

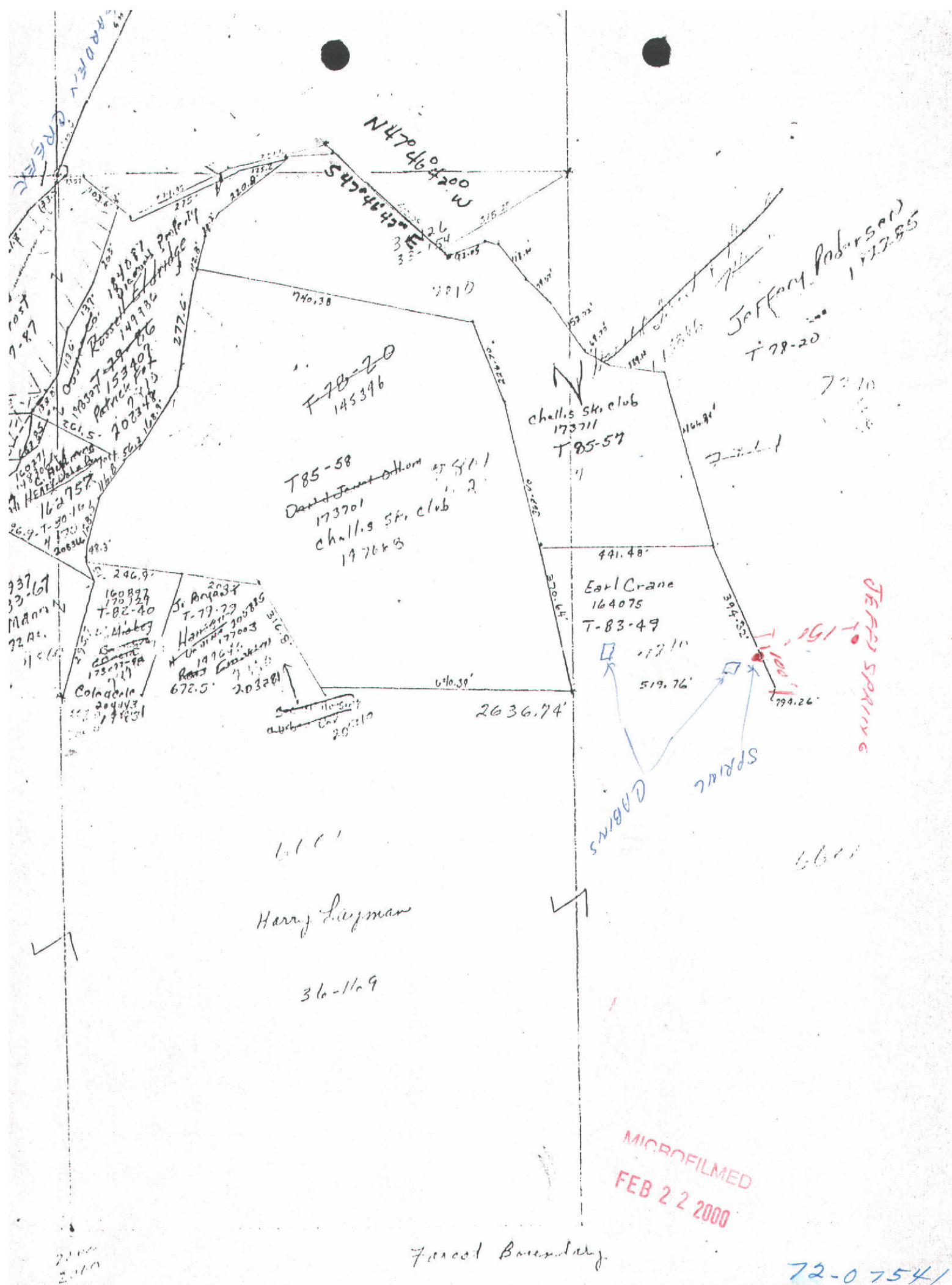
Topographic map of the Daugherty area, showing contour lines, roads, and landmarks. Handwritten annotations in blue ink include:

- POINTS OF DIVERSION (2)**: Two locations marked with arrows pointing to specific points on the map.
- PLACE OF USE**: A location marked with an arrow pointing to a red square on the map.

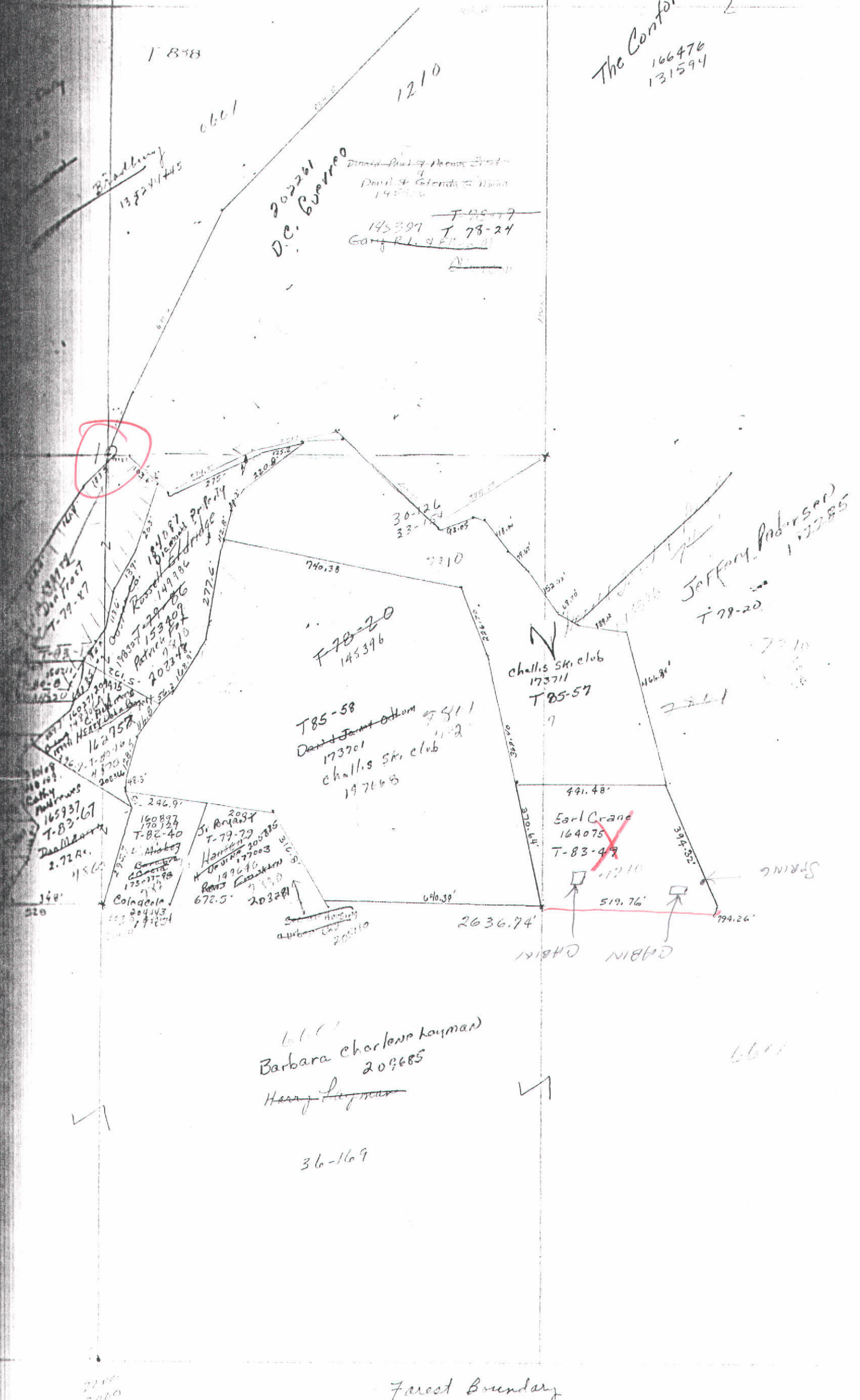
The map is titled **T13N, R18E** and includes a north arrow and scale bar. The map shows contour lines, roads, and landmarks. The map is titled **T13N, R18E** and includes a north arrow and scale bar.

EARL MED CRAYZ
(Applicant)

FEB 22 2000

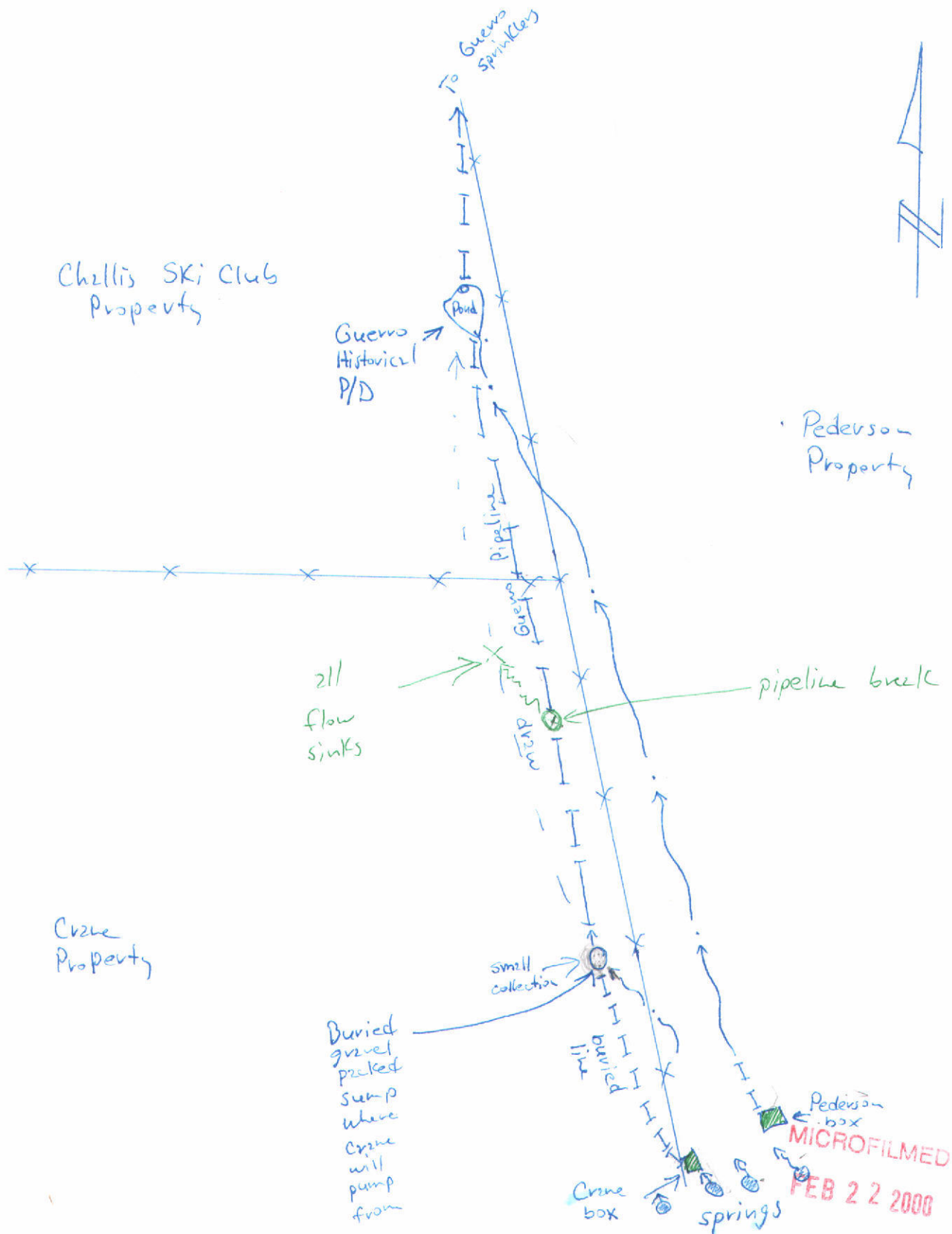


The Confor Family
166476
131594



10 R 18

has historically been diverted by Guerro. It quite possibly sinks and goes under the what is gathered by Guerro or possibly a portion of it may contribute to the unnamed stream flowing to the Guerro pool. It did not appear at the day I visited the pool that there was springs rising in the pool itself. As for the stream it was impossible to tell. See attached sketch.





Collection pond
where Grzes buried
pipeline ends at
at buried gravel
packed cistern.
He plans to pump
from here. This
is also place where
Guerra has placed
a pipeline to collect
Czame water which
bubbles up and
surface spring flow.



Guerra's pipeline
which became
disconnected at joint.



Flow from Guerra's
pipeline sinks in
this area before
leaving Czame property.

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Stream channel below
P/D (dry) Diversion
Pipeline
taking all flow

Guervo historical
P/D.



Diversion Pipeline to
Guervo sprinklers



Pipelining from
Creane Property.

Stream

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Collection pond
where Grue's buried
pipeline ends 2t
2t buried gravel
packed cistern.
He plans to pump
from here. This
is also place were
Guerra has placed
2 pipeline to collect
Crane water which
bubbles up 2nd
surface spring flow



Guerra's pipeline
which became
disconnected 2t joint.

Copies



Flow from Guerra's
Pipeline sinks in
this area before
leaving Crane proper

Duplicated

Division Pipeline to
Guerra sprinklers



Stream

Pipeline from
curve property.

Copies

Guerra historical
P/D.

Stream channel below
P/D (dry) Division-
Pipeline
taking all flow





LOCATION OF P/D
& P/u DETERMINED
DURING A FIELD
VERIFICATION
EXAM ON 6-18-96
BY KKC.

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CLAIM _____ INIT KKC
T. R. S. Q/Q
P/D 13N 18E 10 SENESE
PHOTO 4-24
DT.&ID. 1974 Aight

enlarged
1562

72-07541

ANDREWS (WELL)

COLE P/D (DOM)
A72-10105 (WELL)

BRYANT P/D
(DOM WELL)

GUERRERO P/D

72-04117

PEDERSON P/D
72-07425

CRANE P/D
(2)

GUERRERO P/D
72-07509

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POINT OF DIVERSION COMPARISON
FOR:

TNS 13N; RNG 18E; SEC 10; SE 1/4 B.M.
FOUND DURING A FIELD VISIT ON
6-18-1996 BY KKC AND ADM

CLAIM _____ INIT KKC
T. R. S. Q/Q PREP DATE 6-19-96
P/D 13N 18E 10 SE 1/4 enlarged
PHOTO SCS 241-161 150%
DT & ID 8-29-84

72-07541

FOR APPLICATION FOR PERMIT
DATE PHOTOS TAKEN; 06-18-96
PICTURE SET # 1

You are looking northeast on the right to west on the left across the diversion works for Mr Crane. There are two 'cisterns' buried in the spring seep area. One is visible underwater on the right on the far side of the fenceline. That

Point of Diversion is on Pederson's property. That cistern is tied to another buried cistern further down hill from this point. The location is within this photo set but I did not mark the location for picture taking purposes and I cannot spot its location in the photos. The diversion works will include a pump to the place of use which is out of the picture range to the left, or southwest. The system layout information was obtained from Mr Dan Guerrero.



ALLEN MERRITT DAN GUERRERIO



72-
07541

CLAIM # MULTIPLE USERS AND RIGHTS NEAR GARDEN CREEK
PRIMARILY PICTURED, TNS 13N; RNG 18E; SEC 10; B.M.
DATE PHOTOS TAKEN; 06-18-96
PICTURE SET #

You are looking east on the right to north on the left. The photo set was taken to capture the location of various property/claimant locations within this area.

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GUERRERO P/U GUERRERO P/D PEDERSON GUERRERO P/D PEDERSON P/D CRANE BRYANT GUERRERO P/D
A72-04117 P/U A72-04117 P/D (2) P/U P/D 72-07509

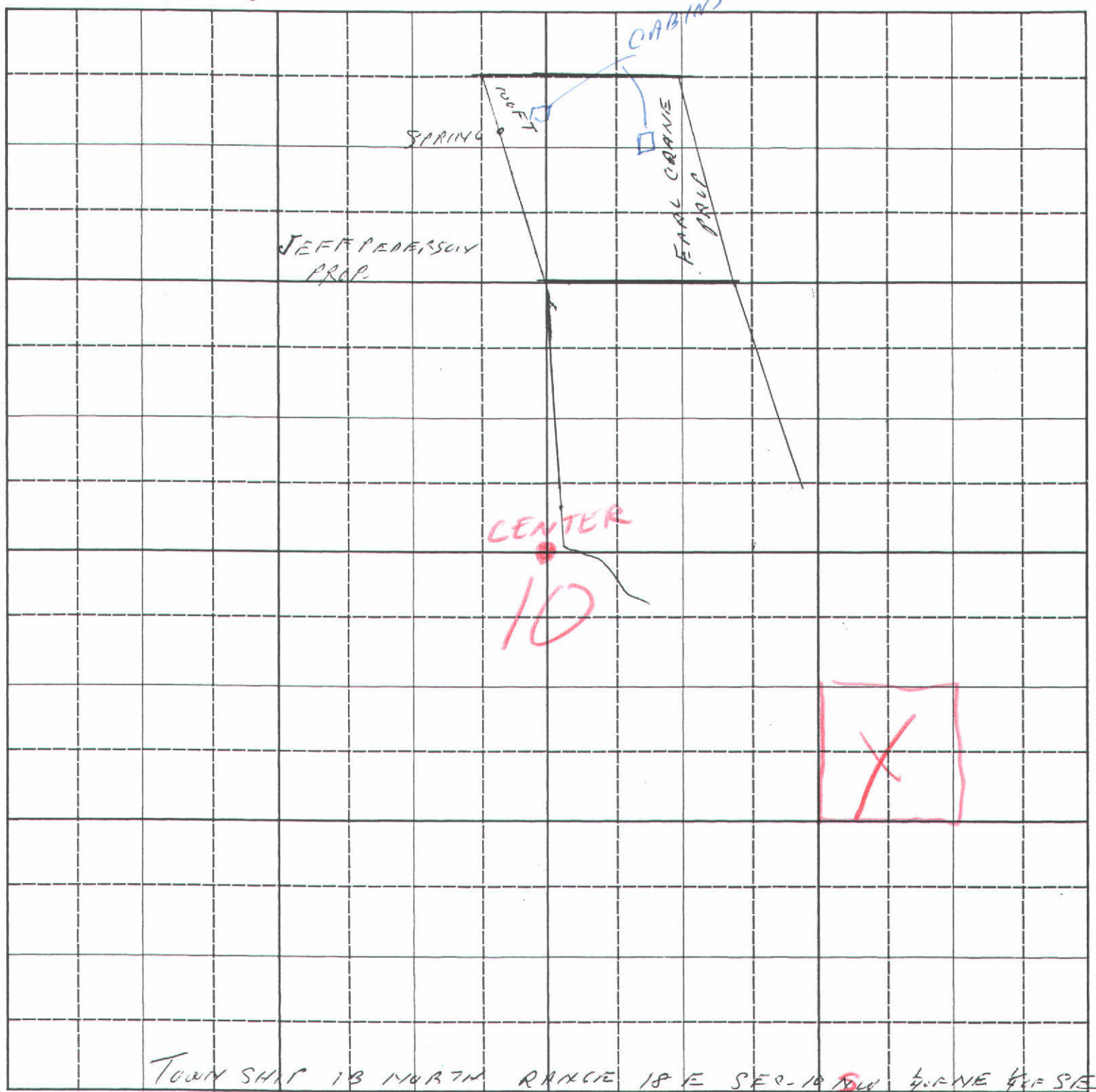


ANDREWS
P/D P/U

COLE P/D P/U
A72-10105 GW

WATER USERS NEAR EARL CRANE
PER KKC.

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



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.

MICROFILMED EARL CRANE
FEB 22 2000 (Applicant)



Pederson
Pipeline & Trench

8-25-95



CRANE
P.T. 1/11/95

8-25-95

A photograph of a forest floor. A prominent, light-colored, possibly bleached or white, log lies horizontally across the middle of the frame. The surrounding area is filled with dense green foliage, including various leaves and branches. Some branches are bare and light-colored, while others have green leaves. In the bottom right corner, there is a date stamp in orange. Handwritten in red ink on the right side of the image is a note with an arrow pointing to the white log.

Anderson
overt low
from Box

8.26'95

A photograph of a light-colored wooden box, possibly a collection container, situated in a natural, outdoor environment. The box is surrounded by dry leaves, twigs, and some green foliage. The box has several small holes or indentations on its surface. A piece of wood is attached to the right side of the box. The handwritten text "Pederson Bot collection" is written in red on the front of the box. A date stamp "8/29/95" is visible in the bottom right corner.

Pederson
collection Bot

8/29/95

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NOV 29 1999

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

Department of Water Resources

PROOF OF BENEFICIAL USE

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

1. Permit No. 72-07541 Telephone No. (208) 879-2397
2. Name(s) of Permit Holder(s): EARL CRANE
3. Mailing Address: PO Box 11 CHALLIS Id 83226
4. Source of Water: UNNAMED SPRING If GROUNDWATER (well), Date Drilled: mo. / yr.
 - a. Well Driller: N/A Drilling Permit Number: N/A
 - b. OPTIONAL: Pump Horsepower: TWO 3/4 HP Pressure (psi): 40 PSI Dynamic pumping level (ft): 50 ft
5. Use(s) (as authorized by the water right permit):
Domestic (No. of households): 2 HOUSEHOLDS Stockwater (No. and type of stock): NO
Irrigation (No. of acres): NO Other:
6. Total rate of diversion and/or volume for which proof is submitted: 0.04 cfs OR acre feet
7. Measuring Device Requirement: (refer to the approval conditions on your permit and respond accordingly)
(This question is not optional. Please check either yes or no. Proofs returned not checked accordingly, will be considered incomplete)

Measuring Device:	Is a measuring device required?	Yes <u> </u>	or No <u>✓</u>
	Has the measuring device been installed?	Yes <u> </u>	or No <u>✓</u>
Flow Measurement Port:	Is a flow measurement port required?	Yes <u> </u>	or No <u>✓</u>
	Has the measurement port been installed?	Yes <u> </u>	or No <u>✓</u>
8. Fee Enclosed: \$ (See Fee Schedule on back of the instructions for filing proof of beneficial use)
9. Person to contact to accompany the Department representative during field examination of the water system.
Name: Earl Crane Telephone Number: (208) 879-2397
Address: PO Box 11 Challis, Idaho 83226

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

Signature of permit holder: Earl Crane Date: 11/20/99
(include your title, if on behalf of company or organization)

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO

IN THE MATTER OF APPLICATIONS AND)
PERMITS FOR THE DIVERSION AND USE)
OF SURFACE WATER AND GROUND)
WATER IN AND TRIBUTARY TO THE)
SELWAY-BITTERROOT WILDERNESS)
AREA, GOSPEL-HUMP WILDERNESS AREA,)
AND FRANK CHURCH-RIVER OF NO)
RETURN WILDERNESS AREA)
_____)

MORATORIUM ORDER

The Director of the Department of Water Resources ("Director"), having responsibility for the administration of the appropriation of water in the State of Idaho, the protection of rights to the use of water within the state, the protection of the public interest in the waters of the state, and the conservation of the water resources of the state, enters the following Findings of Fact, Conclusions of Law, and Final Order.

FINDINGS OF FACT

1. On April 30, 1993, the Director issued an Amended Moratorium Order that stopped the approval of certain applications seeking to appropriate surface water within the Salmon and Clearwater River Basins in Idaho.
2. On December 13, 1993, the United States filed Notices of Claim in the Snake River Basin Adjudication ("SRBA") for federal reserved water rights for the Selway-Bitterroot, Gospel-Hump, and Frank Church-River Of No Return wilderness area designations. On February 27, 1997, a motion to amend the Notices of Claim for all three wilderness area designations was filed with the District Court of the Fifth Judicial District of the State of Idaho (the "SRBA district court") to change the claimed priority dates.
3. As amended, pertinent portions of the claim filed in the SRBA for a federal reserved water right for the Selway-Bitterroot Wilderness are as follows:

Identification Number: A31-11191
Name of Claimant: United States of America

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Date of Priority: September 3, 1964, except for Magruder Corridor that has priority date of July 23, 1980

Source of Water Supply: All streams, lakes, ponds, springs, seeps or other natural sources of water including groundwater, whether named or not and whether perennial, intermittent or ephemeral within the boundaries of the Selway-Bitterroot Wilderness. This claim is intended to also include those sources of water which are not presently known or not reasonably susceptible of quantification because of the de minimus and diffuse nature of their flow and which supply wetlands, marshes, or other vegetation which serves such wilderness purposes as habitat protection and drinking water for wildlife. Tributary to Lochsa and Selway Rivers.

Location of Points of Diversion: None

Location of Place of Use: All locations in the Selway-Bitterroot Wilderness where natural sources of water exist.

Instream Flow Beginning

And Ending Points: All locations in the Selway-Bitterroot Wilderness where natural sources of water exist

Total Quantity Claimed: The entire unappropriated flow and all other natural sources of water as of the date of designation, specifically, September 3, 1964.

4. As amended, pertinent portions of the claims filed in the SRBA for federal reserved water rights for the Gospel-Hump Wilderness are as follows:

Identification Numbers: 77-12774, 82-11120

Name of Claimant: United States of America

Date of Priority: February 24, 1978

Source of Water Supply: All streams, lakes, ponds, springs, seeps or other natural sources of water including groundwater, whether named or not and whether perennial, intermittent or ephemeral within the boundaries of the Gospel-Hump Wilderness. This claim is intended to also include those sources of

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water which are not presently known or not reasonably susceptible of quantification because of the de minimus and diffuse nature of their flow and which supply wetlands, marshes, or other vegetation which serves such wilderness purposes as habitat protection and drinking water for wildlife. Tributary to Salmon River.

Location of Points of Diversion: None

Location of Place of Use: All locations in the Gospel Hump Wilderness where natural sources of water exist.

Instream Flow Beginning

And Ending Points: All locations in the Gospel-Hump Wilderness where natural sources of water exist

Total Quantity Claimed: The entire unappropriated flow and all other natural sources of water as of the date of designation, specifically, February 24, 1978.

5. As amended, pertinent portions of the claims filed in the SRBA for federal reserved water rights for the Frank Church-River of No Return Wilderness are as follows:

Identification Numbers: A75-13605, A77-12775

Name of Claimant: United States of America

Date of Priority: July 23, 1980

Source of Water Supply: All streams, lakes, ponds, springs, seeps or other natural sources of water including groundwater, whether named or not and whether perennial, intermittent or ephemeral within the boundaries of the Frank Church-River of No Return Wilderness. This claim is intended to also include those sources of water which are not presently known or not reasonably susceptible of quantification because of the de minimus and diffuse nature of their flow and which supply wetlands, marshes, or other vegetation which serves such wilderness purposes as habitat protection and drinking water for wildlife. Tributary to Salmon River.

MORATORIUM ORDER

FEB 22 2000

Location of Points of Diversion: None

Location of Place of Use: All locations in the Frank Church-River of No Return Wilderness where natural sources of water exist.

Instream Flow Beginning

And Ending Points: All locations in the Frank Church-River of No Return Wilderness where natural sources of water exist

Total Quantity Claimed: The entire unappropriated flow and all other natural sources of water as of the date of designation, specifically, July 23, 1980.

6. On December 18, 1997, the SRBA district court issued *Order Granting and Denying United States' Motions for Summary Judgment on Reserved Water Rights* for claims made by the United States under the Wilderness Act, Multiple-Use Sustained-Yield Act ("MUSYA"), and Hells Canyon National Recreation Area Act ("HCNRA"), referred to herein as "1997 SRBA Reserved Rights Order." In this order, the SRBA district court ruled that: "The United States is entitled to a federal reserved water right for all unappropriated flows in the Frank Church-River of No Return, the Selway-Bitterroot, and the Gospel-Hump wilderness areas." (1997 SRBA Reserved Rights Order, p. 5). The SRBA district court emphasized its ruling by stating: "The amount of water minimally sufficient to fulfill Congressional intent is the total amount of unappropriated water within each [wilderness] area, **such that none is ever available for future appropriation.**" (1997 SRBA Reserved Rights Order, p. 15, emphasis added).

7. On July 24, 1998, the SRBA district court issued *Memorandum Decision Granting, In Part, and Denying, In Part, the United States' Motion for Summary Judgment on Reserved Water Rights Claims* for claims made by the United States under the Wild and Scenic Rivers Act, referred to herein as "1998 SRBA Wild and Scenic Decision." In this decision, the SRBA district court ruled that under the Central Idaho Wilderness Act, the United States " ... **reserved land north and south of the Mainstem of the Salmon River as wilderness, thereby reserving all unappropriated flows of water in the Mainstem**" referring back to the 1997 SRBA Reserved Rights Order in a footnote. (1998 SRBA Wild and Scenic Decision, p. 7, emphasis added). The SRBA district court noted that "Congress declared that the Mainstem of the Salmon River [that segment of the main Salmon River designated as a component of the Wild and Scenic Rivers System] would be administered solely under the Wild and Scenic Rivers Act, not the Wilderness Act." However, the SRBA district court did not describe any limitation on the reservation of unappropriated flows, nor did the court distinguish between that segment of the main Salmon River designated as Wild and Scenic and that segment adjacent to the Gospel-Hump and Frank Church-River of No Return Wilderness Areas that lies downstream of the Wild and Scenic designation.

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8. On October 1, 1999, the Supreme Court of the State of Idaho issued 1999 Opinion No. 113 in the case of *Potlatch Corp. et al. v. United States of America* affirming the 1997 SRBA Reserved Rights Order granting the United States reserved water rights for all unappropriated water in the Frank Church-River of No Return, the Selway-Bitterroot, and the Gospel-Hump Wilderness Areas.

9. As of the date of this Order, there are approximately 60 pending applications for permits to appropriate surface water and ground water in the Selway-Bitterroot, Gospel-Hump, and Frank Church-River of No Return Wilderness Areas, and areas tributary to the wilderness areas. In addition, approximately 90 permits to appropriate water have been issued in these areas for which proof of beneficial use has not yet been submitted.

10. Although the SRBA district court has not issued final decrees for federal reserved water rights in the Selway-Bitterroot, the Gospel-Hump, and the Frank Church-River of No Return Wilderness Areas, the Supreme Court's decision of October 1, 1999, once final, will preclude future appropriations of water within the wilderness areas and in areas tributary to the wilderness areas.

CONCLUSIONS OF LAW

1. The Director is responsible for the allocation of water for new uses in Idaho. Section 42-203A(5), Idaho Code, reads in pertinent part as follows:

... In all applications whether protested or not protested, where the proposed use is such (a) that it will reduce the quantity of water under existing water rights, or (b) that the water supply itself is insufficient for the purpose for which it is sought to be appropriated, or (c) where it appears to the satisfaction of the director that such application is not made in good faith, is made for delay or speculative purposes, or (d) that the applicant has not sufficient financial resources with which to complete the work involved therein, or (e) that it will conflict with the local public interest, where the local public interest is defined as the affairs of the people in the area directly affected by the proposed use, or (f) that it is contrary to conservation of water resources within the state of Idaho; the director of the department of water resources may reject such application and refuse issuance of a permit therefor, or may partially approve and grant a permit for a smaller quantity of water than applied for, or may grant a permit upon conditions. (emphasis added)

2. The Director is authorized under the provisions of Section 42-1805(7), Idaho Code, as follows:

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After notice, to suspend the issuance or further action on permits or applications as necessary to protect existing vested water rights or to ensure compliance with the provisions of chapter 2, title 42, Idaho Code, or to prevent violation of the minimum flow provisions of the state water plan.

3. The claims filed by the United States in the SRBA for federal reserved water rights for all unappropriated water in the Selway-Bitterroot, Gospel-Hump, and Frank Church-River of No Return Wilderness Areas did not limit the claimed amount to unappropriated water arising solely within the wilderness areas as of the date the wilderness areas were reserved, nor did the claims include subordination to existing permits to appropriate water having junior priority dates for private holdings within the wilderness areas. Neither the 1997 SRBA Reserved Rights Order nor the Idaho Supreme Court decision affirming the 1997 SRBA Reserved Rights Order limited the federal reserved water rights to unappropriated water arising solely within the boundaries of the wilderness areas. Therefore, both the SRBA district court and the Idaho Supreme Court have included unappropriated water flowing into the wilderness areas, either above or below land surface, as part of the unappropriated water "in" or "within" the wilderness areas.

4. Neither the 1997 SRBA Reserved Rights Order, the 1998 SRBA Wild and Scenic Decision, nor the Idaho Supreme Court decision affirming the 1997 SRBA Reserved Rights Order excluded portions of the Middle Fork of the Salmon River, the South Fork of the Salmon River, or Big Creek lying upstream of the wilderness area boundaries, or clearly excluded the Mainstem of the Salmon River, from being considered as sources for unappropriated water "in" or "within" the wilderness areas as of the date the wilderness areas were reserved.

5. Although petitions for rehearing are pending before the Idaho Supreme Court, a moratorium on the granting of new permits to appropriate surface water or ground water and on continued development under existing permits is necessary. A moratorium will preserve the status quo until final decrees are issued for federal reserved water rights and limit the potential for resources being expended to develop water rights for which no unappropriated water may be available.

6. Because this moratorium order is issued to preserve the status quo, the order should take effect immediately upon issuance to protect the public interest in accordance with the provisions of Section 67-5247, Idaho Code.

MORATORIUM ORDER

FEB 22 2000

ORDER

IT IS, THEREFORE, HEREBY ORDERED that the prior Amended Moratorium Order of the Director issued on April 30, 1993, remains in effect and the requirements listed below also apply.

IT IS FURTHER HEREBY ORDERED that a moratorium is established on the processing of applications for permits to appropriate surface water or ground water within and tributary to the Selway-Bitterroot Wilderness Area, the Gospel-Hump Wilderness Area, and the Frank Church-River of No Return Wilderness Area, subject to the following conditions:

1. This moratorium order shall be in effect on and after its entry and shall remain in effect until withdrawn or modified by order of the Director, except as provided herein.
2. This moratorium order applies to all applications for permit, previously filed or to be filed, and all existing permits for which proof of beneficial use has not been filed with the Department, seeking to appropriate surface water or ground water within the Salmon River Basin upstream from the location where the Salmon River leaves the Gospel-Hump Wilderness Area in Section 3, T24N, R4E, B.M. and in the Clearwater River Basin upstream from the location where the Selway River leaves the Selway-Bitterroot Wilderness Area in Section 7, T31N, R10E, B.M. The wilderness areas and tributary areas affected by this moratorium order are depicted on the attached map.
3. This moratorium order does not apply to any application proposing a non-consumptive use of water.
4. This moratorium order does not prevent the Director from reviewing an application that otherwise would not be approved under terms of this moratorium on a case by case basis, if the Director determines that the use of the water pursuant to the application would have no effect on other water rights due to:
 - (a) the location of use; or
 - (b) the effect on other water rights would be offset through mitigation provided by the applicant.

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5. The holders of all existing permits to appropriate water within the Selway-Bitterroot, Gospel-Hump, and Frank Church-River of No Return Wilderness Areas, and within areas tributary to those wilderness areas, shall upon receipt of this moratorium order immediately stop further development under the permit, and within sixty (60) days of receipt of this order do one of the following:

- (a) file proof of beneficial use documenting the extent of diversion and beneficial use of water that was completed prior to receiving this moratorium order; or
- (b) request a stay in the development period under the permit, in accordance with Section 42-204, Idaho Code, until the conditions that resulted in this order have been alleviated, if such should ever occur.

Dated this 26th day of October, 1999.

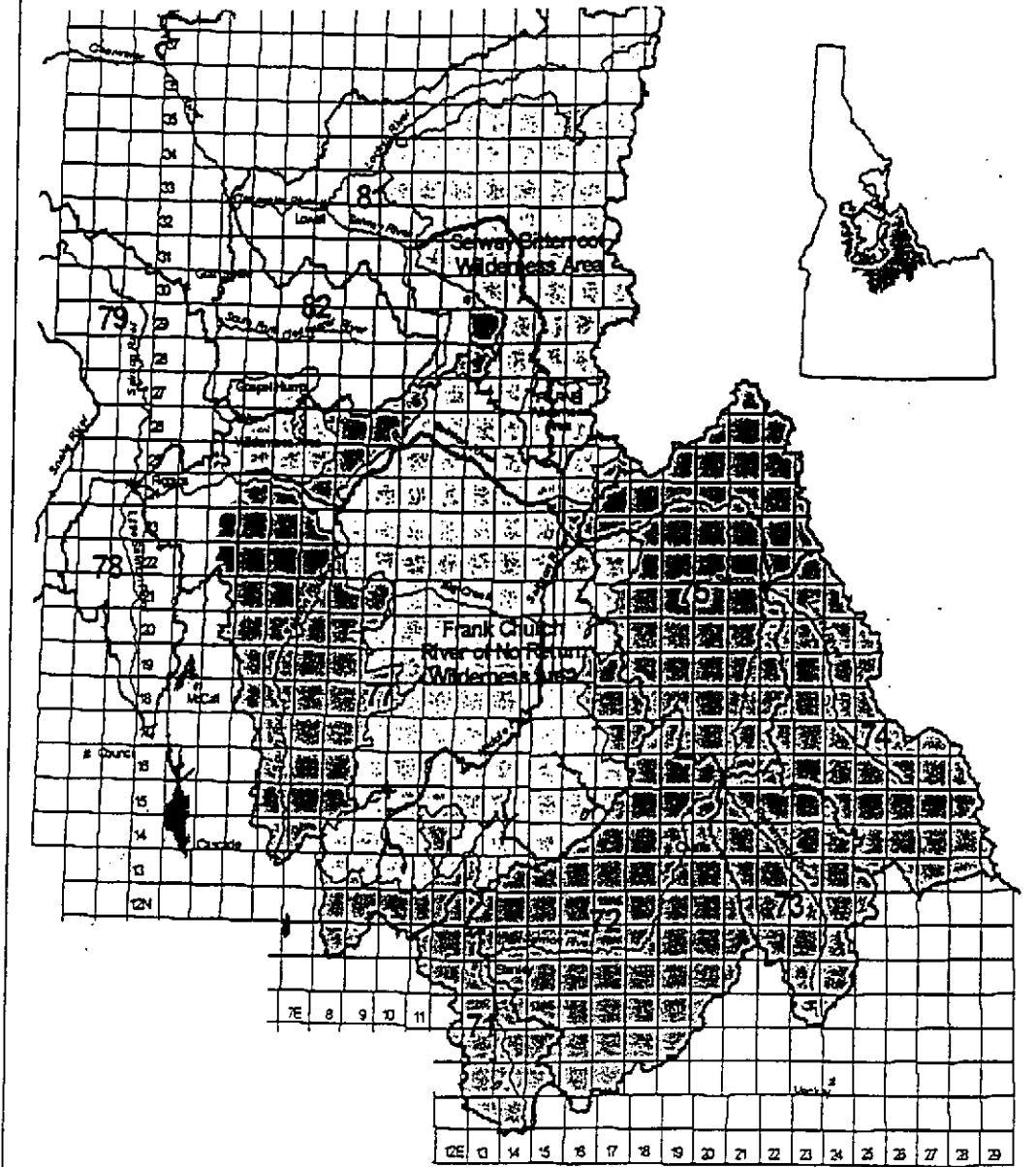
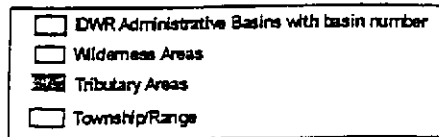


KARL J. DREHER
Director

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FEB 22 2000

Wilderness Moratorium Areas

October 26, 1999



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APPEAL FILED 3/17/97.

