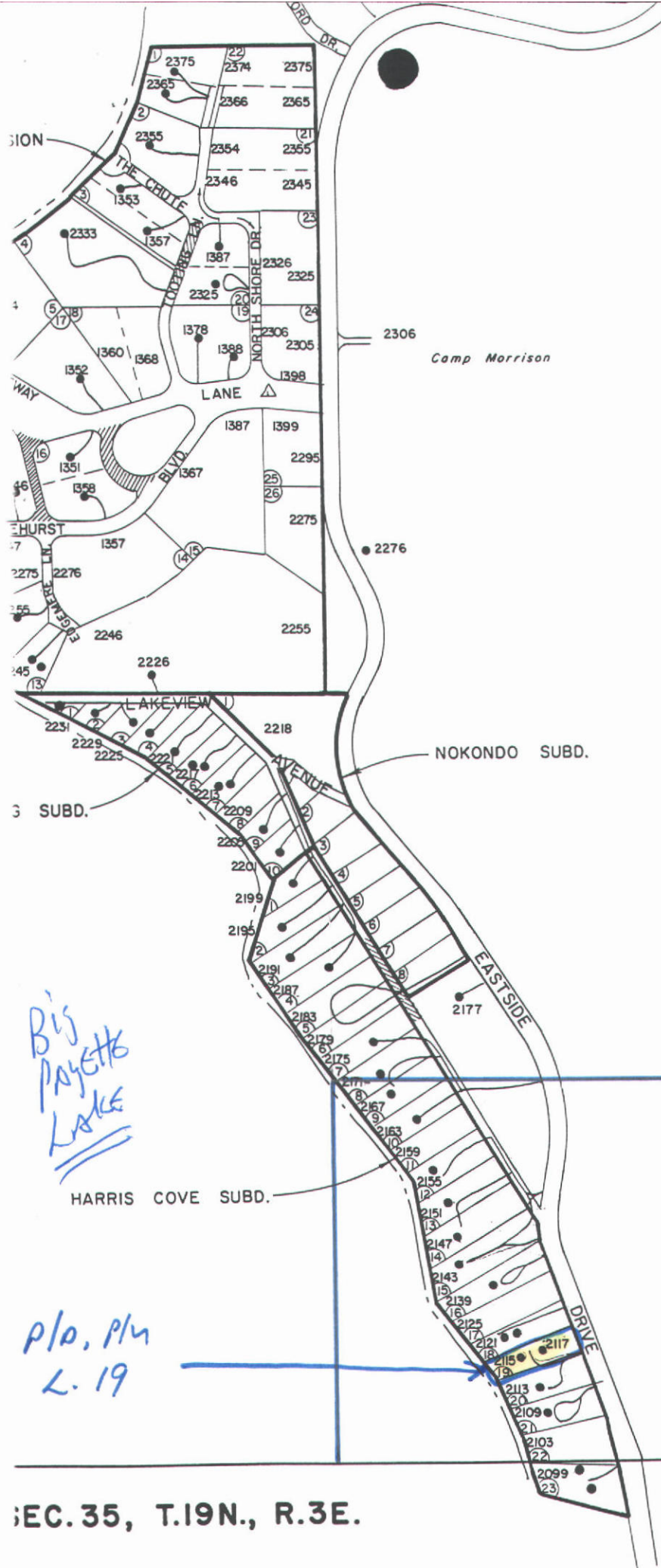




Scale $\approx 1" = 503'$
 From "Valley Co.
 Rural Addressing System"
 Bk. 1 of 2

-gc 9/16/98

NOTE - separate system for
 adjacent O/L on L. 19 is
 Section's 65-10438.

(SWSE)
 gov't Lot 4 of S. 35

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 DEC 10 1999

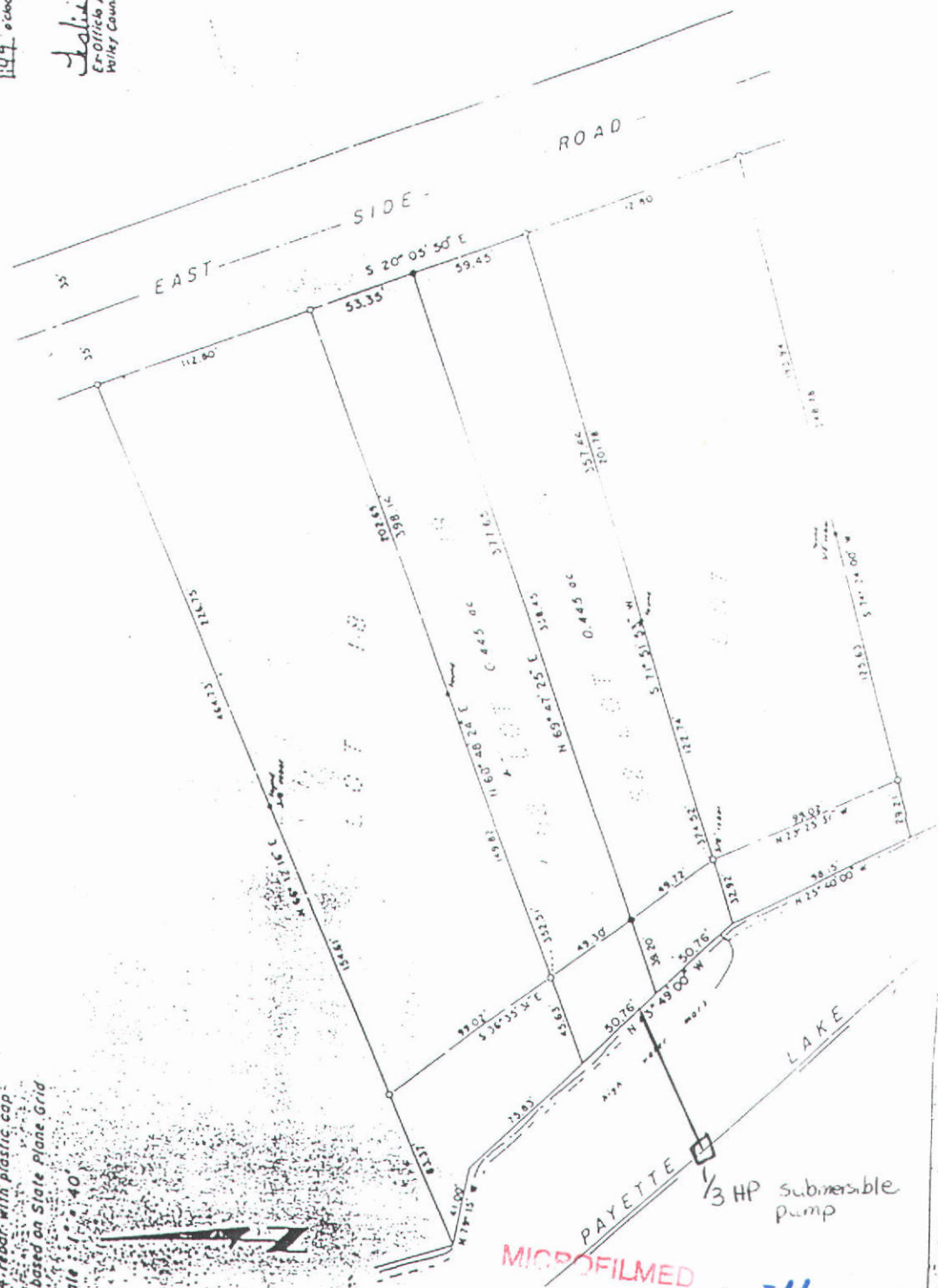
SEC. 35, T.19N., R.3E.

IOWA map
 per applicant's
 info

Book 3 Page 37
 of Records of Survey
 Instrument No. 156751
 Filed and recorded at the request of Tom Kuy
149 acres P. M. 14th 16th 18th 19th 20th 1982
Dr. K. Hawkins
Oct-17
John Sullivan
 Ex-Officio Auditor and Recorder
 Polk County, Idaho
 Fee \$5.00

RECORD OF SURVEY
 LOT 19
 Harris Cove Subdivision
 Book 1, Page 20 of Plats
 Valley County, Id.
 for
VAN LEUVEN
& LIMBAUGH

Kerr Surveying & Consulting, Inc.
 Co., Id.

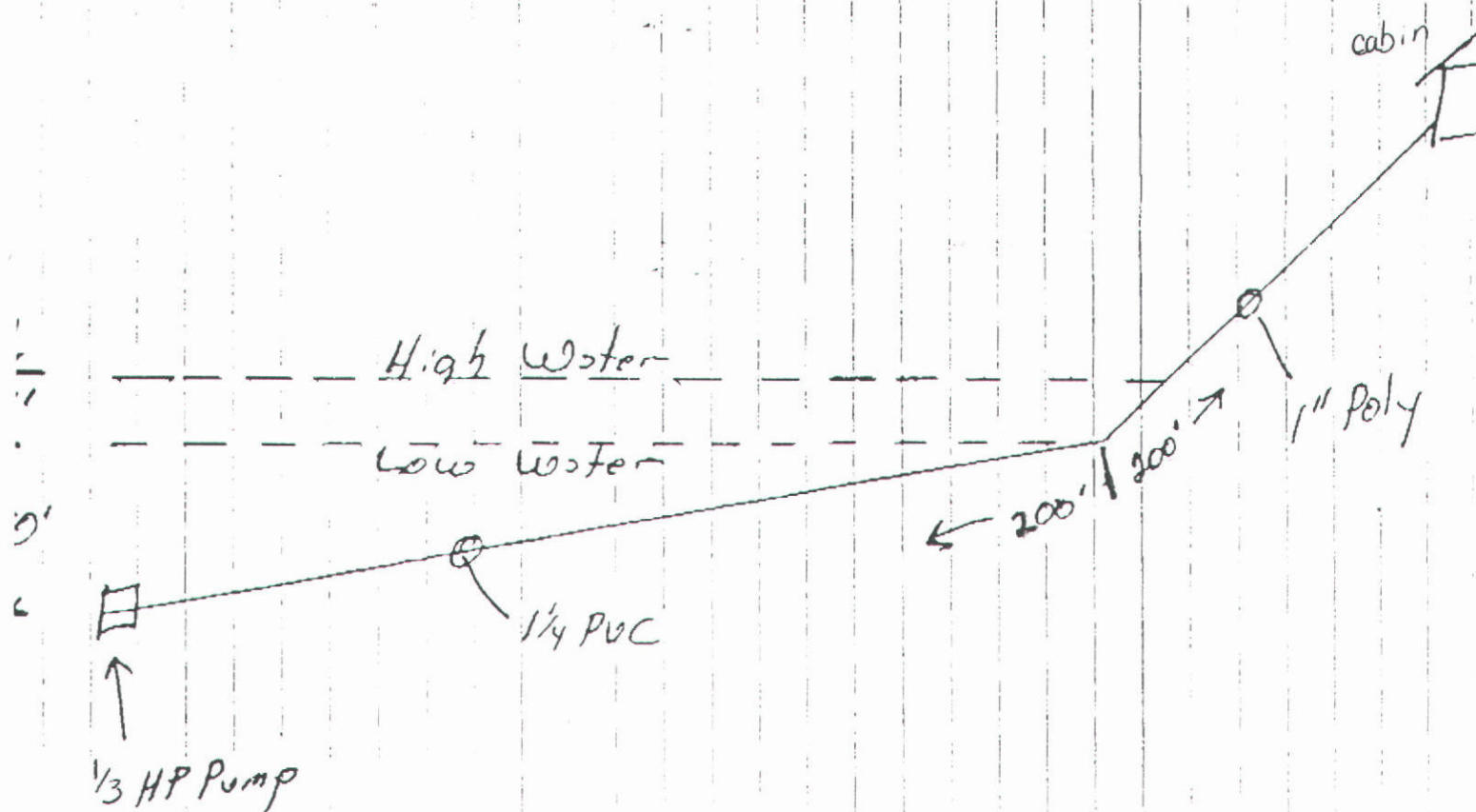


Found & rebar, Record of Survey, Book
 2, page 90, Inst. No. 151137, Sept. 1986
 • set 1" x 24" rebar with plastic cap
 Bearings based on State plane Grid
 Scale 1" = 40'

MICROFILMED
 DEC 10 1995
 Applicant's map

Survey of Harris Cove Subdivision, Valley County, Idaho, by
 Kerr Surveying & Consulting, Inc., dated 1982, and the
 survey made by me in 1987, 1988, and 1989, and the
 plat of the same, showing the boundaries and distances as recorded in the
 records of Survey, Book 1, Page 20 of Plats, Valley County, Idaho.





Applicant's diagram

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SEIFERT DRAWING

Lot 19

N 1/2

S 1/2

Parking

Seifert

Shultz

Fitzwater

DECK

Trailer

Property Line

Parking

Shed

Shed

Cabin

Cabin

DECK

DECK

MICROFILMED
(NOT TO SCALE)
DEC 10 1999

PROTESTANT'S EXHIBIT No 2

PROTESTANTS EXHIBIT No. 5

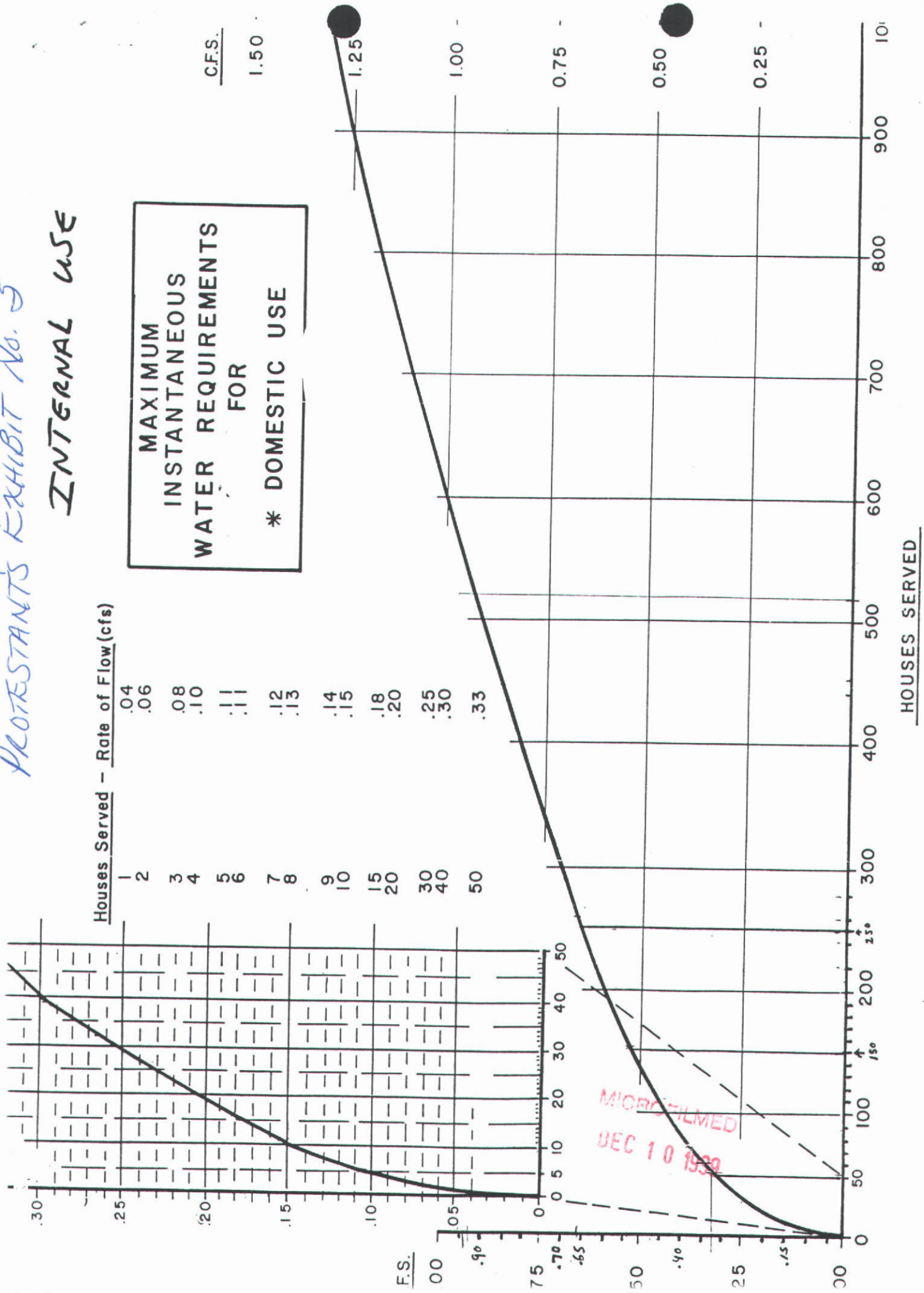
INTERNAL USE

Houses Served - Rate of Flow (cfs)

1	.04
2	.06
3	.08
4	.10
5	.11
6	.12
7	.13
8	.14
9	.15
10	.18
15	.20
20	.25
30	.30
40	.33
50	

MAXIMUM
INSTANTANEOUS
WATER REQUIREMENTS
FOR
* DOMESTIC USE

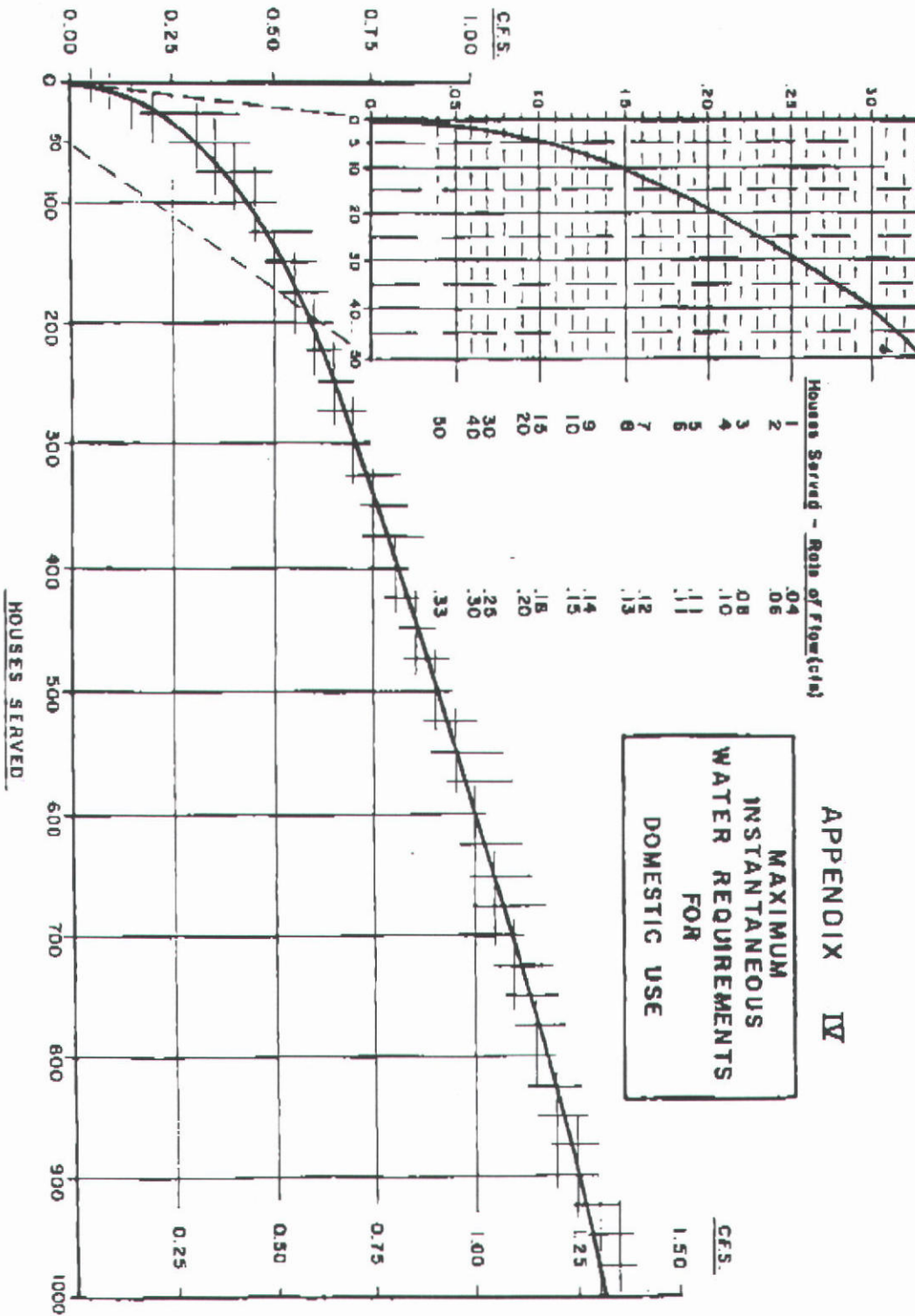
C.F.S.
1.50



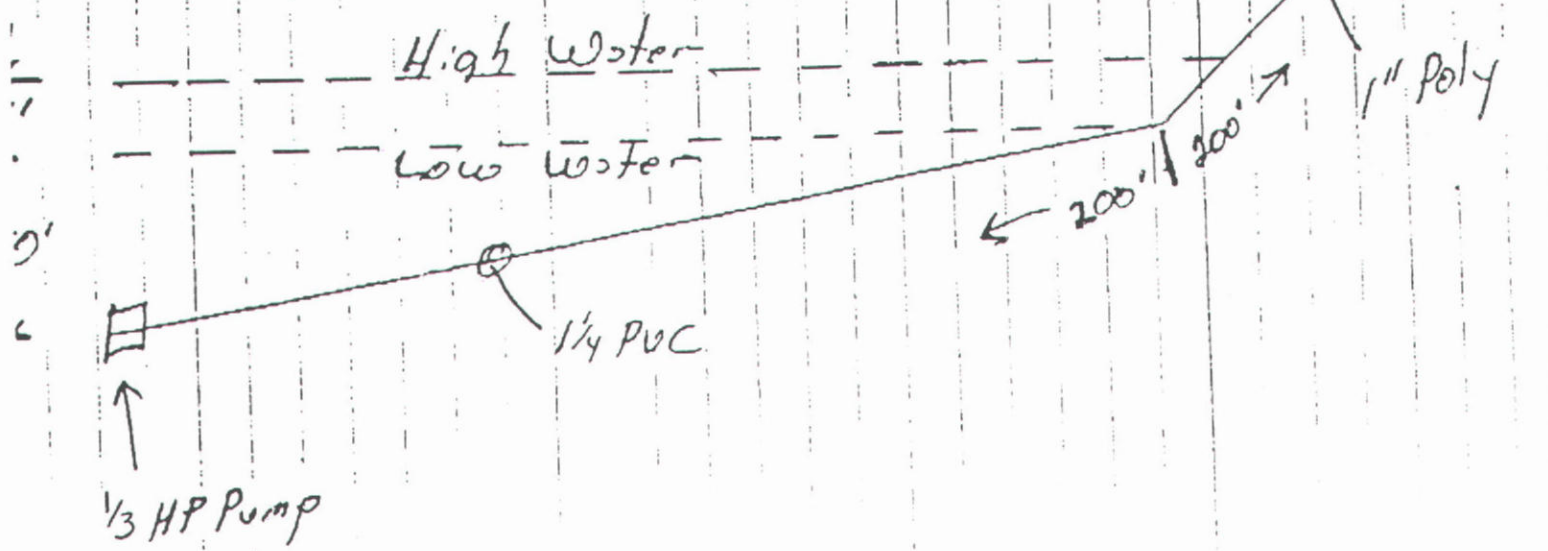
HOUSES SERVED

FIG. 1.

* (From Community Water Systems Source Book, J. Ameen, 1977, Technical Proceedings, North Carolina.)



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 DEC (1) 1999



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DEC 10 1999

Instrument No. 166751

Filed and recorded at the request of Tom Kuy
149 acres 2.41, 16.16, 19.82
at H. H. Harkins
Dec-17

John Sullivan
E-Office Auditor and Recorder
Valley County, Idaho

Fee \$5.00

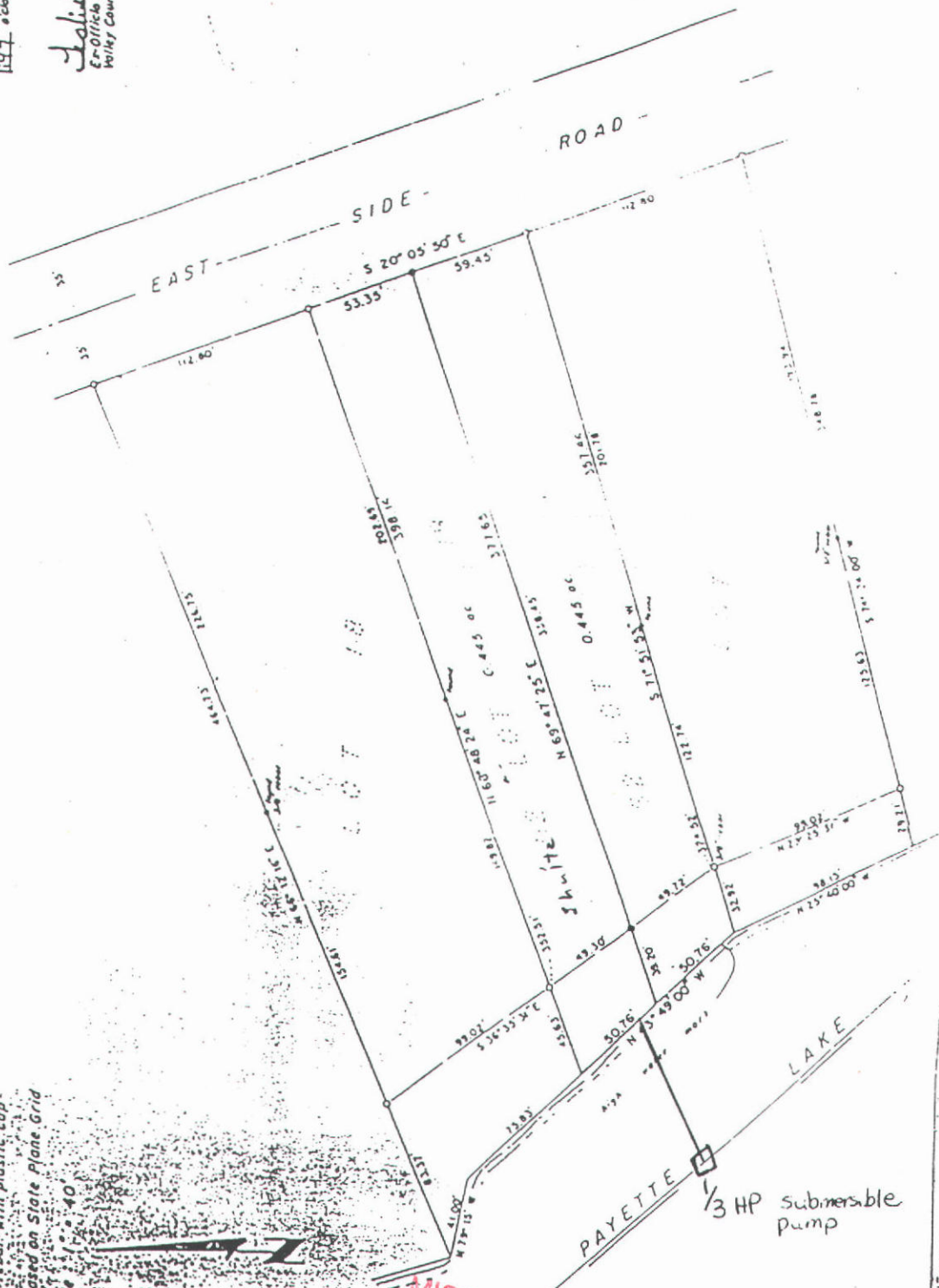
RECORD OF SURVEY

LOT 19

Harris Cove Subdivision
Book 1, Page 20 of Plats
Valley County, Id.

for
VAN LEUVEN
& LIMBAUGH

Kerr Surveying
1101) Coll. Id.



Found & rebar - Record of Survey, Book
1, Page 90, Inst. No. 151137, Sept 1986

Set 1 x 24" rebar with plastic cap

Bearings based on State Plane Grid

Scale 1" = 40'

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Surveyor's Note: This plat was prepared by the Surveyor, at the
request of the parties, and is subject to the provisions of the
statute governing the practice of surveying in this state. The
survey was made by me, the Surveyor, and the plat is correct
in accordance with the statute.



