

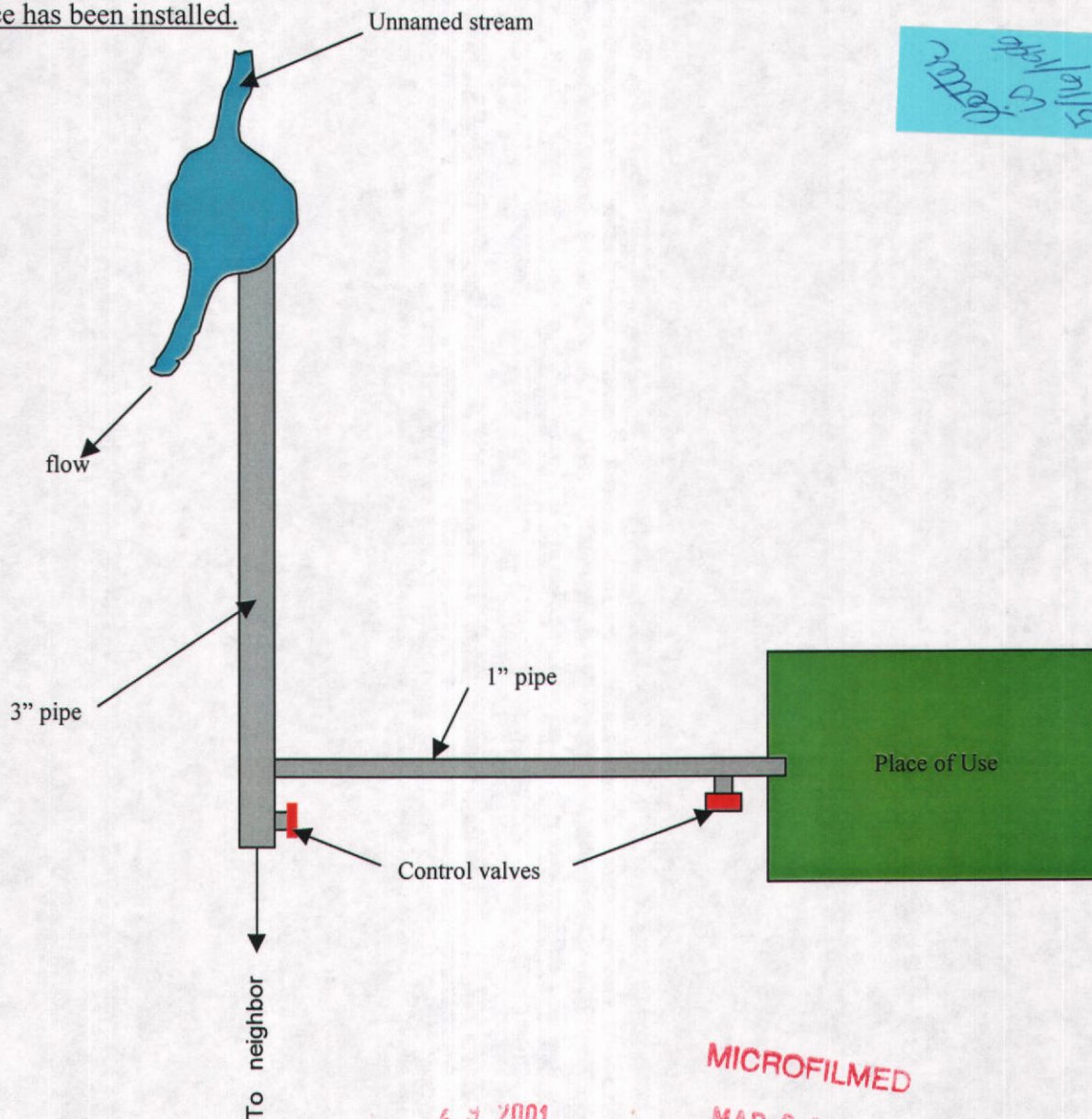
Idaho Dept. of Water Resources
Place of Use Comparison Report[illegible]

E. NARRATIVE/REMARKS/COMMENTS

The point of diversion and the place of use are located in the SWNW of Section 17, Township 09N, Range 09E. The water is diverted from a small pool in the stream by a submerged 3-inch pipe. The 3-inch pipe runs down the hill about 270 feet. At this point a 1-inch pipe is connected to the system. This 1-inch pipe conveys the water to Mr. Wilson's property. The entire system is fed by gravity. Two sprinklers are usually used to irrigate the lawn. The water is only used for external domestic purposes. The area irrigated is approximately 0.14 acres $[(40 \text{ ft} \times 50 \text{ ft}) + (28 \text{ ft} \times 143 \text{ ft}) = 6004 \text{ ft}^2]$.

A diversion rate of 0.21 cfs was measured using a 5-gallon bucket and a stopwatch.

The condition of approval requiring a measuring device was postponed. See letter by Gary Spackman on May 16, 2000. The condition of approval requiring a lockable controlling works was not met. I recommend that this permit be licensed for 0.02 cfs with an annual volume of 0.6 AF once a lockable device has been installed.



Have the conditions of permit been met? ☐ YES ☒ X NO

T09N
R09E
Sec. 17

65-12286

JACKSON PEAK QUADRANGLE
IDAHO-BOISE CO.
7.5 MINUTE SERIES (TOPOGRAPHIC)

2972 11
EIGHTMIL

24 R8E R9E

2972 III NW
(MILLER MTN. EAST)

26

25'

27

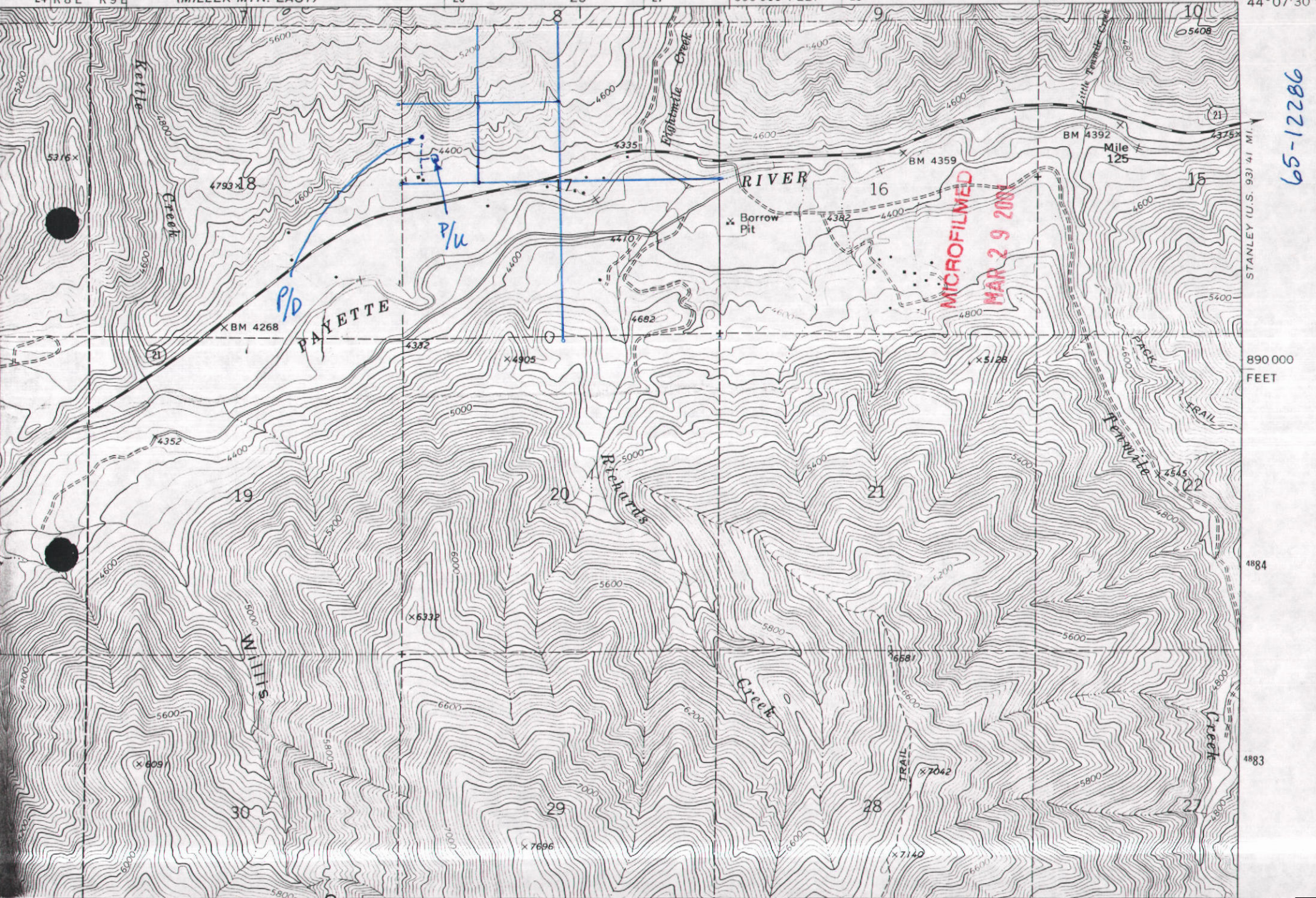
590 000 FEET

28

29

115°22'30"

44°07'30"



65-12286

STANLEY (U.S. 93) 41 MI.

890 000
FEET

4884

4883

P/D



Submerged pipe

P/u



MICROFILMED

MAR 29 2001

65-12286

P/u



P/u



MICROFILMED

MAR 29 2001

65-12286

FIELD NOTES

6-30-00

Page 1 of 2

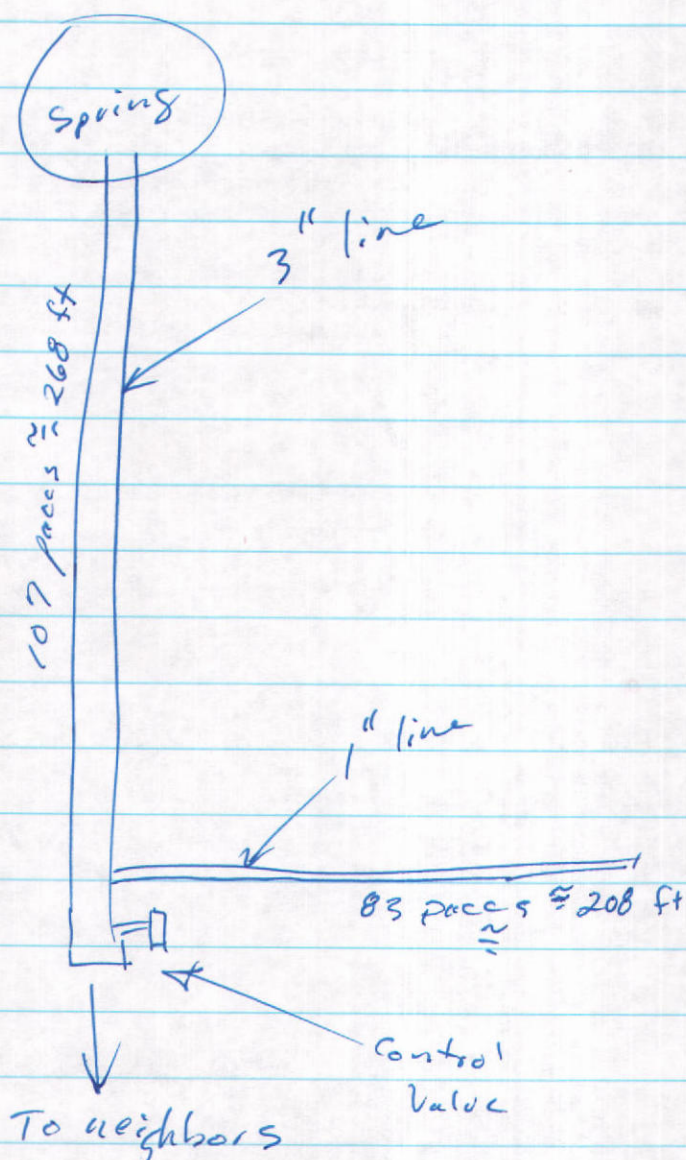
65-12286

1" Mainline

No lockable device

Measuring requirement was waived.

{ 5 Gallon Bucket
31.4 sec



MICROFILMED

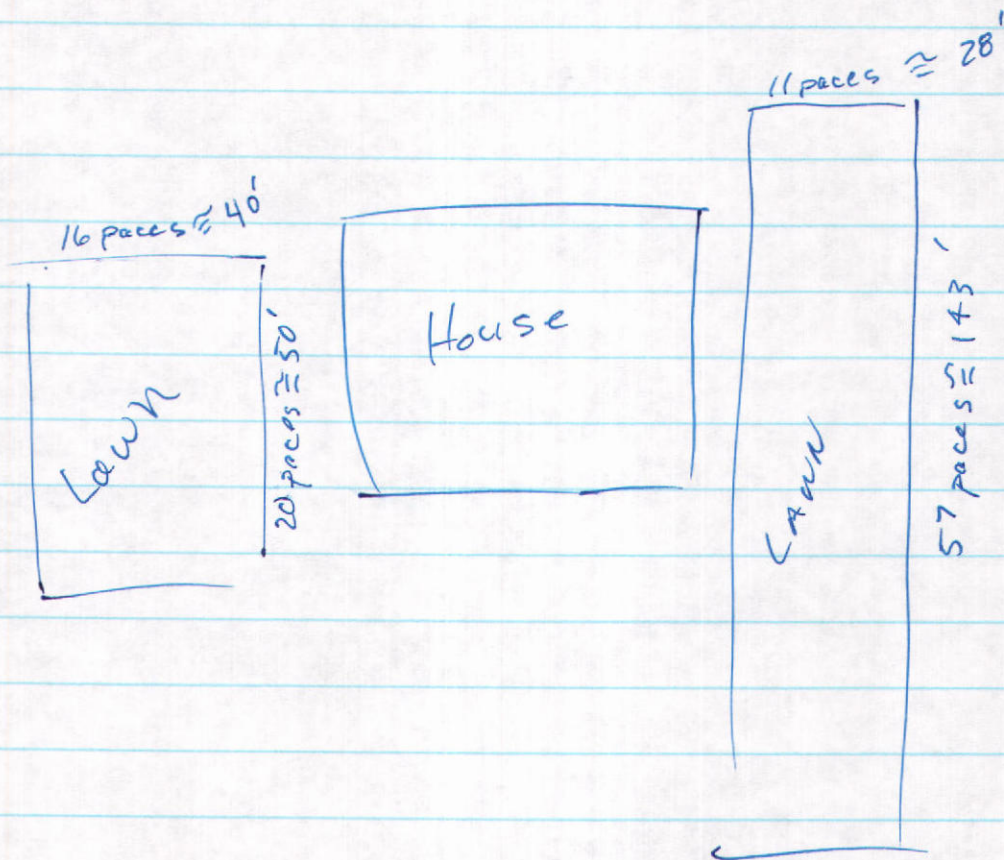
MAR 29 2001

65-12286

6-30-00

65-12286

Water is only used to water the lawn.



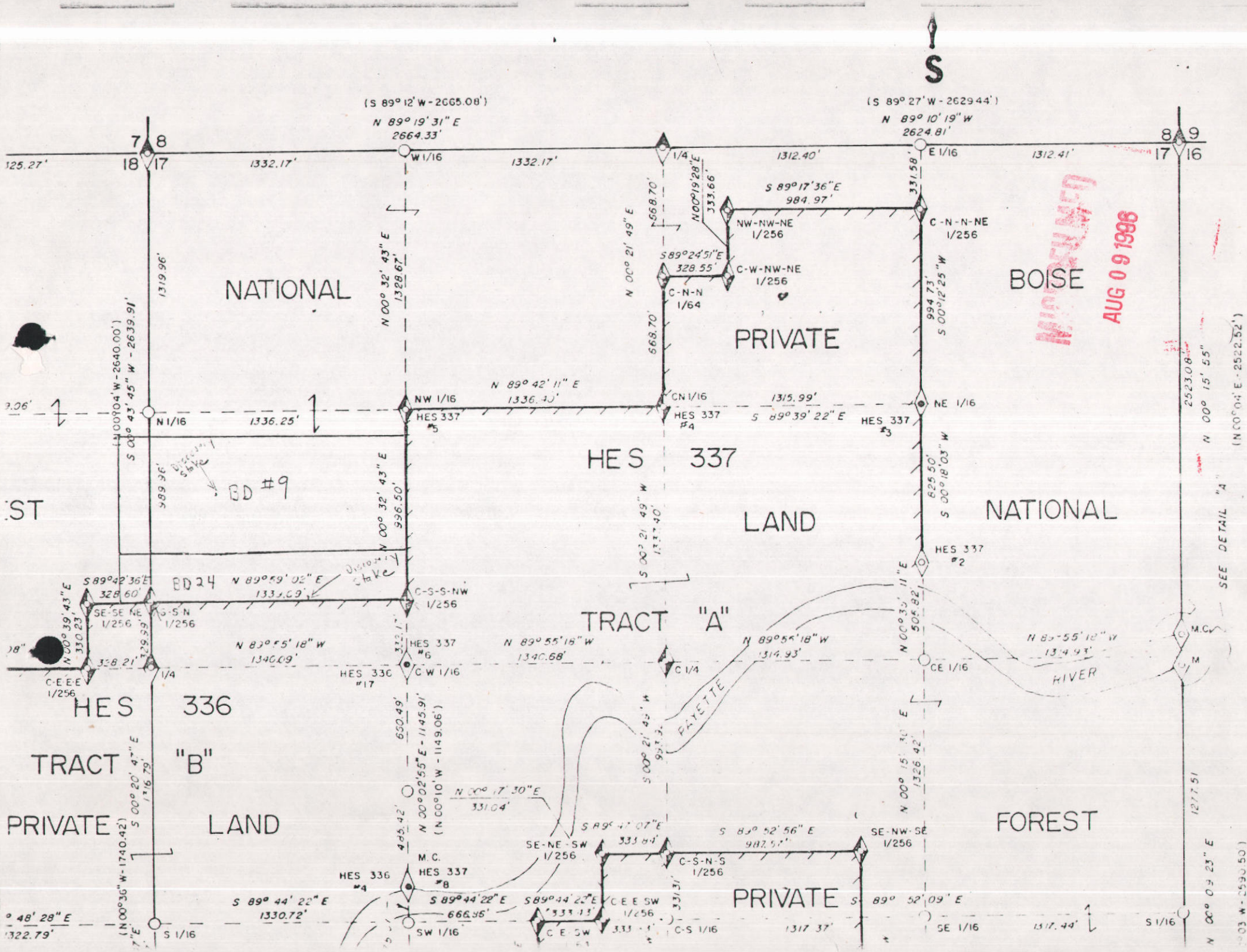
All conditions were met except for installation of a lockable device.

He is going to install device and send a picture.

MICROFILMED

MAR 29 2001

65-12286



State of Idaho
Department of Water Resources
Water Right License

WATER RIGHT NO. 65-12286

Priority: November 08, 1979

Maximum Diversion Rate: 0.02 CFS
Maximum Diversion Volume 0.6 AF

It is hereby certified that ROY WILSON Or PATRICIA WILSON
HC 76 BOX 3112
LOWMAN ID 83637 have complied with the terms and
conditions of the permit, issued pursuant to Application for Permit dated November 08, 1979; and have
submitted Proof of Beneficial Use on May 20, 1996. An examination indicates that the works have a
diversion capacity of 0.02 cfs of water from:

SOURCE

UNNAMED STREAM

Tributary: SINKS

and a water right has been established as follows:

<u>BENEFICIAL USE</u>	<u>PERIOD OF USE</u>	<u>DIVERSION RATE</u>	<u>ANNUAL DIVERSION VOLUME</u>
DOMESTIC	01/01 to 12/31	0.02 CFS	0.6 AF

LOCATION OF POINT(S) OF DIVERSION:

UNNAMED STREAM SW $\frac{1}{4}$ NW $\frac{1}{4}$ Sec. 17, Twp 09N, Rge 09E, B.M., BOISE County

PLACE OF USE: DOMESTIC

Twp	Rge	Sec	NE				NW				SW				SE				
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	Totals
09N	09E	17							X										

CONDITIONS OF APPROVAL

- Domestic use under this right is for ~~external use in conjunction with 1 home~~
- Use of water under this right is supplemental to all existing water rights with the same purpose and place of use.
- Use of water under this water right will be regulated by the watermaster of State Water District No 65.

MICROFILMED

MAR 29 2001

State of Idaho
Department of Water Resources
Water Right License

WATER RIGHT NO. 65-12286

- 4 Upon specific notification by the Department, the right holder shall install a lockable device of a type acceptable to the Department in a manner that will provide the watermaster suitable control of the diversion.

This license is issued pursuant to the provisions of Section 42-219, Idaho Code. The water right confirmed by this license is subject to all prior water rights and shall be used in accordance with Idaho law and applicable rules of the Department of Water Resources.

Signed and sealed this 29TH day of MARCH, 2001.

Acting for


KARL J. DREHER
Director

MICROFILMED

MAR 29 2001

WATER RIGHT SUMMARY

ACTION	RIGHT NO.	NAME	AMOUNT CFS
Original Application	65-12286	Ralph Claycomb Joyce Claycomb	0.02
Full Assignment	65-12286	Roy Wilson or Patricia Wilson	0.02

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AUG 09 1996

State of Idaho
DEPARTMENT OF WATER RESOURCES

RECEIVED
MAY 23 1996

ASSIGNMENT OF PERMIT
To change the ownership of a permit

Department of Water Resources

I, Ralph Claycomb
Joyce Claycomb, hereby assign to Roy or Patricia Wilson
of Lowman, Idaho HC 76 Box 3112 83637
(Full Address)

All my right, title, and interest in and to Permit No. 65-12286
to appropriate the public waters of the State of Idaho.

OR (for partial assignments)

The following described portion of my right, title, and interest in and to
Permit No. _____ to appropriate the public waters of the State of Idaho.

Describe portion of the permit assigned listing the number of acres in each 40 acre subdivision,
point of diversion location, and the amount of water in cubic feet per second.

Made this 22 day of May, 1996.

Ralph Claycomb, Joyce Claycomb
Permit Holder(s)

State of Idaho)
County of Ada) SS

On this 22 day of May, 1996, personally appeared before me
the signer of the above instrument, duly acknowledged to me that he/she/they executed the same.

JoAnne Libengood
Notary Public

SEAL

JoAnne Libengood
Signature

My commission expires: 4-29-99

AUG 09 1996

RECEIVED

MAY 20 1996

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

- AUG 09 1996

State of Idaho
Department of Water Resources
Permit To Appropriate Water
NO. 65-12286

Proposed Priority: November 8, 1979 Maximum Diversion Rate: 0.02 CFS

This is to certify, that **RALPH CLAYCOMB**
JOYCE CLAYCOMB
GENERAL DELIVERY
LOWMAN ID 83637

has applied for a permit to appropriate water from:
UNNAMED STREAM tributary of **SINKS**

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

<u>BENEFICIAL USE</u>	<u>PERIOD OF USE</u>	<u>RATE OF DIVERSION</u>
DOMESTIC	01/01 to 12/31	0.02 CFS

LOCATION OF POINT(S) OF DIVERSION: SWNW , Sec. 17, Township 09N, Range 09E
BOISE County

PLACE OF USE: DOMESTIC

TWN RGE SEC

09N 09E 17

SWNW

CONDITIONS OF APPROVAL AND REMARKS

1. Proof of construction of works and application of water to beneficial use shall be submitted on or before July 1, 1996.
2. Subject to all prior water rights.
3. The issuance of this right does not grant any right-of-way or easement across the land of another.
4. Project construction shall commence within one year from the date of permit issuance and shall proceed diligently to completion unless it can be shown to the satisfaction of the Director of the Department of Water Resources that delays were due to circumstances over which permit holder had no control.
5. Use of water under this right is subject to control by the watermaster of State Water District No. 65.
6. A measuring device and lockable controlling works of a type acceptable to the Department shall be permanently installed and maintained as part of the diverting works prior to diversion of water under this right.
7. This water right is for the diversion of 0.02 cfs, to be used for one household.
8. Use of water under this right is supplemental to all existing water rights with the same purpose and place of use.

AUG 09 1996

State of Idaho
Department of Water Resources

Permit To Appropriate Water

NO. 65-12286

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

8th day of April, 1996

Karl J. Dreher
for Karl J. Dreher, Director

APR 8 1996

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

IN THE MATTER OF APPLICATIONS FOR)
PERMIT NOS. 65-12283 IN THE NAME)
OF GORMAN AND/OR BARBARA MIRACLE)
AND 65-12286 IN THE NAME OF RALPH)
AND/OR JOYCE CLAYCOMB)

PRELIMINARY ORDER

This matter having come before the Idaho Department of Water Resources (department), as a result of an inquiry from the permit holders, the department makes the following Findings of Fact, Conclusions of Law and Order:

FINDINGS OF FACT

1. On October 25, 1993, the department issued a Recommended Order partially approving Application for Permit No. 65-12283 in the name of Gorman and/or Barbara Miracle and approving Application for Permit No. 65-12286 in the name of Ralph and/or Joyce Claycomb. A condition of approval was that proof of construction of works and application of water to beneficial use (proof) was due two (2) years after the date of the Final Order to be issued in the matter by the department.

2. On February 9, 1994, the department issued a Final Order Adopting Recommended Order in the matter but did not specifically issue a permit document for each approved application and did not specifically describe the proof due date for each application.

CONCLUSIONS OF LAW

1. Section 42-203A, Idaho Code, authorizes the department to issue a water right permit.

2. Section 42-204, Idaho Code, authorizes the department to set the date by which a permit holder is required to submit proof of beneficial use of water to the department.

3. The department's failure to issue permit documents and to set a specific date for the submittal of proof of beneficial use to the department was inadvertent and was an oversight.

4. The department should issue permit documents and should set the proof due date for each permit.

AUG 09 1996

ORDER

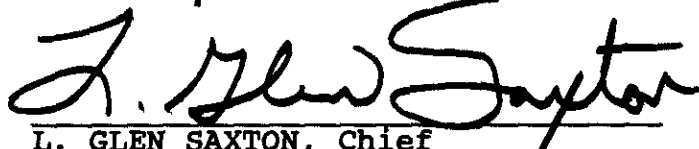
IT IS THEREFORE, HEREBY ORDERED that Permit No. 65-12286 in the name of Ralph and/or Joyce Claycomb is **APPROVED** subject to the conditions of approval shown on the Final Order and on the permit, specifically including the following condition:

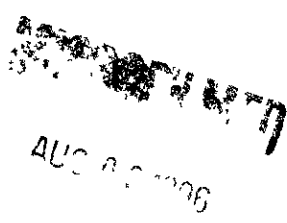
Proof of construction of works and application of water to beneficial use shall be submitted on or before July 1, 1996.

IT IS FURTHER, HEREBY ORDERED that Permit No. 65-12283 in the name of Gorman Miracle and/or Barbara Miracle is **APPROVED** subject to the conditions of approval shown on the Final Order and on the permit, specifically including the following condition:

Proof of construction of works and application of water to beneficial use shall be submitted on or before July 1, 1996.

Dated this 8th day of April, 1996.


