreement received virtually all of the usable water in the stream.

Stunted crops, poverty, and bitterness on the part of the Yakimas whose lands were entitled to water from Ahtanum Creek were, of course, results of the 1908 agreement. Hostility between the Indians and the non-Indians was all-pervasive, becoming open struggles each irrigation season, accentuated when the yield of Ahtanum Creek was reduced by reason of a light snow pack in the mountains where it had its source.

When the Yakimas brought an action against the United States to protect their rights, Justice successfully moved to have the case dismissed for want of jurisdiction—for want of the legal capacity of the Indians to proceed against it for their own protection—notwithstanding the fact it adamantly refused to act for them.[132]

Politics always prevailed and no action was taken to restore to the Yakimas the invaluable water to which they were entitled under their Treaty. Those conditions continued for two generations with the attendant damage to the Indians.

(e) *Forty-one years after first request to Justice it filed action to quiet title to Yakima rights in Ahtanum Creek: fifty-eight years later the Yakimas recovered their rights; Yakimas forced to act to prevent loss of the rights which they had decreed to them:*

After repeated delays over a period in excess of forty years the Justice Department initiated an action to quiet the title to the rights of the Yakimas in Ahtanum Creek. In excess of fifty-five years after the matter was referred to that Department for action the Court of Appeals for the Ninth Circuit directed the entry of a decree awarding to the Yakimas each year: (1) all of the water of Ahtanum Creek after July 10, the commencement of the short water period;[133] (2) a right of reversion to the quantity of water strictly limited to irrigation the non-Indians are permitted to use during the period of high runoff, as those irrigation uses are reduced.[134] The non-Indians are permitted prior to July 10 of each year to divert up to 47 cubic feet per second of the flow of the stream, strictly limited to the purpose mentioned.[135]

[132] See *Totus* v *United States* in the United States District Court for the Eastern District of Washington.
[133] 330 F. 2d 897, 913, 915 et seq
[134] 330 F. 2d 897, 913 the reversionary clause enunciated by the court is as follows. "when the needs of those parties, [i e. these particular individuals] were such as to require less * * * then their rights to the use of the water was correspondingly reduced, and those of the Indians, in like measure, greater."
[135] NOTE: In addition the Court of Appeals recognized the Indian right to recover compensation for the severe losses they had experienced by the 1908 agreement A claim previously filed by the Yakimas for the monetary loss was dismissed based upon the decree entered in their favor at the direction of the appellate court, all as reviewed above C f s is measurement of flowing water The number of cubic feet of water flowing past a given point each second of time

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After the decree was entered in their favor as directed by the Court of Appeals, an effort was made to force upon the Yakimas a "settlement." When the Yakima Tribal Council was advised that Justice was contemplating a settlement, they came to Washington, informed the officials that they would reject any effort of that nature again to invade their rights. Had the Tribal Council failed to act promptly and vigorously they would undoubtedly have been subjected to another chapter of their history since 1906.

(f) *Economic development of Yakima lands curtailed by acts of Justice and Interior; effects of that conduct continues; threat of loss remains:*

Flagrant breach by the United States of the trust responsibility to the Yakimas most severely curtailed, for two generations' the economic development of the Indian land entitled to water from Ahtanum Creek. Yakima Valley is one of the world's great produce areas, especially for apples, cherries, pears, and similar fruit. Hops are an important crop. All require late water. Indian lands are some of the finest orchard acreage in the entire country. However, because of the agreement purporting to give to the non-Indians 75% of the water, fruit could not be successfully raised. Accordingly, the Indian lands only produced short-water crops, for example, grain and less than two full cuttings of alfalfa.

In the brief time since the decree was entered in their favor, alfalfa production has greatly increased. No longer are the lands limited to the short-water crops. Orchards are now being planted on a large scale, though production from them is, of course, years away. Income from the lands in question has risen by hundreds of thousands of dollars a year. Yet it is too clear for question that the Yakimas were gravely injured from the standpoint of economic development and that damage of necessity is continuing in character because of the retardation imposed by the unconscionable 1908 deal made without their knowledge.

Threats against the Yakimas' rights continue. The Bureau of Reclamation has attempted to secure their agreement to the construction of a reclamation project on Ahtanum Creek. Now well experienced, the Indians peremptorily reject that Bureau's activities. Yet the Bureau continues projects along the Yakima River and it is reasonable to expect that the Indians will be presented with further threats of seizure or invasion of their rights.

Another cause celebre involving the stifling of economic development of Indian lands by seizure of their water will now be considered.

II. Destruction of Pyramid Lake

(a) *Pyramid Lake not only an Indian, but a National asset of incalculable value:*

One hundred and twenty-five years ago General Fremont had this to say of Pyramid Lake which he discovered in 1844:

> "Beyond, a defile between the mountains descended rapidly about 2,000 feet; and filling all the lower space was a sheet of green water some twenty miles broad. It broke upon our eyes like the ocean. The waves were curling in the breeze and their green color showed it to be a body of deep water. For a long time

we sat enjoying the view. It was like a gem in the mountains which from our position seemed to enclose it almost entirely." [136]

Interior's Bureau of Outdoor Recreation, in 1969, reiterated Fremont's glowing description of Pyramid Lake:

"Pyramid Lake by virtue of its leviathan proportions, year-round water-oriented recreation season, outstanding sport fishery potential, and wealth of aesthetic, geological, ecological, archeological and historical phenoma is presently a recreation resource of national significance.

"Pyramid Lake offers greater undeveloped potential for supporting high-quality water-based recreation opportunities for a large number of users than any other lake in northern Nevada and California." [137]

Not mentioned by the last report is the potential destruction of Pyramid Lake if present plans of the Bureau of Reclamation are not changed.[138]

The history of Pyramid Lake is a reflection of the callous disregard of Indian property, their rights and interests. Moreover, it is a prime example of the disdain of unchecked political power exercised against a woefully weak minority deprived of any means of preserving the most elemental features of human dignity.[139]

(b) *1859–the establishment of the Pyramid Lake Indian Reservation*:

The Northern Paiute Indians were the victims of the westward movement of "civilization." In the late 1840's gold and silver brought miners to Nevada. Shortly thereafter the ranchers and farmers arrived. These lands so attractive to the miners and ranchers had been the home and abiding place of the Northern Paiute Indians who had adjusted to the desert environment and survived the rigors of it. To a marked degree the Paiutes gained their sustenance from fish taken from the Truckee River and Pyramid Lake. The Truckee River rises on the California side of Lake Tahoe, proceeds down the precipitous eastern slopes of the High Sierras, crosses the common boundary separating California and Nevada, and terminates in Pyramid Lake, which has no outlet.

"* * * Captain John C. Fremont * * * reported: 'the [Pyramid] lake [in 1844] was found to be teeming with untold millions of brilliantly colored giant cut-throat trout. Indians came from as far away as the Great Salt Lake to obtain them for food.' " [140]

Forty-one years after this succinct statement by Fremont, the United States Geological Survey stated in 1885 that, "The [Pyramid] Lake is abundantly supplied with splendid trout, Salmo purpuratus Henshavi * * *." [141]

As an Interior Department Task Force observed: "The Paiute Indians of the Pyramid Lake were and are a fish-eating people. Their primary natural resource for many generations has been the Lake and its fish." [142] Because of conflicts between the settlers and the Northern

[136] Harold W Fairbanks, Ph D., Berkeley, Cal., U S. Geological Survey Library March 5, 1901 *The Popular Science Monthly*, 505, 507

[137] 1969 *Report of Bureau of Outdoor Recreation*, page 14

[138] See House Document No 191, 84th Congress, 1st Session, Washoe Project Nevada-California Letter from the Assistant Secretary of the Interior transmitting a report and findings on the Washoe Project, Nevada and California, pursuant to section 9(a) of the Reclamation Project Act of 1939 (53 Stat 1187).

[139] See in this regard the articles in *The New Yorker*, January 1 through January 22, 1955

[140] Action Program for Resource Development, Truckee and Carson River Basins, California-Nevada, 1964, p. 20

[141] United States Geological Survey, *Geological History of Lake Lahontan*, Israel Cook Russel, 1885, page 62.

[142] *Action Program For Resource Development Truckee and Carson River Basins California-Nevada*, 1964, page 20.

Paiute Indians, the Pyramid Lake Indian Reservation was established in 1859. It is comprised of a limited land area which completely surrounds Pyramid Lake and embraces a segment of the Truckee River. From that date the Indians resided on the Reservation with the fishery constituting a source of subsistence and income.

In 1895, the National Geographic reported on the "abundant fish life" in both Pyramid and the then existing Winnemucca Lakes.[143] Immediately after the turn of the century there is reported the fact that Lake Pyramid" * * * is well supplied with large trout, as well as several other kinds of fish." [144]

Yet the task force in 1964 reported to the Secretary that:

> "The once famous cutthroat-trout fishery of Pyramid Lake and the lower Truckee River ceased to exist about 1938, largely because recession of the lake has made the lower river all but inaccessible to spawning fish. A trout fishery has been partially restored by natural and artificial means since 1950." [145]

(c) *The Newlands Federal Reclamation Project:*

In 1902 Congress enacted the Reclamation Act,[146] the objective of which, as reviewed above, was to make habitable the arid and semi-arid public lands, thus attracting settlers. Nevada's then Senator Newlands was a prime advocate of the Act. As a consequence the Newlands Reclamation Project was one of the first to be constructed.

Geography, history, and politics coalesce in regard to the Newlands Project and have spelled disaster to the Northern Paiutes. South of the Truckee River Basin—and entirely separate from it—is the Carson River Basin. That river, like the Truckee, rises in California and enters Nevada. Early settlers in Nevada diverted water from the Carson River to irrigate their lands. Like all western snow-fed streams, it is highly erratic, producing an abundance of water in the early spring and declining rapidly in flow as the snow melts away. The need to impound water for late season use was a necessity. Lahontan Reservoir on the Carson River was built to impound water from both that source and the Truckee River.

To the reclamation planners the yield of the Carson River was insufficient. They desired to provide additional water for the Newlands Project by the construction of the Truckee Canal to divert Truckee River water out of the Truckee River Basin away from Pyramid Lake for use in the Carson River Basin. That Canal was completed in 1906.

Grandiose plans for the Newlands Reclamation Project failed. Poor soil, a short growing season, poor drainage, and bad engineering contributed to that failure. Of a huge reclamation area originally planned to embrace 287,000 acres of irrigated land, the average annual irrigated area within the project, after sixty years of operation, has been estimated at slightly in excess of 50,000 acres.

Financial failure of the Newlands Project was, of course, the result of its physical failure. Write-offs of almost half of the interest-free Federal investment were made. Massive subsidies in addition to write-offs came from the sale of electricity and collection of grazing

[143] National Geographic Society, *Physiography of United States, Present and Extinct Lakes of Nevada*, V. 1: 1896, pp 101, 114, 115
[144] *Popular Science Monthly*, Vol 58, 1900-01, pp 509.
[145] *Action Program for Resource Development*, etc pages 26–27.
[146] See above, footnote 116, et seq.

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fees, other sources of income having no relationship to agricultural production from the irrigated lands, have kept this grossly submarginal project in existence.

(d) *Seizure of Indian Truckee River water without payment of compensation, for diversion out of the Truckee Basin for the Newlands Project and unconscionable waste of that water on the project, cause disastrous decline of Pyramid Lake and destruction of invaluable Indian fishery:*

From 1859 to 1910 there had been substantial irrigation development using Truckee River water in the Reno-Sparks area. Those diversions all within the Truckee River Basin did not seriously affect Pyramid Lake and Winnemucca Lake situated nearby, which actually fed from overflow from Pyramid Lake. A large part of the diversions after irrigation returned to the river and flowed into Pyramid Lake.

Diversions out of the Truckee River Basin to irrigate Carson Valley lands in the Newlands Reclamation Project, either directly or from impoundment in Lahontan Reservoir, drastically reduced the quantities of water entering Pyramid Lake.

Under a 1926 contract between the Secretary of the Interior and the Truckee-Carson Irrigation District, a Nevada public corporation, the District assumed the responsibility of administering the Newlands Project, including but not limited to the diversion of Truckee River water away from Pyramid Lake, with the disastrous consequences to that Lake which have been described.

For over forty years the District had practiced uncontrolled diversion of Truckee River water away from Pyramid Lake. In anticipation of the need to secure sufficient water for the Washoe Reclamation Project now under construction, changes were required in the diversions by the Irrigation District from the Truckee River. Even with those changes Indian water is grossly wasted by the District.

Seizure of the Indian rights to the use of water has been done without compensation to the Indians. If Congress authorized the condemnation of the rights of the Pyramid Lake Tribe—that matter has never been resolved—then there are two prime factors which have been totally ignored: (1) the Indians are entitled to payment for those rights which have actually legally been condemned;[147] (2) Indian rights, if in fact condemned, could not be taken for wasteful purposes because under the Reclamation Act, the basis, the measure, and the limit of any right on Reclamation Projects is beneficial use.[148]

Compensation for the Indian right of fishery, so wantonly destroyed, has not been paid. Yet, as reviewed above, that right of fishery, like the right to the use of water, is an interest in real property having the dignity of a freehold estate.[149] The injustice in the seizure of Indian rights without just compensation is underscored by this description of the Newlands Reclamation Project by a hydrologic engineer.

> "Of special interest to this study are the relatively large areas of non-agricultural land that consume river water either directly or indirectly. The survey shows 19,225 acres of permanent water surface and some 44,172 acres of dense and very dense phreatophytes. Thus, there are nearly 64,000 acres of heavy water con-

[147] *United States* v. *Gerlach Live Stock Company*, 339 U. S. 725 (1949).
[148] 43 U. S. C. 372, 383 et seq.
[149] See above, footnote 21, et seq.

suming nonagricultural lands or nearly as much area as was covered by agricultural crops in 1967. Although these lands are used for wildlife purposes, they have relatively little, if any, value for cattle grazing purposes." [150]

This report refers to the "extremely low efficiency of water use"—a kindly way of charging waste—on the Newlands Reclamation Project. It concludes in substance that even with an efficiency of 34%—roughly a waste of 66%—100,000 acre-feet of water annually could be saved for Pyramid Lake.

While Pyramid Lake was precipitously declining with an ever-increasing saline content—assuring the ultimate death of this great natural resource—the politically powerful forces in Nevada ignored the plight and poverty of the Northern Paiute Indians. The Bureau of Outdoor Recreation reported earlier this year the effects of diversions to the Newlands Reclamation Project, with its great waste.

"Since 1910, however, the lake level has gradually been receding with the exception of a few brief periods when heavy runoff years once again revived the failing lake. Pyramid Lake is currently 82 feet below the lake level recorded 58 years ago and 72 feet below the lake level which Fremont saw in 1844.

"The white man's tampering with related natural resources in the Truckee and neighboring Carson River basins has greatly accelerated the decline of the lake. Between 1888 and 1890, sawdust from upstream mills clogged the Truckee River channel just north of the lake and the river waters were diverted through Mud Lake Slough into the nearby and now dry Winnemucca Lake. The Indians dammed the Slough in 1890 and diverted waters back through their normal channel into Pyramid Lake. Later the Federal government, through the Bureau of Reclamation, began diverting water out of the Truckee River Basin into the Carson River Basin to supply irrigation waters for one of the first irrigation projects in the Southwest—the Newlands Project at Fallon, Nevada. These diversions began when Derby Dam on the Truckee River was completed in 1905 and have greatly accelerated the decline in the level of Pyramid Lake. An average of 250,000 acre feet is diverted annually out of the Truckee River Basin for irrigation uses on the Truckee Bench and the Newlands Project." [151]

(e) *Stifling of economic development on Pyramid Lake Indian Reservation by reason of rapidly declining water surface of Pyramid Lake:*

Reference has already been made to Pyramid Lake's great potential for recreation Yet there has been nothing but the most meager development. Investors could not expend funds of any magnitude because of the imminent destruction of the Lake by Federal Reclamation Projects both existing and abuilding

Poverty among the Pyramid Lake Tribe of Indians—despair and travail for generations—is the lot of these people by reason of the construction and operation of the Newlands Reclamation Project—a submarginal wasteful project—maintained with Federal funds.

[150] *Report on Lower Truckee-Carson River Hydrology Studies*, by Clyde-Criddle-Woodward, Inc Consulting Engineers, Salt Lake City, Utah April 1968

[151] *1969 Report of Bureau of Outdoor Recreation*, pages 43–44.

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(f) *Economic development of immense value to the Northern Paiute Indians and the Nation, if Reclamation Projects are prevented from destroying Pyramind Lake:*

If Pyramid Lake is not intentionally destroyed, economic development would be very feasible with high financial returns for the Pyramid Lake Tribe of Indians. As the Bureau of Outdoor Recreation states:

> "A properly developed Pyramid Lake will help meet the water-based recreation needs of a combined day-use and weekend/vacation-use (includes the San Francisco Bay Area) zone population of 13,814,243 in the year 2000. Visitation to Pyramid Lake in that year should total 2,375,000.
>
> "If Pyramid Lake's recreation resources are properly developed, significant tangible and intangible benefits will accrue to the U.S., Nevada, Washoe County, the Reno-Sparks complex, local interests and the Pyramid Lake Indian Tribe. The direct tangible economic benefits from recreation at Pyramid Lake could total $1,425,000 in general admission fees, $15,482,625 in visitor expenditures at the lake and over one-half million dollars in jobs annually by the year 2000. In the 32-year interim between today and the turn of the century, a total gross income from the admission fees and visitor expenditures generated by a developed Pyramid Lake would accumulate to an impressive $202,380,000. A developed Pyramid Lake will also generate additional annual expenditures in the millions of dollars by visitors outside of the recreation area for sporting equipment, car services, food, lodging, and gaming, etc." [152]

(g) *Final coup to Pyramid Lake—The Washoe Federal Reclamation Project:*

Demise of the "gem in the mountains," as Fremont described Pyramid Lake, is assured if the Washoe Reclamation Project now under construction is completed. Again, the interagency clash between the Bureaus of Reclamation and Indian Affairs, with the Indians victimized, has become intensified. In explicit terms the plans to build the Washoe Reclamation Project have been set forth; in explicit terms the Project can be constructed only by the seizure of the last vestige of the Indian rights in the Truckee River. Concomitantly the destruction of Pyramid Lake, for all practical purposes, is planned.

(i) *Stampede Dam on the Truckee River:*

The Stampede Dam is now being built on the Truckee River. It is a major component of the Washoe Project. Capacity for it is now planned at 225,000 acre-feet. If used as proposed under the Washoe Project it will take from Pyramid Lake the water required ultimately to stabilize it as a viable body of water, accentuate the decline of the lake, greatly increase the salinity of it, leaving it a dead sea.

(ii) *Watasheamu Reservoir on the Upper Carson River:*

Another major component of the Washoe Project is Watasheamu Reservoir on the Carson River. Substantial quantities of the waters which would flow down to the Newlands Reclamation Project, will be impounded in that reservoir for use in the Carson Valley above the Newlands Project Lahontan Reservoir.

[152] Ibid. pages 15-16.

(h) *Seizure of I… Project:*

When Carson R… amu Reservoir, the equivalent amount River away from … Indian water will decline. Flood wa… diverted through … have been the on… Lake. When Sta… on the Carson R… operation, the de… summated; the … of their property … them, because th… forces which have …

(i) *Resolution … Reclamation Proj…*

Prodigal waste could not be tole… come feasible. … immensely capa… vast powers, the …

For example, … divert Truckee … the generation … able to it in the … Dam to meet t… would have to … waters wasted … This would imp… Refuge—a frin… Truckee River … River water e… use on the New… ments in the … Valley and ab… tion of Carson … impounded in … River Basin … Pyramid Lake …

Simply sta… Washoe Reel… Lake to the f…

(j) *Pyram… they were mo… opposition:*

Opposition … the Pyramid …

[152] House Docu…

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(h) *Seizure of Indian water to provide a supply of water for Washoe Project·*

When Carson River water is impounded at the proposed Watasheamu Reservoir, thereafter to be used above the Newlands Project, an equivalent amount of Indian water will be diverted from the Truckee River away from Pyramid Lake to compensate for it. That seizure of Indian water will, of course, accelerate the lake's already precipitous decline. Flood waters of the Truckee which historically could not be diverted through the Truckee Canal and away from Pyramid Lake have been the only source of the meager supply reaching Pyramid Lake. When Stampede Dam on the Truckee and Watasheamu Dam on the Carson River, with their planned appurtenant works, are in operation, the destruction of this great natural resource will be consummated; the Northern Paiutes will have suffered the final seizure of their property; the final indignity will have been heaped upon them, because they are without means to withstand the monolithic forces which have conspired against them.

(i) *Resolution of conflicts over contesting claims between the Newlands Reclamation Project and the Washoe Reclamation Project:*

Prodigal waste of water by the Newlands Reclamation Project could not be tolerated if the Washoe Reclamation Project was to become feasible. With the ingenuity of prime planners, using their immensely capable engineering staff, and with judicious use of their vast powers, the Bureau of Reclamation developed a plan.[183]

For example, no longer would the Truckee-Carson Irrigation District divert Truckee River "winter water"—not required for irrigation—for the generation and sale of electricity, with attendant income so profitable to it in the past. That water would have to be stored in Stampede Dam to meet the Washoe Project water requirements. A reduction would have to be made in the quantities of Carson and Truckee River waters wasted down the Carson River to maintain swamps for ducks. This would impinge to a degree upon Interior's Stillwater Wild Life Refuge—a fringe beneficiary of the excessive diversions of Indian Truckee River water to the Newlands Reclamation Project. Carson River water entering Lahontan Reservoir and there impounded for use on the Newlands Project would be drastically reduced by impoundments in the Watasheamu Reservoir for use in the Upper Carson Valley and above Lahontan Reservoir. To compensate for the reduction of Carson River water previously available, Truckee River water impounded in Stampede Dam would be diverted out of the Truckee River Basin in addition to that previously diverted away from Pyramid Lake.

Simply stated: All increased quantities of water required for the Washoe Reclamation Project would be taken away from Pyramid Lake to the further injury of the Northern Paiutes.

(j) *Pyramid Lake Indians object to Washoe Reclamation Project—they were momentarily appeased, then recognized the need to renew their opposition:*

Opposition to the Washoe Reclamation Project was interposed by the Pyramid Lake Tribe of Indians. Assurances were given by the

[183] House Document No 181, 84th Congress, 1st Session, Washoe Project, Nevada-California

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Department of the Interior that their interests would be preserved and, indeed, enhanced They withdrew their opposition momentarily. There is thus presented a prime obstacle to preserving and protecting Indian assets within a single Department having as disparate and conflicting interests as the Reclamation Bureau and the Northern Paiutes. At all costs—invariably Indian costs—a consensus must be reached Yet the elemental precepts of trust law reviewed above necessarily reject all acts of the trustee who bargains against the beneficiary for himself or any third party. Very properly the trustee is required that he have a single loyalty to the beneficiary. Yet the Department of the Interior was forced to weigh conflicting interests, the Indians with no political power against the powerful Bureau of Reclamation.

The substance of the assurances to the Indians was that in the administration of the conjunctive use of the waters of the two rivers, efforts would be made to maximize the use of the Carson River waters and to minimize the use of the Truckee River for the Newlands Project so that Pyramid Lake would be benefited. In actuality the Indians found that: (1) they would be deprived of the quantity of Truckee River water required to resolve the conflict between the two reclamation projects; (2) they would be stripped of the last vestige of the rights they claimed for Pyramid Lake to make the Washoe Project physically feasible.

When the light of those facts shone through, the Bureau of Indian Affairs withdrew its approval of the Departmental Task Force Report;[134] the Indians in effect joined the Bureau in its action.

(k) *Secretarial rules and regulations on the Truckee-Carson Rivers:*

Impossibility of fulfilling splintered and irreconcilable conflicts within the Department of the Interior is often glossed over by the issuance of rules and regulations which are a composite of vagaries enmeshed in contradictions. That course was pursued in regard to conflicting interests on the Truckee-Carson River Systems. The impossible objective was to stretch insufficient supplies to provide water for: (1) the Newlands Reclamation Project; (2) the Truckee Storage Project; (3) the Washoe Reclamation Project; (4) migratory birds; and (5) Pyramid Lake Indian Reservation.