Daniel C. Guerrero v. IDWR and Earl Crane
Custer County Case No. CV-97-33

Gregory W. Moeller, Attorney for Protestant/Appellant
Phillip J. Rassier, Attorney for IDWR
Earl Crane, Appearing Pro Se

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FEB 22 2000

MAR 18 1997

Department of Water Resources

Gregory W. Moeller
of RIGBY, THATCHER, ANDRUS,
RIGBY, KAM & MOELLER, Chartered
Attorneys at Law
25 North Second East
Rexburg, Idaho 83440
Telephone: 208 356-3633

Attorneys for Appellant Daniel C. Guerrero

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF
THE STATE OF IDAHO IN AND FOR THE COUNTY OF CUSTER

IN THE MATTER OF APPLICATION FOR)
PERMIT NO. 72-07541 IN THE NAME) NOTICE OF APPEAL
OF EARL CRANE)
_____)

TO: THE IDAHO DEPARTMENT OF WATER RESOURCES, EARL CRANE,
AND THE CLERK OF THE ABOVE-ENTITLED COURT

NOTICE IS HEREBY GIVEN that:

1. DANIEL C. GUERRE^R_AO, the above-named Appellant, appeals to the District Court for the Seventh Judicial District of the State of Idaho, in and for the County of Custer, from the Final Order of the Idaho Department of Water Resources, dated February 13, 1997, by Karl J. Dreher, Director.
2. Appellate has a right to appeal to this Court and venue for this matter is proper in Custer County, Idaho, pursuant to Idaho Code § 67-5272(d). The Department of Water Resources' Final Order is a final, appealable Order pursuant to Idaho Code § 67-5270.

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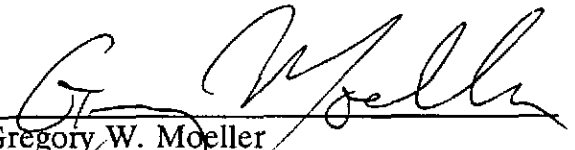
3. The Final Order appealed from by Appellant was served by mailing a copy to Appellant on February 18, 1997. This appeal has been filed within twenty-eight (28) days of service as per the Department's letter of February 18, 1997.

4. This appeal is made on both issues of fact and issues of law.

5. Appellant requests, pursuant to Idaho Code § 67-5275, that the Idaho Department of Water Resources, within 42 days after the service of this notice, transmit a copy of the agency record of the proceedings in this matter to the Custer County District Court.

6. Appellant hereby applies to the Court for leave to present additional material evidence relating to the validity of the agency action and alleges that there is just cause for the receipt of this evidence pursuant to Idaho Code § 67-5276.

DATED This 14th day of March, 1997.



Gregory W. Moeller
of Rigby, Thatcher, Andrus, Rigby
Kam & Moeller, Chtd.
Attorneys for Appellant

CERTIFICATE OF SERVICE

I HEREBY CERTIFY That on this 14th day of March, 1997, a true and accurate copy of the foregoing was sent by U.S. Mail, postage prepaid to the following:

Earl Crane
P.O. Box 11
Challis, ID 83226

Department of Water Resources
1301 N. Orchard St.
Statehouse Mail
Boise, ID 83702-9000



Gregory W. Moeller

State of Idaho
Department of Water Resources
Permit To Appropriate Water

NO. 72-07541

Proposed Priority: January 2, 1996

Maximum Diversion Rate:

0.04 CFS

This is to certify, that **EARL CRANE**

PO BOX 11

CHALLIS ID 83226-0011

has applied for a permit to appropriate water from:

SPRING

tributary of **SINKS**

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

BENEFICIAL USE

PERIOD OF USE

RATE OF DIVERSION

DOMESTIC

01/01 to 12/31

0.04 CFS

LOCATION OF POINT(S) OF DIVERSION:

SWNESE , Sec. 10, Township 13N, Range 18E
CUSTER County

PLACE OF USE: DOMESTIC

TWN RGE SEC

13N 18E 10

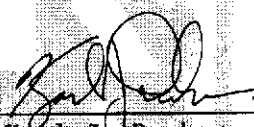
NESE

CONDITIONS OF APPROVAL AND REMARKS

1. See Final Order for conditions and limitations for use of water under this approval.

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

14th day of February, 1997.


Karl J. Dreher, Director

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FEB 22 2000

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

IN THE MATTER OF APPLICATION FOR)
PERMIT NO. 72-07541 IN THE NAME)
OF EARL CRANE)

FINAL ORDER

On October 16, 1996, the hearing officer for the Idaho Department of Water Resources (department) issued a Recommended Order in connection with the above captioned matter. On November 12, 1996, protestant Daniel C. Guerrero filed a Petition for Reconsideration which was denied by the hearing officer.

On December 3, 1996, the protestant submitted a request to the department seeking thirty (30) additional days in which to file exceptions or briefs to the Recommended Order. On December 4, 1996, the department granted the request allowing 28 additional days to file exceptions or briefs and 28 days for the applicant to respond to any exceptions or briefs.

On December 31, 1996, the protestant filed a Brief in Opposition to Recommended Order seeking to have the Recommended Order set aside for a year to allow further examination of the systems. On January 29, 1997, the applicant filed a Memorandum in Support of Recommended Order.

In his brief, the protestant did not allege error in the Recommended Order or show that with reasonable diligence why the information now sought could not have been obtained prior to the October 1996 hearing. Hence, the protestant's request to delay the matter for a year is not fair to the applicant and should be denied.

Based upon his understanding of the law and the facts in this matter, the Director makes the following Findings of Fact, Conclusions of Law and Final Order:

FINDINGS OF FACT

1. On December 29, 1995, Earl Crane (applicant) submitted Application For Permit No. 72-07541 (application) to the department proposing the diversion of 0.04 cubic feet per second (cfs) of water from an Unnamed Spring within the SW1/4NE1/4SE1/4 Section 10, T13N, R18E, B.M. Custer County to be used year-round for domestic purposes for two (2) cabins. (The "1/4" designations will be omitted from subsequent legal descriptions in this order).

2. The department published notice of the application which was subsequently protested by Garden Creek Ranch c/o D.C. Guerrero (protestant).

3. On October 2, 1996, the department conducted a hearing in the matter in Challis, Idaho. Both the applicant and protestant were present and represented themselves.

4. Issues identified by the protestant include the following:

a. The application will reduce the quantity of water under existing water rights.

b. The water supply itself is not sufficient for the purposes intended.

c. The application conflicts with the local public interest.

5. Exhibits offered and accepted as a part of the record include the following:

a. Applicant's Exhibit 1 - Warranty Deed from Donald P. Frost, Naoma Frost, Don A. Mann and Glenda G. Mann to Earl C. Crane and Helen E. Crane dated June 1, 1982.

b. Protestant's Exhibit A - Memorandum dated August 27, 1996 to Allen Merritt from Bob Foster.

c. Protestant's Exhibit B - Plat showing a spring and water line locations in Section 10, T13N, R18E, B.M.

d. Protestant's Exhibit C - Grant of Easement and Water Rights dated March 17, 1980 from Donald Frost and Naoma Frost, Don A. Mann and Glenda G. Mann to Gary R.L. Oliverson and Elise M. Oliverson.

e. Protestant's Exhibit D - Page 4 of a Contract of Sale and Warranty Deed dated March 11, 1988 from Gary R. L. Oliverson and Elise M. Oliverson to D.C. Guerrero.

f. Protestant's Exhibit E - Contract of Sale between Gary R.L. Oliverson and Elise M. Oliverson to D.C. Guerrero.

6. The land presently owned by the applicant and by the protestant was formerly owned by Donald P. Frost, Naoma Frost, Don A. Mann and Glenda G. Mann (original owners) who sold part of the land to the applicant, part to the protestant and part to other adjacent owners. The sales transaction involving the lands show that the original owners intended to convey the right to use the springs located on the original owners' property to both the applicant and to the protestant. This intended conveyance is supported by both the Warranty Deed to the applicant (Exhibit 1) and the Grant of Easement and Water Rights to the protestant's predecessors (Exhibit C).

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7. The location of "the spring" claimed by the protestant and as represented on Claim to Water Right No. 72-04117 filed in 1982 by the protestant is not a clearly defined spring but is a wet, boggy area generally located in the SENESE Section 10, T13N. R18E, B.M.

8. The applicant has partially developed two spring areas by excavating the areas, constructing a collection system and connecting the spring areas with a pipe. The upper spring area is located upon the property of Jeffrey P. Pedersen and the lower spring area is located on the applicant's four (4) acre parcel of property. The applicant has estimated the combined flow from the two areas as approximately 0.5 gallons of water in 10 seconds (about 3 gallons per minute). The applicant has also leveled two areas on which he intends to build houses.

9. There were insufficient data available to show whether the springs located in the SENESE Section 10 used by the protestant and the spring areas sought by the applicant in the SWNESE Section 10 are hydraulically connected. Water from the spring on the applicant's property sinks into the ground on the applicant's property suggesting that the spring may be privately-owned.

10. On July 14, 1982, the protestant filed Claim to a Water Right No. 72-04117 with the department claiming the following:

Source: Unnamed springs trib. to sinks
Priority: 1942
Pt of div: NESE, NWSE (2 points) Section 10, T13N, R18E,
B.M.
Uses: 0.50 cfs for irrigation of 25 acres
0.04 cfs for 1 domestic use
0.02 cfs for livestock
0.56 cfs - TOTAL
Basis of rt: Beneficial use

11. On November 16, 1989, the protestant filed a Snake River Basin Adjudication (SRBA) claim based on prior claim 72-04117 claiming an enhanced water use over that previously claimed as follows:

Source: Springs trib. to sinks
Priority: 1878
Pt of div: NWNESE, NENWSE, SESWNE Section 10, T13N, R18E,
B.M.
Uses: 0.60 cfs for irrigation of 30 acres
0.06 cfs for 2 domestic uses
0.02 cfs for livestock
0.68 cfs - TOTAL
Basis of rt: Beneficial use

After investigating SRBA Claim No. A72-04117 filed by the

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protestant, the department plans to recommend a priority of August 24, 1927 and a maximum rate of diversion substantially less than claimed.

CONCLUSIONS OF LAW

1. Section 42-203A, Idaho Code, provides in pertinent part as follows:

In all applications whether protested or not protested where the proposed use is such (a) that it will reduce the quantity of water under existing water rights, or (b) that the water supply itself is insufficient for the purpose for which it is sought to be appropriated, or (c) where it appears to the satisfaction of the director that such application is not made in good faith, is made for delay or speculative purposes, or (d) that the applicant has not sufficient financial resources with which to complete the work involved therein, or (e) that it will conflict with the local public interest, where the local public interest is defined as the affairs of the people in the area directly affected by the proposed use, or (f) that it is contrary to conservation of water resources within the state of Idaho; the director of the department of water resources may reject such application and refuse issuance of a permit therefor... .

2. The water use of the protestant, while earlier in time than the applicant, is represented by claims which have not been quantified or confirmed.

3. The application does not conflict with the local public interest.

4. The application will not reduce the quantity of water under the existing water right of the protestant.

5. The water supply itself is sufficient to provide domestic water to two (2) homes.

6. The application is made in good faith and not for delay or speculative purposes.

7. The applicant has sufficient financial resources with which to complete the project.

8. The application is not contrary to the conservation of water resources within Idaho.

9. The department should approve the application subject to certain conditions and limitations.

WOMAN
FEB 22 1999

ANALYSIS

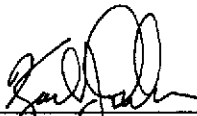
The language in both the applicant's Warranty Deed and the protestant's Warranty Deed clearly shows that the intent of the original owners was to allow use of the springs by their successors-in-interest including the applicant. Hence, approval of the application is the most equitable resolution of the matter.

ORDER

IT IS THEREFORE, hereby ORDERED that Application for Permit No. 72-07541 in the name of Earl Crane is **APPROVED** subject to the following conditions and limitations:

1. Use of water under the right is subject to all prior water rights.
2. Proof of construction of works and application of water to beneficial use shall be submitted to the department on or before **February 1, 1998**.
3. Approval of the application does not supercede or waive any contractual obligation(s) of the applicant or protestant if such obligation(s) exist.
4. Approval of the application does not grant any right-of-way or easement across the lands of another party.
5. Domestic use is for two (2) homes.

Signed this 13th day of February, 1997.



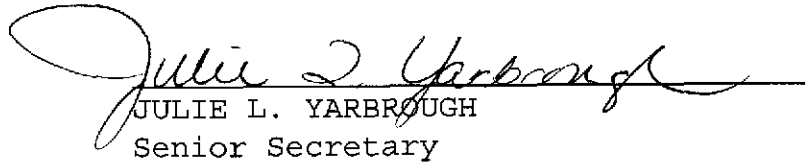
KARL J. DREHER
Director

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 18th day of February, 1997,
I mailed a true and correct copy, postage prepaid, of the foregoing
FINAL ORDER to the following:

Earl Crane
P.O. Box 11
Challis, ID 83226

D.C. Guerrero
Garden Creek Ranch
P.O. Box 248
Challis, ID 83226


JULIE L. YARBROUGH
Senior Secretary

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

IN THE MATTER OF APPLICATION FOR)
PERMIT NO. 72-07541 IN THE NAME)
OF EARL CRANE)
_____)

ORDER

This matter having come before the Idaho Department of Water Resources (department), as a result of a protest against the approval of an application for permit, the department makes the following Findings of Fact, Conclusions of Law and Order:

FINDINGS OF FACT

1. On October 16, 1996, the hearing officer for the Idaho Department of Water Resources (department or IDWR) issued a Recommended Order in connection with Application for Permit No. 72-07541 (application) filed in the name of Earl Crane (permit holder).

2. On October 30, 1996 and on November 12, 1996, Daniel C. Guerrero (protestant) submitted a Petition for Reconsideration (petition) to the hearing officer. On November 13, 1996, the hearing officer denied the petition for reconsideration.

3. On December 3, 1996, the protestant submitted to the Director a request to extend for thirty (30) days the time in which to file exceptions and briefs to the hearing officer's recommended order. The reason for the requested extension is to allow time for the protestant to seek the advice of an attorney in the contested matter.

CONCLUSIONS OF LAW

1. The department should provide the opportunity to the protestant and/or to the applicant to now seek legal counsel in this matter if they so choose.

2. The department should extend for a period of twenty-eight (28) days the time in which the protestant may file exceptions and briefs.

ORDER

IT IS THEREFORE, HEREBY ORDERED that the time in which the protestant may file exceptions or briefs in connection with the Recommended Order issued by the hearing officer is extended to **January 2, 1997.**

IT IS FURTHER, HEREBY ORDERED that the applicant be allowed twenty-eight (28) days after the date of service of any exceptions or briefs filed by the protestant in which to respond to the exceptions and briefs.

Dated this 4th day of December, 1996.



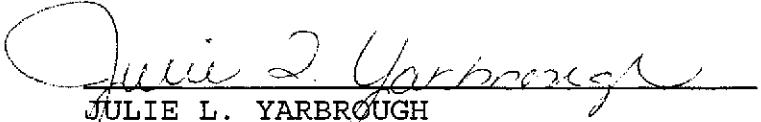
KARL J. DREHER
Director

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 13th day of December, 1996,
I mailed a true and correct copy, postage prepaid, of the foregoing
ORDER to the following:

Earl Crane
P.O. Box 11
Challis, ID 83226

D.C. Guerrero
Garden Creek Ranch
P.O. Box 248
Challis, ID 83226


JULIE L. YARBROUGH
Senior Secretary

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

IN THE MATTER OF APPLICATION)
FOR PERMIT NO. 72-07541 IN)
THE NAME OF EARL CRANE)

**ORDER DENYING
PETITION FOR RECONSIDERATION**

On October 16, 1996, the hearing officer for the Idaho Department of Water Resources (department or IDWR) issued a Recommended Order in connection with Application for Permit No. 72-07541 (application) filed in the name of Earl Crane (permit holder). On October 30, 1996 and on November 12, 1996, Daniel C. Guerrero (protestant) submitted a Petition for Reconsideration (petition) to the hearing officer.

The hearing officer has reviewed the petition and responds to the items in the petition as follows:

1. Finding of Fact No. 4.a. - This finding of fact identifies one of the issues raised by the protestant and should not be changed.

Based on evidence available to date, the priority of use which the department will recommend to the court in the Snake River Basin Adjudication for Notice of Claim to a Water Right No. 72-04117 filed by the protestant is August 24, 1927 and the recommended rate of diversion of 0.14 cubic feet per second (cfs). This information will be added to Finding of Fact No. 10. in the Final Order of the department.

Water use by Jeffrey Pederson is not a part of the hearing record.

The protestant is not entitled to 1.24 cfs of water.

On August 27, 1996, the department measured 0.096 cfs being discharged from the protestant's sprinkler system. This measurement is not necessarily representative of flow available for diversion during other times of the year.

2. Finding of Fact No. 4.b. - This finding of fact identifies one of the issues raised by the protestant and should not be changed.

The water supply available to the applicant is sufficient for the domestic purpose for which it is sought. Also see the response to item 1. above.

3. Finding of Fact No. 4.c. - This finding of fact identifies one of the issues raised by the protestant and should not be changed.

4. Finding of Fact No. 5. - The finding of fact is correct and should not be changed. A water right or part thereof can not be conveyed unless such water right exists. The purpose of the

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applicant in filing the application was to establish a water right.

5. Finding of Fact No. 6. - The finding of fact is correct and should not be changed.

6. Finding of Fact No. 7. - The finding of fact is correct and should not be changed. The application was filed in order to comply with state water law.

7. Conclusion of Law No. 2. - The conclusion of law is correct and should not be changed. Also see the response to item 1. above.

8. Conclusion of Law No. 3. - The conclusion of law is correct and should not be changed. Also see the response to item 4. above.

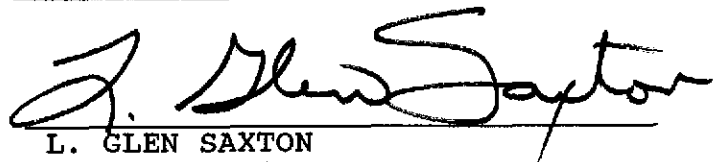
9. Conclusion of Law No. 5. - The conclusion of law is correct and should not be changed. Also see the response to item 2. above.

ORDER

IT IS, THEREFORE, HEREBY ORDERED that the protestant's Petition for Reconsideration of the Recommended Order is hereby **DENIED**.

IT IS FURTHER, HEREBY ORDERED that since the protestant has not shown sufficient cause to grant oral argument, the request is **DENIED** unless the Director determines a need for and schedules oral argument.

Dated this 13th day of November, 1996.

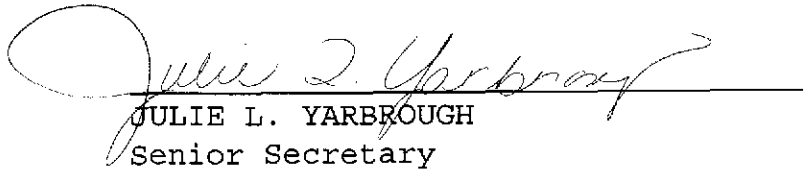

L. GLEN SAXTON
Hearing Officer

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 13th day of November, 1996,
I mailed a true and correct copy, postage prepaid, of the foregoing
ORDER DENYING PETITION FOR RECONSIDERATION to the following:

Earl Crane
P.O. Box 11
Challis, ID 83226

D.C. Guerrero
Garden Creek Ranch
P.O. Box 248
Challis, ID 83226


JULIE L. YARBROUGH
Senior Secretary

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE
STATE OF IDAHO

IN THE MATTER OF APPLICATION FOR)
PERMIT NO. 72-07541 IN THE NAME)
OF EARL CRANE)
_____)

RECOMMENDED ORDER

This matter having come before the Idaho Department of Water Resources (department) in the form of a protested application for permit, the department having held a conference and a hearing in the matter, the hearing officer recommends the following Findings of Fact, Conclusions of Law and Order:

FINDINGS OF FACT

1. On December 29, 1995, Earl Crane (applicant) submitted Application For Permit No. 72-07541 (application) to the department proposing the diversion of 0.04 cubic feet per second (cfs) of water from an Unnamed Spring within the SW1/4NE1/4SE1/4 Section 10, T13N, R18E, B.M. Custer County to be used year-round for domestic purposes for two (2) cabins. (The "1/4" designations will be omitted from subsequent legal descriptions in this order).

2. The department published notice of the application which was subsequently protested by Garden Creek Ranch c/o D.C. Guerrero (protestant).

3. On October 2, 1996, the department conducted a hearing in the matter in Challis, Idaho. Both the applicant and protestant were present and represented themselves.

4. Issues identified by the protestant include the following:

a. The application will reduce the quantity of water under existing water rights.

b. The water supply itself is not sufficient for the purposes intended.

c. The application conflicts with the local public interest.

5. Exhibits offered and accepted as a part of the record include the following:

a. Applicant's Exhibit 1 - Warranty Deed from Donald P.

Frost, Naoma Frost, Don A. Mann and Glenda G. Mann to Earl C. Crane and Helen E. Crane dated June 1, 1982.

b. Protestant's Exhibit A - Memorandum dated August 27, 1996 to Allen Merritt from Bob Foster.

c. Protestant's Exhibit B - Plat showing a spring and water line locations in Section 10, T13N, R18E, B.M.

d. Protestant's Exhibit C - Grant of Easement and Water Rights dated March 17, 1980 from Donald Frost and Naoma Frost, Don A. Mann and Glenda G. Mann to Gary R.L. Oliverson and Elise M. Oliverson.

e. Protestant's Exhibit D - Page 4 of a Contract of Sale and Warranty Deed dated March 11, 1988 from Gary R. L. Oliverson and Elise M. Oliverson to D.C. Guerrero.

f. Protestant's Exhibit E - Contract of Sale between Gary R.L. Oliverson and Elise M. Oliverson to D.C. Guerrero.

5. The land presently owned by the applicant and by the protestant was formerly owned by Donald P. Frost, Naoma Frost, Don A. Mann and Glenda G. Mann (original owners) who sold part of the land to the applicant, part to the protestant and part to other adjacent owners. The sales transaction involving the lands show that the original owners intended to convey the right to use the springs located on the original owners' property to both the applicant and to the protestant. This intended conveyance is supported by both the Warranty Deed to the applicant (Exhibit 1) and the Grant of Easement and Water Rights to the protestant's predecessors (Exhibit C).

6. The location of "the spring" claimed by the protestant and as represented on Claim to Water Right No. 72-04117 filed in 1982 by the protestant is not a clearly defined spring but is a wet, boggy area generally located in the SENESE Section 10, T13N. R18E, B.M.

7. The applicant has partially developed two spring areas by excavating the areas, constructing a collection system and connecting the spring areas with a pipe. The upper spring area is located upon the property of Jeffrey P. Pedersen and the lower spring area is located on the applicant's four (4) acre parcel of property. The applicant has estimated the combined flow from the two areas as approximately 0.5 gallons of water in 10 seconds (about 3 gallons per minute). The applicant has also leveled two areas on which he intends to build houses.

8. There was insufficient data available to show whether the springs located in the SENESE Section 10 used by the protestant and the spring areas sought by the applicant in the SWNESE Section 10

are hydraulically connected. Water from the spring areas developed by the applicant sink into the ground suggesting that the springs could be privately owned springs.

9. On July 14, 1982, the protestant filed Claim to a Water Right No. 72-04117 with the department claiming the following:

Source: Unnamed springs trib. to sinks
Priority: 1942
Pt of div: NESE, NWSE (2 points) Section 10, T13N, R18E,
B.M.
Uses: 0.50 cfs for irrigation of 25 acres
0.04 cfs for 1 domestic use
0.02 cfs for livestock
0.56 cfs - TOTAL
Basis of rt: Beneficial use

10. On November 16, 1989, the protestant filed a Snake River Basin Adjudication claim based on prior claim 72-04117 claiming an enhanced water use over that previously claimed as follows:

Source: Springs trib. to sinks
Priority: 1878
Pt of div: NWNESE, NENWSE, SESWNE Section 10, T13N, R18E,
B.M.
Uses: 0.60 cfs for irrigation of 30 acres
0.06 cfs for 2 domestic uses
0.02 cfs for livestock
0.68 cfs - TOTAL
Basis of rt: Beneficial use

CONCLUSIONS OF LAW

1. Section 42-203A, Idaho Code, provides in pertinent part as follows:

In all applications whether protested or not protested where the proposed use is such (a) that it will reduce the quantity of water under existing water rights, or (b) that the water supply itself is insufficient for the purpose for which it is sought to be appropriated, or (c) where it appears to the satisfaction of the director that such application is not made in good faith, is made for delay or speculative purposes, or (d) that the applicant has not sufficient financial resources with which to complete the work involved therein, or (e) that it will conflict with the local public interest, where the local public interest is defined as the affairs of the people in the area directly affected by the proposed use, or (f) that it is contrary to conservation of water resources within the state of Idaho; the director of the department of water resources may reject such application and refuse

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issuance of a permit therefor... .

2. The water use of the protestant, while earlier in time than the applicant, is represented by claims which have not been quantified or confirmed.

3. The application appears to be filed consistent with the sale contract documents applicable to the land of both the applicant and protestant and does not conflict with the local public interest.

4. The application will not reduce the quantity of water under the existing water right of the protestant.

5. The water supply itself is sufficient to provide domestic water to two (2) homes.

6. The application is made in good faith and not for delay or speculative purposes.

7. The applicant has sufficient financial resources with which to complete the project.

8. The application is not contrary to the conservation of water resources within Idaho.

9. The department should approve the application subject to certain conditions and limitations.

ANALYSIS

The language in both the applicant's Warranty Deed and the protestant's Warranty Deed clearly shows that the intent of the original owners was to allow use of the springs by their successors-in-interest including the applicant. Hence, approval of the application appears to be the most equitable resolution of the matter.

ORDER

IT IS THEREFORE, hereby ORDERED that Application for Permit No. 72-07541 in the name of Earl Crane is **APPROVED** subject to the following conditions and limitations:

1. Use of water under the right is subject to all prior water rights.

2. Proof of construction of works and application of water to beneficial use shall be submitted to the department on or before the date shown in the final order of the department.

3. Approval of the application does not supercede any

ORDER - Pg 4

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FEB 22 2000

contractual obligation(s) of the applicant or protestant if such obligation(s) exist.

4. Approval of the application does not grant any right-of-way or easement across the lands of another party.

5. Domestic use is for two (2) homes.

Signed this 15th day of October, 1996.


L. GLEN SAXTON
Hearing Officer

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 16th day of October, 1996,
I mailed a true and correct copy, postage prepaid, of the foregoing
RECOMMENDED ORDER to the following:

Earl Crane
P.O. Box 11
Challis, ID 83226

D.C. Guerrero
Garden Creek Ranch
P.O. Box 248
Challis, ID 83226


JULIE L. YARBROUGH
Senior Secretary

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SEP 12 2003

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Form 202
10/92

Ident. No. 72-07541

DEC 29 1995

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
APPLICATION FOR PERMIT

Department of Water Resources
Southern Region

To appropriate the public waters of the State of Idaho

1. Name of applicant EARL CRANE Phone 879-2397
Post office address PO BOX 11 CHALLIS, IDA. 83226
UNNAMED
2. Source of water supply SPRING which is a tributary of SINKS
3. Location of point of diversion is SW $\frac{1}{4}$ of NE $\frac{1}{4}$ of SE $\frac{1}{4}$, Govt. Lot _____
Sec. 10 Township 13 NORTH Range 18 EAST B.M. Custer County; additional
points of diversion if any: _____

4. Water will be used for the following purposes:

- Amount .04 for DOMESTIC purposes from Jan 1 to Dec 31 (both dates inclusive)
(cfs or acre-feet per annum)
Amount _____ for _____ purposes from _____ to _____ (both dates inclusive)
(cfs or acre-feet per annum)
Amount _____ for _____ purposes from _____ to _____ (both dates inclusive)
(cfs or acre-feet per annum)
Amount _____ for _____ purposes from _____ to _____ (both dates inclusive)
(cfs or acre-feet per annum)

5. Total quantity to be appropriated is (a) .04 and/or (b) _____
cubic feet per second acre feet per annum

6. Proposed diverting works:

- a. Description of ditches, flumes, pumps, headgates, etc. WE PLAN TO PUT A HEAD
BOX IN THE SPRING WHICH WILL HOLD ABOUT 30 GAL
TO SUPPLY A 1 HP PUMP FOR THE CABINS
b. Height of storage dam _____ feet; active reservoir capacity _____ acre-feet; total
reservoir capacity _____ acre-feet; period of year when water will be diverted to storage:
_____ to _____ inclusive.
c. Proposed well diameter is _____ inches; proposed depth of well is _____ feet.
d. Is ground water with a temperature of greater than 85°F being sought? No
e. If well is already drilled, when? _____; Drilling firm _____;
Well was drilled for (well owner) _____

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

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FEB 22 1996

CHANGES MADE PER APPLICANT'S RESPONSE TO
01/02/96 LETTER AND KRC'S FIELD VERIFICATION
C.S.

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

- Hydropower; show total feet of head and proposed capacity in KW. _____
- Stockwatering; list number and kind of livestock. _____
- Municipal; show name of municipality. _____
- Domestic; show number of households. 2
- Other; describe fully. _____

9. Description of place of use:

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

TWP	RANGE	SEC.	NE¼				NW¼				SW¼				SE¼				TOTALS
			NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	
13 N	18 EAST	10													D				DOMESTIC

PER APPLICANT'S RESPONSE TO 01/02/96 LETTER AND KRC'S FIELD VERIFICATION C.S.

Total number of acres to be irrigated NONE

10. Describe any other water rights used for the same purposes as described above. N/A

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

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

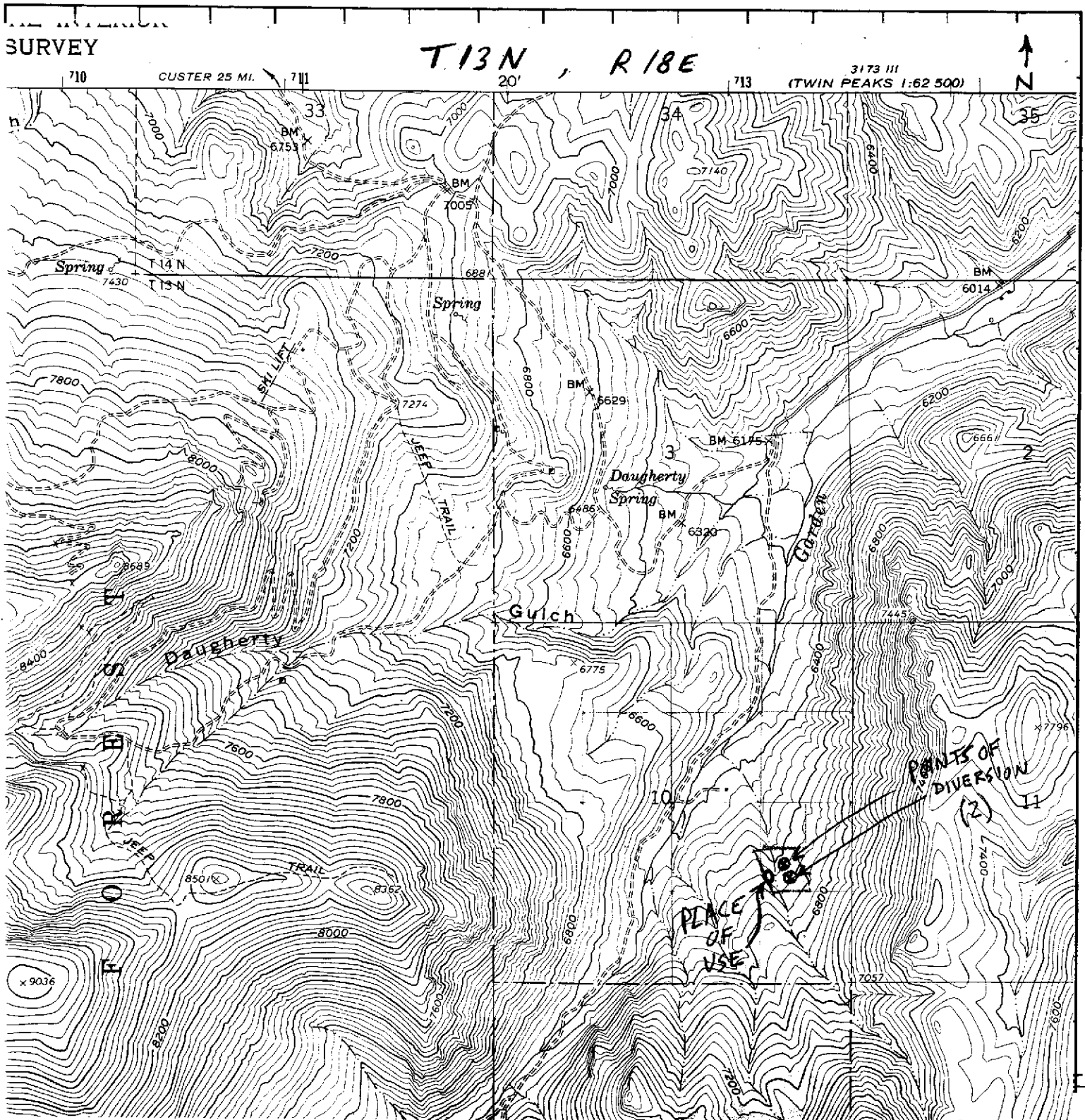
c. If the property is owned by a person other than the applicant, describe the arrangement enabling the applicant to make this filing. WE HAVE A VERBAL AGREEMENT WITH JEFF.

12. Remarks: THIS SPRING IS RIGHT ON THE PROPERTY LINE IT IS A VERY SMALL SPRING WHICH RAN ABOUT 100 OR 150 FT IT HAS NEVER BEEN DEVELOPED.

RECORDED

FEB 22 2000

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



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.

FRANK CRANE
(Applicant)

FEB 22 2009

Received by MB Date 12/29/95 Time 10:02 am Preliminary check by CS
Fee \$ 50.00 Receipted by CS # 5018754 Date 1/2/96
Publication prepared by MB Date 6/24/96 Published in Challis Messenger
Publication approved MB Date 7/19/96

ACTION OF THE DIRECTOR, DEPARTMENT OF WATER RESOURCES

This is to certify that I have examined Application for Permit to appropriate the public waters of the State of Idaho No. _____, and said application is hereby _____.

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 _____, 19 ____.

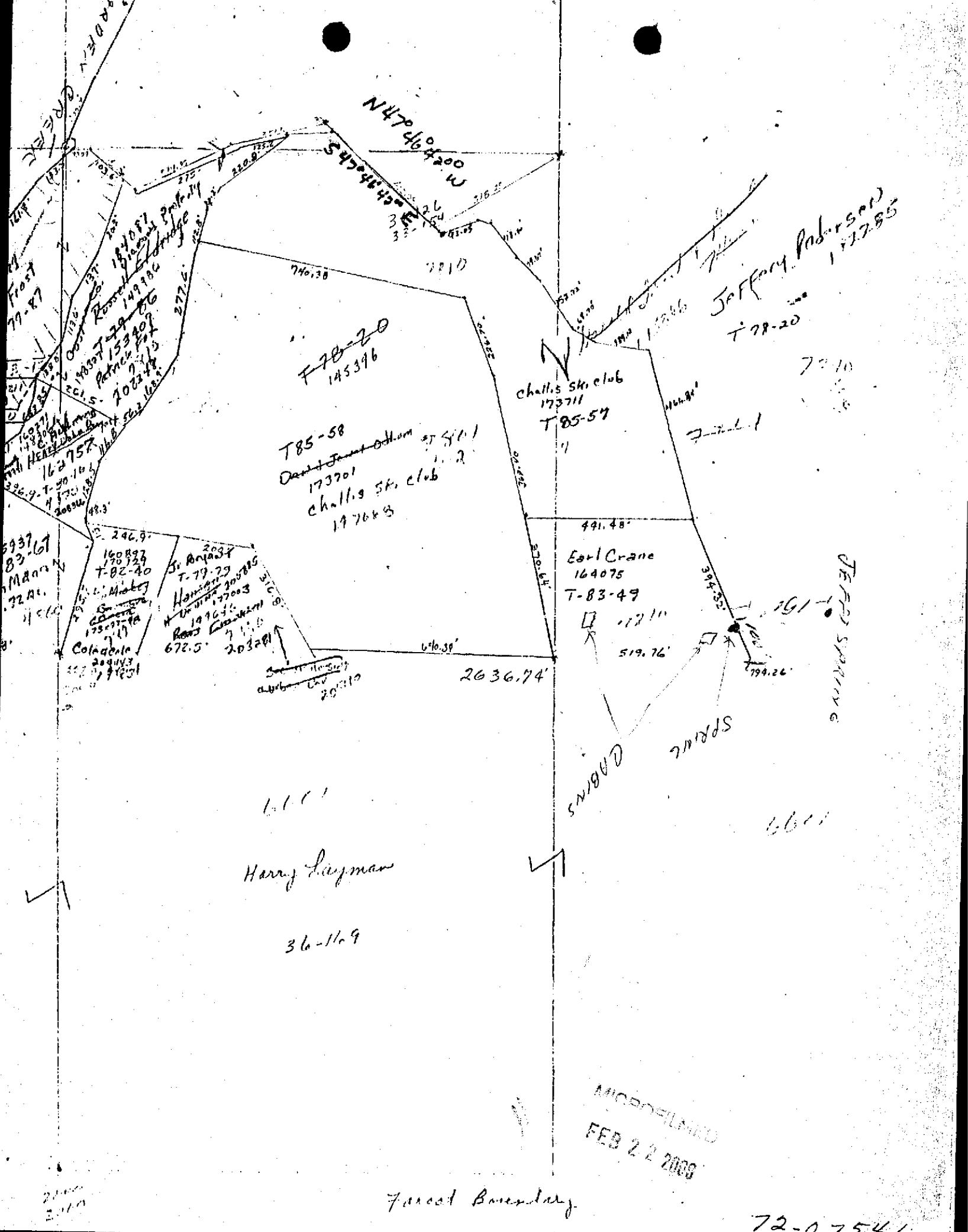
c. The rate of diversion, if water is to be used for irrigation under this permit, when combined with all other water rights for the same land shall not exceed 0.02 cubic feet per second for each acre of land.

d. The water right acquired under this permit if for hydropower purposes shall be junior and subordinate to all rights to the use of water, other than hydropower, within the State of Idaho that are initiated later in time than the priority of this permit and shall not give rise to any right or claim against any future rights to the use of water, other than hydropower, within the State of Idaho initiated later in time than the priority of this permit.

e. Other:

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FEB 22 2008

Forest Boundary

72-07541

10
R 18

0902
10017

671-78

Barbara Charlotte Koyman
209685
~~Harriet Koyman~~

CABIN CABIN

SPRING

~~4-20-75~~

66-11554-40
173711
T 85-54

~~785-58~~
197301
OK. 6/11/83
197698

~~145396~~
~~778-20~~

Jeffrey
7-78-20

~~10-27-84~~
 42-84 1 168541
~~6-27-84~~
 10-27-84
 10-27-84
 10-27-84

1000

The Confor Family
166476
131591
2

R. Spachman

COLLEGE OF SOUTHERN IDAHO

P.O. Box 1238

315 Falls Ave.

Twin Falls, Idaho 83301



*I. D. W. R.
222 Shoshone St. E.
Twin Falls, Id. 83301*



State of Idaho

DEPARTMENT OF WATER RESOURCES

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

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

January 10, 2000

DIRK KEMPTHORNE
GOVERNOR

KARL J. DREHER
DIRECTOR

EARL CRANE
P.O. BOX 11
CHALLIS, ID 83226

PROOF ACKNOWLEDGMENT LETTER

RE: PERMIT NO. 72-07541

Dear Permit Holder:

The department acknowledges receipt of the proof of beneficial use form submitted for the above referenced permit. The next step in the process of developing a water right is for the department to conduct a field examination to determine and confirm the use being made of the water.