RECEIVED

OCT 20 1998

Publisher's Affidavit of Publication

STATE OF IDAHO

.SS

County of Valley

I, Carol J. Wright, being duly sworn and say, I am the receptionist of The Star-News, a weekly newspaper published at McCall, in the County of Valley, State of Idaho; that said newspaper is in general circulation in the county of afore said and is a legal newspaper; that the PUBLIC NOTICE, a copy of which is enclosed hereto and is a part hereof, was published in said newspaper once a week for a period of two weeks in the regular and entire issue of every number there of during the period of time of publication, and was published in the newspaper proper and not in a supplement; and that publication of such notice began October 1, 1998 and ended October 8, 1998.

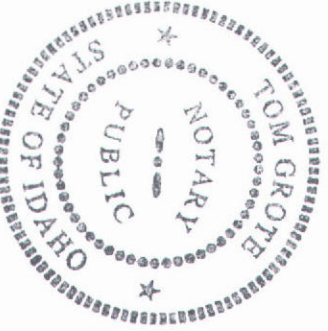
Carol J. Wright

Subscribed and sworn before me this the 9th day of October, 1998.
STATE OF IDAHO

COUNTY OF VALLEY

On this 9th day of October, in the year of 1998, before me, a Notary Public, personally appeared Carol J. Wright, known or identified to me to be the person whose name subscribed to the within instrument, and being by me first duly sworn, declared that the statements therein are true, and acknowledged to me that she executed the same.

Tom Grote
Tom Grote
Notary Public for Idaho
Residing at McCall, Idaho
Commission Expires: 1999



NOTICE OF APPLICATION FOR WATER RIGHT

The Following application(s) have been filed to appropriate the public waters of the State of Idaho:
65-13803 SHULTZ, STEPHEN, SHULTZ, PAULA
1339 E. 3RD AVE.
SALT LAKE CITY, ID 84103.
Source: PAYETTE LAKE, Tributary: PAYETTE RIVER, NORTH FORK.
Diversion Pt. LOT 4 (SWSE) Sec 35 T 19N R 03E in VALLEY County. Use: DOMESTIC (0.040 CFS). Total Diversion: (0.040 CFS).
Dated Filed: 8/14/1998.

In: VALLEY County, T19N R03E S35 Lot 4 (SWSE).
Permits will be subject to all prior water rights. Protests may be submitted based on the criteria of Sec. 42-203A, Idaho Code. Any protest against the approval of this application must be filed with the Director, Dept. of Water Resources, Western Region, 2735 Airport Way, Boise, Idaho 83705 together with a protest fee of \$25.00 on or before OCTOBER 19, 1998. The protestant must also send a copy of the protest to the applicant. KARL J. DREHER, Director 21c/10/8

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DEC 10 1999

RECEIVED

AUG 17 2000

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.

1 Permit No. 65-13803 Telephone No. (801) 359-0941
(801) 914-6461 (pager)

2 Name of Permit Holder(s) Stephen and Paula Shultz

3 Mailing Address. 1339 E Third Avenue
City Salt Lake City State Ut Zip 84103

4 Source of Water. Payette Lake If **GROUNDWATER** (well), Date Drilled: mo _____ / yr _____
Well Driller _____ Drilling Permit Number _____

5 Use(s) (as authorized by the water right permit)
Domestic (No. of households) 2 Stockwater (No. and type of stock) _____
Irrigation (No. of acres) _____ 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 _____ or No X
Has the measuring device been installed? Yes _____ or No X

8. Fee Enclosed. \$ 50 (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 Stephen or Paula Shultz - will arrange depending on date if needed Telephone Number. (801) 359-0941
Address. 1339 E Third Avenue, Salt Lake City, UT 84103

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

Signature of permit holder Stephen and Paula Shultz Date 8/14/00
(Include your title, if on behalf of company or organization)

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SEP 14 2000

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

IN THE MATTER OF APPLICATION FOR)
WATER RIGHT NO. 65-13803 IN THE NAME) **PRELIMINARY ORDER**
STEPHEN AND/OR PAULA SHULTZ)
_____)

Stephen and Paula Shultz (Shultz) filed application to appropriate water no. 65-13803 with the Idaho Department of Water Resources (IDWR), seeking to divert 0.04 cubic feet per second (cfs) from Big Payette Lake to supply domestic water to two dwellings. The application was protested by Susan and Avery Seifert (Seifert). The contested case was heard by IDWR on August 25, 1999. Based on the evidence presented at the hearing and the information contained in the application file, IDWR finds, concludes, and orders as follows:

FINDINGS OF FACT

1. On August 14, 1998, Shultz filed application to appropriate water no. 65-13803 with IDWR, seeking to divert 0.04 cfs from Big Payette Lake to supply domestic water to two dwellings.
2. The application seeks to legalize water service to a log cabin built on the shores of Big Payette Lake in the 1940's and also to a double-wide trailer placed on the property in 1975. Water has been supplied to these dwelling from Big Payette Lake since the structures were constructed or moved onto the property.
3. Application to appropriate water no. 65-13803 was filed because use of water for the cabin and trailer was not recognized by the Payette River Adjudication in a decree dated April 17, 1986.
4. Water from Big Payette Lake flows into the North Fork of the Payette River from an outlet located at the south end of the lake. The North Fork of the Payette River is a tributary of the Payette River. Waters of the Payette River are distributed to water users by a watermaster during periods of water shortage. Water users are seldom denied water, however. Instead, storage water from Cascade and Deadwood Reservoirs is delivered to water users whose natural flow rights would be cut off because of their later priority.
5. The Payette River Water Supply Bank is operated by the advisory committee for Water District No. 65, Payette River. At the hearing, Mark Limbaugh, Watermaster for the Payette River, testified that small, domestic uses of surface water are not currently regulated. He testified, however, that if they were regulated, past experience leads him to believe there would

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DEC 10 1999

be sufficient storage water in the Payette River Water Supply Bank for domestic users to lease water for their needs.

6. Seifert expressed concern about the double-wide trailer receiving a water right. Shultz Exhibit B, a letter from the City of McCall, states that the trailer, while not conforming to the current ordinance, is recognized as a prior existing structure. Stephen Shultz testified that there is no proceeding currently pending to determine whether the trailer is a legal dwelling. Based on the information presented at the hearing, the City of McCall has recognized the trailer as a dwelling that may remain and be occupied on the Shultz property.

7. Seifert also expressed concern about the sewer connection for the Shultz cabin and trailer. Seifert established that the sewer line for the Shultz property was stubbed into Seifert's sewer line that connects into the sewer main line. Seifert also established that there are separate sewer connections on the mainline for the Shultz cabin and trailer. There was no showing, however, that the present connection violates any ordinance of the city or violates any health or environmental laws or regulations of the state of Idaho.

8. In recent years, Shultz extended the intake for their submersible pump farther into the lake. As a result, Shultz were required to obtain an encroachment permit from the Idaho Department of Lands. The testimony showed that Shultz have already obtained the encroachment permit.

CONCLUSIONS OF LAW

1. Idaho Code § 42-203A 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 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.

2. The applicant bears the burden of proof regarding the factors IDWR must consider under Idaho Code § 42-203A.

3. There is water in the Payette River system to supply an additional small domestic use from Big Payette Lake. Should compensation for the withdrawal ever be required in the future, Shultz should be able to lease sufficient storage water to compensate for the withdrawal.

4. Approval of this application will not injury other water rights.
5. There is sufficient water to supply the needs of the proposed use.
6. Shultz own the cabin and double-wide trailer, and water has always been provided to the dwellings since their construction.
7. The application is not filed for speculation, delay, or in bad faith.
8. Because the project construction is already complete, the applicant has sufficient financial resources to complete the project.
9. Lake-side residences are an integral part of the economy and residential setting in Valley County.
10. These residences must have a source of domestic water supply. If a homeowner has complied with all planning and zoning ordinances, encroachment requirements, and health and welfare laws and regulations, the local public interest reviewed by IDWR is satisfied.
11. This proposed use of water is very small. The proposed use of water is consistent with principles of conservation of the waters of the state of Idaho.

ORDER

IT IS HEREBY ORDERED that application to appropriate water right no. 65-13803 is **APPROVED** subject to the following conditions:

1. Use of water under this water right shall be regulated by the watermaster of Water District No. 65, Payette River.
2. Use and disposal of water under this approval shall comply with applicable water quality standards of the Division of the Environmental Quality of the Department of Health and Welfare.
3. Domestic water under this right cannot be supplied to a dwelling not recognized by local governing entities or not complying with local zoning ordinances. Delivery of water to an illegal dwelling or structure is cause for the Director of the Idaho Department of Water Resources to revoke this water right.
4. The water right holder must comply with all permitting requirements of the Idaho State Department of Lands.
5. Irrigation occurring under this domestic use shall not exceed one-half acre.

6. The domestic use authorized under this right is deliverable to two residences, and shall not exceed 13,000 gallons per day.

7. If this right is ever regulated directly by the watermaster of the Payette River, the water right holder shall rent from the Payette River Water Supply Bank a sufficient volume of water to supply two residences a full supply of water.

8. The availability of water for this right is subject to all prior water rights, including those of Lake Reservoir Co.

Dated this 5th day of October, 1999.



GARY SPACKMAN
Hearing Officer

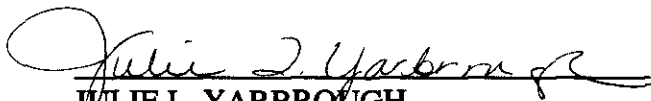
CERTIFICATE OF MAILING

I HEREBY CERTIFY that on the 18th day of October, 1999, the foregoing Preliminary Order was served upon the following by placing a copy of the same in the United States Mail, postage prepaid and properly addressed to the following:

Stephen and Paula Shultz
1339 East 3rd
Salt Lake City, UT 84103

Avery and Susan Seifert
117 East Skylark Dr.
Boise, ID 83702

Brian L. McMahan
P.O. Box 1066
McCall, ID 83638



JULIE L. YARBROUGH
Administrative Assistant, Water Allocations

State of Idaho
Department of Water Resources

Permit To Appropriate Water

NO. 65-13803

Priority: August 14, 1998

Maximum Diversion Rate:

0.04 CFS

This is to certify, that **STEPHEN SHULTZ**

PAULA SHULTZ

1339 E 3RD AVE

SALT LAKE CITY UT 84103

has applied for a permit to appropriate water from:

PAYETTE LAKE

tributary of **PAYETTE RIVER, NORTH FORK**

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: Lot 4 (SWSE), Sec. 35, Township 19N, Range 03E
VALLEY County

PLACE OF USE: DOMESTIC

TWN RGE SEC

19N 03E 35 Lot 4 (SWSE)

CONDITIONS OF APPROVAL AND REMARKS

1. Proof of application of water to beneficial use shall be submitted on or before **October 1, 2000**.
2. Subject to all prior water rights.
3. See Preliminary 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

18th day of October, 1999.


for: Karl J. Dreher, Director

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DEC 10 1999

P 414 388 437

US Postal Service

Receipt for Certified Mail

AVERY &/OR SUSAN SEIFERT
117 E SKYLARK DR
BOISE ID 83702

PS Form 3800, April 1995

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	

MICROFILMED
DEC 10 1999

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

P 414 388 436

US Postal Service

Receipt for Certified Mail

STEPHEN &/OR PAULA SHULTZ
1339 E 3RD AVE
SALT LAKE CITY UT 84103

PS Form 3800, April 1995

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	\$ 2 98
Postmark or Date	

MICROFILMED
1989

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
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- 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

Is your RETURN ADDRESS completed on the reverse side?

SENDER:

- ☐ Complete items 1 and/or 2 for additional services
☐ Complete items 3, 4a, 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

3 Article Addressed to

STEPHEN &/OR PAULA SHULTZ
1339 E 3RD AVE
SALT LAKE CITY UT 84103

4a Article Number

P 414 388 436

4b Service Type

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

7 Date of Delivery

1/11/94

5 Received By (Print Name)

6 Signature (Addressee or Agent)

Paula K Shultz

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

PS Form 3811, December 1994

102595-99-B-0223

Domestic Return Receipt

65-1990 3 Shultz

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

- 1 ☐ Addressee's Address
2 ☐ Restricted Delivery

Thank you for using Return Receipt Service.

UNITED STATES POSTAL SERVICE



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

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

RECEIVED

JUN 28 1999

WATER RESOURCES
WESTERN REGION

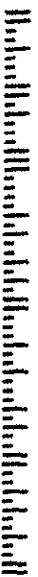
DEPARTMENT OF WATER RESOURCES

2735 AIRPORT WAY
BOISE, IDAHO 83706

MICROFILMED

DEC 10 1999

06



Is your RETURN ADDRESS completed on the reverse side?

SENDER:

- ☐ Complete items 1 and/or 2 for additional services
☐ Complete items 3, 4a, 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

3 Article Addressed to

AVERY &/OR SUSAN SEIFERT
117 E SKYLARK DR
BOISE ID 83702

4a Article Number

P 914

4b Service Type

- ☐ Registered
☒ Express Mail
☐ Return Receipt for Merchandise

388 437

- ☒ Certified
☐ Insured
☐ COD

5 Date of Delivery

12/17/99

5 Received By (Print Name)

Avery Seifert

6 Signature of Addressee or Agent

Avery Seifert

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

117 E Skylark Dr
Boise ID 83702

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

- 1 ☐ Addressee's Address
2 ☐ Restricted Delivery

65-13803

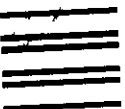
Thank you for using Return Receipt Serv

PS Form 3800, December 1999

102595-99-B-0223

Domestic Return Receipt

UNITED STATES POSTAL SERVICE



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

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

RECEIVED

JUN 28 1999

**WATER RESOURCES
WESTERN REGION**

**DEPARTMENT OF WATER RESOURCES
2735 AIRPORT WAY
BOISE, IDAHO 83706**

MICROFILMED

DEC 10 1999

Ident. No. 65-13803

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

OCT 07 1999

APPLICATION FOR PERMIT

To appropriate the public waters of the State of Idaho

1. Name: STEPHEN SHULTZ 801-359-0941
Address: 1339 E 3RD AVE
SALT LAKE CITY UT 84103
AND/OR
Name: PAULA SHULTZ 801-359-0941
Address: 1339 E 3RD AVE
SALT LAKE CITY UT 84103
2. Source: PAYETTE LAKE Trib. to: PAYETTE RIVER, NORTH FORK
3. Location of Point of Diversion: Lot 4(SWSE), Sec. 35, Township 19N, Range 03E
VALLEY County
4. Water will be used for the following purposes:

Purpose	From	To	CFS	(or)	AF
DOMESTIC	01/01	12/31	0.040		
5. Total quantity to be appropriated is:
0.040 CFS (and/or) AF
6. Proposed diverting works:
 - a. Description of ditches, flumes, pumps, headgates, etc.
SUBMERSIBLE PUMP.
 - 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 groundwater with a temperature greater than 85F being sought? NO
 - e. If well is already drilled, when?
Drilling Firm
Well was drilled for
7. Time required for the completion of the works and application of
the water to the proposed beneficial use is 1 year(s).

file copy - see original for processing
document
-82 5/18/99
RECEIVED
JUL 14 1999

8. Place of Use: DOMESTIC

TWN RGE SEC
19N 03E 35 Lot 4(SWSE)

9. a. Who owns the property at the point of diversion?
APPLICANT
b. Who owns the land to be irrigated or place of use?
APPLICANT
c. If the property is owned by a person other than the applicant,
describe the arrangement enabling the applicant to make this filing.

10. Remarks:

11. Map of proposed point of diversion and place of use attached? []

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.

Applicant

Received by _____ Date _____ Time _____ Preliminary check by _____

Fee \$ 50.00 Receipted by _____ #W024271 Date 8/14/1998

Publication prepared by _____ Date _____ Published in _____

Publication approved _____ Date _____

MICROFILMED
DEC 10 1998

Ident. No. 65-13803

Comments: Date: 9/18/1998 User-ID: STAYLOR

Subject: Use

Domestic use is for ^{two}~~one~~ home.

Comments: Date: 9/18/1998 User-ID: STAYLOR

Subject: Property Also Known As

Parcel No. RR 00327 000019AA.

Property also known as lot 19, north half, Harris Cove subdivision. Previously thought to be part of 65-10438 but SRBA determined otherwise. Use includes minor landscaping with two homes.

* d'base correction 4/23/99 -SL

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AUG 14 1998

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

To appropriate the public waters of the State of Idaho

1. Name of Applicant Stephen and Paula Schultz Phone (801) 359-0941
Mailing address 1339 E 3rd Avenue, Salt Lake City, UT 84103
2. Source of water supply BIG PAYETTE LAKE which is a tributary of Payette River, N.F.
3. Location of point of diversion is Township 19 N Range 03 E Sec. 35, in the SW 1/4, SE 1/4, Govt. Lot 4, B.M., Valley County;
additional points of diversion if any: _____

4. Water will be used for the following purposes:

Amount .04 CFS for Domestic purposes from 01/01 to 12/31 (both dates inclusive)
(cfs or acre-feet per annum)

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

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

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

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) 2.4 AF/yr *
cubic feet per second acre feet per annum

6. Proposed diverting works:

- a. Describe type and size of devices used to divert water from the source 1/3 HP Submersible Pump
- b. Height of storage dam _____ feet; active reservoir capacity _____ acre-feet; total reservoir capacity _____ acre-feet
- c. Proposed well diameter is _____ inches; proposed depth of well is _____ feet
- d. Is ground water with a temperature of greater than 85°F being sought? _____
- e. If well is already drilled, when? _____; Drilling firm _____;
Well was drilled for (well owner) _____; Drilling Permit No. _____

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

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

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

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* completed system per 9/15/98 to KCON w/ Paula Schultz.
ITEM 5 per dept standards.

SEP 1 1999

-82

9. Description of place of use:

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

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

TWP	RGE	SEC	NE				NW				SW				SE				TOTALS
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
19N	03E	35																D	
																	1.4		*

Total number of acres to be irrigated _____

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

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

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

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

12. Remarks: Parcel No RR 00327 000019AA

COMMENTS { - property also known as lot 19, North Half, Harris Cove Subdivision
Previously thought to be part of 65-10438 but SABA determined
otherwise. Use includes minor landscaping with 2 homes. }

13. MAP OF PROPOSED PROJECT ATTACHED ☒ Show clearly the proposed point of diversion, place of use, section number, township and range number.

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

*Label as
"Applicant plus
I own info" **

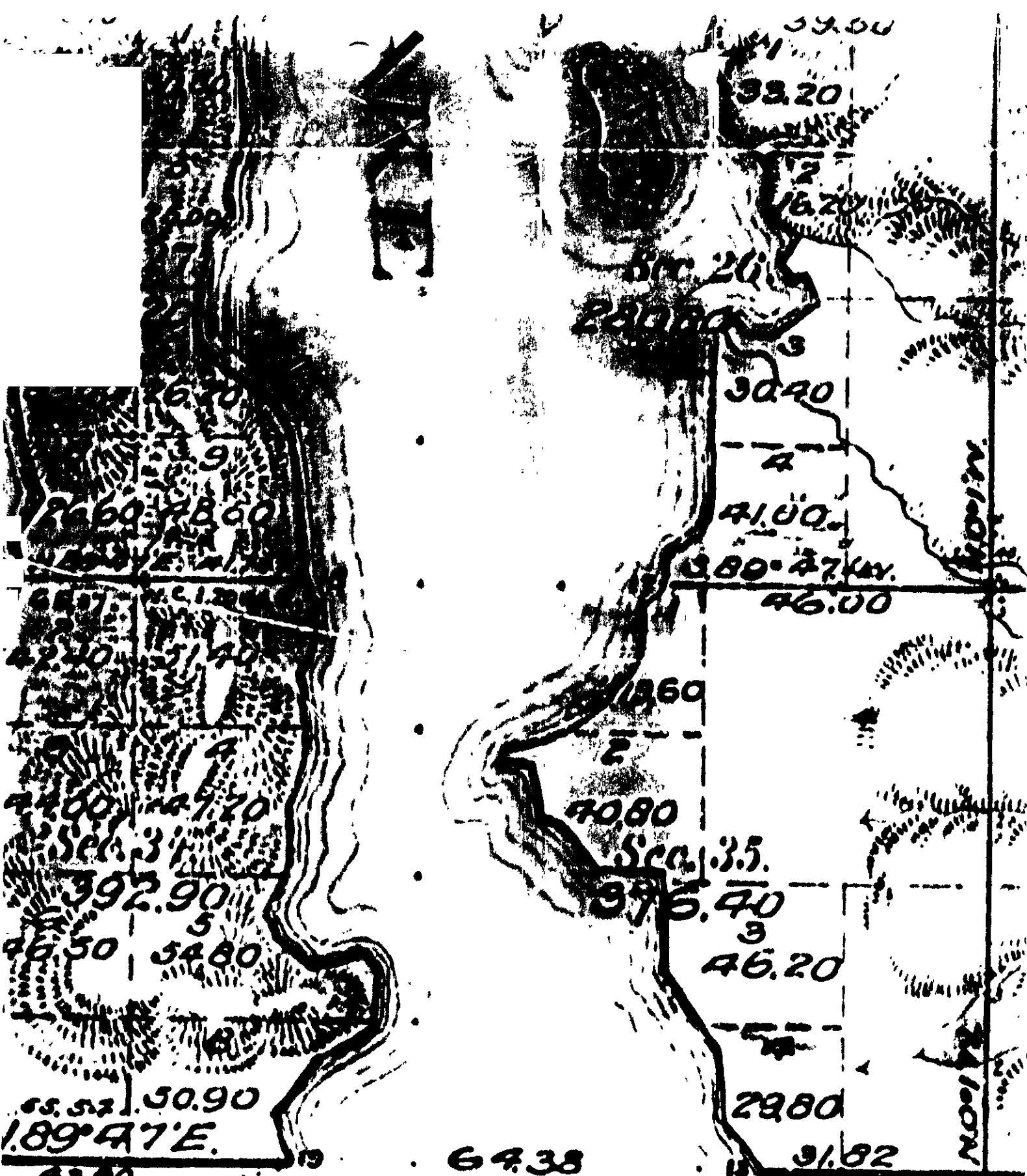
Stephen M. Shultz Paula K Shultz
 (Applicant)

Received by DB Date 8-14-98 Time 10:30 AM Preliminary check by SL
 Fee \$ 50- Received by DB # W024271 Date 8-14-98
 Publication prepared by SL Date 9-23-98 Published in Star News
 Publication approved SL Date 10-22-98 10-1-98-98

* SL 9/16/98 per file info & zone standards.

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DEC 10 1999



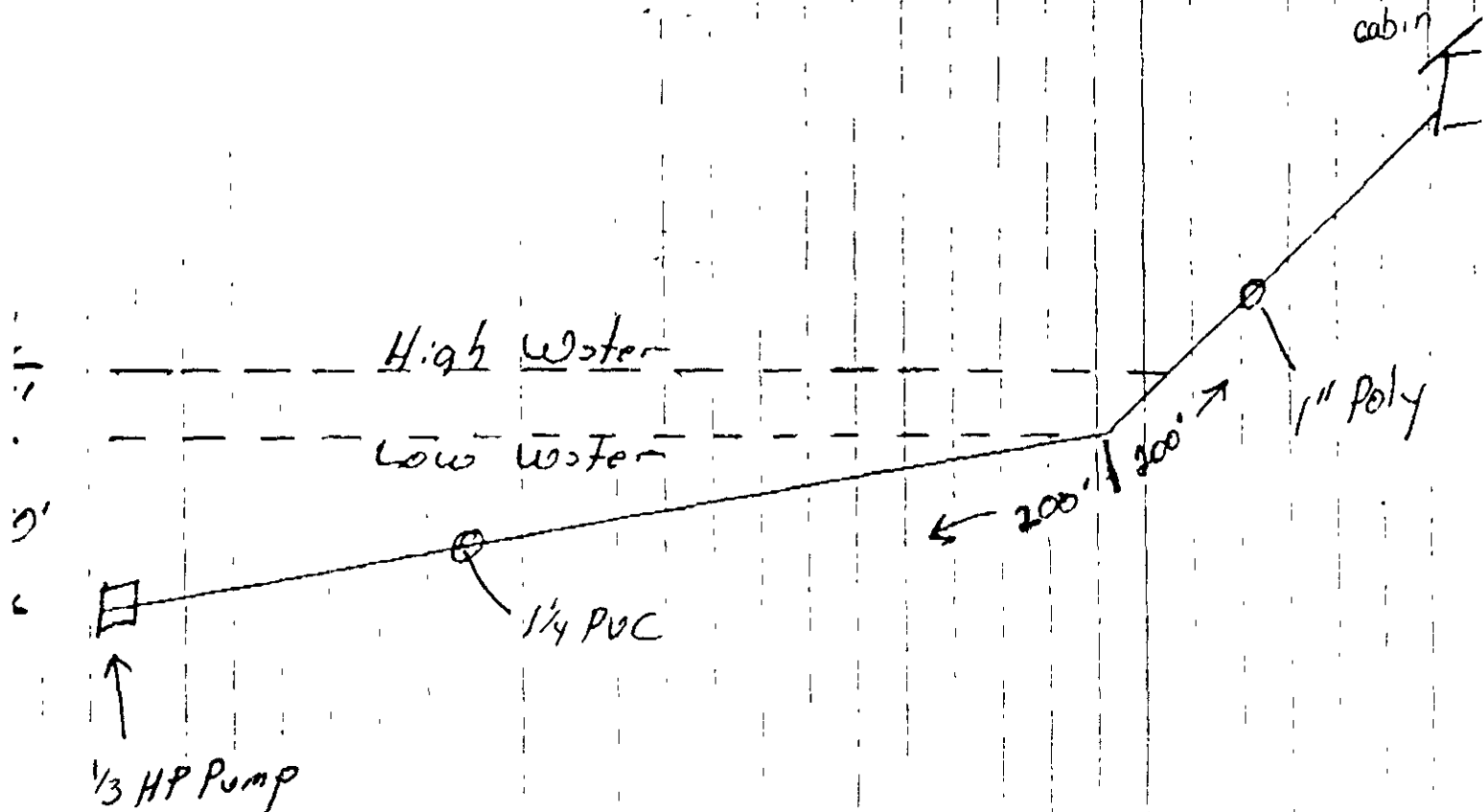
MICROFILMED

19N 3E
5.35

1999

...ination

The above...



Applicant's diagram

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DEC 10 1999

SD-4110
INQUIRY

Idaho Department of Water Resources
Adjudication Remarks Screen

Date: 09/15/98
Time: 16:49:30

Water Right Number: 65-10438
EXP

FIRST PAGE

PARCEL NO. RP 00327000019B A
PROPERTY ALSO KNOWN AS, LOT 19 HARRIS COVE SUBDIVISION.

(GOLD4=Prev Screen) (GOLD6=End of Data)
(GOLD5=Next Screen)

(Enter=Exit)
(GOLD8=Cancel)

*Separate system
from Schultz's →*

*Seifert's D/I
different parcel # than
Schultz*

RECEIVED
FEB 10 1999

SC

APPLICATIONS CHECKLIST

APPLICATION NO. 65-13803 APPLICANT: Shultz

- ☒ Log in Apps.lis
- ☒ Make files & labels
- ☒ Add bar code
- ☒ Advertise
- ☒ Put dates & newspaper in file
- ☒ Comment letters
- ☒ Proof Affidavit
- ☐ Send to S.O. (Apps.lis & Bar Code)

IF PROTESTED

- ☒ Put protest date in data base
- ☒ Put protest in apps.lis
- ☒ Green sticker on file
- ☒ Protest letters
- ☐ Remind people to send copies of their corres. to app & prot
- ☒ Do protest info sheet
- ☒ send room confirmation letter
- ☐ Make sure mtg rooms are handicap approved.
- ☒ Make sure all parties are on the mailing list.
- ☐ Remove prot date from data base
- ☐ Change apps.lis
- ☐ Change bar code
- ☐ Sent to SO

TRANSFERS

- ☐ Make copies for file, Jan & SO (Pam & Jim)
- ☐ Add dates and transfer no. to advertising
- ☐ Transfer by computer to S.O. (DWR03::VAULT)



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

September 6, 2000

DIRK KEMPTHORNE
GOVERNOR

KARL J. DREHER
DIRECTOR

STEPHEN SHULTZ
PAULA SHULTZ
1339 E THIRD AVE
SALT LAKE CITY UT 84103

PROOF ACKNOWLEDGMENT LETTER

RE: PERMIT NO. 65-13803

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, and that it meets the permitted beneficial use. An examiner from our Western Regional Office will be contacting you, probably during the summer of 2001 to schedule a meeting to inspect your diversion.