Those rules and regulations were primarily to obtain sufficient water for the Washoe Reclamation Project, through further diversions of water away from Pyramid Lake and the limitation upon the grossly wasteful practices of the Newlands Reclamation Project, thus providing Washoe with water previously wasted by Newlands.[135] To placate the Paiute Indians—but never to recognize that the Indians had rights to maintain Pyramid Lake as a permanent viable body of water—the rules and regulations provided for the conjunctive use of the available supplies from those two streams, and that:

> "* * * coordinated operation and control of the Truckee and Carson Rivers in regard to the exercise of water rights of the United States * * * to (1) comply with all of the terms and provisions of the Truckee River Decree and the Carson River

[134] Memorandum of July 14, 1966, from the Commissioner of Indian Affairs to the Chairman of the Task Force

[135] Any doubt that the objective of the rules and regulations is to provide water for the Washoe Reclamation Project is removed when consideration is given to the above cited Washoe Project, Nevada-California, House Document No 191, 84th Congress, First Session, and the plans now progressing to complete that project.

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Decree; and (2) maximize the use of the flows of the Carson River in satisfaction of Truckee-Carson Irrigation District's water entitlement and minimize the diversion of flows of the Truckee River for District use in order to *make available to Pyramid Lake as much water as possible.*" (Emphasis supplied)

The "as much water as possible" for Pyramid Lake is, of course, gratuitous and is not intended to be a recognition of the Indian rights to maintain the Lake.

Provision is also made in the rules and regulations that the Newlands Reclamation Project would receive an annual supply of 406,000 acre-feet of water. The rules and regulations provide that the 406,000 acre-feet of water annually "may be reduced." That concession came about only after bitter inter-agency struggles. Both the Indian Bureau and the Indians were well aware that the 406,000 acre-feet annual water allowance was tantamount to a guarantee to the Truckee-Carson Irrigation District that Indian Truckee River water would be wasted, as the quantity far exceeded that required for reasonable beneficial use on that project. Hence, the term "may be reduced" held out hope that the dissipation of Truckee River water with the attendant adverse effect on Pyramid Lake might be controlled.

As will be seen, the hope for better times for the Indians under the rules and regulations became a shadow with the substance passing to the Reclamation Bureau and its satellites.

(l) *The "nine-point package agreement":*

Limitation upon the Newlands Reclamation Project—administered by the politically powerful Truckee-Carson Irrigation District—was neither undertaken lightly nor accomplished with ease. Without restrictions on the historic waste of that ill-starred project there would be insufficient water for the Washoe Reclamation Project, even with the seizure of all of the Indian water in the Truckee River that could be economically diverted away from Pyramid Lake for Washoe.

There emerged the "nine-point package agreement"—thus named by its sponsors. It is important here primarily because it resuscitated the then expiring Washoe Reclamation Project which, as stated, is the terminal catastrophe to the Northern Paiutes. Principally from the standpoint of the Indians the "package" provides for an increase of acreage above the historic 51,000 acres annually irrigated on the Newlands Project, to 74,500 acres and for an assured firm annual supply of 406,000 acre-feet of water. No reduction in the 406,000 acre-feet would be permitted as provided for in the much publicized but largely vacuous rules and regulations, except that "The Department [of the Interior] would reserve the right to commence suit to challenge the correctness of" the 406,000 acre-feet allocation for the Newlands Reclamation Project. Conveniently left open were the type of action which would be brought, the issues that would be tried, by whom, against whom, when and in what court. Indeed, the Secretary of the Interior might well be one of the prime parties against whom the Indians would proceed.[156]

Ultimately, the Northern Paiutes were again left with an illusion and the Washoe Reclamation Project moved nearer to completion when peace was purchased from the Truckee-Carson Irrigation

[156] See exchange of correspondence respecting "nine-point package agreement" dated July 13, 1967, August 10, 1967, related documents, between Department of the Interior and the Truckee-Carson Irrigation District

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District—purchased, let it be emphasized, with water desperately needed by the Northern Paiutes to maintain Pyramid Lake.

(m) *Decrees unenforced—need to "settle" Alpine Case to assure Carson River water for Watasheamu Reservoir—Indian Truckee River water would be seized to compensate Newlands Reclamation Project for loss of Carson River water:*

A Temporary Restraining Order was entered in March 1950 which is a preliminary adjudication of rights on the Carson River including those of the United States required for the Newlands Reclamation Project.[157] That Order is based largely upon the evidence introduced by the Justice Department in support of the direct flow and storage rights asserted for the Newlands Project. The decree has never been enforced. Had that decree been strictly enforced with Carson River water being diverted only for beneficial purposes in the Upper Basin of the Carson River, based upon priority and limited to the acreage set forth in the decree, and had the beneficial use requirements been enforced against the Newlands Reclamation Project, it would have greatly reduced the quantity of water to be diverted out of the Truckee River for that project. The Indians and Pyramid Lake would have benefited greatly for every acre-foot of water from the Carson River diverted without right under the decree, or wasted, must be replaced with Truckee River water. Failure to enforce the March 1950 decree and reducing the need for Truckee River water in the Carson Valley, is demonstrative of the need for policy changes and the elimination of conflicts between agencies of the Department of the Interior.

Economic development of Pyramid Lake has been retarded not by a single act or omission by the federal establishment, but rather by a composite of seemingly disparate events—failure, for example, to enforce the decree in the *Alpine Case*. Yet upon examination of all of the facts, it is evident that this omission to fulfill the trust obligation to the Indians stems directly from the conflict among federal agencies for the waters of the Carson and Truckee Rivers.

(n) *Enforcement of the rights and priorities in the Alpine Decree would prevent construction of Reclamation's Watasheamu Dam, a major component of the Washoe Project:*

The broad plan for the Washoe Project involved taking Carson River water from the Newlands Reclamation Project and compensating Newlands with increased diversions of Indian Truckee River water away from Pyramid Lake. That exchange of Newlands Carson River water constitutes the use of trust property for the benefit of the trustee to the irreparable damage of the beneficiary of the trust.

To use Newlands Carson River water at Watasheamu Reservoir and its appurtenances requires the abandonment by the United States of its invaluable priorities on Newlands which are set forth with specificity in the Alpine 1950 decree. Enforce those priorities and there would be no Watasheamu Reservoir and Reclamation's plans would be thwarted. The Criddle Report summarizes the need to abandon the Federal Newlands rights to accomplish Reclamation's plans for Watasheamu:

> "Studies by the Carson River Hydrology Task Force indicate that if prior rights are respected [those of the United States for

[157] *United States* v. *Alpine Land & Reservoir Company, et al.*, Defendants, in the United States District Court for the District of Nevada, Equity No D-183.

the Newlands Project, and all others], little water would be available for Watasheamu and that under the above Secretarial policy, it seems mandatory that rights be respected if such action affects the demand on Truckee River." [158]

(o) *Northern Paiutes forced to expend their meager resources to prevent "settlement" by Justice of Alpine Case; Justice opposes Indians:*

Repeatedly the Federal Establishment has attempted to secure a settlement of the *Alpine Case* with the politically powerful landowners in the Upper Carson River Valley. Those owners will not tolerate interference with their historically wasteful practices of diverting Carson River water without controls of any kind, including headgates, measuring devices, or any other means of administration usually applied in western United States, all in violation of the decree Justice had entered in March 1950.

A settlement which would please those powerful landowners in the Upper Carson by freeing enough Carson River water from the Newlands Project to make feasible the Watasheamu Reservoir was the objective of the innumerable meetings between Interior, Justice, and the lawyers representing the Upper Carson landowners. As the negotiations progressed the Northern Paiutes and the Bureau of Indian Affairs were frustrated in every attempt to prevent the arrangement with the attendant increased call for water from the Truckee River.

Confronted with sure disaster if the "settlement" was consummated, the Northern Paiutes, through their attorneys, filed a petition to intervene in the *Alpine Case*. In their petition to intervene the Indians alleged the failure of the United States properly to perform its functions as their trustee, the irreparable damage they suffered from the waste of water, and the failure of the United States to enforce the March 1950 decree. To that and other allegations of the failure of the trustee, Justice responded as follows:

> "The United States admits a reluctance to insist upon enforcement of the [1950] temporary decree insofar as it differs from the Report of the Special Master.
>
> [The Report which, if approved by the court, would be clearly at variance with the evidence introduced by Justice, particularly in regard to the strict enforcement of priorities, beneficial use and related restrictions upon upstream water users, with the attendant increase in demands for Truckee River water.] If this is construed by this Court as a failure of the fiduciary duty of the United States to the Applicant, then the United States herein immediately requests complete enforcement of the temporary decree whether or not Applicant is allowed to intervene."

Because Justice had declared that the Indians' effort to intervene and thus assist themselves in the protection of their rights constitutes an adversary proceeding, it refused to supply the Indians with the exchange of correspondence and related data between the Department of the Interior and Justice. Justice, moreover, succeeded in having the court deny the Northern Paiutes their day in court. An appeal has been filed by them to the Court of Appeals for the Ninth Circuit and is now pending.

[158] *Report on Lower Truckee-Carson River Hydrology Studies* * * * by Clyde-Criddle-Woodward, Inc Consulting Engineers, Salt Lake City, Utah April 1968

Caught between the monolothic Departments with their conflicting responsibilities, the Northern Paiutes–poverty-stricken, destitute–are expending their meager funds to defend themselves against the Federal agencies, including their lawyers within the agencies.

Intervention by the Northern Paiutes in the *Alpine Case* has been fruitful. They stopped the settlement so disastrous to them. However, they had the power of their opponents brought forcefully to their attention. Incredibly the long-disputed California-Nevada Compact was revised to include the main thrust of the "settlement" Nevada's legislature has approved it. California's legislature adjourned without approving the compact.

(p) *Discriminatory interpretation of Orr Water Ditch Decree against the Northern Paiute Indians—thwarted economic development of Pyramid Lake:*

Provisions in the *Orr Water Ditch* decree adjudicating the rights to the use of waters of the Truckee River, primarily for purposes of irrigation, have been used to discriminate against the Pyramid Lake Tribe of Indians, sometimes in this consideration referred to as the Northern Paiutes.

An all-important element in the ownership of the water rights is the ability to change the place of use and purpose of them. Similarly the right to sell, transfer, or exchange water rights is a primary ingredient, as in the title of any property. Indeed, freedom from restraints against the alienation, use, sale, or disposition of property in the absence of injury to others is a basic precept of the law. However, the decree entered pursuant to the consent of Interior and Justice Departments, adjudicating Indian irrigation rights to the use of water, was declared to impose upon those Indians' rights the most severe limitations.

On May 5, 1955, the Solicitor ruled as follows:

> "This is in response to an inquiry you have received whether water available for the irrigation of Pyramid Lake Indian lands may be allowed to flow into Pyramid Lake in aid of the fish resources of the Reservation.
>
> * * *
>
> "The Truckee River decree is specific as to the use of water under the rights adjudicated to the Indians and other parties under the decree. In these circumstances, it is my opinion that the Indians do not have the right to divert the use of the water adjudicated to them by the said decree to the propagation of fish resources in Pyramid Lake." [159]

[159] No M-36282, May 5, 1955, from Associate Solicitor, Indian Affairs to Commissioner of Indian Affairs The portion of this ruling omitted in the text reads as follows

"The Pyramid Lake Reservation was created before Nevada statehood by the withdrawal of lands by the Department November 29, 1859, later confirmed and approved by Executive Order of President Grant dated March 23, 1874 The area was a part of the land acquired by the United States in a cession from Mexico in 1848 The Lake is approximately 30 miles in length and 10 miles wide at its broadest point and is entirely within the Reservation

"The Indians have adjudicated water rights in Truckee River which flows through a portion of the Reservation and empties into the Lake These water rights were awarded by final decree entered September 8, 1944, by the United States District Court, District of Nevada equity—Docket No A3, in the case of *United States of America v Orr Water Ditch Company, et al* Under the decree the Indians are entitled to a maximum of approximately 30,000 acre-feet of water per year for irrigation and domestic uses

"It is fundamental in irrigation law that there can be no ownership of the corpus of water flowing in a stream prior to its being diverted from the stream into canals ditches or reservoirs of the party entitled to use the water (Kinney on Water Rights, Vol 2, 2nd ed , p 1349) 'Neither sovereign nor subject can have any greater than a usufructuary right in running water' (Kinney on Water Rights, Vol 1, 2nd ed , pp 548-549 and cases there cited) It is also a familiar rule that water adjudicated for irrigation purposes if not utilized for that purpose must be allowed to flow downstream for the benefit of other water users with later rights in the stream"

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Those severe limitations imposed by the *Orr Water Ditch* decree upon the Indians' rights is contrasted in regard to the non-Indians' rights under that decree:

> "Persons whose rights are adjudicated hereby, their successors or assigns, shall be entitled to change, in the manner provided by law the point of diversion and the place, means, manner or purpose of use of the waters to which they are so entitled or of any part thereof, so far as they may do so without injury to the rights of other persons whose rights are fixed by this decree."

Ridiculous though the Solicitor's opinion may be—inept; unprofessional; failing to mention much less consider the legal issues involved in the change of place of use or purpose of rights to the use of water—no mention is made that the water for the purposes of the fishery could injure no one, the Indians being the last users on the stream, no mention is made of the unconscionable limitations consented to by Interior and Justice which the decree imposes upon the Indian rights and no mention is made of the surplus waters in the Truckee River which the Bureau of Reclamation was to attempt to seize for the Washoe Project and to which the Indians obviously are legally entitled. That opinion, nevertheless, had this very salient, destructive effect upon the Indians: It became the law of the Department of the Interior to the irreparable damage of the Northern Paiute Indians, constituting a barrier to the economic development of the vast potential of Pyramid Lake and the Truckee River for the benefit of the Indians. It was, indeed, the party line upon which the Washoe Reclamation Project was to proceed in the attempt, not yet consummated, to seize the last of the Indian Truckee River water.

Nine years after this Solicitor's opinion, in October 1964. the Secretary of the Interior approved and adopted a report entitled, "Action Program for Resource Development Truckee and Carson River Basins, California-Nevada" No effort was made to preserve Pyramid Lake. Rather the decline and ultimate destruction of the Lake by the Newlands Reclamation Project and the Washoe Reclamation Project was prognosticated. Recommendation No. VI of the Report did provide that Justice would be requested to seek an amendment to the *Orr Water Ditch* decree permitting the Indians to use the meager quantity of water allowed to them for irrigation—30,000 acre-feet annual maximum—for purposes of fishery.[160]

By a letter dated November 2, 1964, the Department of the Interior requested Justice to bring an action because "The Indians want to use part of their decreed water for reestablishing the fishery at Pyramid Lake." No effort was to be made to preserve the Lake, planned out of existence by the Bureau of Reclamation.

Legalisms, never researched, but only vaguely formulated among the Interior and Justice lawyers, caused the request of November 2, 1964, to amend the *Orr Water Ditch* decree, to languish and no action to this date has ever been taken in regard to it.

(q) *Successful demands to reconsider Interior's legal and policy decisions made by Bureau of Indian Affairs and by the Indians:*

Freeing the Indians from the restrictions imposed upon them entailed months of disengaging action. By 1966 the Bureau of Indian

[160] *Note:* The vast proportion of the decreed rights could never be used by the Indians for purposes of irrigation by reason of the Nation's failure to build a project which could use it, and the dilapidated condition of the small project now in existence

Affairs and the Indians were able to demonstrate the needless disaster being imposed upon them through the planned destruction of Pyramid Lake.[161] In July 1966, the Commissioner of Indian Affairs withdrew the Bureau's approval of the October 1964 Action Program Report. The press came to recognize the plight of the Indians and the news media brought forcefully to the attention of the public the manner in which the great Indian and national asset was being destroyed. Ultimately the struggle to preserve the Lake with its vast potential was being recognized.

(r) *California-Nevada Compact—A grave peril to the Indians and to Pyramid Lake:*

In keeping with the concept of the Bureau of Reclamation and the Truckee-Carson Irrigation District that the Indian Truckee River rights to the use of water could be seized without compensation (destruction of the famous fishery, indeed, the destruction of Pyramid Lake itself with poverty-in-perpetuity for the Indians, would be countenanced without a struggle), the California-Nevada Compact purporting to divide between the States the waters of the Truckee, Carson and Walker Rivers was prepared. The Compact, so clearly violative of the Constitution of the United States, so flagrantly an invasion of the Nation's rights, powers and obligations to the Indians, was rejected out of hand by the Federal Government.[162]

A revised 1968 Compact was adopted by the California and Nevada Commissioners. It had all the objectionable features of the earlier compact with this addition: It set forth the "settlement" which the Interior-Justice-Upper Carson River water users had failed to consummate by reason of the intervention in the *Alpine Case* by the Northern Paiutes. Seldom has such power politics been used to strike down Indian claims. Failing to succeed when the Indians intervened in *Alpine*, the Nevada Compact Commissioners cooperated by writing the substance of the unconscionable "settlement" into a compact and received approval of it by the Nevada legislature. Again strenuous objection was interposed to the compact by the Federal Government and the Indians.[163]

Losing in their own State of Nevada in their struggle against the destruction of Pyramid Lake, the Northern Paiutes received gracious treatment by California's legislature. Secretary Hickel's letter of March 18, 1969, strongly opposed the Compact. The Indians and their lawyers were heard by the California representatives. On March 20, 1969, the Indians received a reprieve from destruction by the California-Nevada Compact—at least momentarily—by reason of an amendment California has proposed, exempting the Indian rights from the operation of the Compact.

(s) *Ambivalence within the Department of the Interior respecting Indians exemplified by Pyramid Lake struggle:*

Ambivalence is the hallmark of Interior in regard to its trust responsibility towards the American Indians. Practical politics—the

[161] Pyramid Lake in Nevada is not only a Home, Abiding Place and a Source of Livelihood for Northern Paiute Indians—it is a National Asset of Great Scenic Beauty, with Vast Potential for Recreation, of Historic Import, of Scientific significance—It Must Be Preserved

[162] See letter April 22, 1966, Assistant Secretary Anderson to Bureau of the Budget Also Analysis of *California-Nevada Interstate Compact concerning waters of Lake Tahoe, Truckee River, Carson River and Walker River Basins* dated January 20, 1966

[163] See letter January 14, 1969, Secretary of the Interior to Bureau of the Budget

lifeblood of the Bureau of Reclamation—are daily confronted with good conscience and the need to fulfill the trust responsibility to the Indians. Erosion of Indian title to rights to the use of water is the consequence. Congressional enactments and reclamation project approval clash with obligations owed by Interior's Secretary to the Indians. Agonizing appraisals and reappraisals are made; reports are written and speeches given. Yet none of them produce sufficient water—indeed, any water—to provide for the Indians and the *plans* of Reclamation for its projects.

Life or death of Pyramid Lake is the perfect example of Interior's agonizing, for:

1. Destruction of Pyramid Lake is assured if the Washoe Reclamation Project is constructed. The United States cannot have Pyramid Lake and the Washoe Project; there is simply insufficient water in the Carson and Truckee Rivers for the Lake and the Project.

2. Destruction of Pyramid Lake is assured if the contract now approved by Interior is authorized by Congress, increasing the Newlands Reclamation Project from its historic average irrigated acreage of 51,000 acres to 74,500 acres, guaranteeing a firm supply of water to the Newlands Project of 406,000 acre-feet annually.

Interior proceeds with the construction of the Washoe Reclamation Project.

Papers are written in regard to Pyramid Lake and its vast potential for public benefit—witness the 1969 report of the Bureau of Outdoor Recreation alluded to above.

Promises are made of litigation to protect the Indian rights in the Truckee River and Pyramid Lake Currently the Solicitor's Office refers to a letter to Justice requesting that court action.

Contracts are signed to assure 406,000 acre-feet of water annually to Newlands Reclamation Project and increased water right acreage to 74,500 acres.

The harsh fact is this: Reclamation obtains action—results of practical politics; the Indians receive words—results of good conscience being placated.

Water required for the Washoe Reclamation Project is to be obtained through prohibiting Newlands grossest waste, nevertheless gravely wasteful practices still continue on Newlands. When occasional momentarily available quantities of water enter Pyramid Lake, they are loudly trumpted as being evidence of Indian protection.

When Nature supplies a huge snow pack in the high Sierras—at widely spaced intervals over the years—and the existing Reclamation facilities cannot carry the volume of runoff, some of the water must enter Pyramid Lake. This is not looked upon by Reclamation as an Act of God, but a spiritual rapport between conflicting agencies. But this vanishes when another Act of God results in a light snow pack and short water supply; or more practically when Recalmation has completed Stampede Reservoir on the Tuckee, Watasheamu on the Carson.

(t) *Congress alone can preserve Pyramid Lake:*

This is not a new story in Indian history. It is no different today than when President Andrew Jackson nullified the Supreme Court's decision by simply refusing to permit its implementation by Executive action and a grave stain never to be removed, was indelibly written

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on a Nation's conscience [164] Nor is it different than when Congress passed the Act of August 1, 1914, to restore *Winters Doctrine Rights* to the Yakima Indians who, Congress said, "have been unjustly deprived of the portion of the natural flow of the Yakima River to which they are equitably entitled"

What is being done to the Northern Paiutes today differs not at all from what Jackson did to the Cherokees; only the dates and the names are changed, with one exception—the Northern Paiutes have no place to go.

Congress can stop the inhumanity being perpetrated on the Northern Paiutes. It can:

1. Refuse to appropriate funds for the Washoe Reclamation project or vitiate Congressional approval of the project;
2. Refuse to appropriate funds to carry out the contracts which would enlarge the Newlands Reclamation Project beyond its historic irrigated acreage and limit the project to beneficial use of all waters diverted to it, thus striking down the firm supply of 406,000 acre-feet of water which the contracts in question would guarantee;
3. Refuse to approve the California-Nevada Compact if it fails to protect, preserve and guarantee the Indian Truckee River rights and their right to maintain Pyramid Lake as a permanent viable body of water.
4. Direct Justice to fulfill its responsibilities in regard to the protection of the rights of the Northern Paiutes in the Truckee River and Pyramid Lake, to desist from opposing the Indian efforts to protect themselves by intervening in the *Alpine Case*, but rather to assist them in it, and to have the principles of beneficial use of water enforced under the *Orr Water Ditch* decree on the Truckee River and the *March 1950 Decree* on the Carson River.

Finally, if Congress were to declare that Pyramid Lake should be preserved for the benefit of the Indians and the nation and that the fisheries destroyed by diversions to the Newlands Reclamation Project should be restored, a long step would be taken in correcting one phase of innumerable, sometimes ghastly, wrongs perpetrated on the Northern Paiutes.

III. Policies Past, Present and Future in Regard to the Indian Rights to the Use of Water in Lower Colorado River Valley—A Crucible

Politics and water readily mix creating an unstable, volatile combination Only the strong prevail when confronting the combination. That is, of course, the Indian problem in general, and most particularly in the Lower Colorado River Valley. Economic development of Indian lands has long been retarded by reason of politics in and out of the Interior Department.

(i) *Arizona v. California, United States, Intervener:*

Arizona had failed in the Supreme Court because in early cases the United States had been declared an indispensable party, which was immune from suit and had failed to evidence an inclination to become a party to a suit to have adjudicated the rights to the use of water

[164] Schmekebier, The Office of Indian Affairs, page 35.

of the Colorado River. That stream drains 244,000 square miles in seven States, with every square mile and drop of water an intemperate political issue [165]

By the end of the 1940's and the early years of 1950, population pressures in the Southwest—particularly the California and Arizona area—forced the National Government to reconsider its historical reluctance to become a party to the gruelling struggle among the sister States of the Colorado River Basin. Conversations within Justice were undertaken and the matter fully reviewed with Interior. At the first meeting after it was agreed the suit would be initiated, this strong caveat was given: Play down the Indian rights! To that caveat the response was made that there probably would not be a justiciable issue in the case if the Indian rights were played down.

On November 2, 1953, the "Petition of Intervention on Behalf of the United States of America" was filed in *Arizona* v. *California*. Among other things, the petition alleged the United States of America was the trustee for the Indians and Indian Tribes and asserted

> "that the rights to the use of water claimed on behalf of the Indians and Indian Tribes as set forth in this Petition are prior and superior to the rights to the use of water claimed by the parties to this cause in the Colorado River and its tributaries in the Lower Basin of that stream." [166]

Immediately an all-out attack was launched against the Attorney General. The powerful politicians and their political attorneys from the Lower Basin States would not tolerate the assertion that Indian claims were "prior and superior" to the claims of the States. Yet the petition with the required copies had been filed. No real problem, said the powerful ones—withdraw the petition, strike the offending passage pleaded on behalf of the Indians, and refile it. That was done. The truncated version reads as follows:

> "XXVII
>
> "The United States of America, as trustee for the Indians and Indian Tribes, claims in the aggregate on their behalf rights to the use of water from the Colorado River and its tributaries in the Lower Basin of that stream in the States of Arizona and California as set forth in Appendix IIA of this Petition." [167]

Thus the odd-looking page 23 of the present petition, with its wide spaces between the lines, is explained. It suffered from power failure by those inclined towards the Indians.