Be advised that Section 42-248, Idaho Code, requires you or the owner of this water right to maintain current ownership and address records on file with the department. Forms to file a change of ownership of a water right and/or a change in the address of the water right owner are available from any department office.

If you have questions concerning the field examination, please contact the **SOUTHERN** Regional Office of the department in Twin Falls at (208) 736-3033.

Sincerely,

L. GLEN SAXTON, Chief
Water Allocation Bureau

c: IDWR - Regional Office

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FEB 22 2000

ANALYSIS SHEET
FOR
PROOF OF BENEFICIAL USE

Permit No. 72-07541 Reviewed by THA Date 1-07-00

GENERAL CONSIDERATIONS

yes Name same as permit?
yes Address same as permit?
yes Proof timely received?
If not, complete calculation below.

TYPES OF USE

Dom
yes Correct Uses?

SOURCE OF WATER

✓ Surface water source
✓ Ground water source
✓ Drilling permit required?
✓ Copy in the file? Drilling Permit No. ✓
✓ Amount paid for permit ✓ Correct?
✓ Well log in the file?

LICENSE EXAMINATION FEE

yes Required?
50⁰⁰ Amount Submitted
yes Correct?

MEASURING DEVICE

NO Required?
✓ Installed?
✓ Waiver requested?

PRIORITY CALCULATION

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

DEFICIENCIES OR ACTION ITEMS

OK - acknowledge proof

DATA ENTRY

New Address ✓ Proof Made 11-29-99

Z 269 221 931

US Postal Service

Receipt for Cer

No Insurance Coverage

Do not use for Internatio

Sent to

Street & Number

Post Office, State, & ZIP Coc

Postage

Certified Fee

Special Delivery Fee

Restricted Delivery Fee

Return Receipt Showing to Whom & Date Delivered

Return Receipt Showing to Whom, Date, & Addressee's Address

TOTAL Postage & Fees

Postmark or Date

10 83226-0011

e)

PS Form 3800, April 1995

72-07541
EARL CRANE
PO BOX 11
CHALLIS

Stick postage stamps to article to cover First-Class postage, certified mail fee, and charges for any selected optional services (See front).

1. If you want this receipt postmarked, stick the gummed stub to the right of the return address leaving the receipt attached, and present the article at a post office service window or hand it to your rural carrier (*no extra charge*).
2. If you do not want this receipt postmarked, stick the gummed stub to the right of the return address of the article, date, detach, and retain the receipt, and mail the article.
3. If you want a return receipt, write the certified mail number and your name and address on a return receipt card, Form 3811, and attach it to the front of the article by means of the gummed ends if space permits. Otherwise, affix to back of article. Endorse front of article **RETURN RECEIPT REQUESTED** adjacent to the number.
4. If you want delivery restricted to the addressee, or to an authorized agent of the addressee, endorse **RESTRICTED DELIVERY** on the front of the article.
5. Enter fees for the services requested in the appropriate spaces on the front of this receipt. If return receipt is requested, check the applicable blocks in item 1 of Form 3811.
6. Save this receipt and present it if you make an inquiry.

102595-99-M-0079

PS Form 3800, April 1995 (Reverse)

SENDER:

- Complete items 1 and 2 for additional services.
- Complete items 3 and 4b.
- Print your name and address on the reverse of this form so that we can return this card to you.
- Attach this form to the front of the mailpiece, or on the back if space does not permit.
- Write "Return Receipt Requested" on the mailpiece below the article number.
- The Return Receipt will show to whom the article was delivered and the date delivered.

I also wish to receive the following services (for an extra fee):

- ☐ Addressee's Address
- ☐ Restricted Delivery

Consult postmaster for fee.

3. Article Addressed to:

72-07541
EARL CRANE
PO BOX 11
CHALLIS

15 23226-0011

4a. Article Number

4b. Service Type

- ☐ Registered ☐ Insured
- ☐ Express Mail ☐ COD
- ☒ Return Receipt for Merchandise

7. Date of Delivery

5/3

5. Received By: (Print Name)

8. Addressee's Address (Only if requested and fee is paid)

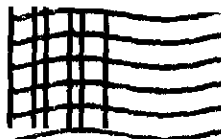
6. Signature: (Addressee or Agent)

X *Hazel E Crane*

PS Form 3811, December 1994

Domestic Return Receipt

UNITED STATES POSTAL SERVICE



First-Class Mail
Postage & Fees Paid
PS
Permit No. G-10

• Print your name, address, and ZIP Code in this box •

DEPARTMENT OF WATER RESOURCES
1301 N. ORCHARD ST.
BOISE, ID 83706-2237

RECEIVED

NOV 1 - 1999

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Department of Water Resources

FEB 22 2000

WA





State of Idaho

DEPARTMENT OF WATER RESOURCES

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

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

DIRK KEMPTHORNE
GOVERNOR

KARL J. DREHER
DIRECTOR

October 26, 1999

CERTIFIED MAIL

RE: Procedures Available upon Issuance of Final Moratorium Order

Dear Applicant or Permit Holder:

The accompanying "Final Order" by the Director of the Department of Water Resources establishes a moratorium on the processing of applications for permits to appropriate surface water or ground water within and tributary to the Selway-Bitterroot Wilderness Area, the Gospel-Hump Wilderness Area, and the Frank Church-River of No Return Wilderness Area. The order is issued pursuant to Section 67-5246, Idaho Code, and is effective as of October 25, 1999.

This letter provides a statement of the available procedures pursuant to Section 67-5246, Idaho Code, and provides the time limits for filing a petition for reconsideration of the order. The statement is required by the Department's Rule of Procedure 740.02.

PETITION FOR RECONSIDERATION

Any party may file a petition for reconsideration of a final order within fourteen (14) days of the service date of the order. The department will act on a petition for reconsideration within twenty-one (21) days of its receipt, or the petition will be deemed denied by operation of law pursuant to Section 67-5246(4), Idaho Code.

A party may not be required to comply with a final order unless the party has been served with or has actual knowledge of the order. If the order is mailed to the last known address of a party, the service is deemed to be sufficient.

OPPORTUNITY TO REQUEST HEARING

The department did not conduct a hearing prior to issuance of the accompanying order. Section 42-1701A(3) provides, in pertinent part, as follows:

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FEB 22 2000

Unless the right to a hearing before the director or the water resource board is otherwise provided by statute, any person aggrieved by any decision, determination, order or action of the director of the department of water resources or any applicant for any permit, license, certificate, approval, registration, or similar form of permission required by law to be issued by the director, who is aggrieved by a denial or conditional approval ordered by the director, and who has not previously been afforded an opportunity for a hearing on the matter shall be entitled to a hearing before the director to contest the denial or conditional approval upon filing with the director, within fifteen (15) days after receipt of the denial or conditional approval, a written petition stating the grounds for contesting the action by the director and requesting a hearing.

APPEAL OF FINAL ORDER TO DISTRICT COURT

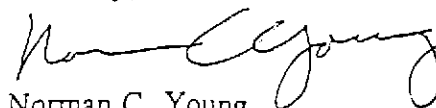
Pursuant to Sections 67-5270 and 67-5272, Idaho Code, any party aggrieved by a final order or orders previously issued in a matter before the department may appeal the final order and all previously issued orders in the matter to district court by filing a petition in the district court of the county in which:

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

The appeal must be filed within twenty-eight (28) days of (a) the service date of the final order, (b) an order denying petition for reconsideration, or (c) the failure within twenty-one (21) days to grant or deny a petition for reconsideration, whichever is later. See Section 67-5273, Idaho Code. The filing of an appeal to district court does not in itself stay the effectiveness or enforcement of the order under appeal.

For questions regarding the moratorium order please contact Glen Saxton, Water Allocation Bureau Chief, or me at (208) 327-7900.

Sincerely,



Norman C. Young
Administrator
Water Management Division

RECEIVED
FEB 22 2000

FILED IN CHAMBERS AT BLACKFOOT,
BINGHAM COUNTY, IDAHO.

December 14, 1998 AT
4 P.M.

RECEIVED

DEC 08 1998

Department of Water Resources

James C. Hendon
JAMES C. HENDON
District Judge

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT

STATE OF IDAHO, IN AND FOR THE COUNTY OF CUSTER

IN THE MATTER OF APPLICATION FOR)
PERMIT NO. 72-07541 IN THE NAME)
OF EARL CRANE)

CASE NO. CV 97-33

DANIEL C. GUERRERO,
Appellant,

MEMORANDUM DECISION
AND ORDER

vs.

IDAHO DEPARTMENT OF WATER
RESOURCES, and EARL CRANE,
Respondents.

I. INTRODUCTION

Petitioner Daniel C. Guerrero (Guerrero) appealed a decision of the Idaho Department of Water Resources (IDWR) granting to Earl Crane (Crane) a permit to divert water from a natural spring on his property for domestic use in two residences. (Permit Number 72-07541)

II. PRIOR PROCEEDINGS

Crane filed for his permit to develop a natural spring and divert domestic water for two residences. Guerrero claimed that he used all of the available water from the designated spring area and protested.

On December 29, 1995, Crane filed application for Permit No. 72-07541, accompanied by the required application fee, with IDWR. IDWR published notice of the application on July 4 and July 11, 1996; Guerrero filed his protest on July 22, 1996.

IDWR conducted a pre-hearing conference on the protested application; then conducted a hearing on the protested application; the hearing officer issued a recommended order on October 16, 1996, and Guerrero filed his petition for reconsideration of the recommended order on October 30, 1996, which the hearing officer denied on November 13, 1996.

Guerrero filed Exceptions and a supporting brief; Crane filed a legal memorandum in support of the hearing officer's order; the IDWR director signed the final order approving the issuance of the permit on February 13, 1997. Approved Permit No. 72-07541 with a proposed priority date of January 2, 1996, appears in the agency record at page 134. Guerrero appealed the final order to the District Court on March 17, 1997.

In addition, Guerrero asked this Court to supplement the appellate record by directing the IDWR to do additional testing on any hydrological connection between the spring area designated for Crane and a spring area designated for Guerrero.

III. STANDARD OF REVIEW

The Idaho Administrative Procedure Act (IAPA) sets forth the standard of review to be used by the court.

- (3) When the agency was required . . . to issue an order, the court shall affirm the agency action unless the court finds that the agency's findings, inferences, conclusions, or decisions are:
 - (a) in violation of constitutional or statutory provisions;
 - (b) in excess of the statutory authority of the agency;
 - (c) made upon unlawful procedure;
 - (d) not supported by substantial evidence on the record as a whole; or
 - (e) arbitrary, capricious, or an abuse of discretion.

If the agency action is not affirmed, it shall be set aside, in whole or in part, and remanded for further proceedings as necessary.

- (4) Notwithstanding the provisions of [subsection (3)] of this section, agency action shall be affirmed unless the substantial rights of the appellant have been prejudiced.

Idaho Code §67-5279(3), (4) (1989). The Idaho Supreme Court has described the standard of review this court must follow.

Factual determinations are not erroneous when they are supported by competent and substantial evidence even though conflicting evidence exists. Wulff v. Sun Valley Co., 127 Idaho 71, 73-74, 896 P.2d 979, 981-82 (1995). Erroneous conclusions of law made by an agency may be corrected on appeal. See Love v. Board of County Comm. of Bingham County, 105 Idaho 558, 671 P.2d 471, appeal after remand, 108 Idaho 7287, 701 P.2d 1293 (1985).

Peterson v. Franklin County, 130 Idaho 176, 182, 938 P.2d 1214, 1220 (1997); see also, Shobe v. Ada County, 130 Idaho 580, 583, 944 P.2d 715, 718 (1997). Evidence is substantial if reasonable minds would accept it as sufficient to support a conclusion. See

Skyview-Hazeldel, Inc. v. Idaho Dept. of Health and Welfare, 128 Idaho 756, 760, 918 P.2d 1201, 1205 (1996).

IV. ANALYSIS

A. ISSUES

Guerrero's appeal presents two principal issues:

First, where IDWR's findings of fact and conclusions of law supported by the substantial evidence on the record as a whole, or were they arbitrary, capricious, or an abuse of discretion? IDWR found that Crane's proposed use would not reduce the quantity of water under Guerrero's water rights; that the water supply was sufficient for the proposed use; that Crane had financial resources to complete his project; and that the use would not conflict with the local public interest.

Second, Guerrero contends that the IDWR director bears the burden to establish whether or not his point of diversion was hydrologically connected to Crane's proposed point of diversion.

IDWR determined that sufficient evidence was not presented to establish by the preponderance that Guerrero's appointed diversion was hydrologically connected to Crane's proposed point of diversion. Guerrero argued before the agency--and moved to supplement the record in this court--that the IDWR director had the statutory power and duty to conduct tests on the availability of unappropriated waters and that IDWR should have obtained evidence on its own to determine whether or not the two points of diversion were hydrologically connected. Does the IDWR have a statutory duty

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FEB 22 2000

to prove that Crane's water permit will not adversely affect Guerrero's water rights?

B. SUBSTANTIAL COMPETENT EVIDENCE SUPPORTS IDWR'S FINDINGS OF FACT AND CONCLUSIONS OF LAW

Idaho Code §42-203A(5) provides:

. . . . The director of the department of water resources shall find and determine from the evidence presented to what use or uses the water sought to be appropriated can be and are intended to be applied. . . . In all applications whether protested or not protested, where the proposed use is such (a) that it will reduce the quantity of water under existing water rights, or (b) that the water supply itself is insufficient for the purpose for which it is sought to be appropriated, or (c) where it appears to the satisfaction of the director that such application is not made in good faith, is made for delay or speculative purposes, or (d) that the applicant has not sufficient financial resources with which to complete the work involved therein, or (e) that it will conflict with the local public interest, where the local public interest is defined as the affairs of the people in the area directly affected by the proposed use, or (f) that it is contrary to conservation of water resources within the state of Idaho; the director of the department of water resources may reject such application and refuse issuance of a permit therefor, or may partially approve and grant a permit for a smaller quantity of water than applied for, or may grant a permit upon conditions. . .

The applicant has the burden of proof on each of these six issues and the protestant has the burden of showing how the public interest would be negatively impacted. See Shokal v. Dunn, 109 Idaho 330, 339, 707 P.2d 441, 450(1985).

1. The Permit Will Not Reduce The Quantity Of Water Under Existing Water Rights.

Guerrero alleged that his springs are hydrologically connected to the springs Crane seeks to appropriate. IDWR concluded that there was insufficient evidence to find a hydrological connection

between the springs.¹ The evidence shows that the springs may be connected, but are probably independent of each other.² Substantial, competent, though conflicting evidence, supports the director's finding; it must be upheld.

2. The Water Supply Is Sufficient For The Purpose For Which It Is Sought.

Guerrero alleged that the water supply was insufficient for the purpose for which it was sought. The only testimony or evidence as to the amount of water available from the spring was given by Crane.³ He testified that the water supply was in excess of what was needed. Guerrero's evidence did not contradict Crane's testimony. Crane's uncontroverted testimony was a sufficient basis for the director's finding.

3. Crane Has The Financial Resources To Complete The Project.

Crane testified that he had the financial resources to complete his project. The record shows that much of the work had already been completed.⁴ This evidence is uncontroverted. The

¹Final Order, p. 3; Agency Record, p. 140.

²See Allen Merritt memo dated September 9, 1996, discussing the possibility of a hydrological connection. Agency Record, pp. 98-99, Allen Merritt memo, Sept. 9, 1996.

³"The applicant has estimated the combined flow from the two areas as approximately 0.5 gallons of water in 10 seconds (about 3 gallons per minute)." Final Order, p. 3; Agency Record, p. 140.

⁴Mr. Crane, at the time of the hearing, had already developed a collection system for the two springs sought and he testified that he had the financial resources to complete the development. Mr. Guerrero did not challenge this testimony at the hearing. Transcript On Appeal, pp. 5-6.

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FEB 22 2003

director's finding that Crane has the financial resources to complete the project is supported by substantial evidence.

4. The Proposed Use Does Not Conflict With The Local Public Interest.

The Idaho Supreme Court has instructed that:

Those applying for permits and those challenging the application bear the burden of demonstrating which elements of the public interest are impacted and to what degree. . . . this burden of production lies with the party that has knowledge peculiar to himself. . . . the applicant should have the burden of going forward and ultimately the burden of proof on the impact on the local public interest. On the other hand, a protestant who claims a harm particular to himself should have the burden of going forward to establish that harm.

. . . [T]he burden of proof in all cases as to where the public interest lies . . . rests with the applicant. It is not the protestant's burden of proof to establish that the project is not in the local public interest.

Skobal 109 Idaho at 339, 707 P.2d at 450.

The public interest involves many factors which vary in importance and weight according to each case's circumstances. The determination of which public interest factors are impacted and what the public interest requires, are to be determined by the sound discretion of the director. Id., 109 Idaho at 339, 707 P.2d 450.

The local public interest is impacted in two ways: the benefit of providing water for domestic purposes and the possible adverse effect on Guerrero. Crane testified that his project was beneficial because it would allow him to develop two residences. Guerrero alleged that the project would deprive him of his water

FEB 22 2007

rights, but presented little evidence supporting that allegation.⁵ The director's determination that the proposed use was in the local public interest was not an abuse of his discretion.

5. The Substantial Rights Of The Appellant Have Not Been Prejudiced.

Agency actions must be affirmed if the substantial rights of the appellant have not been prejudiced. Idaho Code §67-5279(4). Guerrero failed to show how any of his substantial rights have been prejudiced. He was given the opportunity to gather and present evidence and testimony, to cross-examine Crane's testimony and rebut his evidence.

IDWR has the authority to grant water permits with appropriate conditions and limitations. Idaho Code §42-203A(5). Permit No. 72-07541 is subject to all prior water rights, including Guerrero's. Final Order, p. 5; Agency Record, p. 142. Mr. Guerrero's rights have not been violated.

C. IDWR DOES NOT HAVE A DUTY TO CONDUCT AN INDEPENDENT STUDY OF THE EFFECTS OF APPLICANTS PROPOSED PROJECT ON PROTESTANT'S RIGHTS

Idaho Code §42-1805 sets forth certain powers and duties of the director of the department of water resources:

In addition to other duties prescribed by law, the director of the Department of Water Resources shall have the following powers and duties:

. . . .

- (3) To conduct surveys, tests, investigations, research, examinations, studies,

⁵The only evidence offered in support was the Bob Foster memo of August 27, 1996, which appears to have been written under the assumption that the springs are hydrologically connected. Agency Record, p. 37.

FEB 22 2000

and estimates of cost relating to availability of unappropriated water, effective use of existing supply, conservation, storage, distribution and use of water.

- (4) To prepare and compile information and data obtained and to make the same available to interested individuals or agencies.

. . . .

Guerrero contends that §42-1805 places a statutory duty on IDWR to perform tests to determine whether the springs are hydrologically connected to the stream and pool where Guerrero obtains irrigation water. Guerrero insists that IDWR cannot issue a water permit to Crane without first showing that his water rights will not be impacted. Neither party cites any authority to support or oppose this interpretation.

The interpretation of a statute begins with an examination of its literal words. In re Permit No. 36-7200, 121 Idaho 819, 823, 828 P.2d 848, 852 (1992); Ada County v. Gibson, 126 Idaho 854, 856, 893 P.2d 801, 803 (Ct. App. 1995). Where statutory language is unambiguous, the clearly expressed intent of the legislature must be given effect, and there is no occasion for rules of construction. Wolfe v. Farm Bureau Ins. Co., 128 Idaho 398, 404, 913 P.2d 1168, 1174 (1996); Ada County v. Gibson, supra. However, where the test of a statute is ambiguous, courts look to rules of construction for guidance and may consider the reasonableness of proposed interpretations in assessing its meaning. Gibson, supra; Frazier v. Neilsen & Co., 118 Idaho 104, 106, 794 P.2d 1160, 1162 (Ct. App. 1990).

Davis v. Idaho Dept. of Health and Welfare, 130 Idaho 469, 470, 943 P.2d 59, 60 (Ct. App. 1997).

Where the language of a statute is clear and unambiguous, the plain meaning is given effect unless the result is palpably absurd. See State v. Ayala, 129 Idaho 911, 917, 935 P.2d 174, 180 (Ct. App.

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FEB 22 1999

1997) (citing Miller v. State, 110 Idaho 298, 715 P.2d 968 [1986]). An ordinance is ambiguous if reasonable minds might disagree or be uncertain as to its meaning. See Ada County v. Gibson, 126 Idaho 854, 856, 893 P.2d 801, 803 (Ct. App. 1995).

The interpretation of a statute begins with an examination of the literal meaning of its words. Davis, 130 Idaho at 470, 943 P.2d at 60. Idaho Code §42-1805 appears unambiguous on its face. It does not, however, contain any references to resolution of disputes before IDWR or its application, if any, to such disputes. The statute is, therefore, ambiguous as to how it relates to protested water permits.

The Idaho Supreme Court has stated that IDWR is first "an administrative agency and second a quasi-judicial body." See In re Permit No. 47-7680, 114 Idaho at 605, 759 P.2d at 896. IDWR held a hearing at which Crane and Guerrero were able to present testimony and evidence and conduct cross-examinations. Guerrero appeals the order that was given as a result of that hearing. IDWR was acting as a quasi-judicial body when it held the hearing and made its decision on an order.

The applicant must prove, among other things, that his proposed use will not reduce the quantity of water available under existing water rights. See Shokal, 109 Idaho at 339, 707 P.2d at 450; See also Idaho Code §42-203A(5). Guerrero's proposed reading of §42-1805 would shift both to IDWR by requiring it to develop and present evidence. It is unreasonable to assume that the legislature intended to put the burden of proof in hearings over

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FEB 22 2000

protested water permits on IDWR when acting in its quasi-judicial function. It would be akin to putting the burden of proof on the judge. IDWR does not have a duty to perform studies to determine whether Guerrero's hydrological theories are correct.

V. CONCLUSION

IDWR does not have a duty to conduct tests on water sources in connection with protested water permit applications. IDWR correctly applied the criteria of §42-203A(5). The director did not abuse his discretion and his conclusions are based on substantial, though conflicting, evidence and must be upheld on review.

IT IS SO ORDERED.

DATED this 4th day of December, 1998.



JAMES C. HERNDON
District Judge

FEB 22 2003

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a full, true and correct copy of the foregoing instrument was mailed by first class mail with prepaid postage and/or hand delivered and/or sent by facsimile this 4th day of December, 1998, to:

Phillip J. Rassier, Esq.; Deputy Attorney General;
P O Box 83720-0098; Boise, ID 83720

Gregory W. Moeller, Esq.; 25 North Second East; Rexburg, ID 83440

Earl Crane; P O Box 11; Challis, ID 83226

G Michael Lee, Esq; P O Box 1010; Challis, ID 83226

(S E A L)

ETHEL PECK, Clerk

By Linda Jones
Deputy Clerk

FEB 22 2000

MEMORANDUM

To: L. Glen Saxton
From: Karl J. Dreher 
RE: **APPOINTMENT AS HEARING OFFICER - PROCEDURE RULE 410**
Date: September 24, 1996

You are hereby appointed as hearing officer and are authorized to represent the department as provided by IDAPA Rule 37.01.01410 (Procedure Rule 410) in the following contested matter:

In the Matter of Application for Permit No. 72-07541 in the name of Earl Crane

The department has scheduled a hearing in the matter as follows:

Date: October 2, 1996
Time: 9:00 a.m.
Place: Custer County Courthouse
Commissioner's Room
Challis, ID 83226

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FEB 22 2006

State of Idaho
Department of Water Resources



ROSTER OF ATTENDANCE

IN THE MATTER OF APPLICATION FOR PERMIT NO.
72-07541 IN THE NAME OF EARL CRANE

Date: October 2, 1996
Time: 9:00 a.m.
Location: Custer County Courthouse
Commissioner's Room
Challis, ID 83226
Hearing Officer: L. Glen Saxton

* * Please Print * *

NAME	ADDRESS	REPRESENTING
EARL CRANE	PO BOX 11 CHALLIS	SELF
D. GUERRERO	Box 248 CHALLIS	SELF
Hazel Crane	P.O. Box 11 Challis	Crane's

MICROFILMED

FEB 22 2000

WARRANTY DEED

For Value Received We, Donald P. Frost and Naoma Frost, husband and wife,
and Don A. Mann and Glenda G. Mann, husband and wife,

the grantor s, do hereby grant, bargain, sell and convey unto Earl C. Crane and Hazel E. Crane,
husband and wife,

the grantee s, whose current address is Box 11, Challis, Idaho 83226

the following described premises, in Custer

County Idaho, to-wit:

See Attached Exhibit A.

Department of Water Resources
APPLICANT'S

Exhibit 1

Date Admitted Yes 10/2/82 AD

TO HAVE AND TO HOLD the said premises, with their appurtenances unto the said Grantee_s,
their heirs and assigns forever. And the said Grantor_s do hereby covenant to and
with the said Grantee_s, that they are the owner_s in fee simple of said premises; that they are free
from all incumbrances

and that they will warrant and defend the same from all lawful claims whatsoever.

Dated: June 1, 1982

Donald P. Frost

Don A. Mann

Naoma Frost

Glenda G. Mann

STATE OF IDAHO, COUNTY OF Custer

On this 1st day of June, 1982,
before me, a notary public in and for the said State, per-
sonally appeared Donald P. Frost, Naoma Frost,
Don A. Mann and Glenda G. Mann

known to me to be the person s whose name s are
subscribed to the within instrument, and acknowledged to
me that they executed the same.

Patsy Kindt

Notary Public

Residing at Challis
Comm. Expires Lifetime

, Idaho

STATE OF IDAHO, COUNTY OF CUSTER

I hereby certify that this instrument was filed for record at
the request of CUSTER COUNTY TITLE

at forty minutes past ONE o'clock P.M.,
this 21st day of June,
1982, in my office, and duly recorded in Book
of Deeds at Page

Howard A. Boster
Ex-Officio Recorder

By Barbara Abbott Deputy.

Fees \$ 4.00
Mail to: C.C.T.

RECORDED
FEB 22 2008

EXHIBIT A

Description:

NWNESE

Part of Section 10, Township 13 North, Range 18 East, Boise Meridian, Custer County, Idaho, described as:

Beginning at a point that is North 00°08'59" East, 1,326.08 feet along the Section line and South 89°40'26" West, 794.26 feet along the South sixteenth line from the Southeast corner of said Section 10; and running thence South 89°40'26" West, 519.76 feet along said sixteenth line; thence North 12°14'59" West, 370.64 feet; thence North 89°40'26" East, 441.48 feet; thence South 23°27'02" East, 394.32 feet to the Point of Beginning.

TOGETHER WITH an easement 15 feet in width on each side of the following described centerline:

Part of Section 10, Township 13 North, Range 18 East, Boise Meridian, Custer County, Idaho described as:

Beginning at a point on Garden Creek Road that is North 00°08'59" East, 2652.27 feet along the Section line to the East Quarter corner of said Section 10 and North 89°28'23" West, 2559.39 feet from the Southeast corner of said Section 10; and running thence South 25°59'32" East, 88.50 feet; thence South 50°45'12" East, 64.40 feet; thence South 74°56'34" East, 44.51 feet; thence North 68°19'45" East, 166.89 feet; thence North 61°02'30" East, 150.50 feet; thence North 67°54'32" East, 77.18 feet; thence North 86°45'40" East 112.57 feet; thence South 18°14'38" East, 128.14 feet; thence South 25°10'14" West, 212.50 feet; thence South 44°10'40" East, 33.53 feet; thence North 85°17'19" East, 224.22 feet; thence North 71°39'17" East, 205.03 feet; thence South 70°19'10" East, 40.91 feet; thence South 42°30'06" East, 118.94 feet; thence South 34°00'37" East, 80.11 feet; thence South 24°00'54" East, 89.97 feet; thence South 29°06'13" East, 83.46 feet; thence South 20°07'36" East, 96.05 feet; thence South 06°16'35" East, 117.53 feet; thence South 13°03'05" East, 150.92 feet; thence South 24°54'59" East, 110.02 feet to the end of said road centerline.

TOGETHER WITH right of 300 gallons of water per day from the spring as disclosed in Memorandum of Sale dated September 22, 1977, between Donald Frost and Naoma Frost, husband and wife, and Don A. Mann and Glenda G. Mann, husband and wife, Seller, and Gary R. L. Oliverson and Elise M. Oliverson, husband and wife, Buyer, recorded April 9, 1979, as instrument No. 149865, records of Custer County, Idaho.

ALL SUBJECT TO THE FOLLOWING RESTRICTIONS AND RESTRICTIVE COVENANTS:

1. That Buyers herein, their heirs, successors and assigns shall use the above described real property for residential purposes exclusively. That no buildings shall be erected, altered or placed or permitted to remain on any acreage other than residential structures and garage buildings and outbuildings used in connection with said residences. All structures shall be of rustic construction. This covenant does not, however, restrict the rental of the premises or improvements upon the premises for residential purposes.
2. No mobile homes or trailers are to be located upon the above described premises unless covered with siding and a roof.
3. No metallic roofs allowed unless painted green or brown.
4. No outdoor toilet facilities shall be employed for the occupant's use. All structures shall be for non-commercial usage.
5. Fencing shall not be constructed with metal rails or metal posts.
6. There shall be no livestock or domestic animals other than cats, dogs, horses and cows held or maintained upon the above described premises.

Handwritten signature and initials, possibly "H. M." and "N. F." with a date "2/2/2000".

Stamp: FEB 22 2000

Memorandum

Date: August 27, 1996

To: Allen Merritt, Southern Region

From: Bob Foster, Salmon Office *RF*

Re: Dan Guerrero measurement
water rights 72-04117 .56 cfs & 72-07509 .04 cfs

On the above date I was contacted by Mr. Guerrero and requested to perform a measurement on his sprinkler system.

The following conditions were observed.

1. Three inch handline consisting of thirty four ~~7/16~~
7/64 sprinkler heads
2. No pressure gauge installed on system.
3. Only twenty-seven sprinklers were operating due to low water flow.

My calculations are as follows: 7/16 sprinkler head @ 20 psi (estimated) = 1.59 gpm.
 $27 \times 1.59 = 42.93 \text{ gpm}$
 $42.93 \text{ divided by } 448 = 0.0958 \text{ cfs}$

This may or may not be an accurate measurement due to the estimation of pressure in the system however it may reflect the potential for impact of further appropriation of the spring s source which supplies Mr. Guerrero's system.

cc: Dan Guerrero

copy

Department of Water Resources	
PROTESTANT'S	
Exhibit	<u>A</u>
Date Admitted	<u>Yes</u>

Adm 10/2/96

WIDAC
FEB 22 2002

Place of use

Department of Water Resources	PROTESTANT'S
Exhibit	C
Date Admitted	Yes 10/2/92 Adm

GRANT OF EASEMENT AND WATER RIGHTS

INDENTURE made this 17th day of March, 1980 by and between DONALD FROST and NAOMA FROST, husband and wife, and DON A. MANN and GLENDA G. MANN, husband and wife, ("grantors"), and GARY R.L. OLIVERSON and ELISE M. OLIVERSON, husband and wife, ("grantees").

WHEREAS grantees are the owners of approximately 29.77 acres located in the SW1/4 NE1/4 and the NW1/4 SE1/4 of Section 10, T. 13 N., R. 18 E., B.M., Custer County, Idaho described in the deed from grantors to grantees recorded September 22, 1977 as instrument no. 145397, records of Custer County, Idaho; and

WHEREAS grantors have agreed to convey certain water rights and an easement for use in connection with grantees' land to grantees, NOW, THEREFORE,

IT IS MUTUALLY AGREED AS FOLLOWS:

① 1. Grantors hereby grant to grantees an easement 40 feet in width, for maintenance and construction of a ditch or pipeline to a certain existing natural spring on grantors' property located in the approximate NE1/4 SE1/4, Section 10, T. 13 N., R. 18 E., B.M., which strip shall be 20 feet on either side of a center line consisting of the middle of a natural creek drainage extending from the Southeasterly boundary of grantees' land described above; running Southeasterly across grantors' real property in said NE1/4 SE1/4 of Section 10 to and including said existing natural spring, located approximately 40 feet North of the South boundary line of said NE1/4 SE1/4, Section 10.

2. Grantors further grant to grantees the waters from said natural spring, with the exception of 1,200 gallons of water per day therefrom, for domestic use only to four homes at 300 gallons per day per home, reserved unto grantors.

FEB 22 2000

3. Grantors further grant to grantees the right to develop the existing natural spring within an area having a radius of 50 feet from the center of said spring, provided that such development is done in an environmentally acceptable manner with minimum surface damage to grantors' property.

4. Grantors further reserve a 20 foot right of way across the 40 foot easement granted herein for road and utility purposes, to be located upon survey of said easement, as hereinafter provided.

5. Grantors shall cause the 40 foot easement to be surveyed prior to July 1, 1981 by a surveyor licensed in the State of Idaho and a legal description thereof prepared, the costs of which survey and description shall be borne by grantors. Grantors shall thereupon execute a good and sufficient Grant of Easement and Water Rights for such described easement and the water rights herein set forth, subject to the exceptions and reservations hereinabove set forth.

6. The agreements herein shall bind and inure to the heirs, successors and assigns of each of the parties hereto.

IN WITNESS WHEREOF, the parties have hereunto set their hands the day and year first above written.

Donald Frost , grantor

Gary R.L. Oliverson, grantor

Noama Frost, grantor

Elise M. Oliverson, granted
by Gary R.L. Oliverson her
attorney in fact

Don A. Mann, grantor

Glenda G. Mann, grantor

Department of Water Resources
PROTESTANT'S
Exhibit <u>D</u>
Date Admitted <u>Yes</u> <u>10/2/96</u> <u>ADN</u>

general taxes to be prorated as herein set forth; all reservations in patents or state grants or in the laws authorizing the issuance thereof; the bonded debt of any taxing unit; all zoning and land use requirements and restrictions imposed by any governmental unit; requirements and restrictions provided by any fire, building, plumbing, electrical and other codes imposed by any governmental unit; all easements and rights of way, including roads, ditch and utility of sight and record, under, over and across the premises, including a ten foot easement contained in the deed from Donald Frost et ux et al to Gary R.L. Oliverson et ux, recorded September 22, 1977 as instrument no. 145397, records of Custer County, Idaho; and the Land Bank mortgage hereinafter described which Land Bank mortgage seller agrees to satisfy prior to or simultaneously with the payment in full by buyer of the deferred portion of the purchase price.

WATER RIGHTS AND EASEMENT. Seller agrees to provide certain water rights and an easement to a spring located on real property adjacent to the premises, the general form of such easement being attached hereto.

TITLE INSURANCE. Buyer acknowledges receipt of a standard form title insurance commitment showing marketable title and insuring the title of seller for the benefit of the buyer, and buyer accepts the condition of title to the premises, with the exceptions set forth in such commitment.

CONDITION OF BUSINESS AND PREMISES. The buyer has inspected the premises sold hereunder, and agrees to accept the same "AS IS" in their present condition, and the seller has made no representations or warranties, including no representation or warranty regarding income to be derived from or any other conditions of the premises, except as expressly set forth in this contract.