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 **Western** Regional Office of the department in Boise at (208) 334-2190.

Sincerely,

Deborah J. Gibson
Administrative Assistant
Water Allocation Bureau

Encl

c: IDWR - Regional Office

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SEP 11 2000

ANALYSIS SHEET
FOR
PROOF OF BENEFICIAL USE

Permit No. 05-13803 Reviewed by D. Gibson Date 9/6/00

GENERAL CONSIDERATIONS

Yes Name same as permit?

Yes Address same as permit?

Yes Proof timely received?

If not, complete calculation below.

TYPES OF USE

Domestic

Correct Uses? Yes

SOURCE OF WATER

Yes Surface water source

No Ground water source

/ Drilling permit required?

/ Copy in the file? Drilling Permit No. /

/ Amount paid for permit

/ Well log in the file?

/ Correct?

LICENSE EXAMINATION FEE

Yes Required?

\$50 Amount Submitted

Yes Correct?

MEASURING DEVICE

No Required?

No Installed?

/ Waiver requested?

PRIORITY CALCULATION

Date proof received

8/17/00

Date proof due

10/1/00 -

No. of days late

/ =

Priority Date

/ +

New Priority Date

/

DEFICIENCIES OR ACTION ITEMS

Not included in proof.

DATA ENTRY

New Address

No

Proof Made

8/17/00

RECEIVED

AUG 17 2000

Department of Water Resources

8/14/00

Dear Ms Drew Ellis -

Pursuant to our telephone conversation, I am enclosing the "Proof of Beneficial Use" form (completed) as well as check # 5307 in the amount of \$50.00 for the "License Examination Fee" for Water Permit # 65-13803.

We will be in McCall from Aug 19 - Sept 3, 2000 but will not return until the following summer. Is it possible to schedule the field examination accordingly?

Thank you for your help in this matter -

Sincerely -

Paula Shultz

MICROFILMED

SEP 13 2000

RECEIPT
For Monies Paid
to the
Idaho Department of Water Resources

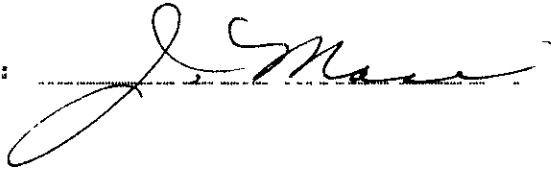
Receipt No: 00000001

Date: 11/17/2000
Time: 10:35:48

Received
From: SPULL, STEPHEN M

Type of Payment	Program Acct	Amount
BENEFICIAL USE #65-13E 13	55104	11.00
CHECK 5307		
	Total	11.00

Region: STATE

Signature: 

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SEP 13 2000

July 31, 2000

STEPHEN SHULTZ
PAULA SHULTZ
1339 E 3RD AVE
SALT LAKE CITY UT 84103

PROOF DUE NOTICE

RE: PERMIT NO. 65-13803

Dear Permit Holder:

One of the conditions of approval of the above referenced water permit was that proof of the extent of your beneficial use must be submitted to this office on or before October 1, 2000.

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

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

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

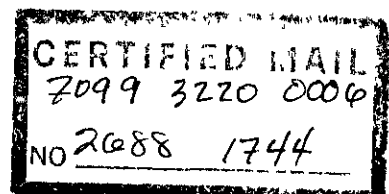
SINCERELY,

DEBORAH DREW-ELLIS
Administrative Assistant

Enclosures

MICROFILMED

SEP 13 2000





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 18, 1999

RE: In the matter of Application for Permit No. 65-13803 in the name of Stephen and/or Paula Schultz

Dear Interested Parties:

The accompanying order is a "**preliminary order**" issued by the department pursuant to section 67-5243, Idaho Code. It can and will become a final order without further action of the department unless a party petitions for reconsideration within fourteen (14) days after issuance as further described below:

PETITION FOR RECONSIDERATION

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

If any party appeals or takes exceptions to this preliminary order, opposing parties shall have twenty-one (21) days to respond to any party's appeal. Written briefs in support of or taking exceptions to the preliminary order shall be filed with the Director. The Director retains the right to review the preliminary order on his own motion.

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DEC 16 1999

ORAL ARGUMENT

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

CERTIFICATE OF SERVICE

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

FINAL ORDER

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

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

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

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

APPEAL OF FINAL ORDER TO DISTRICT COURT

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

- i. A hearing was held,
- ii. The final agency action was taken,

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JUN 10 1993

- iii. The party seeking review of the order resides, or
- iv. The real property or personal property that was the subject of the agency action is located.

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

Sincerely,


L. GLEN SAXTON, Chief
Water Allocation Bureau

Enclosure

c: IDWR - Western Region

MAILED
JUL 10 1993

Do not send to Jon
Gorski or any other
attorney for Serfuts
unless a notice of
appearance is filed

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
APPROPRIATION APPLICATION ANALYSIS SHEET

INITIAL REVIEW BY: RL DATE: 9/16/98 APPLICATION: 65-13803

REQUIRED INFORMATION

Name: (If applicant is a corporation or partnership, names and addresses for the director, officers, and other partners must be included.)
Address:
Source: (See USGS Quad for names of water sources)
Point of Diversion: (10 acres for spring, lot & block descriptions for Subdivisions, local name)
County:
Quantity: (flow and/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: (show T, R, S, QQ &/or QQQ)
Subdivision plat: (for > 1 home in restricted area. $\geq$ 5 homes in non-restricted area)
Signature: (If applicant is corp., partnership, or municipality, title of signatory is required)
Correct fee paid

Gov't. Lots:
4 P/D
P/U

ADDITIONAL INFORMATION

N/A ADVERTISE REMARK(S)
(Reviewer identify which remarks)
7 T FLAG CHANGED TO P FLAG

YES NO

see next page
Overlapping place of use: (Describe source & relationship to present application on next page.)
Overlapping point of diversion.
Critical groundwater area:
Groundwater management area:
1992 moratorium: letter to IDFG will cover this as needed
Bull trout impact area
E-mail to SCA staff: (perennial stream, non-pump diversion &/or any mining).
E-mail to Dam Safety staff: (for any storage)
Mitigation plan: Check any that apply.
N/A immediate = acceptable plan required and submitted. CONS. USE $\pm$ 0
so N/A
future = open areas, acceptance of condition of approval is in file.
Send power requirement letter:
Send fish farm requirement letter:
Power residency affidavit:
Diversion greater than 5 cfs or 500 af or irrigation greater than 200 acres: (If yes, attach Large Diversion supplementary analysis sheet.)
*REQUEST ADDITIONAL INFORMATION FROM THE APPLICANT

Also see IDL info & Appl. filed w/ IDL for
waterline - w/ my 11/2/98 letter.

Date Requested ✓ Date Response Received ✓

PROCESSING

APP. NO. 65-

YES NO

☒ ☐ In form for advertising:
☐ ☒ Statewide advertising: (> 10 cfs &/or 1000 af)
☒ ☐ Fee amount, receipt number and date recorded on application:

SEND COPIES TO: NOTE IF E-MAIL COMMENT LETTER USED.☒ YES ☐ NO

☐ ☒ I.D. Health & Welfare
☐ ☒ I.D. District Health
☒ ☐ I.D. Fish & Game
☐ ☒ I.D. Lands

☒ YES ☐ NO

☐ ☒ U.S. BLM
☐ ☒ U.S. Forest Service
☒ ☐ Water Dist. # 65
☐ ☒ Other

ask about

FINAL REGIONAL PROCESSING REVIEW:

Bull trout &/or other fishery concerns

YES NO

☒ ☐ Affidavit of publication received:
☒ ☐ Application published correctly: If not, record action taken.

☒ ☐ Publication dates and paper recorded on application:☐ ☐ Final date for protest 10-19-98☒ ☐ Protests received.☐ ☐ Recommendations attached:☐ ☐ Measuring device required:☐ ☐ Measuring port required:☐ ☐ Water delivered by water master? District #☐ ☐ Special conditions of approval or cover letter:

See below for additional information

Recommended Date or Priority

Recommended by: Date:

STATE OFFICE REVIEW

See below for additional information. By Date

ADDITIONAL INFORMATION:

Overlap usually N/A in Review of minor systems but:
 SRBA + PRBA file history shows 65-10438 previously thought to
 cover this existing O/Z system. However, recent SRBA determination
 showed that right is for separate O/I use other than on L 19
 of subd. (for Septent). So now appl is for separate pump for
 Schultz's O/Z.

Avery and Susan Seifert
117 E. Skylark Dr
Boise, Idaho 83702
September 10, 1999

Gary Spackman
State of Idaho Department of Water Resources
Western Region Office
2735 Airport Way
Boise, Idaho 83705-5082

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SEP 21 1999

Department of Water Resources

RECEIVED

SEP 13 1999

WATER RESOURCES
WESTERN REGION

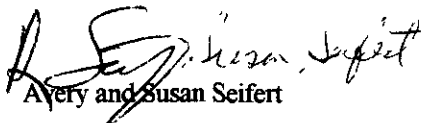
Dear Mr. Spackman,

Thank you for your letter dated September 7, 1999. We are requesting a duplicate tape, which has not been reformatted of the testimony on water right application no. 65-13803. We will have a transcript of the testimony prepared from the duplicate tape. It is important the tape has not been reformatted.

We hope this clarifies what we are seeking. The notice of the hearing conference we were given by the Department describes a procedure whereby the parties are entitled to a copy of the tape upon written request and the payment of the cost of reproducing the tape. Please send us the cost and we will issue a check immediately.

Thank you for your time

Sincerely Yours


Avery and Susan Seifert

OCT 07 1999

CC Brian McMahan
Senator Atwell Parry

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SEP 14 1999



State of Idaho
DEPARTMENT OF WATER RESOURCES

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

September 7, 1999

DIRK KEMPTHORNE
GOVERNOR

KARL J. DREHER
DIRECTOR

AVERY &/OR SUSAN SEIFERT
117 E SKYLARK DR
BOISE ID 83702

Re: Your Request for Copies of a Hearing Report

Dear Mr. & Mrs. Seifert:

A letter from you was received in this office on August 31, 1999, requesting "copies of the hearing report on application for water right no. 65-13803." I am uncertain what it is you are seeking.

I recorded the testimony on cassette tape at a speed of 1.2 revolutions per minute. I could reproduce a copy of the tape for you at minimal cost. You must find a machine that will play back the tape, however. People who have requested a copy of the tape in the past have been frustrated because of their inability to find a machine that will play the tape at an audible speed.

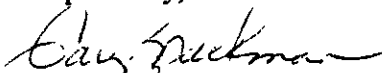
On the other hand, if you wish the Idaho Department of Water Resources (IDWR) to prepare a transcript of the testimony, the cost will be significant. The cost is approximately \$3.00 per page and preparation of the transcript could cost several hundred dollars. IDWR probably would require a prepayment of the estimated costs prior to requesting that the transcript be prepared.

Finally, I could interpret your letter as simply requesting a copy of the decision that will be issued. I am, of course, required to serve you with a copy of the decision. The service of a copy of the decision will cost nothing.

Again, if you would clarify your request, I would be happy to respond to it.

Finally, may I remind you that any correspondence with the hearing officer should be copied to Brian McMahan, attorney for Stephen and Paula Shultz. I am forwarding a copy of your letter to him.

Respectfully,


Gary Spackman

GS:st

CC: Stephen & Paula Shultz
B McMahan

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DEC 10 1999

Avery and Susan Seifert
117 E Skylark Dr
Boise, Idaho 83702
August 30, 1999

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31
AUG 20 1999

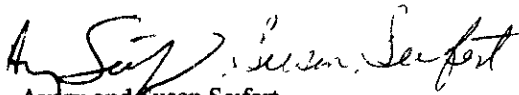
WATER RESOURCES
WESTERN REGION

Gary Spackman
Idaho Department of Water Resources
Western Region Offices
2735 Airport Way
Boise, Idaho 83705-5082

Dear Mr. Spackman,

Please send us copies of the hearing report on application for water right no 65-13803
We understand there is a fee Please include the invoice

Sincerely Yours,


Avery and Susan Seifert

cc Senator Atwell Parry

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DEC 10 1999

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AUG 17 1999

WATER RESOURCES
WESTERN REGION

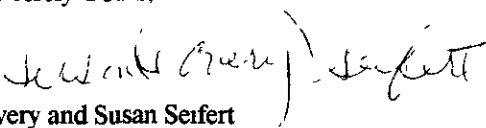
Avery and Susan Seifert
117 E Skylark Dr.
Boise, Idaho 83702
August 16, 1999

Gary Spackman
State of Idaho Department of Water Resources
Western Region Office
2735 Airport Way
Boise, Idaho 83705

Dear Mr Spackman:

Mr. David Paulsen will be attending the pre-hearing conference you have scheduled in McCall, Idaho, on August 25, 1999, at City Hall, 9 a m., on the water right application permit No. 65-13803

Sincerely Yours,


Avery and Susan Seifert

cc: Stephen and Paula Shultz
Senator Atwell Parry

MICROFILMED

DEC 10 1999

ROSTER OF ATTENDANCE

IDAHO DEPARTMENT OF WATER RESOURCES
2735 AIRPORT WAY, BOISE, IDAHO 83705

Re: Application for Permit No. 65-13803 in the Name of Stephen &/or Paula Shultz

Place: McCall City Hall, American Legion Hall, McCall, Idaho

Date: Wednesday, August 25, 1999

Conducted by: Gary Spackman

NAME

ADDRESS

Brian L. McMahon	Box 1066 McCall ID 83638
STEPHEN M SHULTZ	1339 E. 3 rd AVE. S.L.C. UT 84103
Paula K Shultz, Paula K Shultz	1339 E 3 rd Av. SLC. UT 84103
~~Deed Schwab~~	PO Box 158 McCall
Terry Seghlan	600 E. River Park Lane #105, Boise, 83706
MARIE LINBAUGH	102 N. MAIN PAYETTE 83661
DORIS E. PAULSEN	25282 STEPHEN LN PARMA, ID 83660
David Paulsen	25282 Stephen Ln Parma Id 83660
Aaron Seifert	117 E. SKYLARK Dr Boise Id 83702
Avery Seifert	117 E. Skylark Dr. Boise Id 83702
Jan Shultz	IDAHO BOISE

MICROFILM...

DEC 17 1999

SEIFERT DRAWING

Lot 19

N 1/2

S 1/2

Parking

Seifert

Shultz

Fitzwater

Property Line

Trailer

Parking

Shed

Shed

DECK

Cabin

DECK

Cabin

DECK

MICROFILMED TO SCALE
(DEC 7, 1999)

PROTESTANT'S EXHIBIT No 2

September 24, 1998

Stephen & Paula Shultz
1339 E. 3rd Avenue
Salt Lake City, UT 84103

RE: Your property at 2117 Eastside Dr., McCall (N½ of Lot 19, Harris Cove Sub.)

Dear Mr. & Mrs. Shultz,

I met with Mrs. Susan Seifert, your neighbor to the south at 2115 Eastside Drive, on September 17 to discuss property usage in the area. During that meeting I found a variety of nonconforming uses and structures occurring on both properties. At this time there are no violations of McCall City Code occurring on either property. Rather than get into details, I will simply summarize two general considerations.

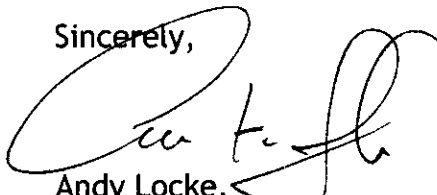
First, I will presume that the log cabin on your property is the primary dwelling on the site, and that the mobile home is secondary. The existence of two dwellings on a single property is contrary to MCC 3-8-060 (D), which states that: *No more than one dwelling unit per lot shall be permitted except as conditionally permitted under Section 3-8-030 (C), Guest house, or 3-8-030 (E), Multifamily dwelling units.* As the mobile home pre-dates the enactment of zoning in this area, per MCC 3-28-050, it is considered to exist as a valid conditional use. In short, the structure is "grandfathered." Please be advised that usage of the mobile home is limited to a guest house only, and the structure may not be rented. If you choose to rent the property, you must rent both the primary dwelling and the guest house, and those renters must follow the requirements noted above.

Second, the deck area which appears to be shared by both yourselves and the Seiferts is located within 50 feet of the high water mark. This structure is also nonconforming. As such, construction in this area is limited to maintenance of the deck only, and new construction is prohibited.

I have read a series of correspondence between yourselves and the Seiferts. It appears that most issues are of a civil nature.

If you have any questions, please feel free to contact me at the number listed below. I can also be reached by e-mail at the following address: planner@mccall.id.us.

Sincerely,



Andy Locke,
Planning & Zoning Administrator

CC: Avery & Susan Seifert

MICROFILMED
DEC 1 1999

Shultz Ex. B

AJ0749NP
No. 65-10438

**IDAHO DEPARTMENT OF WATER RESOURCES
ADJUDICATION CLAIM PROFILE REPORT
(REGIONAL)**

DATE: 06/03/98
PAGE: 1

OWNER CODE	NAME & ADDRESS	PRIORITY DATE	WATER USE	USE PERIOD FROM TO	DIVERSION RATE	DIVERSION VOLUME
C	SUSAN G SEIFERT	08/01/1948	DOMESTIC	01-01 12-31	0.02 CFS	1.20 AFA
C	AVERY L SEIFERT 117 SKYLARK DR BOISE ID 83702 (208) 343-7532				0.02 CFS	1.20 AFA
				TOTAL DIVERSION:		

Water Source: BIG PAYETTE LAKE

Point(s) of Diversion: T19N R03E S35 Lot04(SWSE)

[illegible]

POL County: VALLEY

Non-Irrigation Uses: 1 HOME

Conditions of Approval:

N11 - THE QUANTITY OF WATER DECREED FOR THIS WATER RIGHT IS NOT A DETERMINATION OF HISTORICAL BENEFICIAL USE.

N13 - THE QUANTITY OF WATER UNDER THIS RIGHT SHALL NOT EXCEED 13,000 GALLONS PER DAY.

Remarks: EXP
PARCEL NO. RP 00327000198 A
PROPERTY ALSO KNOWN AS, LOT 19 HARRIS COVE SUBDIVISION.

Dates:	Exam Made Date:	Verified Date:	Objection Filed Date:

Misc: Water District Number: 65 Field Inspection Flag: Presumption Flag:

Comments: Date: 03/07/1997 User-ID: CORR3 Subject: COPIED FROM REMARKS
THERE HAS ALWAYS BEEN TWO CABINS ON THIS PROPERTY.
ADDRESS CHANGED PER REQUEST RECEIVED 9/10/96. LH

Date: 02/03/1998 **User-ID:** SBOCK
DECREE WAS FOR ONLY 1 HOME **Subject:** **USES**

Date: 06/03/1998 **User-ID:** JSHURTE **Subject:** CHANGE OF OWNERSHIP

MICROFILMED
DEC 10 1999

Comments:

Date: 06/03/1998 User-ID: JSHURTE Subject: CHANGE OF OWNERSHIP
THE CHANGE OF OWNERSHIP DONE THIS DATE IS TO SHOW THE ORIGINAL
OWNER OF THE ORIGINAL CABIN FOR WHICH THIS WATER RIGHT WAS
DECREED FOR. THE OLD PAYETTE RIVER BASIN ADJUDICATION RECORDS
SHOW THAT THE CABIN WAS ORIGINALLY OWNED BY GREENE'S, THEN SOLD
TO VAN LEUVEN'S, WHO IN TURN SOLD TO SEIFERT'S (WARRANTY DEED IN
FILE). THERE IS SUPPORTING DOCUMENTATION SHOWING THAT THE RIGHT
WAS VAN LEUVEN'S AND OUR DATABASE SHOWS VAN LEUVEN'S AS THE
DECREED OWNER. THE CONFUSION CAME WHEN THE SNAKE RIVER BASIN
ADJUDICATION CLAIM WAS FILED FOR TWO HOMES BY THE SEIFERT'S. AT
THE TIME THE CLAIM WAS FILED BOTH HOMES WERE HOOKED UP TO THE OLD
SYSTEM, THEREFORE, THE SEIFERT'S FILED ON BOTH. HOWEVER, SINCE
THE ORIGINAL DECREE WAS FOR ONE HOME, IDWR REDUCED THE
RECOMMENDATION TO THE SRBA COURT TO ONE HOME. THEREFORE, MRS.
SEIFERT BECAME CONCERNED AS TO WHICH PERSON SHOULD HAVE THE WATER
RIGHT. SINCE THE WATER RIGHT GOES WITH THE ORIGINAL HOME AND
THERE IS EVIDENCE IN THE FILE THAT THE SEIFERT'S ARE THE OWNERS
OF THE ORIGINAL HOME, THIS CLAIM IS BEING CHANGED INTO THEIR
NAMES ONLY.

Audit:

06/03/98 JSHURTE

MICROFILMED
SEP 14 1999

INTERNAL USE

Houses Served - Rate of Flow (cfs)

1	.04
2	.06
3	.08
4	.10
5	.11
6	.12
7	.13
8	.14
9	.15
10	.18
15	.20
20	.25
30	.30
40	.33
50	

MAXIMUM
INSTANTANEOUS
WATER REQUIREMENTS
FOR

* DOMESTIC USE

C.F.S.

1.50

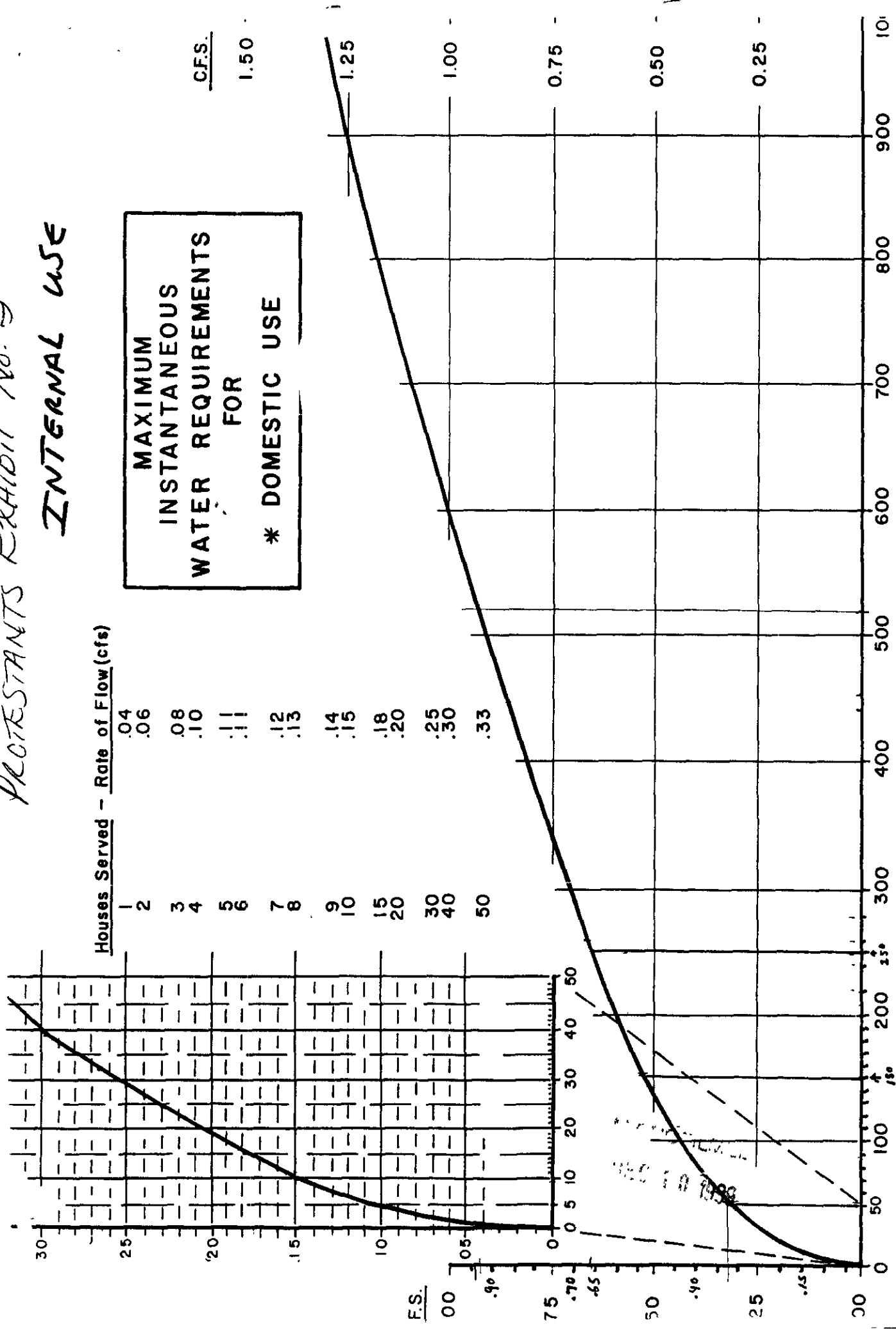
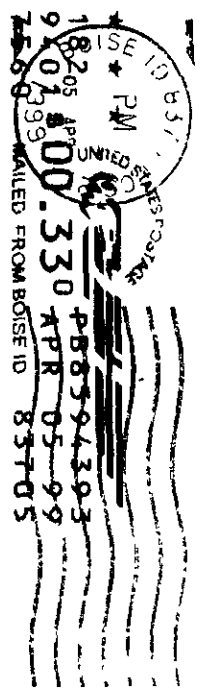


FIG. 1.

* (From Community Water Systems Source Book, J. Ameen, 1977, Technical Proceedings, North Carolina.)

IDAHO DEPARTMENT OF WATER RESOURCES
WESTERN REGION
2735 Airport Way
Boise, Idaho 83705-5082
RETURN SERVICE REQUESTED

AVENUE 5100 SUSAN SEIFERT
117 E. SKYLARK DR.
BOISE, ID 83702



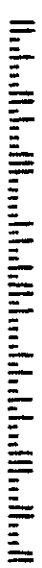
Received

4/6/99

Four
Standards
for
in-house
use
Note:
.02 cfs $\approx$ 9 gpm

6661 0 1 100

83702+2322



Susan Seifert
117 E. Skylark Dr.
Boise, Idaho 83702
August 10, 1999

RECEIVED
AUG 12 1999
WATER RESOURCES
WESTERN REGION

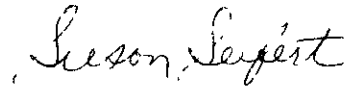
Gary Spackman
Idaho Department of Water Resources
Western Region
2735 Airport Way
Boise, Idaho 83705-5082

Dear Mr Spackman,

I am writing you about water right application no.65-13803.
In your letter to my husband, Avery and I, dated April 28,1999, you stated
that the department would make Jan Shurte available to testify We would
like her to be present at the hearing scheduled on August 25,1999, at 9:00 a.m.
at McCall City Hall, American Legion conference room,216 Park St , McCall,
Idaho 83638. We believe she can clarify facts relevant to this dispute

Thank You.

Sincerely Yours,


Susan Seifert

cc Stephen and Paula Shultz
Tom Morris, Moffatt Thomas
Senator Atwell Parry

MICROFILMED

AUG 14 1999

BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE

STATE OF IDAHO

**IN THE MATTER OF APPLICATION)
FOR PERMIT OF WATER RIGHT NO.)
65-13803 IN THE NAME OF)
STEPHEN &/OR PAULA SHULTZ.)**

NOTICE OF HEARING

On August 14, 1998, Stephen &/or Paula Shultz filed with the Idaho Department of Water Resources (IDWR) application for permit no. 65-13803. The application was protested by Avery &/or Susan Seifert.

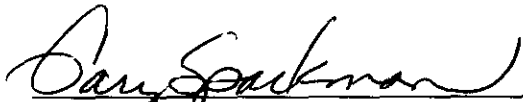
The Department has scheduled the matter for hearing on **Wednesday, August 25, 1999, at 9:00 a.m. at the McCall City Hall, American Legion conference room, 216 Park St., McCall, Idaho 83638.** The hearing will be held in accordance with provisions of Chapters 2 and 17, Title 42 and Chapter 52, Title 67, Idaho Code and the adopted Rules of Procedure of the Department. A copy of the rules may be obtained from the IDWR upon request. The presiding officer at the hearing will be Gary Spackman.