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[165] *Arizona* v. *California*, 298 U.S. 558 (1936)

[166] Petition of Intervention, *Arizona* v. *California*, No. 10 Original, filed November 2, 1953, Paragraph XXVII, page 23

[167] The two provisions are set forth here in full From first Petition filed November 2, 1953·

"XXVII

"The United States of America, as trustee for the Indians and Indian Tribes, claims in the aggregate on their behalf rights to the use of water from the Colorado River and its tributaries in the Lower Basin of that stream in the States of Arizona and California as set forth in Appendix IIA of this Petition The United States of America asserts that the rights to the use of water claimed on behalf of the Indians and Indian Tribes as set forth in this Petition are prior and superior to the rights to the use of water claimed by the parties to this cause in the Colorado River and its tributaries in the Lower Basin of that stream."

From Petition filed December 1953·

"XXVII

"The United States of America, as trustee for the Indians and Indian Tribes, claims in the aggregate on their behalf rights to the use of water from the Colorado River and its tributaries in the Lower Basin of that stream in the States of Arizona and California as set forth in Appendix IIA of this Petition"

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The Supreme Court in *Arizona* v. *California*, applied the principles of *Winters, Conrad Investment Company, Walker River, Ahtanum*, declaring the basic concepts of those cases to be applicable to reserved lands of the United States. [168] However, there are aspects which require most careful consideration.

(ii) *State apportionment threat to economic development of the Indian Reservations under Arizona v. California*:

Politics smothered the rights of the Indians to assert their claims against the entire Colorado River System. Those rights are properly against the river—not political subdivisions, but the Upper Basin States (Wyoming, Colorado and Utah) where most of the water rises, had the political power to stay out of the case. As was pointed out in regard to the *Winters Doctrine Rights*, they are against the stream system:

> "The suggestion that much of the water of the Ahtanum Creek originates off the reservation is likewise of no significance. The same thing was true of the Milk River in Montana; and it would be a novel rule of water law to limit either the riparian proprietor or the appropriator to waters which originated upon his lands or within the area of appropriation. Most streams in this portion of the country originate in the mountains and far from the lands to which their waters ultimately become appurtenant." [169]

In sharp contrast to the principles enunciated—invariably applied—the Supreme Court in *Arizona* v. *California*, drastically limited the Indian rights:

> "* * * we note our agreement with the Master that all uses of mainstream water within a State are to be charged against that State's apportionment, which of course includes uses by the United States." [170]

As a consequence the Indians are at the mercy of the wheeling and dealing by the states as they attempt to obtain projects and water. A most ominous threat to the Colorado River Valley Indians is the fact that the Colorado River has been outrageously overappropriated. Where the water for the Central Arizona Project, in the light of guarantees to California, must come from should be clear warning to the Indians. The same powerful people who forced the Attorney General to change the Petition in *Arizona* v. *California* are exercising those powers—powers that can strip from the Indians the rights which originally were to be "played down." Economic development has thus been thwarted on all Indian Reservations in the Colorado River Valley.

(iii) *"Giveaway" of 1,500 acres of Mohave Indian land:*

Without notice to the Fort Mohave Tribe of Indians or to the Bureau of Indian Affairs, the Solicitor's Office conducted a proceeding initiated by California in the Bureau of Land Management. 1,500 acres of invaluable Indian land was awarded to California by a decision dated March 15, 1967, allegedly as coming within the Swamp

[168] See above, *Winters Doctrine*, footnote 22, et seq.
[169] *United States* v. *Ahtanum Irrigation District*, 236 F. 2d 321, 325.
[170] 373 U.S. 546, 601

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and Overflow Act. Only by chance when the matter was then on appeal did it come to the attention of the Bureau and the Indians.

Efforts by the Bureau of Indian Affairs to intervene were denied—the Solicitor, it was said, perhaps facetiously but none the less officially, was representing the Bureau, although the Bureau was given no notice or opportunity to be heard. Under most severe restrictions the Indians were allowed drastically limited intervention. An astounding fact was forcefully brought to the Indians' attention: The Solicitor's position was not the lawyer for the Trustee, the United States; rather he emphasized, he was Judge and in fact owed a trust obligation to California. Anomalous? Not at all; that's the law as enunciated by the Solicitor. The matter is now before the Secretary of the Interior for reconsideration. It is but a single example of outrageous conduct by conflicting agencies within the Interior Department, perpetrated against the Mohaves in regard to their lands which are inseparable from their rights to the use of water.

(iv) *Conflicts within Interior—Failure to protect and define boundaries, rights to the use of water:*

Grave damage to the economic development of the Colorado River Indian Reservation has occurred and is occurring, due to the failure of conflicting federal agencies to resolve basic differences. Lands have been separated from the Reservation and Indian occupancy lost for periods up to half a century.

A boundary dispute lasting virtually one hundred years, recently brought out an irrational opinion which declared: The boundary was the unknown high-water line in 1876, but for "administrative convenience" another line could be used. This opinion has created administrative and jurisdictional problems which cause economic chaos, not development. Moreover, even more damaging to the Indians is the loss of between 2,000 and 4,000 acres of invaluable lands and rights to the use of water in the Colorado River.

Loss of land and rights to the use of water on the Colorado River Indian Reservation reflect only part of the damage. In an area where recreation, year-round, is rapidly growing, the loss of access to the Colorado River has prejudiced and will continue to gravely prejudice economic development for these Indians.

(v) *Fort Yuma Indian Reservation:*

This tormented Indian Reservation has suffered more than most. In 1893 the Indians had an agreement imposed upon them by force. All facts point to fraud, diverse and general culpability on the part of officials of the national government. Those who refused to sign for the Indians were whipped into submission. Others, it is reported, were held in jail for months without charge.

Purportedly the Yumas—Quechans as they are known—were to retain some of their irrigable lands. Other lands were to be sold and payment made to the Indians They were not sold. Title remains in the United States. Today the Bureau of Land Management is leasing land taken forceably from the Yumas. Those lands are being irrigated and rental for irrigated lands is collected by the last named Federal agency. The question is raised, How can these lands be declared non-irrigable—as they have been—when they are in fact irrigated?

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Simple enough, the Bureau of Reclamation states they are non-irrigable! By that fiat the Indians are deprived of their lands and the economic development of the Reservation delivered a smashing blow.

IV. MISSOURI RIVER BASIN—A VAST AREA WHERE ECONOMIC DEVELOPMENT HAS BEEN DEFEATED BY FEDERAL AGENCIES, LAWS AND POLICIES

(i) *Seizure by the Bureau of Reclamation of Fort Peck Indian water supply:*

The Fort Peck Indians owned invaluable *Winters Doctrine Rights* in the Milk River. The Bureau of Reclamation built the Milk River Reclamation Project It seized the Indian water without compensation and is using it on the Reclamation Project. As a consequence the economic development of the Fort Peck Indian Reservation was gravely retarded. Confronted with the Bureau of Reclamation, water was sought from another source and at great cost the Indian project was reconstructed.

(ii) *Seizure without right or compensation of Indian rights to the use of water at Yellowtail Dam on the Crow Indian Reservation and elsewhere in the Missouri River Basin:*

One of the most flagrant examples of the Bureau of Reclamation's disregard of Indian water rights will be found at Yellowtail Dam and Reservoir in Montana's Crow Indian Reservation. There the Bureau of Reclamation not only did not pay the Crows for their *Winters Doctrine Rights* in the Bighorn River, but is selling the Indian water, depositing the proceeds to a non-Indian account, and seeking to charge coal developers on the Reservation for Indian water, thus driving down the payment the Indians will receive for their coal.

Detailed reviews of the principles of the *Winters Doctrine Rights* have been made including the Crow Indian Yellowtail Dam matter.[171] Time and space do not permit a review of all damage done to Indian rights to the use of water throughout the Missouri River Basin, and its effect upon the economic development of the many Reservations in the Valley. That damage is high and is continuing.

V. CALIFORNIA'S INDIANS ROBBED OF THEIR RIGHTS TO THE USE OF WATER; FAILURE OF THE UNITED STATES TO FULFILL ITS OBLIGATIONS, GRAVE CONFLICTS WITHIN FEDERAL ESTABLISHMENT DEPRIVES CALIFORNIA'S INDIANS OF ADEQUATE REPRESENTATION

Failure of the United States to protect Indian rights to the use of water to which the California Indians are entitled has defeated all hope of economic development of some Reservations. Economic development—Indian or non-Indian—in Southern California is geared to the availability of water to a degree unsurpassed on this Continent It explains the devastation brought to the Mission Indians—the La-Jollas, Rincons, Palas Their rights have been seized without compensation. Their efforts to defend themselves have been defeated. Others, unless the seizure of these rights is prevented, will experience the same

[171] See memorandum dated October 13, 1965, entitled *Winters Doctrine Rights in the Missouri River Basin* Also memorandum dated December 5, 1967, entitled *Analysis of Opinion November 16, 1967*, to the extent that it relates to the rights of the Crow Indians in the Bighorn River

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(i) *Flathead I*

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grave damage. So widespread, so all-encompassing is this failure of the Nation to fulfill its obligations to the Indians it is impossible to chronicle here the magnitude of the damage done to them, particularly those Indians in Southern California.

Shaken by this failure of the Nation to fulfill its obligations, the California Indian Legal Services has become actively engaged and is rendering legal assistance to the Indians. There are conflicts within the federal establishment which have caused it to fail these Indians in a most serious way. Recently a brief in opposition to the claims of certain of the Mission Indians and others demonstrates the impossibility of Justice Department to protect adequately Indian rights to the use of water. In that brief there is a failure fully to cite an authority repeatedly relied upon; fully to review the results of the litigation giving rise to the decision relied upon, or correctly to interpret the decision in its present status in view of decisions not cited by Justice.[172]

That effort to sustain a proposition which, if successful, would defeat a claim of the Indians for compensation is diametrically opposed to the position taken by Justice in support of Indian claims.[173] Indeed, the brief referred to above applies principles seeking to defeat the Indian claims, which have not been applied against non-Indians seeking restitution for the alleged taking of rights to the use of water.[174] This matter and related disparities in regard to conflicts within Justice and Interior is the subject of present intensive investigation. California's Indians are aroused over the loss of their rights due to the conflicts in question and are greatly in need of legal assistance if they are to avoid further seizure of their rights.

VI. Economic Development Gravely Retarded by Purported Seizure of Indian Land and Rights to the Use of Water on Other Indian Reservations

(i) *Flathead Indian Reservation:*

Magnitude of disasters inflicted upon the Salish and Kootenai Tribes by the opening of the Flathead Indian Reservation to non-Indians and later to other developments, has never been determined. That opening took place in the early 1900's. There has been a continuous disregard of the Indian rights, a claim by the Solicitor that all of those Flathead rights had been preempted by the United States for the largely non-Indian project, and a failure to take cognizance of priority accorded to Indian rights in the administration of the irrigation project.[175]

Every effort to institute an action to protect or have determined the rights of the Salish and Kootenai Tribes has been denied by the Solicitor's Office. A full investigation of the matter is now under way to

[172] See brief filed August 1968 before the Indian Claims Commission, Docket No 80-A, Baron Long (El Capitan), Campo, Inaja, *La Jolla, et al*, v *United States of America*, defendant; Defendants requested findings of fact, objections to petitioners' proposed findings of fact, and brief, pages 28, 29.

[173] This is not new—see memorandum dated June 19, 1956, captioned *Water Rights on Indian Reservations* (filed under *Gila River Pima Maricopa Indian Community, et al*, v *United States*, Docket No 236, before Indian Claims Commission)

[174] In effect the brief before the Indian Claims Commission declares that the Indians are not entitled to compensation without a general adjudication That position is, of course, wholly incorrect—see *United States* v *Gerlach Live Stock Co*, 339 U S 725 (1949).

[175] See memorandum prepared at request of Solicitor dated April 28, 1967, "*Memorandum* relative to the titles to rights to the use of water and the authority to control and administer them on the Flathead Indian Reservation"

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the end that those rights will be inventoried and, it is hoped, in some manner protected against further encroachment by the non-Indians permitted to occupy the Fathead Indian Reservation.

(ii) *Gila River Indian Reservation—Pima Maricopa Community; economic development greatly impeded by attempted seizure of immemorial rights of Indians in the Gila River:*

The San Carlos Indian Irrigation Project was undertaken [176] purportedly for the benefit of the Pima Indians who had from time immemorial irrigated their lands. What occurred has been a violation of the nation's trust responsibility to the Indians—an attempted illegal seizure of most of the rights of the Indians. Moreover, the broad *Winters Doctrine Rights* for future development of the Indian Reservation have been systematically denied.

It is infrequent that a court decree—here with the consent of Justice and Interior—sets forth a violation of the Indians' *Winters Doctrine Rights*. [177] In the cited paragraphs of the decree and elsewhere in it the prior immemorial rights of the Indians are recognized and then are specifically subordinated to the junior rights.

This course of conduct, among others, in connection with the project in question reflects innumerable violations of the surface and ground water rights of the Indians. A full investigation must be undertaken in regard to this outrageous circumstance. It will reveal the extent of the damage to economic development that the Indians have experienced.

AN ATTEMPT TO RECTIFY ANCIENT WRONGS IN REGARD TO INDIAN LANDS AND RIGHTS TO THE USE OF WATER

The Commissioner of Indian Affairs has authorized and directed a program, strenuously prosecuted to recover for the Indians, lands and water rights of which they are wrongfully deprived. Progress is being made. Yet the lack of legal assistance or outright opposition within the government and without has created grave problems in connection with the program. Should that program be stopped or retarded, the economic development of the American Indian Reservations may very well be precluded for all time because of the rapidity with which their lands and rights to the use of water are being eroded away by the failure properly to protect them.

[176] See *A History of the Pima Indians and the San Carlos Irrigation Project*, Senate Document No 11, 89th Congress, 1st Session.

[177] See Decree entered June 29, 1935, Globe Equity No 59, *The United States of America* v. *Gila Valley Irrigation District*, et al

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FEDERAL ENCROACHMENT ON INDIAN WATER RIGHTS AND THE IMPAIRMENT OF RESERVATION DEVELOPMENT

By WILLIAM H. VEEDER*

FOREWORD

In the arid and semiarid regions of the Western United States, adequate rights to the use of water resources are a particularly crucial element in economic development. The responsibility for protecting the water rights of American Indian reservations rests with the Interior and Justice Departments. William Veeder argues that the conflicting responsibilities of these Departments make it virtually impossible for them to adequately fulfill their responsibility to the Indian reservations. He recommends that the responsibility for protecting the Indian water rights should be placed in an agency independent from the Interior and Justice Departments, and that this agency should move promptly to inventory Indian water rights and to determine the highest and best uses to which these valuable rights can be put.

Summary

1. American Indian Reservations in the western United States contain invaluable natural resources. These include the land of which they are comprised, minerals, forests, lakes, streams and other sources of water which arise upon, border, traverse or underlie the Reservations.

2. Economic development of the western Reservations is inseparable from Indian rights to the use of water, which in turn are the most valuable of all natural resources in the arid and semiarid regions. Those rights are the catalyst for all economic development. Without them the Reservations are virtually uninhabitable, the soil remains untilled, the minerals remain in place, and poverty is pervasive.

3. Since time immemorial the Indians' water resources were inextricably a part of their way of life; indeed, a prime feature of their sustenance. Highly sophisticated irrigation systems were developed along the Gila River by the Pimas and Maricopas. Menominees harvested their wild rice, used the streams for travel, fishing and hunting. The Mohaves, Quechans and other Colorado River Indians depended on the stream's annual Nile-like floods to irrigate their crops. The Yakimas lived upon and traded salmon taken from the Columbia, as

*Water Conservation and Utilization Specialist, Bureau of Indian Affairs, Department of the Interior.

NOTE: The analysis and conclusions in this paper are those of the author, and do not necessarily represent the position of the Bureau of Indian Affairs or the Department of the Interior.

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Enclosure No. 3

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2 Land Ops.

Land Operations
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WH-4

December 23, 1959

Mr. E. L. White
Area Engineer
Snake River Development Office
Bureau of Reclamation
214 Broadway
Boise, Idaho

Dear Mr. White:

Further reference is made to your letter of September 24, 1959, concerning plans for water and land utilization for the Duck Valley Indian Reservation. The Nevada Indian Agency and this office have been considering this matter since our letter of October 9 to you, and have the following information for you:

A. Duck Valley Project
   1. Water Supply
      a. Natural flow of Owyhee River
      b. Stored water from Wild Horse Reservoir - capacity, 32,000 ac. ft.
   2. Lands
      a. Presently irrigated - 9,170 acres
      b. Ultimate irrigated area - 24,000 acres (to be selected from larger area of land)

B. Blue Creek Area
   1. Water Supply
      a. Natural flow of creek and tributaries
   2. Lands
      a. Presently irrigated - 6,500 acres (flood irrigated by natural spreading)
      b. Ultimate irrigated area - 11,000 acres (to be irrigated by artificially spreading flood waters)

C. Minor Irrigation Areas
   1. Water Supply
      a. Natural flow of Boil Creek, Miller Creek, Bell Creek, Papoose Creek, and tributaries

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2. Lands
   a. Presently irrigated - 1,128 acres
   b. Ultimate irrigated area - 1,200 acres

D. Domestic and Stock Water

In addition to needs for irrigation, water will be required for domestic and stock water purposes on the reservation.

The water diversion quantities for the lands listed above will be such amounts, all having a first priority, as are required for growing of crops suited to the area, subject to the physical availability of the water in the streams. This position on water utilization is based on the doctrine established by the Winters Case and other court decisions.

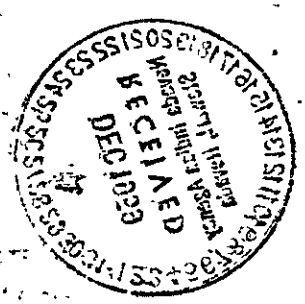
We trust that the above information will serve your needs. If it does not, please let us know.

Sincerely yours,

George W. Hedden

ASSISTANT Area Director

Copy to: Superintendent, Nevada Agency
Commissioner, Bureau of Indian Affairs, Central Office
Area Director, Portland Area Office



Enclosure No. 4

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UNITED STATES

DEPARTMENT OF THE INTERIOR

INDIAN IRRIGATION SERVICE

SUPERVISING ENGINEER

REPORT

WATER SUPPLY, WATER RIGHTS & AGRICULTURAL CONDITIONS WESTERN SHOSHONE OR DUCK VALLEY RESERVATION. NEVADA - IDAHO.

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Provided for by Act of Congress of March 4, 1929.

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Charles A. Engle,
Supervising Engineer.

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May- 1930.

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WATER SUPPLY REPORT - WESTERN SHOSHONE RESERVATION - NEVADA.

Blue Creek and Tributaries.

North of the reservation, there is an irrigated area of 2548 acres which is irrigated from several streams as follows:

1225 acres irrigated from Blue Cr. and Reservoir and Little Blue Cr. and Reservoir.

642 acres irrigated from Payne Creek & Reservoir.

619 acres irrigated from Mary's Creek Reservoir.

62 acres irrigated from Indian Creek & Reservoir.

The greater portion of this irrigated land is owned by The Blue Creek Land & Livestock Company whose headquarters are located at Elko, Nev.

The earliest settlement of these lands dates back to 1890. In 1893 Joseph A. Sewell purchased all lands and water rights excepting those belonging to the Riddle Brothers of Riddle, Idaho, which were purchased about the year 1924 by the Sewell interests with the exception of the land and water rights of Frank W. Riddle who retains title to his land and 1/7 interest in the Mary's Creek reservoir, and direct diversion and reservoir rights on Payne Creek, a tributary of Blue Creek.

The Sewell interests, after the death of Joseph A. Sewell and his wife, have combined their interests and formed a corp-

WATER SUPPLY REPORT - WESTERN SHOSHONE RESERVATION - NEVADA.

In 1925, Frank W. Riddle begun the construction of a reservoir on Payne Creek in order to conserve the supply from that source and which enables him to irrigate later in the season, when needed the most. It is stated by the owners of these lands and no doubt is a fact that the lands would be of little value without stored water. The runoff occurs early in the spring, generally the latter part of March or early part of April and is of short duration, the runoff on Little Blue Creek especially which is said to last for only a few days.

Application for the construction of a reservoir was made by Henry Rubelt on Shoo Fly Creek, a tributary of Blue Creek with a subsequent proof of construction accepted February 14, 1921. Another dam for a reservoir was constructed by him in 1929, on West Fork of Shoo Fly Creek. Mr. Rubelt irrigates an area of mixed hay meadow of approximately 200 acres and is situated approximately 6 miles upstream on Shoo Fly Creek from its confluence with Blue Creek. It is stated that only during extreme high water in the early spring does the stream flow of Shoo Fly Creek reach the channel of Blue Creek and for that reason the irrigated area is not included in the total irrigated area of Blue Creek and tributaries, neither is the water of Shoo Fly Creek considered in the water supply.

oration, known as the Blue Creek Land & Livestock Company, having headquarters in Elko, Nevada. Charles Sewell is President and Hazel Sewell is Secretary of the Company.

This Company claims ownership of 17,000 acres of land which includes approximately 2100 acres of meadow land of which 500 acres are of mixed meadow, that is, tame grasses sown in the wild meadow, and 1600 acres of wild hay meadow. They also have a lease on 2,500 acres of grazing land from the State of Idaho and claim to own 14,000 head of sheep and 2,500 head of cattle. Practically their entire head of cattle is grazed on the Duck Valley Reservation.

In the early development of these lands it was soon realized that the water supply was inadequate and steps were taken to control the supply and conserve it by the building of reservoirs. A reservoir was constructed by the Riddle Brothers on Mary's Creek, beginning about the year 1904, on lands that were made an addition to the Duck Valley Reservation in 1910. Joseph A. Sewell begun the construction of a reservoir on Blue Creek in the year 1905. Right of way for a reservoir, by H. S. Portlock, on Little Blue Creek, was approved January 22, 1910, and whose interest was later purchased by the Sewell interests.

Enclosure No. 2

Licenses Issued by the State Reclamation Engineer
(formerly Commission of Reclamation)
Confirming the Right to the Use of Water in
Blue Creek Drainage

License No.	Date of Priority*	Amount
1175	3/18/05	26.3 CFS
4249	12/28/08	25.0 "
5512	11/30/09	18.7 "
7421	6/10/11	9.6 "
8571	7/31/12	3.0 "
9571	10/21/12	3.0 "
8920	11/6/12	2.0 "
8919	11/6/12	2.0 "
1173	3/11/13	20.8 "
9540	7/29/13	2.0 "
9777	11/4/13	.8 "
11025	2/12/15	2.0 "
11264	5/18/15	6.4 "
11342	6/12/15	2.0 "
7421	6/19/15	3.8 "
12123	3/8/16	16.7 "
12255	6/10/16	2.1 "
12709	10/20/16	4.0 "
8905	7/2/17	19.5 "
13334	11/24/17	1.1 "
13336	11/28/17	.2 "
13965	4/7/19	3.0 "
14892	8/11/20	.1 "
16391	10/20/25	16.7 "
4295	8/25/26	6.2 "
16723	7/27/27	3.0 "
16341	4/14/29	6.7 "
		206.7 "

55 7009

License No.	Date of Priority*	Amount
R-22	6/10/16	1600 acre ft./yr.
R-45	10/20/16	100 "
R-381	10/20/25	4175 "
R-431	7/3/28	280 "
R-376	4/14/29	300 "
R-629	5/25/37	280 "
R-657	11/16/38	460 "
R-1055	11/4/59	895 "
R-1227	8/22/66	245 "
	4/17/69	820 "
		9155

*None of the dates of priority of the above licenses is prior to the dates of priority for the lands on the Duck Valley lying within the Blue Creek Drainage, which dates are April 16, 1877 and May 4, 1886. In addition, it should be noted that no rights prior to the Indian rights can be claimed under the so-called "constitutional" method based on Article XV, Section 3, Idaho Constitution. This provision has been construed as authorizing a person to appropriate the water of a stream simply by actually diverting the water and applying it to a beneficial use. Sand Point Water & Light Co. v. Panhandle Development Co., 11 Idaho 405, 413-414, 83 P. 347 (1905). Enclosure No. 4 indicates that the earliest settlement the land north of the Reservation by non-Indians was in 1890, subsequent to the priority dates of the Indians.

