

State of Idaho
Department of Water Resources
Permit to Appropriate Water

NO. 63-31869

Priority: January 23, 2004

Maximum Diversion Rate: 0.20 CFS

This is to certify, that JOHN B FERGUSON
PO BOX 140737
BOISE ID 83714

has applied for a permit to appropriate water from:

Source: BOISE RIVER

Tributary: SNAKE RIVER

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

<u>BENEFICIAL USE</u>	<u>PERIOD OF USE</u>	<u>RATE OF DIVERSION</u>
AESTHETIC	01/01 to 12/31	0.20 CFS

LOCATION OF POINT OF DIVERSION:

BOISE RIVER L6 (SW $\frac{1}{4}$ NE $\frac{1}{4}$) Sec. 23, Twp 04N, Rge 01E, B.M., ADA County

PLACE OF USE: AESTHETIC

Twp	Rge	Sec	NE				NW				SW				SE				Totals
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
04N	01E	23			X														
					L6														

CONDITIONS OF APPROVAL

1. Proof of application of water to beneficial use shall be submitted on or before **September 01, 2005**.
2. Subject to all prior water rights.
3. Water used under this water right is limited to the beneficial use for aesthetic purposes for two existing waterfalls occupying a combined surface area of not more than 100 square feet. There can be no enlargement of the surface area of the existing waterfalls and use of water under this water right.
4. Use of water under this right shall be non-consumptive.
5. This right does not authorize the diversion of water released from storage for stream flow maintenance under prior right 63-03618.
6. Use of water under this right will be regulated by a watermaster with responsibility for the distribution of water among appropriators within a water district. At the time of this approval, this water right is within State Water District No. 63.
7. Prior to diversion of water under this right, the right holder shall install a lockable device, subject to the approval of the Department, in a manner that will provide the watermaster suitable control of the diversion.
8. Place of use is located within Lot 34, Blk. 1, Woods #2 at Riverside Subdivision.

This permit is issued pursuant to the provisions of Section 42-204, Idaho Code. Witness the signature of the Director, affixed at Boise, this 20th day of September, 2004.


FOR KARL J DREHER, Director

RECEIVED

SEP 14 2004

FORM 202
2/99DEPARTMENT OF
WATER RESOURCESIdent. No. 63-31869STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
APPLICATION FOR PERMIT

To appropriate the public waters of the State of Idaho

1. Name of Applicant John Ferguson Phone 208-362-2100Mailing address B.O. Box 140737, Boise, ID 837142. Source of water supply Riverside Creek Boise River which is a tributary of Boise River Snake River3. Location of point of diversion is Township 4N Range 1E Sec. 23, in the SW $\frac{1}{4}$, NE $\frac{1}{4}$, Govt. Lot Ada, B.M., Ada County;

additional points of diversion if any: _____

4. Water will be used for the following purposes:

Amount .2 for Aesthetics purposes from 1-1 to 12-31 (both dates inclusive)
(cfs or acre-feet per annum)Amount _____ for _____ purposes from _____ to _____ (both dates inclusive)
(cfs or acre-feet per annum)Amount _____ for _____ purposes from _____ to _____ (both dates inclusive)
(cfs or acre-feet per annum)Amount _____ for _____ purposes from _____ to _____ (both dates inclusive)
(cfs or acre-feet per annum)Amount _____ for _____ purposes from _____ to _____ (both dates inclusive)
(cfs or acre-feet per annum)Amount _____ for _____ purposes from _____ to _____ (both dates inclusive)
(cfs or acre-feet per annum)5. Total quantity to be appropriated is (a) .2 and/or (b) .4
cubic feet per second acre feet per annum

6. Proposed diverting works:

a. Describe type and size of devices used to divert water from the source 5 HP Pump 3" Water lineb. Height of storage dam _____ feet; active reservoir capacity _____ acre-feet; total
reservoir capacity _____ acre-feet

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

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

e. If well is already drilled, when? _____; Drilling firm _____;

Well was drilled for (well owner) _____; Drilling Permit No. _____

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

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

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

b. Stockwatering; list number and kind of livestock. _____

c. Municipal; show name of municipality. _____

d. Domestic; show number of households. _____

e. Other; describe fully. Aesthetics

5. Description of place of use:

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

TWP	RGE	SEC	NE				NW				SW				SE				TOTALS
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
4N	1E	23			J														

Total number of acres to be irrigated _____

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

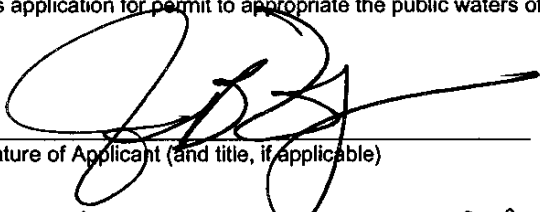
1. a. Who owns the property at the point of diversion? John Ferguson
- b. Who owns the land to be irrigated or place of use? John Ferguson
- c. If the property is owned by a person other than the applicant, describe the arrangement enabling the applicant to make this filing: _____

2. Remarks: Non consumptive, WE ARE NOT ADDING ANY STREAMS OR PONDS. THIS IS JUST FOR THE RIGHT TO DIVERT WATER FOR THE WATER FALLS.