If you plan to offer exhibits for the record, note that IDAPA Rule of Procedure 37.01.01.606 requires that you provide a copy of exhibits to each party and to the presiding officer.

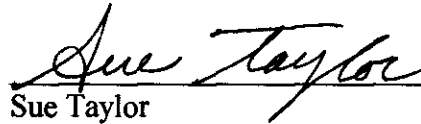
The hearing will be conducted in a facility which meets the accessibility requirements of the Americans with Disabilities Act. If you require special accommodations in order to attend, participate in or understand the hearing, please advise the department within ten (10) days prior to the hearing.

All parties to the matter will have the opportunity to respond and present information and argument on all issues involved.

Dated this 21st day of June, 1999.


GARY SPACKMAN

I hereby certify that on the 22nd day of June, 1999, I mailed a true and correct copy, postage prepaid, of this document to the applicant(s) and protestant(s) listed:



Sue Taylor
Senior Secretary

CERTIFIED MAIL

STEPHEN &/OR PAULA SHULTZ
1339 E 3RD AVE
SALT LAKE CITY UT 84103

AVERY &/OR SUSAN SEIFERT
117 E SKYLARK DR
BOISE ID 83702

NON-CERTIFIED MAIL

AMY PEMBERTON
MILLEMANN PITTENGER & MCMAHAN LLP
PO BOX 1066
MCCALL ID 83638

JON S GORSKI
MOFFATT THOMAS BARRETT ROCK & FIELDS, CHTD
PO BOX 829
BOISE ID 83701-0829

CONFERENCE AND HEARING PROCEDURE

APPLICATION FOR PERMIT

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 proposed 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 on issues 1, 2, 3, 4, & 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 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.

MICROFILMED

DEC 10 1999

CONFERENCE

The purpose of a prehearing 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 offers, schedule hearings, establish procedure at hearings and address other matters that may expedite orderly conduct and disposition of the proceeding or its settlement.

HEARING

The department will tape record the hearing. Copies of a hearing tape are available upon written 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 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 their 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 prior to any scheduled hearing.

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 ten (10) days prior to the hearing.

MICROFILMED

SEP 18 1999



State of Idaho

DEPARTMENT OF WATER RESOURCES

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

FAX (208) 334-2348

June 22, 1999

DIRK KEMPTHORNE
GOVERNOR

KARL J. DREHER
DIRECTOR

MCCALL CITY HALL
PO BOX 986
MCCALL ID 83638

Re: Conference Room Reservation

This letter is to confirm the conference room reservation made by the Department of Water Resources at the McCall City Hall, American Legion conference room on Thursday, August 19, 1999, from 9:00 a.m. until 5:00 p.m. and on Wednesday, August 25, 1999, from 9:00 a.m. until 5:00 p.m.

If you have any questions please call me at 334-2190, Western Region of the Department of Water Resources.

Sincerely,

Sue Taylor
Senior Secretary

MICROFILM

JUN 23 1999

RECEIVED

JUN 16 1999

WATER RESOURCES
DIVISION

Avery and Susan Seifert
117 E. Skylark Dr.
Boise, Idaho 83702
June 14, 1999

Bill Robertson
McCall City Manager
P.O. Box 986
McCall, Idaho 83638

re: new construction at 2117 Eastside Dr, McCall(N1/2 of Lot 19,Harris Cove Sub.)

Dear Mr. Robertson,

I wish to report a violation of McCall City code and ordinance. I spoke with Chelsi Sholty, your assistant today and she suggested writing would be the best way to explain the situation to you. I have enclosed a letter dated September 24, 1998 from Andy Locke in reference to the situation. My husband Avery and I are currently contesting the Shultzes application for a water right permit with the State of Idaho. It is a complicated situation. The Shultzes and our lot are only 50ft. wide and we have multiple shared uses on the two properties. The mobile home and their main cabin have their sewer connection on our property. When Andy Locke wrote the letter and quoted MCC3-28-050, he explained to me that "the use shall not be expanded spatially or otherwise changed or intensified prior to approval by the Commission of conditions of approval for the use." The Shultzes have stakes up along side the property line between our two lots, and we found a receipt from Lumbermans with a drawing on it. It is obvious they are about to expand on the outside of the mobile home, without a building permit. In Andy's paragraph about the deck area he was referencing previous structures the Shultzes had erected without a building permit or the sanction of the McCall Planning and Zoning Department.

Ms. Cholty suggested we contact the sheriff, however, in the past Commissioner Julie Eddins had Andy Locke deal with this matter. Please call me at your earliest convenience at 208 343-7532.

Sincerely Yours,



Avery and Susan Seifert

cc :Steve and Paula Shultz
Julie Eddins, McCall P&Z, Impact Area
Gary Spackman, Idaho Dept. of Water Resources
Thomas Morris, Moffatt Thomas
Senator Atwell Parry

MICROFILM

JUN 10 1999

RECEIVED

JUN 07 1999

WATER RESOURCES
WESTERN REGION

FACSIMILE TRANSMISSION

TO: Gary Spackman FAX: (208) 334-2348
FROM: Steve and Paula Shultz DATE: June 3, 1999
RE: Application for Water Right No. 65-13803
Pages(incl. cover): 2

MESSAGE:

Dear Mr Spackman:

Attached is a copy of our response to the letter from Mr Gorski, attorney for Susan and Avery Seifert We have sent it to them via Mr. Morris because we have been informed that he will be handling this case since Mr. Gorski is no longer with Moffat Thomas. We apologize for the delay in our response - we only received their letter, dated May 26, 1999, earlier this week upon our return to Salt Lake City We also will send you a copy via US Mail

Sincerely,

Paula & Steve
Paula and Steve Shultz

MICROFILM

JUN 10 1999

Steve and Paula Shultz
1339 E. Third Ave.
Salt Lake City, UT 84103

Via Facsimile and US Mail

Copy

June 3, 1999

Avery and Susan Seifert
c/o Thomas C. Morris, Esq
Moffatt Thomas
US Bank Plaza Building
101 S. Capitol Blvd. 10th Fl
Boise, Idaho 83701 0829

RECEIVED
JUN 07 1999
WATER RESOURCES
WESTERN REGION

Dear Avery and Susan,

We have received the letter from your attorney, Jon S. Gorski, dated May 26, 1999. We do not agree with the conditions outlined in his proposed agreement.

On the basis of your original protest of our water rights application, dated October 5, 1998, you stated that to resolve your protest you wanted, "Appropriate 0.02 cfs and 1 2 AF for one domestic household (home)". In your most recent letter dated May 14, 1999, you stated you "have no dispute on the first condition" (the 0.04 cfs). Furthermore, you went on to say, "We agree that the water right would be provided for one household and one mobile home guest house." You also said, "We are not protesting providing water to your (Shultz's) current situation." Therefore, we interpreted your May 14, 1999, letter to indicate that you agreed with our original water right application and your protest had been resolved.

We believe the other issues you subsequently have raised are land use issues, not water right issues. They should not encumber our application or the final water right granted. We will not agree to the latest terms you have set forth as "conditions for our water right" since we believe they deal with Zoning and Planning issues.

We hope that you will understand and agree with our position. If so, please withdraw your protest. If not, we are prepared to proceed to a hearing in August.

Sincerely,

Steve and Paula

Steve and Paula

cc Gary Spackman
Amy Pemberton, Esq
Brian McMahan, Esq
Thomas C. Morris, Esq

MICROFILM

JUN 10 1999

FACSIMILE TRANSMISSION

TO: Gary Spackman FAX: (208) 334-2348
FROM: Steve and Paula Shultz DATE: June 3, 1999
RE: Application for Water Right No. 65-13803
Pages(incl. cover): 2

MESSAGE:

Dear Mr. Spackman.

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Sincerely,

Paula & Steve

Paula and Steve Shultz

MICROFILM

JUN 10 1999

Steve and Paula Shultz
1339 E Third Ave.
Salt Lake City, UT 84103

Via Facsimile and US Mail

June 3, 1999

Avery and Susan Seifert
c/o Thomas C Morris, Esq.
Moffatt Thomas
US Bank Plaza Building
101 S. Capitol Blvd. 10th Fl
Boise, Idaho 83701 0829

Dear Avery and Susan,

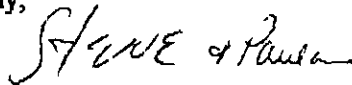
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We hope that you will understand and agree with our position. If so, please withdraw your protest. If not, we are prepared to proceed to a hearing in August.

Sincerely,



Steve and Paula

cc: Gary Spackman
Amy Pemberton, Esq.
Brian McMahan, Esq
Thomas C. Morris, Esq

MICRO

DEC 1 1999



State of Idaho

DEPARTMENT OF WATER RESOURCES

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

FAX (208) 334-2348

PHILIP E. BATT
GOVERNOR

KARL J. DREHER
DIRECTOR

May 24, 1999

STEVE &/OR PAULA SHULTZ
1339 E 3RD AVE
SALT LAKE CITY UT 84103

AVERY &/OR SUSAN SEIFERT
117 E SKYLARK DR
BOISE ID 83702

Re: Application for Water Right No. 65-13803

Dear Parties:

I have received copies of correspondence exchanged between the parties attempting to resolve the protest against application for water right no. 65-13803. I have also spoken to both parties on the phone. The parties have identified August 24 - 27 as a mutually acceptable time for a hearing. If the protest has not been resolved by June 4, 1999, I will schedule the hearing for August 25 or 26 in McCall if possible.

Sincerely,


Gary Spackman

GS:st

MICROFILMED

350 10 1999

Gary Spackman
State Department of Water Resources
Western Region 2735 Airport Way
Boise, Idaho 83705-5082
May 11, 1999

RECEIVED

MAY 12 1999

WATER RESOURCES
WESTERN REGION

Avery and Susan Seifert
117 E. Skylark Dr.
Boise, Idaho 83702

Dear Mr. Spackman:

We are in receipt of your letter dated April 28, 1999. We have enclosed copies of three recent correspondence to us from Paula and Steve Shultz, dated April 28, May 5 and May 6, 1999. We also are enclosing a copy of our later dated today, written to the Shultzes from us. As we explain to the Shultzes, we see no reason to rush the scheduling of a IDWR hearing which may not be necessary. We do have some time in July and August we could possibly be available to have a hearing in McCall, however if we need counsel to attend, we need his schedule to consider. We are hopeful that we can arrive at a compromise without a hearing and will give this our immediate attention, as soon as we can discuss this with our attorney on his return from vacation.

Could you extend the May 17, 1999 deadline for presenting calendars for a hearing date a few more days?

Sincerely,


Avery and Susan Seifert

cc Senator Atwell Parry

enc 4

MICROFILMED

DEC 10 1999

Avery and Susan Seifert
117 E. Skylark Dr.
Boise, Idaho 83702
May 11, 1999

Steve and Paula Shultz
1339 E. Third Ave.
Salt Lake City, UT 84103

Dear Steve and Paula,

Thank you for your three most recent correspondences regarding the joint uses on our shared properties. We are in receipt of three letters from you, one dated April 28, 1999, one May 5, 1999 and one dated May 6, 1999. We also are in receipt of a letter from Gary Spackman, dated April 28, 1999 re: application for water right no. 65-13803.

Our legal counsel is on vacation and we can not reach him until later this week. Consequently, we are unable to respond to your letters until we have had some time to digest your proposal. There are multiple issues at stake and we need a few days to think this over. We see no reason to rush the arrangement of a IDWR hearing date, when it may not even be necessary. We would like to assure you that we want this resolved as much as you do, however three days without the ability to discuss this with legal counsel is simply not enough time.

We will respond to you as soon as possible.

Sincerely,


Susan and Avery Seifert

cc: Gary Spackman
Senator Atwell Parry

enc: 1

MICROFILMED
DEC 10 1999

Steve and Paula Shultz
1339 E. Third Ave
Salt Lake City, UT 84103

April 28, 1999

Avery and Susan Seifert
117 E. Skylark Dr
Boise, Idaho 83702

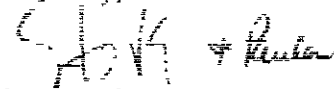
Dear Avery and Susan:

We are in receipt of your letter dated April 19, 1999 in which you enclosed your bills from Bill Hardin. We have now spoken with Bill regarding his snow removal services and charges for 1999. After reviewing the data he states that he has billed us each correctly for the services he has provided this year, as per our signed contract/agreement dated November 12, 1998. His billing appears to be in line with the cost sharing for snow removal specified in our attorney's November 5, 1998 to you. Therefore, we decline to contribute to your snow removal bill.

In addition, despite our differences, we wish to be good neighbors. In that light, we will give you permission to use the upper parking area, which is on our property and owned by us, as an area for overflow parking whenever it is open this spring and summer, if you so desire. We do not, however, give you permission to park your boat trailer in the upper parking area or to use this area for any other purpose other than overflow parking. The area between the two cabins that is on our property and owned by us (the majority of the area) may be used by you only for turning around with a passenger vehicle whenever it is open.

We hope this summer will be pleasant for us all!

Sincerely,


Steve and Paula

cc: Amy Pemberton

MICROFILMED
JEC 10 1999

S. eve and Paula Shultz
1339 E. Third Ave
Salt Lake City, UT 84103

May 5, 1999

Avery and Susan Seifert
117 E Skylark Dr
Boise, Idaho 83702

Dear Avery and Susan,

I thank you for your considerate note of April 26, 1999. We plan to be in McCall 2 or 3 weeks in June but Kevin Groves is welcome to do his work even if we are present. We view his work as a minimal inconvenience to us, and if it helps him and you to get the job done, we certainly are willing to be accommodating. We request that he use our property only to access your project and not use our property for parking or for storing equipment or supplies. In addition, we request that our property be left clean.

We have now received your letter of April 28, 1999 and hope to respond by the end of this week.

Finally, in an effort to reduce possibilities for conflict to a minimum in the future, we would like you to reconsider the possibility of having separate docks as suggested in our attorney's October 20, 1998 letter to your attorney, Jon Gorski. Please give this some thought and let us know.

We are keeping our fingers crossed for warm weather soon and hope we all can have an enjoyable, stress-free summer!

Sincerely,

Paula (+ Steve)
Paula and Steve

cc: Amy Pemberton

*This letter
contradicts their
correspondence
dated April 28.
For your information*

MICROFILMED

DEC 10 1999

Steve and Paula Shultz
1334 E Third Ave
Salt Lake City, UT 84103

May 6, 1999

Avery and Susan Sefer
117 E. Skylark Dr.
Boise, Idaho 83702

Dear Avery and Susan,

Thank you for your letter dated April 28, 1999. This letter is in response to the five conditions you listed regarding our water right application. This letter will address each of those conditions in the same order.

First, 0.04 cfs is the quantity of water requested under our application, so that is not an issue.

Second, the water would be provided to the main house and a guest house for as long as those structures are maintained on the property. The applicable provisions of the governing codes allow "non conforming" but grandfathered structures to be repaired and replaced. The City Administrator can confirm this regarding the McCali Code if you contact him.

Third, it is not our intention to split the main house from the guest house, neither is it our intention to do further subdividing. In fact, it is our understanding that the law currently would not allow any further subdivision. However, we do not know what the future law may say, neither are we able to make promises that might bind future owners of our property. Neither do we want you or us to give up any rights that we respectively may have in the future regarding anything that might happen on our property or your property. Accordingly, we are able to state that we intend to abide by all applicable codes, laws, rules and regulations regarding the use of our property and the water rights that go with it, and we would simply expect for you to do the same, with both of us reserving whatever rights we have under the applicable laws as they exist now or in the future.

Fourth, as has been stated above, the applicable laws allow us to repair and replace existing non conforming but grandfathered structures and we intend to have a guest house on our property for the foreseeable future. Therefore, there would not be a time when the guest house would no longer be used thus allowing or requiring the water right to attach only to the main house.

UNRECORDED

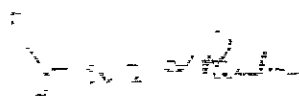
MAY 10 1999

Avery and Susan Seifert
May 6, 1999
Page 2

Fifth, although we do not intend to expand the use of the guest house, we do intend to use it indefinitely and repair and/or replace it as necessary as allowed by the governing laws and ordinances.

The foregoing represents our position regarding the five items listed in your April 28th letter. We hope that it is acceptable to you. If not, we are prepared to proceed to the IDWR hearing. If we have not heard from you by May 14, 1999, we will communicate our available dates to Mr. Gary Spackman as he requested in his letter to you dated April 28, 1999. Please let us know if we are going to be able to resolve this matter along the lines set forth above. We, too, would like to resolve this matter as soon as possible, but if we are not able to resolve it amongst ourselves, then we are prepared to proceed to the hearing in McCall.

Sincerely,



Steve and Paula

cc Gary Spackman
Amy Pemberton, Esq.
Brian McMahon, Esq.
Jon B. Gorski, Esq.

REC'D - LA
MAY 17 1999

Boise
Idaho Falls
Pocatello

Moffatt Thomas

MOFFATT THOMAS BARRETT ROCK & FIELDS, CHTD.

Willis C. Moffatt,
1907-1980

Eugene C. Thomas

John W. Barrett

R. B. Rock

Richard C. Fields

Robert E. Bakes

John C. Ward

Paul S. Street*

Larry C. Hunter

Glenna M. Christensen

Mark S. Prusynski

Morgan W. Richards

Michael G. McPeck

Stephen R. Thomas

Jon S. Gorski

Gary T. Dance

Gerald T. Husch

Kirk R. Helvie

Thomas C. Morris

Michael E. Thomas

James C. deGlee

Patricia M. Olsson

Mark A. Ellison

David S. Jensen

Bradley J. Williams

James L. Martin

Lee Radford

Robert B. Burns

Stephen J. Olson

Scott A. Tschirgi

Julie K. Weaver

C. Clayton Gill

David P. Gardner

Anne Baker Wilde

Erik J. Bolinder

Stephen R. Drake

Jeremy C. Chou

Katrina T. Sather

Julian E. Gabiola

Ray J. Chacko

Dean C. Sorensen

**of counsel*

RECEIVED

MAY 27 1999

WATER RESOURCES
WESTERN REGION

May 26, 1999

US Bank Plaza Building
101 S Capitol Blvd 10th Fl
PO Box 829
Boise Idaho 83701 0829

208 345 2000
800 422 2889
208 385 5384 Fax
www.moffatt.com

Steve and Paula Shultz
1339 East Third Avenue
Salt Lake City, UT 84103

Re: Avery and Susan Seifert
MTBR&F File No 17-308

Dear Mr and Mrs Shultz

Enclosed are triplicate originals of an agreement between yourselves and the Seiferts. After reviewing the letters and discussing the matter with the Department of Water Resources, there needs to be a formal set of conditions that are on file with the Department in your application file. Therefore, I have prepared this agreement that encompasses those points raised in the last letters between yourselves and the Seiferts.

Please sign this agreement in triplicate and have your signatures notarized. You may retain one copy and send the other two copies directly to the Seiferts. They will then deliver one original to the Department of Water Resources, and at that time, withdraw their protest. Thank you for your cooperation.

Very truly yours,



Jon S. Gorski

JSG/kdp

Enclosures

cc Avery and Susan Seifert (w/enc)
Gary Spackman (w/enc)

MICROFILMED
DEC 10 1999

AGREEMENT

This agreement is effective as of June 1, 1999, by and between **EVERY SEIFERT** and **SUSAN SEIFERT** ("Seiferts") and **STEVE SHULTZ** and **PAULA SHULTZ** ("Shultzes")

RECITALS:

A Shultzes have made an application for a water right with the Idaho Department of Water Resources and the application is referenced as Application for Permit No. 65-13803 in the name of Paula and Stephen Shultz (the "Application")

B Seiferts have protested the Application

C Seiferts will withdraw the protest provided Shultzes agree to the conditions set forth in this agreement.

AGREEMENT

NOW, THEREFORE in reliance upon the above recitals the parties agree as follows

1 Seiferts withdraw their protest to the Application subject to the preservation of Seiferts' rights contained herein

2 The Application and any future grant of water rights shall be subject to the following terms and conditions

a The water right shall be 04 cfs and will attach to the current cabin and current mobile home (guest house) on the property.

b Should the use of the mobile home ever change or should Shultzes' property be subdivided, Seiferts would have the right to protest at that point in time with respect to any water right attaching to the new use or subdivided lot

c Should the mobile home be removed, any future new structure would require an independent water right and the water right granted under the Application could not be used for a future structure

3 This agreement shall inure to the benefit of Shultzes and Seiferts, their respective heirs, successors and assigns and subsequent landowners of the property they own in McCall, Idaho

4. A copy of this agreement shall be lodged with the Idaho Department of Water Resources file for the Application

IN WITNESS WHEREOF, the parties have executed this agreement on the date opposite their signature

Date

AVERY SEIFERT

Date

SUSAN SEIFERT

Date

STEVE SHULTZ

Date

PAULA SHULTZ

STATE OF IDAHO)
 ss
County of Ada)

On this _____ day of _____, 1999, before me, a Notary Public in and for said State, personally appeared **AVERY SEIFERT**, known or identified to me (or proved to me on the oath of _____), to be the person whose name is subscribed to the within instrument, and who 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

NOTARY PUBLIC FOR IDAHO
Residing at _____
My Commission Expires _____

STATE OF IDAHO)
 .ss
County of Ada)

On this _____ day of _____, 1999, before me, a Notary Public in and for said State, personally appeared **SUSAN SEIFERT**, known or identified to me (or proved to me on the oath of _____), to be the person whose name is subscribed to the within instrument, and who acknowledged to me that she 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

NOTARY PUBLIC FOR IDAHO
Residing at _____
My Commission Expires _____

STATE OF _____)
County of _____) ss

On this _____ day of _____, 1999, before me, a Notary Public in and for said State, personally appeared **STEVE SHULTZ**, known or identified to me (or proved to me on the oath of _____), to be the person whose name is subscribed to the within instrument, and who 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

NOTARY PUBLIC FOR _____
Residing at _____
My Commission Expires _____

STATE OF _____)
County of _____) ss

On this _____ day of _____, 1999, before me a Notary Public in and for said State, personally appeared **PAULA SHULTZ**, known or identified to me (or proved to me on the oath of _____), to be the person whose name is subscribed to the within instrument, and who acknowledged to me that she 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

NOTARY PUBLIC FOR _____
Residing at _____
My Commission Expires _____

PRIMARY CHILDREN'S MEDICAL CENTER

DEPARTMENT OF PEDIATRIC MEDICAL IMAGING

100 NORTH MEDICAL DRIVE, SALT LAKE CITY, UTAH 84113 • 801-588-2490 • Fax 801-588-2499



FAX SHEET

Medical Director
Richard S. Boyer, M.D.

Administrative Director
David Young, MBA RT (R)

Executive Secretary
Valerie Kemp

Radiologists
Virgil R. Condon, M.D.
G. William Nixon, M.D.
Richard B. Jaffe, M.D.
Barbara S. Reid, M.D.
Richard S. Boyer, M.D.
Paula K. Shultz, M.D.
Keith S. White, M.D.
G. Peter Focia, M.D.

Diagnostic Radiography
Stacy Brown, RT (R)

CT/Special MRI
Laurie Coburn, RT (R) (CV)

Reception/Files
Karey McDonald

Nuclear Medicine
Sam Haskett, MBA CNMT

Ultrasound
Marcie Newton, RDMS

Nursing
Jay Beasley, RN

Information Systems/IMACS
Darin Day, BS RT (R)

DATE:

5/20/99

TO:

Gary Spackman, IDWR

TELEPHONE #:

(208) 334-2348

FAX #:

(208) 334-2190

FROM:

Steve & Paula Shultz

Department of Pediatric Medical Imaging

Office: 801-588-2490

Radiologists: 801-588-2470

FAX: 801-588-2499

Other: 801-_____

Number of pages, including cover sheet: 3

REMARKS: Originals will be sent by mail

Thank-you -

Paula Shultz

This facsimile may contain PRIVILEGED AND/OR CONFIDENTIAL INFORMATION intended only for the use of the addressee. If you are not the addressee, or the person responsible for delivering it to the person addressed, you may not copy or deliver this to anyone else. You are hereby notified that any dissemination or copying of this facsimile is strictly prohibited. If you received this facsimile by mistake, please immediately notify us by telephone. Thank You.

4-5-1-9 1999

Paula and Stephen Shultz
1339 E. Third Avenue
Salt Lake City, UT 84103

Via Facsimile and US. Mail

May 19, 1999

Mr. Gary Spackman
Idaho Department of Water Resources
Western Region
2735 Airport Way
Boise, ID 83705-5082

RE: Application for Permit No. 65-13803

Dear Mr. Spackman:

Thank you for the copy of your April 28, 1999 letter to Avery and Susan Seifert

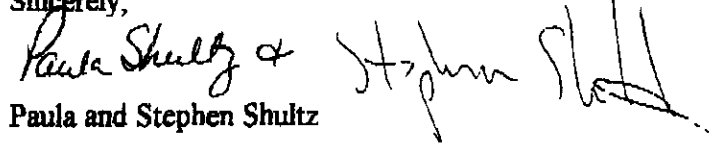
In our most recent correspondence with the Seiferts, we have requested that they withdraw their protest to our water right application and advise you accordingly. (see enclosure) In the event that this does not occur, as per your request, we are submitting the dates we can arrange to be in McCall for a hearing

We can arrange our schedules to attend a hearing in McCall the following dates:

Thursday, July 1, 1999
Friday, July 2, 1999
Wednesday-Friday, August 4-6, 1999
Monday-Friday, August 23-27, 1999

We hope that one of these dates will also be convenient for the Seiferts

Sincerely,


Paula and Stephen Shultz

cc: Avery and Susan Seifert
Amy Pemberton
Brian McMahan
Jon Gorski

MICRO-FILMED

DEC 10 1999

Steve and Paula Shultz
1339 E. Third Ave.
Salt Lake City, UT 84103

May 19, 1999

Avery and Susan Seifert
117 E. Skylark Dr.
Boise, Idaho 83702

Dear Avery and Susan,

Thank you for your letter dated May 14, 1999. As we read your letter, it appears that we have resolved the water right issues. Therefore, will you please advise Mr. Spackman that you are withdrawing your protest to our application? If you feel there are still some unresolved water right issues, please let us know what they are. Thank you.

Sincerely,



Steve and Paula

cc: Gary Spackman
Amy Pemberton, Esq.
Brian McMahan, Esq.
Jon S. Gorski, Esq.

MICROFILMED
DEC 10 1999

Paula and Stephen Shultz
1339 E. Third Avenue
Salt Lake City, UT 84103

Via Facsimile and US Mail

May 19, 1999

Mr Gary Spackman
Idaho Department of Water Resources
Western Region
2735 Airport Way
Boise, ID 83705-5082

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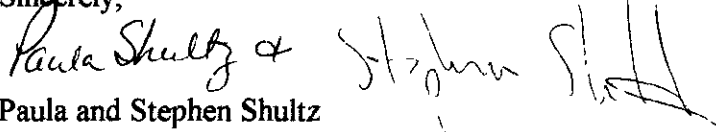
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Friday, July 2, 1999
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Monday-Friday, August 23-27, 1999

We hope that one of these dates will also be convenient for the Seiferts

Sincerely,


Paula and Stephen Shultz

cc Avery and Susan Seifert
Amy Pemberton
Brian McMahan
Jon Gorski

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DEC 10 1999

RECEIVED

MAY 24 1999

WATER RESOURCES
WESTERN REGION

Steve and Paula Shultz
1339 E. Third Ave.
Salt Lake City, UT 84103

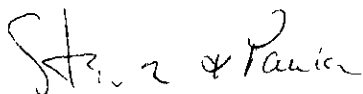
May 19, 1999

Avery and Susan Seifert
117 E. Skylark Dr
Boise, Idaho 83702

Dear Avery and Susan,

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Sincerely,



Steve and Paula

cc: Gary Spackman
Amy Pemberton, Esq
Brian McMahan, Esq
Jon S. Gorski, Esq

MICROFILMED
DEC 10 1999

RECEIVED
MAY 24 1999
WATER RESOURCES
WESTERN REGION

RECEIVED

MAY 17 1999

WATER RESOURCES
WESTERN REGION

Avery and Susan Seifert
117 East Skylark Drive
Boise, ID 83702

May 14, 1999

Steve and Paula Shultz
1339 East Third Avenue
Salt Lake City, UT 84103

Dear Steve and Paula

We received your letter dated May 6, 1999. We are somewhat confused by some of your responses. The responses did not address the water right issues. In this letter, we will provide more detail to clear up your misunderstanding. Since we have no dispute on the first condition, we would like to take the other conditions in order. Our hope is that with this further explanation, we can reach a resolution.