55 7009

Enclosure No. 5

S—1143

UNITED STATES

DEPARTMENT OF THE INTERIOR

INDIAN IRRIGATION SERVICE

SUPERVISING ENGINEER

REPORT

WATER SUPPLY, WATER RIGHTS & AGRICULTURAL CONDITIONS

WESTERN SHOSHONE OR DUCK VALLEY RESERVATION.

NEVADA - IDAHO.

- - - - - - - - - - - - - - - - - -

Provided for by Act of Congress of March 4, 1929.

- - - - - - - - - - -

Charles A. Engle,
Supervising Engineer.

- - - - - - -

May- 1930.

55 7009

REPORT OF WATER SUPPLY, WATER RIGHTS AND AGRICULTURAL CONDITIONS - WESTERN SHOSHONE RESERVATION, NEVADA - IDAHO.

Water Supply Blue Creek.

On July 26, 1929, an investigation was made of the stream flow entering the reservoirs in private ownership north of the reservation as follows:

Blue Creek above "Sewell" reservoir 3/5 second-foot (Est.)

Little Blue Creek above "Sewell" reservoir. None.

Indian Creek above "Sewell" reservoir. None.

Mary's Creek supply ditch, Sewell and Riddle Res. None.

Payne Creek above Riddle reservoir 2/5 second-foot. (Est.)

On July 13 and 15, 1929, when the outlet gates were closed at the above named reservoirs, the reservoirs on Mary's, Payne and Indian Creeks were practically dry, but the Blue Creek reservoir contained an approximate storage of 827 acre-feet and the Little Blue Creek reservoir contained an approximate storage of 354 acre-feet. It was stated by Charles Sewell, President of the Blue Creek Land & Livestock Company, that it was their custom, when there was any storage left in their reservoirs at the beginning of the haying season, to release this water for the irrigation of their meadow lands after the hay had been removed, to increase the

productivity of the meadow in the following year.

A ditch on the East side of Blue Creek was in the course of construction during the latter part of 1929, to increase the supply for a part of the lands now being irrigated and also to bring other lands under irrigation which have not heretofore been irrigated.

While no doubt this Company have complied with the State laws with reference to water filings and development of storage, and the large sum they have expended in the protection of their own water rights, there can be no question but that it has been detrimental to the Indians on the Duck Valley Reservation. The lands (approximately 200 acres) which were farmed by Indians about 17 years ago, have become worthless for the raising of hay which was formerly cut from these lands, and it has also decreased the pasturage value of all the lands adjacent to Blue Creek on the reservation.

Three Indian farms on Blue Creek have been abandoned for the past 17 years or since the construction of the reservoirs on Blue and Little Blue Creek. Upon the occasion of the visit to these lands, there were no fences, these having been removed several years ago, but there was evidence of an old well and of a cabin. Also along the course of

WATER SUPPLY REPORT - WESTERN SHOSHONE RESERVATION - NEVADA

Blue Creek there still remained portions of several earth and rock dams which had been placed across the creek channel, to cause the stream to overflow its banks and flood the adjoining hay land. This tract is now returning to its natural state (sage brush) and in a few years, if the present conditions continue, all evidence of a hay meadow will have been obliterated. An occasional spear of grass commonly growing in a wild hay meadow was visible and there is no doubt that with the water which formerly came down the course of Blue Creek that these lands would again become productive. There is no doubt that the abandonment of these farms was caused by the loss in productivity which can not be attributed to anything excepting shortage of water, due to the holding back of the flood waters of Blue Creek and Little Blue Creek in the reservoirs on these streams.

Statement of Guy Manning (Indian) on former operations by Indians on Blue Creek.

"Bob Roberts, harvested approximately 25 tons of hay, about 19 or 20 years ago and abandoned the place about 2 years later on account of lack of water for irrigation, due to the construction of the "Sewell" reservoir.

Jimmie Thomas, harvested approximately 50 or 60

tons of hay, and abandoned his place 2 Or 3 years later than Roberts, hoping that water would again come down Blue Creek as formerly. Thomas had, at the time he lived on Blue Creek about 150 head of cattle and as a consequence of shortage of hay, a part of his herd died from starvation and he was forced to see the balance of his herd at a sacrifice, and was, at the time of abandonment of his place, practically bankrupt.

Billie Bell, who lived between Roberts and Thomas, left at practically the same time and for the same reason. In addition to the above 3 residents, who had their places fenced and harvested hay therefrom, hay was cut outside the fences on the open range, but that all ceased with the construction of the above named reservoir."

Although the Blue Creek Land & Livestock Company either own or lease the land along Blue Creek and to the reservation line, no hay was cut in 1929 to within a point approximately 2 miles north of the reservation line. The land adjacent to Blue Creek from this point to the reservation line is a grass meadow but evidently for the lack of water it did not produce grass sufficient to justify the expense of mowing, although in former years a portion of this area has been mown over.

WATER SUPPLY REPORT - WESTERN SHOSHONE RESERVATION - NEVADA

It is very evident that it is the intention of the Blue Creek Land & Livestock Company to increase the area of their meadow land, for they are now compelled to buy considerable hay for the wintering of the stock now owned by them, and the fact that they expended approximately $1800 in the enlargement and reconstruction of the Little Blue Creek reservoir.

It is therefore apparent that the adjudication of the waters of Blue Creek and tributaries should no longer be delayed. Providing the rights of those now using all of the waters of Blue Creek above the reservation are upheld by the Court, the only relief left for the Indians would be the development by the Government of a storage reservoir.

Enclosure No. 6

MAP TO LARGE TO SCAN

Enclosure No. 7

55 7009

MAP TO LARGE TO SCAN

Enclosure No. 8

55 7009

September 21, 1971

I have resided on the Duck Valley Reservation most of my life and was acquainted with the people who had been living and ranching in the Blue Creek area. I have observed the area for many years and noticed the edge of the meadows drying up since the abundance of water has gradually diminished over the years.

Blue Creek used to flow year around but since several dams and spreaders have been built North of the Reservation it now dries up during the summer.

Several Indian families including Shorthair John, Jimmie Thomas, Bob Roberts, Hugh Thomas and Henry Thomas used to live and ranch in the area during the early 1900's where they were able to raise livestock and cut hay for winter feed. As the water flow decreased some of the hay meadows dried up and livestock water was not sufficient. These families were forced to relocate farther south on the East Fork of the Owyhee River drainage. There is no one living on the Blue Creek drainage at the present time.

The Indians have continued to cut hay where possible, most of the time, but the best hay areas are much smaller and sagebrush and other undesirable plants are crowding into the meadows.

Spring run-offs fills the lower area each year, but is shallow and mostly disappears in early summer. Many waterfowl nest and frequent the area, especially in spring, fall and winter when the water level is highest.

Livestock are grazed year round on the area with the principle use in the spring and late fall.

During the 1930's the CCC built five spreader dams on the main Blue Creek drainage. These structures were small and have been damaged by spring run-off, however, most of them continue to function to a dgree.

Grant Kelly, Ned Pahty, Chief Pahty, Hebbert Egan, Simon Bean, Hugh Thomas and Henry Thomas used to ranch and reside in the Blue Creek area North of the Reservation which is now part of Riddle Ranches.

Webster Thomas Webster Thomas

55 709

Enclosure No. 9

Water Supply & Uses in the Owyhee River Basin, Owyhee County, Idaho - Daniel Sobol, Dec, 1964
(Hydrologist, Idaho -19- Bur. Rec.)

BLUE CREEK

Blue Creek is a southward-flowing tributary of the Owyhee River. Blue Creek drains about 300 square miles of the incised plateaus of the southeastern part of the area.

Water from Blue Creek is used extensively by Riddle Ranches, Inc. to irrigate about 1500 acres. The system includes ten reservoirs with combined capacity of about 15,000 acre-feet. These reservoirs are compiled on the following table:

TABLE 6. Reservoirs on Riddle Ranch, Owyhee County, Idaho

Reservoir	Location	Capacity in acre-feet	Remarks
Alder	Sec. 5, T15S, R4E	2000	Filled about three times each year. Water diverted from Mary's Creek, a tributary of the Bruneau River for use along Squaw Creek
Paine	Secs. 27 and 34, T13S, R3E	1200	
Little Blue	Secs. 16 and 17, T13S, R3E	3000	Filled four years out of five
Big Blue	Secs. 2 and 11, T13S, R2E	6000	Filled four years out of five
Little Fromm	Sec. 22, T13S, R2E	500	
Rodeo	Sec. 22, T13S, R2E	500	
Harris Creek	Sec. 21, T13S, R2E	500	
Shoo Fly	Secs. 30 and 31, T13S, R2E	1000	Filled every year
Upper Shoo Fly	Sec. 22, T13S, R1E	1000	Filled about four years out of five
Indian Creek	Sec. 28, T14S, R3E	300	Off-channel reservoir filled every year

Enclosure No. 1

55 7009

DUCK VALLEY RESERVATION.

[Partly in Idaho.]

EXECUTIVE MANSION, *April 16, 1877.*

It is hereby ordered that the following-described tract of country, situated partly in the Territory of Idaho and partly in the State of Nevada, be, and the same hereby is, withdrawn from the public domain, to wit: Commencing at the one hundredth milepost of the survey of the north boundary of Nevada; thence due north to the intersection of the north boundary of township 16 south of Boise base line in Idaho; thence due west to a point due north of the one hundred and twentieth milepost of said survey of the north boundary of Nevada; thence due south to the ninth standard parallel north of the Mount Diablo base line in Nevada; thence due east to a point due south of the place of beginning; thence north to the place of beginning. And the above-named tract of land is hereby set apart as a reservation for the Western Shoshone Indians, subject to such modifications of boundary as a location of limits shall determine.

R. B. HAYES.

EXECUTIVE MANSION, *May 4, 1886.*

It is hereby ordered that the following-described lands in the Territory of Idaho, viz: Township 15 south, ranges 1, 2, and 3 east of the Boise meridian be, and the same are hereby, withdrawn from sale and settlement and set apart as an addition to the Duck Valley Reservation for the use and occupation of Paddy Caps band of Pi-Utes and such other Indians as the Secretary of the Interior may see fit to settle thereon: *Provided, however*, That any tract or tracts of land within said townships the title to which has passed out of the United States, or to which valid homestead or preemption rights have attached under the laws of the United States prior to this date, are hereby excluded from the operations of this order.

GROVER CLEVELAND.

THE WHITE HOUSE, *July 1st, 1910.*

It is hereby ordered that the following-described lands in the State of Idaho, viz: All that part of T. 15 S., R. 4 E., B. M., lying and being west of a line formed by extending the east boundary line of the Duck Valley Indian Reservation through the said township, be, and the same are hereby, withdrawn from settlement, entry, and sale, and set apart as an addition to the Duck Valley Indian Reservation: *Provided*, That nothing herein shall affect any existing valid rights of any person to the lands described.

WM. H. TAFT.

MOAPA RIVER RESERVATION.

[Formerly called Muddy Valley Reserve.]

EXECUTIVE MANSION, *March 12, 1873.*

Agreeably to the recommendation contained in the foregoing letter of the Secretary of the Interior of this day, the following-described lands in the southeastern part of Nevada are hereby set apart for

55 7009

TAPE #I [redacted]

11-23-71

Record

NAME	TAPE READING	SUBJECT
[redacted]	000 - 003	Introduction
Stene	007	Opening
Ringert	044	Presentation
Greene	064	Reply
Ringert	076	
Greene	086	
Ringert	093	
Greene	099	exhibit offered P1 P2
Ringert	126	" exhibits
Stene	132	denied motion
Peter Jackson (W.R.	263	exam
" " (Greene	340	Cross - exam
" " (CSA	347	" "
" " (Greene	378	" "
" " (W.R.	400	" "
" " (Greene	408	" "
Keith Anderson (W.R.	465	exam (exhibit A5 to A15 offered)
(interruptions (Greene ½")	↑	
" " (CSA	468	cross exam
" " (W.R.	600	exam
" " (Greene		cross exam

(Stene 617)

(cont'd.) $500.00 fee

Keith Anderson (Greene cross exam

(Phil 623)

628 End

TAPE #1 side 2 11-23-71

Wm Ringert / Y. 000 - 014 discussion

K Anderson / Y. 029 "

K. Anderson (Greene 159 cross-exam

W.R 107

K. Anderson (CSA 160 cross-exam

167 conclusion of evidence

Steve 172

James H

Mr. Stephens (Greene ~ interruption (W.R. exam

(184 Ringert + Phil)

189 blank spell am getting tired

" " 275 exam

55 7009

11-24-71

CSA	276	opening
Green, CSA, Ringert		P1 + P2
		Y/ Stephens
		testimony
Phil		overruled
		Jan 31 to file brief
	305	15 days to respond
Stephens (Greene	long pause before 336	exam P5 P6
		[illegible]
Ringert	355	O/R Y/ P6
Stephens / W.R	360	cross exam
Stephens [redacted] / CSA	383-391	" "
" / Phil	395	
" / Greene	406	exam
" / W.R	416	cross-exam
" / Greene + W R	530	P15-21
	[redacted] 538	P22-23
Barnett / Greene	562	P-7
Mr Stevens recalled [redacted] to clarify matters & allow him to be excused from the hearing	Noon	
Stephens / W.R	580	P17
Barnett / Greene	614 end of tape	24 thru 35 Picture ~~Photos~~ - April - 71

55 7009

Watch for long pauses!

Tape 2 - Side One

Barnett/Greene	000 - 154?	Lectures -
WR 012		
[redacted]		
WR 062		
WR 124		
WR 135	154	
Green	154 - 160	Books ??
CSA		
Phil		
Ringgit		
Barnett/Green	160 - 176	
Ringgit		
CSA 173		
Barnett/W.R	[redacted] 208	Cross talk
" (Greene	215	
" (W.R.	226	
" (CSA	232	
Cotton (Greene	232 to ↓	introduced P36 adm. and gone over! very goodly
CSA 263		
WR 266		
WR 370 -		
WR 380 -		
441 - WR	374 - Recess	
446 - CSA		
456 - KA	422 -	P37 intro
	461	36-37 adm

Cotton / Ringert	[redacted]	Cross exam
522 Greene 526 pause	526	
Cotton / Greene	533	
532 WR 533 CSA 535 Greene	542	
[redacted] CSA to Jackson	546	
Cotton / WR	651	
CSA to Cotton	553	
Jackson / WR 562 Green	565	
Anderson / WR	573	A16-17
Ringert - Closing Greene - "	579	
	587 THE END	

55 7009

Exhibits

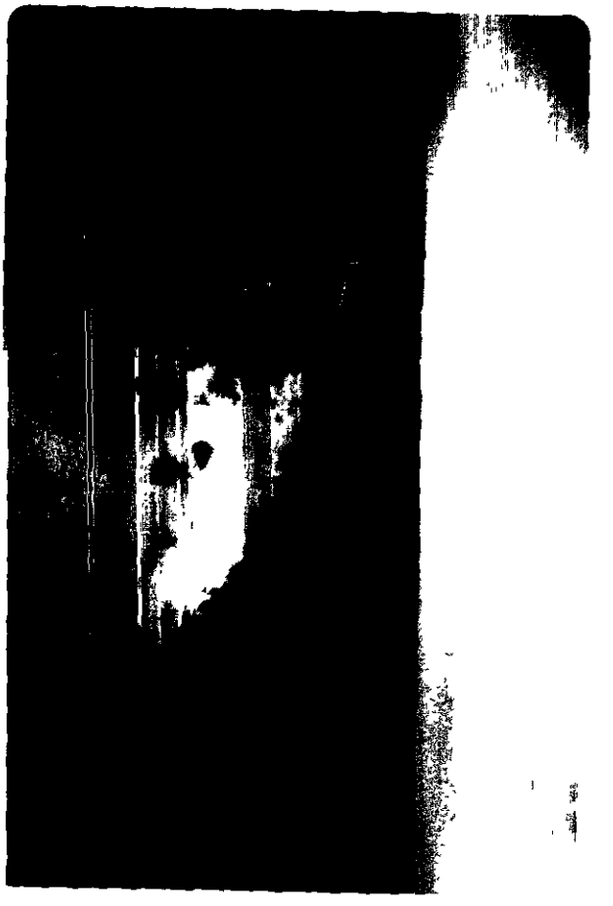
No.	Offered	Admitted
P1	Copies of Dept. correspondence	No
P2	Copy of Mem Dec 55-7002	No
P3	Large Map	Yes
P4	Small map	withdrawn
P5	Small map	Yes
P6	Small map	Yes
P7 thru P14	Aerial Photos	Yes
P15 thru P21	Aerial Photos	Yes
P22	Report	lodged
P23	Report	lodged
P24 thru P35	Pictures	Yes
P36 (5 pages)	Project Records	Yes
P37	Hydrograph	Yes ■

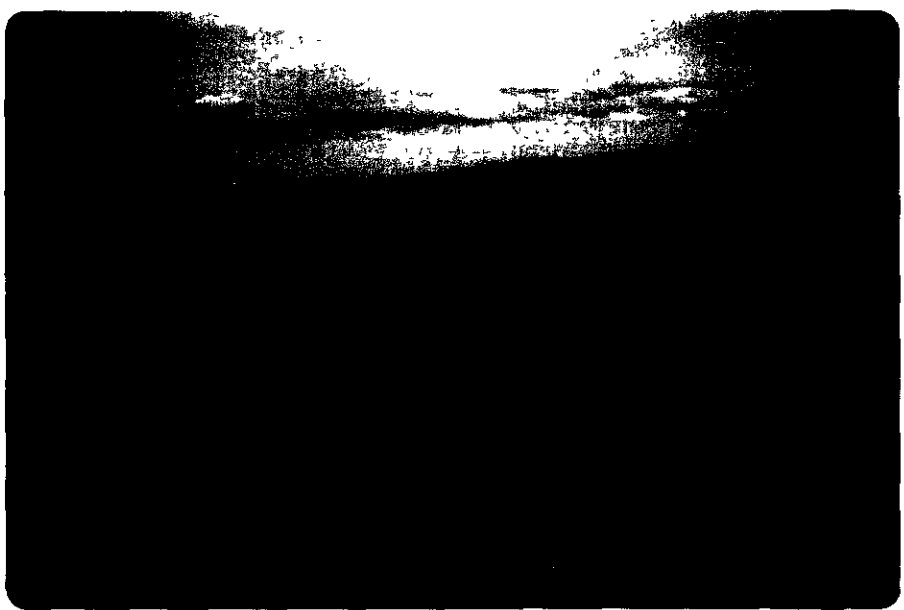
~~* [illegible] before 1947~~

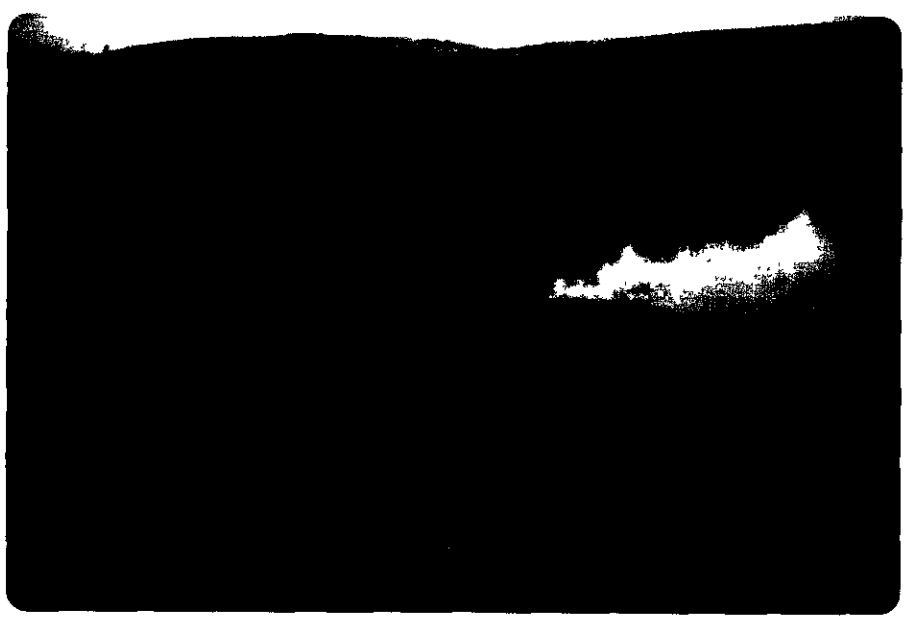
55 7009

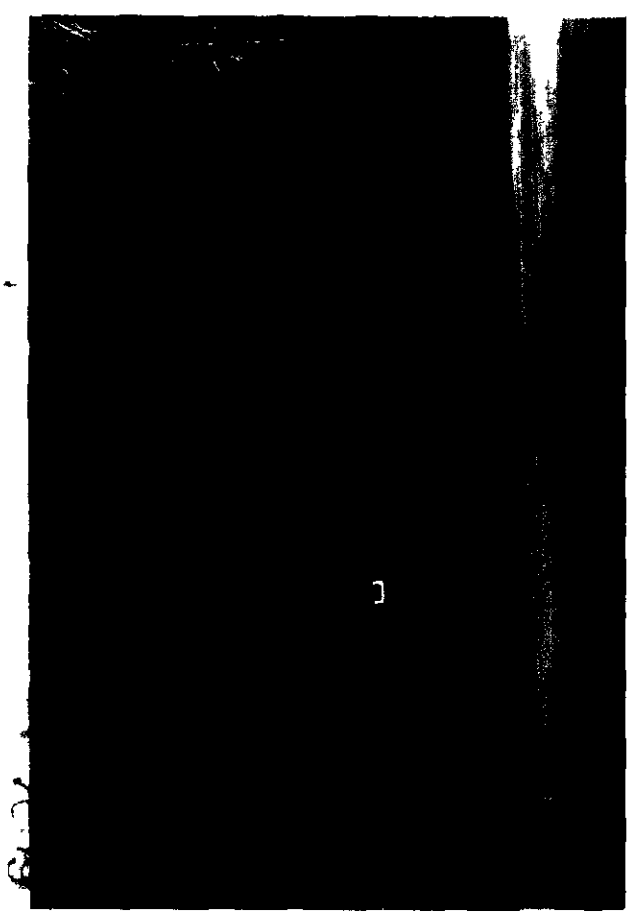
Exhibits

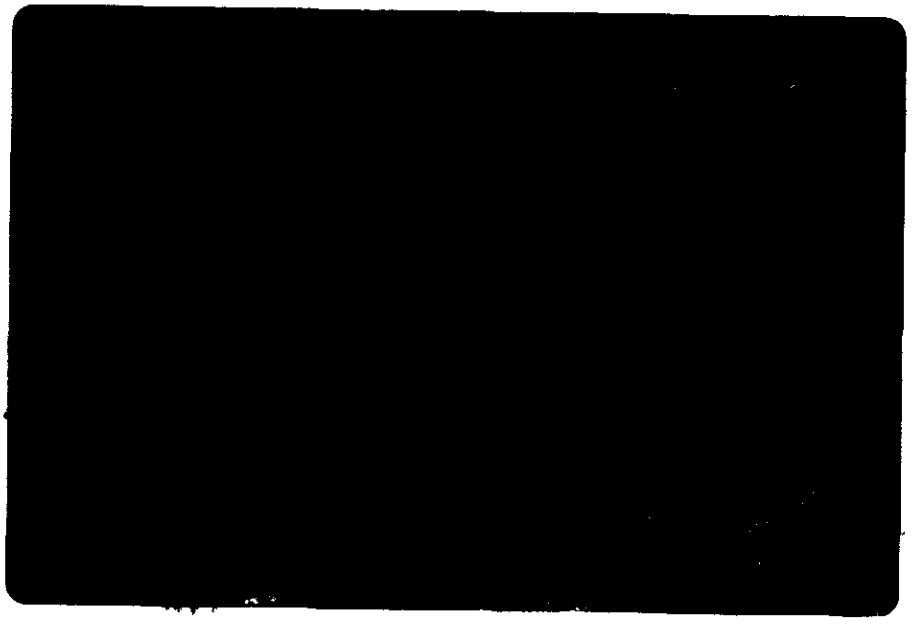
No	Offered	Admitted
A1	Map	Yes
A2	Picture	Yes
A3	"	Yes
A4	"	Yes
A5	Large Map	Yes
A6	Schematic Diagram	Yes
A7 & 7A (2 pages)	Water Data Summary	Yes
A8	Chart	Yes
A9	"	Yes
A10 & 10A (2 pages)	Diversion Table	Yes
A11	Chart (bar-graph)	Yes
A12	Copy of Sec. of I.C.	Yes
A13	Chart	Yes
A14	Chart	Yes
A15	Summary of Haldeman Storage	Yes
A16	Map	Yes
A17	Map	Yes