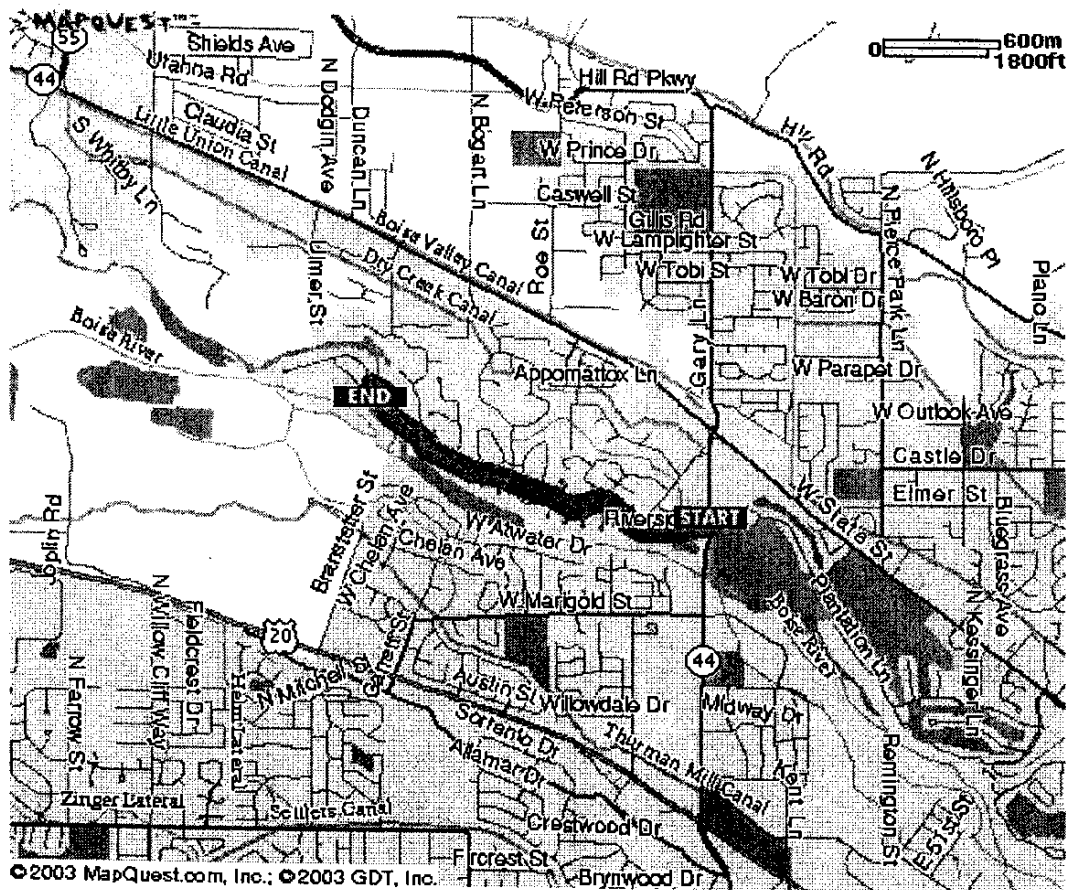
LOT 34 BLOCK 1 WOODS #2 AT RIVERSIDE SUBDIVISION
THE PUMP IS SET UP TO DIVERT .2 CFS

3. MAP OF PROPOSED PROJECT REQUIRED - Attach an 8 1/2"x11" map clearly identifying the proposed point of diversion, place of use, section #, township & range. (A photocopy of a USGS 7.5 minute topographic quadrangle map is preferred.)