With regard to condition number two, we were addressing a specific part of your application. We agree that the water right would be provided for one household and one mobile home guest house. The issues that you raise with regard to the City of McCall have no bearing on where the water will be provided. Further, your reading of the McCall City Codes is not precise nor accurate in our view. We do not want to get into a discussion of the McCall City Codes. We both have copies of a letter that indicates the mobile home is a nonconforming use. It cannot be replaced. The Code does allow you to repair it. That is not the point. The water right is provided to both the cabin and mobile home guest house. Should you ever replace the mobile home guest house, obviously you would need to comply with City Codes. We would reserve the right to protest the new use at that time. We are not protesting providing water to your current situation.

With regard to the third condition, we are simply stating that if you subdivide, we specifically reserve the right to protest the water right. You claim you do not want to bind future owners or give up rights that you might have in the future with regard to your property. We are not asking you to give up any rights. We are simply reserving the right to protest any future subdivision. All of the other issues you raised are not germane. We are simply stating that should you ever subdivide, we will then protest any attempt to transfer this water right to a subdivision of your lot.

Since your mobile home is a nonconforming use, once that use goes away, it would naturally appear that the water right attaches only to your cabin. We are not limiting your rights to remove the mobile home and build a new guest house. If you do so, you will have to comply with all the laws. Again, we are only talking about the water right. The water right cannot attach to a future unknown use. It can only attach to the existing nonconforming use. Once it

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MAY 18 1999

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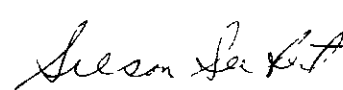
Steve and Paula Shultz
May 14, 1999
Page 2

goes away, the future uses must comply with codes. You have reserved all your rights by our proposal.

With regard to the final condition, again the McCall City Code is clear that you cannot replace or expand your use of the mobile home. It is unclear to us as to what you intended by your comment since we are simply stating the law and our position.

In conclusion, we hope that this clarification of our points is helpful to you. Many of your comments did not appear to be aimed at resolving the water right issue, but rather arguing zoning law and issues that have nothing to do with the water right. Our conditions are frankly simple and reasonable. There is no objection to .04 cfs to the current cabin and mobile home. However, should you ever change the use of the mobile home or subdivide, then we would reserve the right to protest the water right being used for a different use or being transferred. So long as you continue using the property in the same manner, we have no quarrel. This seems like a very logical and reasonable approach, and we hope that you will find this resolution satisfactory.

Very truly yours,

 
Avery and Susan Seifert

cc ✓ Steve Lester, Dept of Water Resources
Senator Atwell Parry

MICROFILMED
DEC 16 1999

copy -
sent 5/6/99

Steve and Paula Shultz
1339 E. Third Ave.
Salt Lake City, UT 84103

RECEIVED

MAY 10 1999

WATER RESOURCES
WESTERN REGION

May 6, 1999

Avery and Susan Seifert
117 E Skylark Dr.
Boise, Idaho 83702

Dear Avery and Susan,

Thank you for your letter dated April 28, 1999. This letter is in response to the five conditions you listed regarding our water right application. This letter will address each of those conditions in the same order

First, 0.04 cfs is the quantity of water requested under our application, so that is not an issue

Second, the water would be provided to the main house and a guest house for as long as those structures are maintained on the property. The applicable provisions of the governing codes allow "non conforming" but grandfathered structures to be repaired and replaced. The City Administrator can confirm this regarding the McCall Code if you contact him.

Third, it is not our intention to split the main house from the guest house, neither is it our intention to do further subdividing. In fact, it is our understanding that the law currently would not allow any further subdivision. However, we do not know what the future law may say, neither are we able to make promises that might bind future owners of our property. Neither do we want you or us to give up any rights that we respectively may have in the future regarding anything that might happen on our property or your property. Accordingly, we are able to state that we intend to abide by all applicable codes, laws, rules and regulations regarding the use of our property and the water rights that go with it, and we would simply expect for you to do the same, with both of us reserving whatever rights we have under the applicable laws as they exist now or in the future

Fourth, as has been stated above, the applicable laws allow us to repair and replace existing non conforming but grandfathered structures and we intend to have a guest house on our property for the foreseeable future. Therefore, there would not be a time when the guest house would no longer be used thus allowing or requiring the water right to attach only to the main house

MICROFILMED

MAY 11 1999

Avery and Susan Seifert

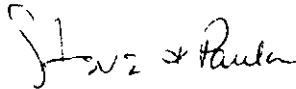
May 6, 1999

Page 2

Fifth, although we do not intend to expand the use of the guest house, we do intend to use it indefinitely and repair and/or replace it as necessary as allowed by the governing laws and ordinances

The foregoing represents our position regarding the five items listed in your April 28th letter. We hope that it is acceptable to you. If not, we are prepared to proceed to the IDWR hearing. If we have not heard from you by May 14, 1999, we will communicate our available dates to Mr Gary Spackman as he requested in his letter to you dated April 28, 1999. Please let us know if we are going to be able to resolve this matter along the lines set forth above. We, too, would like to resolve this matter as soon as possible, but if we are not able to resolve it amongst ourselves, then we are prepared to proceed to the hearing in McCall

Sincerely,



Steve and Paula

cc. Gary Spackman
Amy Pemberton, Esq.
Brian McMahan, Esq.
Jon S. Gorski, Esq.

MICROFILMED
JUL 10 1999

Avery and Susan Seifert
117 East Skylark Drive
Boise, ID 83702

April 28, 1999

RECEIVED

APR 30 1999

WATER RESOURCES
WESTERN REGION

Stephen and Paula Shultz
1339 East Third Avenue
Salt Lake City, UT 84103

Dear Steve and Paula

Our apologies for not getting back to you sooner. We have spent a great deal of time considering our protest of your application and concern over the status of the mobile home. It is difficult to reach a compromise when there are so many factors to consider in light of the history involving your property and our property.

In spite of our differences, we wish to be good neighbors and respect your rights as well as have you respect our rights. The City of McCall clarified the status of your mobile home as a conditional use that cannot be expanded or used apart from your existing cabin. We believe our compromise should likewise reflect that position. You have indicated in the past that you never intend to subdivide or rent the mobile home apart from or separate from your cabin. Your cabin and mobile home constitute one unit on one lot.

With respect to your application for a water right, we would withdraw our protest if you would be agreeable to the following conditions and changes to your application.

- 1 The application would be for .04 cfs as the total water right to your property.
- 2 The water right would be provided for one household and a mobile home guest house.
- 3 The water right may never split between the household and the mobile home. Your lot may never be subdivided. Should there ever be an attempt to subdivide the household from the mobile home or to split the water right between the household and the mobile home, we then have the right to protest the split and raise those same issues we are raising today. In other words, our protest over providing water to the mobile home as a separate entity is reserved, and so long as you continue to use the property as one single unit with one household including a mobile home whose use can never be expanded, we can withdraw our protest.
- 4 Once the mobile home is no longer used, the water right attaches only to your cabin.

MICROFILMED

DEC 10 1999

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65-13803

Stephen and Paula Shultz

April 27, 1999

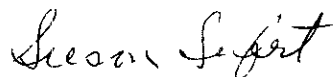
Page 2

5 The mobile home will not be replaced or the use expanded.

Since you have indicated you had no plans other than to use the mobile home for your own personal use, we are hopeful this proposal would not be an impediment to your planned use of your property. Should you ever sell your property or change your mind, we have reserved the protest that we have today for another day. In the interim, you can have a water right that provides water to your cabin and the mobile home as one right for both, but not as separate and distinct water rights.

We are hopeful that this proposal would meet with your approval, because it would certainly bring matters to a close with respect to your water right application. It would allow you to have water coming to your property and reserves for us any issues we have with regard to the mobile home for another day should that issue ever arise. We are hopeful that you are agreeable so that we can bring this matter to a close, and we can all enjoy our summer in McCall. Please let us know if this is acceptable to you.

Very truly yours,

 
Avery and Susan Seifert

cc Steve Lester, Department of Water Resources
 Senator Atwell Parry

MICROFILMED

DEC 16 1999

RECEIVED

APR 28 1999

IDWR/North

Avery and Susan Seifert
117 E. Skylark Dr.
Boise, Idaho 83702
April 6, 1999

RECEIVED

APR 08 1999

Department of Water Resources

Karl J. Dreher, Director
State of Idaho, Department of Water Resources
1301 North Orchard St.
P.O. Box 83720
Boise, Idaho 83720-0098

Dear Director Dreher:

We are writing you in the matter of a water right application for permit ~~no. 65-13803~~. This concerns your employee, Mark Limbaugh, Watermaster for the Payette River, District 65, 102 N. Main, Payette, Idaho 83661. We have enclosed a detailed explanation written to Gary Spackman of the Western Region Office. We would greatly appreciate your involvement in this conflict of interest matter. Thank You.

RECEIVED

APR 30 1999

WATER RESOURCES
WESTERN REGION

Sincerely Yours,



Avery and Susan Seifert
343-7532 (Home)
336-3232 (work)

MICROFILMED

DEC 1 1999

Avery and Susan Seifert
117 E. Skylark Dr.
Boise, Idaho 83702
April 6, 1999

RECEIVED
APR 08 1999
Department of Water Resources

Mr Gary Spackman
Western Region Office Manager
Idaho Department of Water Resources
2735 Airport Way
Boise, Idaho 83705-5082

Dear Mr. Spackman

On April 2, 1999 we met with Steve Lester, Water Rights Supervisor, Stephen and Paula Shultz, and Mark Limbaugh, the Watermaster for the Payette River. We met in McCall City Hall at 1:30 p.m., for the prehearing conference in the matter for permit no. 65-13803; the application the Shultzes have requested to appropriate the public waters of the State of Idaho. As you know, Mr. Limbaugh's family owned the Shultzes land until 1996. We were extremely surprised that Mr. Limbaugh was present with the conflict of interest and potential liability he has. It was extremely unclear to us who was running the conference and who had arranged the conference. We had come prepared to exchange issues under Section 42-203A, Idaho Code, however we couldn't because of Mr. Limbaugh's presence.

The Shultzes seem confused about the reasons we were there and didn't speak to issues, which were outlined in section 42-203A. When we raised any questions from Mr. Lester about the specific guidelines from the Department for surface water rights, or tried to clarify points on the instructions for filing an application form, he was vague and non-specific. We had brought exhibit items we wanted to ask about, however we were never given the opportunity to "formulate and simplify issues" or to "exchange proposed exhibits". We were asked several times, "Why are you protesting?", by Mr. Lester.

The Shultzes application has been amended more than one time. It is now very confusing to us what they are asking for. In Chapter 2 of Title 42, section 42-211, "If amendment to an application is made after publication of notice of the original application, said notice shall be republished following the amendment, upon payment by the applicant of the statutory fee for republication as in this act provided". Rule 39 of the Idaho Administrative Code, Water Appropriation, also speaks to this; the applicants' initials do not appear anywhere on the amended application. We need a copy of the amended application in whatever form it is now.

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Regarding a possible hearing. Will any of the previous correspondence be part of the record? We have information documenting our water right and the surrounding rights of our neighbors, will this be part of the record or will it be our responsibility to have this put in the record? Who will preside at a hearing and who will make the final determination of the Shultzes water right? Can we subpoena Jan Shurte, or will her view of the situation be part of the record?

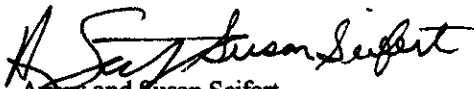
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DEC 10 1999

(2)

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Susan can be reached at 343-7532 during the day We look forward to hearing from you.

Sincerely Yours,


Avery and Susan Seifert

cc: Karl J. Dreher, Director State of Idaho, Department of Water Resources

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DEC 10 1999



State of Idaho

DEPARTMENT OF WATER RESOURCES

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

FAX (208) 334-2348

April 28, 1999

DIRK KEMPTHORNE
GOVERNOR

KARL J. DREHER
DIRECTOR

AVERY &/OR SUSAN SEIFERT
117 E SKYLARK DR
BOISE ID 83702

Re: Application for Water Right No. 65-13803

Dear Mr. & Mrs. Seifert:

Thank you for your letter dated April 6, 1999. May I remind you that you must carbon copy Stephen &/or Paula Shultz with any correspondence that you send to the department because this is a contested matter.

I scheduled a prehearing conference held in McCall on April 2, 1999. I was aware that Mark Limbaugh might attend the conference. I have never constrained any person interested in a contested water right matter from attending a prehearing conference, but I have restricted the conduct of people attending the conferences. Because of Mr. Limbaugh's knowledge of past activities he appropriately could explain facts related to issues that might be raised. Although he might also have some interest as the watermaster of the Payette River, he does not routinely attend contested water right matters for a small application to appropriate water.

You assert that Mr. Limbaugh presided at the conference, and that his presence did not allow the free exchange of information to resolve issues related to Idaho Code § 42-203A. I asked Steve Lester to conduct the prehearing conference because of his past experience and expertise in conducting conferences and resolving difficult water right issues. A conference is an informal meeting to determine or resolve issues of both fact and law, to help the parties understand the administrative process, and to establish a schedule for discovery and possible hearing.

I cannot address some of the specific questions you raised regarding the discussions at the prehearing conference. I can only rely on my confidence in Steve Lester because of my past observations.

You asked whether another prehearing conference would be appropriate. I am happy to schedule a prehearing conference if both parties agree that a conference will promote settlement, will define the issues, or make the hearing process more efficient. At this time it appears another conference is not needed and is not likely to be productive. We can also discuss informally the possibility of settlement just prior to the hearing.

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Avery &/or Susan Seifert
April 27, 1999
Page -2-

You asked several questions about the hearing. Information contained in the file of IDWR at the time of the hearing is part of the record. You will be responsible for producing and moving for the admission of any other documents you may wish to have considered. After the hearing, the hearing officer will write a decision. The decision will be reviewed by the director of this department, and can be appealed to the district court of the State of Idaho. You may subpoena department employees to testify. If you want Jan Shurte to testify, the department will agree to have her available to testify if she knows facts relevant to the dispute.

I have not addressed every question you asked. I am prohibited from answering some of the questions if I am to be the hearing officer. Some I cannot answer because they require detailed knowledge of what happened at the prehearing conference.

I will schedule a hearing to be conducted within the next six (6) months. I will schedule it at a time convenient for both parties if one can be found. Please determine dates in July and August when a hearing can be held, and let me know by May 17, 1999. I intend to hold the hearing in McCall.

Sincerely,



Gary Spackman

GS:st

CC: Stephen & Paula Shultz
Amy Pemberton, Esq.
Jon S. Gorski, Esq.

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DEC 10 1999

RECEIVED

APR 08 1999

WATER RESOURCES
WESTERN REGION

Avery and Susan Seifert
117 E Skylark Dr.
Boise, Idaho 83702
April 6, 1999

Mr Gary Spackman
Western Region Office Manager
Idaho Department of Water Resources
2735 Airport Way
Boise, Idaho 83705-5082

Dear Mr. Spackman

On April 2, 1999 we met with Steve Lester, Water Rights Supervisor, Stephen and Paula Shultz, and Mark Limbaugh, the Watermaster for the Payette River. We met in McCall City Hall at 1:30 p.m., for the prehearing conference in the matter for permit no. 65-13803, the application the Shultzes have requested to appropriate the public waters of the State of Idaho. As you know, Mr. Limbaugh's family owned the Shultzes land until 1996. We were extremely surprised that Mr. Limbaugh was present with the conflict of interest and potential liability he has. It was extremely unclear to us who was running the conference and who had arranged the conference. We had come prepared to exchange issues under Section 42-203A, Idaho Code, however we couldn't because of Mr. Limbaugh's presence.

The Shultzes seem confused about the reasons we were there and didn't speak to issues, which were outlined in section 42-203A. When we raised any questions from Mr. Lester about the specific guidelines from the Department for surface water rights, or tried to clarify points on the instructions for filing an application form, he was vague and non-specific. We had brought exhibit items we wanted to ask about, however we were never given the opportunity to "formulate and simplify issues" or to "exchange proposed exhibits". We were asked several times, "Why are you protesting?", by Mr. Lester.

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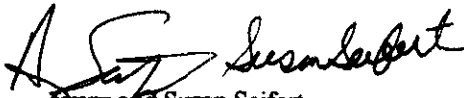
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DEC 10 1999

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Susan can be reached at 343-7532 during the day. We look forward to hearing from you.

Sincerely Yours,


Avery and Susan Seifert

cc: Karl J. Dreher, Director State of Idaho, Department of Water Resources

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DEC 10 1989

CONVERSATION MEMORANDUM

DATE 4/23/99
FILE 65-13803

NAME OF PARTY -

EMPLOYEE SL

RE: Info Forwarded to Applicants

Per 4/22 conv. memo, I faxed info to
Applicants today:

- 1) Protestants' letters to Director & Reg. Mgr.,
Received c Region 4/8/99.
- 2) 3 letters between attorneys - this is
fax version received c Region 12/15/98.
- 3) IDWR 4/22/99 memo by Ncy.

MICROFILMED
DEC 18 1999



State of Idaho

DEPARTMENT OF WATER RESOURCES

2735 Airport Way, Boise, Idaho 83705

Phone: (208) 334-2190 FAX: (208) 334-2348 www.idwr.state.id.us/idwr/idwrhome.htm

DIRK KEMPTHORNE
Governor

KARL J. DREHER
Director

FAX TRANSMITTAL COVER SHEET

FAX # (208) 334-2348

DATE: 4/23/99

TO: Paula & Stephen Shultz

FROM: Flore Leter

fax 801-588-2499

DOCUMENT DESCRIPTION: 65-13803 Protested Application -

Add'l information you have not yet received:

① Copies of fax letters received here on 12/15/98 - between
Attorneys' offices.

TOTAL PAGES SENT: 11 + COVER SHEET

CONTACT: _____

② Copies of letters received here on 4/8/99.

③ Copy of dept.'s 4/22/99 memo re meeting
with protestant.

Most likely next step is scheduling a hearing, not
another pre-hearing conference.

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DEC 10 1999

12-15-98
Moffatt Thomas

MOFFATT THOMAS BARRETT ROCK & FIELDS, CHTD

Willis C. Moffatt,
1907-1980
Eugene C. Thomas
John W. Barrett
R. B. Rock
Richard C. Fields
Robert E. Balow
John C. Ward
Paul S. Sower
Larry C. Hunter
Glenna M. Christensen
Mark S. Proynski
Morgan W. Richards
Michael G. McPeak

Stephen R. Thomas
Jon S. Gordon
Gary T. Duce
Gerald T. Husch
Kirk R. Helvie
Thomas C. Morris
Michael E. Thomas
James C. deGlee
Patricia M. Olson
Mark A. Ellison
David S. Jensen
Bradley J. Williams
James L. Marcio
Robert B. Burns

Stephen J. Olson
Lee Radford
Scott A. Tachau
Julie K. Weaver
C. Clayton Gill
David P. Gardner
Rob G. Dickinson
Anne Baker Wilde
Erik J. Bohlander
Stephen R. Drake
Jeremy C. Chou
Katrina T. Sather
Ray J. Chacko

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Idaho Falls
Pocatello

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208 385 5384 Fax
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October 28, 1998
via facsimile

Amy N. Pemberton, Esq.
Millemann, Pittenger & McMahan, LLP
706 North First
P. O. Box 1066
McCall, ID 83638

Re: Seifert - Shultz
MTBR&F File No. 17-308

Dear Amy:

Enclosed is a letter the Seiferts received from the Department of Water Resources on October 26, 1998. This letter is being written to you pursuant to the Department's request that the Seiferts contact the Shultzes in an effort to determine "what is proposed by the application and to attempt to resolve the protest." I think that the Shultzes have misinterpreted the Seiferts' protest and have assumed the worst with regard to the protest. The purpose of this letter is to (a) request that the Shultzes provide the Seiferts with additional information as to what is proposed by the application, and (b) provide the Shultzes with an attempt to resolve the protest.

As you know, prior to 1971, water could be diverted either through a water permit or through historical constitutional use. After 1971, the law requires that new water rights were only allowed if permitted through the state. Based on our research, it would appear that historically there was one water right of .02 cfs or 1.2 a.f. for the combined properties. The water right was obtained on and attached to the Seiferts' property. When the Seiferts put in their own water system, they needed to clarify the water rights of the various parties.

Based on the historical usage, there is no question that the cabins on the Seifert and the Shultz property would have historical rights to divert water from Payette Lake. The mobile home was put in place after 1971 and would have no historical right, nor do we find any water right for the mobile home. The mobile home is a nonconforming use. In the Shultzes' application, they ask for .04 cfs or 2.4 a.f. for their property for two homes. This amount of water seems curious in that for years both properties were serviced by .02 cfs or 1.2 a.f.

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Amy N. Pemberton, Esq.
October 28, 1998
Page 2

What would resolve the Seiferts' protest would be that the Shultzes request .02 cfs or 1.2 a.f. for their entire property; i.e., both structures, which is the same amount of water that has historically been taken for both properties. Secondly, the application should show that the water right is for one home and one mobile home. With these minor modifications, the protest could be withdrawn.

As I have indicated, the Seiferts are not intending or attempting to prohibit use of the mobile home, but they do want all of the uses on the property to be in compliance with the law. Consequently, if the amount of water is reduced and the distinction is made between the mobile home and the house, I think we can reach a resolution here. If the Shultzes continue to contend that they applied for a water right as required by the state, the Seiferts would consider withdrawing the protest if Gary Spackman of the Department of Water Resources confirms in writing that the Shultzes had no other options and that the application is proper.

Please let me know how you would like to proceed.

Very truly yours,

Jon S. Gorski

JSG/sh
Enclosure

cc: Avery and Susan Seifert

(3)

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DEC 10 1999

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MILLEMANN, PITTENGER & McMAHAN, LLP
ATTORNEYS AT LAW

705 NORTH FIRST
POST OFFICE BOX 1066
MCALL, IDAHO 83838

STEVEN J. MILLEMANN
GREGORY C. PITTENGER
BRIAN L. McMAHAN
AMY N. PEMBERTON

TELEPHONE: (208) 834-7841
FACSIMILE: (208) 834-4816
E-MAIL: mpm@cyberhighway.net

November 5, 1998

Via Facsimile (208) 385-5384

Jon S. Gorski, Esq.
Moffatt Thomas Barrett Rock & Fields, Chtd.
US Bank Plaza Building
101 S. Capitol Blvd. 10th Floor
P. O. Box 829
Boise, ID 83701-0829

Re: Seifert/Shultz

Dear Jon:

I am writing with regard to our conversation yesterday relating to the Seiferts' protest of the Shultzes' application for a water rights permit, and relating to the snow removal issue. First, I had a conversation with Gary Spackman of the Department of Water Resources. I asked him what the usual amount of water permitted for domestic use is. He stated that with a shared water system, which is what the Shultzes have (i.e. the cabin and the guest house both share a water system), the recommended water flow is .04 cfs for one use and .06 cfs for two uses. Please see the attached graph which depicts water requirements for domestic use. The Shultzes have applied for a total of .04 cfs for both homes, which is the recommended water flow for only one domestic use. While the Shultzes do not feel the need to increase their application to .06 cfs, they do not want to jeopardize any future water use by obtaining a permit with too little water flow. Although Mr. Spackman stated that such small water uses are rarely if ever investigated, the Shultzes do not want to be put in the position of needing more water than they have been allocated, and they do not want to put the Department of Water Resources in the position of questioning such use. Therefore, the Shultzes are not willing to reduce their request to .02 cfs for both houses.

The Shultzes will agree, however, to modify the description at paragraph 8.d of their application from "2 domestic homes" to "2 domestic uses; one home and one guest home".

(4)

MICROFILMED
11-10-98

November 5, 1998
Jon S. Gorski, Esq.
Page - 2

Finally, Gary Spackman stated that the application made by the Shultzes for a water permit was made properly.

As to snow removal, the Shultzes are willing to proceed with the contracting with Bill Hardin and Craig Collins exactly as they have proceeded for the past two years. This, in their opinion, is as follows:

For the past two years Bill Hardin has had separate contracts with the Seiferts and the Shultzes. The Shultzes use Bill Hardin's services on an "on demand" basis. They let Bill know several weeks in advance that they will be coming, and he makes sure to clear the area. On the other hand, the Seiferts have had a "keep open" arrangement with him, meaning that every time it snows enough to require snow removal, Bill plows the roadway. If Bill clears the area for the Shultzes at a time when he would have also cleared the area for the Seiferts, he splits the cost between the two. Otherwise, the Shultzes are charged for the cost to have him clear snow when they request it, and the Seiferts are charged for the cost to "keep open" the area.

Craig Collins provides security checks and snow blower services. He clears a path to the cabins approximately the width of two snow blowers. He charges the Seiferts and the Shultzes each one half the cost for this path to the bottom of the hill. He then charges the Shultzes the additional cost to clear a path to their side door and to the water access door under the cabin. He does additional snow removal for the Seiferts for which charges them additionally. Craig has indicated in the past that he can perform his snow removal services even if Bill Hardin does not clear the roadway above on a "keep open" basis.

Additionally, Paula Shultz has contacted both Bill Hardin and Mark Limbaugh with regard to historical practice for snow removal. Mark Limbaugh confirmed that he used Bill Hardin's services on an "on demand" basis as well, and only paid for the services when he requested them. Bill Hardin also confirmed that expenses for snow removal have historically been shared in the past in the manner described above, with the owners of the Shultz cabin paying only for "on demand" snow clearing.

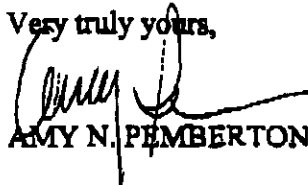
In short, the Shultzes are not willing to share in the cost of having Bill Hardin clear the roadway on a "keep open" basis. They will maintain separate contracts for snow removal with Bill Hardin and Craig Collins, and handle those contracts as specified above. While I am sympathetic to your clients' understanding of historic events which may be different than those stated above, my clients are not willing to negotiate this matter further.

12) MICROFILMED
JAN 14 1999

November 5, 1998
Jon S. Gorski, Esq.
Page - 3

Please let me know at your earliest convenience how your clients intend to proceed with their protest of the water rights application so that the Shultzes may respond to Gary Spackman's recent letter. Thank you, and please call me if you have any questions.

Very truly yours,



AMY N. PEMBERTON

Enclosure

cc: Client

Gorski Ltr 11-5

RECORDED
(6) 11-10-1998

Boise
Idaho Falls
Pocatello

Moffatt Thomas

MOFFATT THOMAS BARRETT ROCK & FIELDS, CHTD.

Willis C. Moffatt,
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November 13, 1998

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Amy N. Pemberton, Esq
Millemann, Pittenger & McMahan, LLP
706 North First
P O. Box 1066
McCall, ID 83638-1066

Re: Shultz/Seifert
MTBR&F File No. 17-308

Dear Amy:

Thank you for your letter dated November 5, 1998. Seiferts understand that Craig Collins is no longer providing the services that he did last year and the services are now being provided by a Matt Gustafsen. Seiferts would intend to use Matt Gustafsen in the same way they used Craig Collins. Please let me know if Shultzes plan to do likewise so that the cost can be split.

With regard to use of Bill Hardin, Seiferts disagree as to what the past practice was before Shultzes. In any event, begrudgingly and reluctantly and for this year only, Seiferts will agree to use Hardin's services for an "on demand" basis. They feel this is an improper way to manage snow removal, but given their anticipated use of the cabin this winter, it will make more sense to do it this way.

With regard to the issues on water, Seiferts are still considering Shultzes' proposal and conducting their research.

Very truly yours,

10/
Jon S Gorski

JSG/kdp

cc. Avery and Susan Seifert

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APR 08 1999

Department of Water Resources

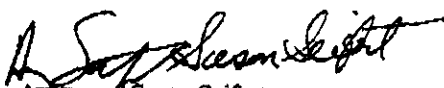
Avery and Susan Seifert
117 E. Skylark Dr.
Boise, Idaho 83702
April 6, 1999

Karl J. Dreher, Director
State of Idaho, Department of Water Resources
1301 North Orchard St.
P.O. Box 83720
Boise, Idaho 83720-0098

Dear Director Dreher:

We are writing you in the matter of a water right application for permit no. 65-13803. This concerns your employee, Mark Limbaugh, Watermaster for the Payette River, District 65, 102 N. Main, Payette, Idaho 83661. We have enclosed a detailed explanation written to Gary Spackman of the Western Region Office. We would greatly appreciate your involvement in this conflict of interest matter. Thank You.