Irrigable Acreage of Districts in Owyhee Projects

	Gravity	Pumped	Gravity or Pumped
Owyhee District	49,543		
Ontario-Nyssa District			5,938
Advancement District			700
Payette-Oregon Slope District		4,659	
Crystal District		1,280	
Bench District		2,342	
Slide District		1,144	
Old Gem District	779	14,572	5,392
New Gem District	12,835		
Ridgeview District	6,174		
Owyhee Ditch Co.	3,960		10,000
	73,291	23,997	22,030

Total acreage 119,318

36

11-24-11 dw

55 7009

Live storage

Project Records

OWYHEE RESERVOIR

Year	Computed Inflow Per Calendar Year USGS*	Amount Spilled	Minimum Storage And Date		Maximum Storage And Date	
1947	364,400	000	10-10	237,150	4-20	636,610
1948	415,000	000	9-30	223,710	5-13	488,360
1949	620,000	000	10-6	319,610	6-7	603,120
1950	596,800	000	10-9	336,880	5-25	656,170
1951	796,400	325,046	10-9	382,600	2-20	715,000
1952	1,711,000	1,074,223	10-15	434,310	3-18	715,000
1953	419,100	000	10-15	362,890	4-10	579,580
1954	214,000	000	10-16	125,220	4-6	537,020
1955	341,600	000	10-10	55,830	5-14	357,730
1956	792,000	000	10-10	393,150	6-4	704,590
1957	865,500	451,328	10-10	402,840	3-4	715,000
1958	949,700	436,150	10-15	426,730	3-2	715,000
1959	140,400	000	9-19	165,550	4-8	532,570
1960	454,000	000	10-11	157,100	4-18	537,020
1961	234,200	000	10-1	30,140	4-18	361,950
1962	521,100	000	10-13	160,290	6-9	418,200
1963	424,300	000	10-12	225,760	6-28	424,210
1964	797,900	000	10-17	441,750	5-11	698,900
1965	809,500	483,778	10-13	500,810	1-6	715,000
1966	203,700	000	10-15	255,430	4-6	656,900
1967	472,300	000	10-13	319,340	6-20	548,780
1968	182,600	000	10-12	121,530	4-8	463,120
1969	1,056,000	323,053	10-15	423,510	5-13	719,860
1970	633,400	78,351	10-15	473,190	5-16	717,910

55 7009

* Measuring Station
1947-50 8 mi. S.W. of Watson

1951-to date .5 mi. upstream from Jordan Creek
2.5 mi. north of Rome

	① Used from Reservoir N & S Canal A.F.	② Down the River Owyhee Ditch A.F.	③ (①+②) Total From Reservoir by N & S Canal & Owyhee ditch	④ Pumped N & S Board	⑤ Pumped Owyhee Ditch	⑥ (④+⑤) Total Pumped	⑦ (①+④) Total Gravity & Pumped N & S Board	⑧ (③+⑥) Total Gravity & Pumped N & S Bd. & Owyhee Ditch
1947	+466,555	45,772	512,327	+134,578	12,930	147,508	601,133	659,835
48	+392,393	14,371	406,764	148,054	40,981	189,035	540,447	595,799
49	+466,820	30,850	497,670	154,980	32,073	187,053	621,800	684,723
50	+466,305	46,709	513,014	135,543	9,967	145,510	601,848	658,524
51	+464,248	*36,822	501,070	+132,507	4,725	137,232	596,755	638,302
52	499,117	*22,682	521,799	137,504	3,705	141,209	636,621	636,621
53	477,698	70,344	548,042	137,289	--	137,289	614,987	685,331
54	482,337	30,017	512,354	163,951	30,930	194,881	646,288	707,235
55	391,695	14,795	406,490	160,804	38,498	199,302	552,499	605,792
56	469,022	58,539	527,561	160,558	--	160,558	629,580	688,119
57	446,084	*39,834	485,918	137,219	--	137,219	583,303	623,137
58	456,210	*40,562	496,772	136,489	--	136,489	592,699	633,261
59	420,099	27,599	447,698	155,592	31,279	186,871	575,691	634,569
60	441,620	34,491	476,111	167,068	33,011	200,079	608,688	676,190
61	374,031	26,523	400,554	182,575	42,319	224,894	556,606	625,448
62	403,117	31,830	434,947	159,971	32,695	192,666	563,088	627,613
63	382,566	28,999	411,565	163,027	35,458	198,485	545,593	610,050
64	403,077	48,305	451,382	145,243	7,880	153,123	548,320	604,505
65	442,050	*55,965	498,015	133,446	2,858	136,304	575,496	634,319
66	465,700	38,256	503,956	185,094	31,072	216,166	650,803	720,122
67	431,301	36,414	467,715	154,165	21,929	176,094	585,466	643,809
68	395,740	25,323	421,063	168,046	34,490	202,536	563,786	623,599
69	453,096	*38,811	491,907	141,925	5,292	147,217	595,021	639,124
70	453,495	*43,372	496,867	149,293	8,018	157,311	602,788	654,178

55 7019

*Delivery not counted while dam is spilling
+From Owyhee Project History

	1. Gravity To Gem	2. Pumped for Ont.-Nyssa	3. Pumped for Owyhee Ditch	Pumped to save Reservoir Water in years of low or anticipated low storage 4. Gem Pumps	5. Ontario Nyssa	6. Owyhee Ditch	(4+5+6) 7. Total Res. Water Saved
47	35,485	4,708	12,930				
48*	33,028	19,469	40,981	5,512	12,773	40,981	59,266
49*	33,827	12,977	32,073	4,713	6,281	32,073	43,067
50	28,558	4,082	9,965				
51	38,608	2,611	4,725				
52	44,217	4,847	3,705				
53	39,863	6,595	9,554				
54*	37,107	20,644	30,930	1,433	13,948	30,930	46,311
55*	30,301	22,951	38,498	8,239	16,255	38,498	62,992
56	41,209	9,834	-0-				
57	41,230	7,807	-0-				
58	49,936	7,982	-0-				
59*	34,719	15,481	31,279	3,821	8,785	31,279	43,885
60*	42,286	20,940	33,011	(3,746)	14,244	33,011	43,509
61*	22,234	25,186	42,319	16,306	18,490	42,319	77,115
62*	28,283	19,301	32,695	10,257	12,605	32,695	55,557
63*	22,371	21,691	35,458	16,169	14,995	35,458	66,622
64	28,714	10,290	7,880				
65	38,531	3,737	2,858				
66*	34,205	19,088	31,072	4,335	12,392	31,072	47,799
67*	28,945	13,789	21,929	9,595	7,093	21,929	38,617
68*	26,983	21,836	34,494	11,557	15,140	34,494	61,191
69	37,310	6,573	5,292				
70	38,816	11,288	8,018				

* Short or anticipated short water years

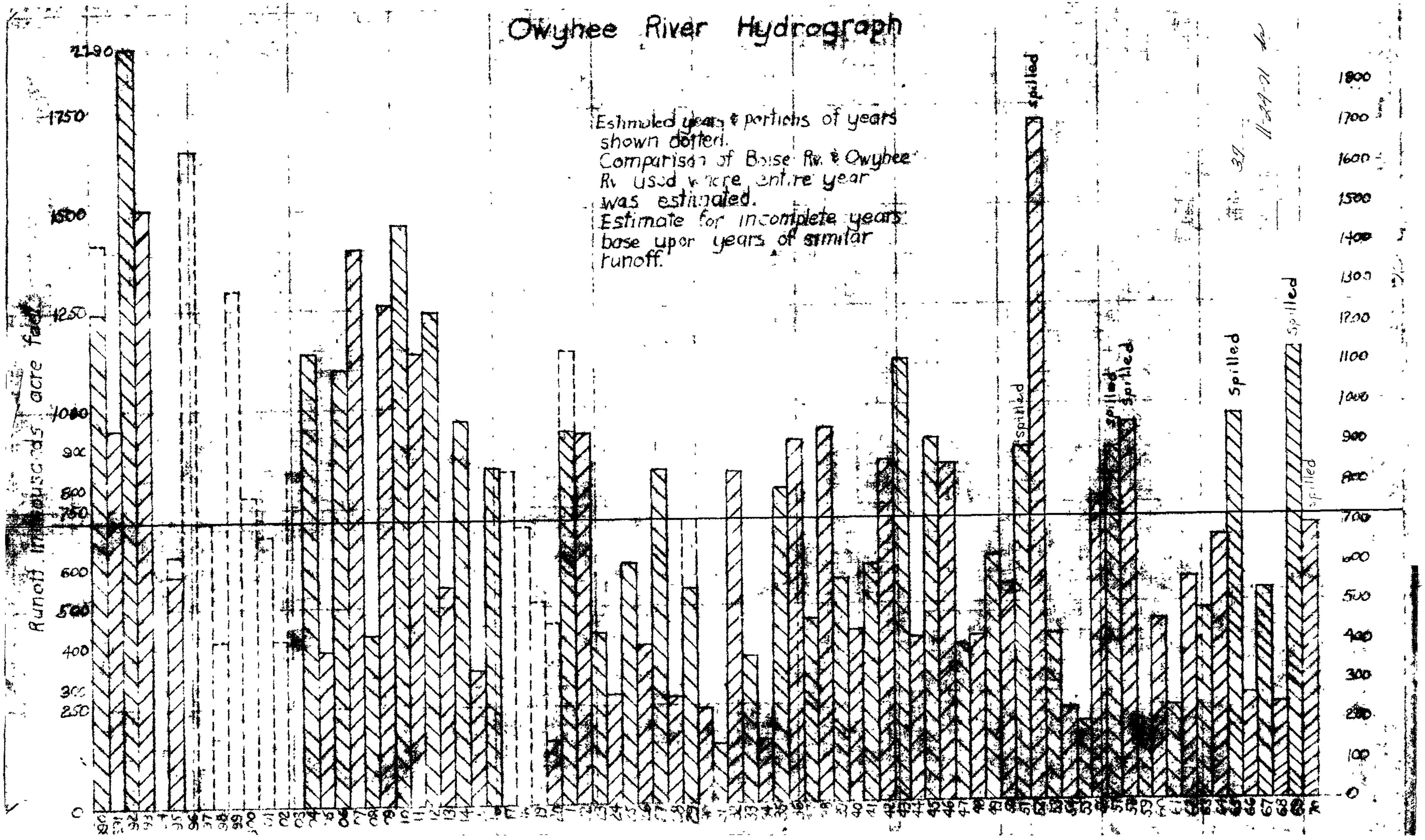
Col. 1. Owyhee water used on pump lands (A.F.)
2. A. F. pumped by Ontario-Nyssa pumps
3. A. F. pumped by Owyhee Ditch pumps
4. A. F. saved by additional pumping by Gem Pumps=average of Owyhee water used in years of sufficient reservoir storage (38,540) minus actual used that year, a year of short or anticipated short Owyhee water.
5. A. F. pumped minus average supplimental pumped in years of sufficient Owyhee water (6696 a.f. ave.)
6. A. F. actually pumped to save decreed water (41,880 a.f.) and their share of reservoir storage (2.937%).

WATER USE ASSUMING NO CARRYOVER STORAGE IS USED

				(3-1)	3 95,321	1 95,321
	(1.)	(2.)	(3.)	(4.)	(5.)	(6.)
	Inflow A.F. 1-1 to 12-31 U.S.G.S.	Shortage to Fill A.F. 715,000-(1)	Water Used A.F.	Carryover Useage A.F.	Actual A.F./Ac. Used	Use if Only Inflow was Used A.F./Ac.
47	364,400	350,600	512,327	147,927	5.37	3.82
48	415,000	300,000	406,764	---	4.27	4.27
49	620,000	95,000	497,670	---	5.22	5.22
50	596,800	118,200	513,014	---	5.38	5.38
51	796,400		501,070	---	5.26	5.26
52	1,711,000		521,799	---	5.47	5.47
53	419,100	295,900	548,042	128,942	5.75	4.40
54	214,000	501,000	512,354	298,354	5.38	2.25
55	341,600	373,400	406,490	64,890	4.26	3.58
56	792,000		527,561	---	5.53	5.53
57	865,500		485,918	---	5.10	5.10
58	949,700		496,772	---	5.21	5.21
59	140,400	574,600	447,698	307,298	4.70	1.47
60	454,000	261,000	476,111	22,111	4.99	4.76
61	234,200	480,800	400,554	166,354	4.20	2.46
62	521,100	193,900	434,947	---	4.56	4.56
63	424,300	297,700	411,565	---	4.32	4.32
64	797,900		451,382	---	4.74	4.74
65	809,500		498,015	---	5.22	5.22
66	203,700	511,300	503,956	300,256	5.29	2.14
67	472,300	242,700	467,715	---	4.91	4.91
68	182,600	532,400	421,063	238,436	4.42	1.92
69	1,056,000		491,907	---	5.16	5.16
70	633,400	81,600	496,867	---	5.21	5.21

(6) Use if only inflow was used or actual used if (1) is greater than (3) Years underlined that would be short of water if carryover was not used.

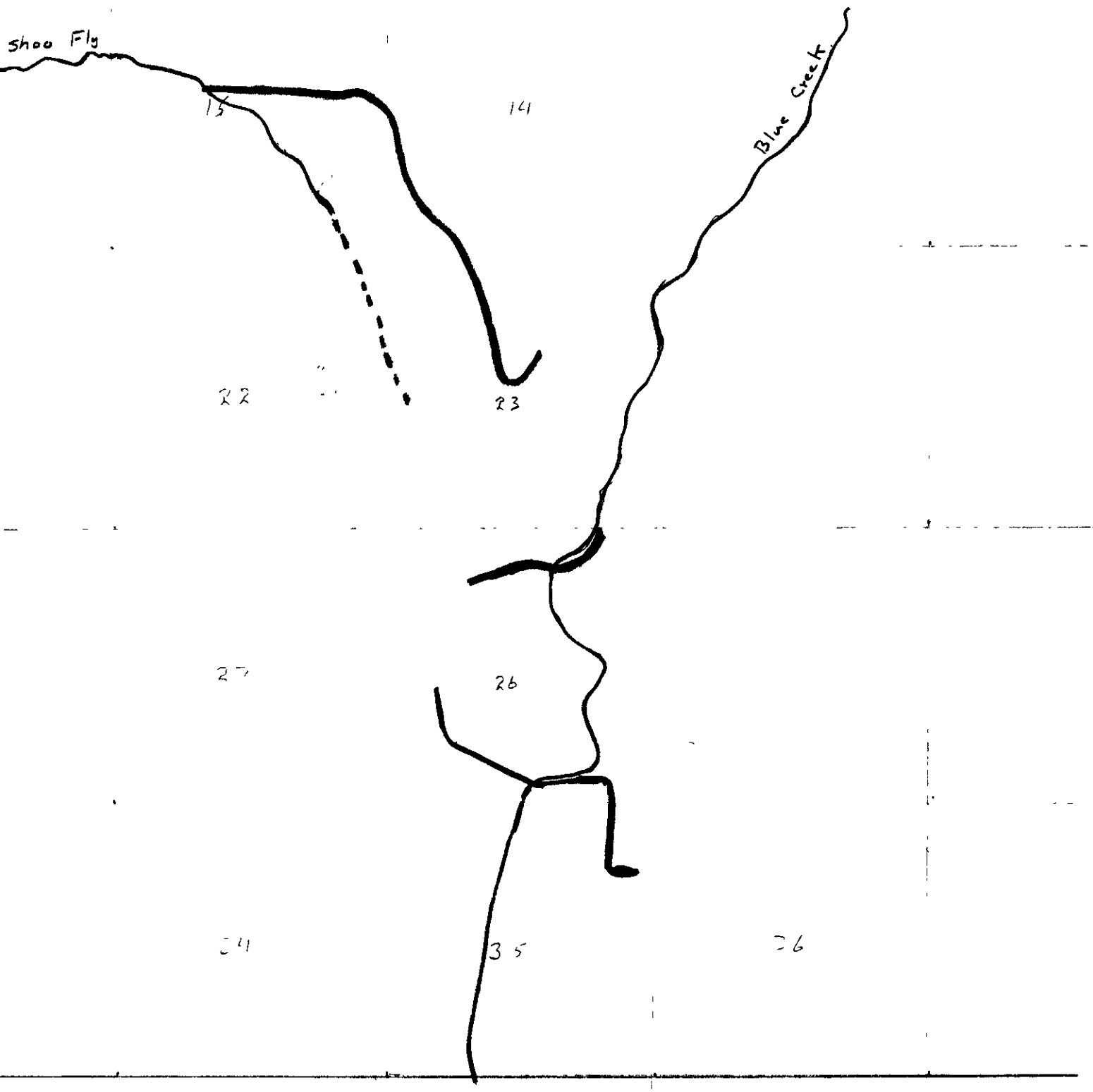
3 Actual Acres served by Owyhee gravity water



Owyhee River Hydrograph
Estimated years & portions of years shown dotted.
Comparison of Boise Rv. & Owyhee Rv. used where entire year was estimated.
Estimate for incomplete years base upon years of similar runoff.
Runoff in thousands acre feet
spilled
spilled
spilled
spilled
Spilled
spilled
spilled

Department of Water Resources
APPLICANT'S
Exhibit 1
Date Admitted 11-23-71

14 S 2 E



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Department of Water Resources
APPLICANT'S
Exhibit 15
Date Admitted 11-23-71

Owyhee Reservar, Oregon

Summary of Holdover Storage

1. Reservoir first filled May 7, 1936
2. Reservoir has filled & spilled in 18 of 36 years
3. Of the 715,000 AF reservoir contents October 1, 1971 there were 308,000 AF of active storage above the diversion tunnels to the North & South canals
4. The "age" of this 308,000 AF active holdover storage is:

   A. 30,000 AF has been in the reservoir since May 7, 1936 (35½ yrs old)

   B. 94,400 AF additional has been in the reservoir since mid-February 1962 (nearly 10 yrs old)

   C. 183,600 AF remaining has been in the reservoir since January 31, 1969 (nearly 2 yrs old)

Source of Data: Published records of reservoir contents, USGS Annual Water-Supply Papers

Department of Water Administration
APPLICANTS
Exhibit 14
Date Admitted 11-23-71

Comparative Crop Yields ("Wet" vs. "Dry" Years)

YEAR	1952 (wet)	1955 (dry)
AREA	Gem Irrig. Dist.	Gem & Ridgeview Ir. Dists.
WATER SUPPLY (AF/Ac)	5.832	5.381
Barley (Bu/Ac)	60	54
Corn (Bu/Ac)	57	58
Mixed Grain (Bu/Ac)	52	57
Oats (Bu/Ac)	64	54
Wheat (Bu/Ac)	49	56
Alfalfa Hay (Ton/Ac)	4.2	3.9
Irrig. Pasture (AUM/Ac)	6	10
Sugar Beets (Ton/Ac)	21.1	24.1
Potatoes-early (Bu/Ac)	473	447

Data from Crop Census reports in Owyhee Project History, 1952-56, on file with U.S. Bureau of Reclamation

1952- Largest inflow to reservoir of record (1935-70)

Diversion to Gem Dist. 5.832 AF/A, to S. Division 6.146 AF/A

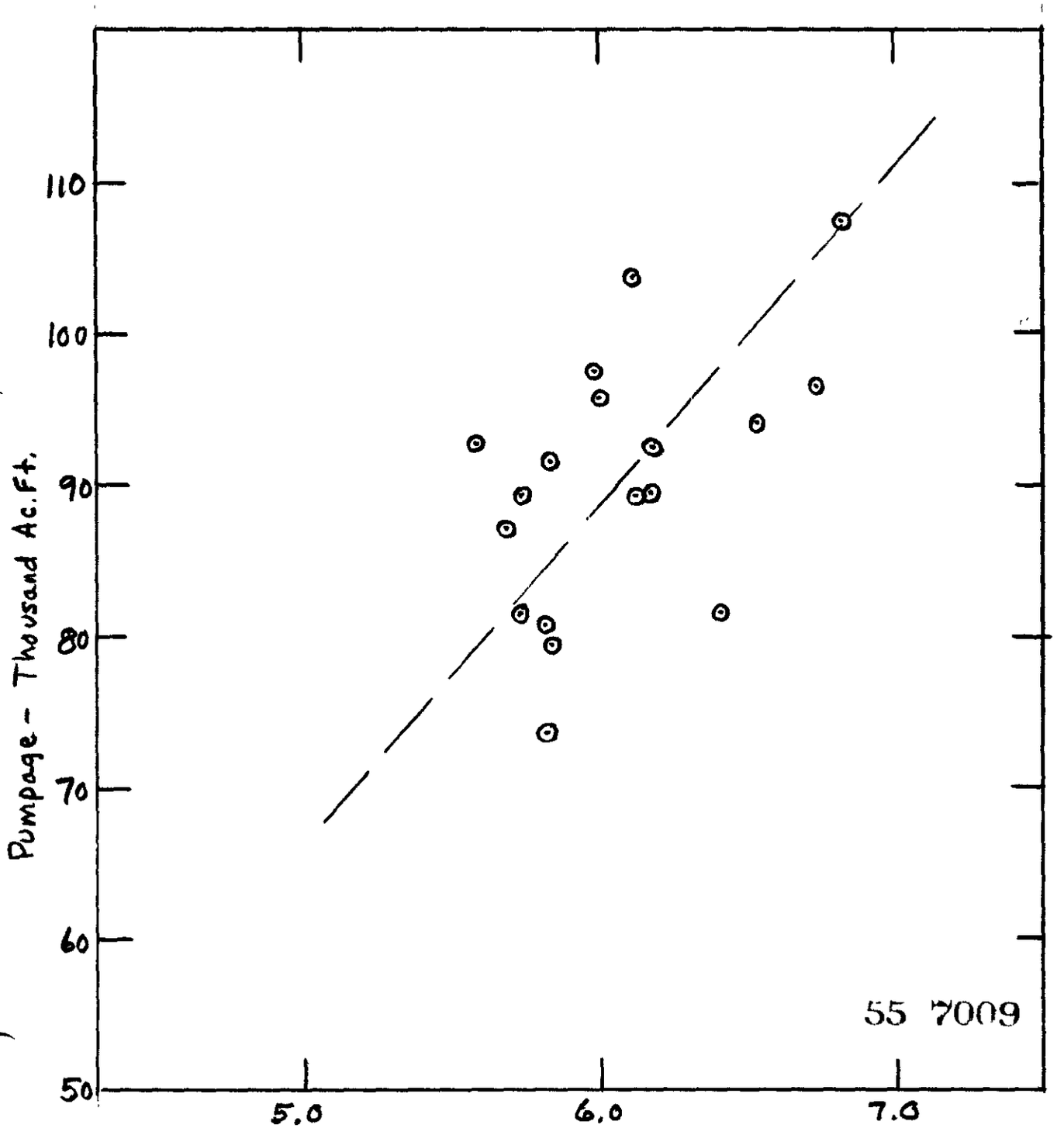
1955- Irrigators took voluntary shortages to have holdover for next year

Diversion to Gem Dist. 5.686 AF/A, to S Division 5.381 AF/A

Department of [illegible]
APPLICANT'S
Exhibit 13
Date Admitted 11-23-21

Gem Irrigation District
(Owyhee Project)

Snake River Pumpage related to Diversions



Total Diversion (Ac.Ft. per Irrigable* Acre) to District

*- Diversion per irrigated acre is higher

Department of Water Administration
APPLICANT'S
Exhibit 12
Date Admitted 11-23-71

Sec. 42-202. APPLICATION TO APPROPRIATE WATER - CONTENTS - FILING FEES - DISPOSITION OF FEES - RECORD OF RECEIPTS.

For the purpose of regulating the use of the public waters and of establishing by direct means the priority right to such use, any person, association or corporation hereafter intending to acquire the right to the beneficial use of the waters of any natural streams, springs or seepage waters, lakes or ground water, or other public waters in the state of Idaho, shall, before commencing of the construction, enlargement or extension of the ditch, canal, well, or other distributing works, or performing any work in connection with said construction or proposed appropriation or the diversion of any waters into a natural channel, make an application to the Department of Water Administration for a permit to make such appropriation. Such application must set forth

1. The name and post office address of the applicant.

2. The source of the water supply.

3. The nature of the proposed use or uses and the period of the year during which water is to be used for such use or uses.