L. GLEN SAXTON, Chief
Water Allocation Bureau



1000

(n) (A)

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE
STATE OF IDAHO

IN THE MATTER OF APPLICATIONS FOR) PERMIT NOS. 65-12283 IN THE NAME) OF GORMAN AND/OR BARBARA MIRACLE;) AND 65-12286 IN THE NAME OF RALPH) AND/OR JOYCE CLAYCOMB) _____)	FINAL ORDER ADOPTING RECOMMENDED ORDER
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A Recommended Order was issued on October 25, 1993, which approved Application for Permit Number 65-12286 in the name of Ralph &/or Joyce Claycomb, and approved a portion of Application Number 65-12283 in the name of Gorman &/or Barbara Miracle. The protestant, Jim Branson, petitioned for reconsideration of the decision, and the petition was denied on November 22, 1993. Branson subsequently filed exceptions with the Department of Water Resources. The exceptions are summarized as follows:

1. Branson alleges water emanating from a mine tunnel located on Branson property is not subject to appropriation.
2. Branson alleges there is not sufficient water for appropriation.
3. Branson alleges issuance of a permit without a right to access the point of diversion is prohibited by law.
4. Branson alleges the applications are speculative.

ANALYSIS

The Supreme Court in Branson v. Miracle, 107 Idaho 221, 687 P.2d 1348 (1984) specifically determined the nature of the water emanating from the mine tunnel that is now the subject of this dispute. The Supreme Court held "that the water flow emanating

AUG 09 1996

from the mine portal is public groundwater subject to appropriation." 107 Idaho at 225. Branson attempts to distinguish the Miracle and Claycomb proposals from the Supreme Court decision by relying on a later decision in a dispute between the parties issued by District Judge Duff McKee. Branson alleges that Judge McKee determined the water did not leave the Branson property, and, based on this holding, Branson seeks a holding that the water cannot be appropriated, presumably pursuant to Idaho Code § 42-212, which prohibits the appropriation of private waters by a third person without permission of the landowner.

Judge McKee's decision did not change or add facts that would change the Supreme Court holding. Judge McKee's opinion discusses whether the stream flows in an established channel, and whether the stream protection act applies to the facts of the case. His decision did not address the question of whether the water flowing in the tunnel may be appropriated. This issue was already decided by the Supreme Court case. The question of whether the water leaves the property was not important in the initial Supreme Court decision. The Supreme Court determined that the water was subject to appropriation because the water emanating from the tunnel is neither a spring, pool, pond or lake. Only if the water is a spring, pool, pond or lake is the question of whether it arises and sinks on private property important.

Branson also argues that the state cannot grant a permit because a water right cannot be perfected in trespass. The issue raised by Branson is a typical alternative-choice question.

AUG 09 1996

Prospective water users can sue for a right-of-way under the law of condemnation. See Idaho Code § 42-1103 and § 42-1106. If a prospective appropriator files a condemnation action without any color of a right to appropriate the water, the courts could dismiss the action for failure to show any basis for the condemnation. By applying with the Department of Water Resources first, the applicant obtains a permit, which gives him the right to perfect a water right if all of the conditions of the permit are satisfied. A permit cannot ripen into a perfected water right unless the applicant obtains a right-of-way, and diverts and develops the proposed use within the time period granted by the permit. The issuance of a permit does not perfect a water right, and it does not violate the holding that a water right cannot be perfected in trespass. The permit holder must still perfect his water right after issuance of the permit by developing the beneficial use as permitted.

With respect to the issue of speculation, the proposals by the applicants to build a cabin or residence without submitting detailed plans to the department is not speculation. Were these applications proposing a large development, requiring substantial capital, and a large quantity of water was to be diverted, the department might require more detailed plans. In this case, however, the department must compare the small size of the development to the cost of preparation of detailed plans, and also weigh the other evidence. The evidence shows the applicants are

AUG 09 1996

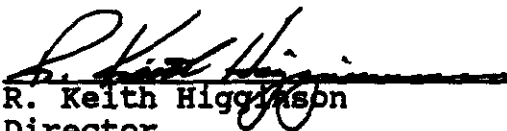
earnestly seeking to develop these permits. A short period of construction will insure against speculation.

Finally, the evidence presented at the hearing shows that there is water available for appropriation from the mine tunnel for the purposes sought.

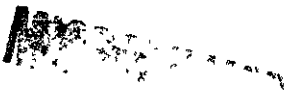
ORDER

IT IS HEREBY ORDERED that the Recommended Order, issued October 25, 1993, is adopted as the final decision of the department.

Dated this 9TH day of February, 1994.



R. Keith Higginson
Director


AUG 09 1996

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on the 15th day of February, 1994, I mailed a true and correct copy, postage prepaid, of the foregoing Final Order Adopting Recommended Order to the following:

Ralph/Joyce Claycomb
902 Logan St.
Boise, ID 83612

Gorman/Barbara Miracle
1441 Lawndale Dr.
Twin Falls, ID 83301

Lloyd Walker, Esq.
P.O. Box 1923
Twin Falls, ID 83301

Claude Marcus, Esq.
737 N. 7th
Boise, ID 83702

Jim Branson
3803 Collister
Boise, ID 83703

IDWR Western Regional Office
Boise, Idaho

Carolyn Andregg
Carolyn Andregg
Secretary

AUG 09 1996

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE
STATE OF IDAHO

IN THE MATTER OF APPLICATIONS FOR)	
PERMIT NOS. 65-12283 IN THE NAME)	
OF GORMAN AND/OR BARBARA MIRACLE;)	ORDER DENYING
AND 65-12286 IN THE NAME OF RALPH)	PETITION FOR
AND/OR JOYCE CLAYCOMB)	RECONSIDERATION
_____)	

Following issuance of a recommended order, Jim Branson, the protestant, filed a petition for reconsideration. Branson argues that the Department of Water Resources should find that "the small stream of water running from the portal of the Branson mine tunnel was not a stream subject to appropriation under the laws of Idaho." Branson quotes a portion of a judgment issued by Judge Duff McKee in the reply to the Miracle-Claycomb memorandum dated, June 21, 1993. Judge McKee's opinion discusses whether the stream flows in an established channel, and whether the stream protection act applies to the facts of the case. It does not address the question of whether the water flowing in the tunnel may be appropriated. This question was resolved by the Supreme Court in Branson v. Miracle, 107 Idaho 221, 687 P.2d 1348 (1984). The Supreme Court stated:

The Bransons, however, argue that the water falls within I.C. § 42-212 which defines those waters in the state as private and thus not appropriable without permission from the owner of the land situated thereon. I.C. § 42-212 defines such private waters as "the waters of any lake not exceeding five (5) acres in surface area at high water mark, pond, pool or spring in this state, which is located or situated wholly or entirely upon the lands of a person or corporation." We are not persuaded by the Bransons' arguments. The evidence offers no support for the water flow being either a lake, pond or pool; the waters here involved are running waters. The Bransons' argument that the mine water is a spring similarly is not persuasive. . . . There was no dispute but that the water flow emanating from the mine was created as a result of the mining operations. . . . The water flow did not issue naturally from the surface of the earth; thus it was not a spring.

AUG 09 1996

. . . In the present case ground water has been brought to the surface artificially. The Bransons' are not responsible for augmenting the amount of ground water available or preventing the loss of ground water available but only for bringing that water to the surface.

We hold that the water flow emanating from the mine portal is public groundwater subject to appropriation.

107 Idaho at 225.

Following the initial decision before the Supreme Court, a subsequent Supreme Court decision required that Miracle condemn a right-of-way to appropriate the public ground water. Miracle and Claycomb can, under existing law, condemn a right-of-way to appropriate public water. A water right cannot be established in trespass, but a water right can be perfected when an applicant obtains a permit to appropriate water, and subsequently condemns a right-of-way to perfect the right.

Branson also challenges some of the conclusions of law. The conclusions questioned are sufficiently clear to describe the legal reasoning behind the decision, and need no further elaboration.

ORDER

IT IS HEREBY ORDERED that Branson's petition for reconsideration is Denied.

Dated this 22nd day of November, 1993.



Gary Spackman
Hearing Officer

AUG 09 1996

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 22nd day of November, 1993, I mailed a true and correct copy, postage prepaid, of the foregoing Order Denying Petition for Reconsideration to the following:

Gorman Miracle
1441 Lawndale Dr.
Twin Falls, ID 83301

Ralph/Joyce Claycomb
902 Logan St.
Boise, ID 83612

Jim Branson
3803 Collister
Boise, ID 83703

Lloyd Walker Esq
PO Box 1923
Twin Falls, ID 83301

Claude Marcus Esq
737 N 7th
Boise, ID 83702

Claudette J. Kinney
Claudette J. Kinney
Word Processing Specialist

AUG 09 1996

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE
STATE OF IDAHO

IN THE MATTER OF APPLICATIONS FOR)
PERMIT NOS. 65-12283 IN THE NAME)
OF GORMAN AND/OR BARBARA MIRACLE;)
AND 65-12286 IN THE NAME OF RALPH)
AND OR JOYCE CLAYCOMB)
_____)

RECOMMENDED
ORDER

Gorman and/or Barbara Miracle and Ralph and/or Joyce Claycomb, having filed with the Department of Water Resources Applications for Permit Nos. 65-12283 and 65-12286 respectively; protests having been received; and conferences and hearings having been held; the Department finds, concludes and orders as follows:

FINDINGS OF FACT

1. On November 6, 1979, Gorman and/or Barbara Miracle filed water right application no. 65-12283 with the Department of Water Resources (hereinafter Department). The application proposes diversion of 0.16 cubic feet per second (cfs) from an unnamed stream, tributary to the South Fork of the Payette River, for domestic use in four (4) homes. Mrs. Miracle is now deceased so the application is solely in the name of Mr. Miracle (hereinafter Miracle). On November 8, 1979, Ralph and/or Joyce Claycomb (hereinafter Claycombs) filed water right application no. 65-12286 with the Department. The application proposes the diversion of 0.04 cfs from the same source for domestic use in one (1) home. Both applications propose a point of diversion within the SW $\frac{1}{4}$ NW $\frac{1}{4}$, Sec. 17, T9N, R9E, B.M., Boise County.

2. Notice of the applications was advertised in the Idaho World on November 16 and 23, 1979.

3. Jim Branson protested approval of the applications.

4. The Department held a hearing regarding the applications

RECOMMENDED ORDER - Page 1

AUG 10 1996

on December 4, 1984. At the hearing, the applicants were present and represented by their attorney, Lloyd J. Walker. The protestant was represented by his attorney, Claude Marcus. The hearing did not result in resolution of the protest, because a related district court decision was being appealed to the Idaho Supreme Court at that time.

5. The Department scheduled a conference for December 4, 1989, to which the protestant failed to appear. The Department subsequently sent an Order to Show Cause why the protest should not be dismissed, and Mr. Branson's attorney adequately responded to the order on January 29, 1990.

6. A conference was held on December 3, 1990. Mr. Marcus suggested that action on the two applications for permit be delayed until an easement matter still pending before the court was settled. All parties present at the conference concurred with this suggestion, and the two files were held pending resolution of the lawsuit.

7. On January 20, 1993, another hearing was held. Again, the applicants were present and were represented by Mr. Walker. The protestant was present and was represented by Mr. Marcus. Subsequent to the hearing, on February 8, 1993 Mr. Marcus submitted a brief on behalf of the protestant; on June 22, 1993, Mr. Walker submitted a brief on behalf of the applicants; and on June 23, 1993, Mr. Marcus submitted a reply on behalf of the protestant. All briefs are considered in this decision, and are included in the official record in this matter.

8. During the January 20, 1993 pre-hearing conference, the applicants reduced the rate of flow requested in the applications. Application for Permit No. 65-12283 was reduced to 0.04 cfs, for domestic use in two households, neither of which has been constructed. Application for Permit No. 65-12286 was reduced to 0.02 cfs, for supplemental domestic use in one household which presently receives water from a well.

9. At the hearing, counsel for the applicants moved for dismissal of the protests because the protestant had lost his

AUG 09 1996

standing to protest the matter as a consequence of the previous court decisions in this matter. Also at the hearing, counsel for the protestants moved that the applications be dismissed forthwith. The Hearing Officer took both motions under advisement.

10. The protestant raised objections to the proposed diversion and uses alleging that:

- a. there is insufficient water in the source to supply the proposed diversions, and
- b. the source which the applicants have proposed to divert is private water and is not subject to appropriation, and
- c. the applicants do not have a right-of-way to divert the water proposed to be diverted in the applications, and
- d. the applications were filed for speculative purposes.

11. The unnamed stream identified as the source of water in both applications is the outflow from the tunnel on the Birthday No. 24 mining claim. This stream has been the subject of previous litigation. In Branson v. Miracle, 107 Idaho 221, 687 P.2d 1348 (1984), the Idaho Supreme Court found that the water flow emanating from the mine portal is public groundwater subject to appropriation.

12. Miracles were decreed water right no. 65-10839 with priority of May 1, 1943, authorizing diversion of 0.02 cfs for domestic purposes in one household. Bransons were decreed water right no. 65-10737 with priority of June 1, 1957 authorizing diversion of 0.04 cfs for domestic purposes in one household, and 50 gallons per year for mining purposes. The Branson point of diversion is located in the mine. The Miracle point of the diversion is located about 200 feet downstream from the mine portal, on the Branson mining claim. An easement to convey 0.02 cfs from this point across the Branson mining claim to the Miracle property was awarded to Miracle by the Fourth Judicial District Court in an Amended Judgment and Decree dated January 13, 1993.

AUG 09 1996

13. The flow of water emanating from the mine tunnel was measured on November 24, 1984 to be about 58 gallons per minute (0.13 cfs). Mr. Branson estimated the flow of water emanating from the mine tunnel in October, 1992 to be less than 30 gallons per minute (0.07 cfs).

14. Applicant Miracle testified that he owns two tracts of land to which he desires to pipe water for domestic use. He testified that he desires to build a domicile on a two and one-half acre tract of property. He further testified that he plans to sell another two acre parcel, and that the property would sell better with a water right.

15. Applicant Claycomb testified that he intends to add the water identified in his application to an existing groundwater supply at an existing household as a supplemental water supply.

16. A typical household uses a maximum of 1000 gallons of water per day. A flow of 0.02 cfs would need to be diverted for about two hours to provide this amount of water.

CONCLUSIONS OF LAW

1. Idaho Code, § 42-203A(5), states in part as follows:

The director of the department of water resources shall find and determine from the evidence presented to what use or uses the water sought to be appropriated can be and are intended to be applied. In all applications whether protested or not protested, where the proposed use is such (a) that it will reduce the quantity of water under existing water rights, or (b) that the water supply itself is insufficient for the purpose for which it is sought to be appropriated, or (c) where it appears to the satisfaction of the department 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 directly affected by the proposed use, or (f) that it is contrary to the 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

AUG 09 1996

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 Idaho Supreme Court determined water emanating from the mine tunnel is available for appropriation. The extent of water available for appropriation in addition to the amounts decreed has not been determined by previous court actions. There is no reason why the protestant should not have standing to protest the applications in this matter.

3. There is sufficient water emanating from the mine to satisfy the existing uses plus additional uses.

4. A water right cannot be established by trespass. The Department does not grant any easement or right-of-way in issuing a water right.

5. The Supreme Court of Idaho has held that an applicant must have possessory interest in the place of use to receive an approved permit. Lemmon v. Hardy, 95 Idaho 778, 519 P.2d 1168 (1974). A party having possessory interest is defined by the Department as the property owner, contract purchaser, contract seller, renter, or lessee. The acquisition of a water right by an applicant who is a contract seller of property where the water is to be used is not speculative.

6. The establishment of a supplemental source of supply for a water use in Idaho is an accepted practice. The acquisition of a water right for the purpose of making property more valuable for marketing purposes, without any intent by the applicant to develop the water, is speculative.

7. The motion to dismiss the protest should be denied.

8. The motion to dismiss the applications should be denied.

ORDER

IT IS HEREBY ORDERED that Application for Permit No. 65-12283 is APPROVED IN PART, subject to the following conditions:

1. This water right is subject to all prior water rights.

RECOMMENDED ORDER - Page 5

AUG 09 1996

2. The water right is approved for the diversion of 0.02 cfs, to be used for one household. Use of water in a second household as proposed in the application is denied.

3. The issuance of this right in no way grants any right-of-way or easement across the lands of another.

4. The time allowed for the completion of works and application of water to the proposed beneficial use is limited to two years following the date indicated on the final order.

5. Project construction shall commence within one year from the date of permit issuance and shall proceed diligently to completion unless it can be shown to the satisfaction of the Director of the Department of Water Resources that delays were due to circumstances over which the permit holder had no control.

IT IS FURTHER ORDERED that Application for Permit No. 65-12286 is APPROVED, subject to the following conditions:

1. This water right is subject to all prior water rights.

2. This water right is approved for the diversion of 0.02 cfs, to be used for one household.

3. Use of water under this right is supplemental to all existing water rights with the same purpose and place of use.

4. The issuance of this right in no way grants any right-of-way or easement across the lands of another.

5. The time allowed for the completion of works and application of water to the proposed beneficial use is limited to two years following the date indicated on the final order.

6. Project construction shall commence within one year from the date of permit issuance and shall proceed diligently to completion unless it can be shown to the satisfaction of the Director of the Department of Water Resources that delays were due to circumstances over which the permit holder had no control.

7. Use of water under this right is subject to control by the watermaster of State Water District No. 65.

8. A measuring device and lockable controlling works of a type acceptable to the Department shall be permanently installed and maintained as part of the diverting works prior to diversion of

RECOMMENDED ORDER -

APR 9 1996

water under this right.

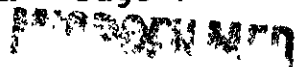
IT IS FURTHER ORDERED that the motion to dismiss the protest is DENIED.

IT IS FURTHER ORDERED that the motion to dismiss the applications is DENIED.

Dated this 25th day of October, 1993.



Gary Spackman
Hearing Officer



CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 26th day of October, 1993, I mailed a true and correct copy, postage prepaid, of the foregoing Recommended Order to the following:

Ralph/Joyce Claycomb

902 Logan St
Boise, ID 83612

Gorman Miracle

1441 Lawndale Dr
Twin Falls, ID 83301

Jim Branson

3803 Collister
Boise, ID 83703

Lloyd Walker Esq

PO Box 1923
Twin Falls, ID 83301

Claude Marcus Esq

737 N 7th
Boise, ID 83702



Karen L. Gustafson
Secretary/Records Manager

AUG 09 1996

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
APPLICATION FOR PERMIT

To appropriate the public waters of the State of Idaho

1. Name of applicant Ralph and Joyce Claycomb Phone 342-6605
259-3546
none

Post office address Lowman, Idaho 83601

2. Source of water supply unnamed stream which is a tributary of S. F. Payette

3. Location of point of diversion is SW $\frac{1}{4}$ of NW $\frac{1}{4}$ of Section 17 Township 9 N.

Range 9 E. B.M. Boise County, additional points of diversion if any: _____

4. Water 0.02 04 1/20/1993 to be used for the following purposes:

Amount 0.02 04 c.f.s. for domestic purposes from Jan. 1 to Dec. 31 (both dates inclusive)
(cfs or acre-feet per annum)

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

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

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

5. Total quantity to be appropriated:

a. 0.02 04 1/20/1993 cubic feet per second and/or b. _____ acre-feet per annum.

6. Proposed diverting works:

a. Description of ditches, flumes, pumps, headgates, etc. pipe from stream to reservoir

b. Height of storage dam N/A feet, active reservoir capacity _____ acre-feet; total reservoir capacity _____ acre-feet, materials used in storage dam: _____

Period of year when water will be diverted to storage _____ to _____ inclusive.
(Month/Day) (Month/Day)

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

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

8. Description of proposed uses:

a. If water is not for irrigation:

(1) Give the place of use of water: SW $\frac{1}{4}$ of NW $\frac{1}{4}$ of Section 17 Township 9 N.

Range 9 E. B.M.

(2) Amount of power to be generated: _____ horsepower under _____ feet of head.

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

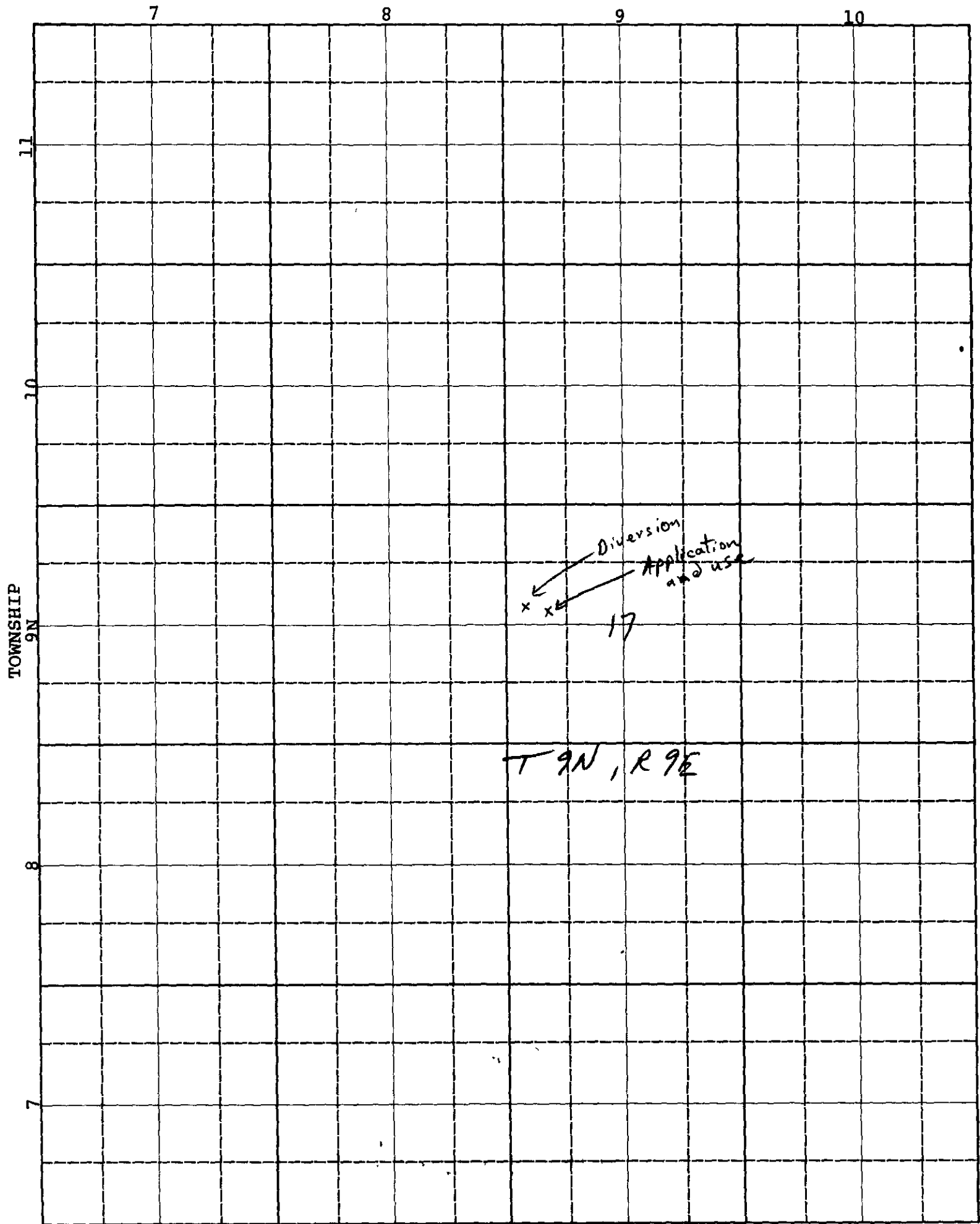
(4) Name of municipality to be served _____, or number of families to be supplied with domestic water _____

(5) If water is to be used for other purposes describe: domestic

AUG 6 1996

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

RANGE E.B.M.



Scale 2 inches equal 1 mile.

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

AUG 09 1996

RALPH

Ralph Claycomb
(Applicant) CLAYCOMB

JOYCE

(Applicant)

Joyce Claycomb
CLAYCOMB

Received by kw Date 11/8/79 Time 11:15
Preliminary check by CWB Fee \$ 2000 # 15227
Receipted by KK Date 11/8/79
Publication prepared by kw Date 11/15/79
Published in The Idaho World
Publication dates 11/23 & 11/30/79
Publication approved KK Date 12/27/79
Protests filed by: James Branson

Copies of protests forwarded by KK
Hearing held by _____ Date _____
Recommended for approval denial by DET

ACTION OF THE DIRECTOR, DEPARTMENT OF WATER RESOURCES

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

1. Approval of said application is subject to the following limitations and conditions:

- a. SUBJECT TO ALL PRIOR WATER RIGHTS.
- b. Proof of construction of works and application of water to beneficial use shall be submitted on or before _____, 19 ____.
- c. The rate of diversion, if water is to be used for irrigation under this permit, when combined with all other water rights for the same land shall not exceed 0.02 cubic feet per second for each acre of land.
- d. Other: _____

Witness my hand this _____ day of _____, 19 ____.

Director

AUG 09 1996

STATE OF IDAHO,
County of Boise }

...B. Reichert., being
duly sworn, deposes and says:
that he is the manager and prin-
cipal clerk of THE IDAHO
WORLD, a weekly newspaper
published at Idaho City, in the
County of Boise and State of Ida-
ho; that said paper has been and
is in general circulation in the
county aforesaid, and in the vi-
cinity of Idaho City; that the
advertisement, a copy of which is
hereto attached, was published in
said newspaper once a week for
....2... consecutive weeks in
the entire and regular issue of
every number of said paper dur-
ing the period and time of publi-
cation and was published in the
newspaper and not a supplement;
that said paper has been estab-
lished and regularly and continu-
ously published for more than
seventy-eight weeks past previ-
ous to the first publication of
this notice. Such notice was pub-
lished in the issue beginning with

...11-23., 1979. and end-

ing with the issue of 11-30.

1977...

...B. Reichert...

Subscribed and sworn to before

me this 14th day of Dec 1979

Ruth M. Sparrow

Clerk/Dist Ct

By: Kris Hoffman

Reputy.

NOTICE OF APPLICATION FOR WATER
RIGHT

Notice is hereby given that the following
application(s) have been submitted for permit to
appropriate the public waters of the State of
Idaho:

65-12285

SCHOEN, DONALD W.
734 WICKHAM FEN WAY, BOISE ID. 83709
Source: GROUNDWATER

Date Filed: 11/08/1979

Amount: 0.67 CFS
Diversion Point: SWSE Sec. 36 T 09N R 05E,
BOISE, CO.
Use: INDUSTRIAL (0.67 CFS) from 01/01 to 12/31

Place of Use: SWSE Sec 36 T 09N R 05E
Diversion Means: WELL AND TAILINGS POND

65-12286

CLAYCOMB, RALPH &/or JOYCE
LOWMAN, ID. 83637
Source: UNNAMED STREAM tributary to
PAYETTE RIVER, S. FORK
Date Filed: 11/08/1979

Amount: 0.04 CFS
Diversion Point: SWNW Sec 17 T 09N R 09E,
BOISE CO.
Use: DOMESTIC (0.04 CFS) from 01/01 to 12/31
Place of Use: SWNW Sec 17 T 09N R 09E
Diversion Means: PIPE FROM STREAM TO
RESERVOIR

If issued the permit(s) will be subject to all
prior water rights. Protests against the granting
of any permit must be filed with the Director of
the Idaho Department of Water Resources, 92 S.
Cole Road, Boise, Idaho 83709 on or before
DECEMBER 10, 1979.