POSSESSION, USE AND OCCUPANCY. It is understood and agreed that buyer may have possession of the premises on and after the

SEP 22 2000

Department of Water Resources

PROTESTANT'S

Exhibit

D (part 2)

RECEIVED

Date Admitted day of March

OCT 11 1996

C202261

THIS INDENTURE, Made this

in the year of our Lord one thousand nine hundred and eighty Department of Water Resources

between GARY R.L. OLIVERSON and ELISE M. OLIVERSON, husband and wife,

of Rice County of

State of Washington the parties of the first part, and

D.C. Guerrero, a single man,

of Challis County of Custer

State of Idaho the party of the second part,

WITNESSETH, That the said parties of the first part, for and in consideration of the sum of

DOLLARS,

of the United States of America, to in hand paid by the

said party of the second part, the receipt whereof is hereby acknowledged, ha granted, bargained

and sold, and by these presents do grant, bargain, sell, convey and confirm unto the said party

of the second part, and to his heirs and assigns forever, all the following described real estate,

situated in Custer County

State of Idaho, to wit:

A fraction of the SW1/4 NE1/4 and of the NW1/4 SE1/4,
Section 10, Township 13 North, Range 18 East, Boise
Meridian, Custer County, Idaho, described as:

Commencing at the Southeast corner of the SW1/4 NE1/4,
Section 10 and the Point of Beginning; thence
South 58°10'06" West, 378.28 feet; thence
North 47°46'42" West, 400.28 feet; thence
South 76°52'31" West, 251.16 feet; thence
South 64°42'31" West, 274.95 feet; thence
North 49°04'21" West, 151.34 feet; thence
South 89°04'02" West, 93.97 feet to the Southwest
Corner of the said SW1/4 NE1/4; thence
North 22°27' East, 200.4 feet; thence
North 26°37' East, 600.0 feet; thence
North 44°11' East, 834.5 feet, more or less, to the
North line of said SW1/4 NE1/4; thence
North 89°41'04" East, 383.19 feet to the Northeast
corner of said SW1/4 NE1/4; thence
South 00°05'37" West, 1326.43 feet to the Point of
Beginning.

SUBJECT TO:

- 1) A 10 foot easement contained in Deed from Donald Frost and Naoma Frost, husband and wife, and Don A. Mann and Glenda G. Mann, husband and wife, to Gary R. L. Oliverson and Elise M. Oliverson, husband and wife, recorded September 22, 1977, as instrument no. 145397, records of Custer County, Idaho.
- 2) A mortgage dated August 25, 1977, from Gary R. L. Oliverson and Elise M. Oliverson, husband and wife, to the Federal Land Bank of Spokane, a corporation; securing the payment of \$48,000.00 and interest, recorded August 29, 1977, as instrument no. 144644, records of Custer County, Idaho.

TOGETHER WITH:

- 1) All water rights and grantors' interest in all mineral rights appurtenant to the premises.

C.C.

EARL CRANE ALSO # 2)
NEXT PAGE

2) An easement, 40 feet in width from the Southeast corner of the premises southeasterly to a natural spring located approximately 40 feet North of the South boundary line of the NE1/4 SE1/4, Section 10, T. 13 N., R. 18 E., B.M.; and the waters from said natural spring with the exception of 1,200 gallons of water per day therefrom.

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Department of Water Resources

TOGETHER With all and singular the tenements, hereditaments and appurtenances thereunto belonging or in anywise appertaining, the reversion and reversions, remainder and remainders, rents, issues and profits thereof, and all estate, right, title, and interest in and to the said property, as well in law as in equity, of the said parties of the first part:

TO HAVE AND TO HOLD, All and singular the above mentioned and described premises, together with the appurtenances, unto the party of the second part, and to his heirs and assigns forever. And the said parties of the first part, and their heirs, the said premises in the quiet and peaceable possession of the said part of the second part, heirs and assigns, against the said parties of the first part, and their heirs, and against all and every person and persons whomsoever, lawfully claiming or to claim the same shall and will WARRANT and by these presents forever DEFEND.

IN WITNESS WHEREOF, The said parties of the first part have hereunto set their hands and seals the day and year first above written

SIGNED, SEALED AND DELIVERED IN PRESENCE OF

<i>Gary R.L. Oliverson</i>	_____	[Seal]
Gary R.L. Oliverson,	_____	
<i>Elise M. Oliverson</i>	_____	[Seal]
<i>by Gary R.L. Oliverson Atty in fact</i>	_____	[Seal]
Elise M. Oliverson by her attorney	_____	
in fact, Gary R.L. Oliverson	_____	[Seal]

STATE OF IDAHO, *Washington*
County of *Stevens* } ss.

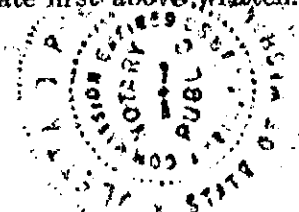
On this *Eleventh* day of March in the year 19 *80*, before me
a Notary Public

in and for said State, personally appeared Gary R.L. Oliverson, known to me to be the person whose name is subscribed to the within instrument as the attorney in fact of Elise M. Oliverson, and acknowledged to me that he subscribed the name of Elise M. Oliverson thereto, and

known to me to be the person whose name is subscribed to the within instrument, and acknowledged to me that he executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal, the day and year in this certificate first above written.

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FEB 22 2000



William H. Smith
Notary Public
Residing at *Chilly* Idaho.

No. _____

WARRANTY DEED

—TO—

Dated Aug 21, 1992

STATE OF IDAHO,

County of

Custer

} ss.

I hereby certify that this instrument was
filed for record at request of _____

D.C. Duerns

at 10 minutes past 11

o'clock A M., this 21st day

of August, A. D. 1992

in my office, and duly recorded in Book _____

of _____ at page _____

Ethel M. Peck

Ex-Officio Recorder.

By Wanda Murphy

Deputy.

Fees, \$ 6.00

BYMS-YORK COMPANY, BOISE

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OCT 11 1996

Department of Water Resources

CONTRACT OF SALE

THE PARTIES hereto are GARY R.L. OLIVERSON and ELISE M. OLIVERSON, husband and wife ("seller"), and D.C. GUERRERO, a single man ("buyer").

AGREEMENT: It is mutually agreed by and between the parties as follows:

SALE OF PREMISES. The seller shall sell and the buyer shall buy that certain real property (herein called the "premises" which term includes all buildings, improvements and fixtures now or hereafter placed upon such real property, all water rights, seller's interest in any mineral rights, and all other appurtenances) situated in Custer County, Idaho and described as follows:

A fraction of the SW1/4 NE1/4 and of the NW1/4 SE1/4, Section 10, Township 13 North, Range 18 East, Boise Meridian, Custer County, Idaho, described as:

Commencing at the Southeast corner of the SW1/4 NE1/4, Section 10 and the Point of Beginning; thence South 58°10'06" West, 378.28 feet; thence North 47°46'42" West, 400.28 feet; thence South 76°52'31" West, 251.16 feet; thence South 64°42'31" West, 274.95 feet; thence North 49°04'21" West, 151.34 feet; thence South 89°04'02" West, 93.97 feet to the Southwest Corner of the said SW1/4 NE1/4; thence North 22°27' East, 200.4 feet; thence North 26°37' East, 600.0 feet; thence North 44°11' East, 834.5 feet, more or less, to the North line of said SW1/4 NE1/4; thence North 89°41'04" East, 383.19 feet to the Northeast corner of said SW1/4 NE1/4; thence South 00°05'37" West, 1326.43 feet to the Point of Beginning.

PURCHASE PRICE. The buyer shall pay to the seller for the premises a purchase price of \$120,000.00 as follows:

\$500.00, representing earnest money heretofore paid by buyer.

Norm
Glen
File

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DEC 26 1997

Department of Water Resources

Gregory W. Moeller
of RIGBY, THATCHER, ANDRUS,
RIGBY, KAM & MOELLER, Chartered
Attorneys at Law
25 North Second East
Rexburg, Idaho 83440
Telephone: 208 356-3633

Attorneys for Appellant Daniel C. Guerrero

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF
THE STATE OF IDAHO IN AND FOR THE COUNTY OF CUSTER

IN THE MATTER OF APPLICATION FOR
PERMIT NO. 72-07541 IN THE NAME
OF EARL CRANE

DANIEL C. GUERRERO,

Appellant

vs.

IDAHO DEPARTMENT OF WATER
RESOURCES, and EARL CRANE,

Respondents.

Case No. CV 97-33

APPELLANT'S BRIEF

COMES NOW the Appellant, DANIEL C. GUERRERO, by and through his
attorney of record, Gregory W. Moeller, of Rigby, Thatcher, Andrus, Rigby, Kam & Moeller,
Chartered, and pursuant to the Court's "Minute Entry and Order - Notice of Hearing," dated
November 18, 1997, hereby submits this "Appellant's Brief."

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STATEMENT OF THE CASE

A. Nature of the Case and Course of the Proceedings.

On October 2, 1996, the Department of Water Resources conducted a hearing in Challis, Idaho, on the Application of Earl Crane (hereinafter "Crane") and the Protest of Daniel C. Guerrero, dba Garden Creek Ranch (hereinafter "Guerrero"). Neither party was represented by counsel at that hearing.

Two weeks later, on October 16, 1996, L. Glen Saxton, Hearing Officer, issued a Recommended Order granting the Application for Permit. On November 7, 1996, and again on November 12, 1996, Guerrero, *pro se*, filed a "Petition for Reconsideration of a Recommended Order and Request an Oral Argument Before the Director." On November 13, 1996, the Hearing Officer issued an "Order Denying Petition for Reconsideration."

On December 3, 1996, Protestant submitted a request to the Director of the Department of Water Resources for thirty (30) days additional time to file exceptions or to brief legal issues related to the Hearing Officer's Recommended Order upon the grounds that he needed the additional time to seek advice from an attorney. On December 4, 1996, Karl J. Dreher, Director of the Idaho Department of Water Resources, issued an order granting Guerrero 28 additional days to file a brief, extending the deadline to January 2, 1997.

On December 20, 1996, L. Glen Saxton, Chief of the Water Allocation Bureau, forwarded some additional information to Guerrero, including a file memo from Allen Merritt, dated September 9, 1996. Agency Record, pp. 98-101. The memo included a map, presumably drawn by Mr. Merritt. This map showed the location of the springs in question, Guerrero's historical point of diversion, and appears at first glance to show quite plainly how there is an

interconnection between the various springs involved.

Based upon this and other information, Guerrero filed a Brief in Opposition to Recommended Order. However, the Idaho Department of Water Resources (hereinafter "IDWR") issued a "Permit to Appropriate Water to Earl Crane" on February 14, 1997. Four days later, on February 18, 1997, the IDWR mailed its "Final Order," dated February 13, 1997. On March 14, 1997, the Appellant filed a Notice of Appeal. Following settlement of the transcript and completion of the Agency Record, the Court scheduled this matter for briefing.

B. Statement of Facts.

The real property currently owned by the Respondent, Earl Crane, and the Appellant, Daniel C. Guerrero, was formally owned by Donald P. Frost, Naoma Frost, Don A. Mann, and Glenda G. Mann. They had sold part of their land to Crane (see Applicant's Hearing Exhibit "1"¹), part to Gary R. L. Oliverson and Elise M. Oliverson, and part to other third parties.

On March 11, 1988, Guerrero entered into a Contract of Sale with Oliversons and received a Warranty Deed dated March 11, 1988 (see Protestant's Hearing Exhibits D (Parts 1 and 2)). Pursuant to the Contract of Sale, dated March 11, 1988, Oliversons conveyed to Guerrero "certain water rights and an easement to a spring located on real property adjacent to the premises, the general form of such easement being attached hereto."

The document referred to in the contract is the "Grant of Easement and Water Rights" granted by Donald Frost, Naoma Frost, Don A. Mann and Glenda G. Mann to Guerrero's predecessors, Gary R. L. Oliverson and Alise M. Oliverson (see Protestant's Hearing Exhibit C).

¹Copies of all relevant exhibits introduced at the hearing are attached to the Transcript on Appeal, pp. 45-58.

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These documents form the basis for the "Claim of Water Right No. 72-04117" which was filed in 1982 by Guerrero.

Crane partially developed two spring areas near Guerrero's property by excavating along the springs and constructing a collection system which was connected to the spring areas by a pipe. The upper spring collection area is located upon property owned by Jeffery P. Pedersen and the lower spring collection area is located on Crane's 4-acre parcel. Crane estimated that the combined flow from both areas was approximately .05 gallons per minute. Crane leveled two areas of his property with the apparent intention of building houses there which would use this water.

On July 24, 1996, Guerrero filed a protest with IDWR against Crane's Application for Water Permit No. 72-07541. Agency Record, pp. 26-27. The basis for Guerrero's protest were as follows:

1. Guerrero alleged that he held an earlier and prior water right and permit to the water flowing from the spring claimed as the point of diversion by Crane.
2. There is not an adequate flow of water from the point of diversion to even fulfill the prior right, let alone Crane's application.
3. Any further diversion of water will interfere and diminish the flow available to Guerrero.
4. Crane had installed the water system prior to obtaining a permit; and
5. Crane's actions have caused a decrease in the regular spring flows and it a disruption of the channels of water flowing to Guerrero.

Apparently, in preparation for the October 2, 1996, hearing, Allen Merritt went to Guerrero and Crane's properties and observed the water rights at issue. He prepared an internal memo dated September 9, 1996, reporting his findings. Although the details of that memo will be

discussed in more detail later in this brief, suffice it to say for the time being that Merritt's memo concluded that it was "impossible to tell" how the parties' water rights were interconnected.

Agency Record, pp. 124-127. However, following the hearing on October 2, 1996, the Hearing Officer's Recommended Order of October 16, 1996, concluded that "there was insufficient data" to determine the connection between the spring area sought by Crane and Guerrero's water rights. Agency Record, pp. 52-57.

Guerrero's water right does not stem from a clearly defined spring. Guerrero diverts water from a spring and creek approximately 200 yards long. Crane's application seeks to take water from above the 200 yard long point of diversion used by Guerrero. Agency Record, pp. 19-21. The fact that Crane's point of diversion was upstream from Guerrero leads to a logical and fair conclusion that Guerrero would be affected by additional diversions upstream and above his point of diversion.

Apparently not considered by IDWR were documents in its own records concerning complaints made by Guerrero against Crane's upstream diversion of water. On August 25, 1995, Bob Foster from IDWR's office in Salmon, Idaho, visited the site and determined that an illegal diversion pipe existed. He took photographs and made notes. As a result of Mr. Foster's investigation, on September 6, 1995, Allen Merritt sent a letter to Crane recognizing Guerrero's complaint that the diversion works constructed by Crane had reduced the flow of a nearby spring which supplied Guerrero's prior water right. The letter also confirms that at the time this was occurring, Crane did not have a permit to appropriate water.²

²This letter was attached as "Exhibit 'A'" to the "Affidavit of Daniel C. Guerrero" (Agency Record, pp. 84-86). For some reason, the Agency Record did not contain a copy of the attachment to the Affidavit. The September 6, 1995, letter to Crane from Allen Merritt has been

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Bob Foster apparently visited Guerrero and Crane's property several other times. On August 27, 1996, Mr. Foster performed a measurement of Guerrero's sprinkler system. The results of that measurement were introduced as evidence at the hearing as Protestant's Hearing Exhibit "A." (See also Agency Record p. 102). Foster concluded:

This may or may not be an accurate measurement due to the estimation of the pressure in the system. However, it may reflect the potential for impact of further appropriation of the spring s [sic] source which supplies Mr. Guerrero's system.

Because Guerrero feels he provided adequate information establishing a hydrological connection, and because such information clearly existed in IDWR's own files, Guerrero has appealed the agency's decision.

ARGUMENT

I. IDWR's own records suggests a hydrological interconnection between the springs used by Guerrero and the spring areas sought by Crane.

Unfortunately, it appears that neither party was represented by counsel at the October 2, 1996, hearing. Furthermore, neither side provided any expert testimony at that hearing. However, there exists ample information in IDWR's own file which raise serious question as to the connection of the water rights at issue. This evidence, which IDWR had access to at the time it reached its "Final Order" was ignored by IDWR. This evidence raises enough questions that Crane should have been required to rebut or answer these concerns prior to the issuance of a permit.

For example, the Memorandum from Bob Foster to Allen Merritt, dated August 27, 1996, indicates that only 27 of Mr. Guerrero's 34 heads were operating due to low water flow.

attached to this brief as Brief Exhibit "1."

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Agency Record, p. 117. Even if the methodology or adequacy of this memorandum is somehow questioned by Crane or IDWR, no follow up studies were ever done. In essence, although IDWR performed tests indicating there was a possible connection, they failed to follow through with further investigation that would have conclusively answered the question.

Furthermore, an internal file memo written by Allen Merritt, dated September 9, 1996, concluded as follows:

It would appear that during high over land runoff the drainage from Crane would make it to [Guerrero's] historical P/D but I'm not convinced that when this drainage sinks including the springs that hydrologically the water enters the pool or provides water to what has historically been diverted by [Guerrero]. It quit[e] possibly sinks and goes under the what is gathered by [Guerrero] or possibly a portion of it may contribute to the unnamed stream flowing to the [Guerrero] pond. It did not appear at the day I visited the pool that there was springs rising in the pool itself. As for the stream it was impossible to tell [sic]. (Emphasis added). Agency Record, pp. 98-99.

It is clear that IDWR's own investigation could not rule out a hydrological connection between Guerrero's rights and Crane's proposed point of diversion.

It is worth noting that even the Hearing Officer's Recommended Order of October 16, 1996, expressed uncertainty when he made the following finding:

There was insufficient data available to show whether the springs located in the SWNESE Section 10 used by the protestant and the spring area sought by the applicant in the SWNESE Section 10 are hydraulically connected. Water from the spring area developed by the applicants sink[s] into the ground suggesting that the springs could be privately owned springs [sic]. (Emphasis added). Agency Record, pp. 53-54.

In short, it appears that the Department of Water Resources has made an important decision concerning this matter although there is still a great deal of uncertainty and conflicting data. Had either of the parties consulted with an attorney, prior to the hearing on October 2, 1996,

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they in all likelihood would have presented expert testimony or engineering reports to resolve this issue. However, whether attorneys were involved or not, IDWR still had the responsibility to not only provide a fair hearing, but to perform a thorough evaluation of the facts. Guerrero presented enough questions at the hearing, and later, when he filed his "Brief in Opposition to Recommended Order," dated December 31, 1996, the Department should have taken a closer look.

II. IDWR has a duty to thoroughly investigate these matters before issuing a permit for use of waters of the State of Idaho.

The specific duties of IDWR are set forth in the Constitution of the State of Idaho, Article XV, Section 7, and in Idaho Code §§ 42-1701, 42-1706, and 42-1805. Part of these duties include the following responsibilities:

(3) To conduct surveys, tests, investigations, research, examinations, studies, and estimates of cost relating to availability of unappropriated water, effective use of existing supply, conservation, storage, distribution and use of water.

(4) To prepare and compile information and data obtained and to make the same available to interested individuals or agencies. I.C. §§ 42-1805(3) and (4).

Idaho Code § 42-203A(5) provides that "[i]n all applications, whether protested or not protested, where the proposed use is such (a) that it will reduce the quantity of water under existing water rights, . . . the director of the Department of Water Resources may reject such application . . . or may partially approve and grant a permit for a smaller quantity of water . . ."

Armed with the provisions of this statute, the Director may exercise considerable discretion over applications for a permit to use the waters of the state. This is especially true where an injury to a senior right holder is alleged.

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The authority that the Department of Water Resources has over the waters of this state is an important trust, involving perhaps the most vital natural resource to our state's economic survival. The Department has taken this responsibility seriously over the years and has carefully exercised stewardship over the water of the State of Idaho. However, in the case at hand, it appears that the IDWR has somewhat abrogated this responsibility.

For example, despite the possible connection noted in the Department's internal file memo (Agency Record, pp. 98-101), the uncertainty expressed in the Recommended Order itself (Agency Record, pp. 52-57), and the report of Bob Foster, the hearing officer went ahead and recommended granting Crane's Application for a Permit. (Agency Record, p. 102). Guerrero respectfully submits that before granting a permit for the use of such a precious resource of the state, the Department should have engaged in a deeper, more certain analysis of the water rights at issue in this matter.

III. IDWR failed to correctly apply the criteria set forth in I.C. § 42-203A(5).

Idaho Code § 42-203A(5) sets forth six criteria that the hearing officer must consider in issuing any water right, whether protested or not:

In all applications whether protested or not protested, where the proposed use is such (a) that it will reduce the quantity of water under existing water rights, or (b) that the water supply itself is insufficient for the purpose for which it is sought to be appropriated, or (c) where it appears to the satisfaction of the director that such application is not made in good faith, is made for delay or speculative purposes, or (d) that the application has not sufficient financial resources with which to complete the work involved therein, or (e) that it will conflict with the local public interest, where the local public interest is defined as the affairs of the people in the area directly affected by the proposed use, or (f) that it is contrary to conservation of water resources within the State of Idaho . . .

Each of the pertinent factors will be discussed in more detail below.

SEP 22 2000

A. Crane's proposed use will decrease the quantity of water available to Guerrero.

This agreement was more fully addressed in Argument I of this brief. Tests conducted by Foster confirmed that Guerrero had inadequate water to operate all of his sprinkler heads. Guerrero's water right (No. 72-04117) shows .56 c.f.s. and .68 c.f.s., for a total of 1.24 c.f.s. However, Bob Foster's report showed Guerrero, after diversion by Crane, was only receiving 0.0958 c.f.s. (Agency Record, p. 102). Guerrero is already getting less water than he is entitled to since Crane has begun diverting water. This commenced even prior to the issuance of the permit. The evidence was un rebutted by Crane and not satisfactorily resolved in any of IDWR's decisions.

B. The water supply is insufficient for the purpose for which it is sought to be appropriated.

In order to develop the water right in the manner consistent with the permit Crane has sought, Crane must establish that the .04 c.f.s. per second claimed actually exists and will be adequate for two households. (See Crane's Application for Permit, Agency Record, pp. 1-6). There appears to be no evidence in the record to suggest that a year round .04 c.f.s. supply is available. Absent this proof, we cannot just merely assume that the water supply is sufficient for Crane's proposed use and the application should have been denied.

C. Not sufficient financial resources.

The Idaho Supreme Court has held that the applicant has the burden to establish that it is "reasonably probable" that they will be able to obtain the necessary financing within five years to complete the project. Shokal v. Dunn, 109 Idaho 337, 707 P.2d 441 (1985). This was Crane's burden of proof and he did not meet it. There is no evidence in the record to establish the

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FEB 22 2000

Crane has the financial resources to create diversion works capable of supplying year around water in the amounts proposed.

D. Local public interest.

The local public interest is defined as "the affairs of the people in the area directly affected by the proposed use." I.C. §42-203A(5)(e). In this case, the area directly affected by the proposed use is potentially very large. Guerrero and several other water users are in the area of the proposed use.

The law is clear that the burden of proof on the issue of local public interest lies with the applicant. Shokal v. Dunn, 109 Idaho 330, 707 P.2d 441 (1985). Crane had the burden at the hearing to prove why it was in the local public interest for his application to be granted. Only if that burden is met does Guerrero have the obligation to prove to the contrary. It is Guerrero's position that Crane never met his burden. Even if that were not true, we believe substantial evidence was presented at the hearing to establish that Crane's application is not in the "local public interest."

IV. Legal and equitable alternatives exist which would allow IDWR to make a more thorough and accurate decision in this matter.

IDWR apparently concluded that in the interest of resolving this matter quickly, they should adopt the Recommended Order despite the uncertainty expressed therein and despite the possible connections noted in IDWR's internal files. However, better alternatives exist.

The Department could have ordered that the Application for Permit be held in abeyance and allow a test year in 1997. Such a decision would have allowed both parties an opportunity to bring in experts to examine the issues related to this water right and to determine

FEB 22 2000

whether or not there is a hydrological interconnection. The Department would also have had the opportunity to allow its own experts to make similar observations or tests. However, none of this was done. Guerrero respectfully submits that this Court has the authority to refer this matter back to the agency and instruct them to review and scrutinize this matter further before granting the Permit. It is far more important to the interests of the State of Idaho, as well as Mr. Guerrero's interests, that this matter be done right, rather than just quickly.

Neither Crane nor Guerrero presented much evidence in addition to their own testimony on the issue of the hydrological interconnection. Guerrero later submitted a Memorandum dated August 27, 1996, from Bob Foster to Allen Merritt in an effort to prove damage to his own water right from Crane's use. Agency Record, p. 102. However, the Hearing Officer concluded in his Order Denying Petition for Reconsideration, that the examination on only one date **may not** be indicative of the flow available to Guerrero throughout the year. The only way the Department can make such a statement with certainty is to allow the matter to be postponed for a year so that the system can be tested at various times to determine whether or not there is actually any damage. Guerrero believes and respectfully submits that if there is any uncertainty in the allocation of a valuable resource of the State of Idaho, the Permit should not be granted until a better, more certain decision can be reached.

CONCLUSION

Guerrero has raised serious issues which are worthy of closer consideration. Guerrero believes that it is in the public interest of the State of Idaho for IDWR to give this matter closer scrutiny and investigation before issuing a permit to Crane. Hearings before the

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Department of Water Resources, as in any administrative or judicial forum, should be quests for the truth. In this case, it is clear from all of the evidence that the truth may not be yet known. We believe that the truth can only be discovered if IDWR is ordered to allow both parties the opportunity to more fully evaluate the irrigation system and the hydrological interconnection of the water rights, prior to reaching a conclusion.

RESPECTFULLY SUBMITTED This 23rd day of December, 1997.

A handwritten signature in black ink, appearing to read "G. W. Moeller", written over a horizontal line.

Gregory W. Moeller
of Rigby, Thatcher, Andrus, Rigby, Kam,
& Moeller, Chartered
Attorneys for Appellant

FEB 22 2002

CERTIFICATE OF SERVICE

I HEREBY CERTIFY That on this 23rd day of December, 1997, a true and accurate copy of the foregoing was sent by U.S. Mail, postage prepaid, to the following:

Phillip J. Rassier
Water Resources Unit
1301 N. Orchard St.
Statehouse Mail
Boise, ID 83706

Earl Crane
P.O. Box 11
Challis, ID 83226

G. Michael Lee
P.O. Box 1010
Challis, ID 83226

Honorable James C. Herndon
Custer County Courthouse
P.O. Box 385
Challis, ID 83226

Honorable James C. Herndon (courtesy copy)
Bingham County Courthouse
P.O. Box 1028
Blackfoot, ID 83221



Gregory W. Moeller

FEB 22 2000



State of Idaho

DEPARTMENT OF WATER RESOURCES

Southern Region, 222 Shoshone St. East, Twin Falls, Idaho 83301-6165 (208) 736-3033
Fax (208) 736-3037PHILIP E. BATT
GovernorKARL J. DREHER
Director

September 6, 1995

Earl Crane
Challis, ID 83226

RE: Complaint regarding illegal water use and injury to water right

Dear Mr. Crane:

Our office has received a complaint about a spring development reported to have been recently made by you in the Challis area near the NW $\frac{1}{4}$ NW $\frac{1}{4}$ SE $\frac{1}{4}$, Section 10, Twp.13N, Rge.18E, B.M.

The complaint alleges that you constructed a spring diversion earlier this year and that the diversion of water has reduced the flow of a nearby spring which supplies water to a prior water right. On August 25th, 1995, Bob Foster from our Salmon Office visited the site and confirmed a diversion pipe exists.

I have searched our water right records and find that no water right permit for your development exists. Please be aware that since 1971 to develop a use from a spring requires a permit. Since no right or permit exists in our records I request your cooperation in:

- identifying what water right covers your development if our records are not correct.
- cease the diversion from the spring if you have no water right.
- &/or obtain a valid permit or water right for your development.

Please respond to our office within 14 days of the date of this letter as to the status of your project. Please note that if you apply for a permit it will be subject to prior water rights and open for public protest. Please also note that to divert water in Idaho without a valid water right is illegal pursuant to §42-351, Idaho Code and subject to civil penalties of up to \$100 per day.

If you have questions regarding this matter please feel free to contact our office.

Sincerely,

Allen Merritt, PE
Southern Region Manager

CC: Bob Foster - IDWR (Salmon)
Glen Saxton - IDWR (State Office)

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO

IN THE MATTER OF APPLICATION)
FOR PERMIT NO. 72-07541 IN THE)
NAME OF EARL CRANE)
_____)

AGENCY'S CERTIFICATE
OF RECORD

STATE OF IDAHO)
) ss
County of Ada)

I, Karl J. Dreher, Director of the Idaho Department of Water Resources, do hereby certify that the above and foregoing record in the above-entitled matter was compiled and bound under my direction, and is a true and correct record of the pleadings, papers and proceedings therein contained and that said record contains true and correct copies of the papers and pleadings as shown in the index to this record.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the Department of Water Resources at Boise, Idaho, this 14th day of July, 1997.



KARL J. DREHER
Director



AGENCY'S CERTIFICATE OF RECORD - 1

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FEB 22 2000

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO

IN THE MATTER OF APPLICATION)
FOR PERMIT NO. 72-07541 IN THE)
NAME OF EARL CRANE)
_____)

ORDER SETTLING
TRANSCRIPT

DANIEL C. GUERRERO,)
)
Protestant-Appellant,)

vs.)

(Custer Co. Case No. CV-97-33)

IDAHO DEPARTMENT OF WATER)
RESOURCES, and EARL CRANE,)
)

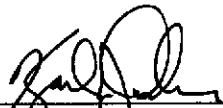
Respondents.)
_____)

TO: ALL PARTIES OR THEIR COUNSEL OF RECORD

YOU ARE HEREBY NOTIFIED, That pursuant to I.R.C.P. 84(o), the transcript of the testimony and proceedings of the hearing before the Department of Water Resources in this matter was lodged with the Department and made available to the parties on May 28, 1997. No objections to the transcript were filed before the Department by the Appellant or the Protestant and the Department staff has not identified any corrections. The settled transcript with the Agency Record will be filed in district court pursuant to I.R.C.P. 84(p).

NOW, THEREFORE, IT IS HEREBY ORDERED that no objections being made to the transcript in this proceeding before the Department; the transcript is hereby settled pursuant to the provisions of I.R.C.P. 84(o).

DATED This 26th day of June, 1997.



KARL J. DREHER
Director

CERTIFICATE OF SERVICE

I hereby certify that I served a true and correct copy of the following described document on the persons listed below by mailing in the United States mail, first class, with the correct postage affixed thereto on the 26th day of June, 1997.

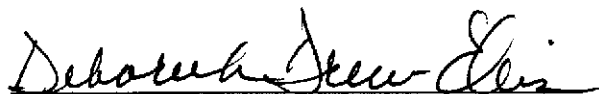
Document served: ORDER SETTLING TRANSCRIPT

Persons served: Gregory W. Moeller
Rigby, Thatcher, Andrus
Rigby, Kam & Moeller, Chrt'd.
25 North Second East
Rexburg, Idaho 83440

Earl Crane
P.O. Box 11
Challis, Idaho 83226

G. Michael Lee
Attorney at Law
P.O. Box 1010
Challis, Idaho 83226

Ethel Peck
Clerk of the Seventh District Court
P.O. Box 385
Challis, Idaho 83226



Deborah Drew-Ellis
Legal Secretary
Idaho Department of Water Resources

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO

IN THE MATTER OF APPLICATION)
FOR PERMIT NO. 72-07541 IN THE)
NAME OF EARL CRANE)
_____)

DANIEL C. GUERRERO,)

Protestant-Appellant,)

vs.)

IDAHO DEPARTMENT OF WATER)
RESOURCES, and EARL CRANE,)
_____)

Respondents.)

NOTICE OF LODGING
OF TRANSCRIPT

(Custer Co. Case No. CV-97-33)

TO: ALL ATTORNEYS OR PARTIES OF RECORD AND THE DISTRICT COURT

YOU ARE HEREBY NOTIFIED, pursuant to I.R.C.P. 84(o), that the transcript of the testimony and proceedings of the hearing before the Department of Water Resources (IDWR) in this matter is now deemed lodged with the Department in accordance with I.R.C.P. 84(k)(2).

YOU ARE FURTHER NOTIFIED, that the appellant, Daniel C. Guerrero, previously paid \$100.00 for the preparation of the transcript, and that a balance of \$20.00 is due and payable to the Department of Water Resources. That a copy of the transcript is

being provided to counsel for appellant, and to Earl Crane, the applicant-respondent;

THAT pursuant to I.R.C.P. 84(o) the parties have fourteen (14) days from the date of this notice in which to file any objection to the transcription;

THAT any objections to the transcript shall be made in writing to the Department and shall be determined thereby;

THAT upon failure of the parties to file any objection within such 14-day period, the transcript shall be deemed settled; and,

THAT thereafter, in accordance with I.R.C.P. 84(p), the Department shall file with the district court to which appeal has been made the original of the transcript together with a copy of the agency record and all exhibits offered or admitted in the proceeding.

DATED this 27th day of May, 1997



KARL J. DREHER
Director

CERTIFICATE OF SERVICE

I hereby certify that I served a true and correct copy of the following described document on the persons listed below by mailing in the United States mail, first class, with the correct postage affixed thereto on the 28th day of May, 1997.

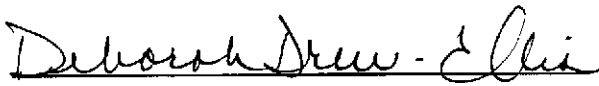
Documents served: NOTICE OF LODGING OF TRANSCRIPT
and TRANSCRIPT ON APPEAL

Persons served: Gregory W. Moeller
Rigby, Thatcher, Andrus
Rigby, Kam & Moeller, Chrt'd.
25 North Second East
Rexburg, Idaho 83440

Earl Crane
P.O. Box 11
Challis, Idaho 83226

G. Michael Lee (Notice only)
Attorney at Law
P.O. Box 1010
Challis, Idaho 83226

Ethel Peck (Notice only)
Clerk of the Seventh District Court
P.O. Box 385
Challis, Idaho 83226


DEBORAH DREW-ELLIS
Legal Secretary

Date

Activity

Applic. No. 72-0754110-4-96**PREPARE RECOMMENDED ORDER** (Julie or hearing officer)

- Prepare order/clean-up water right file
- Route to Cindy Z. for initial review

10/7**INITIAL APPLICATION REVIEW** (Cindy Z)

- Check order for conditions of approval to use
- Data enter information using "p" prefix.

10-10-96**PREPARE RECOMMENDED ORDER** (Hearing officer)

- Make appropriate changes to recommended order
- Route to Norm for review

10-15-96**MAIL SIGNED RECOMMENDED ORDER** (Julie)

- Prepare certificate of service, cover letter and mail
- Send copy of recom. order to region
- Hold file for 21 days for exceptions and request for reconsideration

CALL UP FILE AND CONTINUE PROCESS (Julie)

- Route file to hearing officer

*11-13-mailed order denying pet. for reconsid.***PREPARE FINAL ORDER** (Hearing officer)

- Review exceptions, if any, for changes to Final Order

REVIEW AND ROUTE FOR SIGNATURE (Hearing officer/Julie)**AFTER FINAL ORDER HAS BEEN SIGNED**12/14/97**PREPARE PERMIT FOR SIGNATURE** (Cindy Z)

- Update data base with changes and print a permit
- Route to Julie for final processing

2-18-97**MAIL FINAL ORDER** (Julie)

- Prepare certificate of service and cover letter
- Mail cover letter, permit, final order, certificate of mailing to all parties
- Send copies within the department

UPDATE DATABASE (Cindy Z)**CALL UP FILE AND ROUTE FOR SYNOPSIS PREPARATION** (Julie)

- Call up file after 21 day period in which to file exceptions and/or requests for reconsideration

PREPARE SHORT SYNOPSIS FOR AGENCY ORDER INDEX (Hearing Officer)

- Route file to Julie for index update

FINAL DATABASE UPDATE AND ACTION (Cindy Z)**ROUTE TO MICROFILM** (Darla)

- Film file
- Route to vault

VAULT

- Remove the hearing tapes, index, and file
- Remove cards from protest and/or hold drawer



State of Idaho

DEPARTMENT OF WATER RESOURCES

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

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

PHILIP E. BATT
GOVERNOR

KARL J. DREHER
DIRECTOR

February 18, 1997

RE: In the Matter of Applications for Permit No. 72-07541 in the name of Earl Crane

Dear Interested Party:

The accompanying order is a "final order" issued by the department pursuant to section 67-5246 or 67-5247, Idaho Code.

Section 67-5246 provides as follows:

(1) If the presiding officer is the agency head, the presiding officer shall issue a final order.

(2) If the presiding officer issued a recommended order, the agency head shall issue a final order following review of that recommended order.

(3) If the presiding officer issued a preliminary order, that order becomes a final order unless it is reviewed as required in section 67-5245, Idaho Code. If the preliminary order is reviewed, the agency head shall issue a final order.

(4) Unless otherwise provided by statute or rule, any party may file a petition for reconsideration of any order issued by the agency head within fourteen (14) days of the issuance of that order. The agency head shall issue a written order disposing of the petition. The petition is deemed denied if the agency head does not dispose of it within twenty-one (21) days after the filing of the petition.

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

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(a) the petition for reconsideration is disposed of; or

(b) the petition is deemed denied because the agency head did not dispose of the petition within twenty-one (21) days.

(6) A party may not be required to comply with a final order unless the party has been served with or has actual knowledge of the order. If the order is mailed to the last known address of a party, the service is deemed to be sufficient.

(7) A non-party shall not be required to comply with a final order unless the agency has made the order available for public inspection or the nonparty has actual knowledge of the order.

(8) The provisions of this section do not preclude an agency from taking immediate action to protect the public interest in accordance with the provisions of section 67-5247, Idaho Code.

PETITION FOR RECONSIDERATION

Any party may file a petition for reconsideration of a final order within fourteen (14) days of the service date of this order. The department will act on a petition for reconsideration within twenty-one (21) days of its receipt, or the petition will be considered denied by operation of law. See section 67-5246(4) Idaho Code.

APPEAL OF FINAL ORDER TO DISTRICT COURT

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

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

The appeal must be filed within twenty-eight (28) days a) of

the service date of the final order, b) of an order denying petition for reconsideration, or c) the failure within twenty-one (21) days to grant or deny a petition for reconsideration, whichever is later. See section 67-5273, Idaho Code. The filing of an appeal to district court does not in itself stay the effectiveness or enforcement of the order under appeal.

Sincerely,

L. GLEN SAXTON
Chief, Water Allocation Bureau

Enclosure

C: IDWR - Region

RECEIVED

JAN 29 1997

Department of Water Resources

1 G. MICHAEL LEE
2 Attorney at Law
3 P.O. Box 1010
4 Challis, Idaho 8226
5 208/879-2444
6 Fax: 208/879-5289

7 BEFORE THE DEPARTMENT OF WATER RESOURCES
8 OF THE
9 STATE OF IDAHO

10 IN THE MATTER OF APPLICATION)
11 FOR PERMIT NO. 72-07541 IN THE) MEMORANDUM IN SUPPORT
12 NAME OF EARL CRANE) OF RECOMMENDED ORDER
13)

14 COMES NOW the Applicant, Earl Crane, by and through his legal counsel, G.
15 Michael Lee, and respectfully submits this Memorandum in Support of Recommended
16 Order of the Hearing Officer entered on October 15, 1996.