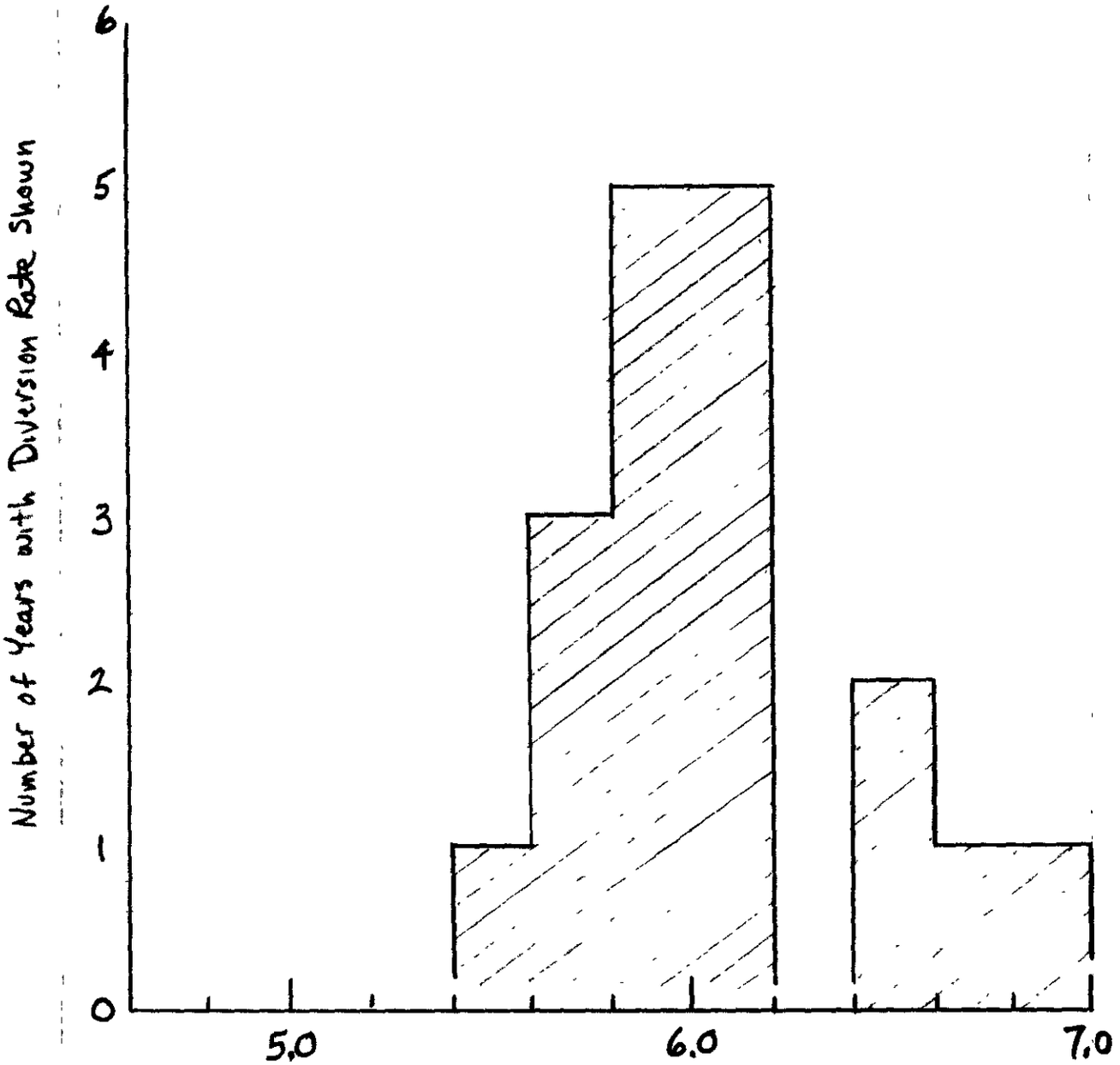
4. The location of the point of diversion and description of the proposed ditch, channel, well or other work and the amount of water to be diverted and used

5. The time required for the completion of construction of such works and application of the water to the proposed use.

Whenever it is desired to appropriate and store flood or winterflow waters, the applicant shall specify in acre feet the quantity of such flood or winterflow waters which he intends to store, but for irrigation purposes he shall not claim more than five (5) acre feet of water per acre of land to be irrigated, nor, in the event of the filing of an application claiming both normal flow and flood water and winterflow water, shall the total amount of water claimed exceed the equivalent of a continuous flow during the irrigation season of more than one (1) cubic foot per second for each fifty (50) acres of land to be irrigated, or more than five (5) acre feet of stored water for each acre of land to be irrigated

The application shall be accompanied by a plan and map of the proposed works for the diversion and application of the water to a beneficial use, showing the character, location and dimensions of the proposed reservoirs, dams, canals, ditches, pipe lines, wells and all other works proposed to be used by them in the

Department of Water Administration
APPLICANT'S
Exhibit 11
Date Admitted 11-23-71



Gem Irrigation Dist. (Owyhee Project)
Diversion Rates - Ac. Ft. / Ac.*
(1952-1970)

*- Per Irrigable Acre (rates higher if per irrigated acre)

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Owyhee Project
(Diversions – Ac.Ft. per Irrigable Acre)

Year	Gem.Irrig Dist.	S.Division	N.Division	Project Total
1952	5.832	6.146	6.139	6.142
53	5.735	6.023	5.757	5.857
54	6.115	6.168	6.134	6.147
55	5.686	5.381	5.179	5.255
1956	6.518	6.229	5.832	5.982
57	5.838	5.625	5.492	5.542
58	6.402	5.573	5.687	5.644
59	6.185	5.839	5.266	5.482
60	6.740	6.177	5.566	5.796
1961	6.118	5.603	5.118	5.300
62	5.829	5.544	5.252	5.362
63	5.588	5.544	5.102	5.195
64	5.730	5.375	5.129	5.221
65	5.805	5.580	5.420	5.480
1966	6.809	6.491	5.997	6.184
67	6.000	5.712	5.472	5.563
68	5.983	5.756	5.115	5.357
69				
70	6.178	6.035	5.541	5.727
1971				

Comparison of Diversions – Irrigable Acres vs. Irrigated Acres

Year	Division	AF/Irrigable Ac.	AF/Irrigated Ac	Farm Delivery AF/Irrigated Ac
1961 1/	North	5.118	5.530	
1962 2/	South	5.544	5.851	5.01
1964 3/	South	5.375	5.64	4.63

Source of Data: Statements by Boards of Control in Annual USBR Project History (copy for 1970 attached as example)

1/ 1961 History, p. 21 and 1962 History, p. 20

2/ 1962 History, p. 30 and 1963 History, p. 51

3/ 1964 History, p. 70 and 1965-66 History, p. 41

Department of Water Administration
APPLICANT'S
Exhibit 10
Date Admitted 11-23-71

We, the undersigned Managers of the Boards of Control of the Owyhee Project, herewith submit the following report on the distribution of power charges and gravity water supply for the year 1970 as stipulated in Article 22(c) (1)(i) of the Amendatory Repayment Contract.

Art. 22 (c) (1) (i) Project wide per-acre of delivery of water

Delivered to South Canal	150,290 acre-feet)	39,752 acres
Delivered to Gem Pump Canals	89,609 acre-feet)	6.0348 A.F. per acre
Sub-total South Division	239,899 acre-feet	
Delivered to North Canal	303,205 acre-feet)	
Delivered to Dead Ox Pump Canals	47,364 acre-feet)	65,497 acres
Delivered to Ontario-Nyssa Pump Canal	11,288 acre-feet)	5.5405 A.F. per acre
Delivered to Kingman Pump Lateral	1,032 acre-feet)	
Sub-total North Division	362,889 acre-feet	
Total Project Diversions	602,788 acre-feet	

602,788 acre-feet + 105,249 acres = 5.7272 acre-feet per acre

Power Distributions

Where Used	KW-Hours	Cost
Owyhee Dam (Less Cherry Creek, etc.)	806,941	$1,896.31
Malheur Siphon	4,620	10.86
Owyhee Ditch Pumps (Less O.D. Co. 18%)	542,800	1,275.58
Ontario-Nyssa Pumps	1,854,400	4,357.84
Gem Pumps	17,901,985	42,069.66
Dead Ox Pumps	7,019,112	16,494.91
Advancement Pumps	243,190	571.50
Kingman Pump	128,560	302.12
	28,501,608	66,978.78

(ii) Gem Pumping Area
Water pumped 89,609 + gravity 38,816 = 128,425 acre-feet
128,425 acre-feet ÷ 20,787 acres = 6.1781 acre-feet per acre
$42,069.66 ÷ 89,609 acre-feet = .4695 cost per acre-feet pumped

Dead Ox Pumping Area
Water pumped 47,364 + gravity 1,779 = 49,143 acre-feet
49,143 acre-feet ÷ 9,423 acres = 5.2152 acre-feet per acre
$16,494.91 ÷ 47,364 acre-feet = .3482 cost per acre-feet pumped

Ontario-Nyssa Pumping Area
Water pumped 11,288 + gravity 15,034 = 26,322 acre-feet
26,322 acre-feet ÷ 5,831 acres = 4.5142 acre-feet per acre
$4,357.84 ÷ 11,288 acre-feet = .3860 cost per acre-feet pumped

Department of Water Administration
APPLICANT'S
Exhibit 10A
Date Admitted 11-23-71 dw

(2) Excess - Cost of Power
Gem Pumping Area
6.1781 acre-feet per acre - 5.7272 = .4509 acre-feet
.4509 x .4695 x 20,787 acres = $4,400.56

Manager, North Board of Control

Tom Potter
Manager, South Board of Control
2-24-71

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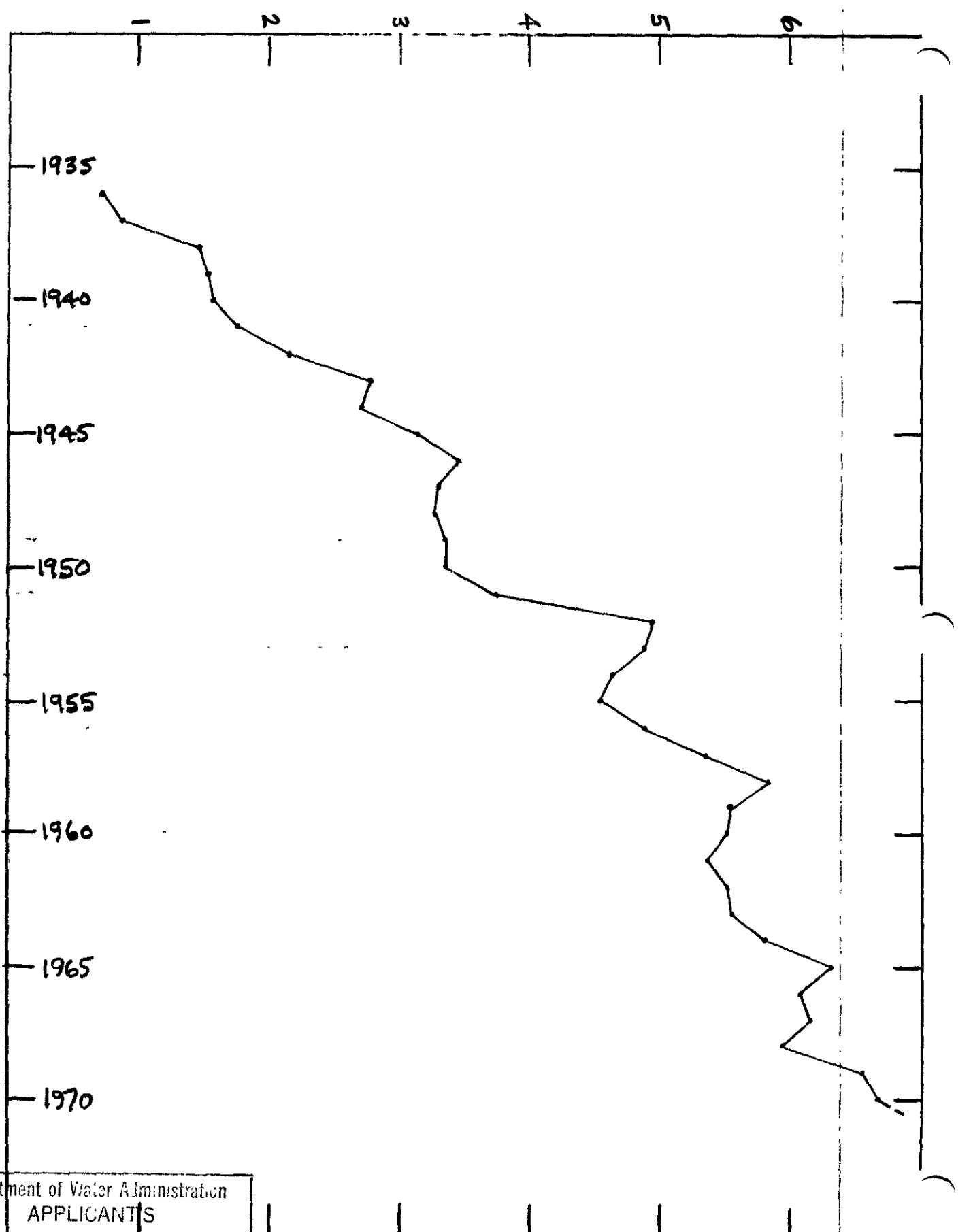
Owyhee Reservoir

Cumulative Historical Inflow In Excess of Diversions*

(Millions of Acre Feet)

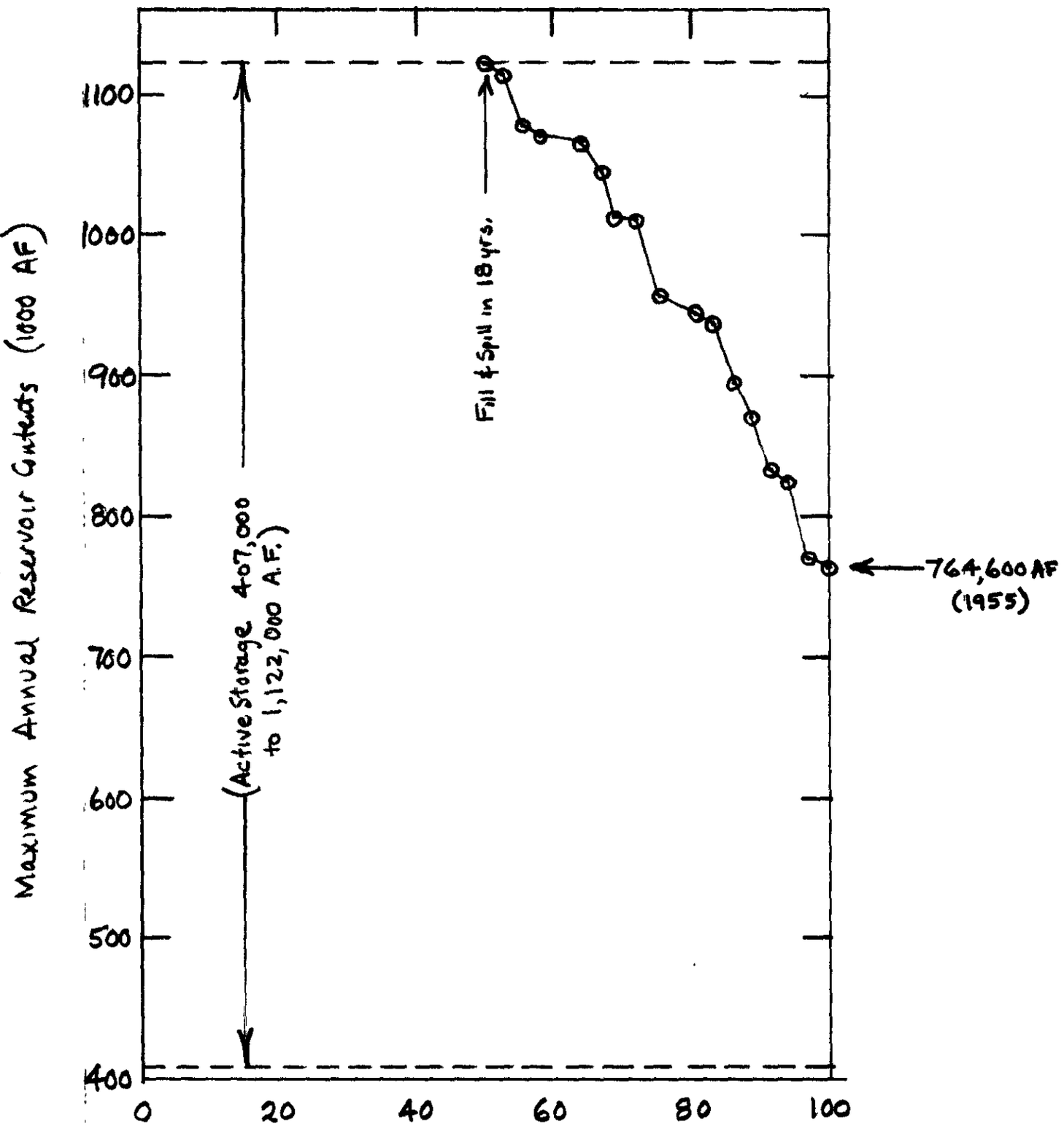


(*-Diversions = Project canals flows plus 40,000 AF/Yr allowance for Owyhee canal downstream)

Department of Water Administration
APPLICANT'S
Exhibit 9
Date Admitted 11-23-71

Department of Water Administration
APPLICANT'S
Exhibit 8
Date Admitted 11-23-71

Owyhee Reservoir - Oregon



Department of Water Administration
APPLICANT'S
Exhibit 7
Date Admitted 11-23-71

Owyhee Reservoir - Water Data Summary
(Thousands of Acre-Feet)

1	2	3	4	5	6	7	8
Water Year	Reservoir Contents (End Year)	Annual Change in Storage Gain or (Loss)	Reservoir Inflow	Outflow to Project	Outflow to River	Total Outflow	Max. Res. Contents
1935	753.5	—	—	—	—	—	809.7
1936	1019.8	266.3	912.4	157.2	488.9	646.1	1125.3*
37	917.1	(102.7)	471.2	277.1	296.8	573.9	1122.6*
38	903.1	(14.0)	939.6	304.0	649.6	953.6	1123.0*
39	775.4	(127.7)	566.3	458.1	235.9	694.0	1122.0*
40	808.3	32.9	430.2	331.7	65.6	397.3	1122.0*
1941	882.7	74.4	605.1	401.0	129.7	530.7	1121.8*
42	857.7	(25.0)	871.6	435.5	461.1	896.6	1121.8*
43	857.5	(0.2)	1107.0	427.4	679.8	1107.2	1121.8*
44	754.4	(103.1)	415.5	463.8	54.8	518.6	1012.0
45	878.5	124.1	926.3	452.3	349.9	802.2	1121.8*
1946	800.7	(77.8)	858.3	509.9	426.2	936.1	1121.8*
47	659.0	(141.7)	397.6	493.9	45.4	539.3	1043.5
48	630.5	(28.5)	418.6	430.9	16.2	447.1	895.2
49	735.5	105.0	618.8	482.9	30.9	513.8	1010.1
50	756.9	21.4	546.0	481.0	43.6	524.6	1063.0
1951	797.6	40.7	888.6	466.4	381.5	847.9	1122.0*
52	867.6	70.0	1738.1	499.1	1169.0	1668.1	1140.0*
53	795.0	(72.6)	455.4	477.7	50.3	528.0	1069.0
54	538.3	(256.7)	257.4	482.3	31.8	514.1	943.8
55	474.4	(63.9)	343.9	391.7	16.1	407.8	764.6
1956	814.3	339.9	860.8	469.0	51.9	520.9	1111.0
57	819.4	5.1	942.6	446.1	491.4	937.5	1136.0*
58	851.0	31.6	970.5	456.2	482.7	938.9	1134.0*
59	576.6	(274.4)	175.7	420.1	30.0	450.1	939.4
60	582.8	6.2	477.9	441.6	30.1	471.7	943.8
1961	437.3	(145.5)	254.3	374.0	25.8	399.8	768.8
62	580.7	143.4	575.3	403.1	28.8	431.9	825.0
63	649.6	68.9	480.1	382.6	28.6	411.2	831.0
64	873.3	223.7	678.9	403.1	52.1	455.2	1078.0
65	919.8	46.5	1010.1	442.1	521.5	963.6	1128.0*
1966	676.9	(242.9)	262.6	465.7	39.8	505.5	1063.0
67	741.9	65.0	530.6	431.3	34.3	465.6	956.2
68	546.1	(195.8)	226.3	395.7	26.4	422.1	870.5
69	846.1	300.0	1114.2	457.9	356.3	814.2	1127.0*
70	894.2	48.1	624.4	453.5	122.8	576.3	1125.0*
1971	715.0	(179.2)	(High)	?	(High)	(High)	1122+*

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Department of Water Administration
APPLICANT'S
Exhibit 7a
Date Admitted 11-23-71 dr

NOTES

* Reservoir spilled

Col. 1 - 12 month period ending Sept. 30 of year shown

Col. 2 - September 30 contents, from USGS annual water-supply papers

Col. 3 - Difference in Col. 2 from preceding year

Col. 4 - (Through 1951) From USGS annual water-supply papers for gage Owyhee River above Owyhee Reservoir
(After 1951) from Col. 2 plus Col. 7

Col. 5 - (Through 1951) from Col. 7 minus Col. 6
(After 1951) From annual statement to USBR from Boards of Control (except 1969 from Oregon St. Engr. bull.)

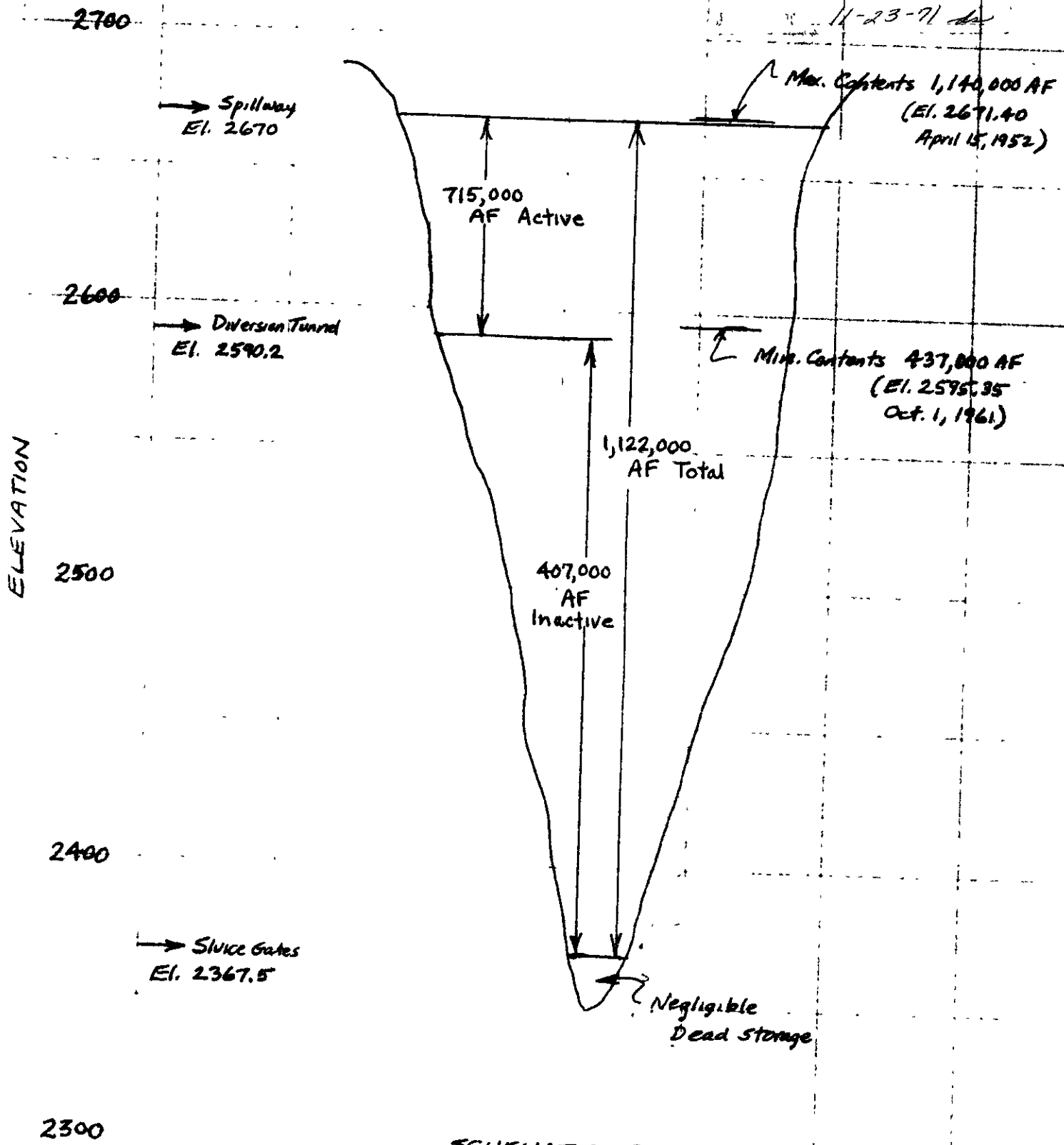
Col. 6 - From USGS annual water-supply papers for gage Owyhee River below Owyhee Dam

Col. 7 - (Through 1951) Col. 4 minus Col. 3
(After 1951) Col. 5 plus Col. 6

Col. 8 - From USGS annual water-supply papers, maximum observed contents during year

6

11-23-71



SCHEMATIC DIAGRAM

Lake Owyhee

(Owyhee Reservoir)

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Department of Water Administration
PROTESTANT'S
Exhibit 2
Date Admitted No dr

BEFORE THE STATE RECLAMATION ENGINEER

OF THE

STATE OF IDAHO

In the Matter of Application for)
)
Permit No. 55-7002 in the name of)
)
RIDDLE RANCHES, INC.)
)

MEMORANDUM DECISION

Application for Permit No. 55-7002 was filed on April 17, 1969, by Riddle Ranches, Inc., Riddle, Idaho. The Application seeks a permit to store an additional 820 acre feet of water per annum by enlargement of an existing earth-filled dam and reservoir on Shoo Fly Creek, a tributary of the East Fork of the Owyhee River. The dam is located in the NE¼SW¼ of Section 26, T. 13 S., R. 1 E., Owyhee County. Water is to be used for irrigation of 1,600 acres of land in T. 13 S., R. 1 E.; T 14 S., R. 1 E.; and T. 14 S., R. 2 E., B.M. Notice of the Application was published in the Owyhee Chronicle on May 15 and 22, 1969. A protest was received from the South Board of Control, Owyhee Project, and the Gem Irrigation District. On May 28, 1969, additional information was submitted regarding the items of protest.