C. Stephen Alired
Director

Published in the Idaho World, Idaho City, Idaho
83631, November 23 and 30, 1979.

RECEIVED

DEC. 19 1979

Department of Water Resources
Western Regional Office

AUG 09 1996



State of Idaho

DEPARTMENT OF WATER RESOURCES

1301 North Orchard Street, Boise, ID 83706 - P.O. Box 83720, Boise, ID 83720-0098

Phone: (208) 327-7900 Fax: (208) 327-7866 Web Site: www.idwr.state.id.us

DIRK KEMPTHORNE
Governor

KARL J. DREHER
Director

March 30, 2001

ROY WILSON
PATRICIA WILSON
HC 76 BOX 3112
LOWMAN ID 83637

RE. License No 65-12286 - Issuance of License

Dear Water Right Holder(s).

The Department of Water Resources has issued the enclosed Water Right License confirming that a water right has been established in accordance with your permit. Please be sure to thoroughly review the conditions of approval and remarks listed on your license.

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

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

If you have any questions, please contact me at 208-327-7946.

Sincerely,

Shelley W. Keen

Water Rights Supervisor

SWK klt

Enclosure(s)

MICROFILMED

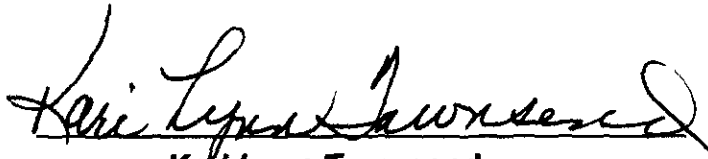
MAR 29 2001

CERTIFICATE OF MAILING

I hereby certify that on March 30, 2001 I mailed a true and correct copy, postage prepaid, of the foregoing PRELIMINARY ORDER(Approved License) to the person(s) listed below:

RE: WATER RIGHT NO. 65-12286

**ROY WILSON
PATRICIA WILSON
HC 76 BOX 3112
LOWMAN ID 83637**

A handwritten signature in cursive script, reading "Kari Lynn Townsend", written over a horizontal line.

**Kari Lynn Townsend
Secretary**

**MICROFILMED
MAR 23 2001**

**EXPLANATORY INFORMATION
TO ACCOMPANY A
PRELIMINARY ORDER**

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

PETITION FOR RECONSIDERATION

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

EXCEPTIONS AND BRIEFS

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

REQUEST FOR HEARING

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

ORAL ARGUMENT

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

CERTIFICATE OF SERVICE

MICROFILMED
JAN 7 9 11 AM

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

FINAL ORDER

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

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

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

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

APPEAL OF FINAL ORDER TO DISTRICT COURT

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

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

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

LICENSE REVIEW CHECKLIST

Permit No 65-12286 Date 3-27-2001 Reviewer: Kay Walker

Change/OK

Name/Address

OK - add phone number

Source
Point of Diversion.

OK
OK

Does change clarify original intended source? If no, void permit.
Change (P39/P49) Add (P45/P44) Feds (P40)

W32 (multiple in 1/4/1/4)
W36 (overlap)
W59 (subdivision description)

Place of Use

OK

Change (P41/P49) Add (P41/P44) Feds (P43)

W60 (subdivision description)
W27 (ppu acre limit)

Overlaps: Right(s):

File reviewed Profile reports printed

P/D & P/U amend (P37) Feds (P48)

Rate of Diversion:

Permitted rate 0.02 cfs

Fee Limit cfs

Measured 0.02 cfs

Theoretical cfs

Recommended Total Diversion Rate 0.02

Water Uses

OK Change (P46)

Season of Use per new Standards

Irrigation cfs af

Stockwater cfs af

Domestic 0.02 cfs 0.16 af

cfs af

cfs af

Total 0.02 cfs 0.16 af

- external domestic

Irrigation - overlap (R58-R61, R62-R65, R66-R69)

supp. Gw (WB7/065/104)

overlap spec combined rts (W35)

<1 acre (W31)

Domestic (W01/wb5/070/071/075)

Power (W42 or W43/025/027/R22 or R23)

Fish (042)

Fire (077)

Water Quality (081/R07)

Payette - (W22/047/27A)

Stockwater for US (R37)

Volume Determination

cfs x 1 9835 x days = af (vs) acres x (FHR) = af

Remarks

OIP, R04

Additional Conditions

yes Watermaster Control 65

use OIP OK GW Measurement/Measuring Device

Other

- Trust R55 - remove 051)

- Non-trust (048/049)

GW Dist? -

Water Msmt. Dist? -

Crit. GWMA? -

GWMA? -

Government Lots? -

Advance Priority?

yes
no

If yes, explain why below.

SRBA Claim?

not req'd

Adjust memo

Amend Letters

P87, S06

Second Amendment Notice

S06

topo V65
Capacity = 0.02

[illegible]

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
BENEFICIAL USE FIELD REPORT

RECEIVED

OCT 17 2000

Department of Water Resources
65-12286

A. GENERAL INFORMATION

Permit No.

1 Owner: Roy or Patricia Wilson

Phone No.

(208) 259-3535

Current Address: HC 76 Box 3112, Lowman, ID 83637

2 Accompanied by: Roy Wilson

Exam Date:

06/30/2000

Address: HC 76 Box 3112, Lowman, ID 83637

Phone No.

(208) 259-3535

Relationship to Permit Holder: Owner

3. Source: Unnamed stream tributary to Sinks

B. OVERLAP REVIEW

1 Other water rights with the same place of use: None

2. Other water rights with the same point of diversion: 65-10737

GW - no OL

C. DIVERSION AND DELIVERY SYSTEM

1. Point(s) of Diversion:

Ident No	Govt Lot	1/4	1/4	1/4	SEC	TWP	RNG	County	Method of Determination/Remarks
			SW	NW	17	09N	09E	Boise	USGS Quad Angle Map

2. Place(s) of Use:

Indicate Method of Determination:

USGS Quad Angle Map

TWP	RGE	SEC	NE				NW				SW				SE				Totals
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
09N	09E	17							D										

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3. **Delivery System Diagram:** Indicate all major components and distances between components. Indicate weir size/ditch size/pipe i.d. as applicable.

SEE ATTACHED SHEET.

X Copy of USGS Quadrange Attached Showing location(s) of point(s) of diversion and place(s) of use (required).

 Aerial Photo Attached (required for irrigation of 10+ acres).

X Photo of Diversion and System Attached

4.

Well or Diversion Identification No.*	Motor Make	Hp	Motor Serial No.	Pump Make	Pump Serial No. or Discharge Size
N/A					

*Code to correspond with No. on map and aerial photo

D. FLOW MEASUREMENTS

1.

Measurement Equipment	Type	Make	Model No.	Serial No.	Size	Calibration Date
5 gallon bucket	N/A					
stopwatch	N/A					

2. Measurements: Time was 31.4 seconds to fill a 5 gallon bucket.

5 gallons ÷ 31.4 seconds = 0.16 gallons per second = 9.6 gpm.

9.6 gpm x [1 cfs / 448.83 gpm] = 0.021 cfs

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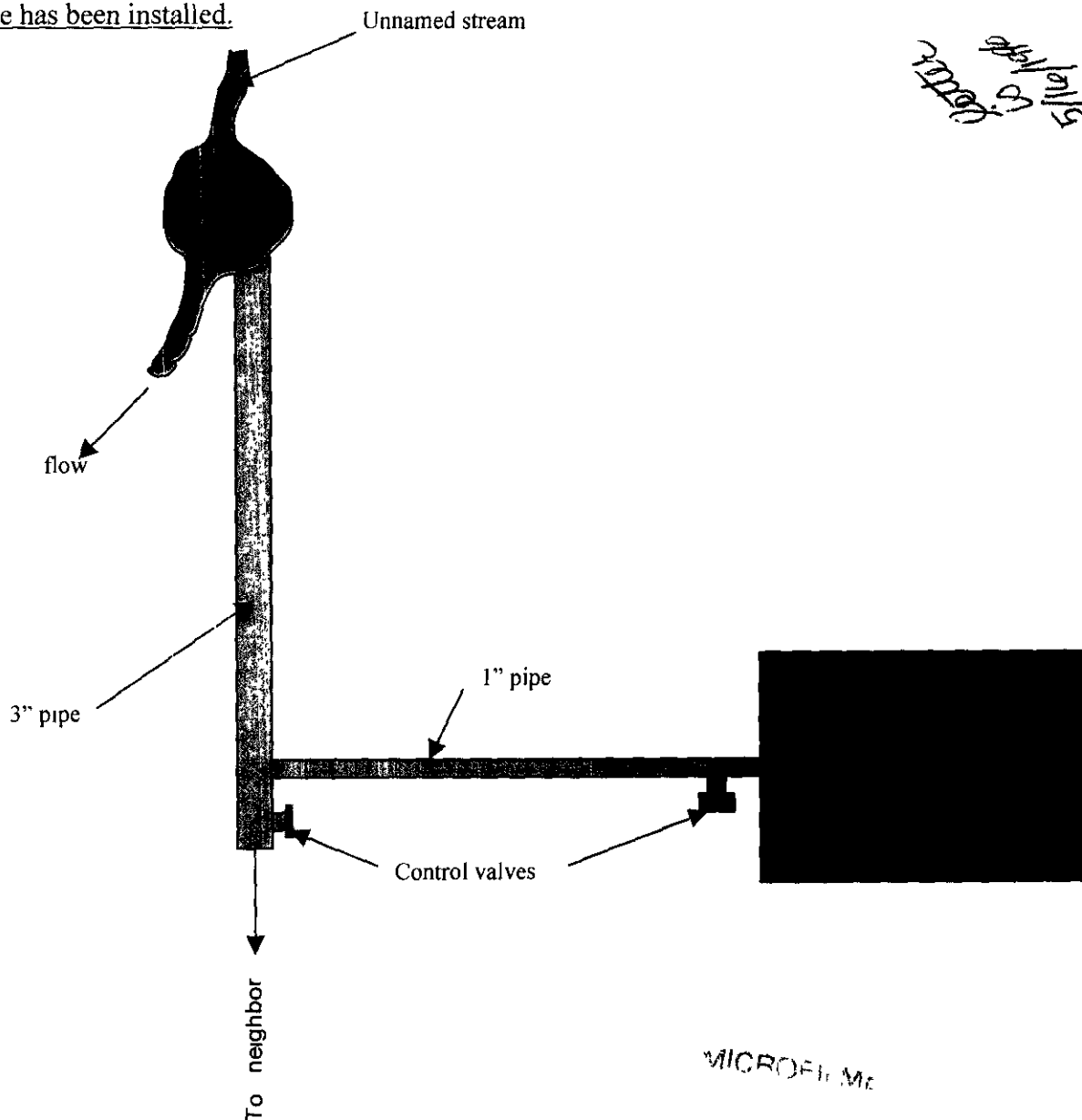
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E. NARRATIVE/REMARKS/COMMENTS

The point of diversion and the place of use are located in the SWNW of Section 17, Township 09N, Range 09E. The water is diverted from a small pool in the stream by a submerged 3-inch pipe. The 3-inch pipe runs down the hill about 270 feet. At this point a 1-inch pipe is connected to the system. This 1-inch pipe conveys the water to Mr. Wilson's property. The entire system is fed by gravity. Two sprinklers are usually used to irrigate the lawn. The water is only used for external domestic purposes. The area irrigated is approximately 0.14 acres [(40 ft x 50 ft) + (28 ft x 143 ft) = 6004 ft²].

A diversion rate of 0.21 cfs was measured using a 5-gallon bucket and a stopwatch.

The condition of approval requiring a measuring device was postponed. See letter by Gary Spackman on May 16, 2000. The condition of approval requiring a lockable controlling works was not met. I recommend that this permit be licensed for 0.02 cfs with an annual volume of 0.6 AF once a lockable device has been installed.



Have the conditions of permit been met? _____ YES _____ X _____ NO

F. FLOW CALCULATIONS

Measurement Method: Bucket and stopwatch

____ Additional Computation Sheets Attached

Time was 31.4 seconds to fill a 5-gallon bucket. 5 gallons ÷ 31.4 seconds = 0.16 gallons per second = 9.6 gpm.

$$9.6 \text{ gpm} \times [1 \text{ cfs} / 448.83 \text{ gpm}] = 0.021 \text{ cfs}$$

G. VOLUME CALCULATIONS

1. Volume Calculations for Irrigation: N/A

$$V_{IR} = (\text{Acres Irrigated}) \times (\text{Irrigation Requirement}) =$$

$$V_{DR} = [\text{Diversion Rate (cfs)}] \times (\text{Days in Irrigation Season}) \times 1.9835 =$$

$$V = \text{Smaller of } V_{IR} \text{ and } V_{DR} =$$

2. Volume Calculations for Other Uses:

Use recommended volume for external domestic use.

0.6 AFA

H. RECOMMENDATIONS

1. Recommended Amounts

Beneficial Use	Period of Use		Rate of Diversion Q (cfs)	Annual Volume V (AFA)
	From	To		
Domestic	01/01	12/31	0.02	0.6
Totals:			0.02 cfs	0.6 AFA

2. Recommended Amendments

____ Change P.D. as reflected above ____ Add P.D. as reflected above ☒ None

____ Change P.U. as reflected above ____ Add P.U. as reflected above ____ Other

I. AUTHENTICATION

Richard D. Hansen – Field Examiner

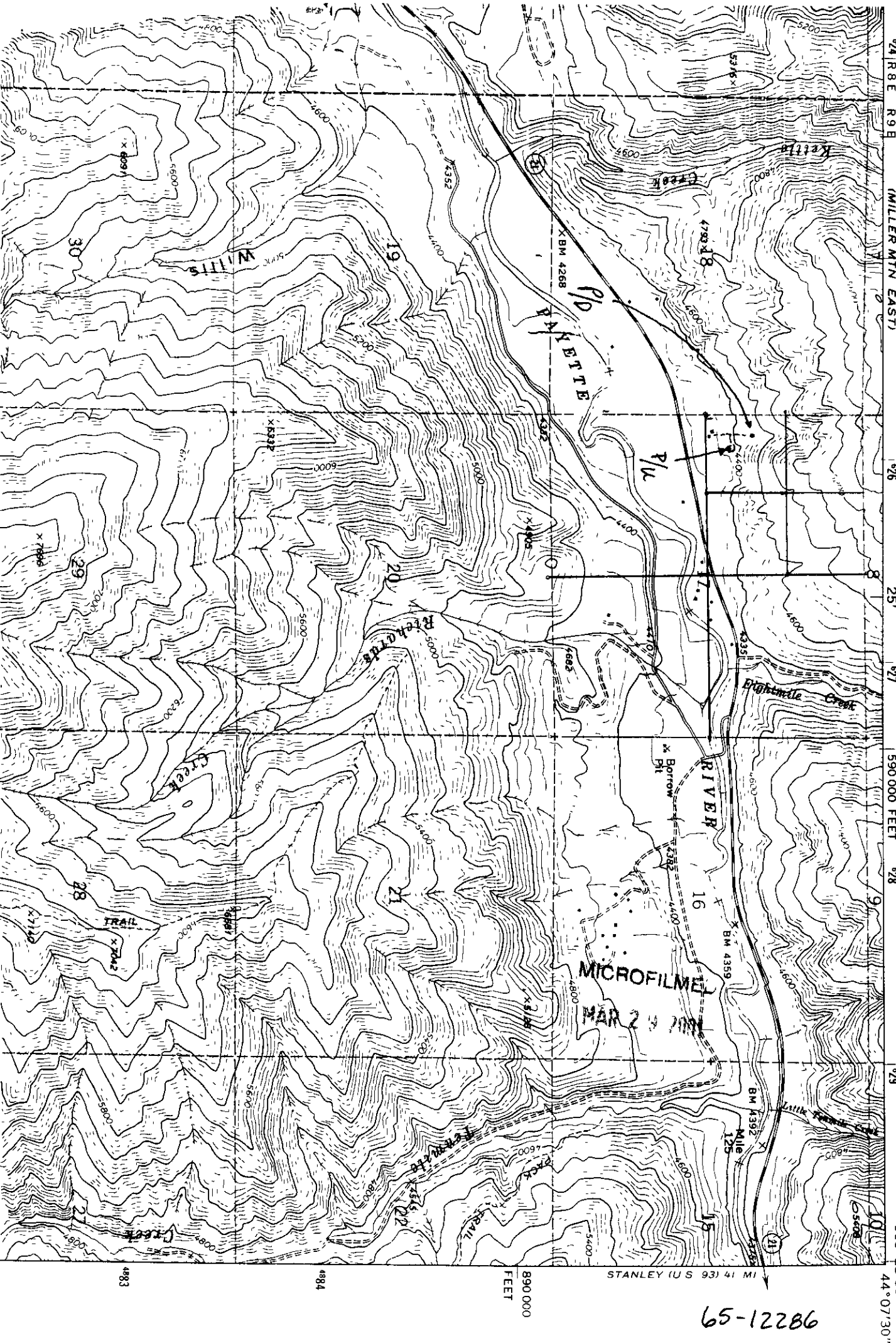
Field Examiner's Name Richard D. Hansen Date: 9/5/2000

Reviewer _____ Date: _____

seal

MICROFILMED

SEP 25 2000



2972 III NW (MILLER MTN EAST) 126 25 27 150 000 FEET 928 929 115°22'30" 44°07'30"

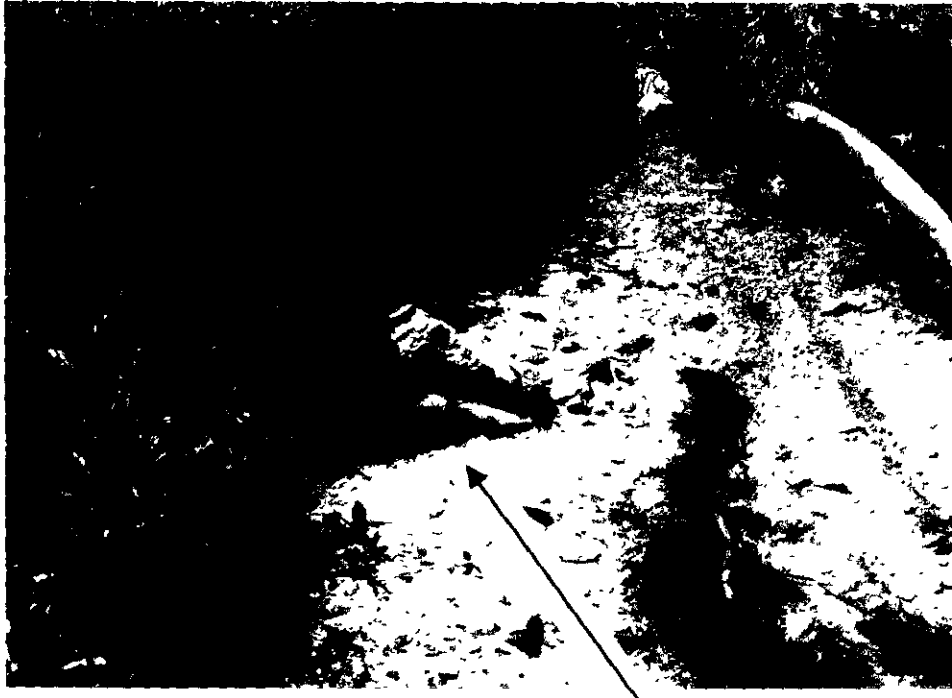
T09N
R09E
Sec. 17

65-12286

JACKSON PEAK QUADRANGLE
IDAHO-BOISE CO.
7.5 MINUTE SERIES (TOPOGRAPHIC)

65-12286

P/D



Submerged pipe

P/u



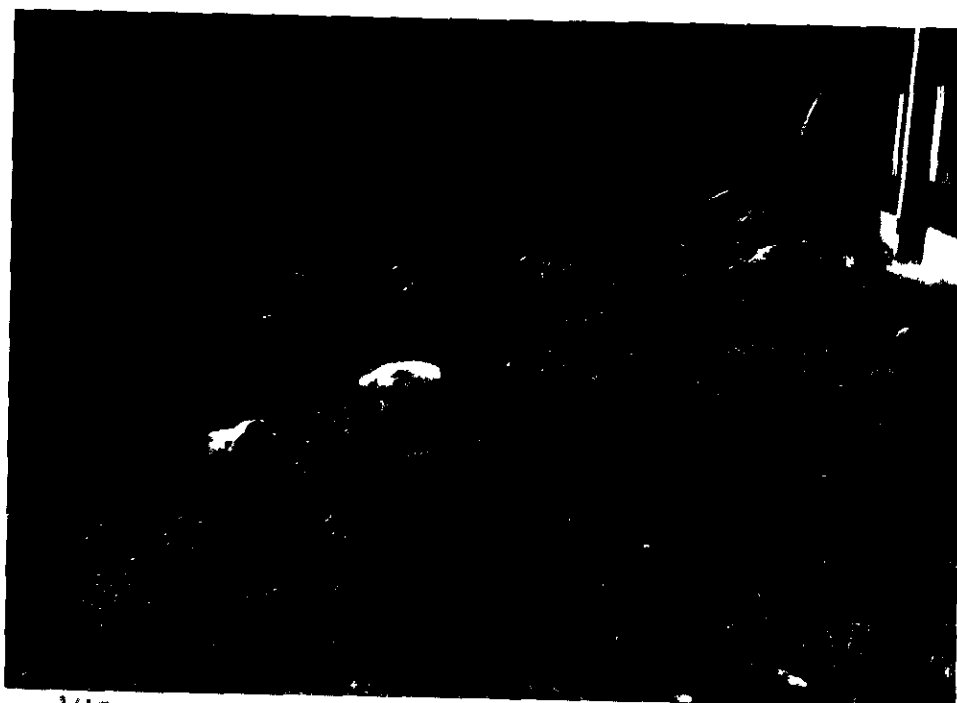
MICRO

65-12286

P/u



P/u



MICROFILM

65-12286

FIELD NOTES

6-30-00

Page 1 of 2

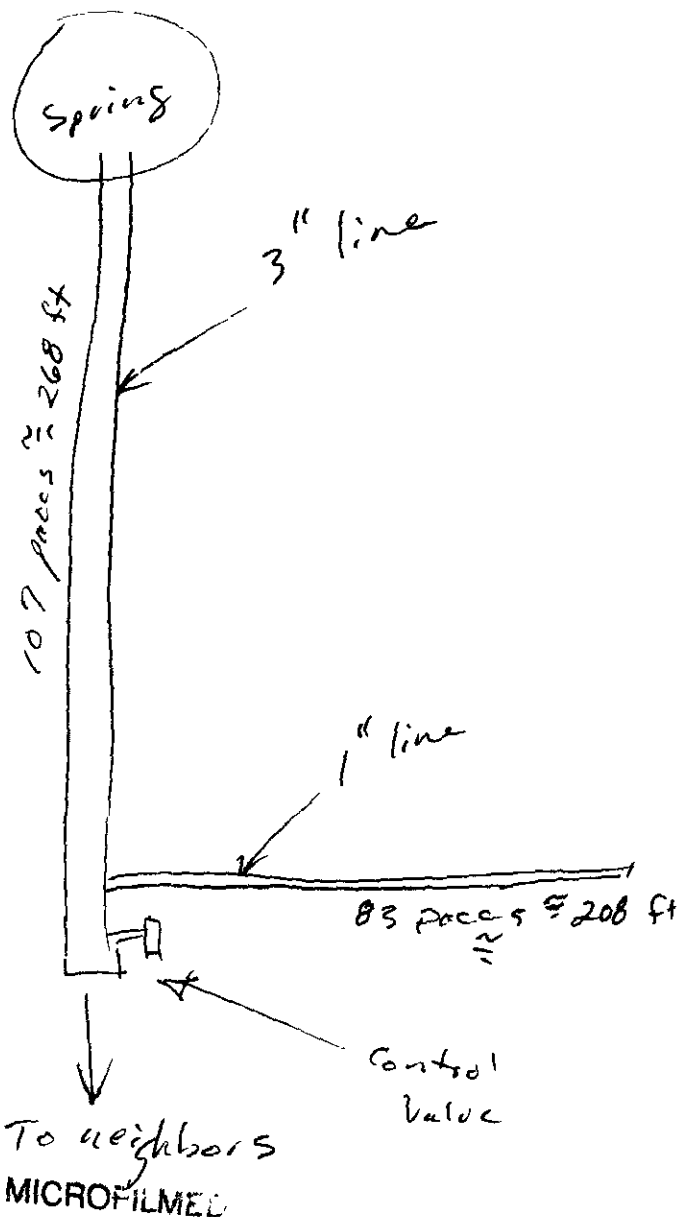
65-12286

1" mainline

No lockable device

Measuring requirement was waived.

{ 5 Gallon Bucket
31.4 sec



MICROFILMED

MAY 24 2001

65-12286

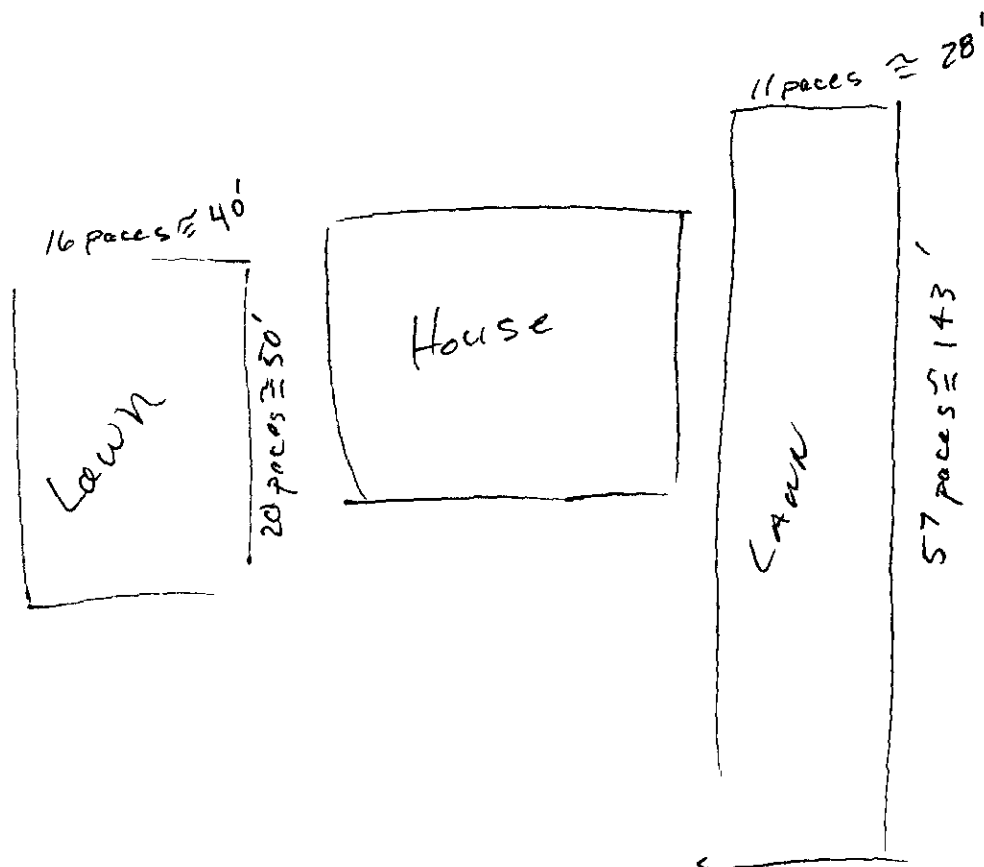
FIELD NOTES

6-30-00

Page 2 of 2

65-12286

Water is only used to water the lawn.