17 STATEMENT OF THE CASE

18 That Earl Crane, hereinafter Crane, submitted his Application for Permit No. 72-
19 07541 to the Department of Water Resources of the State of Idaho, hereinafter Department,
20 on December 29, 1995. By his application Crane sought to divert 0.04 cubic feet per
21 second of water from a spring located upon his property for use as domestic water for two,
22 yet to be constructed, cabins.

23 After the Department's publication of notice of the application, D.C. Guerrero, AKA
24 Garden Creek Ranch, hereinafter Protestant, filed his protest and objection to the Crane
25 application.

26 On August 23, 1996 Allen Merritt, of the Department, conducted a "Pre-hearing
27 MEMORANDUM IN SUPPORT OF RECOMMENDED ORDER-1

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1 conference". Attending the conference were Mr. and Mrs. Earl Crane and the Protestant.

2 From Mr. Merritt's memo to the file, on the same day as the pretrial conference, he
3 accompanied Crane to the spring(s) in question and noted his observations in his memo to
4 file "72-07541 In the name of Crane" on September 9, 1996, said memo is attached hereto
5 as Exhibit "A". From that memo it would appear that Mr. Merritt had previously viewed
6 the spring site(s) accompanied by the Protestant. In his memo of September 9, 1996, Mr.
7 Merritt noted that he was not "convinced" that the spring located on the Crane property,
8 hydrologically enters the pool [pond] that has been the Protestant's historical point of
9 diversion.
10

11 That on October 2, 1996, a hearing was held in Challis, Idaho to resolve the dispute
12 between Crane and Protestant. At said hearing the Hearing Officer took testimony and
13 received exhibits into evidence.
14

15 The Hearing Officer noted that Protestant identified his objections to the Crane
16 application in three particulars:
17

- 18 1. The application would reduce the quantity of water under existing water rights,
19 presumably those of the Protestant;
- 20 2. The water supply was not sufficient for the purposes intended; and,
- 21 3. The application conflicted with local public interest.

22 The Hearing Officer having heard the testimony and reviewing the evidence, issued
23 his Recommended Order on October 15, 1996, attached hereto as Exhibit "B".
24

25 In the Recommended Order the Hearing Officer **specifically** found and concluded
26 as a matter of law that:

27 MEMORANDUM IN SUPPORT OF RECOMMENDED ORDER-2
28

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1. "The application would **not** reduce the quantity of water under the existing water right of the Protestant."

2. "The water supply itself is sufficient to provide domestic water to two (2) homes."

3. The application "does **not** conflict with the local public interest". Emphasis added (See Exhibit "B" at page 4)

The Hearing Officer having specifically addressed the three objections of the Protestant, judiciously and in accordance with Idaho Code § 42-203A expanded his ruling to include all other requirements contained in Idaho Code § 42-203A.

Having found that the Crane application met all pertinent requirements of law, the Hearing Officer ordered that the Crane application be conditionally approved.

From this Recommended Order the Protestant objects via his "Brief in Opposition to Recommended Order".

ARGUMENT

The essence of the Protestant's argument, that the Hearing Officer's Recommended Order should not be followed or approved, is singular: That there **may** be some sort of hydrological interconnection between the spring on Cranes property and the Protestant's historical point of diversion.

Having presented **no** evidence of this theory, the Protestant would have this reviewing body hold up the Crane application for a period of at least a year so that Protestant **may** find a **possible** connection, hydrologically between the spring and Protestant's pond.

MEMORANDUM IN SUPPORT OF RECOMMENDED ORDER-3

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1 Again, having presented no evidence of his theory, the Protestant asks the reviewing
2 body to **speculate** that there **may be** this hydrologic connection and grant the Protestant
3 a year to **maybe** prove his theory.

4 It is hornbook law that the trier of fact, herein the Hearing Officer, should not
5 speculate as to the ultimate issues of any given case. Were the trier of fact in a jury case,
6 i.e. the jury, to speculate as to any material issue sent to them for determination, said
7 finding would be set aside.

9 For argument purposes only, although there is no evidence in the record of any
10 hydrological connection between the spring and Protestant's pond, there is sufficient
11 opinion to the contrary.

13 Mr. Merritt, of the Department, in his memo of September 9, 1996, concludes that

14 "I am not convinced that when this drainage sinks including the
15 springs that hydrologically the water enters the pool or provides
16 water to what has historically been diverted by Guerro (sic)".
(See Exhibit "A")

17 Further, the Hearing Officer found that there was insufficient data, i.e. evidence that
18 the Crane spring is hydrologically connected to the Protestant's pond, and going one step
19 further, suggests that the Crane spring may be a privately owned spring. (See Exhibit "B"
20 at page 3)

22 Also telling and of interest is the method that Protestant has used, in the past, to
23 divert water from the Crane spring to his pond. The Protestant's delivery system from the
24 Crane spring to his pond has been an overland, above ground, pipe which by gravitational
25 force converts water to the pond from the Crane spring. This method of delivery appears

27 MEMORANDUM IN SUPPORT OF RECOMMENDED ORDER-4
28

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1 to be in contradiction of the Protestant's theory of hydrological interconnection. For if the
2 spring and the pond were hydrologically connected there would be no need to transport the
3 spring water overland, because it would naturally end up in the pond, if truly the spring and
4 pond were hydrologically connected. The Protestant's method of delivery strongly suggests
5 there is **no** hydrological connection.
6

7 The Protestant suggests that it is equitable for the Department to postpone its
8 decision for a year for reasons that are vague and speculative as formally addresses. If
9 there is a requirement that the Department should seek equity (the statutes do not seem to
10 require it) then that issue has also been addressed by the Hearing Officer. In exhibit "B"
11 at page 4, he states.
12

13 "The language in both the applicant's Warranty Deed and the
14 Protestant's Warranty Deed clearly shows that the interest of
15 the original owners was to allow use of the springs by their
16 successors-in interest including the applicant. However, approval
of the application appears to be the most equitable resolution
of [this] mater."

17 CONCLUSION

18 The Hearing Officer's findings of fact and conclusion of law are firmly founded
19 upon the evidence and testimony presented in this case.
20

21 The conclusions and the Recommended Order must not be disturbed absent a
22 finding of error. The Protestant has not claimed that the Hearing Officer erred. The
23 Protestant's argument is in the nature of a plea for reconsideration, not that there is error
24 that need to be corrected.

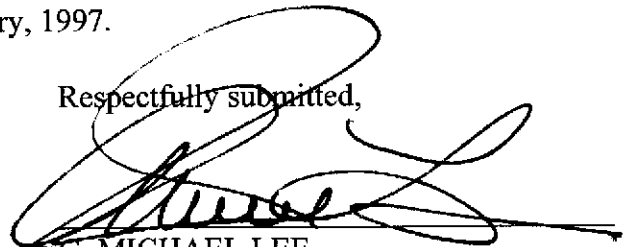
25 Generally the finding and conclusions of the trier of fact are not to be disturbed by
26

27 MEMORANDUM IN SUPPORT OF RECOMMENDED ORDER-5
28

1 the reviewing body unless they are clearly erroneous. Thus there being no allegations of
2 error on the part of the Hearing Officer, and indeed there is no error in the record, therefore,
3 the Recommended Order of the Hearing Officer must be upheld. To do otherwise would
4 be outside the reviewing body's scope of authority. The reviewing body should never
5 substitute its judgment for that of the trier of fact, unless there is the allegation of error and
6 there is clear evidence of error in the record.
7

8 Dated this 25 day of January, 1997.

9 Respectfully submitted,

10 
11 G. MICHAEL LEE
12 Attorney for Applicant
13

14 CERTIFICATE OF MAILING

15 I HEREBY CERTIFY that I mailed a true and correct copy of the foregoing
16 Memorandum in Support of Recommended Order, postage prepaid, this 27 day of
January, 1997, to the following:

17 Gregory W. Moeller
18 25 North Second East
19 Rexburg, Idaho 83440

Department of Water Resources
1301 North Orchard Street
Statehouse Mail
Boise, Idaho 83720-9000

20 Earl Crane
21 P.O. Box 11
22 Challis, Idaho 83226

23 
24 TAMI L. BRAUSEN
25
26

27 MEMORANDUM IN SUPPORT OF RECOMMENDED ORDER-6
28

FEB 22 2000

FROM: Allen Merritt

DATE: September 9, 1996

TO: File: 72-07541 In the name of Crane

SUBJECT: Pre-hearing conference

On August 23, 1996 I conducted a pre-hearing conference in the matter of the protest of the above referenced application. At the conference was Mr. & Mrs. Earl Crane (Applicant) and Mr. Guerro (Protestant)

We discussed the issues and only items #1 & #2 on the handout appeared to be issues. I tried to start a discussion about potential resolution of the protest but the parties did not appear to be open to settle or agree at this point. They wished to have a hearing. I told them how a hearing would be conducted. During the conference we went through the file and looked at the pictures. It was questioned by Mr. Guerro what was being developed and Mr. Crane indicated that there were two domestic units being built. One for his son and the other for himself. The use of the water was going to be in house use with very limited watering of small lawn & landscape at each building site. Mr. Crane indicated that the springs were separate and his spring was on his property and Guerro had no call on his spring. Guerro's point is that the springs are connected and the development by Crane has impacted his use of the water.

After the conference Mr. Crane invited me view the springs again. At first I declined since I had already looked at them. He indicated that it was not fair to only look at them with Mr. Guerro and not give him the opportunity to point out things. I decided to look at the springs again as Crane requested.

I visited the site again and I took the attached pictures. Mr. Crane pointed out the water he has developed or gathered presently rises in a pool where other spring water enters and all is gathered by one of Guerro's pipelines which at times takes water to the pool at the historical point of diversion for Guerro. He then pointed out that Guerro placed the pipelines on his property without permission and indicated that in fact Guerro has increased his historical diversion. He then showed me a point where the Guerro pipeline was disconnected allowing all the water gathered from the Crane property to spill onto the ground still on the Crane property. We followed the spill down the hillside where it sank totally on the Crane property. He pointed out that drainage where this water was flowing is separate from the Guerro historical P/D. I followed the drainage down but found that it would enter the channel right at the Guerro historical point of diversion.

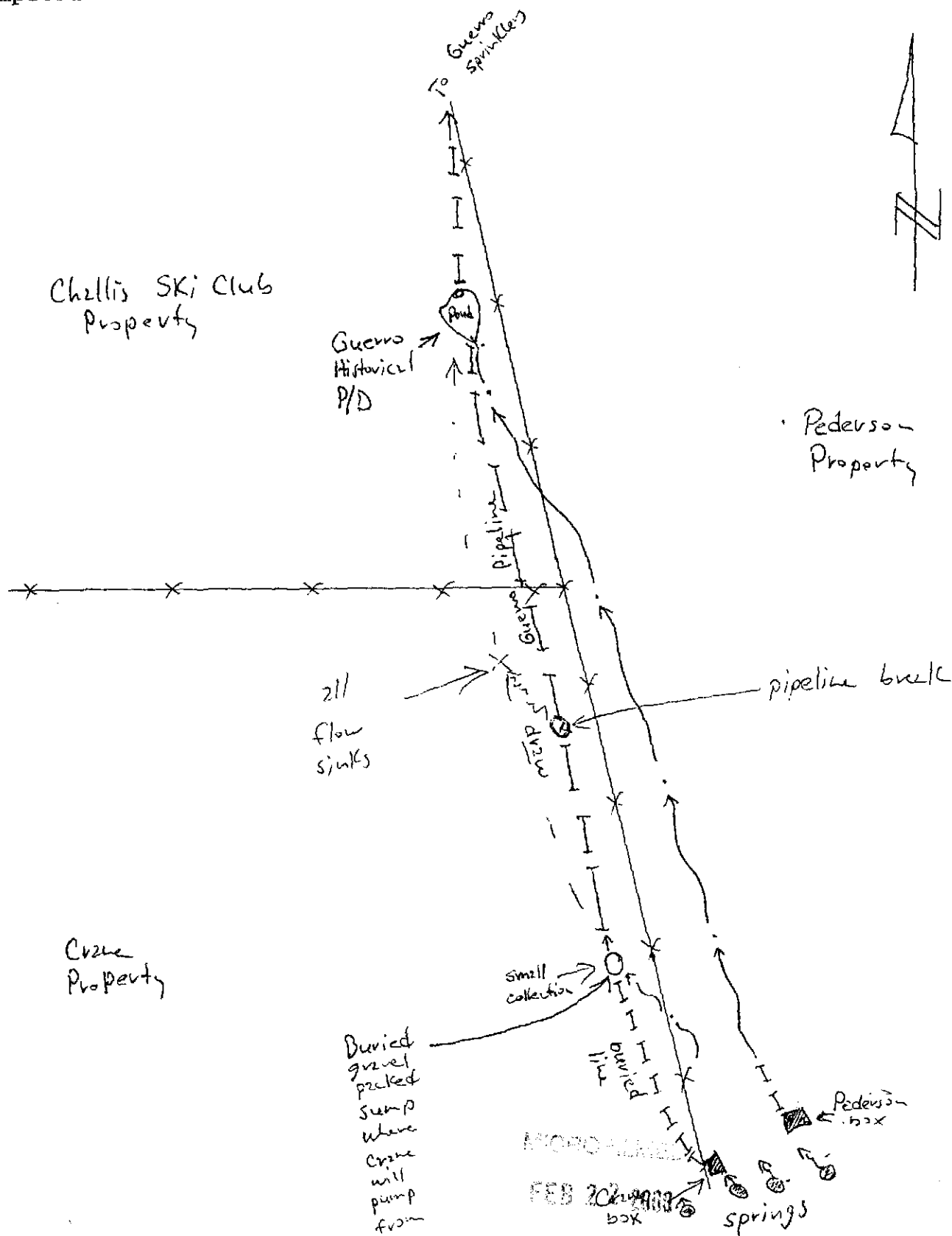
It would appear that during high overland runoff the drainage from Crane would make it to the Guerro's historical P/D but I'm not convinced that when this drainage sinks including the springs that hydrologically the water enters the pool or provides water to what

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FEB 22 2000

EXHIBIT "A"

has historically been diverted by Guerro. It quit possibly sinks and goes under the what is gathered by Guerro or possibly a portion of it may contribute to the unnamed stream flowing to the Guerro pool. It did not appear at the day I visited the pool that there was springs rising in the pool itself. As for the stream it was impossible to tell. See attached sketch.





Collection pond
where Guerro's buried
pipeline ends at
a buried gravel
paved bottom.
the plan to pump
from here. This
is also place where
Guerro has placed
a pipeline to collect
Crane water which
bubbles up and
surface spring flow.



Guerro's pipeline
which became
disconnected at joint.



Flow from Guerro's
pipeline sinks in
this area before
leaving Crane property



Stream channel below
P/O (dry) Division
faking 21 flow



stream channel



stream

Pipeline from
(over property)

FEB 22 2003

↑
under list of
P/O.

BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE

STATE OF IDAHO

IN THE MATTER OF APPLICATION FOR)
PERMIT NO. 72-07541 IN THE NAME)
OF EARL CRANE)
_____)

RECOMMENDED ORDER

This matter having come before the Idaho Department of Water Resources (department) in the form of a protested application for permit, the department having held a conference and a hearing in the matter, the hearing officer recommends the following Findings of Fact, Conclusions of Law and Order:

FINDINGS OF FACT

1. On December 29, 1995, Earl Crane (applicant) submitted Application For Permit No. 72-07541 (application) to the department proposing the diversion of 0.04 cubic feet per second (cfs) of water from an Unnamed Spring within the SW1/4NE1/4SE1/4 Section 10, T13N, R18E, B.M. Custer County to be used year-round for domestic purposes for two (2) cabins. (The "1/4" designations will be omitted from subsequent legal descriptions in this order).

2. The department published notice of the application which was subsequently protested by Garden Creek Ranch c/o D.C. Guerrero (protestant).

3. On October 2, 1996, the department conducted a hearing in the matter in Challis, Idaho. Both the applicant and protestant were present and represented themselves.

4. Issues identified by the protestant include the following:

a. The application will reduce the quantity of water under existing water rights.

b. The water supply itself is not sufficient for the purposes intended.

c. The application conflicts with the local public interest.

5. Exhibits offered and accepted as a part of the record include the following:

a. Applicant's Exhibit 1 - Warranty Deed from Donald P.

ORDER - Pg 1

EXHIBIT 2B

Frost, Naoma Frost, Don A. Mann and Glenda G. Mann to Earl C. Crane and Helen E. Crane dated June 1, 1982.

b. Protestant's Exhibit A - Memorandum dated August 27, 1996 to Allen Merritt from Bob Foster.

c. Protestant's Exhibit B - Plat showing a spring and water line locations in Section 10, T13N, R18E, B.M.

d. Protestant's Exhibit C - Grant of Easement and Water Rights dated March 17, 1980 from Donald Frost and Naoma Frost, Don A. Mann and Glenda G. Mann to Gary R.L. Oliverson and Elise M. Oliverson.

e. Protestant's Exhibit D - Page 4 of a Contract of Sale and Warranty Deed dated March 11, 1988 from Gary R. L. Oliverson and Elise M. Oliverson to D.C. Guerrero.

f. Protestant's Exhibit E - Contract of Sale between Gary R.L. Oliverson and Elise M. Oliverson to D.C. Guerrero.

5. The land presently owned by the applicant and by the protestant was formerly owned by Donald P. Frost, Naoma Frost, Don A. Mann and Glenda G. Mann (original owners) who sold part of the land to the applicant, part to the protestant and part to other adjacent owners. The sales transaction involving the lands show that the original owners intended to convey the right to use the springs located on the original owners' property to both the applicant and to the protestant. This intended conveyance is supported by both the Warranty Deed to the applicant (Exhibit 1) and the Grant of Easement and Water Rights to the protestant's predecessors (Exhibit C).

6. The location of "the spring" claimed by the protestant and as represented on Claim to Water Right No. 72-04117 filed in 1982 by the protestant is not a clearly defined spring but is a wet, boggy area generally located in the SENESE Section 10, T13N. R18E, B.M.

7. The applicant has partially developed two spring areas by excavating the areas, constructing a collection system and connecting the spring areas with a pipe. The upper spring area is located upon the property of Jeffrey P. Pedersen and the lower spring area is located on the applicant's four (4) acre parcel of property. The applicant has estimated the combined flow from the two areas as approximately 0.5 gallons of water in 10 seconds (about 3 gallons per minute). The applicant has also leveled two areas on which he intends to build houses.

8. There was insufficient data available to show whether the springs located in the SENESE Section 10 used by the protestant and the spring areas sought by the applicant in the SWNESE Section 10

MICHAEL J. JONES
FEB 22 2000

are hydraulically connected. Water from the spring areas developed by the applicant sink into the ground suggesting that the springs could be privately owned springs.

9. On July 14, 1982, the protestant filed Claim to a Water Right No. 72-04117 with the department claiming the following:

Source: Unnamed springs trib. to sinks
Priority: 1942
Pt of div: NESE, NWSE (2 points) Section 10, T13N, R18E,
B.M.
Uses: 0.50 cfs for irrigation of 25 acres
0.04 cfs for 1 domestic use
0.02 cfs for livestock
0.56 cfs - TOTAL
Basis of rt: Beneficial use

10. On November 16, 1989, the protestant filed a Snake River Basin Adjudication claim based on prior claim 72-04117 claiming an enhanced water use over that previously claimed as follows:

Source: Springs trib. to sinks
Priority: 1878
Pt of div: NWNESE, NENWSE, SESWNE Section 10, T13N, R18E,
B.M.
Uses: 0.60 cfs for irrigation of 30 acres
0.06 cfs for 2 domestic uses
0.02 cfs for livestock
0.68 cfs - TOTAL
Basis of rt: Beneficial use

CONCLUSIONS OF LAW

1. Section 42-203A, Idaho Code, provides in pertinent part as follows:

In all applications whether protested or not protested where the proposed use is such (a) that it will reduce the quantity of water under existing water rights, or (b) that the water supply itself is insufficient for the purpose for which it is sought to be appropriated, or (c) where it appears to the satisfaction of the director that such application is not made in good faith, is made for delay or speculative purposes, or (d) that the applicant has not sufficient financial resources with which to complete the work involved therein, or (e) that it will conflict with the local public interest, where the local public interest is defined as the affairs of the people in the area directly affected by the proposed use, or (f) that it is contrary to conservation of water resources within the state of Idaho; the director of the department of water resources may reject such application and refuse

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issuance of a permit therefor... .

2. The water use of the protestant, while earlier in time than the applicant, is represented by claims which have not been quantified or confirmed.

3. The application appears to be filed consistent with the sale contract documents applicable to the land of both the applicant and protestant and does not conflict with the local public interest.

4. The application will not reduce the quantity of water under the existing water right of the protestant.

5. The water supply itself is sufficient to provide domestic water to two (2) homes.

6. The application is made in good faith and not for delay or speculative purposes.

7. The applicant has sufficient financial resources with which to complete the project.

8. The application is not contrary to the conservation of water resources within Idaho.

9. The department should approve the application subject to certain conditions and limitations.

ANALYSIS

The language in both the applicant's Warranty Deed and the protestant's Warranty Deed clearly shows that the intent of the original owners was to allow use of the springs by their successors-in-interest including the applicant. Hence, approval of the application appears to be the most equitable resolution of the matter.

ORDER

IT IS THEREFORE, hereby ORDERED that Application for Permit No. 72-07541 in the name of Earl Crane is APPROVED subject to the following conditions and limitations:

1. Use of water under the right is subject to all prior water rights.

2. Proof of construction of works and application of water to beneficial use shall be submitted to the department on or before the date shown in the final order of the department.

3. Approval of the application does not supercede any

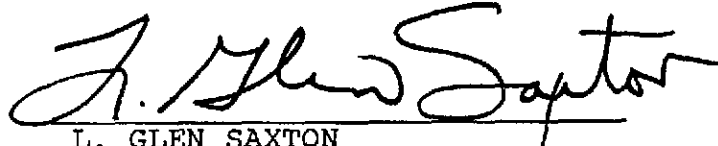
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contractual obligation(s) of the applicant or protestant if such obligation(s) exist.

4. Approval of the application does not grant any right-of-way or easement across the lands of another party.

5. Domestic use is for two (2) homes.

Signed this 15th day of October, 1996.



L. GLEN SAXTON
Hearing Officer

FEB 22 2000

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 16th day of October, 1996,
I mailed a true and correct copy, postage prepaid, of the foregoing
RECOMMENDED ORDER to the following:

Earl Crane
P.O. Box 11
Challis, ID 83226

D.C. Guerrero
Garden Creek Ranch
P.O. Box 248
Challis, ID 83226


JULIE L. YARBROUGH
Senior Secretary

MAILED
FEB 21 1997

RECEIVED

JAN 06 1997

Department of Water Resources

Law Offices

**RIGBY, THATCHER, ANDRUS
RIGBY, KAM & MOELLER, Chartered**

Ray W. Rigby
Gordon S. Thatcher
G. Rich Andrus
Jerry R. Rigby
Michael S. Kam
Gregory W. Moeller

P.O. Box 250
25 North Second East
Rexburg, ID 83440

Telephone:
Rexburg: (208) 356-3633
Idaho Falls: (208) 529-5531
Fax: (208) 356-0768
E-Mail: rexlaw@srv.net

**SENT BY FACSIMILE TRANSMISSION
(208) 327-7866**

December 31, 1996

Director
Department of Water Resources
1301 N. Orchard St.
Statehouse Mail
Boise, ID 83720-9000

**Re: Protestant - Daniel C. Guerrero
Application for Permit No. 72-07541 in the Name of Earl Crane**

Dear Director:

Enclosed is a "Brief in Opposition to Recommended Order" in the above-referenced matter. Please file the same.

Sincerely,


Gregory W. Moeller

dk

Enclosure

MICROFILMED

FEB 22 2002

JAN 06 1997

Gregory W. Moeller
of RIGBY, THATCHER, ANDRUS,
RIGBY, KAM & MOELLER, Chartered
Attorneys at Law
25 North Second East
Rexburg, Idaho 83440
Telephone: 208 356-3633

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE
STATE OF IDAHO

**BRIEF IN OPPOSITION
TO RECOMMENDED
ORDER**

PROCEDURAL BACKGROUND

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FEB 22 2009

Two weeks later, on October 16, 1996, L. Glen Saxton, Hearing Officer, issued a Recommended Order. On November 7, 1996, and again on November 12, 1996, Daniel C. Guerrero, *pro se*, filed a "Petition for Reconsideration of a Recommended Order and Request an Oral Argument Before the Director." On November 13, 1996, the Hearing Officer issued an Order Denying Petition for Reconsideration.

On December 3, 1996, Protestant submitted a request to the Director of the Department of Water Resources for thirty (30) days additional time to file exceptions or brief to the Hearing Officer's Recommended Order upon the grounds that he needed the additional time to seek advice from an attorney. On December 4, 1996, Karl J. Dreher, Director of the Idaho Department of Water Resources, issued an order granting Protestant 28 additional days to file a brief, extending the deadline to January 2, 1997. Although that Order was dated December 4, 1996, it was not sent to Protestant until December 13, 1996. Please see cover letter attached hereto as Exhibit "A."

Mr. Guerrero made an appointment to meet with his attorneys for the first time on December 19, 1996. Protestant's attorneys have only recently become involved in the matter and have not had an opportunity to visually inspect the property and structures in question, or to review the files of the Department of Water Resources.

On December 20, 1996, L. Glen Saxton, Chief of the Water Allocation Bureau, forwarded some additional information that was helpful, including a file memo from Allen Merritt, dated September 9, 1996. A copy of that memo is attached hereto as Exhibit "B". The memo also includes a sketch, presumably drawn by Mr. Merritt. This map shows the location of the springs in question, Mr. Guerrero's historical point of

diversion, and appears at first glance to show quite plainly how there is an interconnection between the various springs involved.

ARGUMENT

I. IDWR's own records suggests a possible hydrological interconnection between the springs used by Protestant and the spring areas sought by Applicant.

Unfortunately, it appears that neither party produced any expert testimony at the October 2, 1996, hearing. However, there exists information in the Department's own file which raises serious questions as to the connection between the water rights in question. The internal file memo produced by Allen Merritt dated September 9, 1996, concludes:

It would appear that during high over land runoff the drainage from Crane would make it to [Guerrero's] historical P/D but I'm not convinced that when this drainage sinks including the springs that hydrologically the water enters the pool or provides water to what has historically been diverted by [Guerrero]. It **quit[e]** possibly sinks and goes under the what is gathered by [Guerrero] **or possibly a portion of it may contribute to the unnamed stream flowing to the [Guerrero] pond.** It did not appear at the day I visited the pool that there was springs rising in the pool itself. As for the stream it was **impossible to tell** [sic].

Even the Hearing Officer's Recommended Order of October 16, 1996, expressed uncertainty when he made the following finding:

There was **insufficient data** available to show whether the springs located in the SWNESE Section 10 used by the protestant and the spring area sought by the applicant in the SWNESE Section 10 are hydraulically connected. Water from the spring area developed by the applicants sink[s] into the ground **suggesting** that the springs **could be** privately owned springs [sic].

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FEB 22 2000

In short, it appears that the Department of Water Resources has made an important decision concerning this matter although there is still a great deal of uncertainty and conflicting data. Had either of the parties consulted with an attorney, prior to the hearing on October 2, 1996, they in all likelihood would have presented expert testimony or engineering reports to discuss this issue.

The evidence presented to the Hearing Officer showed that the spring claimed by the Protestant is not a clearly defined spring. The collection point for the spring and creek from which Protestant draws water is approximately 200 yards long. Neither Applicant nor the Department presented any evidence proving that there was no hydrological connection. This determination could be made by the parties or the Department if an expert can inspect the premises.

II. The Department of Water Resources has a duty to thoroughly investigate these matters before issuing a permit for use of waters of the State of Idaho.

The specific duties of this executive department of the State of Idaho are set forth in the Constitution of the State of Idaho, Article XV, Section 7, and in Idaho Code §§ 42-1701, 42-1706, and 42-1805. Part of these duties include the responsibility:

- (3) To conduct surveys, tests, investigations, research, examinations, studies, and estimates of cost relating to availability of unappropriated water, effective use of existing supply, conservation, storage, distribution and use of water.
- (4) To prepare and compile information and data obtained and to make the same available to interested individuals or agencies. I.C. §§ 42-1805(3) and (4).

Idaho Code § 42-203A(5) provides that [i]n all applications, whether protested or not protested, where the proposed use is such (a) that it will reduce the quantity of water under existing water rights, . . . the director of the Department of Water Resources may reject such application . . . or may partially approve and grant a permit for a smaller quantity of water . . .” Armed with the provisions of this statute, the Director may exercise considerable discretion over applications for a permit to use the waters of the state. This is especially true where an injury to a senior right holder is involved.

The authority that the Department of Water Resources has over the waters of this state is an important trust, involving perhaps the most vital natural resource to our state's economic survival. The Department has taken this responsibility seriously over the years and has carefully exercised stewardship over the water of the State of Idaho. However, in the case at hand it appears that the Recommended Order of the Hearing Officer has somewhat abrogated this responsibility.

Despite the possible connection noted in the Departments' internal file memo and the uncertainty expressed in the Recommended Order itself, the hearing officer has gone ahead and recommended granting the Applicant's Application for a Permit. Respondent respectfully submits that before granting a permit for the use of such a precious resource of the state, the Department should have engaged in a deeper, more certain analysis of the water rights at issue in this matter.

MONO...
FEB 22 2000

III. Fair and equitable alternatives exist to allow the Department to make a more thorough and accurate review of this matter.

The Department could merely conclude that in the interest of resolving this matter quickly, they should adopt the Recommended Order despite the uncertainty expressed therein and despite the possible connections noted in the internal file memo of Allen Merritt. However, better alternatives exist.

For example, the Department could order the Application for Permit held in abeyance and allow a test year in 1997. Such a decision would allow both parties an opportunity to bring in experts to examine the issues related to this water right and to determine whether or not there is a hydrological interconnection. The Department would also have the opportunity to allow its own experts to make similar examinations.

Neither Applicant nor Protestant presented much evidence in addition to their own testimony on the issue of the hydrological interconnection. Mr. Guerrero later submitted a Memorandum dated August 27, 1996, from Bob Foster to Allen Merritt in an effort to prove damage to his own water right from Applicant's use. (See attached Exhibit "C"). However, the Hearing Officer concluded in his Order Denying Petition for Reconsideration, that the examination on only one date may not be indicative of the flow available to Mr. Guerrero throughout the year. The only way the Department can make such a statement with certainty is to allow the matter to be postponed for a year so that the system can be tested at various times to determine whether or not there is actually any damage. Protestant believes and respectfully submits that if there is any uncertainty

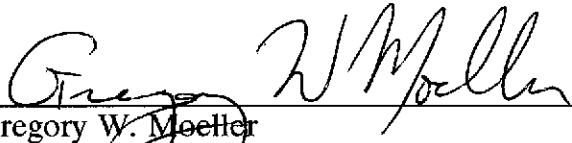
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FEB 22 2000

in the allocation of a valuable resource of the State of Idaho, the permit should not be granted until a better, more certain decision can be reached.

CONCLUSION

The Protestant has raised serious issues which are worthy of closer consideration. Protestant believes that it is in the public interest of the State of Idaho for the Department to give this matter closer scrutiny and investigation before issuing a permit to the Applicant. Hearings before the Department of Water Resources, as in any administrative or judicial forum, should be quests for the truth. In this case, it is clear from all of the evidence that the truth is not yet known. We believe that the truth can only be reached if the Department allows both parties the opportunity to have experts examine the irrigation system during the 1997 year.

RESPECTFULLY SUBMITTED This 31st day of December, 1996.

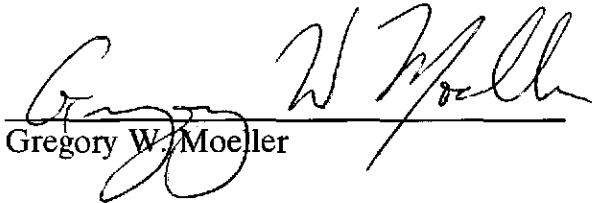


Gregory W. Moeller
of Rigby, Thatcher, Andrus, Rigby, Kam,
& Moeller, Chartered
Attorneys for Protestant

CERTIFICATE OF SERVICE

I HEREBY CERTIFY That on this 31st day of December, 1996, a true and accurate copy of the foregoing was sent by U.S. Mail, postage prepaid to the following:

Earl Crane
P.O. Box 11
Challis, ID 83226



Gregory W. Moeller

**State of Idaho****DEPARTMENT OF WATER RESOURCES****1301 North Orchard Street, Statehouse Mail, Boise, Idaho 83720-9000****Phone: (208) 327-7900 FAX: (208) 327-7866****PHILIP E. BATT
GOVERNOR****KARL J. DREHER
DIRECTOR**

December 13, 1996

RE: In the Matter of Application for Permit No. 72-07541 in the name of Earl Crane

Dear Interested Parties:

I have enclosed a copy of the ORDER issued in connection with the above referenced application for permit.

Please review the Order and contact me at (208) 327-7900 if you have any questions.

Sincerely,

**JULIE L. YARBROUGH
Senior Secretary**

Enclosure

C: IDWR - Region

MICHEL

DEC 22 1996

EXHIBIT**"A"**

FROM: Allen Merritt

DATE: September 9, 1996

TO: File: 72-07541 In the name of Crane

SUBJECT: Pre-hearing conference

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We discussed the issues and only items #1 & #2 on the handout appeared to be issues. I tried to start a discussion about potential resolution of the protest but the parties did not appear to be open to settle or agree at this point. They wished to have a hearing. I told them how a hearing would be conducted. During the conference we went through the file and looked at the pictures. It was questioned by Mr. Guerro what was being developed and Mr. Crane indicated that there were two domestic units being built. One for his son and the other for himself. The use of the water was going to be in house use with very limited watering of small lawn & landscape at each building site. Mr. Crane indicated that the springs were separate and his spring was on his property and Guerro had no call on his spring. Guerro's point is that the springs are connected and the development by Crane has impacted his use of the water.

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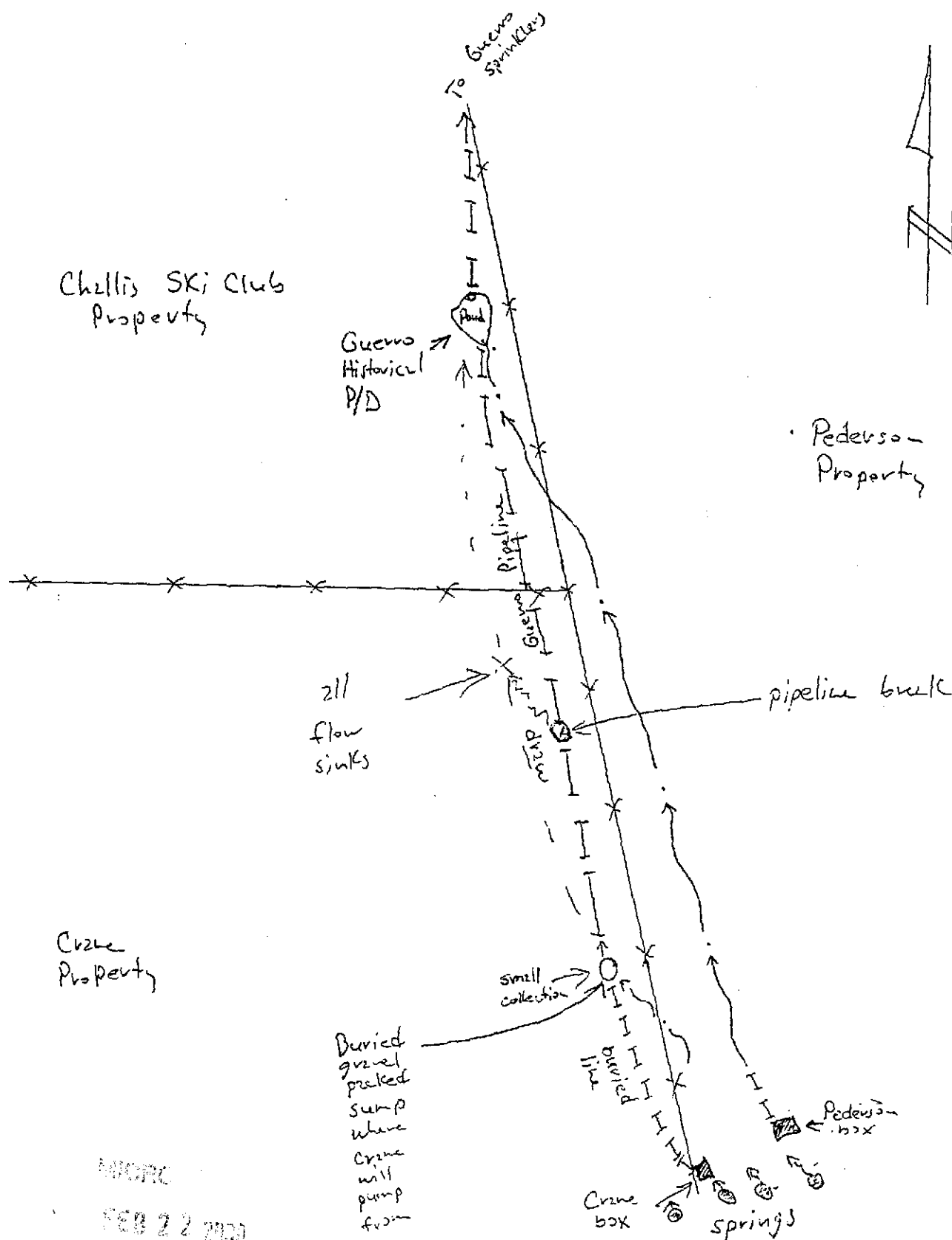
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EXHIBIT

"B"

FEB 7 2 2000

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AMORC

FEB 22 1970



Collection pond.
where Guero's buried
pipeline ends at
at buried gravel
packed section.
the place to pump
from here. This
is also place where
Guero has placed
a pipeline to collect
Crane water which
bubbles up and
surface spring flow.



Guero's pipeline
which became
disconnected at joint.



Flow from Guero's
pipeline sinks in
this area before
leaving Crane property

FEB 22 2000



Stream channel below
P/O (dry) Division
taking 211 flow

←
Growth history
P/O.