Sincerely Yours,



Avery and Susan Seifert
343-7532 (Home)
336-3232 (work)

APR 10 1999

Avery and Susan Seifert
117 E. Skylark Dr.
Boise, Idaho 83702
April 6, 1999

RECEIVED
APR 08 1999
Department of Water Resources

Mr. Gary Spackman
Western Region Office Manager
Idaho Department of Water Resources
2735 Airport Way
Boise, Idaho 83705-5082

Dear Mr. Spackman:

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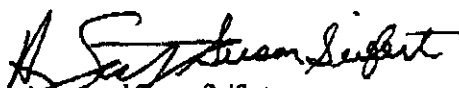
APR 10 1999

(2)

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Susan can be reached at 343-7532 during the day. We look forward to hearing from you.

Sincerely Yours,


Avery and Susan Seifert

cc: Karl J. Dreher, Director State of Idaho, Department of Water Resources

APR 23 1999

MEMORANDUM

TO: FILE 65-13803
FROM: NORM YOUNG *NY*
RE: DISCUSSION WITH PROTESTANTS
DATE: April 22, 1999

On this date, Avery and Susan Seifert, and Attorney Jon Gorski visited this office to discuss their concerns with the department's handling of application for permit 65-13803. Senator Atwell Parry also was in attendance. The Seiferts' concerns centered around whether IDWR would consider that the second domestic use is a mobile home that the City of McCall considers to be in noncompliance with local requirements. They were concerned about IDWR's procedures for recognizing water right ownership changes, particularly those involving a split in use. They were also concerned about the role that Mark Limbaugh might play in consideration of the application; i.e., whether participation is a conflict of interest for the watermaster. Finally, they asked whether alternatives exist to holding a formal hearing.

I confirmed that Rule 45.01.e of IDWR's Water Appropriation Rules includes within the criteria for determining whether a proposed use is in the local public interest consideration of whether the use complies with local planning and zoning ordinances. I indicated that the hearing officer would have the responsibility of weighing the evidence submitted by the parties to determine compliance with this consideration.

I described the requirement to file a notice of ownership change with IDWR, and that IDWR would not authorize an increase in beneficial use through an ownership split.

Copies of the orders creating Water District 65 were given to Mr. Gorski. We discussed the location of the Water District and its role in regulating domestic uses. I described how a watermaster is elected, appointed, and compensated and the role of the watermaster, including the narrow involvement in water allocation. I explained that a conference or hearing is open to the public, but that participation by non-parties could be limited by the hearing officer.

Concerning alternatives to the formal hearing, I suggested settling through an agreement, either with or without another pre-hearing conference, to avoid the cost of a hearing and possible court appeals. I suggested that if an agreement could not be reached that solved the principal issues, perhaps an agreement could be structured to bypass the issues, while preserving each party's rights to contest the issues in the future if a resolution becomes unavoidable. As a final suggestion, I suggested that the parties could

65-13803-13
APR 22 1999

agree to let IDWR issue a preliminary decision, then file exceptions, and ask for a 42-1701A hearing if the decision was unworkable and not in accordance with law.

I advised them that I would put a memo in the file disclosing the substance of the discussions and exclude myself from the decision making process relative to the application.

RECORDED
JUL 12 1977



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 www.idwr.state.id.us/idwr/idwrhome.htm

DIRK KEMPTHORNE

Governor

KARL J. DREHER

Director

FAX TRANSMITTAL COVER SHEET

DATE:

4/23/99

TO:

Steve Lester

FROM:

Pete Fleck

DOCUMENT DESCRIPTION:

originals in the
mail

COMMENTS:

COVER SHEET + 3 PAGES

PLEASE CONTACT

IF YOU DO NOT RECEIVE THIS ENTIRE DOCUMENT

MICROFILMED

DEC 10 1999

Protestant's letters
to : Director
Regional Mgr.

RECEIVED

APR 08 1999

Department of Water Resources

Avery and Susan Seifert
117 E. Skylark Dr
Boise, Idaho 83702
April 6, 1999

Karl J. Dreher, Director
State of Idaho, Department of Water Resources
1301 North Orchard St.
P.O. Box 83720
Boise, Idaho 83720-0098

Dear Director Dreher:

We are writing you in the matter of a water right application for permit no. 65-13803. This concerns your employee, Mark Limbaugh, Watermaster for the Payette River, District 65, 102 N. Main, Payette, Idaho 83661. We have enclosed a detailed explanation written to Gary Spackman of the Western Region Office. We would greatly appreciate your involvement in this conflict of interest matter. Thank You.

Sincerely Yours,



Avery and Susan Seifert
343-7532 (Home)
336-3232 (work)

MICROFILMED

APR 10 1999

Avery and Susan Seifert
117 E. Skylark Dr.
Boise, Idaho 83702
April 6, 1999

Mr. Gary Spackman
Western Region Office Manager
Idaho Department of Water Resources
2735 Airport Way
Boise, Idaho 83705-5082

RECEIVED
APR 08 1999
Department of Water Resources

Dear Mr. Spackman

On April 2, 1999 we met with Steve Lester, Water Rights Supervisor, Stephen and Paula Shultz, and Mark Limbaugh, the Watermaster for the Payette River. We met in McCall City Hall at 1:30 p.m., for the prehearing conference in the matter for permit no. 65-13803; the application the Shultzes have requested to appropriate the public waters of the State of Idaho. As you know, Mr. Limbaugh's family owned the Shultzes land until 1996. We were extremely surprised that Mr. Limbaugh was present with the conflict of interest and potential liability he has. It was extremely unclear to us who was running the conference and who had arranged the conference. We had come prepared to exchange issues under Section 42-203A, Idaho Code, however we couldn't because of Mr. Limbaugh's presence.

The Shultzes seem confused about the reasons we were there and didn't speak to issues, which were outlined in section 42-203A. When we raised any questions from Mr. Lester about the specific guidelines from the Department for surface water rights, or tried to clarify points on the instructions for filling an application form, he was vague and non-specific. We had brought exhibit items we wanted to ask about, however we were never given the opportunity to "formulate and simplify issues" or to "exchange proposed exhibits". We were asked several times, "Why are you protesting?", by Mr. Lester.

The Shultzes application has been amended more than one time. It is now very confusing to us what they are asking for. In Chapter 2 of Title 42, section 42-211, "If amendment to an application is made after publication of notice of the original application, said notice shall be republished following the amendment, upon payment by the applicant of the statutory fee for republication as in this act provided". Rule 39 of the Idaho Administrative Code, Water Appropriation, also speaks to this; the applicants' initials do not appear anywhere on the amended application. We need a copy of the amended application in whatever form it is now.

Mr. Lester also alluded to the fact that we had changed the point of diversion when we put in a licensed submersible pump in August of 1997. He retracted this statement when we clarified we had the water right and the permit from the Idaho Department of Lands and both agencies had approved this before the new water system was put in. Is the Shultzes application allowed to have the same point of diversion as our point of diversion when they do not have a water right? We highly resent the implication that we did something illegal when the water system on the Shultzes property is not permitted by Idaho and never has been. Mark Limbaugh illegally transferred Barbara Limbaugh's name to our Water claim to water on May 9, 1990 and Gene Gibson, the employee of the IDWR allowed this to take place. We were not legally informed by IDWR at the time. We are of the opinion that the Agency is abdicating its responsibilities to us by allowing Mark Limbaugh to preside at the conference last week. We were expecting an informal disposition aimed at some resolution.

Regarding a possible hearing. Will any of the previous correspondence be part of the record? We have information documenting our water right and the surrounding rights of our neighbors, will this be part of the record or will it be our responsibility to have this put in the record? Who will preside at a hearing and who will make the final determination of the Shultzes water right? Can we subpoena Jan Shurtz, or will her view of the situation be part of the record?

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APR 10 1999

(2)

Where do we go from here? Steve Lester mentioned the possibility of another prehearing conference. We would be willing to do this if it were in Boise without Mark Limbaugh present. We are suppose to write the Shultzes a letter with a possible compromise and copy it to Steve Lester. We will do this when we completely understand their amended application and the guidelines the Department prescribes for their application. There was a graph the Shultzes referred to and Steve Lester acted like he was familiar with it. If it is information the Department uses as a guideline why weren't we given this when we requested an application?

Susan can be reached at 343-7532 during the day. We look forward to hearing from you.

Sincerely Yours,


Avery and Susan Seifert

cc: Karl J. Dreher, Director State of Idaho, Department of Water Resources

MICROFILMED
DEC 10 1999

MEMORANDUM

TO: FILE 65-13803
FROM: NORM YOUNG *NY*
RE: DISCUSSION WITH PROTESTANTS
DATE: April 22, 1999

On this date, Avery and Susan Seifert, and Attorney Jon Gorski visited this office to discuss their concerns with the department's handling of application for permit 65-13803. Senator Atwell Parry also was in attendance. The Seiferts' concerns centered around whether IDWR would consider that the second domestic use is a mobile home that the City of McCall considers to be in noncompliance with local requirements. They were concerned about IDWR's procedures for recognizing water right ownership changes, particularly those involving a split in use. They were also concerned about the role that Mark Limbaugh might play in consideration of the application; i.e., whether participation is a conflict of interest for the watermaster. Finally, they asked whether alternatives exist to holding a formal hearing.

I confirmed that Rule 45.01.e of IDWR's Water Appropriation Rules includes within the criteria for determining whether a proposed use is in the local public interest consideration of whether the use complies with local planning and zoning ordinances. I indicated that the hearing officer would have the responsibility of weighing the evidence submitted by the parties to determine compliance with this consideration.

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DEC 11 1999

agree to let IDWR issue a preliminary decision, then file exceptions, and ask for a 42-1701A hearing if the decision was unworkable and not in accordance with law.

I advised them that I would put a memo in the file disclosing the substance of the discussions and exclude myself from the decision making process relative to the application.

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DEC 10 1999

Young, Norm

From: Lester, Steve
Sent: Thursday, April 22, 1999 12 09 PM
To: Young, Norm
Cc: Ellis, Debbie
Subject: Appl 65-13803 for Shultz

Norm -

I received Debbie's message that you have the file. Applicant (Paula S) called today & asked for status report Applicant has not received anything from protestant except the protest letter I think that protestant's attorney sent us a letter (earlier in the process) in addition to protestant's letter about the McCall conference I conducted

I promised Paula that would fax her anything we have received after the original protest letter Also, I mentioned Gary's pending letter about scheduling a hearing instead of holding a second conference Applicant lives in Utah and stated that second conference would be a waste of time/money . "let's do the hearing", she said. Applicant is very frustrated that protestant was non-responsive in recent conference.

Tomorrow would like to fax her the protestant's info plus resolve what we should do next Should Gary's letter be sent? If the fax can be sent from S.O , Paula's fax is 801-588-2499. Otherwise, I can take care of that in the afternoon (have meeting with Gary & other allocation staff here all morning)

Please let me know about fax situation Also, let me know if I can do anything else about this application

Thanks,

Steve

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DEC 10 1999
1

CONVERSATION MEMORANDUM

DATE 4/22/99

FILE 65-13803

NAME OF PARTY Paula Schultz 801-588-2490

EMPLOYEE JL

RE: Status

I returned her call & briefed her on Seifert's latest letter etc. Applicant has not received anything from protestant except copy of protest.

She wants to proceed to hearing. Scheduling difficulties - as in prot. conf - still exist.

She also needs c's of anything Seifert's sent after protest letter.

↳ CAN fax 801-588-2499

File & S.O. - BCGI still shows e W.

Debbie E. will track down file & call me
e that.

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DEC 10 1999

ROSTER OF ATTENDANCE

IDAHO DEPARTMENT OF WATER RESOURCES
2735 AIRPORT WAY, BOISE, IDAHO 83705

Re: Application for Permit No. 65-13803 in the Name of Stephen &/or Paula Shultz

Place: McCall City Hall, American Legion Hall, McCall, Idaho

Date: Friday, April 2, 1999

Conducted by: Steve Lester

NAME

ADDRESS

Susan Seifert	117 E. Sky lark Dr. Boise Id
Avery Seifert	117 E. Sky lark Dr Boise 83702
STEPHEN SHULTZ	1339 E 3 rd AV ² SLC. UT 84103
PAUL SHULTZ	" " " " " "
MARK LINSBACH	102 N. main PAYETTE, ID 83661

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APR 12 1999

Notes 65-13803

JL 4/2/99

Appl.
Shultz

bought in 1996

originally 1 pld to 2 cabins & 1 trailer:

cabin + trailer = Appl.

cabin = Prot.

Fall '97 Prot. put in own pld their O/I.

both parties
agree

→ SRBA → 65-10438 covers prot. & O/I

So Appl. filed to cover older pld now
serving O/I, minor lawn use involved.

(So 1 pld in O/I many yrs. but SRBA results
1 pld O/I for prot.; leave "w.r. shortage" which
application can make whole...)

If approval → 2 w.r.'s to cover 2 systems).

Prot.

Lots discussion re cts vs sfr, standards for
x # domestic, etc.

Went over SRBA vs. MICROFILMED
processes.

I'm not sure re basis their protest but
appears relates to uses of the trailer (rentals?).

Seifert

-2-

We discussed 6 issues & protests & what is/isn't
in IIRK review, burden of proof etc.

Is local public interest the unresolved issue?

Applicant addressed 6 issues in context existing
system many years water supply, #,
etc don't appear to be issues

Dismissal what's next -

Leaving it cannot resolve an
agreement to allow protest to be withdrawn?

protestant wants some time to propose
cond. of approval to resolve.

prot. will send proposal in c 1 wk. to
appl. w cc IIRK

Limbaugh discussed his family's prior own-
ership of land & old w.r. where D/I for
undetermined reason (aeright back in early
days?).

Follow up

done ✓ ① send cc of IIRK's ^{MICROFILMED} permit chart - int. use
per # times - to protestant.

② call up for c 4/12/99 re ~~proposed~~ conditions.

RECEIVED

FEB 16 1999

WATER RESOURCES
WESTERN REGION

Paula and Stephen Shultz
1339 E Third Avenue
Salt Lake City, UT 84103

February 9, 1999

Mr Gary Spackman
Idaho Department of Water Resources
Western Region
2735 Airport Way
Boise, ID 83705-5082

RE. Application for Permit No 65-13803

Dear Mr Spackman:

We are in receipt of the notice of the prehearing conference for the protest of our water rights application dated January 29, 1999. We prefer to meet in McCall, Idaho, on Friday, April 2, 1999 at the McCall City Hall.

We have sent a letter to the Seiferts (protestants) indicating our plans. (see enclosure)

Thank you for your consideration in this matter. We hope that the issues can be resolved at this conference.

Sincerely,

Paula (& Stephen) Shultz
Paula and Stephen Shultz

MICROFILMED

JUN 10 1999

RECEIVED

FEB 16 1999

WATER RESOURCES
WESTERN REGION

Paula and Stephen Shultz
1339 E. Third Avenue
Salt Lake City, UT 84103

February 9, 1999

Avery and Susan Seifert
117 E Skylark Dr
Boise, ID 83702

Dear Avery and Susan

We are in receipt of the notice of a prehearing conference for our water rights application from the Department of Water Resources, sent February 1, 1999 as well as your letter dated February 3, 1999.

We will plan to meet in McCall, Idaho, Friday, April 2, 1999, at 1:30 p.m. at the McCall City Hall, as per the IDWR notice.

Sincerely,

Paula and Stephen Shultz

cc. Gary Spackman

Copy - sent Feb 9, 1999

MICROFILMED

DEC 10 1999

Avery and Susan Seifert
117 E. Skylark Dr.
Boise, Idaho 83702
February 3, 1999

RECEIVED
FEB 04 1999
WATER RESOURCES
WESTERN REGION

Stephen and Paula Shultz
1339 E. Third Ave.
Salt Lake City, Utah 84103

Dear Steve and Paula,

We received a notice of a prehearing conference on your water right application, from the Department of Water Resources yesterday. We would be happy to meet on April 2, 1999, at 1:30 p.m. in either Boise or McCall.

Please let us know what you want to do.

Sincerely Yours,



Avery and Susan Seifert

CC: Gary Spackman

MICROFILMED
DEC 10 1999

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE
STATE OF IDAHO

IN THE MATTER OF APPLICATION)
FOR PERMIT NO. 65-13803 IN THE)
NAME OF STEPHEN &/OR PAULA)
SHULTZ.)

**NOTICE OF PREHEARING
CONFERENCE**

On August 14, 1998, Stephen &/or Paula Shultz filed with the Department of Water Resources (IDWR) an application for permit to appropriate the public waters of the State of Idaho. The application was protested by Avery &/or Susan Seifert.

IDWR has scheduled a conference for the protest to be held on Friday, April 2, 1999, at 1:30 p.m. at the McCall City Hall, American Legion Hall, 216 Park St., McCall, Idaho 83638. The conference will be held in accordance with provisions of Chapters 2 and 17, Title 42, and Chapter 52, Title 67, of the Idaho Code, the adopted Rules of Procedure of the Department of Water Resources, and Rules 40 and 45 of the adopted Rules and Regulations of Water Appropriation of the Department of Water Resources.

Alternatively, IDWR will consider conducting the conference in Boise, or telephonically on the same day upon agreement by the parties and their attorneys. The parties should notify IDWR of an alternative conference agreement on or before March 15, 1999. If an alternative conference is sought, the parties must arrange for a conference room in Boise or arrange to connect the participants telephonically. IDWR will assist the parties, particularly in scheduling a conference room.

The conference will be conducted in a facility which satisfies 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 IDWR within (10) days prior to the conference.

Dated this 29th day of January, 1999



Gary Spackman

MICROFILMED

31 JAN 1999

CERTIFICATE OF MAILING

I hereby certify that on the 5th day of February, 1999, I mailed a true and correct copy, postage prepaid, of this document to the applicant(s) and protestant(s) listed:


Sue Taylor
Senior Secretary

STEPHEN &/OR PAULA SHULTZ
1339 E 3RD AVE
SALT LAKE CITY UT 84103

AVERY &/OR SUSAN SEIFERT
117 E SKYLARK DR
BOISE ID 83702

MICROFILMED

DEC 10 1999

CONFERENCE AND HEARING PROCEDURE

APPLICATION FOR PERMIT

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 proposed 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 on issues 1, 2, 3, 4, & 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 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.

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DEC 10 1995

CONFERENCE

The purpose of a prehearing 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 offers, schedule hearings, establish procedure at hearings and address other matters that may expedite orderly conduct and disposition of the proceeding or its settlement.

HEARING

The department will tape record the hearing. Copies of a hearing tape are available upon written 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 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 their 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 prior to any scheduled hearing.

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 ten (10) days prior to the hearing.

MICROFILMED

DEC 11 1994

Gary Spackman
State of Idaho Department of Water Resources
2735 Airport Way
Boise, Idaho 83705-5082
December 21, 1998

RECEIVED
DEC 22 1998
WATER RESOURCES
SOUTHWEST REGION

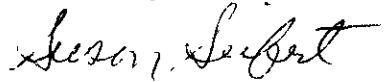
Avery and Susan Seifert
117 E. Skylark Dr.
Boise, Idaho 83702

Dear Mr. Spackman:

Enclosed is the next three months calendar when we will be available to have a pre-hearing conference on application permit no. 65-13803. As I explained on the telephone, we need traveling time to have the conference in McCall, and the weather conditions during these months is a factor. If the conference were in Boise, and we had a couple of weeks notice, we could rearrange Avery's schedule, making more times available.

I telephoned Sue Taylor, the senior secretary today to make sure she has the correct address for us. Both the envelope and Notice of cancellation had our address as Skyline Dr. Fortunately we did receive the correspondence. Note we live at 117 E. Skylark Dr.

Sincerely Yours,



Susan G. Seifert

MICROFILMED

DEC 10 1999

Paula Shultz 12-23-98
501-359-0941

Paula called to
make sure we
noted in the file
that the applicants
did not request the
cancellation of the
conference.

At

BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE

STATE OF IDAHO

**IN THE MATTER OF APPLICATION)
FOR PERMIT NO. 65-13803)
IN THE NAME OF STEPHEN &/OR)
PAULA SHULTZ)**

**NOTICE CANCELLATION
OF CONFERENCE**

Pursuant to a request by the applicant, the conference for the above-referenced matter scheduled for January 6, 1999, in McCall, Idaho, is hereby **CANCELED**.

Enclosed are calendars for the months of March, April and May, 1999. Please mark out the dates you will **NOT** be available for a water right conference. If there is not a compatible date for the applicant and the protestant then IDWR will set a conference date for April or May, 1999, and the parties will have to adjust their schedules, if necessary.

Dated this 17 day of December, 1998



Gary Spackman

CERTIFICATE OF MAILING

I hereby certify that on the 18th day of December, 1998, I mailed a true and correct copy, postage prepaid, of this document to the applicant(s) and protestant(s) listed:



Sue Taylor
Senior Secretary

**STEPHEN &/OR PAULA SHULTZ
1339 E 3RD AVE
SALT LAKE CITY UT 84103**

**AVERY &/OR SUSAN SEIFERT
117 E SKYLINE DR
BOISE ID 83702**

RECEIVED

DEC 22 1998

WATER RESOURCES
WESTERN REGION

March 1999						
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April 1999						
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May 1999						
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APR 23 1999

Shu H2

March 1999

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April 1999

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May 1999

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DEC 10 1999

RECEIVED

JAN 19 1999

WATER RESOURCES
WESTERN REGION

Paula and Stephen Shultz
1339 E. Third Avenue
Salt Lake City, UT 84103

January 12, 1999

Mr. Gary Spackman
Idaho Department of Water Resources
Western Region
2735 Airport Way
Boise, ID 83705-5082

RE: Application for Permit No. 65-13803

Dear Mr. Spackman:

Enclosed please find the calendar you sent to us regarding times we would not be available for a water right conference. I apologize for the delay of this response, but as I told Sue Taylor by phone last week, our work schedules for that time period were not available until now.

There is only one week that we both have off and can plan to be in McCall for the conference. We appreciate any consideration you can give to us in this matter.

Sincerely,


Paula and Stephen Shultz

MICROFILMED

DEC 10 1999

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

IN THE MATTER OF APPLICATION)	
FOR PERMIT NO. 65-13803)	NOTICE CANCELLATION
IN THE NAME OF STEPHEN &/OR)	OF CONFERENCE
PAULA SHULTZ)	
_____)	

Pursuant to a request by the applicant, the conference for the above-referenced matter scheduled for January 6, 1999, in McCall, Idaho, is hereby **CANCELED**.

Enclosed are calendars for the months of March, April and May, 1999. Please mark out the dates you will **NOT** be available for a water right conference. If there is not a compatible date for the applicant and the protestant then IDWR will set a conference date for April or May, 1999, and the parties will have to adjust their schedules, if necessary.

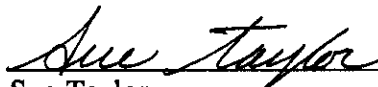
Dated this 17 day of December, 1998



Gary Spackman

CERTIFICATE OF MAILING

I hereby certify that on the 18th day of December, 1998, I mailed a true and correct copy, postage prepaid, of this document to the applicant(s) and protestant(s) listed:



Sue Taylor
Senior Secretary

STEPHEN &/OR PAULA SHULTZ
1339 E 3RD AVE
SALT LAKE CITY UT 84103

AVERY &/OR SUSAN SEIFERT
117 E SKYLINE DR
BOISE ID 83702

MICROFILMED
DEC 16 1998

March

1999

S	M	T	W	T	F	S
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7	8	9	10	11	12	13
14	15	16	17	18	19	20
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28	29	30	31			

April

1999

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May

1999

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DEC 10 1999

Avery and Susan Seifert
117 E. Skylark Dr.
Boise, Idaho
83702
Fax: 385-7205
December 15, 1998

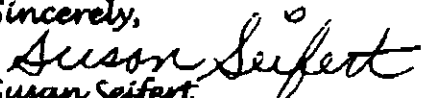
Gary Spackman
State of Idaho, Department of Water Resources
2735 Airport Way, Fax: 208-3342348
Boise, Idaho 83705-5082

Dear Mr. Spackman:

I wrote you a short note yesterday and Faxed it to your secretary. I had today's date on it and I immediately called her to correct the error. I received the notice of prehearing conference on permit no. 65-13803, scheduling the conference in McCall, on January 6, 1999, on Friday, December 18. I also received a copy of a letter from Paula Shultz to you dated November 27. I have enclosed with this fax to you, eight pages of correspondence between your Department, Amy Pemberton, & Jon Gorski. I have numbered the enclosures in the order we have received them. We have made an attempt to resolve the protest.

As I told you in the fax I sent you yesterday, and have tried to explain on your voice mail, My husband can not change his pre-scheduled surgery on January 6, 1999. We can however be at the same place and time, on January 7, 1999. The Shultzes have written you that this is an acceptable time. With the holidays upon us, we have had very little time to rearrange schedules. We also would be willing to meet in McCall, December 23-30, or March 20-27, 1999.

I realize you are very busy, especially at this time of the year. Could you just have your secretary call me at 343-7532 and tell me if January 7 will work, or fax me a reply at 385-7205?

Sincerely,

Susan Seifert

MICROFILMED
DEC 16 1998



State of Idaho
DEPARTMENT OF WATER RESOURCES

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

PHILIP E. BATT
GOVERNOR

KARL J. DREHER
DIRECTOR

October 22, 1998

AVERY &/OR SUSAN SEIFERT
117 E SKYLARK DR
BOISE ID 83702

Re: Application for Permit No. 65-13803 in the Name of Stephen &/or Paula Shultz

Dear Protestant:

This office acknowledges receipt of your protest to the issuance of a permit pursuant to the above referenced application. The Department suggests you contact the applicant directly in an effort to determine what is proposed by the application and to attempt to resolve the protest.

If this office has not been advised within twenty (20) days that the protest has been resolved, the matter will be scheduled for conference. The following are the criteria the Department must consider in either approving or denying an application or permit (Section 42-203A, Idaho Code):

1. Will the proposed use reduce the quantity of water under existing water rights?
2. Is the proposed water supply insufficient for the purposes intended?
3. Is the application made in good faith or for delay or speculative purposes?
4. Has the applicant sufficient financial resources with which to complete the project?
5. Will the proposed use under this permit conflict with the local public interest?
6. Will the proposed use be contrary to conservation of water resources within the state of Idaho?

If this office can be of further assistance, please contact us.

Sincerely,

A handwritten signature in cursive script that reads "Gary Spackman".
Gary Spackman

GS:st

MICROFILMED
OCT 11 1998

(1)

Bode
Idaho Falls
Pocatello

Moffatt Thomas

MOFFATT THOMAS BARRETT ROCK & FIELDS, CHTD.

Willis C. Moffatt
1907-1980

Eugene C. Thomas

John W. Barrett

R. B. Rock

Richard C. Fields

Robert E. Baker

John C. Ward

Paul S. Street

Larry C. Hunter

Glenn M. Christensen

Mark S. Prusynski

Morgan W. Richards

Michael G. McPeak

Stephen R. Thomas

Jon S. Gorski

Gary T. Dance

Gerald T. Husch

Kirk R. Helvie

Thomas C. Morris

Michael E. Thomas

James C. deGlee

Patricia M. Olson

Mark A. Ellison

David S. Jensen

Bradley J. Williams

James L. Martin

Robert B. Burns

Stephen J. Olson

Lee Radford

Scott A. Tschirg

Julie K. Weaver

C. Clayton Gill

David P. Gardner

Rob G. Dickinson

Anne Baker Wilde

Erik J. Bolinder

Stephen B. Drake

Jeremy C. Chou

Katrina T. Sather

Ray J. Chacko

October 28, 1998

via facsimile

US Bank Plaza Building
101 S Capitol Blvd 10th Fl
PO Box 829
Bode Idaho 83701 0829

208 345 2000
800 422 2889
208 385 5384 Fax
www.moffatt.com

Amy N. Pemberton, Esq.