All conditions were met except for installation of a lockable device.

He is going to install device and send a picture.

MICROFILMED

MAR 23 2001

1-5-12286

**ANALYSIS SHEET
FOR
PROOF OF BENEFICIAL USE**

Permit No. 65-12286 Reviewed by [Signature] Date 6-13-96

GENERAL CONSIDERATIONS

TYPES OF USE

yes Name same as permit? dom
no Address same as permit?
yes Proof timely received? Correct Uses? yes
If not, complete calculation below.

SOURCE OF WATER

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

LICENSE EXAMINATION FEE

MEASURING DEVICE

yes Required?
50- Amount Submitted
yes Correct?
no Required?
Installed?
Waiver requested?

PRIORITY CALCULATION

Date proof received _____
Date proof due _____
No. of days late _____ = _____
Priority Date _____ + _____
New Priority Date _____

DEFICIENCIES OR ACTION ITEMS

Proof acceptable
Request 25.00 filing fee per assignment
1/2 fee received

DATA ENTRY

New Address 902 Logan St. Proof Made 520 96
Boise, ID. 83712



State of Idaho

DEPARTMENT OF WATER RESOURCES

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

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

PHILIP E. BATT
GOVERNOR

KARL J. DREHER
DIRECTOR
July 12, 1996

Ralph & Joyce Claycomb
902 Logan St.
Boise, ID 83712

PROOF ACKNOWLEDGEMENT LETTER

RE: Permit No. 65-12286

Dear Permit Holder:

The Department acknowledges receipt of the assignment of permit form transferring ownership of the above referenced water right to the Willson's. We have modified our computer records to reflect this change in ownership.

Additionally, 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.

Please be advised that Section 42-248, Idaho Code, which became affective on July 1, 1996, requires you or the owner of this water right to maintain current ownership and address records on file with the department. Please contact any office of the department for the proper form to file a change of ownership of a water right and/or a change in the address of the owner. Failure to maintain current records with the department could result in the assessment of a monetary penalty. If you have any questions concerning this matter, contact the WESTERN Regional Office in Boise at (208)334-2190.

Sincerely,

JULIE L. YARBROUGH
Senior Secretary

C: IDWR - Regional Office, Roy & Patricia Wilson

Aug 6 1996



State of Idaho

DEPARTMENT OF WATER RESOURCES

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

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

PHILIP E. BATT
GOVERNOR

KARL J. DREHER
DIRECTOR

June 21, 1996

Ralph & Joyce Claycomb
902 Logan St.
Boise, ID 83712

RE: Permit No. 65-12286

Dear Permit Holder:

I am in receipt of the Proof of Beneficial Use and Assignment of Permit submitted in connection with the above referenced water right permit. The proof is acceptable as filed, however, before the department can process the Assignment of Permit it must be accompanied with a \$25.00 filing fee. The form you filled out was a few years old and did not reflect the recent fee requirement.

Please submit the \$25.00 filing fee within thirty (30) days of receipt of this letter so I can transfer the permit to the new owners.

If you have any questions regarding this matter, please contact me at (208)327-7953.

Sincerely,

A handwritten signature in cursive script that reads "Julie L. Yarbrough".

JULIE L. YARBROUGH
Senior Secretary

AUG 09 1996



State of Idaho

DEPARTMENT OF WATER RESOURCES

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

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

PHILIP E. BATT
GOVERNOR

KARL J. DREHER
DIRECTOR

May 16, 1996

Ralph Claycomb
Joyce Claycomb
902 Logan
Boise, Idaho 83712

Re: Permit to appropriate water no. 65-12286

Dear Mr. and Mrs. Claycomb:

I reviewed the decision approving permit to appropriate water no. 65-12286 and the accompanying documents. Condition no. 6 of your permit states:

A measuring device and lockable controlling works of a type acceptable to the Department shall be permanently installed and maintained as part of the diverting works prior to diversion of water under this right.

I recognize that a similar condition was not required of Gorman and Barbara Miracle when their permit to appropriate water was simultaneously approved.

At the time of the approval, I recall there were some discussions that distinguished your use of water from Miracles' use. The distinction is not evident in the files, however. The measuring device condition contemplates the physical installation and measurement prior to diversion. The language also states that the installation must be acceptable to the department.

Please consider this letter authorization to postpone the installation of a measuring device until notified by the Department of Water Resources. You are not excused from the requirement to install a measuring device if the department determines it is necessary in the future for administration of your water right.

Sincerely,


Gary Spackman

GS/dde

cc: Western Region

AUG 09 1996

April 30, 1996

RALPH CLAYCOMB
JOYCE CLAYCOMB
902 LOGAN
BOISE ID 83712

PROOF DUE NOTICE

RE: PERMIT NO. 65-12286

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 July 1, 1996.

(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.

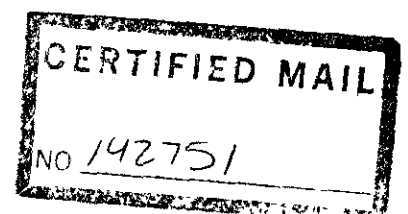
Either an acceptable proof of beneficial use submittal or an acceptable request for an extension of time must be received by this department on or before the above described proof due date. If neither is received, the department will send you a lapse notice. Within sixty (60) days of the mailing of the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

SINCERELY,

JULIE L. YARBROUGH
Senior Secretary

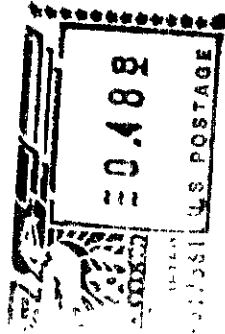
Enclosures

APR 09 1996



STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
North Orchard Street, P.O. Box 83720
Boise, Idaho 83720-0098

PRESTON
FIRST CLASS

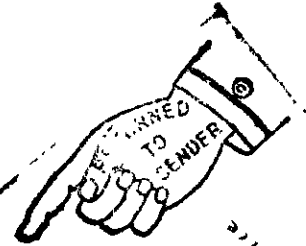


APR 09 1996

RECEIVED
APR 12 1996

Department of Water Resources

Ralph Claycomb
Joyce Claycomb
General Delivery
Lowman, ID 83637



mail in Lowman - does not receive
only a vacation - send to their residence
primary residence

4/22 Mailed to:
902 Logan
Boise, ID 83712



State of Idaho

DEPARTMENT OF WATER RESOURCES

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

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

April 9, 1996

PHILIP E. BATT
GOVERNOR

KARL J. DREHER
DIRECTOR

RE: In the Matter of Applications for Permit Nos. 65-12283 in the name of Gorman and/or Barbara Miracle and ~~65-12284~~ in the name of Ralph and/or Joyce Claycomb

Dear Interested Party:

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

AUG 09 1996

~ Celebrating Our Centennial Year of Service to Idaho 1895-1995 ~

Director retains the right to review the preliminary order on his own motion.

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.

AUG 12 1994

APPEAL OF FINAL ORDER TO DISTRICT COURT

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

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

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

Sincerely,



L. GLEN SAXTON
Chief, Water Allocation Bureau

Enclosure

cc: IDWR - Region

In the Supreme Court of the State of Idaho

File

IN THE MATTER OF APPLICATION FOR)
PERMIT NOS. 65-12283 IN THE NAME OF)
GORMAN & OR BARBARA MIRACLE; AND)
65-12286 IN THE NAME OF RALPH &/OR)
JOYCE CLAYCOMB.)

ORDER DENYING PETITION
FOR REHEARING

JAMES AND MARTHA BRANSON,)
Petitioners-Appellants,)

NO. 21732

v.)

R. KEITH HIGGINSON, DIRECTOR,)
OF THE IDAHO DEPARTMENT OF WATER)
RESOURCES, AND GORMAN AND BARBARA)
MIRACLE AND RALPH AND JOYCE)
CLAYCOMB,)

Ref. No. 96RH-1

Respondents.)

The Appellants having filed a PETITION FOR
RECONSIDERATION AND REHEARING AND BRIEF on February 26, 1996 of the
Court's Opinion released February 20, 1996; therefore, after due
consideration,

IT IS HEREBY ORDERED that Appellant's PETITION FOR
RECONSIDERATION AND REHEARING be, and hereby is, DENIED.

DATED this 4th day of March, 1996.

By Order of the Supreme Court



Lois Dawson, Chief Deputy Clerk for
Frederick C. Lyon, Clerk

cc: Counsel of Record
District Court Clerk
District Judge Robert M. Rowett

APR 6 1996

In the Supreme Court of the State of Idaho

IN THE MATTER OF APPLICATION FOR)
PERMIT NOS. 65-12283 IN THE NAME)
OF GORMAN & OR BARBARA MIRACLE;)
AND 65-12286 IN THE NAME OF RALPH)
&/OR JOYCE CLAYCOMB.)

REMITTITUR

JAMES AND MARTHA BRANSON,)
)
Petitioners-Appellants,)

NO. 21732

v.)

R. KEITH HIGGINSON, DIRECTOR OF)
THE DEPARTMENT OF WATER RESOURCES,)
AND GORMAN AND BARBARA MIRACLE AND)
RALPH AND JOYCE CLAYCOMB,)

Respondents.)

TO: FOURTH JUDICIAL DISTRICT COURT, ADA COUNTY.

The Court having announced its Opinion in this cause
February 20, 1996, which has now become final; therefore,

IT IS HEREBY ORDERED that the District Court shall
forthwith comply with the directive of the Opinion, if any action
is required; and

IT IS FURTHER ORDERED that costs and attorney fees are
allowed to the Respondents Miracles. Costs in the amount of \$90.00
are allowed to the Respondent Idaho Department of Water Resources.

DATED this 4th day of March, 1996.

I, Frederick C. Lyon, Clerk of the Court of Appeals
of the State of Idaho, do hereby certify that the
above is a true and correct copy of the *Remittitur*
entered in the above entitled cause and now on
record in my office.

WITNESS my hand and the Seal of this Court 3-5-96

Frederick C. Lyon
Clerk of the Supreme Court
STATE OF IDAHO

FREDERICK C. LYON

Clerk

By: *Carmen Bird*

puty

IN THE SUPREME COURT OF THE STATE OF IDAHO
Docket No. 21732

IN THE MATTER OF APPLICATION FOR)
PERMIT NOS. 65-12283 IN THE NAME OF)
GORMAN &/OR BARBARA MIRACLE; AND)
65-12286 IN THE NAME OF RALPH &/OR)
JOYCE CLAYCOMB)

JAMES and MARTHA BRANSON,)

Petitioners-Appellants,)

v.)

R. KEITH HIGGINSON, Director, of the)
Idaho Department of Water Resources, and)
GORMAN and BARBARA MIRACLE and)
RALPH and JOYCE CLAYCOMB,)

Respondents.)

1996 Opinion No. 16

Boise, December 1995 Term

Filed: February 20, 1996

Frederick C. Lyon, Clerk

Appeal from the District Court of the Fourth Judicial District of the State of Idaho, Ada County. Hon. Robert M. Rowett, District Judge.

Appeal from a grant of applications to appropriate water. Affirmed.

Marcus, Merrick & Montgomery, Boise, for appellants. Claude V. Marcus argued.

Hon. Alan G. Lance, Idaho Attorney General; Phillip J. Rassier, Deputy Attorney General, Boise, for respondent Higginson. Phillip J. Rassier argued.

John A. Bradley, Burley, for respondents Miracle.

TROUT, Justice

This is an appeal from a district court decision affirming the grant, by the Idaho Department of Water Resources (IDWR), of water use permits to respondents Gorman Miracle and Ralph and Joyce Claycomb.

AUG 09 1996

I.

BACKGROUND AND PROCEDURAL HISTORY

The petitioners-appellants, James and Martha Branson, own what is known as the Birthday Mine located near Lowman, Idaho. A mining tunnel on the Branson property extends into the mountainside and, from its portal, a small stream of water flows. This stream sinks into the ground and does not flow beyond the Branson property.

Related litigation arose from the 1969 Payette River Basin adjudication. In the 1940's, Miracle's predecessor in interest diverted water flowing from the mine for domestic use on what became the Miracle property. In 1964, the Bransons' predecessor installed a second diversion system to supply water for domestic use to his own residence. In 1977, water rights claims were filed by both the Bransons and Miracle. The dispute over these claims resulted in our decision in *Branson v. Miracle*, 107 Idaho 221, 687 P.2d 1348 (1984) (*Branson I*), in which we held that "the water flow emanating from the mine portal is public ground water subject to appropriation." *Id.* at 225, 687 P.2d at 1352. The case was remanded, and a second appeal resulted in the decision of the Court of Appeals in *Branson v. Miracle*, 111 Idaho 933, 729 P.2d 408 (Ct. App. 1986) (*Branson II*). *Branson II* has no impact on the present case.

On November 6, 1979, Miracle and his wife Barbara (now deceased) filed an application to appropriate water flowing from the Birthday Mine portal (this application was for uses separate from the claim at issue in *Branson I* and *Branson II*). They originally sought to appropriate 0.16 cubic feet per second (cfs) for application on two separate tracts of land. However, the application was amended to reduce the requested appropriation to a total of 0.04 cfs (0.02 cfs per tract of land), one half of which was sought to improve the marketability of one of the parcels. The remaining portion of the requested appropriation was sought for domestic purposes in a residence Miracle planned to build on the second tract of land. On November 8, 1979, the Claycombs filed an application similar to Miracle's. They originally sought to appropriate 0.04 cfs for supplemental domestic use in one existing residence, but amended their application to request only 0.02 cfs.

AUG 09 1996

Hearings on the applications were held before an IDWR hearing officer who issued findings of fact, conclusions of law, and a proposed order for adoption by the IDWR. On February 9, 1994, the director of IDWR issued a final order adopting the hearing officer's recommended order. The Miracle application was approved for the diversion of 0.02 cfs. However, the portion requesting a right to appropriate merely to increase the marketability of a tract of land was deemed to be for "speculative purposes" and was denied. The Claycombs' amended application was approved for 0.02 cfs. The final order of the IDWR was affirmed by the district court and the Bransons have appealed.

II.

NATURE OF THE WATER EMANATING FROM THE MINE PORTAL

The Bransons' primary contention on appeal is that the water emanating from the mine tunnel is not subject to appropriation because it does not flow off their land. According to the Bransons, this water is "private water" within the meaning of I.C. § 42-212. Notably, however, in *Branson I*, the Bransons stated the following as an issue to be addressed by this Court:

3. If, as appellants believe, the evidence overwhelmingly proves that the water did not flow from the Branson property on the surface in a natural channel, or at all, is this private water as provided in Section 41-212 [sic] of the Idaho Code; or was this public water which Miracle could appropriate for which he could establish a legal water right.

As requested, the Court answered this issue, expressly holding that the water is not "private water" within the meaning of I.C. § 42-212 because it is not a lake, pond, pool, or spring. *Branson I*, 107 Idaho at 225, 687 P.2d at 1352. Rather, "the water flow emanating from the mine portal is public ground water subject to appropriation." *Id.*

The mere fact that the decision in *Branson I* was not favorable to the Bransons does not entitle them to raise the identical issue before this Court some ten years later. We decline the request to revisit this issue. *See Anderson v. City of Pocatello*, 112 Idaho 176, 731 P.2d 171 (1986) (setting forth elements of doctrine of collateral estoppel).

III.

OTHER ISSUES

In their opening brief on appeal, the Bransons have listed at least one and arguably two additional issues, along with a request for attorney fees, in their statement of issues presented. However, they have not provided this Court with any authority or argument relating to these issues. A failure to support an assignment of error with argument and authority is deemed a waiver of the assignment. *E.g.*, *State v. Burris*, 101 Idaho 683, 684 n.1, 619 P.2d 1136, 1137 n.1 (1980) (citing I.A.R. 35(a)(6)). Accordingly, we decline to address these other issues.

IV.

ATTORNEY FEES

Miracle requests an award of attorney fees pursuant to I.C. § 12-121 based on the fact that this appeal was pursued frivolously and without foundation. In light of our prior decision in *Branson I* and the fact that the Bransons provide little or no argument in support of their position on appeal, we agree. Thus, we award attorney fees on appeal to Miracle pursuant to I.C. § 12-121, but decline the State's request for an award of attorney fees as a sanction under Rule 11.

V.

CONCLUSION

The final order of the IDWR is affirmed. Miracle is awarded attorney fees on appeal. Costs to both Miracle and the IDWR.

Chief Justice McDEVITT, Justices SILAK and SCHROEDER, CONCUR. Justice JOHNSON sat but did not participate.

AUG 09 1996

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO

IN THE MATTER OF APPLICATIONS)
FOR PERMIT NOS. 65-12283 IN)
THE NAME OF GORMAN AND/OR)
BARBARA MIRACLE; AND 65-12286)
IN THE NAME OF RALPH AND/OR)
JOYCE CLAYCOMB)

JAMES AND MARTHA BRANSON,)
Protestants-Appellants,)

v.)

R. KEITH HIGGINSON, DIRECTOR,)
OF THE IDAHO DEPARTMENT)
OF WATER RESOURCES,)
Respondent,)

and)

GORMAN AND BARBARA MIRACLE)
and RALPH AND JOYCE CLAYCOMB,)
Applicants-Respondents.)

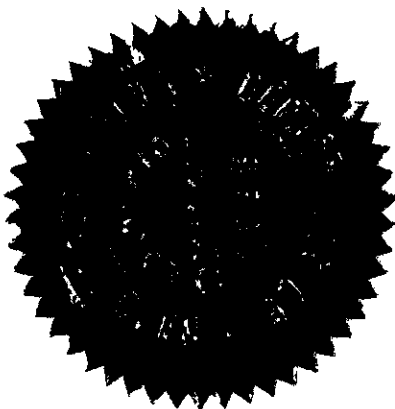
AGENCY'S CERTIFICATE
OF RECORD

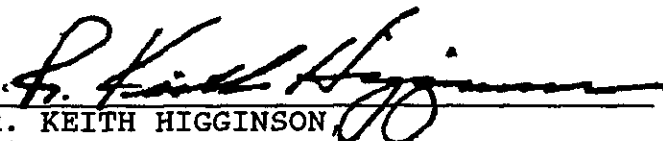
STATE OF IDAHO)
: ss
County of Ada)

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

JUN 9 1996

IN WITNESS WHEREOF, I have hereunto set by hand and affixed
the seal of the Department of Water Resources at Boise, Idaho
this 8th day of June, 1994.




R. KEITH HIGGINSON
Director

AUG 1994

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO

IN THE MATTER OF APPLICATIONS)
FOR PERMIT NOS. 65-12283 IN) ORDER SETTLING TRANSCRIPT
THE NAME OF GORMAN AND/OR)
BARBARA MIRACLE; AND 65-12286)
IN THE NAME OF RALPH AND/OR)
JOYCE CLAYCOMB)

TO: ALL PARTIES OR THEIR COUNSEL OF RECORD

YOU ARE HEREBY NOTIFIED, That the transcript of the testimony and proceedings of the hearing before the Department of Water Resources in this matter having been lodged with the Department and made available to the parties on April 13, 1994, pursuant to I.R.C.P. 83(o); a timely objection to the transcript having been filed by Claude Marcus for the Protestants/Appellants to this proceeding; and the Department staff having identified this correction;

THE FOLLOWING CORRECTION IS MADE TO THE RECORD,
Page 46, Line 8 "bridled" has been changed to "its a well understood question."

NOW, THEREFORE, IT IS HEREBY ORDERED that the correction is made to the transcript in this proceeding and that the transcript is hereby settled pursuant to the provisions of I.R.C.P. 83(o).

DATED this 7TH day of June, 1994.


R. KEITH JOHNSON
Director

AUG 09 1996

CERTIFICATE OF SERVICE

I hereby certify that I served a true and correct copy of the following described document on the persons listed below by mailing in the United States mail, first class, with the correct postage affixed thereto on the 8th day of June, 1994.

Document served: ORDER SETTLING TRANSCRIPT

Persons served: Claude Marcus
MARCUS MERRICK & MONTGOMERY
737 North 7th Street
Boise, ID 83702-5575

John A. Bradley, Esq.
Attorney at Law
Washington Federal Building
210 E. 5th St. N. Suite 1
Burley, ID 83318


RITA I. FLECK
Legal Secretary
Department of Water Resources



State of Idaho

DEPARTMENT OF WATER RESOURCES

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

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

CECIL D. ANDRUS
GOVERNOR

R. KEITH HIGGINSON
DIRECTOR

March 10, 1994

Gayle Lutz and Denise Hodges
Northwest Transcript
P. O. Box 890
Nampa, ID 83653-0890

Re: Hearing Tape - Miracle and Claycomb
Permit Nos. 65-12283 and 65-12286

Enclosed is one tape to be transcribed. It is of a hearing held on January 20, 1993. The parties involved are listed on the enclosed sample under appearances.

I've typed up samples and enclosed a disk with the title page and appearance page. They are listed as Branson.tpg and Branson.app. Also enclosed is a copy of the hearing officer's notes.

If you have any questions concerning this matter, please call me.

Thank you in advance.

Sincerely,

A handwritten signature in cursive script, appearing to read 'Rita I. Fleck'.

RITA I. FLECK
Legal Secretary

Enclosures

AUG 09 1996

Claude Marcus
Marcus, Merrick & Montgomery
Attorneys at Law
737 North 7th Street
Boise, Idaho 83702
Telephone: (208) 342-3563

Attorneys for Petitioners

RECEIVED
FEB 25 1994
Department of Water Resources

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

IN THE MATTER OF APPLICATIONS	)	
FOR PERMIT NOS. 65-12283 IN	)	Case No.
THE NAME OF GORMAN AND/OR	)	
BARBARA MIRACLE; AND 65-12286	)	PETITION FOR JUDICIAL
IN THE NAME OF RALPH AND/OR	)	REVIEW OF FINAL ORDER OF
JOYCE CLAYCOMB	)	DIRECTOR, DEPARTMENT
	)	OF WATER RESOURCES
	)	
	)	Fee Category: R(2)
	)	Fee: \$60.00

James Branson and Martha Branson appeal and respectfully petition the Court for judicial review of Final Order of the Director of the Department of Water Resources. In support thereof petitioners allege:

1. Attached hereto as Supplement A and incorporated herein is a true and correct copy of "Final Order Adopting Recommended Order", dated February 9, 1994 and served February 15, 1994, of R. Keith Higginson, Director of the Idaho Department of Water Resources. Petitioners have exhausted all administrative remedies.

AUG 09 1994

2. Petitioners are owners of the property and water affected by said Order.

3. Petitioners believe and allege that said Order is an attempt to extend the jurisdiction of the state over private waters; is violative of Idaho law; is not factually supported; is in excess of the statutory authority of the Department of Water Resources and therefore arbitrary and an attempted unlawful exercise of discretion.

4. Petitioners are owners of the property and water affected by this Order and are aggrieved and damaged thereby.

5. Upon the submission by the Department of its record of proceedings before the Department petitioners may request permission to supplement the record and may request permission to submit oral argument.

Wherefore, petitioners appeal and petition the Court to review and reverse said Order and direct the dismissal of the water applications considered therein.

Dated: February 25, 1994.

Marcus, Merrick & Montgomery

By *Charles W. Merrick*
Attorneys for Petitioners

09350
FEB 09 1996

CERTIFICATE OF MAILING

I hereby certify that on this 25th day of February, 1994, I mailed a true and correct copy of the foregoing Petition for Judicial Review of Final Order of Director, Department of Water Resources, by depositing same in the U.S. Mail, postage prepaid, as follows:

By certified mail, return receipt requested, to:

Department of Water Resources
1301 North Orchard St.
Statehouse Mail
Boise, Idaho 83720-9000
Attn: Phil Rassier, Attorney

By regular mail to:

Lloyd J. Walker
Attorney at Law
131 Second Street West
P.O. Box 1923
Twin Falls, Idaho 83303-1923

Claude Marcus

AUG 09 1996

Supp. A
RECEIVED FEB 15 1994

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE
STATE OF IDAHO

IN THE MATTER OF APPLICATIONS FOR	)	
PERMIT NOS. 65-12283 IN THE NAME	)	
OF GORMAN AND/OR BARBARA MIRACLE;	)	FINAL ORDER ADOPTING
AND 65-12286 IN THE NAME OF RALPH	)	RECOMMENDED ORDER
AND/OR JOYCE CLAYCOMB	)	

A Recommended Order was issued on October 25, 1993, which approved Application for Permit Number 65-12286 in the name of Ralph &/or Joyce Claycomb, and approved a portion of Application Number 65-12283 in the name of Gorman &/or Barbara Miracle. The protestant, Jim Branson, petitioned for reconsideration of the decision, and the petition was denied on November 22, 1993. Branson subsequently filed exceptions with the Department of Water Resources. The exceptions are summarized as follows:

1. Branson alleges water emanating from a mine tunnel located on Branson property is not subject to appropriation.
2. Branson alleges there is not sufficient water for appropriation.
3. Branson alleges issuance of a permit without a right to access the point of diversion is prohibited by law.
4. Branson alleges the applications are speculative.

ANALYSIS

The Supreme Court in Branson v. Miracle, 107 Idaho 221, 687 P.2d 1348 (1984) specifically determined the nature of the water emanating from the mine tunnel that is now the subject of this dispute. The Supreme Court held "that the water flow emanating

AUG 09 1996

from the mine portal is public groundwater subject to appropriation." 107 Idaho at 225. Branson attempts to distinguish the Miracle and Claycomb proposals from the Supreme Court decision by relying on a later decision in a dispute between the parties issued by District Judge Duff McKee. Branson alleges that Judge McKee determined the water did not leave the Branson property, and, based on this holding, Branson seeks a holding that the water cannot be appropriated, presumably pursuant to Idaho Code § 42-212, which prohibits the appropriation of private waters by a third person without permission of the landowner.

Judge McKee's decision did not change or add facts that would change the Supreme Court holding. Judge McKee's opinion discusses whether the stream flows in an established channel, and whether the stream protection act applies to the facts of the case. His decision did not address the question of whether the water flowing in the tunnel may be appropriated. This issue was already decided by the Supreme Court case. The question of whether the water leaves the property was not important in the initial Supreme Court decision. The Supreme Court determined that the water was subject to appropriation because the water emanating from the tunnel is neither a spring, pool, pond or lake. Only if the water is a spring, pool, pond or lake is the question of whether it arises and sinks on private property important.

Branson also argues that the state cannot grant a permit because a water right cannot be perfected in trespass. The issue raised by Branson is a typical alternative-choice question.