→
Pipeline down
(over property)

NOV 22 2000
FEB 22 2000

RECEIVED

AUG 29 1996

Department of Water Resources
Southern Region

Memorandum

Date: August 27, 1996

To: Allen Merritt, Southern Region

From: Bob Foster, Salmon Office *RF*

Re: Dan Guerrero measurement
water rights 72-04117 .56 cfs & 72-07509 .04 cfs

On the above date I was contacted by Mr. Guerrero and requested to perform a measurement on his sprinkler system.

The following conditions were observed.

1. Three inch handline consisting of thirty four 7/16 sprinkler heads
2. No pressure gauge installed on system.
3. Only twenty-seven sprinklers were operating due to low water flow.

My calculations are as follows: 7/16 sprinkler head @ 20 psi (estimated) = 1.59 gpm.

$$27 \times 1.59 = 42.93 \text{ gpm}$$

$$42.93 \text{ divided by } 448 = 0.0958 \text{ cfs}$$

This may or may not be an accurate measurement due to the estimation of pressure in the system however it may reflect the potential for impact of further appropriation of the spring source which supplies Mr. Guerrero's system.

cc: Dan Guerrero

EXHIBIT

"C"

MAILED

AUG 29 1996

72-07541
Reference for

Law Offices

***RIGBY, THATCHER, ANDRUS
RIGBY, KAM & MOELLER, Chartered***

*Ray W. Rigby
Gordon S. Thatcher
G. Rich Andrus
Jerry R. Rigby
Michael S. Kam
Gregory W. Moeller*

*P.O. Box 250
25 North Second East
Rexburg, ID 83440*

*Telephone:
Rexburg: (208) 356-3633
Idaho Falls: (208) 529-5531
Fax: (208) 356-0768
E-Mail: rexlaw@srv.net*

**SENT BY FACSIMILE TRANSMISSION
(208) 327-7866**

December 31, 1996

Copies

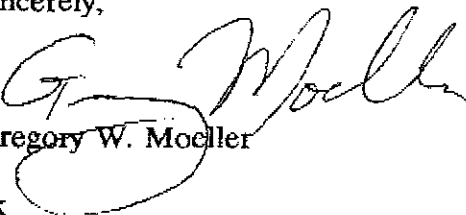
Director
Department of Water Resources
1301 N. Orchard St.
Statehouse Mail
Boise, ID 83720-9000

**Re: Protestant • Daniel C. Guerrero
Application for Permit No. 72-07541 in the Name of Earl Crane**

Dear Director:

Enclosed is a "Brief in Opposition to Recommended Order" in the above-referenced matter. Please file the same.

Sincerely,


Gregory W. Moeller
dk

Enclosure

MICROFILMED

FEB 22 2000

Gregory W. Moeller
of RIGBY, THATCHER, ANDRUS,
RIGBY, KAM & MOELLER, Chartered
Attorneys at Law
25 North Second East
Rexburg, Idaho 83440
Telephone: 208 356-3633

Attorneys for Protestant Daniel C. Guerrero

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE
STATE OF IDAHO

IN THE MATTER OF APPLICATION FOR)
PERMIT NO. 72-07541 IN THE NAME)
OF EARL CRANE)
_____)

BRIEF IN OPPOSITION
TO RECOMMENDED
ORDER

COMES NOW the Protestant, DANIEL C. GUERRERO, by and through his attorneys of record, Rigby, Thatcher, Andrus, Rigby, Kam & Moeller, Chartered, and respectfully submits this brief in opposition to the Recommended Order of October 16, 1996.

PROCEDURAL BACKGROUND

On October 2, 1996, the Department of Water Resources conducted a hearing in Challis, Idaho, on the Application of Earl Crane and the Protest of Daniel C. Guerrero, dba Garden Creek Ranch. Neither party was represented by counsel at that hearing.

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Two weeks later, on October 16, 1996, L. Glen Saxton, Hearing Officer, issued a Recommended Order. On November 7, 1996, and again on November 12, 1996, Daniel C. Guerrero, *pro se*, filed a "Petition for Reconsideration of a Recommended Order and Request an Oral Argument Before the Director." On November 13, 1996, the Hearing Officer issued an Order Denying Petition for Reconsideration.

On December 3, 1996, Protestant submitted a request to the Director of the Department of Water Resources for thirty (30) days additional time to file exceptions or brief to the Hearing Officer's Recommended Order upon the grounds that he needed the additional time to seek advice from an attorney. On December 4, 1996, Karl J. Dreher, Director of the Idaho Department of Water Resources, issued an order granting Protestant 28 additional days to file a brief, extending the deadline to January 2, 1997. Although that Order was dated December 4, 1996, it was not sent to Protestant until December 13, 1996. Please see cover letter attached hereto as Exhibit "A."

Mr. Guerrero made an appointment to meet with his attorneys for the first time on December 19, 1996. Protestant's attorneys have only recently become involved in the matter and have not had an opportunity to visually inspect the property and structures in question, or to review the files of the Department of Water Resources.

On December 20, 1996, L. Glen Saxton, Chief of the Water Allocation Bureau, forwarded some additional information that was helpful, including a file memo from Allen Merritt, dated September 9, 1996. A copy of that memo is attached hereto as Exhibit "B". The memo also includes a sketch, presumably drawn by Mr. Merritt. This map shows the location of the springs in question, Mr. Guerrero's historical point of

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diversion, and appears at first glance to show quite plainly how there is an interconnection between the various springs involved.

ARGUMENT

I. IDWR's own records suggests a possible hydrological interconnection between the springs used by Protestant and the spring areas sought by Applicant.

Unfortunately, it appears that neither party produced any expert testimony at the October 2, 1996, hearing. However, there exists information in the Department's own file which raises serious questions as to the connection between the water rights in question. The internal file memo produced by Allen Merritt dated September 9, 1996, concludes:

It would appear that during high over land runoff the drainage from Crane would make it to [Guerrero's] historical P/D but I'm not convinced that when this drainage sinks including the springs that hydrologically the water enters the pool or provides water to what has historically been diverted by [Guerrero]. It quit[e] possibly sinks and goes under the what is gathered by [Guerrero] or possibly a portion of it may contribute to the unnamed stream flowing to the [Guerrero] pond. It did not appear at the day I visited the pool that there was springs rising in the pool itself. As for the stream it was impossible to tell [sic].

Even the Hearing Officer's Recommended Order of October 16, 1996, expressed uncertainty when he made the following finding:

There was insufficient data available to show whether the springs located in the SWNESE Section 10 used by the protestant and the spring area sought by the applicant in the SWNESE Section 10 are hydraulically connected. Water from the spring area developed by the applicants sink[s] into the ground suggesting that the springs could be privately owned springs [sic].

BRIEF IN OPPOSITION TO RECOMMENDED ORDER - Page 3

dk\guerrero.bri

MONOCLINIC
FEB 22 1997

In short, it appears that the Department of Water Resources has made an important decision concerning this matter although there is still a great deal of uncertainty and conflicting data. Had either of the parties consulted with an attorney, prior to the hearing on October 2, 1996, they in all likelihood would have presented expert testimony or engineering reports to discuss this issue.

The evidence presented to the Hearing Officer showed that the spring claimed by the Protestant is not a clearly defined spring. The collection point for the spring and creek from which Protestant draws water is approximately 200 yards long. Neither Applicant nor the Department presented any evidence proving that there was no hydrological connection. This determination could be made by the parties or the Department if an expert can inspect the premises.

II. The Department of Water Resources has a duty to thoroughly investigate these matters before issuing a permit for use of waters of the State of Idaho.

The specific duties of this executive department of the State of Idaho are set forth in the Constitution of the State of Idaho, Article XV, Section 7, and in Idaho Code §§ 42-1701, 42-1706, and 42-1805. Part of these duties include the responsibility:

- (3) To conduct surveys, tests, investigations, research, examinations, studies, and estimates of cost relating to availability of unappropriated water, effective use of existing supply, conservation, storage, distribution and use of water.
- (4) To prepare and compile information and data obtained and to make the same available to interested individuals or agencies. I.C. §§ 42-1805(3) and (4).

APPROVED
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Idaho Code § 42-203A(5) provides that [i]n all applications, whether protested or not protested, where the proposed use is such (a) that it will reduce the quantity of water under existing water rights, . . . the director of the Department of Water Resources may reject such application . . . or may partially approve and grant a permit for a smaller quantity of water . . .” Armed with the provisions of this statute, the Director may exercise considerable discretion over applications for a permit to use the waters of the state. This is especially true where an injury to a senior right holder is involved.

The authority that the Department of Water Resources has over the waters of this state is an important trust, involving perhaps the most vital natural resource to our state’s economic survival. The Department has taken this responsibility seriously over the years and has carefully exercised stewardship over the water of the State of Idaho. However, in the case at hand it appears that the Recommended Order of the Hearing Officer has somewhat abrogated this responsibility.

Despite the possible connection noted in the Departments’ internal file memo and the uncertainty expressed in the Recommended Order itself, the hearing officer has gone ahead and recommended granting the Applicant’s Application for a Permit. Respondent respectfully submits that before granting a permit for the use of such a precious resource of the state, the Department should have engaged in a deeper, more certain analysis of the water rights at issue in this matter.

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III. Fair and equitable alternatives exist to allow the Department to make a more thorough and accurate review of this matter.

The Department could merely conclude that in the interest of resolving this matter quickly, they should adopt the Recommended Order despite the uncertainty expressed therein and despite the possible connections noted in the internal file memo of Allen Merritt. However, better alternatives exist.

For example, the Department could order the Application for Permit held in abeyance and allow a test year in 1997. Such a decision would allow both parties an opportunity to bring in experts to examine the issues related to this water right and to determine whether or not there is a hydrological interconnection. The Department would also have the opportunity to allow its own experts to make similar examinations.

Neither Applicant nor Protestant presented much evidence in addition to their own testimony on the issue of the hydrological interconnection. Mr. Guerrero later submitted a Memorandum dated August 27, 1996, from Bob Foster to Allen Merritt in an effort to prove damage to his own water right from Applicant's use. (See attached Exhibit "C"). However, the Hearing Officer concluded in his Order Denying Petition for Reconsideration, that the examination on only one date may not be indicative of the flow available to Mr. Guerrero throughout the year. The only way the Department can make such a statement with certainty is to allow the matter to be postponed for a year so that the system can be tested at various times to determine whether or not there is actually any damage. Protestant believes and respectfully submits that if there is any uncertainty

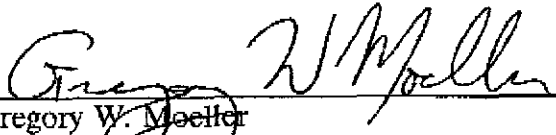
4-10-97
FEB 22 1997

in the allocation of a valuable resource of the State of Idaho, the permit should not be granted until a better, more certain decision can be reached.

CONCLUSION

The Protestant has raised serious issues which are worthy of closer consideration. Protestant believes that it is in the public interest of the State of Idaho for the Department to give this matter closer scrutiny and investigation before issuing a permit to the Applicant. Hearings before the Department of Water Resources, as in any administrative or judicial forum, should be quests for the truth. In this case, it is clear from all of the evidence that the truth is not yet known. We believe that the truth can only be reached if the Department allows both parties the opportunity to have experts examine the irrigation system during the 1997 year.

RESPECTFULLY SUBMITTED This 31st day of December, 1996.



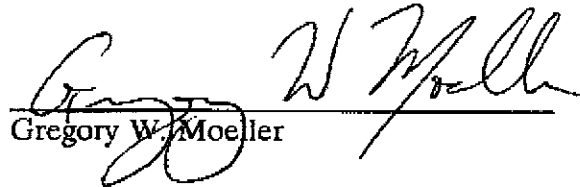
Gregory W. Moeller
of Rigby, Thatcher, Andrus, Rigby, Kam,
& Moeller, Chartered
Attorneys for Protestant

REC'D
FEB 22 1997

CERTIFICATE OF SERVICE

I HEREBY CERTIFY That on this 31st day of December, 1996, a true and accurate copy of the foregoing was sent by U.S. Mail, postage prepaid to the following:

Earl Crane
P.O. Box 11
Challis, ID 83226



Gregory W. Moeller

RECEIVED
FEB 22 2000

**State of Idaho****DEPARTMENT OF WATER RESOURCES**

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

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

PHILIP E. BATT
GOVERNORKARL J. DREHER
DIRECTOR

December 13, 1996

RE: In the Matter of Application for Permit No. 72-
07541 in the name of Earl Crane

Dear Interested Parties:

I have enclosed a copy of the ORDER issued in connection with the above referenced application for permit.

Please review the Order and contact me at (208) 327-7900 if you have any questions.

Sincerely,

JULIE L. YARBROUGH
Senior Secretary

Enclosure

C: IDWR - Region

EXHIBIT

"A"

APPROVED
FEB 22 2000

FROM: Allen Merritt

DATE: September 9, 1996

TO: File: 72-07541 In the name of Crane

SUBJECT: Pre-hearing conference

On August 23, 1996 I conducted a pre-hearing conference in the matter of the protest of the above referenced application. At the conference was Mr. & Mrs. Earl Crane (Applicant) and Mr. Guerro (Protestant)

We discussed the issues and only items #1 & #2 on the handout appeared to be issues. I tried to start a discussion about potential resolution of the protest but the parties did not appear to be open to settle or agree at this point. They wished to have a hearing. I told them how a hearing would be conducted. During the conference we went through the file and looked at the pictures. It was questioned by Mr. Guerro what was being developed and Mr. Crane indicated that there were two domestic units being built. One for his son and the other for himself. The use of the water was going to be in house use with very limited watering of small lawn & landscape at each building site. Mr. Crane indicated that the springs were separate and his spring was on his property and Guerro had no call on his spring. Guerro's point is that the springs are connected and the development by Crane has impacted his use of the water.

After the conference Mr. Crane invited me view the springs again. At first I declined since I had already looked at them. He indicated that it was not fair to only look at them with Mr. Guerro and not give him the opportunity to point out things. I decided to look at the springs again as Crane requested.

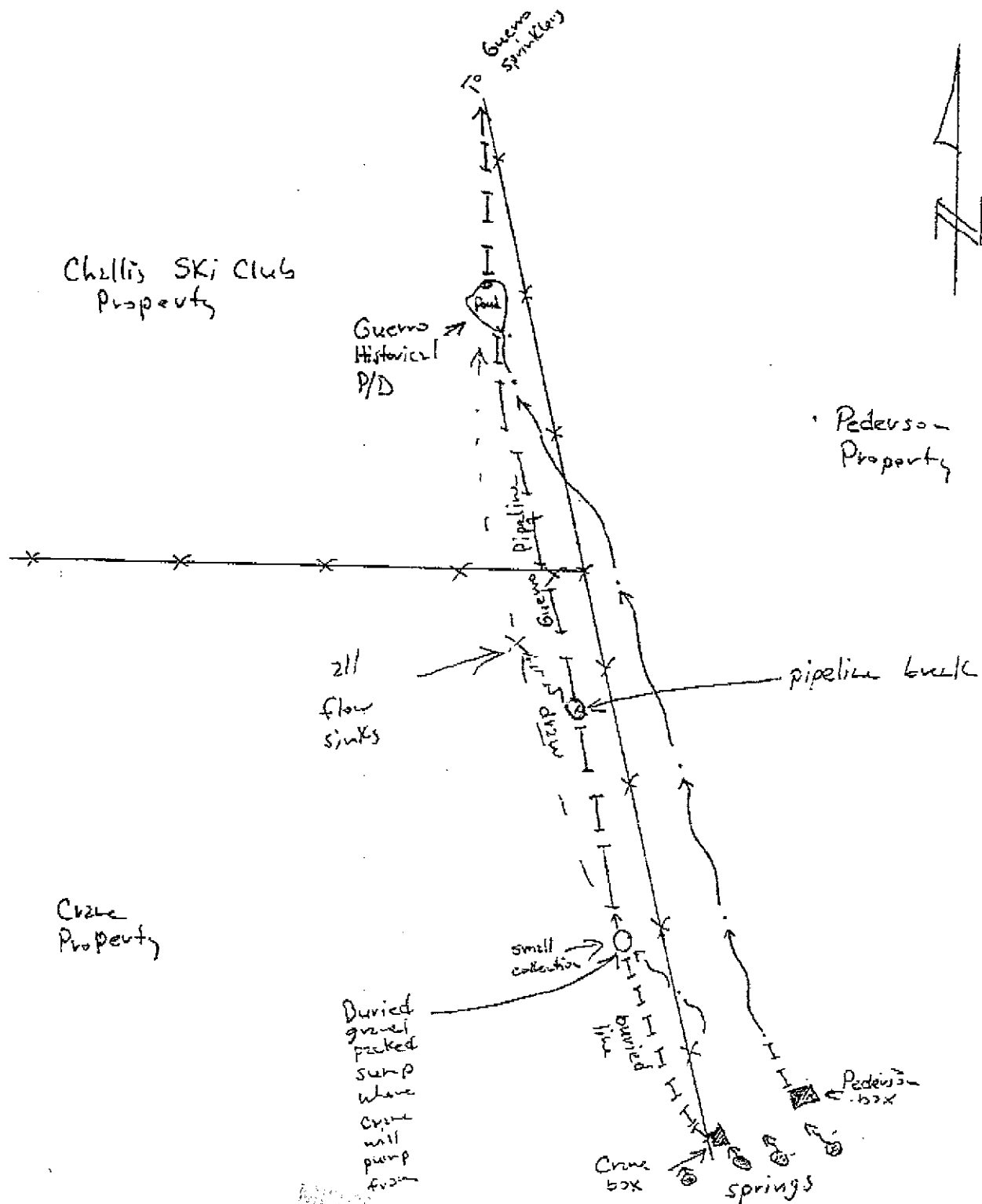
I visited the site again and I took the attached pictures. Mr. Crane pointed out the water he has developed or gathered presently rises in a pool where other spring water enters and all is gathered by one of Guerro's pipelines which at times takes water to the pool at the historical point of diversion for Guerro. He then pointed out that Guerro placed the pipelines on his property without permission and indicated that in fact Guerro has increased his historical diversion. He then showed me a point where the Guerro pipeline was disconnected allowing all the water gathered from the Crane property to spill onto the ground still on the Crane property. We followed the spill down the hillside where it sank totally on the Crane property. He pointed out that drainage where this water was flowing is separate from the Guerro historical P/D. I followed the drainage down but found that it would enter the channel right at the Guerro historical point of diversion.

It would appear that during high overland runoff the drainage from Crane would make it to the Guerro's historical P/D but I'm not convinced that when this drainage sinks including the springs that hydrologically the water enters the pool or provides water to what

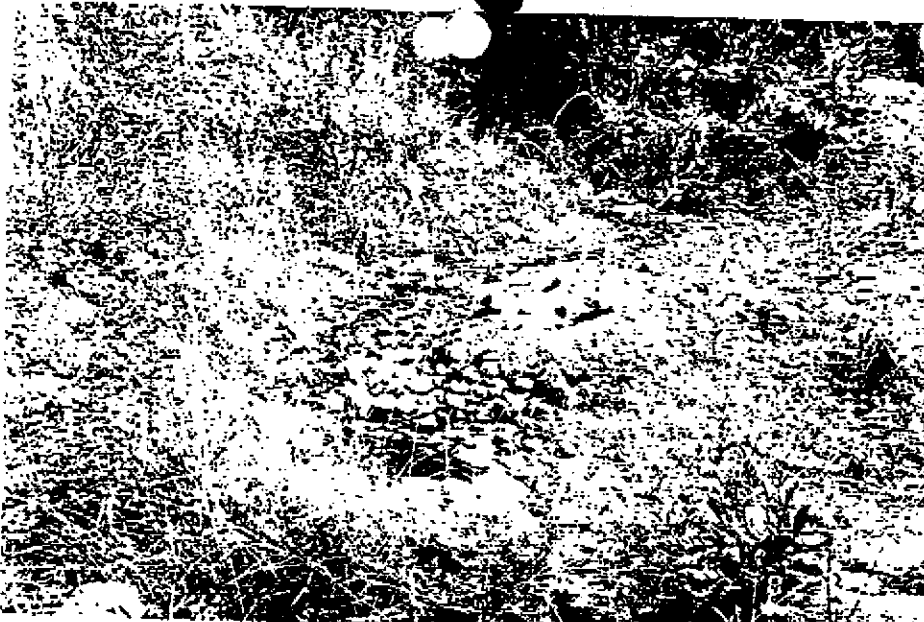
EXHIBIT**"B"**

FEB 22 1997

has historically been diverted by Guerro. It quit possibly sinks and goes under the what is gathered by Guerro or possibly a portion of it may contribute to the unnamed stream flowing to the Guerro pool. It did not appear at the day I visited the pool that there was springs rising in the pool itself. As for the stream it was impossible to tell. See attached sketch.



FEB 22 1996



Collection pond,
where Guero's buried
pipeline ends at
a buried gravel
packed section.
the place to pump
from here. This
is also place where
Guero has placed
a pipeline to collect
crane water which
bubbles up and
surface spring flow.



Guero's pipeline
which became
disconnected at joint.



Flow from Guero's
pipeline sinks in
this area before
leaving, Crane project

FEB 22 1993



Stream channel below
P/D (dry) Division
Pike, 21 of Nov

Green, historical
P/D.

Pipeline from
even property.

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FEB 22 2000

RECEIVED

AUG 29 1996

Department of Water Resources
Southern Region

Memorandum

Date: August 27, 1996

To: Allen Merritt, Southern Region

From: Bob Foster, Salmon Office *RF*Re: Dan Guerrero measurement
water rights 72-04117 .56 cfs & 72-07509 .04 cfs

On the above date I was contacted by Mr. Guerrero and requested to perform a measurement on his sprinkler system.

The following conditions were observed.

1. Three inch handline consisting of thirty four 7/16 sprinkler heads
2. No pressure gauge installed on system.
3. Only twenty-seven sprinklers were operating due to low water flow.

My calculations are as follows: 7/16 sprinkler head @ 20 psi (estimated) = 1.59 gpm.
 $27 \times 1.59 = 42.93$ gpm
 42.93 divided by $448 = 0.0958$ cfs

This may or may not be an accurate measurement due to the estimation of pressure in the system however it may reflect the potential for impact of further appropriation of the spring s source which supplies Mr. Guerrero's system.

cc: Dan Guerrero

EXHIBIT

"C"

TOTAL P.15

FEB 22 2000

RECEIVED

DEC 26 1996

Law Offices

Department of Water Resources

**RIGBY, THATCHER, ANDRUS
RIGBY, KAM & MOELLER, Chartered**

Ray W. Rigby
Gordon S. Thatcher
G. Rich Andrus
Jerry R. Rigby
Michael S. Kam
Gregory W. Moeller

P.O. Box 250
25 North Second East
Rexburg, ID 83440

Telephone:
Rexburg: (208) 356-3633
Idaho Falls: (208) 529-5531
Fax: (208) 356-0768
E-Mail: Rexlaw@srv.net

December 19, 1996

Mr. Glen Saxton
Idaho Department of Water Resources
Statehouse Mail
1301 N. Orchard
Boise, ID 83706
Fax: (208) 327-7866

Mr. Allen Merritt
Southern Region Manager
11341 Filmore Street, Suite 200
Twin Falls, ID 83301-3380
Fax: (208) 736-3037

Mr. Bob Foster
Idaho Department of Water Resources
Vandres, Suite B
Salmon, ID 83467

Re: Daniel C. Guerrero's Protest to Earl Crane's Application for Permit No. 72-07541

Dear Gentlemen:

Our firm has been retained by Daniel C. Guerrero to assist him in filing exceptions and briefs on the Hearing Officer's Recommended Order of October 16, 1996. In the course of my conversations with him this morning, he indicated that he believes there are relevant records in the possession of the Department of Water Resources pertaining to his protest. If such records exist, they should have been considered at the Hearing. I have enclosed a copy of the "Affidavit of Daniel C. Guerrero" which indicates that there is good cause believe there are records which could be helpful to Mr. Guerrero in your possession.

As you are aware, we have until January 2, 1997, to file our exceptions or briefs. Therefore, if you have any of the documents that are identified in the Affidavit of Daniel C. Guerrero, we would appreciate it if you could provide them to our office **as soon as possible**. We are specifically asking for copies of photographs, notes and any field surveys or reports. If there is any charge for making the photocopies, please let us know and we will remit payment promptly. Time is of the essence and we would greatly appreciate having your cooperation so that we can complete a thorough investigation of the matter.

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FEB 22 2000

Gentlemen
December 19, 1996
Page 2

Please feel free to call us if you have any concerns or questions, your help and cooperation will be greatly appreciated.

Sincerely yours,

A handwritten signature in cursive script, appearing to read "Gregory W. Moeller".

Gregory W. Moeller

GWM:rc
VDK\GUERRERO.LTR

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FEB 22 2003

BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE

STATE OF IDAHO

IN THE MATTER OF APPLICATION FOR)
PERMIT NO. 72-07541 IN THE NAME)
OF EARL CRANE)
_____)

**AFFIDAVIT OF
DANIEL C. GUERRERO**

STATE OF IDAHO,)
ss.)
County of Madison.)

DANIEL C. GUERRERO, being first duly sworn, deposes and says:

1. I am an adult, competent to testify to the matters herein. I am the sole owner of a farming operation in the Challis area known as "Garden Creek Ranch."

2. I have filed a protest to Earl Crane's Application for Permit No. 72-07541.

3. On October 2, 1996, the Idaho Department of Water Resources held a hearing in this matter in Challis, Idaho. I was present at that hearing and was not represented by counsel.

4. Around August of 1995, I called the Department of Water Resources and complained about an illegal diversion of water and injury to my water rights by Earl Crane.

5. On August 25, 1995, in response to my complaint, Bob Foster from the Department of Water Resource's office in Salmon, Idaho, visited the site and confirmed that an illegal diversion pipe existed. Mr. Foster took photographs and made notes of

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FEB 22 2000

his observations. Mr. Foster told me that I would be entitled to treble damages for the apparent interference with my water rights.

6. On September 6, 1995, Allen Merritt, Southern Region Manager, sent a letter to Earl Crane. I have attached a copy of that letter as Exhibit "A." The letter confirms that Mr. Foster inspected the scene of Mr. Crane's illegal diversion.

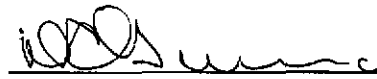
7. Several times since Mr. Foster's initial visit, employees of the Department of Water Resources have been to the property in question and inspected the spring at issue and the surrounding circumstances and structures related to my water rights. I recall meeting with Mr. Merritt, Mr. Kelly, and Mr. Foster over the months following my initial complaint. During those visits they took additional photographs and made notes of their observations.

8. At the evidentiary hearing of October 2, 1996, I was not represented by counsel. I erroneously assumed that the Department would consider the photographs, notes, observations, and any reports that they had produced as a result of their numerous investigations in this matter. That is why I did not present further evidence beyond what I presented at the hearing to establish that there was a hydrological connection between my water source and the spring areas sought by Mr. Crane.

9. I believe that the Department of Water Resources has in its possession records, including photographs, notes, and reports, verifying the hydrological interconnection between the water rights at issue. I further believe that these records should have been considered by the Hearing Officer, L. Glen Saxton, in making his Recommended Order of October 16, 1996.

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FEB 22 2000

DATED This 19th day of December, 1996.



Daniel C. Guerrero

SUBSCRIBED AND SWORN TO Before me this 19th day of December,
1996.



Notary Public for Idaho
Residing at Rexburg, Idaho
My Commission Expires: 8-31-2002

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FEB 22 2003



State of Idaho

DEPARTMENT OF WATER RESOURCES

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

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

PHILIP E. BATT
GOVERNOR

KARL J. DREHER
DIRECTOR

December 20, 1996

Gregory W. Moeller
RIGBY, THATCHER et al.
25 North Second East
Rexburg, ID 83440

RE: PERMIT NO. 72-07541 IN THE NAME OF EARL CRANE

Dear Mr. Moeller:

Pursuant to your FAX transmission received on December 19, 1996, and your request for information, please find enclosed copies of information from the above referenced water right file. Since, I do not specifically know what information you want and since the enclosed information does not represent all of the water right file, you may wish to visit our office and determine firsthand for yourself the information you seek.

I have included in the enclosures, however, copies of the exhibits received at the hearing even though you did not specifically request this information.

If you have questions, please feel free to contact me or the department.

Sincerely,


L. GLEN SAXTON, Chief
Water Allocation Bureau

Encl: Several

c: IDWR - S. Region
Allen Merritt
Earl Crane

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FEB 22 2000

*Law Offices***RIGBY, THATCHER, ANDRUS
RIGBY, KAM & MOELLER, Chartered**

*Ray W. Rigby
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*P.O. Box 250
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Rexburg, ID 83440*

*Telephone:
Rexburg: (208) 356-3633
Idaho Falls: (208) 529-5531
Fax: (208) 356-0768
E-Mail: rexlaw@srv.net*

FAX Transmission Sheet

Date: 12/19/96
To: Glen Saxton
Fax No: (208) 327-7866
From: Gregory W. Moeller
Sent By: Becky
Subject: Affidavit of Daniel C. Guerrero

You should receive 6 page(s) including this cover sheet.

COMMENTS:

If transmission was incomplete or not legible, please call the sender at 208-356-3633.

CONFIDENTIALITY NOTICE: This message is intended only for the use of the individual or entity to which it is addressed and may contain information that is privileged, confidential, and exempt from disclosure under applicable law. If the reader of this message is not the intended recipient, or the employee or agent responsible for delivering the message to the intended recipient, you are hereby notified that any dissemination, distribution, or copying of the communication is strictly prohibited. If you have received this communication in error, please notify us immediately by telephone and return the original message to us at the above address via the US Postal Service. Thank you.

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FEB 22 2000

*Law Offices***RIGBY, THATCHER, ANDRUS
RIGBY, KAM & MOELLER, Chartered**

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December 19, 1996

Mr. Glen Saxton
Idaho Department of Water Resources
Statehouse Mail
1301 N. Orchard
Boise, ID 83706
Fax: (208) 327-7866

Mr. Allen Merritt
Southern Region Manager
11341 Filmore Street, Suite 200
Twin Falls, ID 83301-3380
Fax: (208) 736-3037

Mr. Bob Foster
Idaho Department of Water Resources
Vandres, Suite B
Salmon, ID 83467

Re: Daniel C. Guerrero's Protest to Earl Crane's Application for Permit No. 72-07541

Dear Gentlemen:

Our firm has been retained by Daniel C. Guerrero to assist him in filing exceptions and briefs on the Hearing Officer's Recommended Order of October 16, 1996. In the course of my conversations with him this morning, he indicated that he believes there are relevant records in the possession of the Department of Water Resources pertaining to his protest. If such records exist, they should have been considered at the Hearing. I have enclosed a copy of the "Affidavit of Daniel C. Guerrero" which indicates that there is good cause believe there are records which could be helpful to Mr. Guerrero in your possession.

As you are aware, we have until January 2, 1997, to file our exceptions or briefs. Therefore, if you have any of the documents that are identified in the Affidavit of Daniel C. Guerrero, we would appreciate it if you could provide them to our office **as soon as possible**. We are specifically asking for copies of photographs, notes and any field surveys or reports. If there is any charge for making the photocopies, please let us know and we will remit payment promptly. Time is of the essence and we would greatly appreciate having your cooperation so that we can complete a thorough investigation of the matter.

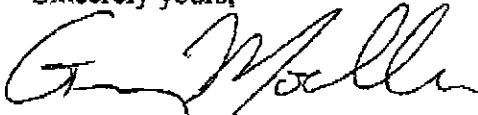
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FEB 22 2000

Gentlemen
December 19, 1996
Page 2

Please feel free to call us if you have any concerns or questions, your help and cooperation will be greatly appreciated.

Sincerely yours,



Gregory W. Moeller

GWM:rc
\\DK\GUERRERO.LTR

MICROFILMED

FEB 22 2000

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE
STATE OF IDAHO

IN THE MATTER OF APPLICATION FOR)
PERMIT NO. 72-07541 IN THE NAME)
OF EARL CRANE)
_____)

AFFIDAVIT OF
DANIEL C. GUERRERO

STATE OF IDAHO,)
ss.)
County of Madison.)

DANIEL C. GUERRERO, being first duly sworn, deposes and says:

1. I am an adult, competent to testify to the matters herein. I am the sole owner of a farming operation in the Challis area known as "Garden Creek Ranch."
2. I have filed a protest to Earl Crane's Application for Permit No. 72-07541.
3. On October 2, 1996, the Idaho Department of Water Resources held a hearing in this matter in Challis, Idaho. I was present at that hearing and was not represented by counsel.
4. Around August of 1995, I called the Department of Water Resources and complained about an illegal diversion of water and injury to my water rights by Earl Crane.
5. On August 25, 1995, in response to my complaint, Bob Foster from the Department of Water Resource's office in Salmon, Idaho, visited the site and confirmed that an illegal diversion pipe existed. Mr. Foster took photographs and made notes of

MOON

FEB 22 2002

his observations. Mr. Foster told me that I would be entitled to treble damages for the apparent interference with my water rights.

6. On September 6, 1995, Allen Merritt, Southern Region Manager, sent a letter to Earl Crane. I have attached a copy of that letter as Exhibit "A." The letter confirms that Mr. Foster inspected the scene of Mr. Crane's illegal diversion.

7. Several times since Mr. Foster's initial visit, employees of the Department of Water Resources have been to the property in question and inspected the spring at issue and the surrounding circumstances and structures related to my water rights. I recall meeting with Mr. Merritt, Mr. Kelly, and Mr. Foster over the months following my initial complaint. During those visits they took additional photographs and made notes of their observations.

8. At the evidentiary hearing of October 2, 1996, I was not represented by counsel. I erroneously assumed that the Department would consider the photographs, notes, observations, and any reports that they had produced as a result of their numerous investigations in this matter. That is why I did not present further evidence beyond what I presented at the hearing to establish that there was a hydrological connection between my water source and the spring areas sought by Mr. Crane.

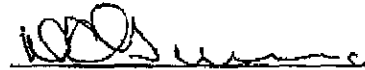
9. I believe that the Department of Water Resources has in its possession records, including photographs, notes, and reports, verifying the hydrological interconnection between the water rights at issue. I further believe that these records should have been considered by the Hearing Officer, L. Glen Saxton, in making his Recommended Order of October 16, 1996.

AFFIDAVIT OF DANIEL C. GUERRERO - Page - 2

dkguerrero.aff

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FEB 22 1996

DATED This 19th day of December, 1996.


Daniel C. Guerrero

SUBSCRIBED AND SWORN TO Before me this 19th day of December,
1996.


Notary Public for Idaho
Residing at Rexburg, Idaho
My Commission Expires: 8-31-2002

12-22-1996



State of Idaho

DEPARTMENT OF WATER RESOURCES

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

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

PHILIP E. BATT
GOVERNOR

KARL J. DREHER
DIRECTOR

December 13, 1996

RE: In the Matter of Application for Permit No. 72-07541 in the name of Earl Crane

Dear Interested Parties:

I have enclosed a copy of the **ORDER** issued in connection with the above referenced application for permit.

Please review the Order and contact me at (208)327-7900 if you have any questions.

Sincerely,

JULIE L. YARBROUGH
Senior Secretary

Enclosure

C: IDWR - Region

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DEC 03 1996

Idaho Department of Water Resources
Karl J. Dreher, Director
1301 North Orchard Street
Statehouse Mail
Boise, Idaho 83720-9000

Department of Water Resources

Sir:

I would like to file an objection to the denial of petition for reconsideration of the recommended order. RE the application for permit No. 72-07541, in the name of Earl Crane. Letter from I.D.W.R., dated, 11-13-96.

I am not an attorney, and do not have the knowledge to define Idaho water law.

I would like to hire an attorney to file a brief, outlining the legal basis for my objection.

I have faxed all relevant material to Mr. Ray Rigby, Attorney-at-Law, Rexburg, Idaho. At this time he hasn't been able to schedule a meeting, therefore I am asking for a 30 day extension.

My main objections are:

- 1.) Are the springs hydraulically connected? Mr. Merritt, Mr. Kelly and Mr. Foster, of I.D.W.R., have been present at the site when Mr. Crane had illegally appropriated water in 1994. They all took pictures and indicated that the water had been diverted. This suggests that the springs are connected. Mr. Saxton has not been to the sight to observe this.
- 2.) Mr. Foster did a water test in August of 1996 and determined that impact of further appropriation would be detrimental.

I would like to have the opportunity for an attorney to go over the facts and advise me.

Thank you for your consideration,



D. C. Guerrero
c.c. Earl Crane
PO Box 11
Challis, ID 83226

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State of Idaho

DEPARTMENT OF WATER RESOURCES

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

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

PHILIP E. BATT
GOVERNOR

KARL J. DREHER
DIRECTOR

November 13, 1996

RE: In the matter of Application for Permit No. 72-07541
in the name of Earl Crane - Petition for
Reconsideration

Dear Interested Party:

Enclosed is an Order Denying Petition for Reconsideration. Within 21 days after the service date of the enclosed denial of a petition for reconsideration, any party may in writing support or take exceptions to any part of a recommended order and may file briefs in support of the party's position on any issue in the proceeding. Written briefs in support of or taking exceptions to the recommended order shall be filed with the Director. Opposing parties shall have 21 days to respond.

Sincerely,

A handwritten signature in cursive script, reading "Julie L. Yarbrough". The signature is written in dark ink and is positioned above the typed name.

JULIE L. YARBROUGH
Senior Secretary

Enclosure

C: IDWR - Region

NOV 13 1996

FEB 22 2000

11-7-96

PAGE 1

I.D.W.R.

1301 N. ORCHARD ST.

BOISE, IDAHO

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NOV 12 1996

Department of Water Resources

ATTN. L. GLEN SAXTON

RE: APPLICATION FOR PERMIT NO. 72-07541
IN THE NAME OF EARL CRANE.

I AM, FILEING FOR A PETITION, FOR
RECONSIDERATION OF A RECOMMENDED ORDER
AND REQUEST AN ORAL ARGUMENT BEFORE
THE DIRECTOR.

THE FOLLOWING POINTS I WOULD LIKE
TO BE RECONSIDERED ARE:

PAGE 1, # 4A. LETTER OF FINDINGS OF FACT
DATED, 10-16-96.

1) THE APPLICATION WILL REDUCE THE QUANTITY
OF WATER UNDER EXISTING WATER RIGHTS.
MY PRIORITY DATE HAS BEEN ESTABLISHED
BY I.D.W.R. TO BE, 1926.