A hearing was set for August 25, 1969, and the parties duly notified. On August 14, 1969, a stipulation from the parties involved was received agreeing to vacate the hearing date. On August 26, 1969, an informal conference was held to discuss the issues involved. A hearing was held on September 20, 1969, in the office of the Department of Reclamation. The applicants were represented by William F. Ringert, Attorney at Law, Boise, Idaho. The protestants were represented by Maurice H Green, Attorney at Law, Boise, Idaho. The applicants presented evidence that they were presently storing spring runoff from Shoo Fly Creek when available, and were presently diverting all the water except during extremely high flows. The Application under consideration includes lands presently being irrigated and some new lands. The protestants presented evidence as to the topography of the proposed site of the reservoir and existing stock pond, and contended that the old dam was washed out prior to 1959 and had not been used since. On cross-examination, Mr. Jackson, representing Riddle Ranches, testified that water had been diverted at the old damsite since 1959.

55 7002

The applicant called Mr. Keith Anderson, Professional Engineer, as a witness. Mr. Anderson gave testimony as to the hydrologic characteristics of the area involved in the application and information as to the water supply and records of the Owyhee Project. Mr. Anderson testified that, in his opinion, the proposed project would not significantly affect the Owyhee Project storage. The protestants called Mr. Tom Cotton, Manager of the Owyhee Project South Board of Control, who gave testimony regarding the water rights of the Project and his opinion as to the effects of the proposed appropriation. The Department of Reclamation took official notice of the records of the U. S. Geological Survey relating to storage of the Owyhee Reservoir and flows of the Owyhee River and tributaries. Four exhibits were submitted by the applicant. Exhibit A-1 was a map showing the drainage and location of the proposed reservoir. Exhibit A-2 was a letter from the Bank of Idaho to the effect that Peter Jackson, President of Riddle Ranches, had been granted an unsecured line of credit in the amount of $200,000, of which $85,000 had been used at the present time. Exhibit A-3 was a graph showing the end-of-month contents of the Owyhee Reservoir from 1936 through 1968. Exhibit A-4 was a schematic diagram of Lake Owyhee and Owyhee Reservoir, giving elevation of sluice gates, diversion tunnels and spillway, and maximum and minimum contents. The protestants submitted two exhibits. Exhibit P-1 was pictures of the proposed reservoir site, and Exhibit P-3 was data describing the amount of water used by the Owyhee Project, irrigated acreage of the Owyhee Project, and the amount of water spilled and maximum date of that storage of the Owyhee Reservoir.

Records of the Department of Reclamation show that the Owyhee Project's water right consists of three certificates issued by the State of Oregon which have been confirmed by the State of Idaho: (1) Storage certificate under Permit R-599 for 700,000 acre feet of water, issued on April 15, 1959; (2) Certificate for the diversion of 1,718 cubic feet per second, issued on April 15, 1959; and (3) Storage certificate under permit R-1764 for 420,000 acre feet of water, issued on April 15, 1959.

Protestants' Exhibit P-3 indicated that the reservoir spilled in 1951, 1952, 1957, 1958 and 1965, and indicated that only during the years 1955, 1956, 1962, 1963 and 1964 was there not a considerable holdover storage in the reservoir at the end of the season. However, it appears that even during those low holdover years

there was water above the outlet gate elevation. Records of the U. S. Geological Survey indicate that at the Rome, Oregon, gage on the Owyhee River located above Owyhee Reservoir, flows exceed the 1,718 c.f.s. an average 2½ months per year. Average flow during the months of March through September for the period 1951-1960 was 1,272 c.f.s. Average flows for the months of March, April, May and June were 1,784, 3,767, 2,094 and 838 c.f.s., respectively.

In issuing a permit to appropriate the public waters of the State of Idaho, the State Reclamation Engineer must consider the amount of water which has been appropriated by reason of prior permits and associated works. He must also consider the amount of water which is available for that appropriation, and he is prohibited from issuing a License which would cause injury to prior rights. The State Reclamation Engineer must also consider three additional items, described in Section 42-203, Idaho Code: (1) That the water supply is sufficient for the purpose intended; (2) That the application is made in good faith and not for delay or speculative purposes; or (3) That the applicant has sufficient financial resources to complete the project. In the event that the application is found to be deficient in any of those points, the State Reclamation Engineer may deny the permit or issue it in part.

In this instance the applicant has submitted evidence to support those three points. The primary issue of contention was whether or not there was a water supply available for the appropriation. There appears to be conclusive evidence that the Owyhee Reservoir spills or releases water on occasion that is not applied to beneficial use by the protestants. Those spills or releases are at times the result of carry-over storage from the previous season or seasons of operation, and as a result it appears to the State Reclamation Engineer that there is unappropriated public water in the irrigation system during those times of spills or releases. Recognizing that these spills or releases are partly unused holdover water from previous seasons, it must follow that such waters have not been applied to beneficial use by the Owyhee Project and therefore no right to such water previously existed. The Department of Reclamation recognizes the importance of carry-over or holdover storage for providing water during periods of below-normal streamflow. However,

it also recognizes that the mere existence of a reservoir with a capacity to catch or hold more than the seasonal needs of an applicant is not in and of itself sufficient to substantiate an appropriation of the entire flow of that stream or river system. There must be a subsequent release of stored water and application of that water to beneficial use over a period of time.

After considering the evidence presented at the hearing, the State Reclamation Engineer finds that the protestants have failed to submit sufficient evidence to show that the storage use of water under Application No. 55-7002 would interfere with the protestants' ability to obtain sufficient water from the Owyhee Reservoir, its tributaries and other supplemental sources, to meet the beneficial requirements of the Project. It consequently will not interfere with their water rights.

IT IS THEREFORE ORDERED and the protest against the issuance of Permit No. 55-7002 is hereby DENIED.

Dated this 4-IN day of March 1970.

R. KEITH HIGGINSON
State Reclamation Engineer

55 7002

IN REPLY REFER TO:

UNITED STATES
DEPARTMENT OF THE INTERIOR
OFFICE OF THE SOLICITOR

Portland Region
Boise Field Office
P.O. Box 937
Boise, Idaho 83701

February 12, 1965

Mr. T. H. Cotton, Sec'y-Mgr.
South Board of Control, Owyhee Project
Homedale, Idaho

Dear Tom:

While we were talking on the phone last week you inquired about what information we had supplied to the State Engineer here in Idaho regarding our certificates of water rights on the Owyhee Project issued by the State Reclamation Engineer of Oregon. I am enclosing a copy of my letter of August 1, 1960 to the State Reclamation Engineer in Idaho supplying him with copies of the storage and diversion water right certificates issued by the State of Oregon for the Owyhee Project. I am also enclosing a copy of the State Reclamation Engineer's return letter in regard to the certificates.

I also filed with the county recorder in Owyhee County the water right certificates on permit No. R-599, permit No. 8171, and permit No. R-1764. These were recorded in September 1960 at the county office. If there is any further information you require regarding these certificates please let me know and I will be glad to make copies of the certificates or any other information that you may need for your records.

Sincerely yours,

William Burpee
Field Solicitor

Enclosures

STATE OF IDAHO

DEPARTMENT OF RECLAMATION

GEO. N. CARTER, STATE RECLAMATION ENGINEER

BOISE

ROBERT E. SMYLIE
Governor

September 8, 1960

OFFICE OF FIELD SOLICITOR
FIELD SOLICITOR
BOISE, IDAHO
SEP 9 1960

Mr. William Burpee
Field Solicitor
Department of Interior
Box 937, Boise, Idaho

Dear Mr. Burpee:

I note the various actions you have taken to make complete the record of all water rights appurtenant to the Owyhee Irrigation Project, situate in the states of Oregon and Idaho. The Gem Irrigation District with its Idaho water rights is an integral part of the Owyhee Project.

It seems to me that the matter of applying water originating in Oregon to Idaho lands is adequately made a matter of record by the Oregon water right certificates which clearly designate by legal subdivision description Idaho lands, to which the water is made appurtenant.

I understand it is the case that no Snake River water pumped from locations where the Snake River is wholly within Idaho is applied to Oregon lands of the Owyhee Project, consequently Idaho permits and water licenses which are a matter of record in that state should adequately take care of Idaho water applied to Idaho lands which are a part of the Owyhee Project.

Additional to the Idaho water permits and licenses discussed in my letter of January 7, 1960. to Maurice H. Greene, Attorney for the Gem Irrigation District, there were a number of Idaho water permits from Jump and Succor Creeks originally issued to various individuals. These rights were eventually conveyed to the Patch Cooperative Canal Company which made proof of completion of works and beneficial use of the water. For some reason vague to this to this office, the licenses growing out of these individual permits were combined into license numbers 94, 922 and 925.

These rights were eventually acquired by the Gem Irrigation District, however, there was no record of the acquisition in this office. At the request of Willard H. Robinson and Maurice H. Greene who presented deeds of conveyance of these water rights to the Gem Irrigation District, notations were made on both permits and the licenses in the records of this office as follows:

"Permits 94, 922 and 925 were deeded from Patch Cooperative Canal Company, Ltd. to Gem Irrigation District February

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____, 1914. The deed number 10908 recorded in Owyhee County, Book 8 of Deeds, Page 471, filed for record April 14, 1914.

In summary it is my opinion that everything necessary has been done to make the record complete on all of the water rights in both Oregon and Idaho, for the Owyhee Project.

Sincerely yours,

Geo. N. Carter

GEO. N. CARTER
State Reclamation Engineer

GNC:ew

cc: Maurice H. Greene
Attorney at Law
300 North 6th St.
Boise, Idaho

55 70(9

Portland Region
Boise Field Office
P.O. Box 937
Boise, Idaho

C
O
P
Y

August 1, 1960

Mr. George N. Carter
State Reclamation Engineer
State House
Boise, Idaho

Dear Mr. Carter:

As you are aware, the Bureau of Reclamation, with the completion of construction of the Owyhee Project and the transfer of operation to the project water users, has been engaged in finalizing the project water rights in accordance with the requirements of section 8 of the Reclamation act of 1902.

This has been accomplished under the statutes of Oregon, and I am enclosing for the permanent records of your office the certificates of water rights issued in connection with the project. These are:

1. Storage certificate under permit No. R-599 for 700,000 acre-feet of water, recorded in State Record of Water Right Certificates, Volume 17, page 24705, issued on April 15, 1959, and recorded in the office of the County Clerk, Malheur County, on May 7, 1959, under instrument No. 10978, in Book G, page 1.

2. Certificate for the diversion of 1,718 cubic feet per second from the Owyhee River, both natural flow and storage, under permit No. 8171 for the irrigation of 103,168 acres, issued on April 15, 1959, recorded in State Record of Water Right Certificates, Volume 17, page 24707, and also recorded in the office of the County Clerk of Malheur County on May 7, 1959 under instrument No. 10982.

3. Storage certificate under permit No. R-1764 for 420,000 acre-feet of water, recorded in State Record of Water Right Certificates, Volume 17, page 24706, issued on April 15, 1959, and recorded in the office of the County Clerk, Malheur County, on May 7, 1959, under instrument No. 10979, in Book G, page 2.

55 [illegible]

4. Certificate for the diversion of 176 cubic feet per second from the Snake River under permit No. 24286, recorded in State Record of Water Right Certificates, Volume 17, page 24703, issued on April 15, 1959, and recorded in the office of the County Clerk, Malheur County, on May 7, 1959, under instrument No. 10980, in Book G, page 3.

5. Certificate for the diversion of 222 cubic feet per second from the Snake River under permit No. 24285, recorded in State Record of Water Right Certificates, Volume 17, page 24704, issued on April 15, 1959, and recorded in the office of the County Clerk, Malheur County, on May 7, 1959, under instrument No. 10981, in Book G, page 7.

You will note that we have included the water right certificates covering pumping from the Snake River even though the lands served are all in Oregon. This is significant to the Idaho lands of the project because the Snake River is a boundary stream between Oregon and Idaho, and because the Owyhee Project, under its authorization and contractual arrangements with the water users both in Oregon and in Idaho, is to be operated on a basis of pooling of water supply and project costs. A copy of the executed amendatory repayment contract of August 29, 1951 approved by the Congress and judicially confirmed as binding on each of the irrigation districts involved, is also enclosed.

To the foregoing water certificates there should be added the Idaho water permits involving diversions in Idaho which you listed in your letter of January 7, 1960 to Mr. Maurice Greene, attorney for the Gem Irrigation District.

Since, as above indicated, the Owyhee Project involves waters in Idaho as well as in Oregon, we have given consideration of what, if any, further actions should be taken to complete the project water rights under the laws of Idaho. Having in mind the fact that the Idaho lands of the project using water from the Owyhee River are served by means of a diversion located in Oregon, and with water stored in Oregon, we see no useful purpose in making any further filings in Idaho in connection with the use of Owyhee River water in Idaho.

In support of this conclusion there are these two principal factors. First, the Oregon water certificates covering Owyhee River water applies to and specifically list the lands of the project in Idaho. Note that the water right certificate under permit No. 8171 starts off with a list of the lands in the Gem Irrigation District. While present Oregon law prohibits the appropriation of water in Oregon for use out of that state except upon the express consent of the

55 7[illegible]9

Oregon legislature, the law of Oregon was otherwise at the time of the issuance of the Owyhee Project water permits. The Oregon legislation of 1951, repealing the prior law permitting out of state appropriations, contained a savings clause to the effect that this repeal did not affect appropriations existing prior to May 12, 1951. Thus, the Idaho lands of the Owyhee Project are protected under already issued Oregon water right certificates. And it is essential that they be protected under Oregon law, even more so than Idaho law, because the storage and diversion works are all located in Oregon. This being so, a further filing in Idaho may be construed as an implication of the invalidity of the Oregon water rights for the Idaho lands. This, I think, should be avoided. Secondly, the Idaho statutory procedures for filing for a permit to appropriate water do not seemingly apply to the situation as to the Owyhee River waters serving the Owyhee Project lands in Idaho. This is apparent because there is no place of diversion from any stream in Idaho. The water is being carried across the state line in the south canal and several laterals and sublaterals from that canal located in Oregon, with some of the laterals and sublaterals zigzagging across the state line. It would be exceedingly difficult to set out precisely the amount of water carried across the state line from Oregon into Idaho and to designate with precision all the places where this is accomplished. Incidently, it is my understanding that some of the Oregon lands are served by water carried in Idaho and taken back into Oregon. Thus, it can be readily seen that the Idaho statutes and forms of your office relating to filing an application to appropriate water are inappropriate and inapplicable to this situation.

In view of the foregoing we have tentatively concluded that it is unnecessary and undesirable to make any filing in Idaho with respect to the Owyhee River waters used on the Owyhee Project lands in Idaho, but instead intend to consider these lands adequately covered by the existing water license issued by the State of Oregon. We would like to have your views on this matter, and if you see any useful purpose in making a filing in Idaho we will be glad to attempt to work out with you whatever procedures can be improvised to accomplish something appropriate under existing law.

You will note that the enclosed water right certificates have been recorded in the local records of Malheur County, Oregon, in accordance with the Oregon water right procedures. Although there seems to be no requirement of law in Idaho to do so, it may perhaps be desirable to have the Oregon certificates recorded in Owyhee County. We would appreciate having your reaction to this as well.

Sincerely yours,

/s/ William Burpee
William Burpee
Field Solicitor

Enclosure

Owyhee Reservoir - Water Data Summary
(Thousands of Acre-Feet)

1	2	3	4	5	6	7	8
Water Year	Reservoir Contents (End Year)	Annual Change in Storage Gain or (Loss)	Reservoir Inflow	Outflow to Project	Outflow to River	Total Outflow	Max. Res. Contents
1935	753.5	—	—	—	—	—	809.7
1936	1019.8	266.3	912.4	157.2	488.9	646.1	1125.3*
37	917.1	(102.7)	471.2	277.1	296.8	573.9	1122.6*
38	903.1	(14.0)	939.6	304.0	649.6	953.6	1123.0*
39	775.4	(127.7)	566.3	458.1	235.9	694.0	1122.0*
40	808.3	32.9	430.2	331.7	65.6	397.3	1122.0*
1941	882.7	74.4	605.1	401.0	129.7	530.7	1121.8*
42	857.7	(25.0)	871.6	435.5	461.1	896.6	1121.8*
43	857.5	(0.2)	1107.0	427.4	679.8	1107.2	1121.8*
44	754.4	(103.1)	415.5	463.8	54.8	518.6	1012.0
45	878.5	124.1	926.3	452.3	349.9	802.2	1121.8*
1946	800.7	(77.8)	858.3	509.9	426.2	936.1	1121.8*
47	659.0	(141.7)	397.6	493.9	45.4	539.3	1043.5
48	630.5	(28.5)	418.6	430.9	16.2	447.1	895.2
49	735.5	105.0	618.8	482.9	30.9	513.8	1010.1
50	756.9	21.4	546.0	481.0	43.6	524.6	1063.0
1951	797.6	40.7	888.6	466.4	381.5	847.9	1122.0*
52	867.6	70.0	1738.1	499.1	1169.0	1668.1	1140.0*
53	795.0	(72.6)	455.4	477.7	50.3	528.0	1069.0
54	538.3	(256.7)	257.4	482.3	31.8	514.1	943.8
55	474.4	(63.9)	343.9	391.7	16.1	407.8	764.6
1956	814.3	339.9	860.8	469.0	51.9	520.9	1111.0
57	819.4	5.1	942.6	446.1	491.4	937.5	1136.0*
58	851.0	31.6	970.5	456.2	482.7	938.9	1134.0*
59	576.6	(274.4)	175.7	420.1	30.0	450.1	939.4
60	582.8	6.2	477.9	441.6	30.1	471.7	943.8
1961	437.3	(145.5)	254.3	374.0	25.8	399.8	768.8
62	580.7	143.4	575.3	403.1	28.8	431.9	825.0
63	649.6	68.9	480.1	382.6	28.6	411.2	831.0
64	873.3	223.7	678.9	403.1	52.1	455.2	1078.0
65	919.8	46.5	1010.1	442.1	521.5	963.6	1128.0*
1966	676.9	(242.9)	262.6	465.7	39.8	505.5	1063.0
67	741.9	65.0	530.6	431.3	34.3	465.6	956.2
68	546.1	(195.8)	226.3	395.7	26.4	422.1	870.5
69	846.1	300.0	1114.2	457.9	356.3	814.2	1127.0*
70	894.2	48.1	624.4	453.5	122.8	576.3	1125.0*
1971	715.0	(179.2)	(High)	?	(High)	(High)	1122+*

55 7009

NOTES

* Reservoir spilled

Col. 1 - 12 month period ending Sept. 30 of year shown

Col. 2 - September 30 contents, from USGS annual water-supply papers

Col. 3 - Difference in Col. 2 from preceding year

Col. 4 - (Through 1951) From USGS annual water-supply papers for gage Owyhee River above Owyhee Reservoir
(After 1951) from Col. 2 plus Col. 7

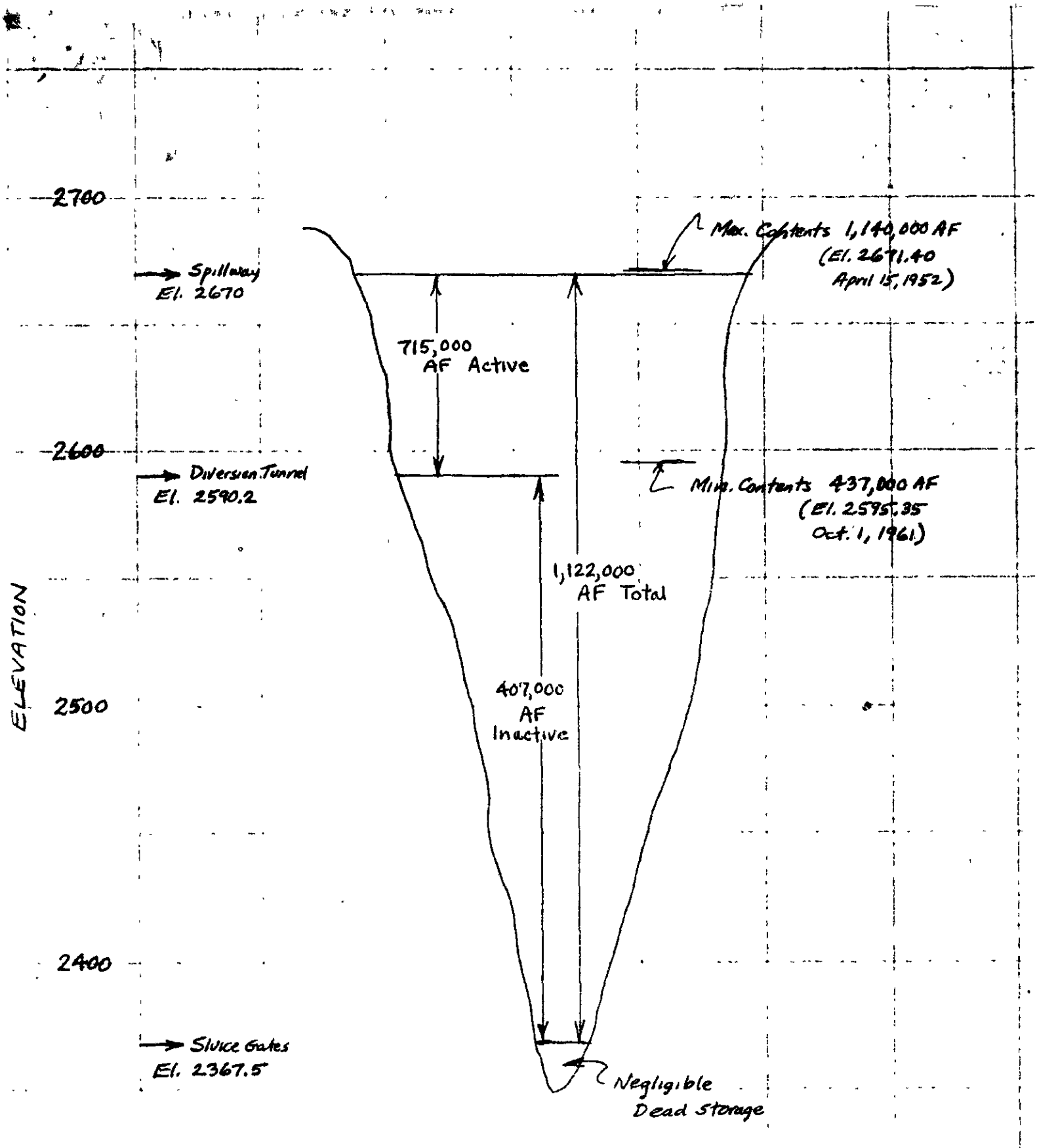
Col. 5 - (Through 1951) from Col. 7 minus Col. 6
(After 1951) From annual statement to USBR from Boards of Control (except 1969 from Oregon St. Engr. bull.)