AUG 09 1996

Prospective water users can sue for a right-of-way under the law of condemnation. See Idaho Code § 42-1103 and § 42-1106. If a prospective appropriator files a condemnation action without any color of a right to appropriate the water, the courts could dismiss the action for failure to show any basis for the condemnation. By applying with the Department of Water Resources first, the applicant obtains a permit, which gives him the right to perfect a water right if all of the conditions of the permit are satisfied. A permit cannot ripen into a perfected water right unless the applicant obtains a right-of-way, and diverts and develops the proposed use within the time period granted by the permit. The issuance of a permit does not perfect a water right, and it does not violate the holding that a water right cannot be perfected in trespass. The permit holder must still perfect his water right after issuance of the permit by developing the beneficial use as permitted.

With respect to the issue of speculation, the proposals by the applicants to build a cabin or residence without submitting detailed plans to the department is not speculation. Were these applications proposing a large development, requiring substantial capital, and a large quantity of water was to be diverted, the department might require more detailed plans. In this case, however, the department must compare the small size of the development to the cost of preparation of detailed plans, and also weigh the other evidence. The evidence shows the applicants are

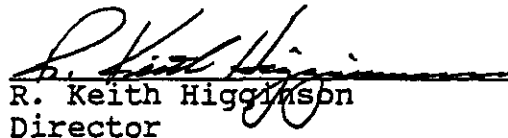
earnestly seeking to develop these permits. A short period of construction will insure against speculation.

Finally, the evidence presented at the hearing shows that there is water available for appropriation from the mine tunnel for the purposes sought.

ORDER

IT IS HEREBY ORDERED that the Recommended Order, issued October 25, 1993, is adopted as the final decision of the department.

Dated this 9TH day of February, 1994.



R. Keith Higginson
Director

AUG 09 1996

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on the 15th day of February, 1994, I mailed a true and correct copy, postage prepaid, of the foregoing Final Order Adopting Recommended Order to the following:

Ralph/Joyce Claycomb
902 Logan St.
Boise, ID 83612

Gorman/Barbara Miracle
1441 Lawndale Dr.
Twin Falls, ID 83301

Lloyd Walker, Esq.
P.O. Box 1923
Twin Falls, ID 83301

Claude Marcus, Esq.
737 N. 7th
Boise, ID 83702

Jim Branson
3803 Collister
Boise, ID 83703

IDWR Western Regional Office
Boise, Idaho

Carolyn Andregg
Carolyn Andregg
Secretary

AUG 09 1996

P-581 149 720

RECEIPT FOR CERTIFIED MAIL

NO INSURANCE COVERAGE PROVIDED
NOT FOR INTERNATIONAL MAIL

(See Reverse)

U S G P O 153-506

PS Form 3800, June 1985

Sent to Ralph Claycomb	
Street and No	
P.O., State, and ZIP Code Boise, ID	
Postage	\$
Certified Fee	
Special Delivery Fee	
Restricted Delivery Fee	
Return Receipt showing to whom and Date Delivered	
Return Receipt showing to whom Date and Address of Delivery	
TOTAL Postage and Fees	\$
Postmark or Date	

AUG 09 1986

P-581 149 721

RECEIPT FOR CERTIFIED MAIL

NO INSURANCE COVERAGE PROVIDED

NOT FOR INTERNATIONAL MAIL

(See instructions)

U S G P O 153-506

PS Form 3800, June 1985

Sent to Jim Branson	
Street and No.	
P. O., State, and ZIP Code Boise, ID 83703	
Postage	\$
Certified Fee	
Special Delivery Fee	
Restricted Delivery Fee	
Return Receipt showing to whom and Date Delivered	
Return Receipt showing to whom Date and Address of Delivery	
TOTAL Postage and Fees	\$
Postmark or Date	

AUG 13 1990

P-581 149 879

RECEIPT FOR CERTIFIED MAIL

NO INSURANCE COVERAGE PROVIDED

NOT FOR INTERNATIONAL MAIL

(See Reverse)

USGPO 153-506

PS Form 3800, June 1985

Sent to <i>Jim Branson</i>	
Street and No.	
P.O., State and ZIP Code	
Postage	\$
Certified Fee	\$
Special Delivery Fee	
Restricted Delivery Fee	
Return Receipt showing to whom and Date Delivered	
Return Receipt showing to whom Date and Address of Delivery	
TOTAL Postage and Fees	\$
Postmark or Date	

SENDER: Complete items 1 and 2 when additional services are desired, and complete items 3 and 4.

Put your address in the "RETURN TO" Space on the reverse side. Failure to do this will prevent this card from being returned to you. The return receipt fee will provide you the name of the person delivered to and the date of delivery. For additional fees the following services are available. Consult postmaster for fees and check box(es) for additional service(s) requested.

- 1 ☐ Show to whom delivered, date, and addressee's address. 2 ☐ Restricted Delivery
(Extra charge) (Extra charge)

3. Article Addressed to:

Ralph & Joyce Claycomb
902 Logan Street
Boise, ID 83612

65-12286

4. Article Number

P-581 149 720

Type of Service:

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

Always obtain signature of addressee
or agent and DATE DELIVERED.

5. Signature - Address

X

6. Signature - Agent

X

7. Date of Delivery

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

UNITED STATES POSTAL SERVICE

OFFICIAL BUSINESS

SENDER INSTRUCTIONS

Print your name, address and ZIP Code in the space below.

- Complete Items 1, 2, 3, and 4 on the reverse.
- Attach to front of article if space permits, otherwise affix to back of article.
- Endorse article "Return Receipt Requested" adjacent to number.

**RETURN
TO**



Print Sender's name, address, and ZIP Code in the space below.

DEPARTMENT OF WATER RESOURCES
2735 AIRPORT WAY
BOISE, IDAHO 83705

RECEIVED

NOV 20 1989



PENALTY FOR PRIVATE
USE, \$300

● **SENDER:** Complete items 1 and 2 when additional services are desired, and complete items 3 and 4.

Put your address in the "RETURN TO" Space on the reverse side. Failure to do this will prevent this card from being returned to you. The return receipt fee will provide you the name of the person delivered to and the date of delivery. For additional fees the following services are available. Consult postmaster for fees and check box(es) for additional service(s) requested.

- 1 ☐ Show to whom delivered, date, and addressee's address. (Extra charge) 2 ☐ Restricted Delivery (Extra charge)

3 Article Addressed to:

Jim Branson
3803 Collister
Boise, ID 83703

AUG 6 9 1996

4. Article Number

P-581 149 721

Type of Service: 65-12286

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

Always obtain signature of addressee
or agent and DATE DELIVERED.

5. Signature — Address

X

6. Signature — Agent

X

7. Date of Delivery

11-24-79

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

UNITED STATES POSTAL SERVICE

OFFICIAL BUSINESS

SENDER INSTRUCTIONS

Print your name, address and ZIP Code in the space below.

- Complete items 1, 2, 3, and 4 on the reverse.
- Attach to front of article if space permits, otherwise affix to back of article.
- Endorse article "Return Receipt Requested" adjacent to number.

RETURN
TO



Print Sender's name, address, and ZIP Code in the space below.

RECEIVED

NOV 27 1989



PENALTY FOR PRIVATE
USE, \$300

Department of Water Resources
Western Regional Office,

DEPARTMENT OF WATER RESOURCES

2735 AIRPORT WAY

BOISE, IDAHO 83705

AUG 09 1986

IDAHO DEPARTMENT OF WATER RESOURCES
WESTERN REGION
2735 Airport Way
Boise, Idaho 83705

e

BEFORE THE DEPARTMENT OF WATER RESOURCES

STATE OF IDAHO

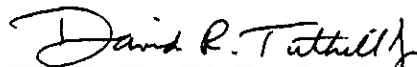
IN THE MATTER OF APPLICATION FOR)
)
PERMIT NO. 65-12286 IN THE NAME OF) ORDER TO SHOW CAUSE
)
RALPH & JOYCE CLAYCOMB)
_____)

Whereas, a conference was held on December 4, 1989, in the matter of protested water right application no. 65-12286 and,

Whereas, protestant Jim Branson was properly notified of the conference but failed to appear,

Now, therefore, IT IS HEREBY ORDERED that the protestant, Jim Branson, provide to the Department no later than January 4, 1990, any information as to why he did not appear at the conference. Failure to provide this information will result in dismissal of the protest.

Dated this 14th day of December, 1989.



David R. Tuthill, Jr., P.E.
Manager, Western Regional Office

CERTIFICATE OF MAILING

I hereby certify that on the 15th day of December, 1989, I mailed true and correct copies, postage prepaid, of this document to Jim Branson and also I mailed this document by certified mail.



Sue Taylor, Secretary - Office Coordinator

IDAHO DEPARTMENT OF WATER RESOURCES
WESTERN REGION
2735 Airport Way
Boise, Idaho 83705

RECEIVED
DEC 20 1989

Department of Water Resources
Western Regional Office

Jim Branson
3803 Collister
Boise, ID 83703

678 340

EXP 00 01188651 12/18/89
NOTIFY SENDER OF NEW ADDRESS
: RETURN TO SENDER
FORWARDING ORDER EXPIRED
* USPS

IDAHO DEPARTMENT OF WATER RESOURCES
WESTERN REGION
2735 Airport Way
Boise, Idaho 83705

RETURN TO SENDER:
() MOVED LEFT NO ORDER
() EXPIRED ORDER
() UNKNOWN/UNDELIVERABLE
() NO SUCH #/STREET/INSUFFICIENT
RETURN RECEIPT REQUESTED

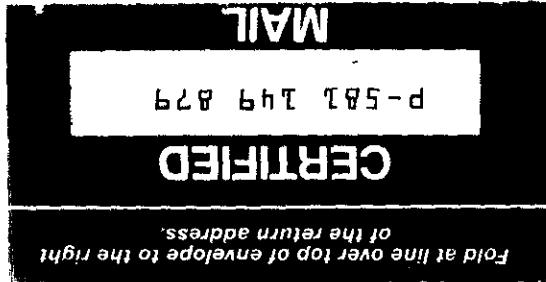
Jim Branson
3803 Collister
Boise, ID 83703

Handwritten signature

DEC 20 1989

Department of Water Resources
Western Regional Office

Handwritten barcode



is your **RETURN ADDRESS**

Raymond file

● **Sender:** Complete items 1 and 2 when additional services are desired, and complete items 3 and 4. Put your address in the "RETURN TO" Space on the reverse side. Failure to do this will prevent this card from being returned to you. The return receipt fee will provide you the name of the person delivering to and the date of delivery. For additional fees the following services are available. Consult postmaster for fees and check boxes for additional services requested.

1. ☐ Show to whom delivered, date, and addressee's address. 2. ☐ Restricted Delivery (Extra charge)

3. Article Addressed to:
 Jim Branson
 3803 Collister
 Moise, ID 83703

4. Article Number
 P-581 149 879

Type of Service: 65-12286
☐ Registered ☐ Insured
☒ Certified ☐ COD ☐ Return Receipt for Merchandise
☐ Express Mail

Always obtain signature of addressee or agent and DATE DELIVERED.

5. Signature of Agent

6. Addressee's Address (ONLY if requested and fee paid)

7. Date of Delivery

PS Form 3811, Mar. 1983 • U.S.G.P.O. 1983-212-366 DOMESTIC RETURN RECEIPT

AUG 09 1996

Thank you for
 Return Receipt

BEFORE THE DEPARTMENT OF WATER RESOURCES

STATE OF IDAHO

IN THE MATTER OF APPLICATION FOR)
)
PERMIT NO. 65-12286 IN THE NAME OF)
)
RALPH & JOYCE CLAYCOMB)
_____)

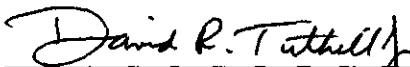
ORDER TO SHOW CAUSE

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Whereas, protestant Jim Branson was properly notified of the conference but failed to appear,

Now, therefore, IT IS HEREBY ORDERED that the protestant, Jim Branson, provide to the Department no later than January 4, 1990, any information as to why he did not appear at the conference. Failure to provide this information will result in dismissal of the protest.

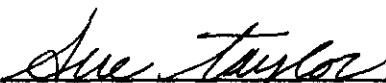
Dated this 14th day of December, 1989.



David R. Tuthill, Jr., P.E.
Manager, Western Regional Office

CERTIFICATE OF MAILING

I hereby certify that on the 15th day of December, 1989, I mailed true and correct copies, postage prepaid, of this document to Jim Branson and also I mailed this document by certified mail.



Sue Taylor, Secretary - Office Coordinator

AUG 09 1996

BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE

STATE OF IDAHO

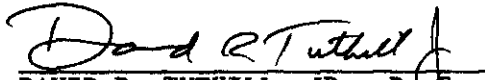
IN THE MATTER OF APPLICATION)
FOR PERMIT NO. 65-12286 IN THE)
NAME OF RALPH & JOYCE CLAYCOMB)

NOTICE OF CONFERENCE

On November 8, 1979, Ralph & Joyce Claycomb filed with the Department of Water Resources an application for permit to appropriate the public waters of the State of Idaho. The application was protested by Jim Branson.

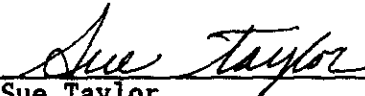
The Department has set the matter of protest for a conference on December 4, 1989, at 10:00 a.m., in the Upstairs Conference Room, Department of Water Resources, 1301 N. Orchard St., Boise, Idaho 83706. The conference will be held in accordance with provisions of Chapters 2 and 17, Title 42, and Chapter 52, Title 67, of the Idaho Code, the adopted Rules of Practice and Procedure of the Department of Water Resources, and Rules 4 and 5 of the adopted Rules and Regulations of Water Appropriation of the Department of Water Resources. Opportunity shall be afforded all parties to respond and present information and argument on all issues involved.

Dated this 17th day of November, 1989.


DAVID R. TUTHILL, JR., P.E.
Manager, Western Regional Office


AUG 09 1996

I hereby certify that on the 17th day of November, 1989, I mailed a true and correct copy, postage prepaid, of this document to the applicant(s) and protestant(s) listed:


Sue Taylor
Secretary

Certified Mail

Ralph & Joyce Claycomb
902 Logan Street
Boise, ID 83712

Jim Branson
3803 Collister
Boise, ID 83703



State of Idaho
DEPARTMENT OF WATER RESOURCES

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

CECIL D. ANDRUS

GOVERNOR

R. KEITH HIGGINSON

DIRECTOR

October 4, 1989

Jim Branson
3803 Collister
Boise, ID 83703

Re: Application for Permit #65-12286 in the name of Ralph and Joyce Claycomb

Dear Mr. Branson:

We have received a letter dated October 2, 1989, from Ralph and Joyce Claycomb, in which they indicate a desire to proceed with the above-referenced application for permit. Enclosed please find a copy of the letter for your information.

The purpose of this letter to you is to ascertain your position with respect to the protest of this application for permit. If, based on the resolution of the dispute with the Miracles, you wish to withdraw your protest, please so advise this office. If, on the other hand, you wish to maintain your protest to this application, please notify me and we will set the matter for a conference or a hearing.

Because of the lengthy period of time that has elapsed since this application was filed, we have also enclosed a copy of the application for permit for your review. If you wish to discuss this matter before making a decision regarding your position, please feel free to contact this office.

Sincerely,

DAVID R. TUTHILL, JR., P.E.
Manager, Western Regional Office

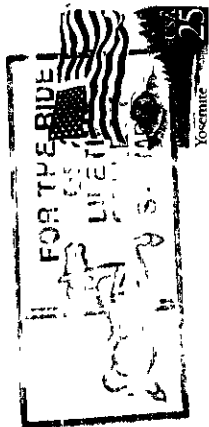
DRT:st

CC: Ralph & Joyce Claycomb
David Shaw, State Office

Encl: Copy of letter dated October 2, 1989
Copy of application for permit

APL 09 1996

Ralph Claycomb
902 Logan St.
Boise, Idaho
83712



Mr. David Luukill
Regional Manager
Water Resource Board
2735 Airport Way
Boise, Idaho
83705

1 OCT 09 1996

RECEIVED

OCT 03 1989

Department of Water Resources
Western Regional Office

Mr. David Tuthill
Regional Manager
Water Resource Board
Boise, Idaho

October 2, 1989

Dear Mr. Tuthill,

Mr. David Shaw suggested that we contact you concerning our desire to process our application number 65-12286, originally dated in November 1979, in the Lowman area. There have been many court appearances between Gorman Miracle and James Branson that had to be settled before a decision could be made on our application.

We understand that the Supreme Court has finally completed a decision, that was not contested, allowing Mr. Miracle the use of the water applied for and the right of ingress and egress to the property.

As agreed during a taped interview in your office with Mr. Miracle and Mr. Branson, we shall use the water from Mr. Miracles water line and transport it on Mr. Miracles property to our property. We, therefore, do not feel that Mr. Branson has any legal reason to object.

We recently sold our Lowman property and would like to clean up all property rights so that we can assign them to Mr. and Mrs. Roy Wilson, the new owners.

Thank you very much.

Yours truly,

Ralph Claycomb

Ralph and Joyce Claycomb
902 Logan St.
Boise, Idaho
83712

AUG 08 1990



State of Idaho
DEPARTMENT OF WATER RESOURCES

1301 North Orchard Street, Statehouse Mail, Boise, Idaho 83720-9000
Phone: (208) 327-7900 FAX: (208) 327-7866

CECIL D. ANDRUS
GOVERNOR

R. KEITH HIGGINSON
DIRECTOR

October 26, 1993

Re: In the matter of Applications for Permit Nos. 65-12283 in the name of Gorman and/or Barbara Miracle; and 65-12286 in the name of Ralph and/or Joyce Claycomb

Dear Interested Party:

The accompanying order is a "recommended order" issued by the department pursuant to Section 67-5243, Idaho Code. The provisions of this order will not become effective until the Director issues a final order in this matter.

Each party to these proceedings who appeared at the hearing may file a petition for reconsideration, briefs and exceptions to the recommended order and may request oral argument before the Director of the department as further described below:

PETITION FOR RECONSIDERATION

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

EXCEPTIONS AND BRIEFS

Within twenty-one (21) days after (a) the service date of this recommended order, (b) the service date of a denial of a petition for reconsideration from this recommended order, or (c) the failure within twenty-one (21) days to grant or deny a petition for reconsideration from this recommended order, any party may in writing support or take exceptions to any part of a recommended order and may file briefs in support of the party's position on any issue in the proceeding. Written briefs in support of or taking exceptions to the recommended order shall be filed with the Director. Opposing parties shall have twenty-one (21) days to respond.

11 09 1996

ORAL ARGUMENT

The Director may schedule oral argument in the matter before issuing a final order. Oral argument on exceptions to a recommended order shall be heard at the discretion of the Director. If oral arguments are to be heard, the Director will, within a reasonable time, notify each party of the place, date and hour for the argument of the case. Unless the Director orders otherwise, all oral arguments will be heard in Boise, Idaho.

CERTIFICATE OF SERVICE

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

FINAL ORDER

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

APPEAL OF FINAL ORDER TO DISTRICT COURT

A party aggrieved by a final order of the Director is entitled to judicial review in compliance with sections 67-5271 through 67-5279, Idaho Code.

Sincerely,



L. Glen Saxton
Chief, Water Allocation Bureau

Enclosures

AUG 69

APPLICATION FOR PERMIT
STATE OFFICE REVIEW

Application #: 65-12286 Date: 10/21/93 Reviewer: Cindy Zimmerman

AREA OF CONCERN? - No/Yes _____
SYSTEM COMPLETED:
No - 26A-~~P17~~
Complete in 1 year - P16
Yes
Proof not submitted - P16
Proof submitted - N/A
GROUNDWATER:
+ 0.2 cfs <flo-ch> - 01G-P03 (new), 01C-P03 (existing), NMR
- 0.2 cfs - NMR <flow chart>
Drilling Permit:
Included w/permit - P99 Permit No. _____
Existing well - N/A (if drilled before 7/1/87)
No WD permit? - 046-46A<Irr>-46B-P23 (if drilled after 7/1/87)
SURFACE WATER: not in WD - 01C-P03 (+.2 w/pump), NMR <flow chart>
LOCATION:
Water District - WD No. 65
Surface water - 005 or 005-01J-~~P08~~ (+.2, or -.2 no pump)
or 005-01H-~~P01~~ (-.2 w/pump); NMR
Groundwater - P05 (if well has not been drilled)
In stream channel - 030 (stream channel alteration)
Irrigation Dist. - 023
Canal Co. Areas - 023
Drainage Districts - 024
Flood Control Dist. - 063
Boise Front (63) - 058 (Groundwater temperature)
Swan Falls Flag - <See condition code chart>
Trust - 051-052-053-P74 (Consumptive Uses)
Non Trust <1> - 048-049
RIVER BASINS (Surface): Water District Control Condition (005) &....
Boise (63) - 05A (req), 11E (non-domestic use), NA
Payette (65) - 064 (consump. use), 047-P04 (Payette Lake), NA
Snake (01, 02 & 03) - 11A-P04 (01), 061-P07 (02/03 No W.D.Cond.), NA
USE:
Fish Propagation - 010/06A/09E-P10(WQ) & 07A-042-002-P06(MD) (req)
044 (N 1000 Spr)
Irrigation - 803 (if GW use SW 1st) (+5A do POU comparison)
Power - 08A-17K-025-027 (req); 01F-P19; 09E-P10;
+25 cfs-P18; 17G(FERC) or 17M(FERC); 18B-P09
Mining - 06A/010/09E-P10 & 054 (req)
Storage (✓ 3 compo.) - 18A-for multi MD in WD, 18B-P09 (+10' high dam)
Domestic (surface) - 021 (Boise R ↑ L Peak), 27A (Payette R)
OWNERSHIP:
Non land owner - 004 (P/D or P/U) - Jim Branson
PROTESTED:
Prehearing agreement - 020
OTHER CONDITIONS: -
REMARKS: - ① woi(1) ② w19
BENEFICIAL USE DUE: - 12-1-1995
COMMENTS: - ① Div Desc ② P/D ownership

WR0749NP
No. P65-12286

IDAHO DEPARTMENT OF WATER RESOURCES
WATER RIGHT PROFILE REPORT
(REGIONAL)

DATE: 10/21/93
PAGE: 1

OWNER CODE	NAME & ADDRESS	PRIORITY DATE	WATER USE	USE PERIOD FROM TO	DIVERSION RATE	DIVERSION VOLUME
C	RALPH CLAYCOMB	11/08/1979	DOMESTIC	01-01 12-31	0.02 CFS	
C	JOYCE CLAYCOMB					
	GENERAL DELIVERY					
	LOWMAN ID 83637					
	(208) 342-6605					
				TOTAL DIVERSION:	0.02 CFS	

Water Source: UNNAMED STREAM

Tributary to: PAYETTE RIVER, SOUTH FORK

Stage: PERMIT

Point(s) of Diversion: T09N R09E S17 SW NW

Place of use Legal Description for: DOMESTIC

	NE				NW				SW				SE			
	NENE	NWNE	SWNE	SENE	NENW	NWNW	SWNW	SENW	NESW	NWSW	SWSW	SESW	NESE	NWSE	SWSE	SESE
T R S	: Lt Ac	: Lt Ac	: Lt Ac	: Lt Ac	: Lt Ac	: Lt Ac	: Lt Ac	: Lt Ac	: Lt Ac	: Lt Ac	: Lt Ac	: Lt Ac	: Lt Ac	: Lt Ac	: Lt Ac	: Lt Ac
09N 09E 17	:	:	:	:	:	:	:	:	:	:	:	:	:	:	:	:

Pou County: BOISE

Conditions of Approval:

- 26A - Project construction shall commence within one year from the
- date of permit issuance and shall proceed diligently to
- completion unless it can be shown to the satisfaction of the
- Director of the Department of Water Resources that delays were
- due to circumstances over which permit holder had no control.
- 005 - Use of water under this right is subject to control by the
- watermaster of State Water District No. 65.
- 01J - A measuring device and lockable controlling works of a type
- acceptable to the Department shall be permanently installed and
- maintained as part of the diverting works prior to diversion of
- water under this right.
- di base updated 10/21/93* -27A - The Director retains jurisdiction to limit diversion of water to
- in-house uses only.
- 004 - The issuance of this right in no way grants any right-of-way
- or easement across the land of another.

Remarks: Domestic use is for 1 home.
See Final Order for additional conditions of approval.

Dates: App. Received: 11/08/1979 Priority Date: 11/08/1979
Proof Due Date: 12/01/1995 Proof Made Date:
Exam Made Date: Exam Sent to S.O.:
Licensed Date:

Misc: Water District Number: 65 Field Exam Fee:

Comments: Date: 10/21/1993 User-ID: ZIMMERMA Subject: DIVERSION DESCRIPTION

WR0749NP
No. P65-12286

IDAHO DEPARTMENT OF WATER RESOURCES
WATER RIGHT PROFILE REPORT
(REGIONAL)

DATE: 10/21/93
PAGE: 2

=====
Comments: Date: 10/21/1993 User-ID: ZIMMERMA Subject: DIVERSION DESCRIPTION
Pipe from stream to reservoir.

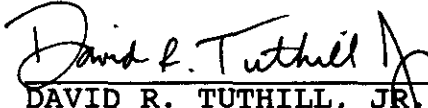
Date: 10/21/1993 User-ID: ZIMMERMA Subject: P/D OWNERSHIP
The point of diversion is located on land owned by Jim Branson.

Audit: 10/21/93 ZIMMERMA

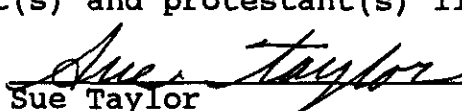
BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE
STATE OF IDAHO

IN THE MATTER OF APPLICATIONS)
) CHANGE IN HEARING DATE
FOR PERMIT NOS. 65-12283 IN THE)
)
NAME OF GORMAN & OR BARBARA)
)
MIRACLE; AND 65-12286 IN THE NAME)
)
OF RALPH &/OR JOYCE CLAYCOMB)

Pursuant to a request by the applicant, the date of the conference in the above-referenced matter is hereby changed from Thursday, January 14, 1993, to Wednesday, January 20, 1993. The time and place of the conference are 10:00 a.m., in the Second Floor Conference Room, Department of Water Resources, 1301 N. Orchard St., Boise, Idaho 83706.


DAVID R. TUTHILL, JR., P. E.
Manager, Western Regional Office

I hereby certify that on the 6th day of January, 1993, I mailed a true and correct copy, postage prepaid, of this document to the applicant(s) and protestant(s) listed:


Sue Taylor
Secretary

Certified Mail

RALPH & JOYCE CLAYCOMB
902 LOGAN ST
BOISE ID 83612

GORMAN & BARBARA MIRACLE
1441 LAWNDALE DR
TWIN FALLS ID 83301

JIM BRANSON
3803 COLLISTER
BOISE ID 83703

LLOYD WALKER ESQ
131 2ND ST WEST
PO BOX 1923
TWIN FALLS ID 83301

CLAUDE MARCUS ESQ
737 N 7TH
BOISE ID 83702
AUG 9 1996

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE
STATE OF IDAHO

IN THE MATTER OF APPLICATIONS)
)
FOR PERMIT NOS. 65-12283 IN THE)
)
NAME OF GORMAN AND BARBARA MIRACLE))
)
AND 65-12286 IN THE NAME OF RALPH)
)
AND JOYCE CLAYCOMB)

NOTICE OF COMBINED HEARING

On November 6, 1979, Gorman and Barbara Miracle filed with the Department of Water Resources an application for permit to appropriate the public waters of the State of Idaho. On November 8, 1979, Ralph and Joyce Claycomb filed with the Department another application. A protest to each application was filed by Jim Branson. A hearing was held by the Department on December 4, 1984, and a conference was held by the Department on December 3, 1990.