Millemann, Pittenger & McMahan, LLP

706 North First

P. O. Box 1066

McCall, ID 83638

Re: Seifert - Shultz

MTBR&F File No. 17-308

Dear Amy:

Enclosed is a letter the Seiferts received from the Department of Water Resources on October 26, 1998. This letter is being written to you pursuant to the Department's request that the Seiferts contact the Shultzes in an effort to determine "what is proposed by the application and to attempt to resolve the protest." I think that the Shultzes have misinterpreted the Seiferts' protest and have assumed the worst with regard to the protest. The purpose of this letter is to (a) request that the Shultzes provide the Seiferts with additional information as to what is proposed by the application, and (b) provide the Shultzes with an attempt to resolve the protest.

As you know, prior to 1971, water could be diverted either through a water permit or through historical constitutional use. After 1971, the law requires that new water rights were only allowed if permitted through the state. Based on our research, it would appear that historically there was one water right of .02 cfs or 1.2 a.f. for the combined properties. The water right was obtained on and attached to the Seiferts' property. When the Seiferts put in their own water system, they needed to clarify the water rights of the various parties.

Based on the historical usage, there is no question that the cabins on the Seifert and the Shultz property would have historical rights to divert water from Payette Lake. The mobile home was put in place after 1971 and would have no historical right, nor do we find any water right for the mobile home. The mobile home is a nonconforming use. In the Shultzes' application, they ask for .04 cfs or 2.4 a.f. for their property for two homes. This amount of water seems curious in that for years both properties were serviced by .02 cfs or 1.2 a.f.

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DEC 10 1998
COPY

Amy N. Pemberton, Esq.
October 28, 1998
Page 2

What would resolve the Seiferts' protest would be that the Shultzes request .02 cfs or 1.2 a.f. for their entire property; i.e., both structures, which is the same amount of water that has historically been taken for both properties. Secondly, the application should show that the water right is for one home and one mobile home. With these minor modifications, the protest could be withdrawn.

As I have indicated, the Seiferts are not intending or attempting to prohibit use of the mobile home, but they do want all of the uses on the property to be in compliance with the law. Consequently, if the amount of water is reduced and the distinction is made between the mobile home and the house, I think we can reach a resolution here. If the Shultzes continue to contend that they applied for a water right as required by the state, the Seiferts would consider withdrawing the protest if Gary Spackman of the Department of Water Resources confirms in writing that the Shultzes had no other options and that the application is proper.

Please let me know how you would like to proceed.

Very truly yours,

Jon S. Gorski

JSG/sh
Enclosure

cc: Avery and Susan Seifert

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(3)

DEC 10 1999

220729_1

MILLEMANN, PITTENGER & McMAHAN, LLP
ATTORNEYS AT LAW706 NORTH FIRST
POST OFFICE BOX 1066
McCALL, IDAHO 83838STEVEN J. MILLEMANN
GREGORY C. PITTENGER
BRIAN L. McMAHAN
AMY N. PEMBERTONTELEPHONE: (208) 834-7841
FACSIMILE: (208) 834-4516
E-MAIL: mm@cyberhighway.net

November 5, 1998

Via Facsimile (208) 385-5384

Jon S. Gorski, Esq.
Moffatt Thomas Barrett Rock & Fields, Chtd.
US Bank Plaza Building
101 S. Capitol Blvd. 10th Floor
P. O. Box 829
Boise, ID 83701-0829Re: Seifert/Shultz

Dear Jon:

I am writing with regard to our conversation yesterday relating to the Seiferts' protest of the Shultzes' application for a water rights permit, and relating to the snow removal issue. First, I had a conversation with Gary Spackman of the Department of Water Resources. I asked him what the usual amount of water permitted for domestic use is. He stated that with a shared water system, which is what the Shultzes have (i.e. the cabin and the guest house both share a water system), the recommended water flow is .04 cfs for one use and .06 cfs for two uses. Please see the attached graph which depicts water requirements for domestic use. The Shultzes have applied for a total of .04 cfs for both homes, which is the recommended water flow for only one domestic use. While the Shultzes do not feel the need to increase their application to .06 cfs, they do not want to jeopardize any future water use by obtaining a permit with too little water flow. Although Mr. Spackman stated that such small water uses are rarely if ever investigated, the Shultzes do not want to be put in the position of needing more water than they have been allocated, and they do not want to put the Department of Water Resources in the position of questioning such use. Therefore, the Shultzes are not willing to reduce their request to .02 cfs for both houses.

The Shultzes will agree, however, to modify the description at paragraph 8.d of their application from "2 domestic homes" to "2 domestic uses; one home and one guest home".

MICROFILMED

DEC 10 1999

November 5, 1998

Jon S. Gorski, Esq.

Page - 2

Finally, Gary Spackman stated that the application made by the Shultzes for a water permit was made properly.

As to snow removal, the Shultzes are willing to proceed with the contracting with Bill Hardin and Craig Collins exactly as they have proceeded for the past two years. This, in their opinion, is as follows:

For the past two years Bill Hardin has had separate contracts with the Seiferts and the Shultzes. The Shultzes use Bill Hardin's services on an "on demand" basis. They let Bill know several weeks in advance that they will be coming, and he makes sure to clear the area. On the other hand, the Seiferts have had a "keep open" arrangement with him, meaning that every time it snows enough to require snow removal, Bill plows the roadway. If Bill clears the area for the Shultzes at a time when he would have also cleared the area for the Seiferts, he splits the cost between the two. Otherwise, the Shultzes are charged for the cost to have him clear snow when they request it, and the Seiferts are charged for the cost to "keep open" the area.

Craig Collins provides security checks and snow blower services. He clears a path to the cabins approximately the width of two snow blowers. He charges the Seiferts and the Shultzes each one half the cost for this path to the bottom of the hill. He then charges the Shultzes the additional cost to clear a path to their side door and to the water access door under the cabin. He does additional snow removal for the Seiferts for which charges them additionally. Craig has indicated in the past that he can perform his snow removal services even if Bill Hardin does not clear the roadway above on a "keep open" basis.

Additionally, Paula Shultz has contacted both Bill Hardin and Mark Limbaugh with regard to historical practice for snow removal. Mark Limbaugh confirmed that he used Bill Hardin's services on an "on demand" basis as well, and only paid for the services when he requested them. Bill Hardin also confirmed that expenses for snow removal have historically been shared in the past in the manner described above, with the owners of the Shultz cabin paying only for "on demand" snow clearing.

In short, the Shultzes are not willing to share in the cost of having Bill Hardin clear the roadway on a "keep open" basis. They will maintain separate contracts for snow removal with Bill Hardin and Craig Collins, and handle those contracts as specified above. While I am sympathetic to your clients' understanding of historic events which may be different than those stated above, my clients are not willing to negotiate this matter further.

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DEC 10 1998

November 5, 1998
Jon S. Gorski, Esq.
Page - 3

Please let me know at your earliest convenience how your clients intend to proceed with their protest of the water rights application so that the Shultzes may respond to Gary Spackman's recent letter. Thank you, and please call me if you have any questions.

Very truly yours,



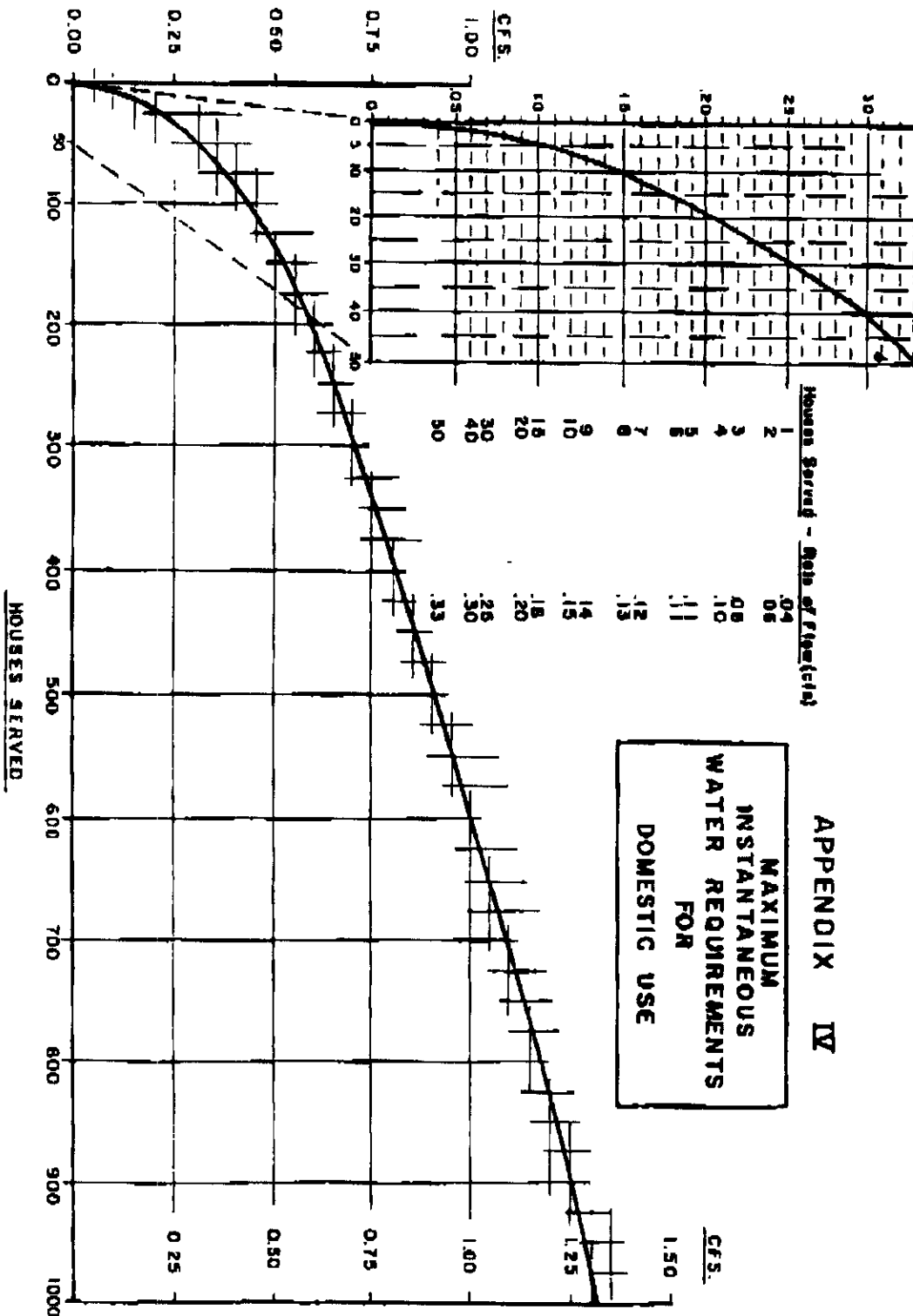
AMY N. PEMBERTON

Enclosure

cc: Client

Gorski Ltr 11-5

MICROFILMED
(6) DEC 10 1999



MICROFILMED
DEC (17) 1999

Boise
Idaho Falls
Pocatello

Moffatt Thomas

MOFFATT THOMAS BARRETT ROCK & FIELDS, CHTD.

Willis C. Moffatt,
1907-1980
Eugene C. Thomas
John W. Barrett
R. B. Rock
Richard C. Fields
Robert E. Baker
John C. Ward
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Eric J. Bolinder
Stephen R. Drake
Jeremy C. Chou
Kathrina T. Sather
Ray J. Chacko

US Bank Plaza Building
101 S Capitol Blvd 10th Fl
PO Box 829
Boise Idaho 83701 0829

November 13, 1998

208 345 2000
800 422 2889
208 385 5384 fax
www.moffatt.com

Amy N. Pemberton, Esq.
Millemann, Pittenger & McMahan, LLP
706 North First
P O Box 1066
McCall, ID 83638-1066

Re: Shultz/Seifert
MTBR&F File No. 17-308

Dear Amy:

Thank you for your letter dated November 5, 1998. Seiferts understand that Craig Collins is no longer providing the services that he did last year and the services are now being provided by a Matt Gustafsen. Seiferts would intend to use Matt Gustafsen in the same way they used Craig Collins. Please let me know if Shultzes plan to do likewise so that the cost can be split.

With regard to use of Bill Hardin, Seiferts disagree as to what the past practice was before Shultzes. In any event, begrudgingly and reluctantly and for this year only, Seiferts will agree to use Hardin's services for an "on demand" basis. They feel this is an improper way to manage snow removal, but given their anticipated use of the cabin this winter, it will make more sense to do it this way.

With regard to the issues on water, Seiferts are still considering Shultzes' proposal and conducting their research.

Very truly yours,

10/
Jon S. Gorski

JSG/kdp

cc. Avery and Susan Seifert

REPRO-FILED
NOV 18 1998 (8)

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

**IN THE MATTER OF APPLICATION)
FOR PERMIT NO. 65-13803 IN THE)
NAME OF STEPHEN &/OR PAULA)
SHULTZ.)**

**NOTICE OF PREHEARING
CONFERENCE**

On August 14, 1998, Stephen &/or Paula Shultz filed with the Department of Water Resources (IDWR) an application for permit to appropriate the public waters of the State of Idaho. The application was protested by Avery &/or Susan Seifert.

IDWR has scheduled a conference for the protest to be held on Wednesday, January 6, 1999, at 1:30 p.m. at the McCall City Hall, American Legion Conference Room, 216 Park St., McCall, Idaho 83638. The conference will be held in accordance with provisions of Chapters 2 and 17, Title 42, and Chapter 52, Title 67, of the Idaho Code, the adopted Rules of Procedure of the Department of Water Resources, and Rules 40 and 45 of the adopted Rules and Regulations of Water Appropriation of the Department of Water Resources.

The conference will be conducted in a facility which satisfies 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 IDWR within (10) days prior to the conference.

Dated this 10th day of December, 1998.



Gary Spackman

CERTIFICATE OF MAILING

I hereby certify that on the 10TH day of December 1998, I mailed a true and correct copy, postage prepaid, of this document to the applicant(s) and protestant(s) listed:


Sue Taylor
Senior Secretary

STEPHEN &/OR PAULA SHULTZ
1339 E 3RD AVE
SALT LAKE CITY UT 84103

AVERY &/OR SUSAN SEIFERT
117 E SKYLARK DR
BOISE ID 83702

CONFERENCE AND HEARING PROCEDURE

APPLICATION FOR PERMIT

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 proposed 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 on issues 1, 2, 3, 4, & 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 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.

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DEC 16 1999

CONFERENCE

The purpose of a prehearing 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 offers, schedule hearings, establish procedure at hearings and address other matters that may expedite orderly conduct and disposition of the proceeding or its settlement.

HEARING

The department will tape record the hearing. Copies of a hearing tape are available upon written 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 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 their 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 prior to any scheduled hearing.

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 ten (10) days prior to the hearing.

MICROFILMED
JEC 1 11 1999



State of Idaho

DEPARTMENT OF WATER RESOURCES

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

PHILIP E. BATT
GOVERNOR

KARL J. DREHER
DIRECTOR

December 10, 1998

MCCALL CITY HALL
216 PARK ST
MCCALL ID 83638

Re: Conference Room Reservation

This letter is to confirm the conference room reservation downstairs in the American Legion Conference Room made by the Department of Water Resources for the 6th day of January, 1999, at 1:30 p.m.

If you have any questions please call me at 334-2190, Western Region of the Department of Water Resources.

Sincerely,

A handwritten signature in cursive script, appearing to read 'Sue', written in dark ink.

Sue Taylor
Senior Secretary

MICROFILMED

DEC 10 1998

Paula and Stephen Shultz
1339 E. Third Avenue
Salt Lake City, UT 84103

November 27, 1998

Mr Gary Spackman
Department of Water Resources
Western Region
2735 Airport Way
Boise, ID 83705-5082

RECEIVED

NOV 30 1998

WATER RESOURCES
WESTERN REGION

RE Application for Permit No. 65-13803

Dear Mr. Spackman.

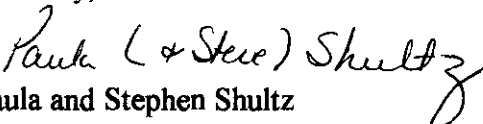
Since we seem to be playing phone tag, I decided to write. We received your letter stating that a protest to our application had been filed. We have contacted Avery and Susan Seifert through their lawyer, Mr. Jon Gorski, to attempt to resolve the protest. As of a letter dated November 13, 1998 from him, "Seiferts are still considering Shultzes' proposal and conducting their research". Since the twenty days in which we were told to advise your office have elapsed, we presume that they are not planning to withdraw their protest.

What is the process now? We understand that a conference or hearing will be scheduled. Is there flexibility in the place and time this can occur? Both of our schedules are fairly inflexible and we have limited time. Is it possible to have the conference and hearing scheduled in McCall during a visit we have planned January 4-7, 1999?

We will continue to try to reach you by phone to discuss this matter. Paula's work phone is (801) 588-2490 and she can be reached there from 7:45 a.m. until at least 5:15 p.m. Monday-Friday

Thank you for your consideration in this matter.

Sincerely,


Paula and Stephen Shultz

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DEC 10 1998



State of Idaho

DEPARTMENT OF WATER RESOURCES

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

FAX (208) 334-2348

November 2, 1998

PHILIP E. BATT
GOVERNOR

KARL J. DREHER
DIRECTOR

CARL WASHBURN
IDAHO DEPT OF LANDS
1910 NW BLVD STE 201
COEUR D ALENE ID 83814-2615

RE: APPLICATION L-65-S-526 SHULTZ WATERLINE

Dear Mr. Washburn:

A copy of your October 20, 1998 memorandum regarding the above referenced application was recently received at this office. The existing Shultz waterline is also involved with pending water right permit application no. 65-13803.

The water right application was filed on August 14, 1998 to cover the existing development. The application has been protested by adjacent owners (Seifert). At this point it would be difficult to say when the protested matter will be resolved but at least a few months will be needed.

Enclosed is a copy of the water right application for your file. Please let me know if you need more information.

Sincerely,

Steve Lester
Water Rights Supervisor

Enclosure

c: Erv Ballou, IDWR State Office

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DEC 10 1999

IDAHO DEPARTMENT OF LANDS

1910 NW Blvd., Suite 201
Coeur d'Alene, Idaho 83814-2615
Phone (208) 769-1535 Fax (208) 769-1557

STANLEY F. HAMILTON - DIRECTOR

RECEIVED
OCT 22 1998
Department of Water Resources

RECEIVED
OCT 28 1998
WATER RESOURCES
WESTERN REGION

MEMORANDUM

DATE: October 20, 1998

TO: Idaho Department of Fish and Game-McCall
Idaho Department of Health and Welfare-DEQ, Boise
~~Idaho Department of Water Resources, Boise~~
Valley County Planning Administration
City of McCall
Big Payette Lake Water Quality Council
Avery Seifert & Albert Poulsen, Jr. - Adjacent Owners

FROM: *and* Carl Washburn
Navigable Waters Specialist

SUBJECT: NOTICE OF APPLICATION L-65-S-526 - SHULTZ WATERLINE

Enclosed is an application and plats requesting permission to permit an existing water intake system: 1/3 hp pump attached to 1 1/4-inch pvc pipe extending 200 feet waterward of OHWM of Payette Lake.

Please submit your comments, recommendations, or objections to IDL by November 4, 1998, regarding the likely effect of the proposed encroachments upon adjacent property, lake, and streambed value factors of navigation, fish and wildlife habitat, aquatic life, recreation, aesthetic beauty, or water quality. If you have concerns or are opposed to the project as proposed, please list your specific reasons for concern or opposition and any facts or documentation to support your position.

You should recommend alternate plans if they are economically feasible to accomplish the purpose of the proposed encroachment. You should also recommend any mitigation measures or special restrictions/provisions you would like included as part of the permit if one is issued.

If you do not submit a comment, I will assume you have no objections to the application. If you have questions concerning the application, I suggest you contact the applicant. If the applicant cannot answer your questions, please contact us.

mc

enclosures

c: Don McNarie, Real Estate Specialist

MICROFILMED

KEEP IDAHO GREEN
PREVENT WILDFIRE

EQUAL OPPORTUNITY EMPLOYER

**U.S. ARMY CORPS OF ENGINEERS
IDAHO DEPARTMENT OF WATER RESOURCES
IDAHO DEPARTMENT OF LANDS**

**RECEIVED - JMI BOTH STATE
IDAHO AND THE CORPS OF ENGINEERS
PRIOR TO START OF WORK**

The Department of the Army permit program is authorized by Section 10 of the Rivers and Harbors Act of 1899 and Section 404 of the Clean Water Act. These require permits authorizing structures and work in or affecting navigable waters of the United States and the discharge of dredged or fill material into waters of the United States, including their adjacent wetlands. State permits are required under the State of Idaho, Stream Channel Protection Act (Title 42, Chapter 38, Idaho Code) and the Idaho Lake Protection Act, Section 58-142 et seq, Idaho Code. This application will meet the requirements of the above agencies.

1. Corps of Engineers # _____ Date Received _____	2. State of Idaho # <u>L-165-S-526</u> Date Received _____ Received 2:50 PM 520 Rec'd By: _____ Receipt # _____
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PLEASE TYPE OR PRINT

3. Applicant <u>Stephen & Paula Shultz</u> Mailing Address <u>1339 E 3rd Avenue</u> <u>Salt Lake City, UT 84103</u> Work Phone (Area) <u>(801) 588-2490</u> Home (Area) <u>(801) 359-0941</u> Fax Number <u>(801) 359-4361</u>	4. Authorized Agent <u>* system is already in place</u> Mailing Address <u>(for past 20-25 years (at least))</u> Work Phone (Area) _____ Home (Area) _____ Tributary of: <u>Payette River</u> Assessor's Desc. (Tax No. or Subdivision, Lot & Block No.) <u>* RR 00 327 0000 19 AA North 1/2 lot 19 Harris Co. (See instruction)</u> <table border="1" style="width:100%"> <tr> <td><u>SWSE</u></td> <td><u>35</u></td> <td><u>19N</u></td> <td><u>03E</u></td> </tr> <tr> <td>1/4 1/4</td> <td>Section</td> <td>Township</td> <td>Range</td> </tr> </table> UTM Coordinate Grid Zone _____ Northing _____ Easting _____	<u>SWSE</u>	<u>35</u>	<u>19N</u>	<u>03E</u>	1/4 1/4	Section	Township	Range
<u>SWSE</u>	<u>35</u>	<u>19N</u>	<u>03E</u>						
1/4 1/4	Section	Township	Range						

5. Location where proposed activity exists or will occur.
 Waterway Payette Lake
McCall Valley Idaho
 In/near city or town County State
83638 City
 Zip Code Local jurisdiction (city or county)

6. Describe the proposed activity. Provide a general description of the proposed work including all discharges of fill material and any structures such as piers, f. boat lifts, bulkheads, and cofferdams.

Obtain appropriate paperwork for a system that has been in place for at least 20-25 years
System is a submersible 1/2 HP pump that originally served both south & North 1/2 lots
of lot 19; in the fall of 1997, the owners of the south 1/2 of lot 19 put in their own
system; we now need an encroachment permit for our existing pump and system

Describe construction methods and equipment:

N/A

List all soil series located at project site, and indicate if any are on the county's hydric soils list:

N/A

Length of project along the stream or extension into lake or reservoir: ~ 200 - 300 feet

Will material be placed waterward of ordinary high water mark? N/A If yes, volume: N/A (cubic yards)
 (BOTH TEMPORARY AND PERMANENT)

Will material be placed in wetlands? N/A If yes, total area: _____ (acres)

Type and composition of fill material: _____ (i.e. sand, etc.) Material Source: _____

Will excavation or dredging be required? NO If yes, volume: _____ (cubic yards) Composition _____

Disposal site for excavated material: N/A Method of excavation: _____

Stream gradient: _____

Method of controlling turbidity and/or sedimentation: _____

7. Size and flow capacity of proposed bridge or culvert and area of drainage served (sq. miles): (Idaho Department of Water Resources requirement.)

THAN 8-1/2 X 11 INCHES IN SIZE. See the instruction pamphlet for instructions and a checklist for completing the drawings. Include photographs of the project mounted on 8-1/2 x 11 sheets.

9. Purpose and intended use: Commercial _____ Private ☒ Other _____ Describ _____

Necessity and justification for project Domestic Water

10. Proposed Starting Date _____ Estimated Duration _____

11. If any portion of the activity is complete, indicate month and year of completion _____
Indicate the existing work on the drawings.

12. Names, addresses, and telephone numbers of adjoining property owners, lessees, etc., whose property also adjoins the waterway.

Susan and Avery Seifert 2115 Eastside Drive, McCall 83638

Albert Poulsen, Jr 2121 Eastside Drive, McCall 83638

☐ Check here if the alteration is located on endowment lands administered by the Idaho Department of Lands

13. LEGAL OWNER IF OTHER THAN APPLICANT _____

Mailing Address _____ City, State, Zip Code _____

Phone _____ Area _____ Work(_____) _____ Home(_____) _____

14. List other applications, approvals, or certifications from other Federal, interstate, state, or local agencies for any structures, constructions, discharges, deposits, other activities described in the application.

Issuing Agency	Type of Approval	Identification No.	Date of Application	Date of Approval
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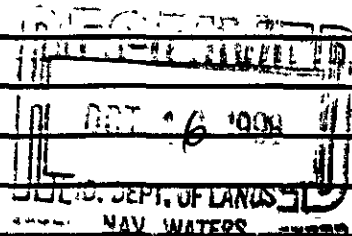
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15. Has any agency denied approval for the activity described herein or for any activity directly related to the activity described herein? Yes _____ No ☒
(If "Yes" explain)

16. Remarks or additional information: _____



17. Application is hereby made for a permit or permits to authorize the activities described herein. I certify that I am familiar with the information contained in application, and that to the best of my knowledge and belief, such information is true, complete, and accurate. I further certify that I possess the authority to take the proposed activities. I hereby grant to the agencies to which this application is made, the right to come upon the above-described location to inspect proposed or completed work.

9/24/98
Date

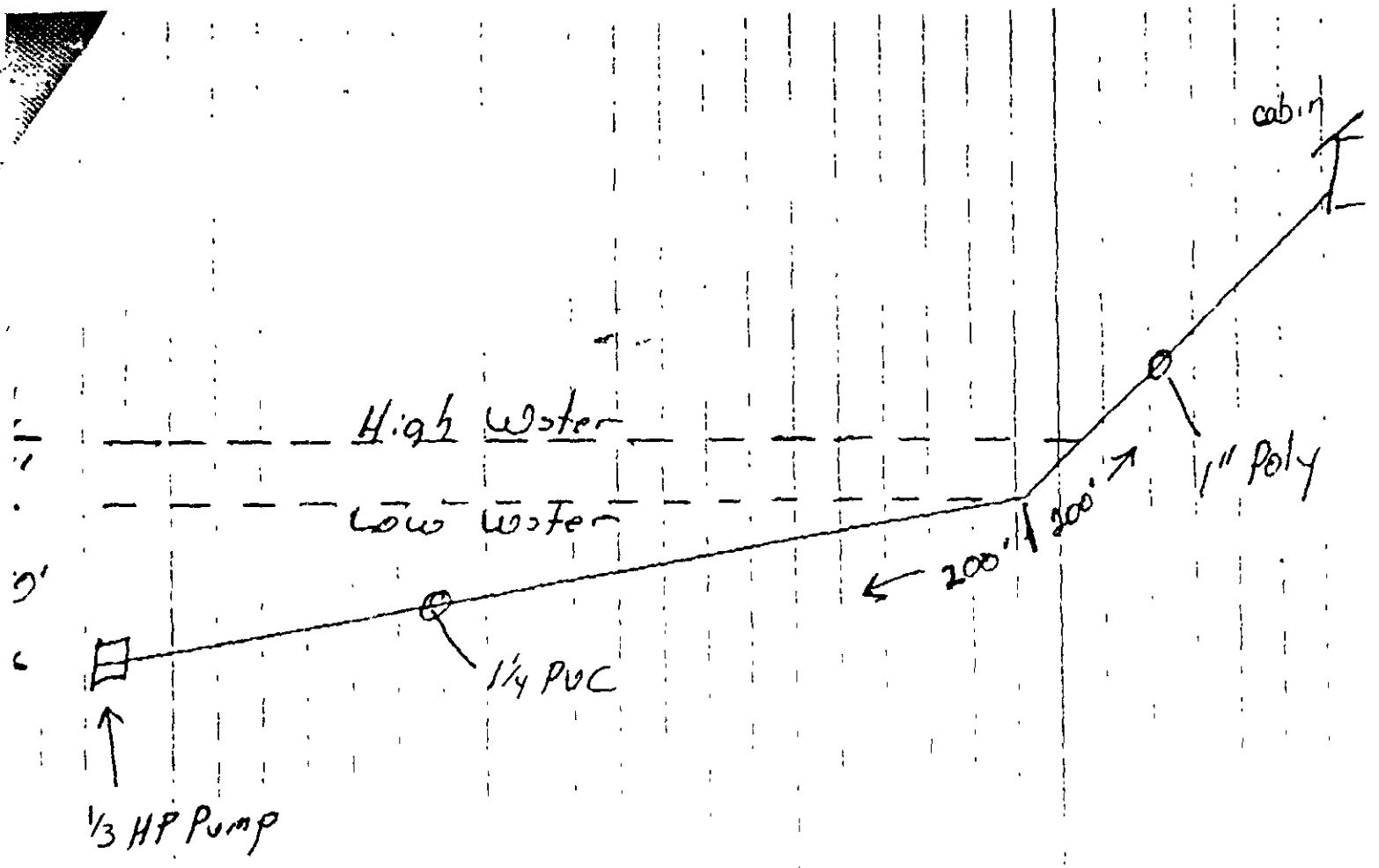
Bruce K Shultz
Signature of Applicant (ORIGINAL SIGNATURE REQUIRED)

19. If an authorized agent is to be designated, Item 4 and the following information should be completed.
I hereby designate _____ to act as my agent in matters related to this permit application. I understand that if a Federal permit is issued, I must sign the permit.