THERE HAS BEEN A PERMIT ISSUED IN 1991,
TO JEFF PEDERSON, FOR DOMESTIC USE ON SAME
SAID SPRING. WITH MR. CRANES 2 HOMES, WATER
DIVERTED FOR THREE HOMES, WILL DEFINATLEY
DECREASE MY WATER SUPPLY.

NOV 22 2000

CONT PAGE 1

MY WATER RIGHTS ARE # 72-04117, WHICH SHOWS: 0.56 AND 0.68 THIS IS A TOTAL OF 1.24 CFS. PROTESTANTS EXHIBIT A, FROM BOB FOSTER, IDWR, SHOWS A TOTAL OF 0.0958 C.F.S. AND INDICATES THAT FURTHER APPROPRIATION WOULD IMPACT MY WATER SUPPLY. I AM NOW GETTING LESS WATER THAN I AM ENTITLED TO.

PAGE 1 # 4 B.

THE WATER SUPPLY ITSELF IS NOT SUFFICIENT FOR THE PURPOSES INTENDED.

I AGAIN REFER TO PROTESTANTS EXHIBIT A. I AM ENTITLED TO 1.24 C.F.S. THE WATER TEST SHOWS AN ESTIMATED 0.0958 C.F.S. WHICH IS NOT SUFFICIENT.

PAGE 1 # 4 C.

THE APPLICATION CONFLICTS WITH THE LOCAL PUBLIC INTEREST.

MY RANCH IS A OPERATING RANCH. IF I DO NOT HAVE SUFFICIENT WATER TO IRRIGATE AND PRODUCE A CROP, I WILL BE OUT OF BUSINESS, AND BE FORCED TO SELL.

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PAGE 2 # 5

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THE INTENDED CONVEYANCE OF WATER RIGHTS BY THE PREVIOUS OWNERS, TO THE APPLICANT CAN BE CHALLENGED BY THE FACT THAT THE PREVIOUS OWNERS HAD NOT FILED FOR ^{WATER} RIGHTS.

CONT. PAGE 2.

HOW CAN SOMEONE CONVEY WATER RIGHTS, WITHOUT HAVING THEM?

PAGE 2 # 6

THE SPRING, CLAIMED BY THE PROTESTANT IS NOT A CLEARLY DEFINED SPRING.

TO THE CONTRARY, THE SPRING AND CREEK ARE FED FROM VARIOUS DRAWS. THE WATER RUNS TO THE SPRING & CREEK AND ARE DEFINATELY CONNECTED HYDRAULICALLY. THIS IS WHY THE COLLECTION POINT FOR THE SPRING AND CREEK IS APPROXIMATELY 200 YARDS LONG. IT HAS BEEN DONE THIS WAY SINCE THE PRIORITY DATE OF 1926.

PAGE 2 # 7

THE APPLICANT HAS PARTIALLY DEVELOPED TWO SPRING AREAS BY EXCAVATING THE AREAS, CONSTRUCTING A COLLECTION SYSTEM AND CONNECTING THE SPRING AREAS WITH A PIPE.

LET IT BE KNOWN, THAT THIS WAS DONE PRIOR TO APPLICANT FILING FOR A PERMIT. THIS ACT DIMINISHED MY WATER SUPPLY BECAUSE WATER WAS FLOWING TO OTHER AREAS, RATHER THAN TO THE CREEK.

MR. MERRITT, MR. KELLY AND MR. FOSTER, ~~WERE~~ FROM I.D.W.R. WERE CALLED OUT AT VARIOUS TIMES TO INSPECT THE UNLAWFUL APPROPRIATION OF WATER. PICTURES WERE TAKEN AND THE ISSUE WAS DISCUSSED AT LENGTH.

CONT. PAGE 3

I AM SURE THAT THE DEPARTMENT HAS SOME MEMORANDA ON FILE.

CONCLUSIONS OF LAW

PAGE 4 # 2

WATER USE BY PROTESTANT HAVE NOT BEEN QUANTIFIED OR CONFIRMED.

THIS IS WRONG BECAUSE ON PAGE 3 #9 AND #10 STATES TOTAL C.F.S. OF 0.56 AND 0.68 WHICH IS A TOTAL OF 01.24 C.F.S. AGAIN BACK TO PAGE TWO, PROTESTANTS EXHIBIT A,

APPROXIMATE WATER TEST SHOWS 0.0958

PAGE 4 # 3

THE SALES CONTRACT DOES NOT SEEM APPLICABLE BECAUSE SELLERS DID NOT HAVE A WATER RIGHT.

PAGE 4 # 5

THE WATER SUPPLY IS NOT SUFFICIENT. REFER AGAIN TO PAGE 2 # 4B.

THANK YOU,

GARDEN CREEK RANCH



D.C. GUERRERO

C.C.

MR. EARL CRANE

Box 11

CHALLIS, IDAHO

FEB 22 2000



State of Idaho

DEPARTMENT OF WATER RESOURCES

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

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

PHILIP E. BATT
GOVERNOR

KARL J. DREHER
DIRECTOR

October 31, 1996

Daniel C. Guerrero
P.O. Box 248
Challis, ID 83226

RE: PERMIT NO. 72-07541 IN THE NAME OF EARL CRANE

Dear Mr. Guerrero:

I have received by FAX your brief letter dated October 30, 1996 which states the following:

"I am filing a petition for reconsideration of a recommended order for the above permit number."

From your letter, I can not determine whether the one sentence statement above is intended to be your filing of a petition for reconsideration or whether you are advising that you intend to file such a petition.

If you submit a petition within the next ten (10) days which specifically describes what you want to be reconsidered in the recommended order issued on October 16, 1996 and the reasons therefor, I will consider that the petition has been timely filed. If you do not timely submit the petition, I can not consider it. Note that you are required to send a copy of any such petition to the applicants in the matter in order that they can respond to it if they wish to.

If you have questions relative to procedure, please feel free to contact me.

Sincerely,

L. GLEN SAXTON, Chief
Water Allocation Bureau

c: IDWR - S. Region
Allen Merritt
Earl Crane

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FEB 22 2000

GLENN R. RITTER
CERTIFIED PUBLIC ACCOUNTANT

P.O. BOX 1160, CHALLIS, IDAHO 83226

***** FAX TRANSMITTAL MEMO *****	
TO: <u>Dept. of Water Resources</u>	NO. OF PAGES <u>2</u>
ATTN: DEPT: <u>L. Glen Saxton</u> FAX #:	
FROM: <u>D. Cuervo</u> PHONE: <u>208-879-4553</u>	
CO: _____ FAX #: <u>208-879-5283</u>	
Post-It "Brand" fax transmittal memo 707	

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SEP 22 2003

October 30, 1996

Daniel C. Guerrero
PO Box 248
Challis, ID 83226

RE: In the matter of Application for Permit No. 72-07541 in the name of Earl Crane.

I am filing a petition for reconsideration of a recommended order for the above permit number.

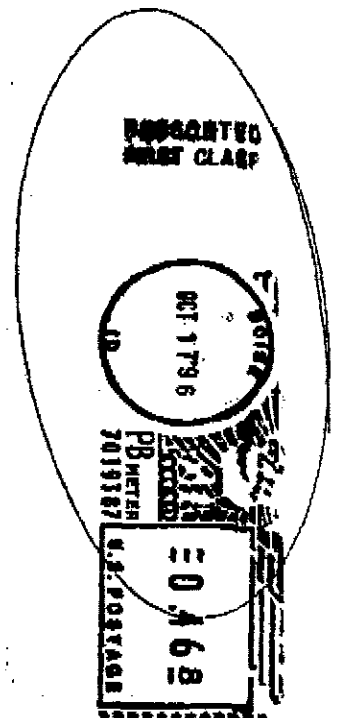

Daniel C. Guerrero

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FEB 22 2000

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
151 North Orchard Street, P.O. Box 15720
Boise, Idaho 83720-0002

P.O.

D.C. Guerrero
Garden Creek Ranch
P.O. Box 248
Challis, ID 83226



AUTO 33226



State of Idaho

DEPARTMENT OF WATER RESOURCES

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

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

October 16, 1996

PHILIP E. BATT
GOVERNOR

KARL J. DREHER
DIRECTOR

RE: In the matter of Application for Permit No. 72-07541 in the name of Earl Crane

Dear Interested Party:

The accompanying order is a "recommended order" issued by the department pursuant to Section 67-5243, Idaho Code. The provisions of this order will not become effective until the Director issues a final order in this matter.

Each party to these proceedings who appeared at the hearing may file a petition for reconsideration, briefs and exceptions to the recommended order and may request oral argument before the Director of the department as further described below:

PETITION FOR RECONSIDERATION

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

EXCEPTIONS AND BRIEFS

Within twenty-one (21) days after (a) the service date of this recommended order, (b) the service date of a denial of a petition for reconsideration from this recommended order, or (c) the failure within twenty-one (21) days to grant or deny a petition for reconsideration from this recommended order, any party may in writing support or take exceptions to any part of a recommended order and may file briefs in support of the party's position on any issue in the proceeding. Written briefs in support of or taking exceptions to the recommended order shall be filed with the Director. Opposing parties shall have twenty-one (21) days to respond.

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FEB 22 2006

ORAL ARGUMENT

The Director may schedule oral argument in the matter before issuing a final order. Oral argument on exceptions to a recommended order shall be heard at the discretion of the Director. If oral arguments are to be heard, the Director will, within a reasonable time, notify each party of the place, date and hour for the argument of the case. Unless the Director orders otherwise, all oral arguments will be heard in Boise, Idaho.

CERTIFICATE OF SERVICE

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

FINAL ORDER

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

APPEAL OF FINAL ORDER TO DISTRICT COURT

A party aggrieved by a final order of the Director is entitled to judicial review in compliance with sections 67-5271 through 67-5279, Idaho Code.

Sincerely,



L. GLEN SAXTON
Chief, Water Allocation Bureau

Enclosure

cc: IDWR - Region

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FEB 22 2000

WR0749WP
No. P72-07541

IDAHO DEPARTMENT OF WATER RESOURCES
WATER RIGHT PROFILE REPORT

DATE: 10/07/96
PAGE: 1

OWNER CODE	NAME & ADDRESS	PRIORITY DATE	WATER USE	USE PERIOD FROM TO	DIVERSION RATE	DIVERSION VOLUME
C	EARL CRANE PO BOX 11 CHALLIS ID 83226-0011 (208) 879-2397	01/02/1996	DOMESTIC	01/01 12/31	0.040 CFS	
TOTAL DIVERSION:					0.040 CFS	

Water Source: SPRING

Tributary to: SINKS

Stage: PERMIT

Point(s) of Diversion: T13N R18E S10 SWNESE CUSTER County

Place of use Legal Description for: DOMESTIC

NE				NW				SW				SE																			
NENE		NWNE		SWNE		SENE		NENW		NWNW		SWNW		SENW		NESW		NWSW		SWSW		SESW		NESE		NWSE		SWSE		SESE	
T	R	S	Lt	Ac	Lt	Ac	Lt	Ac	Lt	Ac	Lt	Ac	Lt	Ac	Lt	Ac	Lt	Ac	Lt	Ac	Lt	Ac	Lt	Ac	Lt	Ac	Lt	Ac	Lt	Ac	

13N 18E 10 :																															

Pou County: CUSTER

Other Water Rights with Same Point(s) of Diversion and Source:
72-07425 72-07541

Other Water Rights Listing Overlapping Place(s) of use:
72-07425

Conditions of Approval:

- 004 - The issuance of this right does not grant any right-of-way
- or easement across the land of another.

Remarks:

Domestic use is for 2 homes.
Approval of the applicaiton does not supercede any contractual
obligations of the applicant or protestant which obligations may
exist.

Dates: App. Received: 01/02/1996 Priority Date: 01/02/1996
Proof Due Date: 12/01/1997 Proof Made Date:
Exam Made Date: Exam Sent to S.O.:
Licensed Date:

Misc: Water District Number: Field Exam Fee:

Audit: 10/07/96 CZIMMERM

**APPLICATION FOR PERMIT
STATE OFFICE REVIEW
by Cindy Zimmerman**

No.: 72-7541 Name: Care Date: 10/7/96 Ad OK?
Correct Fee? ✓ Receipt #: 5018754 Priority: 1/2/96 ✓ Gvmt Lts: ✓

AREA OF CONCERN? - No/Yes _____ Mor _____ GWMA Trust/Non-trust
 PROTESTED: - 020(Protest Agr) or W19(See Final/Prelim Order)
 SYSTEM COMPLETED:
 Yes/proof filed - NA
 1 year/no proof - P16
 +1 year - 26A-P17

GROUNDWATER: $\langle \sqrt{\text{FLO-CH}} \rangle$

- + 0.2 cfs - 01M
- =/- 0.2 cfs - No MD
- =/+ 5 a. - 01M, 065(if GW use SW 1st)

Drilling Permit:

Existing well - NA (pre 7/1/87)
Included w/permit - Permit No. _____, P99
No WD permit? - 046-46B-P23 (post 7/1/87)
irr. in WD - P05 (new well)

SURFACE WATER <√ FLO-CH>(Surface water that doesn't sink is regulated):

Water District(~~dom~~) - 005 (req) WD # 72c <SEE MAP & LISTING>
+ 0.2 cfs - 01J(meas dev)-**P08**
=/- 0.2 cfs - 01H(lock dev)-**P01** or No MD
~~In WD~~ + 0.2 cfs - 01M or No MD (in-stream)
- 0.2 cfs - No MD
=/+ 5 a. irr. - 01M

RIVER BASINS (*Surface water):

Snake R (01) - 11A-P04, NA
(02/03-irr) - 007-P07 (w/remark WB9-† Weiser), NA
Boise R (63) - 05A (if WB), 11E (not 42-111 use), NA
Payette R (65) - 064 (regulated uses), 047-P04 (Payette Lake), NA

USE:

Domestic (surface) - *WB5(Boise R ↑ Star Bridge); 27A(Payette R); NA
Fish Propagation - 07A-042(rq)-010/06A/09E(WQ)-P10;044(N 1000 Spr)
Irr <POU> =/- 5 a - 057 (0.03 cfs/A)
+ 5 a - 03A (0.02 cfs/A)
Mining - 054 (req) & 06A/010/09E-P10
Power - 08A-17K-025-027-028-01F(P19)-09E(P10);
+25 cfs-P18; 17G(FERC) or 17M(FERE); 18B-P09
Storage(✓ 3 compo.) - 18A(multi MD in WD), 18B-P09 (+10' dam), *W07

LOCATION:

42-248 area - In 20/30/40/50/60/70/80 (87) basin? **P84**
Boise Front LoGeo - 058 (-85° GW temp only)
In-stream dev. - P52 (stream channel alteration)
Irr Dist/Canal Co. - 023 (Twin Falls area)
Swan Falls Flag - <SEE CODE CHART>
Trust - 051-052-053-P74 (Consumptive Uses), NA
Non-Trust <1> - 048-049 (Consumptive Uses), NA

OWNERSHIP:Non-land owner

OTHER CONDITIONS:

STANDARD REMARKS:

BENEFICIAL USE DUE:

COMMENTS :

FROM: Allen Merritt

DATE: September 9, 1996

TO: File: 72-07541 In the name of Crane

SUBJECT: Pre-hearing conference

On August 23, 1996 I conducted a pre-hearing conference in the matter of the protest of the above referenced application. At the conference was Mr. & Mrs. Earl Crane (Applicant) and Mr. Guerro (Protestant)

We discussed the issues and only items #1 & #2 on the handout appeared to be issues. I tried to start a discussion about potential resolution of the protest but the parties did not appear to be open to settle or agree at this point. They wished to have a hearing. I told them how a hearing would be conducted. During the conference we went through the file and looked at the pictures. It was questioned by Mr. Guerro what was being developed and Mr. Crane indicated that there were two domestic units being built. One for his son and the other for himself. The use of the water was going to be in house use with very limited watering of small lawn & landscape at each building site. Mr. Crane indicated that the springs were separate and his spring was on his property and Guerro had no call on his spring. Guerro's point is that the springs are connected and the development by Crane has impacted his use of the water.

After the conference Mr. Crane invited me view the springs again. At first I declined since I had already looked at them. He indicated that it was not fair to only look at them with Mr. Guerro and not give him the opportunity to point out things. I decided to look at the springs again as Crane requested.

I visited the site again and I took the attached pictures. Mr. Crane pointed out the water he has developed or gathered presently rises in a pool where other spring water enters and all is gathered by one of Guerro's pipelines which at times takes water to the pool at the historical point of diversion for Guerro. He then pointed out that Guerro placed the pipelines on his property without permission and indicated that in fact Guerro has increased his historical diversion. He then showed me a point where the Guerro pipeline was disconnected allowing all the water gathered from the Crane property to spill onto the ground still on the Crane property. We followed the spill down the hillside where it sank totally on the Crane property. He pointed out that drainage where this water was flowing is separate from the Guerro historical P/D. I followed the drainage down but found that it would enter the channel right at the Guerro historical point of diversion.

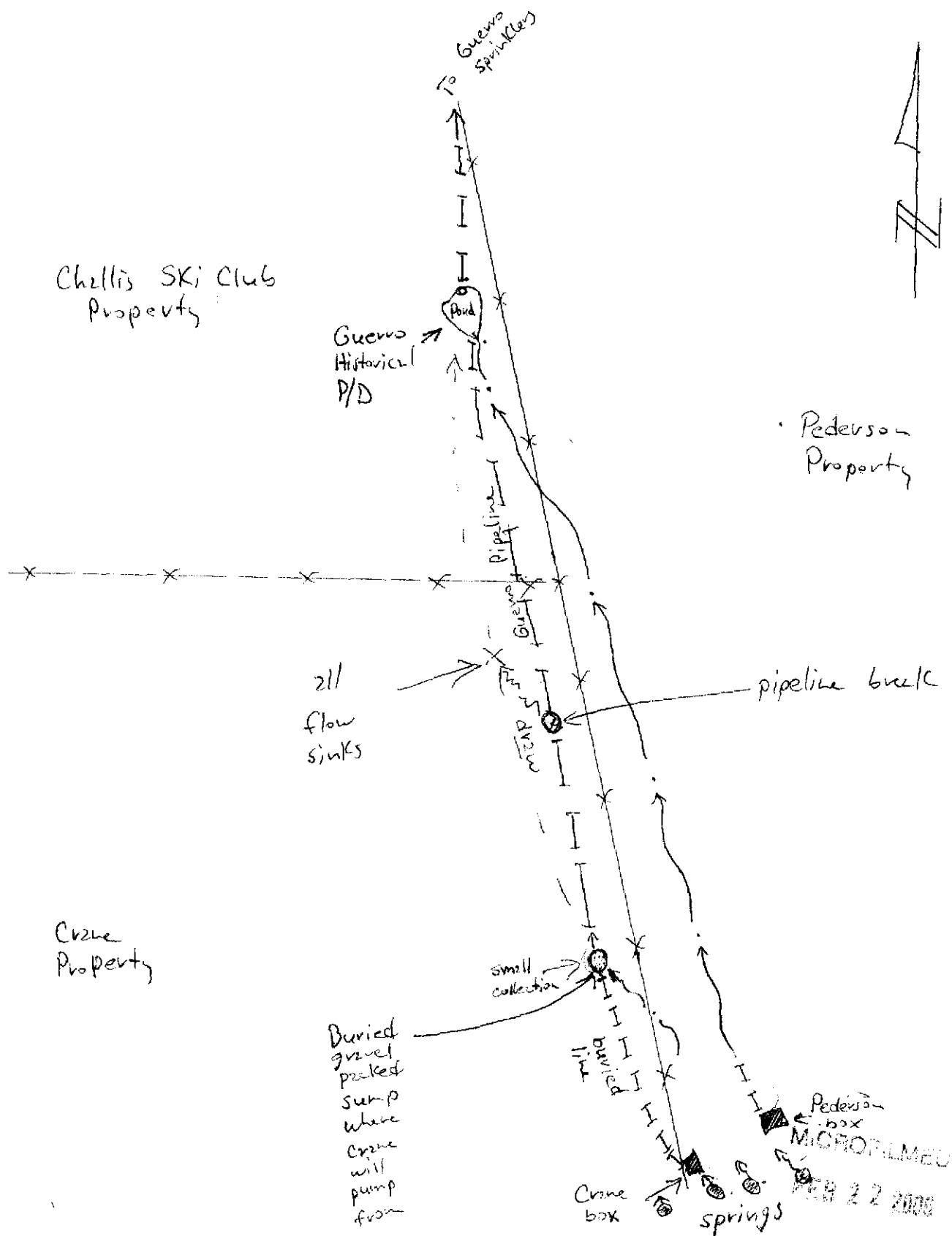
It would appear that during high overland runoff the drainage from Crane would make it to the Guerro's historical P/D but I'm not convinced that when this drainage sinks including the springs that hydrologically the water enters the pool or provides water to what

pool
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FEB 22 2000

has historically been diverted by Guerro. It quite possibly sinks and goes under the what is gathered by Guerro or possibly a portion of it may contribute to the unnamed stream flowing to the Guerro pool. It did not appear at the day I visited the pool that there was springs rising in the pool itself. As for the stream it was impossible to tell. See attached sketch.

point





Collection - pond
where Crane's buried
pipeline ends at
at buried gravel
packed cistern.
He plans to pump
from here. This
is also place where
Guerra has placed
a pipeline to collect
Crane water which
bubbles up and
surface spring flow.

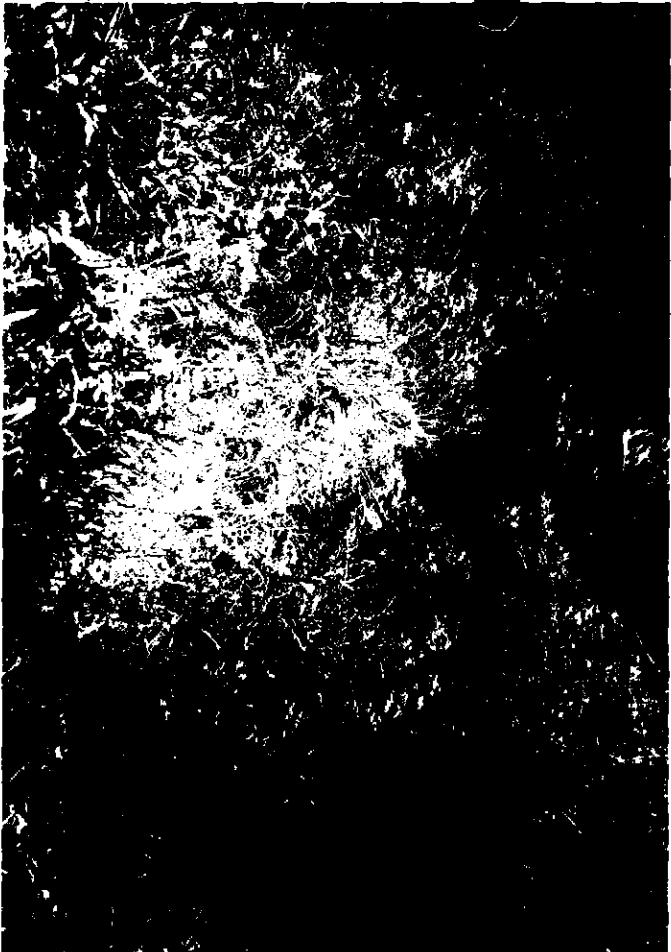


Guerra's pipeline
which became
disconnected at joint.



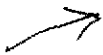
Flow from Guerra's
pipeline sinks in
this area before
leaving Crane property

MOORE
FEB 24 2002



Stream channel below
P/O (dry) Diversion Pipeline
taking all flow

Guerra historical
P/O.



Diversion Pipeline to
Guerra sprinklers

Pipeline from
Guerra Property.



Stream

NOV 19 2003



Collection pond
where Grue's buried
pipeline ends at
at buried gravel
packed cistern.
He plans to pump
from here. This
is also place where
Guerra has placed
a pipeline to collect
Crane water which
bubbles up and
surface spring flow



Guerra's pipeline
which became
disconnected at joint.

Copies



Flow from Guerra's
pipeline sinks in
this area before
leaving Crane proper

Duplicated

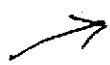
Diversion Pipeline to
Guerra sprinklers



Stream

Pipeline from
Cura property

Copies



Guerra historical
P/D.

Stream channel below
P/D (dry) Diversion Pipeline
failing all flow



RECEIVED

AUG 29 1996

Department of Water Resources
Southern Region

Memorandum

Date: August 27, 1996

To: Allen Merritt, Southern Region

From: Bob Foster, Salmon Office *RF*

Re: Dan Guerrero measurement
water rights 72-04117 .56 cfs & 72-07509 .04 cfs

On the above date I was contacted by Mr. Guerrero and requested to perform a measurement on his sprinkler system.

The following conditions were observed.

1. Three inch handline consisting of thirty four 7/16 sprinkler heads
2. No pressure gauge installed on system.
3. Only twenty-seven sprinklers were operating due to low water flow.

My calculations are as follows: 7/16 sprinkler head @ 20 psi (estimated) = 1.59 gpm.
 $27 \times 1.59 = 42.93$ gpm
 42.93 divided by $448 = 0.0958$ cfs

This may or may not be an accurate measurement due to the estimation of pressure in the system however it may reflect the potential for impact of further appropriation of the spring source which supplies Mr. Guerrero's system.

cc: Dan Guerrero

MICROFILMED

FEB 22 2000

72-07541
Reference for

FILE PROGRESS SUMMARY

APPLICANT:

WATER RIGHT NO. 72-07541

[illegible]



State of Idaho

DEPARTMENT OF WATER RESOURCES

Southern Region, 222 Shoshone St. East, Twin Falls, Idaho 83301-6105 (208) 736-3033
Fax (208) 736-3037

PHILIP E. BATT
Governor

KARL J. DREHER
Director

August 28, 1996

ATTN BARBARA BREEDLOVE
CUSTER COUNTY COURTHOUSE
PO BOX 160
CHALLIS ID 83226

Dear Barbara:

This is a follow-up to our telephone conversation of yesterday to confirm the reservation of the Commissioner's Room for a meeting to be held by this office on Wednesday, October 2, 1996 from 9:00 a.m.-5:00 p.m.

If you have any questions please feel free to contact me or Allen Merritt, Southern Regional Office Manager.

Thank you very much for your assistance in this matter.

Very truly yours,

Mary Baldwin
Senior Secretary

MAILED

SEP 2 2 1996



State of Idaho

DEPARTMENT OF WATER RESOURCES

Southern Region, 222 Shoshone St. East, Twin Falls, Idaho 83301-6105 (208) 736-3033
Fax (208) 736-3037

PHILIP E. BATT
Governor

KARL J. DREHER
Director

August 5, 1996

MS ETHEL PECK
CUSTER COUNTY COURTHOUSE
PO BOX 160
CHALLIS ID 83226

Dear Ms. Peck:

This is a follow-up to our telephone conversation of August 2, 1996 to confirm the reservation of the Commissioners' Room for a meeting to be held by this office on Friday, August 23, 1996 from 1:00 p.m.- 5:00 p.m.

If you have any questions please feel free to contact me or Allen Merritt, Southern Regional Office Manager.

Thank you very much for your assistance in this matter.

Very truly yours,

Mary Baldwin
Senior Secretary

MAILED
SEP 12 1996

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE
STATE OF IDAHO

IN THE MATTER OF APPLICATION
FOR PERMIT NO. 72-07541

EARL CRANE, Applicant
D.C. GUERRERO, Protestant

NOTICE OF HEARING

SOURCE: Unnamed Spring
Tributary to Sinks
COUNTY: Custer

On January 2, 1996, Earl Crane, applicant, filed with the Department of Water Resources an application to appropriate the public waters of the State of Idaho. The Department has received a protest against the approval of said application from the above captioned protestant. The Pre-hearing Conference held on August 23, 1996 did not resolve the matter of protest.

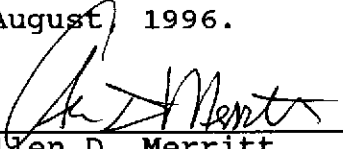
The Department has scheduled the matter for hearing on **Wednesday, October 2, 1996 at 9:00 a.m. in the Commissioner's Room, Custer County Courthouse; Challis, ID 83226.** The hearing will be held in accordance with provisions of chapters 2 and 17, Title 42 and Chapter 52, Title 67, Idaho Code, the adopted Rules of Procedure of the department and Water Appropriation Rules 40 and 45. A copy of the rules may be obtained from the department upon request. The presiding officer at the hearing will be Glen Saxton.

If you plan to offer exhibits for the record, note that IDAPA Rule of Procedure 37.01.01606 requires that you provide a copy of exhibits to each party and to the presiding officer.

If you require special accommodations in order to attend, participate in or understand the hearing, please advise the department within ten (10) days prior to the hearing.

All parties to the matter will have the opportunity to respond and present information and argument on all issues involved.

Dated this 27th day of August, 1996.


Allen D. Merritt
Southern Region Manager

MICROFILMED
FEB 22 2003

CERTIFICATE OF MAILING

I hereby certify that on the 27th day of August, 1996; a true and correct copy of the foregoing Notice of Hearing was forwarded with all required charges prepared, by the method(s) indicated below, to the parties listed:

Mary Baldenini
Secretary

EARL CRANE
PO BOX 11
CHALLIS ID 83226

Hand delivered _____
U.S. Mail-Regular _____
U.S. Mail-Certified x _____
Fax _____

D C GUERRERO
GARDEN CREEK RANCH
PO BOX 248
CHALLIS ID 83226

Hand delivered _____
U.S. Mail-Regular _____
U.S. Mail-Certified x _____
Fax _____

MICROFILMED

FEB 22 2000

CONFERENCE AND HEARING PROCEDURE

APPLICATION FOR PERMIT ISSUES

Section 42-203A, Idaho Code, requires the department to consider the following issues in connection with an application for permit:

1. Will the proposed appropriation injure other water rights? **Yes**
2. Is the water supply sufficient for the purpose for which it is sought to be appropriated? **Yes**
3. Was the application made in good faith or for delay or speculative purposes? **No**
4. Does the applicant have sufficient financial resources with which to complete the proposed project? **No**
5. Is the proposed appropriation in the local public interest, which is defined as the affairs of the people in the area directly affected by the proposed use? **No**
6. Is the proposed use contrary to conservation of water resources within the state of Idaho? **No**

BURDEN OF PROOF

The applicant has the initial burden of proof for issues 1, 2, 3, 4, and 6 above and must provide evidence for the department to evaluate these criteria. The initial burden of proof on issue 5 above lies with both the applicant and protestant as to factors of which they are most knowledgeable and cognizant. The applicant has the ultimate burden of persuasion, however, for this issue.

PROCEDURE

The department generally conducts an informal conference with the parties to determine the issues and to try to settle a protested matter before a hearing is scheduled. If a hearing is held the department will issue a written decision based on the hearing record.

CONFERENCE

The purpose of a pre-hearing conference is to provide the opportunity for the parties and the department to familiarize themselves with a contested matter and to attempt to resolve the matter. At the conference, the department may also formulate and simplify the issues, identify documents to avoid unnecessary proof, exchange proposed exhibits or prepared testimony, limit witnesses, discuss settlement or make settlement offers, schedule hearings, establish procedure at hearing and address other matters that may expedite orderly conduct and disposition of the proceeding or its settlement. The department may issue a "pre-conference statement order" which requires response to the inquiries.

HEARING

The department will tape record the hearing. Copies of a hearing tape are available upon request and the payment of the cost of reproducing the tape. The hearing likely will be conducted by a hearing officer appointed by the Director rather than by the Director himself. If so, the hearing officer will prepare a recommended order for the Director's consideration. Parties can file exceptions to a recommended order, briefs in support of the exceptions or may request oral argument. Parties may seek judicial review of any final order issued by the Director. Parties may by written stipulation waive the right to a recommended order, particularly when a shortened decision process is desirable or necessary. Such a waiver does not eliminate any rights of the parties in connection with the final order of the Director and judicial review of the order.

EXHIBITS

A party who plans to offer an exhibit as part of the hearing record must provide a copy of the proposed exhibit to the parties and to the hearing officer. As part of the conference a date may be set by which exchange of exhibits and witness lists must occur.

EFFECT OF FAILURE TO APPEAR AT A CONFERENCE OR HEARING

Failure to appear at the time and place set for a conference or hearing by the applicant or protestant(s) may allow the department to dismiss without prejudice the protest(s) or the application. Any and all cost incurred by reason of such non-appearance may be assessed against such non-appearing party.

AMERICANS WITH DISABILITIES ACT

Any hearing scheduled will be conducted in a facility which meets the accessibility requirements of the Americans with Disabilities Act. If you require special accommodations in order to attend, participate in or understand the hearing, please advise the department within (10) days prior to the hearing.

RECEIVED
FEB 22 2003

MAILING LIST

RE: App. for permit No. 72-07541

APPLICANT:

EARL CRANE
PO BOX 11
CHALLIS ID 83226

- Tele # 879-2397

PROTESTANT:

D C GUERRERO
GARDEN CREEK RANCH
PO BOX 248
CHALLIS ID 83226

Tele # 879-2760

RECEIVED

SEP 22 1972

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE
STATE OF IDAHO

IN THE MATTER OF APPLICATION
FOR PERMIT NO. 72-07541

EARL CRANE, Applicant
D.C. GUERRERO, Protestant

NOTICE OF
PRE-HEARING CONFERENCE

SOURCE: Unnamed Spring
Tributary to Sinks
COUNTY: Custer

On January 2, 1996, Earl Crane, applicant, filed with the Department of Water Resources an application to appropriate the public waters of the State of Idaho. The Department has received a protest against the approval of said application from the above captioned protestant.

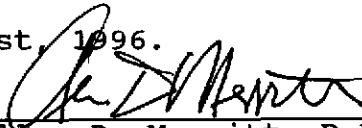
The Department has set the matter of protest for conference on Friday, August 23, 1996 at 1:00 p.m. in the Commissioners' Room, Custer County Courthouse; Challis, ID.

The purpose of the conference is to formulate and simplify the issues, obtain admissions of fact and of documents which will avoid unnecessary proof, arrange for the exchange of proposed exhibits or prepared expert testimony prior to the hearing, limit the number of witnesses, consolidate the examination of witnesses, and advise the parties of the procedure which will be followed at any subsequent hearing.

The conference will be held in accordance with Chapter 2, Title 42, of the Idaho Code and the adopted Rules of Practice and Procedure of the Department of Water Resources.

The conference will be conducted in a facility which meets the accessibility requirements of the Americans with Disabilities Act. If you require special accommodations in order to attend, participate in or understand the conference, please advise the department within (10) days prior to the conference.

Dated this 5th day of August, 1996.


Allen D. Merritt, P.E.
Regional Manager

MICROFILMED

FEB 22 2000

CERTIFICATE OF MAILING

I hereby certify that on the 5th day of August, 1996; a true and correct copy of the foregoing Notice of Pre-Hearing Conference was forwarded with all required charges prepared, by the method(s) indicated below, to the parties listed:

Mary Baldwin
Secretary

EARL CRANE
PO BOX 11
CHALLIS ID 83226

Hand delivered _____
U.S. Mail-Regular X
U.S. Mail-Certified _____
Fax _____

D C GUERRERO
GARDEN CREEK RANCH
PO BOX 248
CHALLIS ID 83226

Hand delivered _____
U.S. Mail-Regular X
U.S. Mail-Certified _____
Fax _____

RECORDED

FEB 22 2000

CONFERENCE AND HEARING PROCEDURE

APPLICATION FOR PERMIT ISSUES

Section 42-203A, Idaho Code, requires the department to consider the following issues in connection with an application for permit:

1. Will the proposed appropriation injure other water rights?
2. Is the water supply sufficient for the purpose for which it is sought to be appropriated?
3. Was the application made in good faith or for delay or speculative purposes?
4. Does the applicant have sufficient financial resources with which to complete the proposed project?
5. Is the proposed appropriation in the local public interest, which is defined as the affairs of the people in the area directly affected by the proposed use?
6. Is the proposed use contrary to conservation of water resources within the state of Idaho?

BURDEN OF PROOF

The applicant has the initial burden of proof for issues 1, 2, 3, 4, and 6 above and must provide evidence for the department to evaluate these criteria. The initial burden of proof on issue 5 above lies with both the applicant and protestant as to factors of which they are most knowledgeable and cognizant. The applicant has the ultimate burden of persuasion, however, for this issue.

PROCEDURE

The department generally conducts an informal conference with the parties to determine the issues and to try to settle a protested matter before a hearing is scheduled. If a hearing is held the department will issue a written decision based on the hearing record.

CONFERENCE

The purpose of a pre-hearing conference is to provide the opportunity for the parties and the department to familiarize themselves with a contested matter and to attempt to resolve the matter. At the conference, the department may also formulate and simplify the issues, identify documents to avoid unnecessary proof, exchange proposed exhibits or prepared testimony, limit witnesses, discuss settlement or make settlement offers, schedule hearings, establish procedure at hearing and address other matters that may expedite orderly conduct and disposition of the proceeding or its settlement. The department may issue a "pre-conference statement order" which requires response to the inquiries.

HEARING

The department will tape record the hearing. Copies of a hearing tape are available upon request and the payment of the cost of reproducing the tape. The hearing likely will be conducted by a hearing officer appointed by the Director rather than by the Director himself. If so, the hearing officer will prepare a recommended order for the Director's consideration. Parties can file exceptions to a recommended order, briefs in support of the exceptions or may request oral argument. Parties may seek judicial review of any final order issued by the Director. Parties may by written stipulation waive the right to a recommended order, particularly when a shortened decision process is desirable or necessary. Such a waiver does not eliminate any rights of the parties in connection with the final order of the Director and judicial review of the order.

EXHIBITS

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EFFECT OF FAILURE TO APPEAR AT A CONFERENCE OR HEARING

Failure to appear at the time and place set for a conference or hearing by the applicant or protestant(s) may allow the department to dismiss without prejudice the protest(s) or the application. Any and all cost incurred by reason of such non-appearance may be assessed against such non-appearing party.

AMERICANS WITH DISABILITIES ACT

Any hearing scheduled will be conducted in a facility which meets the accessibility requirements of the Americans with Disabilities Act. If you require special accommodations in order to attend, participate in or understand the hearing, please advise the department within (10) days prior to the hearing.

MODIFIED
FEB 22 2006

is your RETURN ADDRESS completed on the reverse side!