The Department has now set the matter of protest for a hearing to be held on Thursday, January 14, 1993, at 10:00 a.m. at the Department of Water Resources, 1301 N. Orchard, Boise, Idaho. The hearing 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 Practice and Procedure of the Department of Water Resources, and Rules 4 and 5 of the adopted Rules and Regulations of Water Appropriation of the

AUG 09 1996

Department of Water Resources. Opportunity shall be afforded all parties to respond and present information and argument on all issues involved.

Dated this 14th day of December, 1992.



DAVID R. TUTHILL, JR., P. E.
Manager, Western Regional Office

I hereby certify that on the 14th day of December, 1992, I mailed a true and correct copy, postage prepaid, of this document to the applicant(s) and protestant(s) listed:



Sue Taylor
Secretary, Office Coordinator

Certified Mail

RALPH & JOYCE CLAYCOMB
902 LOGAN ST
BOISE ID 83612

GORMAN & BARBARA MIRACLE
1441 LAWDALE DR
TWIN FALLS ID 83301

JIM BRANSON
3803 COLLISTER
BOISE ID 83703

LLOYD WALKER ESQ
131 2ND ST WEST
PO BOX 1923
TWIN FALLS ID 83301

CLAUD E MARCUS ESQ
737 N 7TH
BOISE ID 83702

DEC 14 1992
PUG 09 1996

CONFERENCE AND HEARING PROCEDURE

IN THE MATTER OF A PROTESTED APPLICATION FOR PERMIT

In accordance with IDAHO CODE, Section 42-203, the following issues are involved in the consideration of the application and protest(s):

- 1) Will the proposed use reduce the quantity of water under existing 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 proposed project?
- 5) Will the proposed use conflict with the local public interest?
- 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, that is, the applicant has the burden of coming forward with evidence for evaluation of those criteria.

The initial burden of proof on issue 5, local public interest, lies with both the applicant and protestant as to factors which they are most knowledgeable and cognizant of. The applicant has the ultimate burden of persuasion with respect to this issue.

PROCEDURE

The procedure normally followed by the department in arriving at a decision on the issues which must be considered is to first hold a conference in the matter and then, if necessary, hold a hearing. If a hearing is held a written decision is issued based on the hearing record.

CONFERENCE

Preliminary to holding a hearing, a pre-hearing conference is held to familiarize the department and the parties with the matter and to determine if a resolution of the protest(s) is possible without the need for a hearing.

09 1996

At the conference the department may formulate and simplify the issues, obtain admissions of fact and of documents which will avoid unnecessary proof, arrange for the exchange of proposed exhibits or prepared expert testimony prior to the hearing, limit the number of witnesses, consolidate the examination of witnesses, and advise the parties of the procedure which will be followed at any subsequent hearing.

HEARING

Any party may request in writing five (5) days before any hearing that the oral proceedings thereof be taken in the form of stenographic notes at the expense of the requesting party. Any party may have such stenographic notes of the oral proceedings, or part thereof, transcribed at his own expense. A taped record of the proceedings will be maintained for the appeal period.

If the hearing is conducted by a hearing officer appointed by the Director, rather than the Director himself, a proposed decision will be issued and the parties will be afforded the opportunity to file exceptions to the proposed decision and present briefs and to request oral argument before the Director prior to the issuance of a final decision by the Director. This procedure is required by IDAHO CODE, Section 42-1701A.

The parties by written stipulation, may waive their right to a proposed decision, however, the failure of either party to waive a proposed decision will not predjudice the director's review of a party's evidence and arguments. However, such a waiver will shorten the decision making process and may expedite substantially the issuance of a final decision. Whether compliance with Section 42-1701A is waived will not affect a party's right to petition for a rehearing of the final decision pursuant to rule 11 of the Department's Rules of Practice and Procedure or affect a party's right to appeal the final decision to the District Court.

Under the provisions of the IDAHO CODE, Sections 42-1701A and 67-5215, any court review of the department's decision on appeal shall be confined to the record created before the department.

If you require special accommodations for a disability in order to participate in or attend the conference (hearing) (public meeting) please advise the department within ten (10) days prior to the conference, hearing or public meeting.

EXHIBITS

If any party at a hearing intends to present an exhibit to augment the hearing record, such party shall in advance of the hearing, prepare sufficient copies of the exhibit for distribution to all parties at the hearing.

APR 09 1996



State of Idaho
DEPARTMENT OF WATER RESOURCES

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

CECIL D. ANDRUS
GOVERNOR

R. KEITH HIGGINSON
DIRECTOR

November 19, 1992

CLAUDE V MARCUS ESQ
737 N 7TH
BOISE ID 83702

RE: Applications for Permit Nos. 65-12283 and 65-12286

Dear Mr. Marcus:

In light of the recent trial results relative to the Miracle easement, would your client be willing to withdraw his protests to the above two applications?

Please advise this office by December 15, 1992, regarding your plans.

Sincerely,

DAVID R. TUTHILL, JR., P.E.
Manager, Western Regional Office

DRT:st

Enclosures: Withdrawal of Protest Forms

AUG 29 1996

CLAUDE V. MARCUS
CRAIG MARCUS
BARRY MARCUS
GALE M. MERRICK
GARY L. MONTGOMERY
ROBERT C. MONTGOMERY
JOHN C. KEENAN

LAW OFFICES
MARCUS, MERRICK & MONTGOMERY

MARCUS BUILDING
737 NORTH 7TH STREET
BOISE, IDAHO 83702-5595

TELEPHONE
(208) 342 3563
TELEFAX
(208) 342 2170

January 28, 1992

RECEIVED
JAN 29 1992

Department of Water Resources
Western Regional Office

Mr. David R. Tuthill, Jr., P.E.
Manager, Western Regional Office
Department of Water Resources
3735 Airport Way
Boise, Idaho 83705-5082

Re: Applications for Permit Nos. 65-12283 and ~~65-12286~~

Dear Mr. Tuthill: *Do*

This refers to your inquiry of January 17th concerning the above applications.

The condemnation case of Miracle against Bransons is still pending in the Boise County District Court. A status conference is to be held February 19th. At that time I believe the court will give us a trial date.

Yours truly,

Marcus, Merrick & Montgomery

Claude Marcus

CVM:ba

JAN 29 1992



State of Idaho
DEPARTMENT OF WATER RESOURCES

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

CECIL D. ANDRUS
GOVERNOR

R. KEITH HIGGINSON
DIRECTOR

January 17, 1992

GORMAN & BARBARA MIRACLE
1441 LAWDALE DRIVE
TWIN FALLS ID 83301

RALPH & JOYCE CLAYCOMB
902 LOGAN ST
BOISE ID 83612

CLAUDE V MARCUS ESQ
737 N 7TH
BOISE ID 83702

Re: Applications for Permit nos. 65-12283 and 65-12286

Dear Interested Parties:

At the water right conference in the above-referenced matter held by the Department on December 3, 1990, Mr. Marcus suggested that action on the two applications for permit be delayed until an easement matter pending before the court was settled. All parties present at the conference concurred with this suggestion, and the two files were placed on hold status.

The purpose of this letter is twofold. First, the files need to be updated to show the present status of the court action relative to the easement trial. Second, the parties are hereby notified that the department intends to conduct a hearing with respect to these applications unless sufficient reason can be shown as to why such a hearing should be delayed.

Please advise this office no later than January 31, 1992, as to the present status of the action to obtain an easement. Also by that date, please provide to this office any reason why a hearing regarding the issuance of water rights for these two proposed applications should not be held on March 18, 1992.

Sincerely,

DAVID R. TUTHILL, JR., P.E.
Manager, Western Regional Office

DRT:st



State of Idaho
DEPARTMENT OF WATER RESOURCES

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

CECIL D. ANDRUS
GOVERNOR

R. KEITH HIGGINSON
DIRECTOR

October 16, 1991

CLAUDE V MARKUS ESQ
737 N 7TH
BOISE ID 83702

RE: Applications for Permit Nos. 65-12283 and 65-12286

Dear Mr. Markus:

During the conference held last year regarding the above two referenced applications for permit, we concluded that we would withhold further action regarding the applications pending resolution of the easement acquisition by Mr. & Mrs. Miracle and Mr. & Mrs. Claycomb.

The purpose of this letter is to inquire about the status of any easement by Mr. & Mrs. Miracle and Mr. & Mrs. Claycomb on the property, to determine if it would be proper to proceed with action on the applications at this time. Please advise this office in this regard no later than November 15, 1991.

Sincerely,

DAVID R. TUTHILL, JR., P.E.
Manager, Western Regional Office

DRT:st

CF: Gorman & Barbara Miracle
Ralph & Joyce Claycomb

RECEIVED

AUG 09 1996



State of Idaho
DEPARTMENT OF WATER RESOURCES

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

CECIL D. ANDRUS

GOVERNOR

R. KEITH HIGGINSON

DIRECTOR

December 5, 1990

Claude V. Marcus, Esq.
737 N. 7th
Boise, ID 83702

Re: Applications for permit nos. 65-12283 and 65-12286

Dear Mr. Marcus:

Enclosed for you information are modified copies of the above-referenced applications.

Please call this office if we can be of further assistance.

Sincerely,

A handwritten signature in cursive script that reads "David R. Tuthill, Jr.".

DAVID R. TUTHILL, JR., P.E.
Manager, Western Regional Office

DRT:st

Encl.

A faint, rectangular stamp, possibly a "RECEIVED" or "FILED" stamp, with illegible text inside.

AUG 09 1996

BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE

STATE OF IDAHO

IN THE MATTER OF APPLICATIONS)
FOR PERMIT NOS. 65-12283 IN THE)
NAME OF GORMAN AND BARBARA MIRACLE)
AND 65-12286 IN THE NAME OF RALPH)
AND JOYCE CLAYCOMB)

NOTICE OF COMBINED CONFERENCE

On November 6, 1979, Gorman and Barbara Miracle filed with the Department of Water Resources, an application for permit to appropriate the public waters of the State of Idaho. On November 8, 1979, Ralph and Joyce Claycomb filed with the Department another application. A protestant to both applications was Jim Branson.

These applications have been the subject of much investigation in the past, but their disposition has not yet been determined. In order to determine (1) whether the applicants still intend to appropriate the water, (2) whether the protestant still objects to the proposals, and (3) the present basis for protest, the Department has set the matter of protest for a combined conference. The conference will be held on Monday, December 3, 1990, at 10:00 a.m., in the Second Floor Conference Room, Department of Water Resources, 1301 N. Orchard St., Boise, Idaho 83706. The conference will be held in accordance with provisions of Chapters 2 and 17, Title 42, and Chapter 52,

APPROVED

AUC 09 1996

Title 67, of the Idaho Code, the adopted Rules of Practice and Procedure of the Department of Water Resources, and Rules 4 and 5 of the adopted Rules and Regulations of Water Appropriation of the Department of Water Resources. Opportunity shall be afforded all parties to respond and present information and argument on all issues involved.

Dated this 16th day of October, 1990.

David R. Tuthill Jr.
DAVID R. TUTHILL, JR., P. E.
Manager, Western Regional Office

I hereby certify that on the 17th day of October, 1990, I mailed a true and correct copy, postage prepaid, of this document to the applicant(s) and protestant(s) listed:

Sue Taylor
Sue Taylor
Secretary

Certified Mail

Ralph & Joyce Claycomb
902 Logan Street
Boise, ID 83612

Gorman & Barbara Miracle
1441 Lawndale Drive
Twin Falls, ID 83301

Jim Branson
3803 Collister
Boise, ID 83703

Lloyd Walker, Esq.
131 2nd St. West
P.O. Box 1923
Twin Falls, ID 83301

Claude V. Marcus, Esq.
737 N. 7th
Boise, ID 83702

CONFERENCE INFORMATION

IN THE MATTER OF APPROVAL OF AN APPLICATION FOR PERMIT

In accordance with Idaho Code, Section 42-203(A), the following issues are involved in the consideration of the application and protest(s):

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 conflict with the local public interest?
6. Will the proposed use be contrary to conservation of water resources within the State of Idaho?

The intent of the conference is to resolve any conflicts regarding the proposed water appropriation in light of these five factors. The conference will not be recorded in an effort to promote full discussion of the issues. Possible resolutions are: (1) clarification of the issues resulting in a determination by all parties that the application is acceptable, (2) modification of the application to make it acceptable to the protestant(s), or (3) addition of acceptable restrictions or conditions of approval. If a resolution is not attainable, then a hearing will be set by the Department.

AUG 08

CLAUDE V. MARCUS
CRAIG MARCUS
BARRY MARCUS
GALE M. MERRICK
GARY L. MONTGOMERY
ROBERT C. MONTGOMERY

LAW OFFICES
MARCUS, MERRICK & MONTGOMERY

MARCUS BUILDING
737 NORTH 7TH STREET
BOISE, IDAHO 83702-5595

TELEPHONE
(208) 342 3563

TELEFAX
(208) 342 2170

January 26, 1990

Mr. David R. Tuthill, Jr.
Manager, Western Regional Office
Department of Water Resources
2735 Airport Way
Boise, Idaho 83705

RECEIVED
JAN 29 1990

Department of Water Resources
Western Regional Office

Re: Application for Permit No. 65-12283 in the name
of Gorman and Barbara Miracle

Dear Mr. Tuthill:

Reference is made to your letter of December 14th concerning the above matter.

I had mailed a copy of your letter to Mr. Branson but have just now met with him to review the water situation.

Issues involved in this litigation have not been completely resolved. The Court, in the last appeal, held that Miracle did not have easement rights across the Branson property.

Therefore, the Branson protests of the Miracle application continues.

Bransons also continue to protest and object to the allowance of the later application of Claycomb to appropriate water from the Branson mine tunnel. I believe this application was number 65-12286. I have no record of action of the department on that application.

Since the court in the later appeal in the Branson-Miracle case held that Miracle did not have any right across the Branson property a water right could not result from Miracle going upon the Branson property and wrongfully appropriating water from the portal of the Branson mine tunnel.

We will keep the department advised of any further developments in this litigation.

Yours truly,

Marcus, Merrick & Montgomery

Claude Marcus

CVM:ba

AUG 9 1996

CONVERSATION MEMORANDUM

DATE 2/14/90FILE 65-12286 / 65-12283NAME OF PARTY Claude MarcusEMPLOYEE Dave TutthillRE: Status of Protests

I called Mr. Marcus to ~~ascertain~~ ~~whether~~ Mr. Branson would desire to ~~maintain~~ continue his protests against approval of the appes. Mr. Marcus stated that they did indeed continue to protest approval of both. He also stated that he is the atty of record in the Claycomb matter representing Mr. Branson. I stated that while there is no official record in the file of Mr. Marcus' participation, his attendance at the hearing where the Claycomb app was discussed was sufficient cause for him to be notified relative to the Claycomb matter.

I called Mr. Claycomb to state that our next step will be to schedule another conf or hearing in the Claycomb matter.

Ans

AUG 09 1990

CLAUDE V. MARCUS
CRAIG MARCUS
BARRY MARCUS
GALE M. MERRICK
GARY L. MONTGOMERY
ROBERT C. MONTGOMERY

LAW OFFICES
MARCUS, MERRICK & MONTGOMERY

MARCUS BUILDING
737 NORTH 7TH STREET
BOISE, IDAHO 83702-5595

TELEPHONE
(208) 342 3563

TELEFAX
(208) 342 2170

January 26, 1990

Mr. David R. Tuthill, Jr.
Manager, Western Regional Office
Department of Water Resources
2735 Airport Way
Boise, Idaho 83705

RECEIVED
JAN 29 1990

Department of Water Resources
Western Regional Office

Re: Application for Permit No. 65-12283 in the name
of Gorman and Barbara Miracle

Dear Mr. Tuthill:

Reference is made to your letter of December 14th concerning the above matter.

I had mailed a copy of your letter to Mr. Branson but have just now met with him to review the water situation.

Issues involved in this litigation have not been completely resolved. The Court, in the last appeal, held that Miracle did not have easement rights across the Branson property.

Therefore, the Branson protests of the Miracle application continues.

Bransons also continue to protest and object to the allowance of the later application of Claycomb to appropriate water from the Branson mine tunnel. I believe this application was number 65-12286. I have no record of action of the department on that application.

Since the court in the later appeal in the Branson-Miracle case held that Miracle did not have any right across the Branson property a water right could not result from Miracle going upon the Branson property and wrongfully appropriating water from the portal of the Branson mine tunnel.

We will keep the department advised of any further developments in this litigation.

Yours truly,

Marcus, Merrick & Montgomery

Claude V. Marcus

CVM:ba

91938

State of Idaho
Department of Water Resources

APPLICATION FOR PERMIT ANALYSIS SHEET

INITIAL REVIEW BY: CW Bryan

APPLICATION NUMBER: 65-12286
CLAYCOOMB

CHECK:

- ☒ Source.
☒ Point of diversion.
☒ County.
☒ Description of diverting works.
☒ Time required for beneficial use of water.
☒ Place of use or acres irrigated.
☒ Map.
☒ Signature.
☒ Fee.
☐ Yes ☒ No Field check required.
☐ Yes ☒ No Critical groundwater area.
☐ Yes ☒ No Request dam safety information. Sent by: _____ Date: _____
☒ Yes ☐ No* In form to receipt.

Field check by: _____

Date: _____

Comments: _____

*REQUEST THE FOLLOWING ADDITIONAL INFORMATION FROM THE APPLICANT: _____

SEND COPIES TO:

- ☐ Idaho State Health Department. Copies sent by: _____ Date: _____
☐ Idaho Fish and Game Department. _____
☐ Idaho Department of Lands. _____
☐ U.S. Bureau of Land Management. _____
☐ U.S. Forest Service. _____
☐ Other _____

PROCESSING:

- ☐ Yes ☐ No Platted by: _____ Map No. _____
☐ Yes ☐ No Other rights on same place of use. _____
☒ Yes ☐ No* In form for advertising.
Final date for protests: 12/10/79
☒ Yes ☒ No Protests received. If yes, record information on 4th page of application.

FINAL REGIONAL PROCESSING REVIEW:

- ☒ Affidavit of publication received. Date: 12/19/79
☒ Application published correctly. If not, record action taken: _____
☒ Fee amount, receipt date & number, recorded on application.
☒ Publication dates and paper, recorded on application.
☐ Protests, dates, withdrawal, etc., recorded on application.
☒ Recommendation & initial, recorded on application.
☐ Yes ☒ No Measuring device required.
☐ Yes ☒ No Access port required.
☒ Yes ☒ No Will water be delivered by watermaster? If yes, what district? 65-Payette R.
11/8/1979 Date of priority recommended.
Special conditions of approval or cover letter. 05 (65, Payette R.), 04

→ Conference held 12/4/89. Protester did not appear.
Order to show cause why protest should not be dismissed sent 12/15/89,
expired 1/4/90. No response rec'd.

By: DER Date: 1/11/90

STATE OFFICE REVIEW:

- ☐ See attached sheet for more information.

By: _____ Date: _____

P 397 135 036

RECEIPT FOR CERTIFIED MAIL

NO INSURANCE COVERAGE PROVIDED—
NOT FOR INTERNATIONAL MAIL

(See Reverse)

Sent to <i>Chairman or Barbara</i>	
Street and No <i>1441 Lawrence Dr</i>	
P.O., State and ZIP Code <i>Lincoln Falls ID 83301</i>	
Postage	\$
Certified Fee	
Special Delivery	
Restricted Delivery Fee	
Return Receipt Showing to whom and Date Delivered	
Return Receipt Showing to whom, Date, and Address of Delivery	
TOTAL Postage and Fees	\$
Postmark or Date	

PS Form 3800, Feb. 1982

P 397 135 035

RECEIPT FOR CERTIFIED MAIL

NO INSURANCE COVERAGE PROVIDED—
NOT FOR INTERNATIONAL MAIL

(See Reverse)

Sent to <i>Ralph E. George Stangor</i>	
Street and No <i>Lowman</i>	
P O, State and ZIP Code <i>ID 83637</i>	
Postage	\$
Certified Fee	
Special Delivery Fee	
Restricted Delivery Fee	
Return Receipt Showing to whom and Date Delivered	
Return Receipt Showing to whom, Date, and Address of Delivery	
TOTAL Postage and Fees	\$
Postmark or Date	

PS Form 3800, Feb. 1982

P 397 135 037

RECEIPT FOR CERTIFIED MAIL

NO INSURANCE COVERAGE PROVIDED—
NOT FOR INTERNATIONAL MAIL

(See Reverse)

Sent to	
Quinn Brandon	
Street and No	
3803 Collier Dr	
P.O., State and ZIP Code	
Boise Id 83703	
Postage	\$
Certified Fee	\$
Special Delivery Fee	\$
Restricted Delivery Fee	\$
Return Receipt Showing to whom and Date Delivered	
Return Receipt Showing to whom, Date, and Address of Delivery	
TOTAL Postage and Fees	\$
Postmark or Date	

PS Form 3800, Feb. 1982

P 397 135 038
RECEIPT FOR CERTIFIED MAIL

NO INSURANCE COVERAGE PROVIDED—
NOT FOR INTERNATIONAL MAIL

(See Reverse)

Sent to	attorney
Street and No	Claude Marcus
P O., State and ZIP Code	137 North 7th Boise ID 83702
Postage	
Certified Fee	
Special Delivery Fee	
Restricted Delivery Fee	
Return Receipt Showing to whom and Date Delivered	
Return Receipt Showing to whom, Date, and Address of Delivery	
TOTAL Postage and Fees	\$
Postmark or Date	

PS Form 3800, Feb. 1982

P 397 135 039

RECEIPT FOR CERTIFIED MAIL

NO INSURANCE COVERAGE PROVIDED—
NOT FOR INTERNATIONAL MAIL

(See Reverse)

Sent to <i>Ward J. Walker</i>	
Street and No <i>PO Box 1923</i>	
P.O., State and ZIP Code <i>Twin Falls Id 83301</i>	
Postage	\$
Certified Fee	
Special Delivery Fee	
Restricted Delivery Fee	
Return Receipt Showing to whom and Date Delivered	
Return Receipt Showing to whom Date, and Address of Delivery	
TOTAL Postage and Fees	\$
Postmark or Date	

PS Form 3800, Feb. 1982

PS Form 3811, July 1982

- **SENDER:** Complete items 1, 2, 3, and 4.
Add your address in the "RETURN TO" space on reverse.

(CONSULT POSTMASTER FOR FEES)

1. The following service is requested (check one).
☒ Show to whom and date delivered
☐ Show to whom, date, and address of delivery
 2. ☐ **RESTRICTED DELIVERY**
 (The restricted delivery fee is charged in addition to the return receipt fee.)

TOTAL \$ _____

3. ARTICLE ADDRESSED TO:

German & Sons Inc. Mich.
1441 Lawrence Ave.
Ann Arbor, MI 48101

4. TYPE OF SERVICE:

- ☐ REGISTERED ☐ INSURED
☒ CERTIFIED ☐ COD
☐ EXPRESS MAIL

ARTICLE NUMBER

(Always obtain signature of addressee or agent)

I have received the article described above.

SIGNATURE ☐ Addressee ☐ Authorized agent

5. DATE OF DELIVERY

11-9-84

6. ADDRESSEE'S ADDRESS (Only if requested)

7. UNABLE TO DELIVER BECAUSE:

7a. EMPLOYEE'S INITIALS



28221-59

RETURN RECEIPT

UNITED STATES POSTAL SERVICE
OFFICIAL BUSINESS

SENDER INSTRUCTIONS

- Print your name, address, and ZIP Code in the space below.
- Complete lines 1, 2, 3, and 4 on the reverse.
 - Attach to front of article if space permits, otherwise affix to back of article.
 - Enclose article "Return Receipt Requested"
 - Indicate in number.



Department of Water Resources
Western Regional Office

NOV 10

AUG 09 1996



PENALTY FOR PRIVATE
USE, \$300

Idaho Department of Water Resources

Western Regional Office (Name of Sender)

Statehouse

Boise, Idaho (See 39780 o. Box)

(City, State, and ZIP Code)

PS Form 3811, July 1982

- **SENDER:** Complete items 1, 2, 3, and 4
Add your address in the "RETURN TO" space on reverse

(CONSULT POSTMASTER FOR FEES)

- 1 The following service is requested (check one)

☒ Show to whom and date delivered \$

☐ Show to whom, date, and address of delivery \$

2. ☐ **RESTRICTED DELIVERY** \$

(The restricted delivery fee is charged in addition to the return receipt fee)

TOTAL \$ _____

- 3 **ARTICLE ADDRESSED TO:**

*Ernie & Joyce Claycomb
Lawman
ID 3315 37*

- 4 **TYPE OF SERVICE:**

☐ REGISTERED ☐ INSURED
☒ CERTIFIED ☐ COD
☐ EXPRESS MAIL

ARTICLE NUMBER

(Always obtain signature of addressee or agent)

I have received the article described above

SIGNATURE ☐ Addressee ☐ Authorized agent

Ernie Claycomb

5 **DATE OF DELIVERY**

POSTMARK
(may be on reverse side)

6. **ADDRESSEE'S ADDRESS** (Only if requested)

7. **UNABLE TO DELIVER BECAUSE:**

7a **EMPLOYEE'S INITIALS**

Ami

3271-59

RETURN RECEIPT

UNITED STATES POSTAL SERVICE
OFFICIAL BUSINESS

SENDER INSTRUCTIONS

- Print your name, address, and ZIP Code in the space below.
- Complete lines 1, 2, 3, and 4 on the reverse.
 - Attach to front of article if space permits, otherwise affix to back of article.
 - Endorse article "Return Receipt Requested".
 - adjacent to number.



PENALTY FOR PRIVATE
USE, \$300

RETURN

RECEIVED

NOV 18 1974

Department of Water Resources
Western Regional Office

Idaho Department of Water Resources
Western Region
Statehouse (Street or P.O. Box)
Boise, Idaho 83720
(City, State, and ZIP Code)

PS Form 3811, July 1982

- **SENDER:** Complete items 1, 2, 3, and 4
Add your address in the "RETURN TO"
space on reverse.

(CONSULT POSTMASTER FOR FEES)

1. The following service is requested (check one)
- ☒ Show to whom and date delivered \$
- ☐ Show to whom, date, and address of delivery \$
2. ☐ **RESTRICTED DELIVERY** \$
(The restricted delivery fee is charged in addition
to the return receipt fee.)

TOTAL \$ _____

3. ARTICLE ADDRESSED TO

Jim Branson
3803 Collier Dr.
Boise ID 83713

4. TYPE OF SERVICE:

- ☐ REGISTERED ☐ INSURED
- ☒ CERTIFIED ☐ COD
- ☐ EXPRESS MAIL

ARTICLE NUMBER

0130

(Always obtain signature of addressee or agent)

I have received the article described above

SIGNATURE

- ☐ Addressee ☐ Authorized agent

5. DATE OF DELIVERY

POSTMARK

(may be on reverse side)

6. ADDRESSEE'S ADDRESS (Only if requested)

7. UNABLE TO DELIVER BECAUSE:

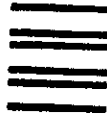
**7a. EMPLOYEE'S
INITIALS**

RETURN RECEIPT

UNITED STATES POSTAL SERVICE
OFFICIAL BUSINESS

SENDER INSTRUCTIONS

- Print your name, address, and ZIP Code in the space below.
- Complete lines 1, 2, 3, and 4 on the reverse.
 - Attach to front of article if space permits, otherwise affix to back of article.
 - Endorse article "Return Receipt Requested"
 - adjacent to number.