Date _____ Original Signature of Authorized Agent _____ Original Signature of Applicant _____

18 U.S.C. Section 1001 provides that: Whoever, in any manner within the jurisdiction of any department or agency of the United States knowingly falsifies, conceals, or covers up by any trick, scheme, or device a material fact or makes any false, fictitious, or fraudulent statements or representations or makes or uses any false writing or document knowing same to contain any false, fictitious, or fraudulent statement or entry, shall be fined not more than \$10,000 or imprisoned not more than 5 years or both. Do not send a Federal permit processing fee with this application. The appropriate fee will be assessed when a permit is issued.

DO NOT SEND FEDERAL PROCESSING FEE WITH APPLICATION



2/10/2011
SEC 10 000

Book 3 Page 37
 of Record of Survey
 Instrument No. 156731
 Filed and recorded at the request of Don Kuy
 149 acres 2 1/4, 1/2, 1/4, 1/8, 1/16, 1/32, 1/64, 1/128, 1/256, 1/512, 1/1024, 1/2048, 1/4096, 1/8192, 1/16384, 1/32768, 1/65536, 1/131072, 1/262144, 1/524288, 1/1048576, 1/2097152, 1/4194304, 1/8388608, 1/16777216, 1/33554432, 1/67108864, 1/134217728, 1/268435456, 1/536870912, 1/1073741824, 1/2147483648, 1/4294967296, 1/8589934592, 1/17179869184, 1/34359738368, 1/68719476736, 1/137438953472, 1/274877906944, 1/549755813888, 1/1099511627776, 1/2199023255552, 1/4398046511104, 1/8796093022208, 1/17592186044416, 1/35184372088832, 1/70368744177664, 1/140737488355328, 1/281474976710656, 1/562949953421312, 1/1125899906842624, 1/2251799813685248, 1/4503599627370496, 1/9007199254740992, 1/18014398509481984, 1/36028797018963968, 1/72057594037927936, 1/144115188075855872, 1/288230376151711744, 1/576460752303423488, 1/1152921504606846976, 1/2305843009213693952, 1/4611686018427387904, 1/9223372036854775808, 1/18446744073709551616, 1/36893488147419103232, 1/73786976294838206464, 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State of Idaho
DEPARTMENT OF WATER RESOURCES

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

PHILIP E. BATT
GOVERNOR

KARL J. DREHER
DIRECTOR

October 22, 1998

AVERY &/OR SUSAN SEIFERT
117 E SKYLARK DR
BOISE ID 83702

Re: Application for Permit No. 65-13803 in the Name of Stephen &/or Paula Shultz

Dear Protestant:

This office acknowledges receipt of your protest to the issuance of a permit pursuant to the above referenced application. The Department suggests you contact the applicant directly in an effort to determine what is proposed by the application and to attempt to resolve the protest.

If this office has not been advised within twenty (20) days that the protest has been resolved, the matter will be scheduled for conference. The following are the criteria the Department must consider in either approving or denying an application or permit (Section 42-203A, Idaho Code):

1. Will the proposed use reduce the quantity of water under existing water rights?
2. Is the proposed water supply insufficient for the purposes intended?
3. Is the application made in good faith or for delay or speculative purposes?
4. Has the applicant sufficient financial resources with which to complete the project?
5. Will the proposed use under this permit conflict with the local public interest?
6. Will the proposed use be contrary to conservation of water resources within the state of Idaho?

If this office can be of further assistance, please contact us.

Sincerely,


Gary Spackman

GS.st

MICROFILMED

DEC 1 1998



State of Idaho

DEPARTMENT OF WATER RESOURCES

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

October 22, 1998

PHILIP E. BATT
GOVERNOR

KARL J. DREHER
DIRECTOR

STEPHEN &/OR PAULA SHULTZ
1339 E 3RD AVE
SALT LAKE CITY UT 84103

Re: Application for Permit No. 65-13803

Dear Applicant:

Enclosed is a protest filed against the issuance of a permit pursuant to the above-referenced application. The Department suggests that you contact the protestants and attempt to resolve the protests.

If this office has not been advised within twenty (20) days that the protest has been resolved, the matter will be scheduled for a conference. The following are the criteria the Department must consider (per Section 42-203A, Idaho Code):

1. Will the proposed use reduce the quantity of water under existing water rights?
2. Is the proposed water supply insufficient for the purposes intended?
3. Is the application made in good faith or for delay or speculative purposes?
4. Has the applicant sufficient financial resources with which to complete the project?
5. Will the proposed use under this permit conflict with the local public interest?
6. Will the proposed use be contrary to conservation of water resources within the state of Idaho?

Please contact this office if you have questions regarding this procedure.

Sincerely,


Gary Spackman

GS:st

Enclosure: Copy of protest(s)

MICROFILMED

DEC 1 1998

**STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
NOTICE OF PROTEST**

RECEIVED

OCT 06 1998

WATER RESOURCES
WESTERN REGION

This form may be used to file a protest with the department under sections 42-108B, 42-203A, 42-203C, 42-211, 42-222 and 42-224, Idaho Code. The department will also accept a timely protest not completed on this form if it contains all necessary information.

1. Matter being protested 65-13803, Shultz, Stephen & Paula, 1339 E 3rd Ave, Salt Lake City, UT 84103
Diversion Pt Lot 4 (SW SE) See 35T 14 NR 03E, Valley County, Domestic 0.040 CFS
2. Name of protestant Avery & Susan Seifert
3. Protestant's representative for service (If different than protestant)

4. Service mailing address 117 E. Sky lark Dr. Boise, Id 83702
5. Service telephone no. 208-343-7532
6. Basis of protest (including statement of facts and law upon which the protest is based) _____
See attachments: letter from Avery & Susan Seifert 10/5/98
Letter From Andy Locke, Pt 2 McCall 9/24/98
Letter From Jan Shurte I DWS, 6-29-98, Water Rights Supervisor
page two of claim 65-10438, Adjudication claim report 6/3/98
(additional pages may be attached to describe the nature of the protest)
7. What would resolve your protest? Appropriate 0.02 CFS and 1.2 AF/yr for
one Domestic Household (Home)

I hereby, acknowledge that if I, or my designated representative, fails to appear at any regularly scheduled conference or hearing in the matter of which I have been notified at the address above, the department may issue a notice of proposed default against me in this matter for failure to appear. I also verify that I have served a copy of this protest upon the applicant.

Signed this 5 day of October, 19 98.

[Signature]
PROTESTANT Susan G. Seifert

PROTESTANT'S REPRESENTATIVE

MICROFILMED

NOTE:

- a) Not more than two (2) representatives for service of documents may be designated on a protest. If this protest is signed by more than one person without identifying the representative(s) for service of documents, the hearing officer may select the person(s) upon whom documents will be served.
- b) A protestant is required to timely file a protest with the department together with a \$25.00 protest fee in order for the protest to be considered by the department. In addition, the department's Rule of Procedure, IDAPA 37.01.01203, requires a protestant to send a copy of a protest to the applicant.
-

INSTRUCTIONS

1. The matter being protested must be clearly identified. A typical matter is identified by the application number such as "Application for Permit No. _____ in the name of _____" or "Application for Transfer No. _____ in the name of _____."
 2. Show the name of the protestant.
 3. If the protestant is represented by an attorney or other authorized representative, show the representative's name. The department then will serve documents on the representative and upon the protestant if specifically requested.
 4. Show the address where the department is to serve the documents. This should be the address of the authorized representative unless the protestant does not designate a representative.
 5. Show the telephone number of the authorized representative unless the protestant does not designate a service representative.
 6. Specifically describe the nature of the protest.
 7. Describe the relief being sought by the protestant.
-

FOR DEPARTMENT USE ONLY

Received by AK Date 10/6/98 Time 10:45
\$25.00 fee Receipted by AK # _____ Date 10-8-98

MICROFILMED
10-10-98

October 5, 1998

Karl J Dreher
Steve Lester
Department of Water Resources
Western Region
2735 Airport Way
Boise, Idaho 83705

Dear Mr . Dreher and Mr. Lester,

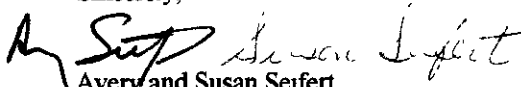
We wish to protest application number 65-13803, Shultz, Stephen, Shultz, Paula, Parcel number RP00327000019AA, or North half Lot 19, Harris Cove Subdivision, Valley County. This parcel has never had an individual IDWR surface water right issued. Prior to May, 1989, the joint water system(with a submersible pump in Payette Lake) was located under the log cabin on this parcel of Lot 19. We are parcel RP 00327000019B A, and the South half of Lot 19, Harris Cove Subdivision, Valley County.

Since May 1989, the log cabin on the N ½ Lot 19 has always been the primary dwelling. It's a log cabin with a cement foundation, with four bedrooms and two full bathrooms, laundry room and kitchen. The mobile home on the parcel of the N ½ Lot 19 has been present since 1978 by tax records. It is a double wide, manufactured in Oregon in 1975, and bought in Nampa, Idaho. It is "illegal" by Payette Lakes Sewer District standards, in that it does not have a separate sewer connection on the Shultzs property. The sewer connection is on our property, without a recorded easement authorizing this. The mobile home and the log cabin on the N ½ of Lot 19 is diverting water, with a submersible pump from Payette Lake, without an encroachment permit from the Idaho Department of Lands. The pump was updated in October of 1997, by a licensed plumber, yet no permit was issued.

We have attached a letter of correspondence from the McCall Planning and Zoning Director to the Shultzs, dated September 24, 1998. The mobile home is "grandfathered" as a structure for use as a guest house only, in a low density residential zoned area. We are in the Impact area of McCall City limits and are zoned for single family housing only. The mobile home can not be rented separately, sold and subdivided as a separate dwelling and parcel, and/or used for another household. City ordinances prohibit changing this non-conforming structure to a conforming structure without a building permit. For the last ten years the mobile home has been used from June to Labor Day only. During the summers of 1995 and 1996, the former owners, the Limbaughs, didn't use the mobile home. The snow fall in winter prevents entrance to the mobile home. Periodically skunks burrough into the mobile home as there is no foundation. Rodents are living in the trailer currently and the skunks are trying.

The Shultz family is one family consisting of two adults and two children. They bought Lot 19 N ½ in the fall of 1996. They reside in the primary dwelling, the log cabin. They have used the mobile home as a guest house for the past two summers, three or four times each summer. We see no rationale for expanding the historical use of the mobile home by expanding a portion of the water claim per their application. Apparently the structures on parcel no. RP 00327000019AA have never had a separate water right, and the historic use has varied, since the 100 foot Lot was subdivided into two 50foot Lots, in July of 1961. The mobile home began beneficial use sometime in 1978, as near as we can tell. The statutory method for domestic use on August 14, 1998 is based on number of domestic households, not how many dwellings or guest houses, on a parcel. Therefore we are requesting the quantity of water to be appropriated be 0.02CFS and 1.2 AF/yr., for one domestic home(household), from 01/01 to 12/31.

Sincerely,


Avery and Susan Seifert
117 E. Skylark Dr.
Boise, Idaho 83702

MICROFILMED
OCT 10 1998

September 24, 1998

Stephen & Paula Shultz
1339 E. 3rd Avenue
Salt Lake City, UT 84103

RE: Your property at 2117 Eastside Dr., McCall (N½ of Lot 19, Harris Cove Sub.)

Dear Mr. & Mrs. Shultz,

I met with Mrs. Susan Seifert, your neighbor to the south at 2115 Eastside Drive, on September 17 to discuss property usage in the area. During that meeting I found a variety of nonconforming uses and structures occurring on both properties. At this time there are no violations of McCall City Code occurring on either property. Rather than get into details, I will simply summarize two general considerations.

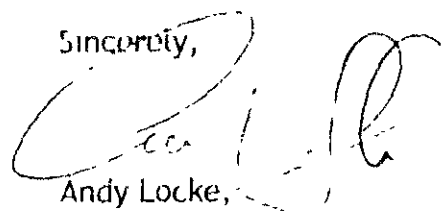
First, I will presume that the log cabin on your property is the primary dwelling on the site, and that the mobile home is secondary. The existence of two dwellings on a single property is contrary to MCC 3-8-060 (D), which states that: *No more than one dwelling unit per lot shall be permitted except as conditionally permitted under Section 3-8-037 (C), Guest house, or 3-8-030 (E), Multi-family dwelling units.* As the mobile home pre-dates the enactment of zoning in this area, per MCC 3-28-050, it is considered to exist as a valid conditional use. In short, the structure is "grandfathered." Please be advised that usage of the mobile home is limited to a guest house only, and the structure may not be rented. If you choose to rent the property, you must rent both the primary dwelling and the guest house, and those renters must follow the requirements noted above.

Second, the deck area which appears to be shared by both yourselves and the Seiferts is located within 50 feet of the high water mark. This structure is also nonconforming. As such, construction in this area is limited to maintenance of the deck only, and new construction is prohibited.

I have read a series of correspondence between yourselves and the Seiferts. It appears that most issues are of a civil nature.

If you have any questions, please feel free to contact me at the number listed below. I can also be reached by e-mail at the following address: planner@mccall.id.us.

Sincerely,



Andy Locke,
Planning & Zoning Administrator

CC Avery & Susan Seifert

McCall, ID
SEP 25 1998

AJ072NP
No. 65-10438

IDAHO DEPARTMENT OF WATER RESOURCES
ADJUDICATION CLAIM PROFILE REPORT
(OPTIONAL)

DATE: 06/03/98
PAGE: 2

Comments: Date: 06/03/1998 User: D:\JSH\RT Subject: CHANGE OF OWNERSHIP

THE CHANGE OF OWNERSHIP HOME THIS DATE IS TO SHOW THE ORIGINAL
OWNER OF THE ORIGINAL CLAIM FOR WATER RIGHT WAS
DECEASED FOR THE OLD FATHER RIVER BASIN ADJUDICATION RECORDS
SHOW THAT THE CASE WAS ORIGINALLY OWNED BY SEIFERTS, THEN SOLD
TO VAN LEUVEN'S, AND VAN LEUVEN SOLD TO SEIFERTS (MARRIAGE DEED IN
FILE). THERE IS NO PROPER DOCUMENTATION SHOWING THAT THE RIGHT
WAS VAN LEUVEN'S AND THE DATABASE SHOWS VAN LEUVEN'S AS THE
DECEASED OWNER. THE CONFUSION CAME WHEN THE SNAKE RIVER BASIN
ADJUDICATION CLAIM WAS FILED FOR TWO HOMES BY THE SEIFERTS. AT
THE TIME THE CLAIM WAS FILED BOTH HOMES WERE HOOKED UP TO THE OLD
SYSTEM, THEREFORE, THE SEIFERTS FILED ON BOTH. HOWEVER, SINCE
THE ORIGINAL DECREE WAS FOR ONE HOME, IOWA REDUCED THE
RECOMMENDATION TO THE SRA COURT TO ONE HOME. THEREFORE, MRS.
SEIFERT BECAME CONCERNED AS TO WHICH PERSON SHOULD HAVE THE WATER
RIGHT SINCE THE WATER RIGHT GOES WITH THE ORIGINAL HOME AND
THERE IS EVIDENCE IN THE FILE THAT THE SEIFERTS ARE THE OWNERS
OF THE ORIGINAL HOME, THIS CLAIM IS BEING CHANGED INTO THE 2
NAMES ONLY.

Audit: 06-03-98 JSH-RT

RECEIVED
JUN 11 1998
MICROFILM



State of Idaho

DEPARTMENT OF WATER RESOURCES

Western Region 2750 Airport Way, Boise, Idaho 83705-5082 (208) 334-2100
(208) 334-2148

PHILIP C. BATT
GOVERNOR

KARL E. DREHMER
DIRECTOR

June 29, 1998

Re Snake River Basin Adjudication Claim No. A65-10438

Barbara Limbaugh
PO Box 376
Fruiland, ID 83619

Dear Ms. Limbaugh,

On May 9, 1990, the above referenced claim was filed in your name and in the name of Avery and Susan Seifert. At that time this claim was filed based upon an existing right decreed in the Payette River Basin Adjudication. This claim was filed in connection with the Snake River Basin Adjudication (SRBA) claims taking and was filed on this decreed right indicating two homes as a part of the claim.

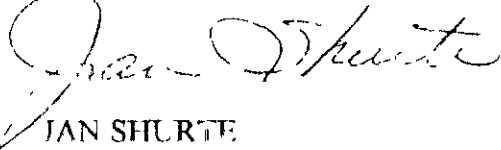
During our review of this claim for recommendation to the SRBA Court, we discovered that the original Payette River Decreed right was issued for only one home. Therefore, our recommendation went out in all of the names, however, only one home was listed. This resulted in a phone call and subsequent visit to our office by Susan Seifert, also shown on this claim, to inquire as to which home actually had been decreed with a 1948 date of first use under this water right.

Upon review of the original decreed water right file, we found that the original claim was filed in the name of Clifford & Nancy Greene. It then indicated that Lawrence Limbaugh Jr. purchased the land from the Greene's and in turn sold to Duane and Donna Van Leuven. The actual decreed right was in the name of Duane and Donna Van Leuven. Susan Seifert has a warranty deed showing their purchase of this home from the Van Leuven's. Therefore, we have changed this claim into the name of Avery and Susan Seifert per the chain of title of this property. This would indicate that the other residence on this property began use of the water from the lake at a later date, however, no water right can be found for this use. It would also indicate that the mobile home began use of the water at an even later date, however, no water right can be found for this use. The water right can only remain on the original home upon which it was appurtenant to from the original decree. Any other uses began at a later date would then be filed upon at the time the water was put to beneficial use. These uses can still be filed upon at this time by filing an application for permit.

RECORDED
JUL 1 1998
406

If you have any questions or further information concerning the ownership of this water right, please feel free to contact me. If we do not receive conflicting documentation from you concerning this change, we will record the change with the SRBA Court within two to three weeks.

Sincerely,



JAN SHURTE

Water Rights Supervisor

Western Region Adjudication Section

IS j

66-0970-2
JAN 16 1979

RECEIVED

OCT 02 1998

WATER RESOURCES
WESTERN REGION

APPLICATION FOR PERMIT FOR WATER RIGHT

NO. 65-13803

RECOMMENDATION OF WATERMASTER

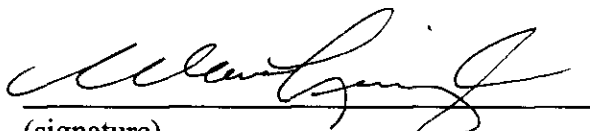
I, Mark Limbaugh, watermaster of the Payette River, of Water District No. 65, County of Valley, State of Idaho, whose address is 102 N. Main, Payette, Idaho 83661, have read the attached copy of the application for permit for a water right in the name of Stephen and/or Paula Shultz.

- Ⓐ I hereby endorse the above numbered application and recommend that the Director of the Department of Water Resources approve the application subject to the following conditions: This diversion will be under the control of the Watermaster for Water District No. 65.

OR

- B. I do not endorse approval of the above numbered application for water right as requested for the following reasons: _____

Dated at Payette, Idaho, this 30th day of September, 1998.


(signature)

MICROFILMED

OCT 14 1998

RECEIVED

OCT 20 1998

Publisher's Affidavit of Publication

STATE OF IDAHO

County of Valley

.SS

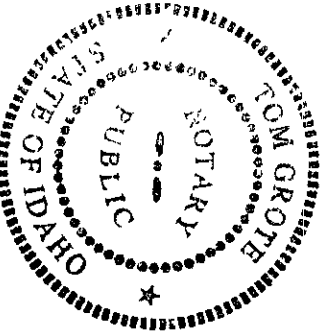
I, Carol J. Wright, being duly sworn and say, I am the receptionist of The Star-News, a weekly newspaper published at McCall, in the County of Valley, State of Idaho, that said newspaper is in general circulation in the county of afore said and is a legal newspaper, that the PUBLIC NOTICE, a copy of which is enclosed hereto and is a part hereof, was published in said newspaper once a week for a period of two weeks in the regular and entire issue of every number there of during the period of time of publication, and was published in the newspaper proper and not in a supplement; and that publication of such notice began October 1, 1998 and ended October 8, 1998

Carol J. Wright

Subscribed and sworn before me this 9th day of October, 1998.
STATE OF IDAHO

COUNTY OF VALLEY

On this 9th day of October, in the year of 1998, before me, a Notary Public, personally appeared Carol J. Wright, known or identified to me to be the person whose name subscribed to the within instrument, and being by me first duly sworn, declared that the statements therein are true, and acknowledged to me that she executed the same



Tom Grote

Tom Grote
Notary Public for Idaho
Residing at McCall, Idaho
Commission Expires 1999

NOTICE OF APPLICATION FOR

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

45-1362 SHULTZ, STEPHEN, SHULTZ, PAUL

1397 E. 1000 N.

SALT LAKE COUNTY, UTAH

Source: PAVETTE LAKE, Tributary

PAYETTE RIVER, SALT LAKE

Diversion to LOT 4 (SW/SE) SEC 1310N

R 05E in Valley County, then to agricultural

(0.040 CFS) Total Diversion: (0.040 CFS)

Dated filed: 8/14/1998

In: VALLEY County, T10N R05E S05E Lot 4 (SW/SE).

persons will be subject to all prior water rights. Persons may be required to obtain water rights of Sec. 42, State of Idaho. Any person applying for a water right in the public waters of the State of Idaho, whether the right be for agricultural, domestic, industrial, municipal, or other purposes, shall file with the Board, within 90 days together with the application, a copy of a copy of the application, and a copy of the protest to the application, signed by the Director 2/20/108

MICROFILMED

DEC 10 1998



State of Idaho

DEPARTMENT OF WATER RESOURCES

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

FAX (208) 334-2348

September 28, 1998

PHILIP E. BATT
GOVERNOR

KARL J. DREHER
DIRECTOR

MARK LIMBAUGH
WATER DISTRICT 65
102 N MAIN
PAYETTE ID 83661

Re: Application for Permit No. 65-13803 in the Name of Stephen &/or Paula Shultz

Dear Sir:

Enclosed is a copy of the above-referenced application for permit within your district. Also, enclosed is a form for your recommendation concerning this application for permit.

Please review the application and submit any comments you may have within two weeks. If you have any questions or need information, feel free to contact this office.

Sincerely,

A handwritten signature in cursive script that reads "Gary Spackman".

Gary Spackman

GS.st

Encl.

NOV 12 1998

10:11 AM



State of Idaho

DEPARTMENT OF WATER RESOURCES

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

PHILIP E. BATT
GOVERNOR

September 28, 1998

KARL J. DREHER
DIRECTOR

**SCOTT GRUNDER
STATE OF IDAHO
DEPT OF FISH & GAME
3101 S POWERLINE RD
NAMPA ID 83686**

Re: Application for Permit No. 65-13803 in the Name of Stephen &/or Paula Shultz

Dear Sir:

Enclosed are copies of the above-referenced applications for permit which may be of interest to your agency. The proposed use is from a source in the bull trout impact area. Please review the applications and submit any comments you may have.

This office normally completes the processing of an application within a six-week period and is required to take final action shortly thereafter, however, if your agency desires to file a formal protest against the approval of this application(s), your written protest along with the \$25.00 protest fee must be received in this office by October 19, 1998.

If you have any questions regarding the application, please contact this office.

Sincerely,

A handwritten signature in cursive script that reads "Gary Spackman". The signature is fluid and extends to the right.

Gary Spackman

GS:st

Encl.

RECEIVED, 10/1/98

10/1/98

CONVERSATION MEMORANDUM

DATE 9/15/98

FILE _____

NAME OF PARTY Paula Schultz 801-359-0941

EMPLOYEE SL

RE: Add'l. info

D/I (Cabin + mobile home) in place 15-20 yrs.

Previously thought covered by 65-10438 but recent SABA rec'd shows that for D/I for Seibert so Schultz' D/I system has no valid W.R. coverage.

USE = 2 lanes w/ very minor landscaping ~~flow~~ (few flower boxes).

Therefore - future mitigation	} N/A	consumptive use is de minimus
- adding flow for yard		

Applicant Requests immediate processing to settle W.R. coverage asap.

DATE OF REVIEW _____

BY _____

RECEIVED

AUG 14 1998

WATER RESOURCES
WESTERN REGION

Paula and Stephen Shultz
1339 E Third Avenue
Salt Lake City, UT 84103

August 11, 1998

Ms Jan Shurte
Idaho Department of Water Resources
Western Region
2735 Airport Way
Boise, ID 83705-5082

Dear Ms Shurte,

Enclosed please find our completed application for a permit for water right and a check in the amount of \$50.00 I believe Mr Mark Limbaugh spoke with you regarding this application, but if you have any questions, please feel free to call me My home phone is (801) 359-0941

Sincerely,

Paula K Shultz
Paula K Shultz

MAILED
AUG 14 1998

RECEIPT
For Monies Paid
to the
Idaho Department of Water Resources

Receipt No: **W024271**

Date: **8/14/1998**
Time: **10:44:13**

Received
From: **SHULTZ, PAULA K**

Type of Payment	Program A cct	Amount
APPLICATION FOR PERMIT - SHULTZ	62103 229 21 1155	50.00
CHECK 1182		
	Total	\$ 50.00

Region: **WESTERN**

Signature: *DBuffington*



State of Idaho

DEPARTMENT OF WATER RESOURCES

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

PHILIP E. BATT
GOVERNOR

KARL J. DREHER
DIRECTOR

SEPTEMBER 23, 1998

Legal Notices Department
The Star News
PO Box 985
McCall, ID 83638

Dear Legal Dept.:

Enclosed you will find a legal notice which we wish to have published on the dates indicated (once a week for two consecutive weekly issues) in your newspaper. If you cannot publish the notice on the proposed dates, please contact us immediately.

An affidavit of publication must be submitted to the Department along with the publication bill. Your cooperation is appreciated.

Please send the affidavit of publication and publication billing to this office before OCTOBER 19, 1998.

Yours truly,

SUE TAYLOR
Secretary/Office Coordinator

Encl.

7-10-68

65-13803

SHULTZ, STEPHEN
SHULTZ, PAULA
1339 E 3RD AVE
SALT LAKE CITY, ID 84103

Source: PAYETTE LAKE

Tributary: PAYETTE RIVER, NORTH FORK

Diversion Pt: LOT 4 (SWSE) Sec 35 T 19N R 03E in VALLEY County.

Use: DOMESTIC	(	0.040 CFS)
Total Diversion:	(	0.040 CFS)

Date Filed: 8/14/1998

In: VALLEY County
T19N R03E S35 Lot 4 (SWSE)

Permits will be subject to all prior water rights. Protests may be submitted based on the criteria of Sec. 42-203A, Idaho Code. Any protest against the approval of this application must be filed with the Director, Dept. of Water Resources, Western Region, 2735 Airport Way, Boise, Idaho 83705 together with a protest fee of \$25.00 on or before OCTOBER 19, 1998. The protestant must also send a copy of the protest to the applicant.

KARL J. DREHER, Director

Published: 10/ 1/1998 & 10/ 8/1998

10/1/98

10/8/98