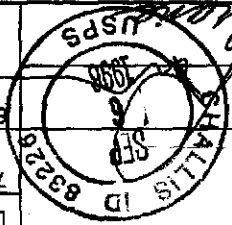
SENDER:

- Complete items 1 and/or 2 for additional services.
- Complete items 3, 4a & b.
- Print your name and address on the reverse of this form so that we can return this card to you.
- Attach this form to the front of the mailpiece, or on the back if space does not permit.
- Write "Return Receipt Requested" on the mailpiece below the article number.
- The Return Receipt will show to whom the article was delivered and the date delivered.

3. Article Addressed to:

72-07541

EARL CRANE
PO BOX 11
CHALLIS ID 83226



5. Signature (Addressee)

6. Signature (Agent)

8. Addressee's Address (only if requested and fee is paid)

MICROFILMED
FEB 22 2000

7. Date of Delivery

- 4b. Service Type
- ☐ Registered
 - ☒ Certified
 - ☐ Express Mail
 - ☐ Return Receipt for Merchandise
 - ☐ COD
 - ☐ Insured

4a. Article Number

1678

- I also wish to receive the following services (for an extra fee):
- 1. ☐ Addressee's Address
 - 2. ☐ Restricted Delivery
- Consult postmaster for fee.

Thank you for using Return Receipt Service.

DOMESTIC RETURN RECEIPT

PS Form 3841, December 1991 *U.S. GPO: 1993-352-714

UNITED STATES POSTAL SERVICE

Official Business

RECEIVED
SEP 09 1996

Department of Water Resources
Southern Region

Print your name, address and ZIP Code here

IDAHO DEPARTMENT OF WATER RESOURCES
SOUTHERN REGION
222 SHOSHONE STREET EAST
TWIN FALLS, IDAHO 83301

PENALTY FOR PRIVATE
USE TO AVOID PAYMENT
OF POSTAGE, \$300

MICROFILMED

FEB 22 2000



NAME AND ADDRESS OF SENDER		Indicate type of mail		Check appropriate block for		POSTMARK AND DATE OF RECEIPT						
Line	Number of Article	Name of Addressee, Street, and Post-Office Address	Postage	Fee	Handling Charge (If Regs.)	Act. Value	Insured Value	Due Sender if C.O.D.	R. R. Fee	S. D. Fee	S. H. Fee	Rest. Re
1	1670	Long Little Eng. R. R. 78	.32	1.00	1.00	2.52						
2	1671	Missile Maker										
3	1672	Shog Mower										
4	✓ 1673	J. Olson Woodlawn (45-0)	.32	1.00	1.00	2.52						
5	✓ 1674	Roger Diaz AM/7-19-96	.32	1.00	1.00	2.52						
6	✓ 1675	Roger Schall AM/7-24-96	.32	1.00	1.00	2.52						
7	✓ 1676	Ed Fragnia										
8	1677	Ray Rouse Wilber R	1.01	1.10	1.10	3.21						
9	✓ 1678	Earl Crane AM/7-26-96 72-07541	.32	1.00	1.00	2.52						
10	1679	DC Guerrero										
11												
12												
13												
14												
15												
Total Number of Pieces Listed by Sender		Total Number of Pieces Received at Post Office	POSTMASTER, PER (Name of receiving employee)		The full declaration of value is required on all domestic and international registered mail. The maximum indemnity payable for nonnegotiable documents under Express Mail occurrence is \$50,000 per piece subject to a limit of \$500,000. The maximum indemnity payable for Registered Mail merchandise is \$500. The maximum indemnity payable for Registered Mail \$400 for C.O.D. parcels. Special delivery charges apply only to Third- and Fourth-class parcels. Special delivery service also includes special handling service.							

FORM MUST BE COMPLETED BY TYPEWRITER, INK OR BALL POINT PEN



State of Idaho

DEPARTMENT OF WATER RESOURCES

Southern Region, 222 Shoshone St. East, Twin Falls, Idaho 83301-6105 (208) 736-3033
Fax (208) 736-3037

July 25, 1996

PHILIP E. BATT
Governor

KARL J. DREHER
Director

D C GUERRERO
GARDEN CREEK RANCH
PO BOX 248
CHALLIS ID 83226

RE: APPLICATION FOR PERMIT NO. 72-07541 (Earl Crane)

Dear Mr. Guerrero:

Your protest against the approval of the above referenced application has been received and a copy has been sent to the applicant with the suggestion that he contact you directly to determine the exact nature of the protest and, if possible, to resolve the matter without action by the Department.

The attachment to this letter describes the issues which the Department must consider in taking action on an application. It also gives a brief description of the conference and hearing procedure followed by the Department in resolving protested applications.

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

Very truly yours,

Allen D. Merritt, P.E.
Southern Region Manager

AM:MB
Enclosure(s)

MICROFILMED

FEB 12 1996



State of Idaho
DEPARTMENT OF WATER RESOURCES

Southern Region, 222 Shoshone St. East, Twin Falls, Idaho 83301-6105 (208) 736-3033
Fax (208) 736-3037

July 25, 1996

PHILIP E. BATT
Governor

KARL J. DREHER
Director

EARL CRANE
PO BOX 11
CHALLIS ID 83226

RE: APPLICATION FOR PERMIT NO. 72-07541

Dear Mr. Crane:

Enclosed is a copy of a protest filed against the above referenced application.

The Department suggests you contact the protestant(s) directly to determine the exact nature of the protest(s) and, if possible, to resolve the matter without action by the Department.

The attachment to this letter describes the issues which the Department must consider in taking action on an application. It also gives a brief description of the conference and hearing procedure followed by the Department in resolving protested applications.

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

Very truly yours,

Allen D. Merritt, P.E.
Southern Region Manager

AM:MB
Enclosure(s)

MAILED 2-2-2001

FEB 22 2001

PROTEST

RECEIVED

JUL 22 1996

Department of Water Resources

TO: Karl J. Dreher, Director
State of Idaho
Department of Water Resources
1301 North Orchard Street
Statehouse Mail
Boise, Idaho 83720-9000

RECEIVED

JUL 24 1996

Department of Water Resources
Southern Region

The undersigned, hereby protests that certain Application for Water Permit filed by Earl Crane, Applicant, P.O. Box 11, Challis, Idaho 83226. Such application is published as #72-07541 with your department and seeks a permit upon an unnamed spring with point of diversion in the SW1/4 NE1/4 SE1/4, Section 10, Township 13 N., Range 18 E., Boise Meridian, Custer County, Idaho, and indicates a filing date of January 2, 1996 in: NE1/4SE1/4, Section 10, Township 13 North, Range 18 East.

The reasons for the protest are:

1. Protestant holds an earlier and prior water right and permit to such spring and the flow therefrom.
2. At times, there is not an adequate flow to fulfill the permitted flow of the prior right.
3. Any new or attempted diversion will interfere with and diminish the flow available for Protestant.
4. Applicant has installed his water system without the proper application or permit, with no regard to Protestant's prior rights.
5. Because of Applicant's actions, water loss has occurred, i.e. disruption of channels and regular flows of spring. Water is now flowing away from the spring and stream because of the installation of a pipe line and storage to Applicant's system.
6. Enclosed is the statutory filing fee of \$25.00.

Dated: 7-16-96

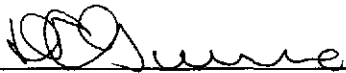

GARDEN CREEK RANCH
D.C. GUERRERO
P.O. Box 248
Challis, Idaho 83226

MAILED
FEB 23 1996

CERTIFICATE OF MAILING

I HEREBY CERTIFY that a true and correct copy of this Protest was, on this 16 day of July, 1996, mailed by regular mail, posted at Challis, Idaho with postage prepaid, to the following party at the address noted:

Earl Crane
P.O. Box 11
Challis, Idaho 83226



GARDEN CREEK RANCH
D.C. GUERRERO

MAILED
JUL 22 1996

6/9/94

COMMUNICATION DOCUMENTATION

This form is to be used to document public record information requests regarding any SRBA claim or claims. The form may also be used to document IDWR communications requesting information regarding any SRBA claim or claims when the request is not made in writing or the claim verification report is not readily available to document the request. This form is to be filed in all relevant claim files or a central office file.

IDWR Employee/Agent Kelly K Christensen

DATE
July 18, 1996 4:57pm

CUSTOMER
EARL CRANE

SUBJECT: GUERRERO HAS PROTESTED HIS APPLICATION FOR PERMIT
phone call (X) walk-in (.)

He stated that he just received a letter of protest from Mr Guerrero. The department has not received the protest yet. I explained the protest hearing process to him. He asked if I had conducted a field visit to the property. I stated that I and Allen Merritt had visited the area during the protest hearing between Guerrero and Cole. I indicated that the department would contact him if the protest reaches this office.

72-07541

NOTED

FEB 27 2000



State of Idaho

DEPARTMENT OF WATER RESOURCES

Southern Region, 222 Shoshone St. East, Twin Falls, Idaho 83301-6105 (208) 736-3033
Fax (208) 736-3037

June 25, 1996

PHILIP E. BATT
Governor

KARL J. DREHER
Director

CUSTER PUBLISHING CO
PO BOX 405
CHALLIS ID 83226

Gentlemen:

Enclosed you will find a legal notice which we wish to have published in your newspaper. We have inserted the required publication dates. If time allows, please submit a galley proof for review before publication.

We have attempted to submit this legal as camera ready. Please call me at your earliest convenience and prior to your staff re-typing the legal if it does not meet your specifications so I can possibly make adjustments.

After sending us a galley proof, proceed with the publication on the dates we have inserted, assuming the notice is correct. If we have any corrections, we will notify you before the first publication. If you cannot publish the notice on the proposed dates, please contact us immediately.

In order to receive payment, an affidavit of publication must be submitted to the Department along with the publication bill.

Very truly yours,

Mary Baldwin
Sr. Secretary

Enclosure

NOTICE OF APPLICATION FOR WATER PERMIT

The following application has been filed to appropriate the public waters of the State of Idaho:

EARL CRANE
PO BOX 11
CHALLIS ID 83226

72-07541

Source: Unnamed Spring tributary to Sinks

Diversion Pt: SW1/4NE1/4SE1/4, S10, T13N, R18E; Custer County.

Use: Domestic (0.04 cfs) 1/1-12/31

Date Filed: 1/2/1996

In: NE1/4SE1/4, S10, T13N, R18E.

The permit will be subject to all prior water rights. Any protest must be filed with the Director, Dept. of Water Resources, Southern Region, 222 Shoshone Street East, Twin Falls, ID 83301 together with a protest fee of \$25.00 on or before July 22, 1996. The protestant must also send a copy of the protest to the applicant.

Karl J. Dreher, Director

Published in The Challis Messenger on 7/3 & 7/11/96.

MAILED 10

FEB 2 2000



State of Idaho

DEPARTMENT OF WATER RESOURCES

Southern Region, 222 Shoshone St. East, Twin Falls, Idaho 83301-6105 (208) 736-3033
Fax (208) 736-3037

June 24, 1996

PHILIP E. BATT
Governor

KARL J. DREHER
Director

EARL CRANE
PO BOX 11
CHALLIS ID 83226

Re: Application for Permit No. 72-07541

Dear Mr. Crane:

The Department of Water Resources acknowledges receipt of your water right application for permit. The application has been assigned the above referenced identification number. Please refer to this number in all further correspondence.

This office has scheduled advertising the application in The Challis Messenger for 7/3 & 7/11/96. A period of ten days following the second publication will be allowed for the submittal of protests.

If an application is protested you will be sent a copy of the protest. The protest must be resolved before the application is approved or denied. If the protest is not resolved voluntarily, this Department will conduct a conference and/or hearing on the matter.

If an application is not protested, it will be forwarded to our State Office in about five weeks. State office personnel will conduct a complete review prior to final processing of the application and will notify you of the outcome of this review. When a permit is issued, you will be sent a copy. A typical processing time for an unprotested application is about eight weeks.

Please feel free to contact this office if you have any questions regarding this procedure.

Sincerely yours,

Corey Skinner, E.I.T.
Safety of Dams Engineer

cs:mb

MICROFILMED
FEB 22 2000

Eare Crum

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

APPLICATION FOR PERMIT ANALYSIS SHEET

INITIAL REVIEW BY C SKINNER DATE JUNE 24, 1996
APPLICATION NO. 72-07541

REQUIRED INFORMATION

- ☒ Name (If applicant is a corporation or partnership, names must be provided for the director, officers, & other partners.)
☒ Address
☒ Source (see USGS quad for names of water sources)
☒ Point of diversion (10 Acres for spring, lot & block descriptions subdivisions, local name, flow &/or volume.
☒ County
☒ Quantity (flow &/or volume)
☒ Period of use
☒ Nature of proposed use (include description of use)
☒ Description of diverting works.
☒ Time required for beneficial use of water.
☒ Place of use or acres irrigated.
☒ Map
☒ Signature (If applicant is corp., partnership, or municipality, of signator is required)
☒ Fee
☒ Yes ☐ No* In form to receipt
- PROPOSED PRIORITY DATE
JANUARY 2, 1996

ADDITIONAL INFORMATION

- ☒ Overlapping place of use(Describe source & relationship to pres application on the back. NONE, SEE ATTACHED MEMO
☒ Overlapping point of diversion.
☒ Yes ☐ No Field check required
Field check by KKC AND ADM
☒ Yes ☐ No Field report attached
☐ Yes ☒ No Critical Ground water area
☐ Yes ☒ No Groundwater management area
☐ Yes ☒ No Send Dam safety information
☐ Yes ☒ No Send power requirement letter
☐ Yes ☒ No Send fish farm requirement letter
☐ Yes ☒ No Power residency affidavit.
☐ Yes ☒ No Power efficiency form
☐ Yes ☐ No Within trustwater boundary(If yes, attach trustwa supplementary analysis sheet.
☐ Yes ☒ No Diversion greater than 5 cfs or 500 acre ft. (If y attach large diversion supplementary analysis shee
See reverse side for additional information.

* REQUEST THE FOLLOWING ADDITIONAL INFORMATION FROM THE APPLICANT: _____

_____ Date Requested _____, 19____

LOCAL PUBLIC INTEREST

Comments recieved from:

☐ City	☐ Idaho Fish & Game	☐ Irrigation Dist.
☐ County	☐ Idaho Health & welfare	☐ Canal Company
☐ Reservations	☐ Div. of Enviromental Quality	☐ Other _____

PROJECT IMPACTS/IMPLICATIONS REPORT

COMMENTS:

DATE _____, 19____

NO STATE WIDE ADVERTISING
REQUIRED.

AFFIDAVIT OF PUBLICATION

State of Idaho, County of Custer, ss:

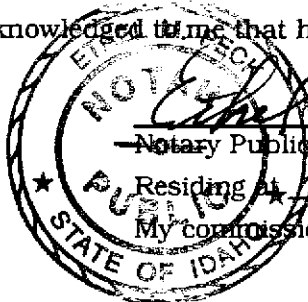
I, Ruth E. Burchell, representing the
Challis Messenger, a weekly newspaper, pub-
lished at Challis, Idaho, do solemnly swear that
the notice hereto attached and made a part here-
of, was published in the regular and entire issue
of the Challis Messenger for 2
consecutive weeks, commencing with the issue
dated July 4 1996 and ending with
the issue dated July 11 1996.

Ruth E. Burchell

STATE OF IDAHO

COUNTY OF CUSTER

On this 11th day of July in the
year of 1996 before me, a Notary Public,
personally appeared Ruth E. Burchell
known or identified to me to be the person
whose name subscribed to the within instru-
ment, and being by me first duly sworn, declared
that the statements therein are true, and ac-
knowledge to me that he executed the same.



Edith M. Peck
Notary Public for Idaho

Residing At Challis

My commission expires: 3-19-98

NOTICE OF APPLICATION FOR WATER PERMIT

The following application has been filed
to appropriate the public waters of the
State of Idaho:

EARL CRANE

PO BOX 11

CHALLIS ID 83226

72-07541

Source: Unnamed Spring trib. to Sinks
Diversion Pt: SW1/4NE1/4SE1/4, S10,
T13N, R18E; Custer County.

Use: Domestic (0.04 cfs) 1/1-12/31

Date Filed: 1/2/1996

In: NE1/4SE1/4, S10, T13N, R18E.

The permit will be subject to all prior
water rights. Any protest must be filed
with the Director, Dept. of Water
Resources, Southern Region, 222
Shoshone Street East, Twin Falls, ID
83301 together with a protest fee of
\$25.00 on or before July 22, 1996. The
protestant must also send a copy of the
protest to the applicant.

Karl J. Dreher, Director

Pub: July 4 & 11, 1996.

MICROFILMED

FEB 22 1996

RECEIVED

JUL 15 1996

Department of Water Resources
Southern Region

OK
NB
7/19/96

STATEMENT

**Custer Publishing, Inc.**

Phone 879-4445

P.O. Box 405

Challis, Idaho 83226

Dept. of Water
222 Shoshone St. East
Jorn Falls, Id 83301-6105

Job No.	Date	DESCRIPTION	Amount
	7-11-96	<i>Notice of Application</i> <i>for Water Permit</i> <i>7/4 & 11/96 - 25 lines</i> <i>(72-07541)</i> <i>OK</i> <i>MB</i> <i>7/19/96</i>	<i>\$</i> <i>25.88</i>
RECEIVED JUL 15 1996 Department of Water Resources Southern Region			

A finance charge of 1½ percent (annual percentage rate of 18%) with a minimum charge of 50¢ will be charged to all accounts not paid within 30 days of billing.

MICROFILMED

FEB 22 2000

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Karl J. Dreher, Director

**Published in The Challis Messenger on
7/3 & 7/11/96.**

7/4 ✓

RECEIVED

FEB 22 2000

MEMORANDUM

TO: Earl Crane Application for Permit File

FROM: Corey Skinner /S

DATE: June 24, 1996

SUBJECT: Staff Review

The enclosed application for permit, filed by Earl Crane, seeks to develop a small spring in a drainage above Garden Creek west of Challis. The spring development is to supply domestic water to two nearby cabins. Allen Merritt and Kelly Christensen visited the property involved with the enclosed application on June 18th.

Mr. Christensen confirmed the location of the spring and took the attached photographs during the June 18th site visit. There are no overlap problems with this particular application, but several other small water developments exist in the surrounding area.

MICROFILMED

FEB 22 2000

72-07541

Crane
P/O (2) & P/u

5
63

72-07541

FEB 27 2000

1568

CLAIM INIT KKC
T. R. S. 8/8
P/D JAN 18E 10 SENESE
PHOTO 11-24
DT.FID. 1974 OJAT

MICROFILM

Key

LOCATION OF P/D
DURING A FIELD
VERIFICATION
EXAM ON 6-18-96
BY KKC.

P/D (2)
8/14

ANDREWS (WELL)

COLE P/D (DOM)
A72-10105 (WELL)

BRYANT P/D
(DOM WELL)

GUERRERO P/D

72-04117

PEDERSON P/D
72-07425

CRANE P/D
(2)

GUERRERO P/D
72-07509

POINT OF DIVERSION COMPARISON
FOR:

TNS 13N; RNG 18E; SEC 10; SE 1/4 B.M.
FOUND DURING A FIELD VISIT ON
6-18-1996 BY KKC AND ADM

CLAIM

INIT KKC

T. R. S. Q/O PREP DATE 6-19-96

P/D 13N 18E 10 SE 1/4 enlarged

PHOTO SCS 241-161 150%

DT & ID 8-29-84

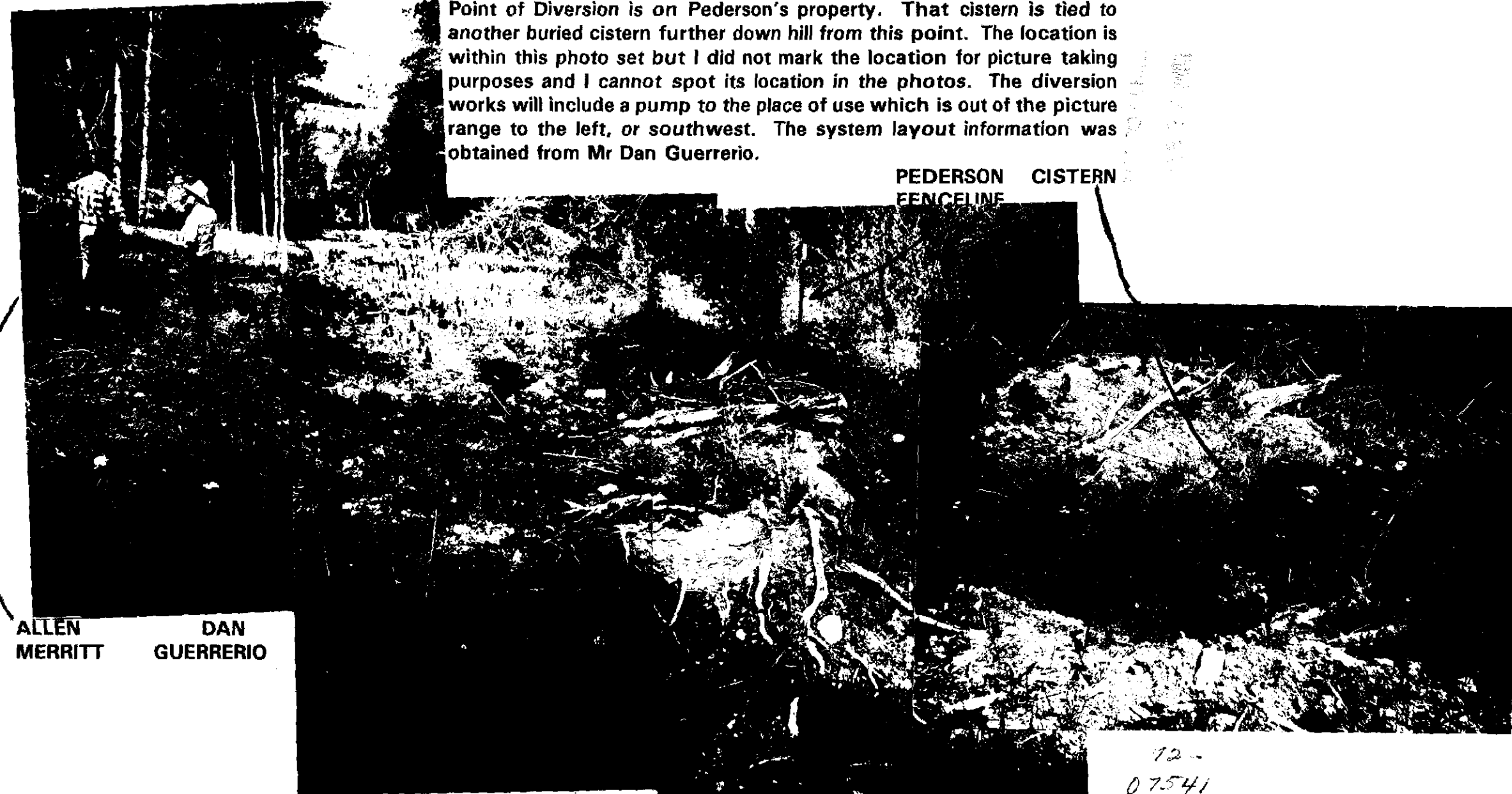
72-07541

FOR APPLICATION FOR PERMIT
DATE PHOTOS TAKEN; 06-18-96
PICTURE SET # 1

You are looking northeast on the right to west on the left across the diversion works for Mr Crane. There are two 'cisterns' buried in the spring seep area. One is visible underwater on the right on the far side of the fenceline. That

Point of Diversion is on Pederson's property. That cistern is tied to another buried cistern further down hill from this point. The location is within this photo set but I did not mark the location for picture taking purposes and I cannot spot its location in the photos. The diversion works will include a pump to the place of use which is out of the picture range to the left, or southwest. The system layout information was obtained from Mr Dan Guerrero.

PEDERSON CISTERN
FENCELINE



ALLEN MERRITT DAN GUERRERIO

72-
07541

CLAIM # MULTIPLE USERS AND RIGHTS NEAR GARDEN CREEK
PRIMARILY PICTURED, TNS 13N; RNG 18E; SEC 10; B.M.
DATE PHOTOS TAKEN; 06-18-96
PICTURE SET #

You are looking east on the right to north on the left. The photo set was taken to capture the location of various property/claimant locations within this area.

GUERRERO P/U GUERRERO P/D PEDERSON GUERRERO P/D PEDERSON P/D CRANE BRYANT GUERRERO P/D
A72-04117 P/U A72-04117 P/D (2) P/U P/D 72-07509



ANDREWS
P/D P/U

COLE P/D P/U
A72-10105 GW

WATER USERS NEAR EARL CRANE
PER KKC.

EARL CRANE'S

RESPONSE(S)

TO JANUARY 2, 1996

LETTER,

Received

2/12/96

COREY

I WENT TO THE COUNTY ASSESSOR
AND HAD HIM CHECK OUR LOCATION
TO MAKE SURE IT WAS RIGHT. THE
RED PENCIL MARKINGS ARE HIS.

THE CABINS ARE IN THE ~~THE~~
SAME AREA AS THE SPRUCE
WITHIN 300' OF EACH OTHER.

I HOPE THE AREA MAP WILL
HELP.

EARL

RECORDED

FEB 22 2000

72-07541



State of Idaho
DEPARTMENT OF WATER RESOURCES

Southern Region, 222 Shoshone St. East, Twin Falls, Idaho 83301-6105 (208) 736-3033
Fax (208) 736-3037

PHILIP E. BATT
Governor

KARL J. DREHER
Director

January 2, 1996

Earl Crane
P.O. Box 11
Challis, ID 83226

Dear Mr. Crane:

As discussed in our telephone conversation today, a map clearly showing the point of diversion from the source of water and the place where the water will be used is to be submitted with an application for permit. I have enclosed a photo copy of a quad map so that you can indicate the location of the point of diversion (the unnamed spring) and the place of use (the cabins). I have also enclosed a copy of your application for permit for your reference. I have changed item #2, the source of water supply, to reflect what you told me on the phone and what Bob Foster from our Salmon office observed in the field. Item #2 now lists the source of water as an unnamed spring that sinks into the ground.

If you could indicate the point of diversion and the place(s) of use on the enclosed map and send it back to our office, your application for permit can be processed in a timely manner. In addition, a copy of any plat maps of the area (with the point of diversion and the place(s) of use indicated) may be of assistance in the processing of your application.

If you have any questions, please do not hesitate to contact our office.

Sincerely,

Corey Skinner, EIT
Dam Safety Section

Enclosures

MICROFILMED
FEB 22 2000

RECEIVED
Form 202
10/92

DEC 29 1995

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
APPLICATION FOR PERMIT

RECEIVED
Ident. No.

FEB 12 1996

Department of Water Resources
Southern Region

To appropriate the public waters of the State of Idaho

Department of Water Resources
Southern Region

1. Name of applicant EARL CRANE Phone 879-2397

Post office address PO BOX 11 CHALLIS, IDAHO 83226
UNNAMED

2. Source of water supply SPRING which is a tributary of SINKS

3. Location of point of diversion is NW 1/4 of NE 1/4 of SE 1/4, Govt. Lot

Sec. 10 Township 13 NORTH Range 18 EAST B.M. Custer County; additional
points of diversion if any:

4. Water will be used for the following purposes:

Amount .04 for DOMESTIC purposes from Jan 1 to Dec 31 (both dates inclusive)
(cfs or acre-feet per annum)

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

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

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

5. Total quantity to be appropriated is (a) .04 cubic feet per second and/or (b) _____ acre feet per annum

6. Proposed diverting works:

a. Description of ditches, flumes, pumps, headgates, etc. WE PLAN TO PUT A HEAD
BOX IN THE SPRING WHICH WILL HOLD ABOUT 30 GAL
TO SUPPLY A 1/2 HP PUMP FOR THE CABINS

b. Height of storage dam _____ feet; active reservoir capacity _____ acre-feet; total
reservoir capacity _____ acre-feet; period of year when water will be diverted to storage:
_____ to _____ inclusive.

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

d. Is ground water with a temperature of greater than 85°F being sought? No

e. If well is already drilled, when? _____; Drilling firm _____;

Well was drilled for (well owner) _____

7. Time required for the completion of the works and application of the water to be proposed beneficial use is

1 yr years (minimum 1 year).

FEB 22 1996

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

- a. Hydropower; show total feet of head and proposed capacity in KW. _____
- b. Stockwatering; list number and kind of livestock. _____
- c. Municipal; show name of municipality. _____
- d. Domestic; show number of households. 2
- e. Other; describe fully. _____

9. Description of place of use:

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

TWP	RANGE	SEC.	NE¼				NW¼				SW¼				SE¼				TOTALS
			NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	
13 N	18 EAST	10	X						X				X						DOMESTIC

Total number of acres to be irrigated NONE

10. Describe any other water rights used for the same purposes as described above. N/A

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

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

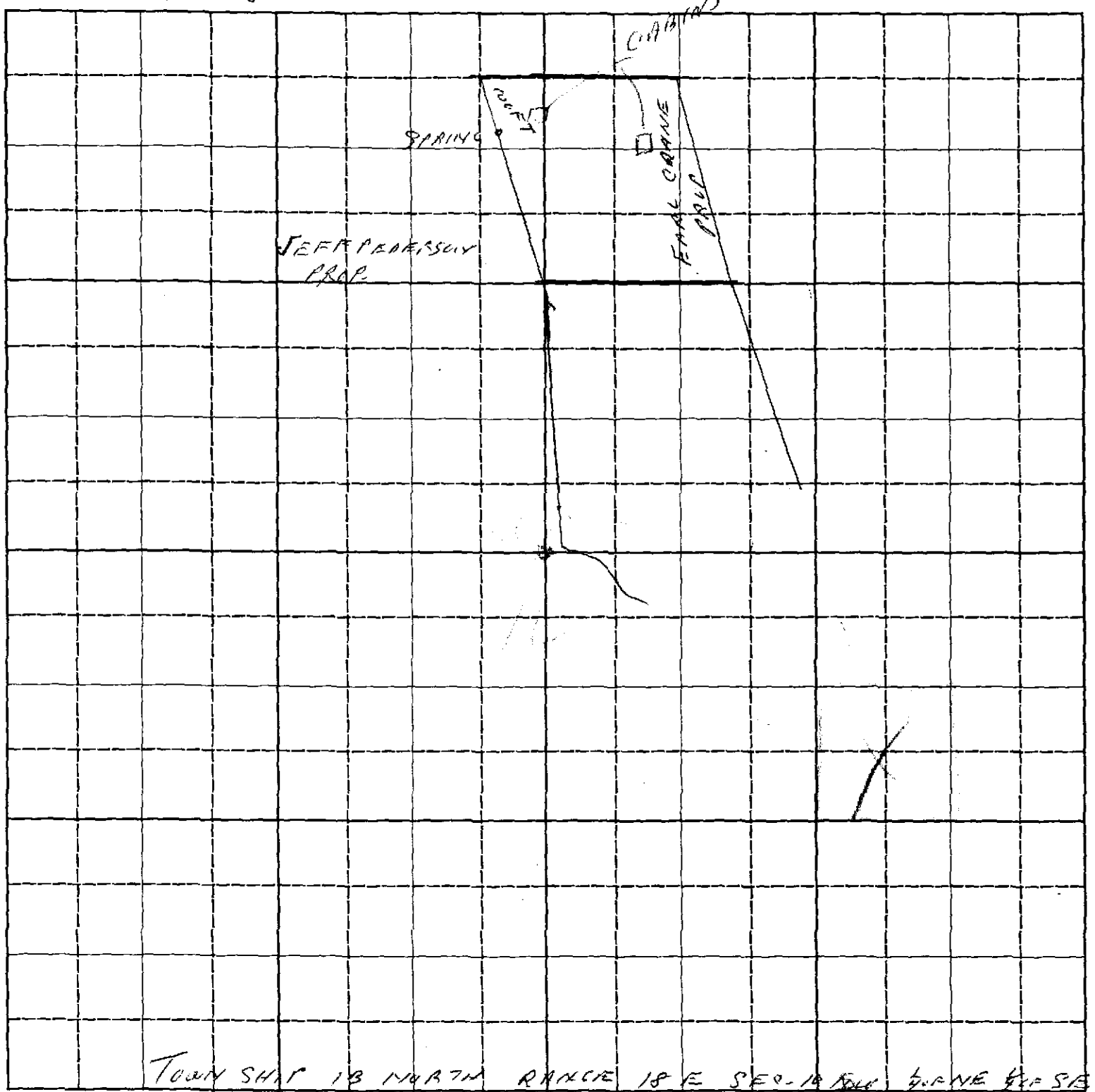
c. If the property is owned by a person other than the applicant, describe the arrangement enabling the applicant to make this filing. WE HAVE A VERBAL AGREEMENT WITH JEFF.

12. Remarks: THIS SPRING IS RIGHT ON THE PROPERTY LINE IT IS A VERY SMALL SPRING WHICH RAN ABOUT 100 FT. IT HAS NEVER BEEN DEVELOPED.

UNRECORDED

FEB 22 1980

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



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.

Wagon 100 EARL CRANE
(Applicant)

(Applicant)

2008 2 2 2009 2 2

CD 479
Fee \$ 50.00
Received by RS # 5018754 Date 1/2/96
Publication prepared by _____ Date _____ Published in _____
Publication approved _____ Date _____

ACTION OF THE DIRECTOR, DEPARTMENT OF WATER RESOURCES

This is to certify that I have examined Application for Permit to appropriate the public waters of the State of Idaho No. _____, and said application is hereby _____.

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 _____, 19____.
- c. The rate of diversion, if water is to be used for irrigation under this permit, when combined with all other water rights for the same land shall not exceed 0.02 cubic feet per second for each acre of land.
- d. The water right acquired under this permit if for hydropower purposes shall be junior and subordinate to all rights to the use of water, other than hydropower, within the State of Idaho that are initiated later in time than the priority of this permit and shall not give rise to any right or claim against any future rights to the use of water, other than hydropower, within the State of Idaho initiated later in time than the priority of this permit.
- e. Other:

RECORDED
FEB 12 1996



State of Idaho

DEPARTMENT OF WATER RESOURCES

Southern Region, 222 Shoshone St. East, Twin Falls, Idaho 83301-6105 (208) 736-3033

Fax (208) 736-3037

PHILIP E. BATT
Governor

KARL J. DREHER
Director

September 6, 1995

Earl Crane
Challis, ID 83226

RE: Complaint regarding illegal water use and injury to water right

Dear Mr. Crane:

Our office has received a complaint about a spring development reported to have been recently made by you in the Challis area near the NW $\frac{1}{4}$ NW $\frac{1}{4}$ SE $\frac{1}{4}$, Section 10, Twp.13N, Rge.18E, B.M.

The complaint alleges that you constructed a spring diversion earlier this year and that the diversion of water has reduced the flow of a nearby spring which supplies water to a prior water right. On August 25th, 1995, Bob Foster from our Salmon Office visited the site and confirmed a diversion pipe exists.

I have searched our water right records and find that no water right permit for your development exists. Please be aware that since 1971 to develop a use from a spring requires a permit. Since no right or permit exists in our records I request your cooperation in:

- identifying what water right covers your development if our records are not correct.
- cease the diversion from the spring if you have no water right.
- &/or obtain a valid permit or water right for your development.

Please respond to our office within 14 days of the date of this letter as to the status of your project. Please note that if you apply for a permit it will be subject to prior water rights and open for public protest. Please also note that to divert water in Idaho without a valid water right is illegal pursuant to §42-351, Idaho Code and subject to civil penalties of up to \$100 per day.

If you have questions regarding this matter please feel free to contact our office.

Sincerely,

Allen Merritt, PE
Southern Region Manager

CC: Bob Foster - IDWR (Salmon)
Glen Saxton - IDWR (State Office)

MEMORANDUM

TO: File No. 72-07541
(Earl Crane Application for Permit)

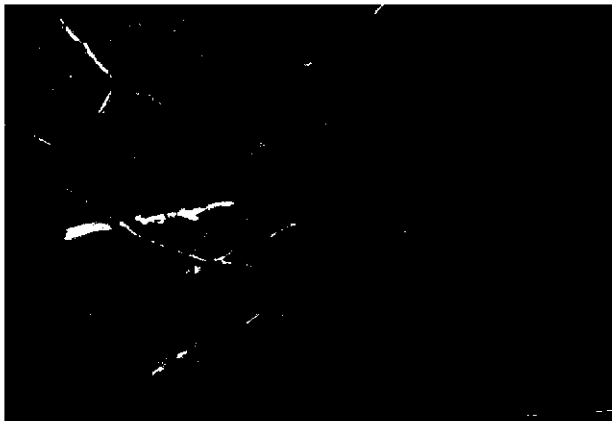
FROM: Debbie Drew-Ellis *dde*

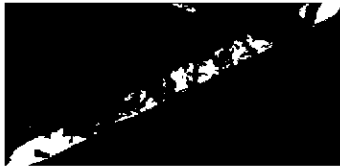
DATE: June 11, 1997

RE: Guerrero Appeal of Department Decision

I have not copied this confidential file for inclusion in the appeal record for this matter.









RECEIVED
AUG 31 1995
Department of Water Resources
Southern Region

MEMORANDUM

DATE: August 28, 1995

TO: Kelly Christensen, Southern Region

FROM: ^{ef}Bob Foster, Salmon Office

RE: Guerrero complaint

Crane 879-2397
Pederson 879-5423 Hwy 75

This memo is in regards to a complaint recieved from Dan Guerrero alleging interference with Guerrero's irrigation right A72-04117 from a spring (s) located in the NWNWSE of S10,T13N,R18E.

I made an on-site visit to Guerrero's point of diversion on August 25, 1995, accompanied by Dan Guerrero and observed the following.

1. A recently constructed collection box, trench, and pipeline located on the west side of Guerrero's point of diversion. Mr. Guerrero stated that Jeff Pederson of Challis had constructed the diverting works earlier this year. (see photos)
2. On the east side of Guerrero's point of diversion there is another recently constructed pipeline. Mr. Guerrero stated this was constructed by Earl Crane of Challis earlier this year. (see photo)

Mr. Guerrero stated the flow from the spring (s) has dropped by half since this construction activity and he is unable to operate a full sprinkler line.

I could observe no use of the water diverted by Crane or Pederson as there are no homes or buildings at the location at this time, however there was water flowing in the trench that had been dug by Pederson and water leaking from the pipeline constructed by Crane.

I feel the probability of these diversions affecting Guerrero's spring (s) is high due to the topography of the area, but the amount of diminished flow from the spring may be difficult to determine without further investigation.

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
206 Van Dreff, Suite B
Salmon, ID 83467-4117



RECEIVED

AUG 31 1995

ATTN KELLY CHRISTENSEN
IDWR
222 SHOSHONE ST EAST
TWIN FALLS ID 83301

Department of Water Resources
Southern Region