PENALTY FOR PRIVATE
USE, \$300



Department of Water Resources
Western Regional Office

NOV 13 1986

NOV 09 1986

Idaho Department of Water Resources

Western Regional Office
Waterhouse

Boise, Idaho 83720

(City, State, and ZIP Code)

PS Form 3811, July 1982

- **SENDER:** Complete items 1, 2, 3, and 4
Add your address in the "RETURN TO"
space on reverse.

(CONSULT POSTMASTER FOR FEES)

1. The following service is requested (check one)

☒ Show to whom and date delivered \$

☐ Show to whom, date, and address of delivery \$

- 2.
- ☐
- RESTRICTED DELIVERY**
- \$

(The restricted delivery fee is charged in addition
to the return receipt fee.)

TOTAL \$ _____

- 3.
- ARTICLE ADDRESSED TO.**

1201 S. 1st St. Vicksburg, MS 39180
137 N. 1st St. Vicksburg, MS 39180
2010 S. 1st St. Vicksburg, MS 39180

- 4.
- TYPE OF SERVICE:**

☐ REGISTERED☐ INSURED☒ CERTIFIED☐ COD☐ EXPRESS MAIL**ARTICLE NUMBER****(Always obtain signature of addressee or agent)**

I have received the article described above.

SIGNATURE☒ Addressee☐ Authorized agent

- 5.
- DATE OF DELIVERY**

11-9-84

POSTMARK

(may be on reverse side)

- 6.
- ADDRESSEE'S ADDRESS**
- (Only if requested)

- 7.
- UNABLE TO DELIVER BECAUSE:**

7a. **EMPLOYEE'S
INITIALS**

RETURN RECEIPT

UNITED STATES POSTAL SERVICE
OFFICIAL BUSINESS



SENDER INSTRUCTIONS

- Print your name, address, and ZIP Code in the space below.
- Complete Boxes 1, 2, 3, and 4 on the reverse.
 - Attach to front of article if space permits, otherwise affix to back of article.
 - Endorse article "Return Receipt Requested"
 - adjacent to number.



PENALTY FOR PRIVATE USE, \$300

01398

RETURN TO

Department of Water Resources
Western Regional Office

Idaho Department of Water Resources

Western Region (Name of Sender)
Statehouse

Boise, Idaho 83720 (Street and P.O. Box)

(City, State, and ZIP Code)

NOV 13 1964

PS Form 3811, July 1962

- **SENDER:** Complete items 1, 2, 3, and 4
Add your address in the "RETURN TO"
space on reverse.

(CONSULT POSTMASTER FOR FEES)

1. The following service is requested (check one).

☐ Show to whom and date delivered \$☐ Show to whom, date, and address of delivery \$

- 2
- ☐
- RESTRICTED DELIVERY**
- \$

(The restricted delivery fee is charged in addition
to the return receipt fee.)**TOTAL \$** _____

- 3
- ARTICLE ADDRESSED TO**

George J. Walker *attorney*
PO Box 1923
Thur Falls ID 83301

- 4
- TYPE OF SERVICE:**

☐ REGISTERED☐ INSURED☐ CERTIFIED☐ COD☐ EXPRESS MAIL**ARTICLE NUMBER****(Always obtain signature of addressee or agent)**

I have received the article described above.

SIGNATURE☐ Addressee☐ Authorized agent

- 5
- DATE OF DELIVERY**

POSTMARK
(may be on reverse side)

- 6
- ADDRESSEE'S ADDRESS**
- (Only if requested)

- 7
- UNABLE TO DELIVER BECAUSE:**

**EMPLOYEE'S
INITIALS**

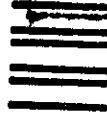
RETURN RECEIPT

UNITED STATES POSTAL SERVICE
OFFICIAL BUSINESS



SENDER INSTRUCTIONS

- Print your name, address, and ZIP Code in the space below.
- Complete boxes 1, 2, 3, and 4 on the reverse.
 - Attach to front of article if space permits, otherwise affix to back of article.
 - Endorse article "Return Receipt Requested".
 - adjacent to number.



PENALTY FOR PRIVATE
USE, \$300

RETURN
TO

Idaho Department of Water Resources

Western Region (Name of Sender)

Statehouse

Boise, Idaho (Street or P.O. Box)

(City, State, and ZIP Code)

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

IN THE MATTER OF APPLICATION FOR PERMIT NO.)
65-12283 IN THE NAME OF GORMAN AND BARBARA) NOTICE OF COMBINED
MIRACLE AND APPLICATION FOR PERMIT NO.) HEARINGS AND/OR
65-12286 IN THE NAME OF RALPH AND JOYCE) CONFERENCES
CLAYCOMB)

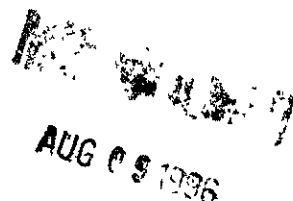
On November 6, 1979, Gorman and Barbara Miracle filed with the Department of Water Resources an application to appropriate the public waters of the State of Idaho. On November 11, 1979, Ralph and Joyce Claycomb filed with the Department of Water Resources an application to appropriate the public waters of the State of Idaho. On November 28, 1979, the Department received protests against the approval of said applications from Jim Branson.

The Department has set the matter of protests for a combined hearing for Tuesday, December 4, 1984, 10:00 a.m., in the State Tower Building, Department of Water Resources, Third Floor Conference Room, 450 W. State Street, Boise, ID, 83720. The hearing will be held in accordance with provisions of Chapter 2, Title 42, and Chapter 52, Title 67, of the Idaho Code and adopted Rules of Practice and Procedure of the Department of Water Resources. Opportunity shall be afforded all parties to respond and present evidence and argument on all issues involved. A pre-hearing conference may be held beginning at the above set time and prior to the hearing.

Dated this 7 day of November, 1984



DAVID B. SHAW
Western Regional Supervisor


AUG 9 1986

PROTEST INFORMATION SHEET

Protestant - Name(s)

Tim Branson3803 Collier, Boise 83703 ← New AddressAddress ~~Lowman, ID 83637~~Attorney - Name & Address Claude Marcus, 737 North 7th,Boise 83702342-3563Date Filed 11/28/79Protest Date 12/10/79Issues ownership, conflict w/ existing rightsApplicant - Attorney - Name & Address Lloyd J. Walker[?], P.O. Box
1923, Twin Falls 83301 733-3083

Date

Acknowledgement Letters: 12/7/79

Receipt Notice

Receipt Date

Has been held until litigation btwn Marcks & Bransons
had been resolved.

Other

AUG 09 1996

CONFERENCE AND HEARING INFORMATION
IN THE MATTER OF APPROVAL OF AN APPLICATION FOR PERMIT

In accordance with Idaho Code, Section 42-203, the following issues are involved in the consideration of the application and protest(s):

1. Will the proposed use reduce the quantity of water under existing water rights?
2. Is the proposed water supply insufficient for the purpose 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 conflict with the local public interest?

Any party may request in writing five (5) days before any hearing that the oral proceedings thereof be taken in the form of stenographic notes at the expense of the requesting party. Any party may have such stenographic notes of the oral proceedings, or part thereof, transcribed at his own expense. A taped record of the proceedings will be maintained for the appeal period.

If the hearing is conducted by a hearing officer appointed by the Director, rather than the Director himself, a proposed decision will be submitted to the parties and the parties may be afforded an opportunity to file exceptions to the proposed decision and present briefs and oral arguments to the Director prior to the issuance of a final decision by the Director. This procedure is required by Idaho Code, Section 42-1701A.

The parties by written stipulation may waive their right to a proposed decision, however, the failure of either party to waive a proposed decision will not prejudice the Director's review of a party's evidence and arguments. However, such a waiver will shorten the decision-making process and may expedite substantially the issuance of a final decision. Whether compliance with Section 42-1701A is waived will not affect a party's right to petition for a rehearing of the final decision pursuant to Rule 11 of the Department's Rules of Practice and Procedure or affect a party's right to appeal the final decision to the district court.

Under the provisions of Idaho Code, Sections 42-1701A and 67-5215, any court review of the Department's decision on appeal shall be confined to the record created before the Department.

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

AUG 09 1996

July 30, 1984

Gorman & Barbara Miracle
1441 Lawndale Dr.
Twin Falls, ID 83301

Re: Cancellation of Hearing

Dear Mr. & Mrs. Miracle:

At the request of the protestants' attorney, this Department has cancelled the hearing and/or conference scheduled on August 6, 1984 at the Department of Water Resources, Boise, Idaho concerning the protested applications for permit No. 65-12283 in the name of Gordan and Barbara Miracle and No. 65-12286 in the name of Ralph and Joyce Claycomb.

The Department will reschedule the conference and/or hearing in the near future, at which time all interested parties will again be notified.

Yours truly,

DAVID B. SHAW
Western Regional Supervisor

DBS:jp

cc: Lloyd J. Walker

40
AUG 09 1984



State of Idaho

DEPARTMENT OF WATER RESOURCES

WESTERN REGION, 450 W. State Street, Boise, Idaho

JOHN V EVANS
Governor

A. KENNETH DUNN
Director

Mailing address:
Statehouse
Boise, Idaho 83720
(208) 334-2190

July 30, 1984

Ralph & Joyce Claycomb
Lowman
Idaho 83637

Re: Cancellation of Hearing

Dear Mr. & Mrs. Claycomb:

At the request of the protestants' attorney, this Department has cancelled the hearing and/or conference scheduled on August 6, 1984 at the Department of Water Resources, Boise, Idaho concerning the protested applications for permit No. 65-12286 in the name of Ralph and Joyce Claycomb and 65-12283 in the name of Gordan and Barbara Miracle.

The Department will reschedule the conference and/or hearing in the near future, at which time all interested parties will again be notified.

Yours truly,

DAVID B. SHAW
Western Regional Supervisor

DBS:jp

cc: Lloyd J. Walker

RECEIVED
AUG 9 1984

July 30, 1984

Claude Marcus
Attorney at Law
737 North 7th
Boise, ID 83702

Re: Applications for Permit No. 65-12283 & 65-12286

Dear Marcus:

This office acknowledges your request to vacate the hearing date of August 6, 1984 for the above listed water rights. A new hearing date will be set in the future and you will then be notified.

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

Yours truly,

DAVID B. STANT
Western Regional Supervisor

DBS:jp

*Copy to Sub
Fleenor.*

CC: Branson

REC 091,1

January 11, 1983

Mr. David B. Shaw
Western Region Supervisor
State of Idaho
Department of Water Resources
Western Region
92 South Cole Road
Boise, Idaho 83709

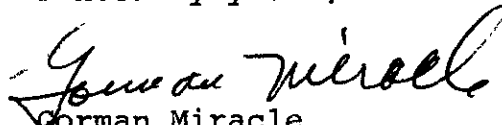
Re: Applications for Permit No.
65-12286, in the name of Ralph
& Joyce Claycomb

Dear Mr. Shaw:

I would like to go on record as being fully in support of the application of Ralph and Joyce Claycomb for domestic water as set out above. I know of my own knowledge that they have need for said water and have and will put it to beneficial use.

If I can be of any further assistance or help, please call.

Sincerely yours,



Gorman Miracle
1441 Lawndale Drive
Twin Falls, Idaho 83301

GM:cr

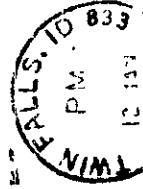
RECEIVED

JAN 17 1983

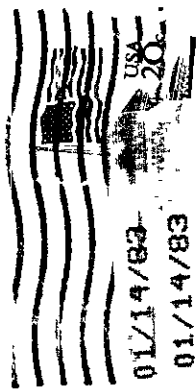
Department of Water Resources
Western Regional Office

AUG 09 1996

Mr. Slim Miracle
1441 Lawndale Drive
Twin Falls, Idaho 83301



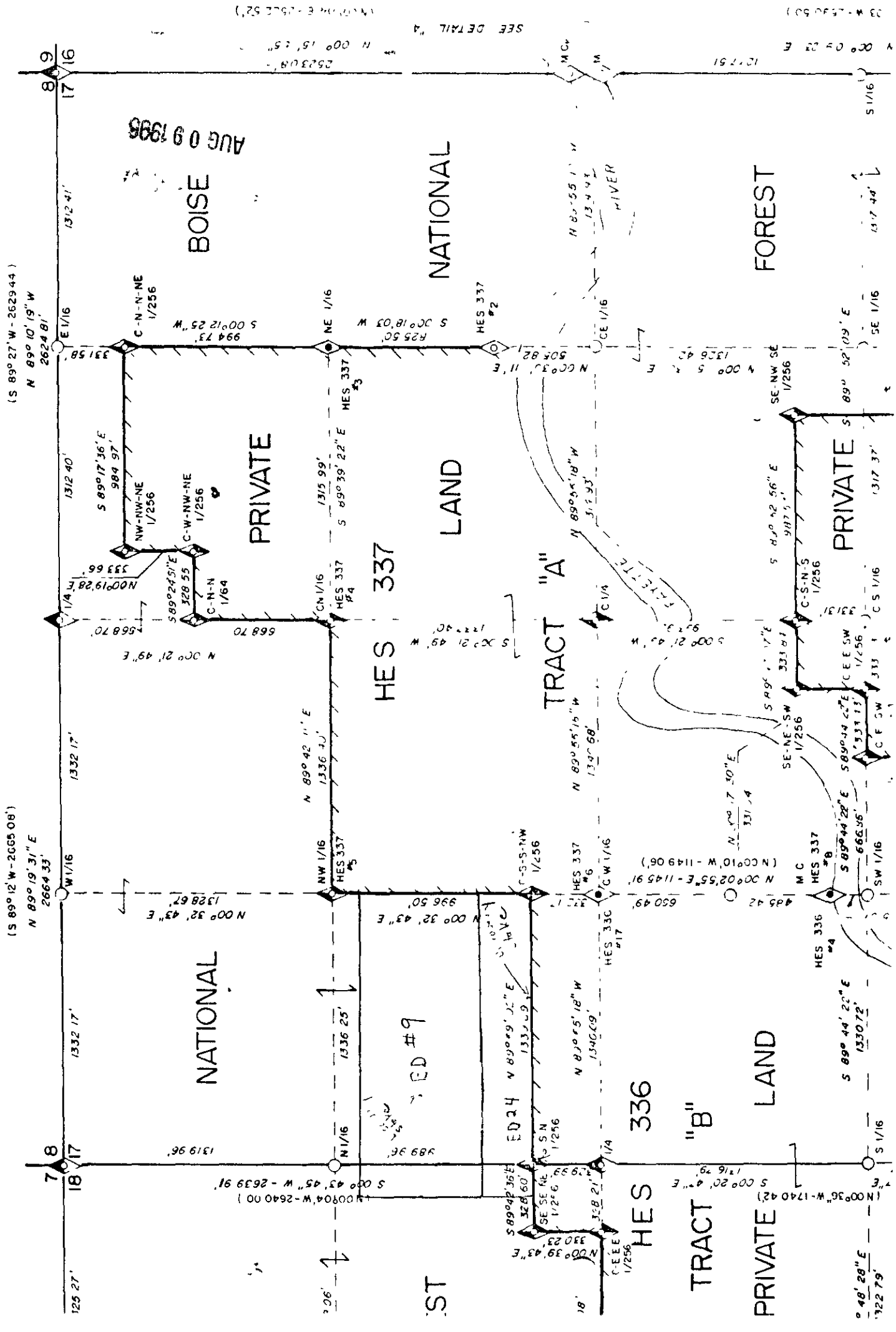
WFS 92 941497N1 01/14/83
WAT 92 94149771 01/14/83



STATE-OF-IDA-WAT-RES
450 W STATE ST
BOISE ID 83702

Mr. David B. Shaw
Western Region Supervisor
State of Idaho
Department of Water Resources
Western Region
92 South Cole Road
Boise, Idaho 83709

9 1393



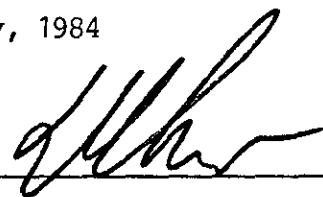
BEFORE THE DIRECTOR OF THE DEPARTMENT OF WATER RESOURCES
OF THE
STATE OF IDAHO

IN THE MATTER OF APPLICATION FOR PERMIT NO.)	
65-12283 IN THE NAME OF GORMAN AND BARBARA)	NOTICE OF COMBINED HEARINGS
MIRACLE AND APPLICATION FOR PERMIT NO.)	AND/OR CONFERENCES
65-12286 IN THE NAME OF RALPH AND JOYCE)	
CLAYCOMB)	

On November 6, 1979, Gorman and Barbara Miracle filed with the Department of Water Resources an application to appropriate the public waters of the State of Idaho. On November 11, 1979, Ralph and Joyce Claycomb filed with the Department of Water Resources an application to appropriate the public waters of the State of Idaho. On November 28, 1979, the Department received protests against the approval of said applications from Jim Branson.

The Department has set the matter of protests for a combined hearing for Monday, August 6, 1984, 10:30 a.m., in the State Office Tower Building, Department of Water Resources, Third Floor Conference Room, 450 W. State Street, Boise, ID, 83720. The hearing will be held in accordance with provisions of Chapter 2, Title 42, and Chapter 52, Title 67, of the Idaho Code and adopted Rules of Practice and Procedure of the Department of Water Resources. Opportunity shall be afforded all parties to respond and present evidence and argument on all issues involved. A pre-hearing conference may be held beginning at the above set time and prior to the hearing.

Dated this 17 day of July, 1984



DAVID B. SHAW
Western Regional Supervisor

AUG 09 1984

P 300 226 117

RECEIPT FOR CERTIFIED MAIL

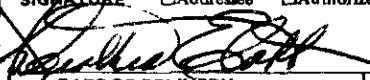
NO INSURANCE COVERAGE PROVIDED—
NOT FOR INTERNATIONAL MAIL
(See Reverse)

PS Form 3800, Apr 1976

SENT TO		Claycomb	
RETURN TO		Rayon or Ayce	
STREET AND NO			
CITY, STATE AND ZIP CODE		Lawrence Id 22637	
POSTAGE		\$	
CERTIFIED FEE		¢	
SPECIAL DELIVERY		¢	
RESTRICTED DELIVERY		¢	
CONSULT POSTMASTER FOR FEES	OPTIONAL SERVICES	RETURN RECEIPT SERVICE	¢
		SHOW TO WHOM, DATE AND ADDRESS OF DELIVERY	¢
		SHOW TO WHOM, DATE AND ADDRESS OF DELIVERY WITH RESTRICTED DELIVERY	¢
		SHOW TO WHOM, DATE AND ADDRESS OF DELIVERY WITH RESTRICTED DELIVERY	¢
		SHOW TO WHOM, DATE AND ADDRESS OF DELIVERY WITH RESTRICTED DELIVERY	¢
TOTAL POSTAGE AND FEES		\$	
POSTMARK OR DATE			

PS Form 3611, Jan 1979

RETURN RECEIPT, REGISTERED, INSURED AND CERTIFIED MAIL

● SENDER Complete items 1, 2, and 3 Add your address in the "RETURN TO" space on reverse											
1 The following service is requested (check one) ☒ Show to whom and date delivered.....¢ ☐ Show to whom, date and address of delivery.....¢ ☐ RESTRICTED DELIVERY Show to whom and date delivered.....¢ ☐ RESTRICTED DELIVERY Show to whom, date, and address of delivery \$ ____											
(CONSULT POSTMASTER FOR FEES)											
2 ARTICLE ADDRESSED TO: Ralph & Joyce Lycomb Leominster, MA 01463											
3 ARTICLE DESCRIPTION <table border="1"> <tr> <td>REGISTERED NO.</td> <td>CERTIFIED NO.</td> <td>INSURED NO.</td> </tr> <tr> <td></td> <td>7200</td> <td></td> </tr> <tr> <td></td> <td>226 117</td> <td></td> </tr> </table>			REGISTERED NO.	CERTIFIED NO.	INSURED NO.		7200			226 117	
REGISTERED NO.	CERTIFIED NO.	INSURED NO.									
	7200										
	226 117										
(Always obtain signature of addressee or agent)											
I have received the article described above SIGNATURE ☐ Addressee ☐ Authorized agent 											
DATE OF DELIVERY		POSTMARK									
5 ADDRESS (Complete only if requested)											
6. UNABLE TO DELIVER BECAUSE.		CLERK'S INITIALS 									

UNITED STATES POSTAL SERVICE
OFFICIAL BUSINESS

SENDER INSTRUCTIONS

Print your name, address, and ZIP Code in the space below.

- Complete items 1, 2, and 3 on the reverse.
- Attach to front of article if space permits, otherwise affix to back of article.
- Endorse article "Return Receipt Requested" adjacent to number.



PAID
BY ADDRESSEE

PENALTY FOR PRIVATE
USE TO AVOID PAYMENT
OF POSTAGE \$300

DEC

3

1982

89622

RETURN TO SENDER

Department of Justice
Washington, D.C. 20535

DEC 09 1995

(Name of Sender)

Resources

Idaho Department of
Western Resources

Statehouse, (Street or P.O. Box)

Boise, Idaho 83720

(City, State, and ZIP Code)

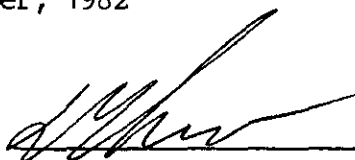
BEFORE THE DIRECTOR OF THE DEPARTMENT OF WATER RESOURCES
OF THE
STATE OF IDAHO

IN THE MATTER OF APPLICATION FOR PERMIT NO.	)	
65-12283 IN THE NAME OF GORMAN AND BARBARA	)	
MIRACLE AND APPLICATION FOR PERMIT NO.	)	NOTICE OF COMBINED
65-12286 IN THE NAME OF RALPH AND JOYCE	)	HEARINGS AND/OR CONFERENCES
CLAYCOMB	)	

On November 6, 1979, Gorman and Barbara Miracle filed with the Department of Water Resources an application to appropriate the public waters of the State of Idaho. On November 11, 1979, Ralph and Joyce Claycomb filed with the Department of Water Resources an application to appropriate the public waters of the State of Idaho. On November 28, 1979, the Department received protests against approval of said application from Jim Branson.

The Department has set the matter of protests for a combined hearing for Monday, January 17, 1983, 1:30 p.m., in the State Office Tower Building, Department of Water Resources, Third Floor Conference Room, 450 W. State St., Boise, Idaho, 83720. The hearings will be held in accordance with provisions of Chapter 2, Title 42, and Chapter 52, Title 67, of the Idaho Code and adopted Rules of Practice and Procedure of the Department of Water Resources. Opportunity shall be afforded all parties to respond and present evidence and argument on all issues involved. A pre-hearing conference may be held beginning at the above set time and prior to the hearing.

Dated this 23 day of November, 1982



DAVID B. SHAW

Western Regional Supervisor


AUG 09 1986

Dennis S. Voorhees
Walker & Spink PA
P.O. Box 1923
Twin Falls Idaho 83301

RE Applications for Permit Nos. 65-12286, in the name of
Ralph & Joyce Claycomb and 65-12283 in the name of
Gorman & Barbara Miracle

Dear Mr. Voorhees:

It has been some time since we received any communication concerning these applications. I understand from Mr. Shaff of our office that your objections to Mr. Branson's adjudication claim was accepted by the court but we have no information after that action was taken.

Could you please advise me of your ~~claim~~'s intentions for these applications and whether a conference and/or hearing should be scheduled in the near future.

Yours truly,

DAVID B. SHAW
Western Region Supervisor

DBS:hlh

cc: Claude Marcus

LLOYD J. WALKER, P.A.
ATTORNEYS AND COUNSELORS AT LAW

131 SECOND STREET WEST
POST OFFICE BOX 1923

Twin Falls, Idaho 83301
TELEPHONE (208) 733-3083

LLOYD J. WALKER
DENNIS S. VOORHEES

RECEIVED
DEC 24 1980

Department of Water Resources
Western Regional Office

December 23, 1980

Mr. David B. Shaw
Western Region Supervisor
State of Idaho
Department of Water Resources
Western Region
92 South Cole Road
Boise, Idaho 83709

Re: Applications for Permit Nos.
65-12286, in the name of Ralph
& Joyce Claycomb and 65-12283
in the name of Gorman & Barbara Miracle

Dear David:

The applications referenced in your letter are subsidiary to claims currently being litigated in a Gem County water rights adjudication. If the Bransons were to prevail entirely on their claims in the Gem County action, it would effectively consume all water sought to be appropriated in the applications referenced in your recent letter. The Gem County matter will be heard in the early part of April 1981. I request that further action on those applications referenced in your recent letter be held in abeyance until the outcome of the Gem County action.

You have my assurance that I will accomodate you in any way that I can. If you need more detailed information on the matters discussed in this letter, please do not hesitate to ask.

Sincerely yours,

LLOYD J. WALKER, P. A.