Col. 6 - From USGS annual water-supply papers for gage Owyhee River below Owyhee Dam

Col. 7 - (Through 1951) Col. 4 minus Col. 3
(After 1951) Col. 5 plus Col. 6

Col. 8 - From USGS annual water-supply papers, maximum observed contents during year

55 70 0



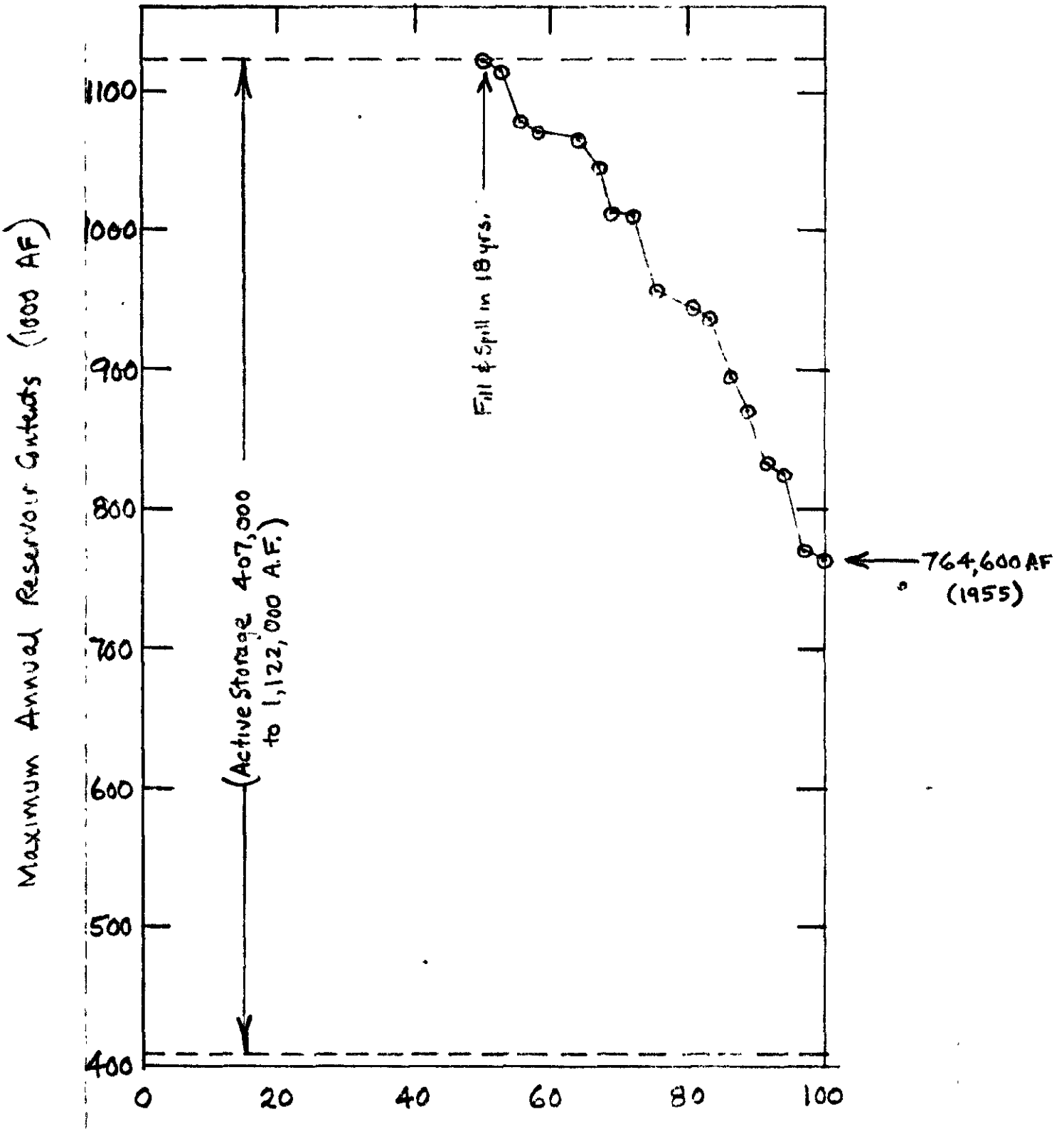
SCHEMATIC DIAGRAM

Lake Owyhee
(Owyhee Reservoir)

A-6

55 7089

Owyhee Reservoir - Oregon



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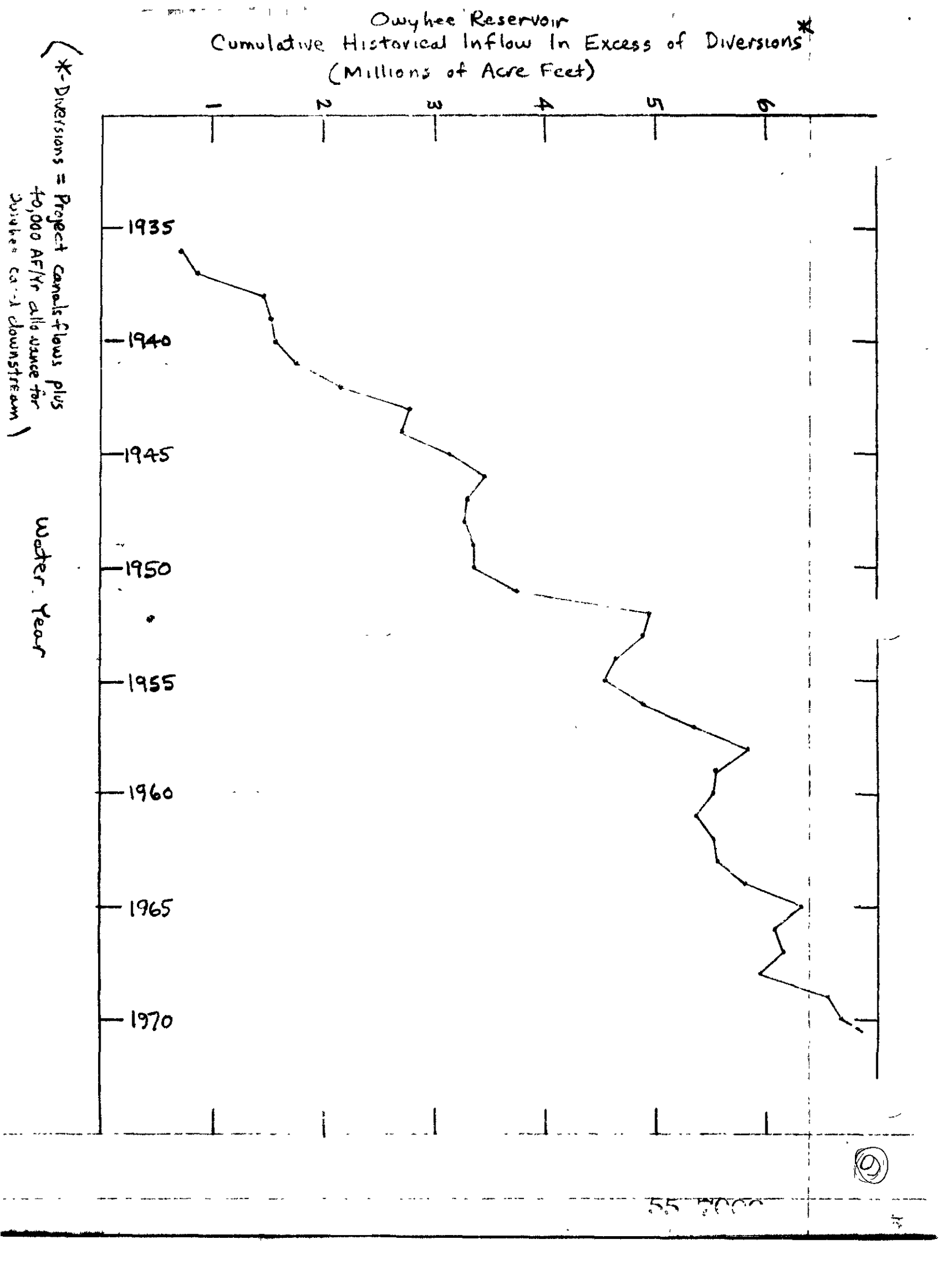

Owyhee Reservoir
Cumulative Historical Inflow In Excess of Diversions*
(Millions of Acre Feet)
1
2
3
4
5
6
1935
1940
1945
1950
1955
1960
1965
1970
Water Year
(*-Diversions = Project canals flows plus 40,000 AF/Yr allowance for Owyhee canal downstream)

Owyhee Project
(Diversions — Ac.Ft. per Irrigable Acre)

Year	Gem. ~~Irrig~~ Pumping Dist.	S. Division	N. Division	Project Total
1952	5.832	6.146	6.139	6.142
53	5.735	6.023	5.757	5.857
54	6.115	6.168	6.134	6.147
55	5.686	5.381	5.179	5.255
1956	6.518	6.229	5.832	5.982
57	5.832	5.625	5.492	5.542
58	6.402	5.573	5.687	5.644
59	6.185	5.839	5.266	5.482
60	6.740	6.177	5.566	5.796
1961	6.118	5.603	5.118	5.300
62	5.829	5.544	5.252	5.362
63	5.588	5.544	5.102	5.195
64	5.730	5.375	5.129	5.221
65	5.805	5.580	5.420	5.490
1966	6.809	6.491	5.997	6.184
67	6.000	5.712	5.472	5.563
68	5.983	5.756	5.115	5.357
69				
70	6.178	6.035	5.541	5.727
1971				

includes Snake as well as Owyhee

Comparison of Diversions — Irrigable Acres vs. Irrigated Acres

Year	Division	AF/Irrigable Ac.	AF/Irrigated Ac.	Farm Delivery AF/Irrigated A
1961 1/	North	5.118	5.530	
1962 2/	South	5.544	5.851	5.01
1964 3/	South	5.375	5.64	4.63

Source of Data: Statements by Boards of Control in Annual USBR Project History (copy for 1970 attached as example)

1/ 1961 History, p. 21 and 1962 History, p. 20

2/ 1962 History, p. 30 and 1963 History, p. 51

3/ 1964 History, p. 70 and 1965-66 History, p. 41

55 7009

10

We, the undersigned Managers of the Boards of Control of the Owyhee Project, herewith submit the following report on the distribution of power charges and gravity water supply for the year 1970 as stipulated in Article 22(c) (1)(i) of the Amendatory Repayment Contract.

Art. 22 (c) (1) (i) Project wide per-acre of delivery of water

Delivered to South Canal	150,290 acre-feet)	39,752 acres
Delivered to Gem Pump Canals	89,609 acre-feet)	6.0548 A.F. per acre
Sub-total South Division	239,899 acre-feet	
Delivered to North Canal	303,205 acre-feet)	
Delivered to Dead Ox Pump Canals	47,364 acre-feet)	65,497 acres
Delivered to Ontario-Nyssa Pump Canal	11,288 acre-feet)	5.5405 A.F. per acre
Delivered to Kingman Pump Lateral	1,032 acre-feet)	
Sub-total North Division	362,889 acre-feet	
Total Project Diversions	602,788 acre-feet	

602,788 acre-feet + 105,249 acres = 5.7272 acre-feet per acre

Power Distributions

Where Used	KW-Hours	Cost
Owyhee Dam (Less Cherry Creek, etc.)	806,941	$1,896.31
Malheur Siphon	4,620	10.86
Owyhee Ditch Pumps (Less O.D. Co. 18%)	542,800	1,275.58
Ontario-Nyssa Pumps	1,854,400	4,357.84
Gem Pumps	17,901,985	42,069.66
Dead Ox Pumps	7,019,112	16,494.91
Advancement Pumps	243,190	571.50
Kingman Pump	128,560	302.12
	28,501,608	66,978.78

(ii) Gem Pumping Area
Water pumped 89,609 + gravity 38,816 = 128,425 acre-feet
128,425 acre-feet ÷ 20,787 acres = 6.1781 acre-feet per acre
$42,069.66 ÷ 89,609 acre-feet = .4695 cost per acre-feet pumped

Dead Ox Pumping Area
Water pumped 47,364 + gravity 1,779 = 49,143 acre-feet
49,143 acre-feet ÷ 9,423 acres = 5.2152 acre-feet per acre
$16,494.91 ÷ 47,364 acre-feet = .3482 cost per acre-feet pumped

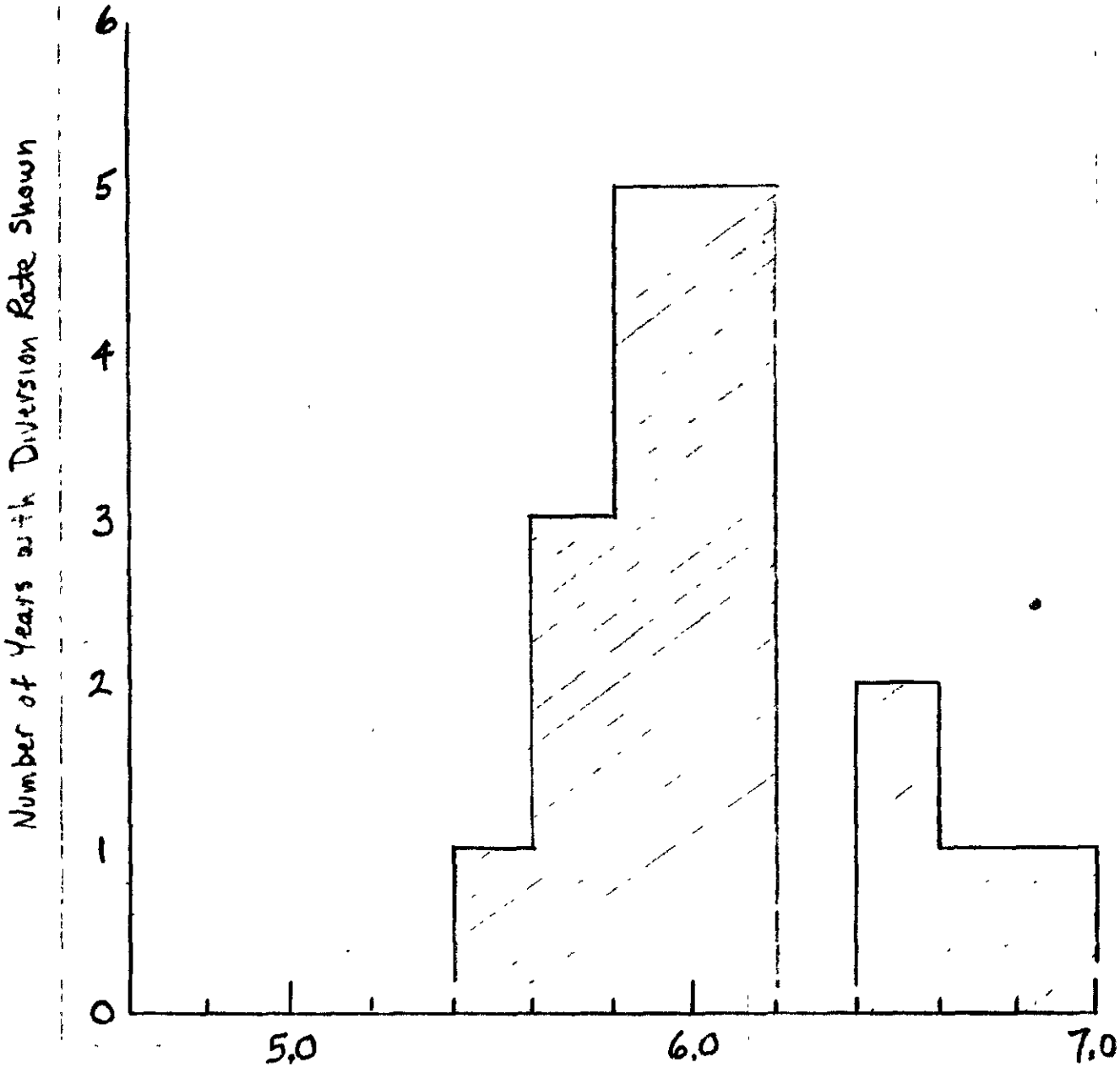
Ontario-Nyssa Pumping Area
Water pumped 11,288 + gravity 15,034 = 26,322 acre-feet
26,322 acre-feet ÷ 5,831 acres = 4.5142 acre-feet per acre
$4,357.84 ÷ 11,288 acre-feet = .3860 cost per acre-feet pumped

(2) Excess - Cost of Power
Gem Pumping Area
6.1781 acre-feet per acre - 5.7272 = .4509 acre-feet per acre
.4509 x .4695 x 20,787 acres = $4,400.56

Manager, North Board of Control

Manager, South Board of Control
2-24-71

55 70499



Gem ~~Irrigation~~ Pumping Dist. (Ouray Project)

Diversion Rates - Ac. Ft. / Ac.*

(1952-1970)

*- Per Irrigable Acre (rates higher if per irrigated acre)

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Sec 42-202. APPLICATION TO APPROPRIATE WATER - CONTENTS - FILING FEES - DISPOSITION OF FEES - RECORD OF RECEIPTS.

For the purpose of regulating the use of the public waters and of establishing by direct means the priority right to such use, any person, association or corporation hereafter intending to acquire the right to the beneficial use of the waters of any natural streams, springs or seepage waters, lakes or ground water, or other public waters in the state of Idaho, shall, before commencing of the construction, enlargement or extension of the ditch, canal, well, or other distributing works, or performing any work in connection with said construction or proposed appropriation or the diversion of any waters into a natural channel, make an application to the Department of Water Administration for a permit to make such appropriation. Such application must set forth

1. The name and post office address of the applicant.

2. The source of the water supply

3. The nature of the proposed use or uses and the period of the year during which water is to be used for such use or uses.

4. The location of the point of diversion and description of the proposed ditch, channel, well or other work and the amount of water to be diverted and used.

5. The time required for the completion of construction of such works and application of the water to the proposed use

Whenever it is desired to appropriate and store flood or winterflow waters, the applicant shall specify in acre feet the quantity of such flood or winterflow waters which he intends to store, but for irrigation purposes he shall not claim more than five (5) acre feet of water per acre of land to be irrigated, nor, in the event of the filing of an application claiming both normal flow and flood water and winterflow water, shall the total amount of water claimed exceed the equivalent of a continuous flow during the irrigation season of more than one (1) cubic foot per second for each fifty (50) acres of land to be irrigated, or more than five (5) acre feet of stored water for each acre of land to be irrigated

The application shall be accompanied by a plan and map of the proposed works for the diversion and application of the water to a beneficial use, showing the character, location and dimensions of the proposed reservoirs, dams, canals, ditches, pipe lines, wells and all other works proposed to be used by them in the

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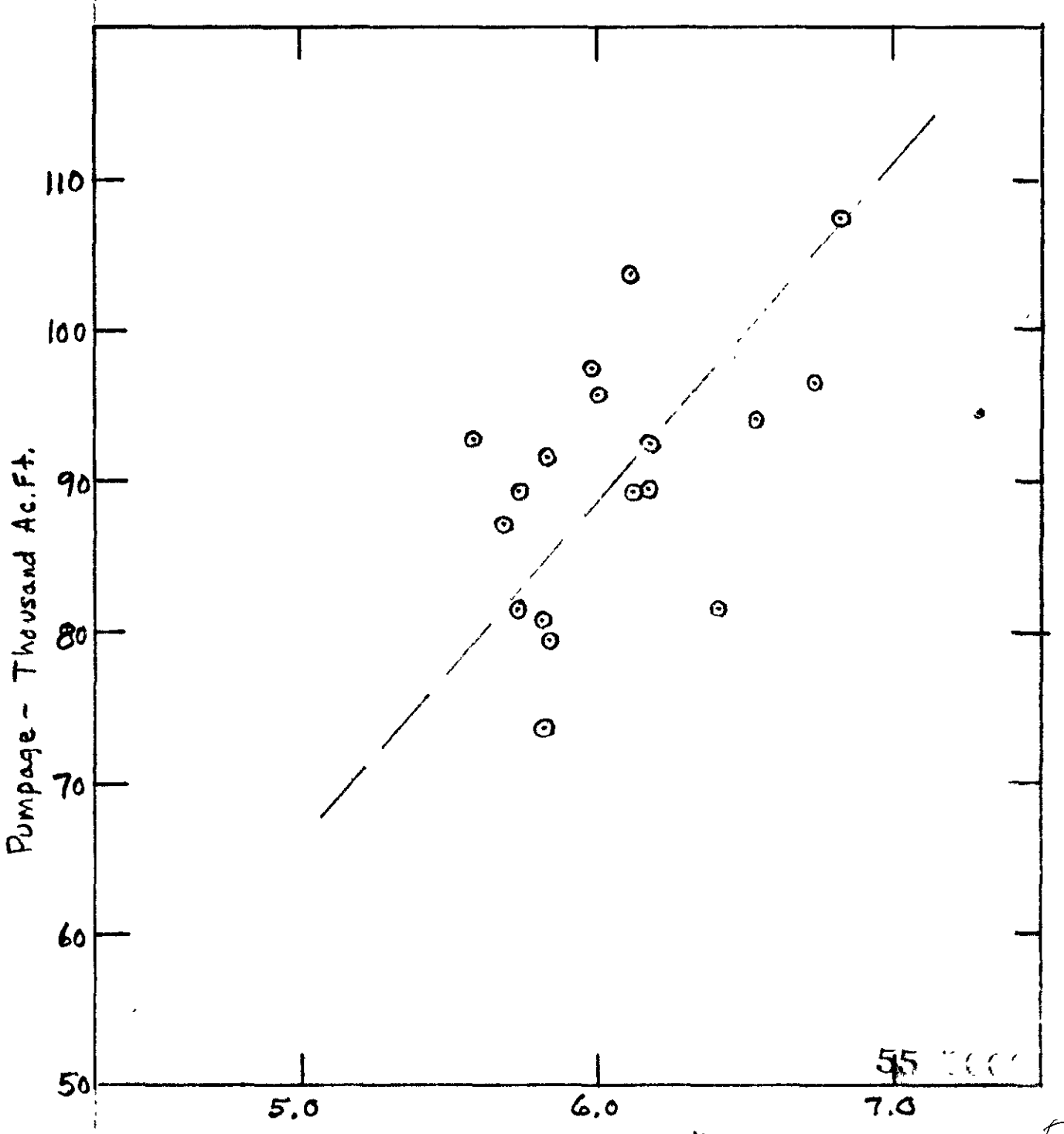
(12)

Gem ~~Irrigation District~~ Pumping Area
(Owyhee Project)

Snake River Pumpage related to Diversions



*- Diversion per irrigated acre is higher

(13)

Comparative Crop Yields
("Wet" vs. "Dry" Years)

YEAR	1952 (wet)	1955 (dry)
AREA	Gem Irrig. Dist.	Gem & Ridgeview Ir. Dists.
WATER SUPPLY (AF/Ac)	5.832	5.381
Barley (Bu/Ac)	60	54
Corn (Bu/Ac)	57	58
Mixed Grain (Bu/Ac)	52	57
Oats (Bu/Ac)	64	54
Wheat (Bu/Ac)	49	56
Alfalfa Hay (Ton/Ac)	4.2	3.9
Irrig. Pasture (AUM/Ac)	6	10
Sugar Beets (Ton/Ac)	21.1	24.1
Potatoes-early (Bu/Ac)	473	447

Data from Crop Census reports in Owyhee Project History, 1952-56, on file with U.S. Bureau of Reclamation

1952- Largest inflow to reservoir of record (1935-70)

Diversion to Gem Dist. 5.832 AF/A, to S. Division 6.146 AF/A

1955- Irrigators took voluntary shortages to have holdover for next year

Diversion to Gem Dist. 5.686 AF/A, to S Division 5.381 AF/A

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Owyhee Reservar, Oregon

Summary of Holdover Storage

1. Reservoir first filled May 7, 1936
2. Reservoir has filled & spilled in 19 of 36 years
3. Of the 715,000 AF reservoir contents October 1, 1971 there were 308,000 AF of active storage above the diversion tunnels to the North & South canals
4. The "age" of this 308,000 AF active holdover storage is:
   - A. 30,000 AF has been in the reservoir since May 7, 1936 (35½ yrs old)
   - B. 94,400 AF additional has been in the reservoir since mid-February 1962 (nearly 10 yrs old)
   - C. 183,600 AF remaining has been in the reservoir since January 31, 1969 (nearly 2 yrs old)

Source of Data: Published records of reservoir contents, USGS Annual Water-Supply Papers

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