DENNIS S. VOORHEES

DSV:gb

AUG 09 1981

PS Form 3811, Jan. 1975

RETURN RECEIPT, REGISTERED, INSURED AND CERTIFIED MAIL

SENDER Complete items 1, 2, and 4
Add your address in the "RETURN TO" space
reverse

1. The following service is requested (check one)

- ☒ Show to whom and date delivered..... 15¢
☐ Show to whom, date, & address of delivery 35¢
☐ RESTRICTED DELIVERY
 Show to whom and date delivered..... 65¢
☐ RESTRICTED DELIVERY
 Show to whom, date, and address of delivery 85¢

2 ARTICLE ADDRESSED TO

Jim Brandon
Woman, Rd 83627

3 ARTICLE DESCRIPTION.

REGISTERED NO	CERTIFIED NO.	INSURED NO
	978075	

(Always obtain signature of addressee or agent)

I have received the article described above

SIGNATURE ☐ Addressee ☐ Authorized agent

Queen Klip
 DATE OF DELIVERY
4/1/80

5 ADDRESS (Complete only if requested)

6 UNABLE TO DELIVER BECAUSE.

POSTMARK

APR
1
1980

CLERK'S
INITIALS

UNITED STATES POSTAL SERVICE
OFFICIAL BUSINESS

SENDER INSTRUCTIONS

Print your name, address, and ZIP Code in the space below
• Complete items 1, 2, and 3 on reverse side
• Moisten gummed ends and attach to back of article

PENALTY FOR PRIVATE
USE TO AVOID PAYMENT
OF POSTAGE, \$300



RETURN
TO



AUG 09 1990

WILDER RESOURCES

LOS ANGELES 90032

65-12286

Department of Interior Resources
Western Regional Office

PS Form 3811, Jan 1975

RETURN RECEIPT, REGISTERED, INSURED AND CERTIFIED MAIL

● SENDER Complete items 1, 2, and 3. Add your address in the "RETURN TO" space on the reverse								
1 The following service is requested (check one) ☒ Show to whom and date delivered..... 15¢ ☐ Show to whom, date, & address of delivery . 35¢ ☐ RESTRICTED DELIVERY Show to whom and date delivered..... 65¢ ☐ RESTRICTED DELIVERY Show to whom, date, and address of delivery 85¢								
2 ARTICLE ADDRESSED TO: <i>Dennis Voorhees</i> <i>Trainer + Spine, P.A.</i> <i>P.O. Box 1923</i> <i>Town Fork, Va 22330</i>								
3. ARTICLE DESCRIPTION <table border="1"> <tr> <td>REGISTERED NO</td> <td>CERTIFIED NO</td> <td>INSURED NO</td> </tr> <tr> <td></td> <td>978076</td> <td></td> </tr> </table>			REGISTERED NO	CERTIFIED NO	INSURED NO		978076	
REGISTERED NO	CERTIFIED NO	INSURED NO						
	978076							
(Always obtain signature of addressee or agent)								
I have received the article described above SIGNATURE ☒ Addressee ☐ Authorized agent <i>James Voorhees</i>								
4 DATE OF DELIVERY APR - 2 1980								
5 ADDRESS (Complete only if requested) 								
6 UNABLE TO DELIVER BECAUSE		CLERK'S INITIALS						

UNITED STATES POSTAL SERVICE
OFFICIAL BUSINESS

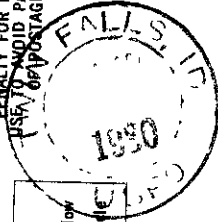
SENDER INSTRUCTIONS

Print your name, address, and ZIP Code in the space below.
• Complete items 1, 2, and 3 on reverse side
• Moisten gummed ends and attach to back of article

**RETURN
TO**



PENALTY FOR PRIVATE
USE TO AVOID PAYMENT
OF POSTAGE, \$300



RECEIVED

APR 4 1980

Department of Water Resources

DEPARTMENT OF WATER RESOURCES

POST OFFICE

BOILE, IDAHO 83720

AUG 09 1996

605-12286

PS Form 3811, Jan. 1975

RETURN RECEIPT, REGISTERED, INSURED AND CERTIFIED MAIL

SENDER Complete items 1, 2, and 3
Add your address in the "RETURN TO" space
reverse

1 The following service is requested (check one)

- ☒ Show to whom and date delivered..... 15¢
☐ Show to whom, date, & address of delivery..... 35¢
☐ RESTRICTED DELIVERY
 Show to whom and date delivered..... 65¢
☐ RESTRICTED DELIVERY
 Show to whom, date, and address of delivery 85¢

2. ARTICLE ADDRESSED TO:

Ralph & Joyce Claycomb
Idaho
83637

3 ARTICLE DESCRIPTION:

REGISTERED NO	CERTIFIED NO	INSURED NO.
	978074	

(Always obtain signature of addressee or agent)

I have received the article described above

SIGNATURE ☐ Addressee ☐ Authorized agent

Allen B. Link
 DATE OF DELIVERY
5/1/75

POSTMARK

APR
 1975

5 ADDRESS (Complete only if requested)

6. UNABLE TO DELIVER BECAUSE.

CLERK'S
INITIALS

SENDER INSTRUCTIONS

PENALTY FOR PRIVATE
USE TO AVOID PAYMENT
OF FRANCHISE FEE. \$300



AUG 09 1996

65-12286

3/79

IDENT. NO. 65-12286

I D A H O D E P A R T M E N T O F W A T E R R E S O U R C E S

WATER RIGHT
DATA ENTRY LOG

[illegible]



State of Idaho

DEPARTMENT OF WATER RESOURCES

WESTERN REGION, 92 South Cole Road, Boise, Idaho 83709

JOHN V. EVANS

Governor

(Office at the corner of
Franklin and Cole Roads)

C. STEPHEN ALLRED

Director

(208) 384-2190

April 7, 1980

Ralph and Joyce Claycomb
Lowman, Idaho 83637

Re: Applications for Permits No. 65-12283 in the name of
Gorman and Barbara Miracle and 65-12286 in the name of
Ralph and Joyce Claycomb

Dear Mr. and Mrs. Claycomb:

The conference and/or hearing scheduled for April 17 at
1:30 P. M. in the above matter has been cancelled at the
request of the applicants' attorney. If necessary, the
conference and/or hearing will be rescheduled at a later
date and you will again be notified.

Yours truly,

DAVID B. SHAW
Western Region Supervisor

DBS/jl

cc: Dennis S. Voorhees

AUG 09 1996



State of Idaho

DEPARTMENT OF WATER RESOURCES

WESTERN REGION, 92 South Cole Road, Boise, Idaho 83709

JOHN V. EVANS
Governor

(Office at the corner of
Franklin and Cole Roads)

(208) 384-2190

C. STEPHEN ALLRED
Director

April 7, 1980

James Branson
Lowman, Idaho 83637

Re: Applications for Permits No. 65-12283 in the name of
Gorman and Barbara Miracle and 65-12286 in the name of
Ralph and Joyce Claycomb

Dear Mr. Branson:

The conference and/or hearing scheduled for April 17 at
1:30 P. M. in the above matter has been cancelled at the
request of the applicants' attorney. If necessary, the
conference and/or hearing will be rescheduled at a later
date and you will again be notified.

Yours, truly,

DAVID B. SHAW
Western Region Supervisor

DBS/jl

APR 9 1980

No.

9275

RECEIPT FOR CERTIFIED MAIL

NO INSURANCE COVERAGE PROVIDED—
NOT FOR INTERNATIONAL MAIL

(See Reverse)

SENT TO		<i>Jim Branson</i>	
STREET AND NO.		<i>Stroman</i>	
P.O. STATE AND ZIP CODE		<i>Ida 83637</i>	
POSTAGE		\$	
CONSULT POSTMASTER FOR FEES	CERTIFIED FEE	\$	
	SPECIAL DELIVERY	\$	
	RESTRICTED DELIVERY	\$	
	OPTIONAL SERVICES		
	RETURN RECEIPT SERVICE		
	SHOW TO WHOM AND DATE DELIVERED	\$	
	SHOW TO WHOM, DATE, AND ADDRESS OF DELIVERY	\$	
	SHOW TO WHOM AND DATE DELIVERED WITH RESTRICTED DELIVERY	\$	
	SHOW TO WHOM, DATE AND ADDRESS OF DELIVERY WITH RESTRICTED DELIVERY	\$	
TOTAL POSTAGE AND FEES		\$	
POSTMARK OR DATE		3/28/80 65-12286 1985	

PS Form 3800, Apr 1976

No.

RECEIPT FOR CERTIFIED MAIL

NO INSURANCE COVERAGE PROVIDED—
NOT FOR INTERNATIONAL MAIL

(See Reverse)

SENT TO		<i>Ralph & Joyce Craycomb</i>	
STREET AND NO.			
P.O., STATE AND ZIP CODE		<i>Newman, Md 83637</i>	
POSTAGE		\$	
CONSULT POSTMASTER FOR FEES	OPTIONAL SERVICES	CERTIFIED FEE	\$
		SPECIAL DELIVERY	\$
		RESTRICTED DELIVERY	\$
	RETURN RECEIPT SERVICE	SHOW TO WHOM AND DATE DELIVERED	\$
		SHOW TO WHOM, DATE, AND ADDRESS OF DELIVERY	\$
		SHOW TO WHOM AND DATE DELIVERED WITH RESTRICTED DELIVERY	\$
SHOW TO WHOM, DATE AND ADDRESS OF DELIVERY WITH RESTRICTED DELIVERY		\$	
TOTAL POSTAGE AND FEES		\$	<i>96</i>
POSTMARK OR DATE			
<i>3/28/80</i> <i>65-12286</i>			

PS Form 3800, Apr 1976

No.

979076

RECEIPT FOR CERTIFIED MAIL

NO INSURANCE COVERAGE PROVIDED—
NOT FOR INTERNATIONAL MAIL

(See Reverse)

SENT TO		<i>Dennis Voorhes</i>	
STREET AND NO.		<i>P.O. Box 1923</i>	
P.O., STATE AND ZIP CODE		<i>Twins Falls 83301</i>	
POSTAGE		\$	
CONSULT POSTMASTER FOR FEES	CERTIFIED FEE	¢	
	SPECIAL DELIVERY	¢	
	RESTRICTED DELIVERY	¢	
	OPTIONAL SERVICES	SHOW TO WHOM AND DATE DELIVERED	¢
		SHOW TO WHOM, DATE AND ADDRESS OF DELIVERY	¢
		SHOW TO WHOM AND DATE DELIVERED WITH RESTRICTED DELIVERY	¢
		SHOW TO WHOM, DATE AND ADDRESS OF DELIVERY WITH RESTRICTED DELIVERY	¢
TOTAL POSTAGE AND FEES		\$	
POSTMARK OR DATE			
<i>3/28/80</i>			
<i>65-12286</i>			

PS Form 3800 Apr. 1976

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

IN THE MATTER OF PROTEST AGAINST APPROVAL	)	
	)	
OF THE APPLICATION FOR PERMIT NO. 65-12286	)	NOTICE OF CONFERENCE
	)	
IN THE NAME OF RALPH AND JOYCE CLAYCOMB	)	AND/OR HEARING
	)	

On November 8, 1979, Ralph and Joyce Claycomb filed with the Department of Water Resources an application to appropriate the public waters of the State of Idaho. On November 28, 1979, the Department received a protest against approval of said application from Jim Branson.

The Department has set the matter of protest for conference and/or hearing for Thursday, April 17, 1980, at 1:30 p.m., in the State Office Conference Room of the Department of Water Resources, 450 W. State Street, Boise, Idaho. Any hearing will be held in accordance with provisions of Chapter 2, Title 42, and Chapter 52, Title 67, of the Idaho Code and adopted Rules of Practice and Procedure of the Department of Water Resources. Opportunity shall be afforded all parties to respond and present evidence and argument on all issues involved.

In accordance with Idaho Code, Section 42-203, the following issues are involved in the consideration of the application and protest:

1. Will the proposed use reduce the quantity of water under existing water rights?
2. Is the proposed water supply insufficient for the purpose 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 conflict with the local public interest?

Any party may request in writing five (5) days before any hearing that the oral proceedings thereof be taken in the form of stenographic notes at the expense of the requesting party. Any party may have such stenographic notes of the oral proceedings, or part thereof, transcribed at his own expense. A taped record of the proceedings will be maintained for the appeal period.

AUG 6 1980

If the hearing is conducted by a hearing officer appointed by the Director, rather than the Director himself, a proposed decision will be submitted to the parties and the parties will be afforded an opportunity to file exceptions to the proposed decision and present briefs and oral arguments to the Director prior the issuance of a final decision by the Director. This procedure is required by Idaho Code, Section 67-5211.

By written stipulation, the parties may waive compliance with Idaho Code, Section 57-5211. If the hearing is conducted by a hearing officer, the hearing officer will ask the parties at the close of the hearing whether they would like to make such a stipulation.

Failure to waive compliance with Idaho Code, Section 67-5211 will not prejudice the Director's review of a party's evidence and arguments. However, such a waiver will shorten the decision-making process and may expedite substantially the issuance of a final decision. Whether compliance with Section 67-5211 is waived will not affect a party's right to petition for a rehearing of the final decision pursuant to Rule 11 of the Department's Rules of Practice and Procedure of affect a party's right to appeal the final decision to the District Court.

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

Dated this 27 day of March, 1980.



DAVID B. SHAW
Western Region Supervisor

AUG 6 1980



State of Idaho

DEPARTMENT OF WATER RESOURCES

WESTERN REGION, 92 South Cole Road, Boise, Idaho 83709

JOHN V. EVANS
Governor

(Office at the corner of
Franklin and Cole Roads)

C. STEPHEN ALLRED
Director

(208) 384-2190

January 17, 1980

RE: Application for Permit No. 65-12286
In the Name of Ralph & Joyce Claycomb

At the request of the applicant's attorney, the conference and/or hearing scheduled for January 24, at 10:30 a.m., in the matter of protested application No. 65-12286, has been cancelled and will be rescheduled at a later date.

Yours truly,

DAVID B. SHAW
Western Region Supervisor

DBS:kk

AUG 09 1980

DBS

WALKER & SPINK, P. A.
ATTORNEYS AND COUNSELORS AT LAW
BANK OF IDAHO BUILDING
POST OFFICE BOX 1923
TWIN FALLS, IDAHO 83301
TELEPHONE (208) 733-3083

LLOYD J. WALKER
MICHAEL T. SPINK
DENNIS S. VOORHEES

January 16, 1980

Mr. David B. Shaw
State of Idaho
Department of Water Resources
Western Region
92 South Cole Road
Boise, Idaho 83709

Re: Application for Permit
No. 65-12283

Dear David:

This letter will confirm our telephone conference today wherein I informed you that I will accompany and represent the Miracles at the protest conference on the permit referenced above. However, my schedule will not permit me to be in Boise on the 24th of January, 1980, and you have agreed to reschedule the conference for a later date. I neglected to mention that I also represent Mr. and Mrs. Ralph Claycomb of Loman, Idaho, whose protest for an application on adjacent land has also been protested.

If you could arrange a conference for the Miracle and Claycomb matters on the same day, I would appreciate it. My unavailable dates within the near future: February 5 and 6; and March 5 through 12, and 20.

Mr. Donald Shaff, Adjudication Supervisor, Idaho Water Resources Department, has viewed the area in which the proposed application lies. He will be able to provide valuable information, and his presence should be arranged.

Sincerely yours,

WALKER & SPINK, P. A.

Dennis S. Voorhees

Dennis S. Voorhees

DSV:rs

cc: Mr. and Mrs. Gorman Miracle
Mr. and Mrs. Ralph Claycomb

RECEIVED
JAN 17 1980

Department of Water Resources
Western Regional Office

P 300-226 194
RECEIPT FOR CERTIFIED MAIL

NO INSURANCE COVERAGE PROVIDED--
 NOT FOR INTERNATIONAL MAIL.
 (See Reverse)

SENT TO			
STREET AND NO		<i>Rough and Jones St. S.W.</i>	
P.O., STATE AND ZIP CODE		<i>Lawman W. 83-1037</i>	
POSTAGE		\$	
CONSULT POSTMASTER FOR FEES	CERTIFIED FEE		c
	SPECIAL DELIVERY		c
	RESTRICTED DELIVERY		c
	SHOW TO WHOM AND DATE DELIVERED		c
	SHOW TO WHOM DATE AND ADDRESS OF DELIVERY		c
	SHOW TO WHOM AND DATE DELIVERED WITH RESTRICTED DELIVERY		c
	SHOW TO WHOM DATE AND ADDRESS OF DELIVERY WITH RESTRICTED DELIVERY		c
TOTAL POSTAGE AND FEES		\$	
POSTMARK OR DATE			

PS Form 3800, Apr 1976

● SENDER Complete items 1, 2 and 3 Add your address in the RETURN TO space on reverse		1 The following service is requested (check one) ☒ Show to whom and date delivered ☐ Show to whom, date, and address of delivery ☐ RESTRICTED DELIVERY ☐ Show to whom and date delivered ☐ RESTRICTED DELIVERY ☐ Show to whom, date, and address of delivery ☐ Show to whom, date, and address of delivery \$ (CONSULT POSTMASTER FOR FEES)		2 ARTICLE ADDRESSED TO James Branson Lowman Idaho 83737		3 ARTICLE DESCRIPTION REGISTERED NO. CERTIFIED NO. INSURED NO. AUG 0 9 1977 9781436		(Always obtain signature of addressee or agent) I have received the article described above SIGNATURE <i>James Branson</i> ☒ Addressee ☐ Authorized agent		4 DATE OF DELIVERY 1-15-80 POSTMARK		5 ADDRESS (Complete only if requested)		6 UNABLE TO DELIVER BECAUSE CLERK'S INITIALS <i>LM</i>	
--	--	---	--	--	--	---	--	--	--	--	--	--	--	---	--

UNITED STATES POSTAL SERVICE
OFFICIAL BUSINESS



PENALTY FOR PRIVATE
USE TO AVOID PAYMENT
OF POSTAGE, \$300

SENDER INSTRUCTIONS

Print your name, address, and ZIP CODE in the space below

- Complete items 1, 2, and 3 on the reverse
- Moisten gummed ends and attach to front of article if space permits otherwise affix to back of article
- Enclose article Return Receipt Requested adjacent to number

RETURN
TO

Att: 001336

DEPT. OF WATER RESOURCES
WESTERN REGION OFFICE

(Name of Sender)

Attn: David B. Shaw

92 South Cole Road

(Street or PO Box)

Boise, ID 83709

(City, State, and ZIP Code)

405-13286

SENDER Complete items 1, 2 and 3
Add your address in the RETURN TO space on
reverse

1 The following service is requested (check one)

☒ Show to whom and date delivered

☐ Show to whom, date, and address of delivery

☐ RESTRICTED DELIVERY

Show to whom and date delivered

— c —

☐ RESTRICTED DELIVERY
Show to whom, date, and address of delivery \$

(CONSULT POSTMASTER FOR FEES)

2 ARTICLE ADDRESSED TO

Ralph and Joyce Claycomb

Lowman

Idaho 83637

3 ARTICLE DESCRIPTION

REGISTERED NO CERTIFIED NO INSURED NO

978142

(Always obtain signature of addressee or agent)

I have received the article described above

SIGNATURE ☐ Addressee ☐ Authorized agent

Sam K. Chapman

DATE OF DELIVERY

1-15-80

POSTMARK

5 ADDRESS (Complete only if requested)

6 UNABLE TO DELIVER BECAUSE

CLERKS
INITIALS

PS Form 3811, Apr. 1977

PS Form 3811, Apr. 1977

RETURN RECEIPT, REGISTERED, INSURED AND CERTIFIED MAIL

UNITED STATES POSTAL SERVICE
OFFICIAL BUSINESS

PENALTY FOR PRIVATE
USE TO AVOID PAYMENT
OF POSTAGE \$300



SENDER INSTRUCTIONS

Print your name, address, and ZIP CODE in the space below

- Complete items 1, 2, and 3 on the reverse
- Moisten gummed ends and attach to front of article if space permits. Otherwise affix to back of article
- Endorse article Return Receipt Requested adjacent to number

RETURN
TO



ALL INFORMATION CONTAINED
HEREIN IS UNCLASSIFIED
DATE 11-19-2011 BY 60322

DEPT. OF WATER RESOURCES
WESTERN REGION OFFICE

(Name of Sender)

Attn. David B. Shaw

92 South Cole Road

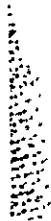
(Street or PO Box)

Boise, ID 83709

(City, State, and ZIP Code)

45-1228

IDAHO DEPARTMENT OF WATER RESOURCES
WESTERN REGION OFFICE
92 SOUTH COLE ROAD
BOISE, IDAHO 83709



Certified Receipts 65-12286

No. 0141

RECEIPT FOR CERTIFIED MAIL

NO INSURANCE COVERAGE PROVIDED—
NOT FOR INTERNATIONAL MAIL
(See Reverse)

SENT TO		James Branson	
STREET AND NO		Lowman	
P.O. STATE AND ZIP CODE		Idaho 83637	
POSTAGE		\$	
CONSULT POSTMASTER FOR FEES	CERTIFIED FEE	¢	
	SPECIAL DELIVERY	¢	
	RESTRICTED DELIVERY	¢	
	OPTIONAL SERVICES RETURN RECEIPT SERVICE	SHOW TO WHOM AND DATE DELIVERED	¢
		SHOW TO WHOM, DATE AND ADDRESS OF DELIVERY	¢
		SHOW TO WHOM AND DATE DELIVERED WITH RESTRICTED DELIVERY	¢
		SHOW TO WHOM, DATE AND ADDRESS OF DELIVERY WITH RESTRICTED DELIVERY	¢

TOTAL POSTAGE AND FEES

POSTMARK

Apr 1976

No. 778-42

RECEIPT FOR CERTIFIED MAIL

NO INSURANCE COVERAGE PROVIDED—
NOT FOR INTERNATIONAL MAIL

(See Reverse)

SENT TO		Ralph and Joyce Claycomb	
STREET AND NO		Lowman	
P.O. STATE AND ZIP CODE		Idaho 83637	
POSTAGE		\$	
CONSULT POSTMASTER FOR FEES	CERTIFIED FEE	¢	
	SPECIAL DELIVERY	¢	
	RESTRICTED DELIVERY	¢	
	OPTIONAL SERVICES	SHOW TO WHOM AND DATE DELIVERED	¢
		SHOW TO WHOM, DATE AND ADDRESS OF DELIVERY	¢
		SHOW TO WHOM AND DATE DELIVERED WITH RESTRICTED DELIVERY	¢
SHOW TO WHOM, DATE AND ADDRESS OF DELIVERY WITH RESTRICTED DELIVERY		¢	
TOTAL POSTAGE AND FEES		\$	
POSTMARK OR DATE		APR 1976	

PS Form 3800, Apr. 1976

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

IN THE MATTER OF PROTEST AGAINST APPROVAL	)	
	)	
OF THE APPLICATION FOR PERMIT NO. 65-12286	)	NOTICE OF CONFERENCE
	)	
IN THE NAME OF RALPH AND JOYCE CLAYCOMB	)	AND/OR HEARING

On November 8, 1979, Ralph and Joyce Claycomb filed with the Department of Water Resources an application to appropriate the public waters of the State of Idaho. On November 28, 1979, the Department received a protest against approval of said application from Jim Branson.

The Department has set the matter of protest for conference and/or hearing for Thursday, January 24, 1980, at 10:30 a.m. in the Second Floor Conference Room, Idaho Department of Water Resources, State Office, 450 West State Street, Boise, Idaho. Any hearing will be held in accordance with provisions of Chapter 2, Title 42, and Chapter 52, Title 67, of the Idaho Code and adopted Rules of Practice and Procedure of the Department of Water Resources. Opportunity shall be afforded all parties to respond and present evidence and argument on all issues involved.

In accordance with Idaho Code, Section 42-203, the following issues are involved in the consideration of the application and protest:

1. Will the proposed use reduce the quantity of water under existing water rights?
2. Is the proposed water supply insufficient for the purpose 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 conflict with the local public interest?

Any party may request in writing five (5) days before any hearing that the oral proceedings thereof be taken in the form of stenographic notes at the expense of the requesting party. Any party may have such stenographic notes of the oral proceedings, or part thereof, transcribed at ~~the~~ expense. A taped record of the proceedings will be maintained for the appeal period.

AUG 08 1979

If the hearing is conducted by a hearing officer appointed by the Director, rather than the Director himself, a proposed decision will be submitted to the parties and the parties will be afforded an opportunity to file exceptions to the proposed decision and present briefs and oral arguments to the Director prior to the issuance of a final decision by the Director. This procedure is required by Idaho Code, Section 67-5211.

By written stipulation, the parties may waive compliance with Idaho Code, Section 57-5211. If the hearing is conducted by a hearing officer, the hearing officer will ask the parties at the close of the hearing whether they would like to make such a stipulation.

Failure to waive compliance with Idaho Code, Section 67-5211 will not prejudice the Director's review of a party's evidence and arguments. However, such a waiver will shorten the decision-making process and may expedite substantially the issuance of final decision. Whether compliance with Section 67-5211 is waived will not affect a party's right to petition for a rehearing of the final decision pursuant to Rule 11 of the Department's Rules of Practice and Procedure or affect a party's right to appeal the final decision to the District Court.

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

Dated this 11 day of January, 19 80.



DAVID B. SHAW
Western Region Supervisor


AUG 09 1986

ORIGINAL PAPERS AND DOCUMENTS CONCERNING THE PROTEST AND HEARING
ON THIS WATER RIGHT ARE CONTAINED IN FILE NO. 63-12283.

RECEIVED
AUG 09 1996

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
Western Region

92 South Cole Road
Boise, Idaho 83709
(208) 384-2190

NOVEMBER 15, 1979

The Idaho World
Box 220
Idaho City, ID 83631

Gentlemen:

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. We have allowed ample time for you to submit a galley proof to this office for review before the first publication date. If you cannot publish the notice on the proposed dates, please contact us immediately.

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

Please send the affidavit of publication and publication billings to this office before DECEMBER 10, 1979.

Yours truly,

Karla Knecht
Secretary

Encl.

AUG 09 1996



State of Idaho

DEPARTMENT OF WATER RESOURCES

WESTERN REGION, 92 South Cole Road, Boise, Idaho 83705

JOHN V. EVANS
Governor

(Office at the corner of
Franklin and Cole Roads)

C. STEPHEN ALLRED
Director

(208) 384-2190

December 7, 1979

James Branson
Lowman, ID 83637

RE: Application for Permit No. 65-12286 & 65-12283

Dear Mr. Branson:

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(s) 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 and/or hearing. At such a conference and/or hearing, the following are the principle items the Department can consider in either approving or denying an application for permit (Section 42-203, Idaho Code):

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

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

Yours truly,

DAVID B. SHAW
Western Regional Supervisor



State of Idaho

DEPARTMENT OF WATER RESOURCES

WESTERN REGION, 92 South Cole Road, Boise, Idaho 83705

JOHN V. EVANS
Governor

(Office at the corner of
Franklin and Cole Roads)

C. STEPHEN ALLRED
Director

(208) 384-2190

December 7, 1979

Ralph & Joyce Claycomb
Lowman, ID 83837

RE: Application for Permit No. 65-12286

Dear Mr. & Mrs. Claycomb:

Enclosed is a copy of a protest(s) filed against the issuance of a permit pursuant to your Application No. ~~65-12286~~. The Department suggests you contact the protestant(s) directly in ~~an effort~~ to determine the nature of the protest(s) and to attempt to resolve the protest(s).

If this office has not been advised within twenty (20) days that the protest(s) has been resolved, the matter will be scheduled for conference and/or hearing. At such a conference and/or hearing, the following are the principle items the Department can consider in either approving or denying the application for permit (Section 42-203, Idaho Code):

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

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

Yours truly,

DAVID B. SHAW
Western Regional Supervisor

Enc.

Mr. David B. Shaw
Western Regional Supervisor
Department of Water Resources
92 South Cole Road
Boise, Idaho

December 15, 1979

Dear Mr. Shaw:

Your letter of December 7, 1979 was received this date. The letter concerns our Application No. 65-12286 for a water permit and refers to a copy of a protest filed against the issuance of this permit. You also stated that a copy of the protest was enclosed but there was no such enclosure.

Will you please check your files and advise us of the person filing the protest and the reason that was given for such action.

Yours truly,



Ralph Claycomb
Star route
Lowman, Idaho
83627

RECEIVED

DEC 19 1979

Department of Water Resources
Western Regional Office

65-12286

CLAYCOMB, RALPH &/or JOYCE

LOWMAN, ID 83637

Source: UNNAMED STREAM tributary to PAYETTE RIVER, S. FORK

Date Filed: 11/08/1979

Amount: 0.04 CFS

Diversion Point: SWNW Sec 17 T 09N R 09E, BOISE Co.

Use: DOMESTIC (0.04 CFS) from 01/01 to 12/31

Place of Use: SWNW Sec 17 T 09N R 09E

Diversion Means: PIPE FROM STREAM TO RESERVOIR.

RECORDED

AUG 09 1996