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


 Signature of Applicant (and title, if applicable)

Received by KL Date 11/23/04 Time 11:45 Preliminary check by DAN
 Fee \$ 10000 Receipted by KL # W031254 Date 11/23/04
 Publication prepared by AK Date 4-15-2004 Published in _____
 Publication approved AK Date 5-3-04 THE IDAHO STATESMAN



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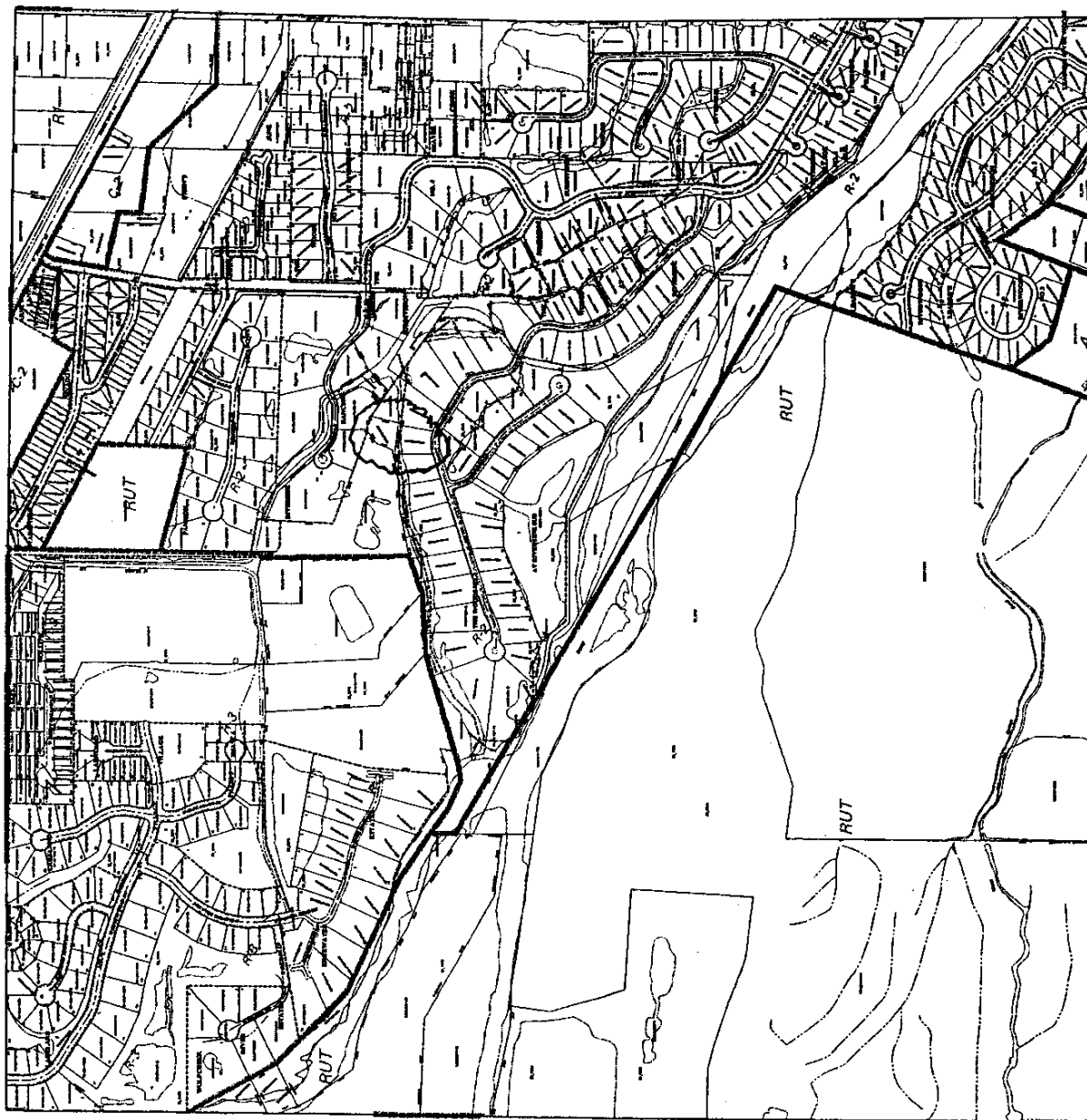
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SECTION 23, T4N R1E

MAKE LARGE PRINT (\$3)

THIS MAP IS NOT A SURVEY. THIS MAP IS FOR INFORMATIONAL PURPOSES ONLY. PIONEER TITLE COMPANY MAKES NO REPRESENTATIONS AS TO THE ACCURACY OF THE MAP AND ASSUMES NO LIABILITY FOR IT.

1. This map is made from data supplied by the County of Adams, Colorado. All County and State records are subject to change without notice. Pioneer Title Company is not responsible for errors or omissions.



THIS IS NOT A SURVEY. THIS MAP IS FOR INFORMATIONAL PURPOSES ONLY. PIONEER TITLE COMPANY MAKES NO REPRESENTATIONS AS TO THE ACCURACY OF THE MAP AND ASSUMES NO LIABILITY FOR IT.

W BAY STREAM CT
W RIVERSIDE DR
W WINTERWOOD LN

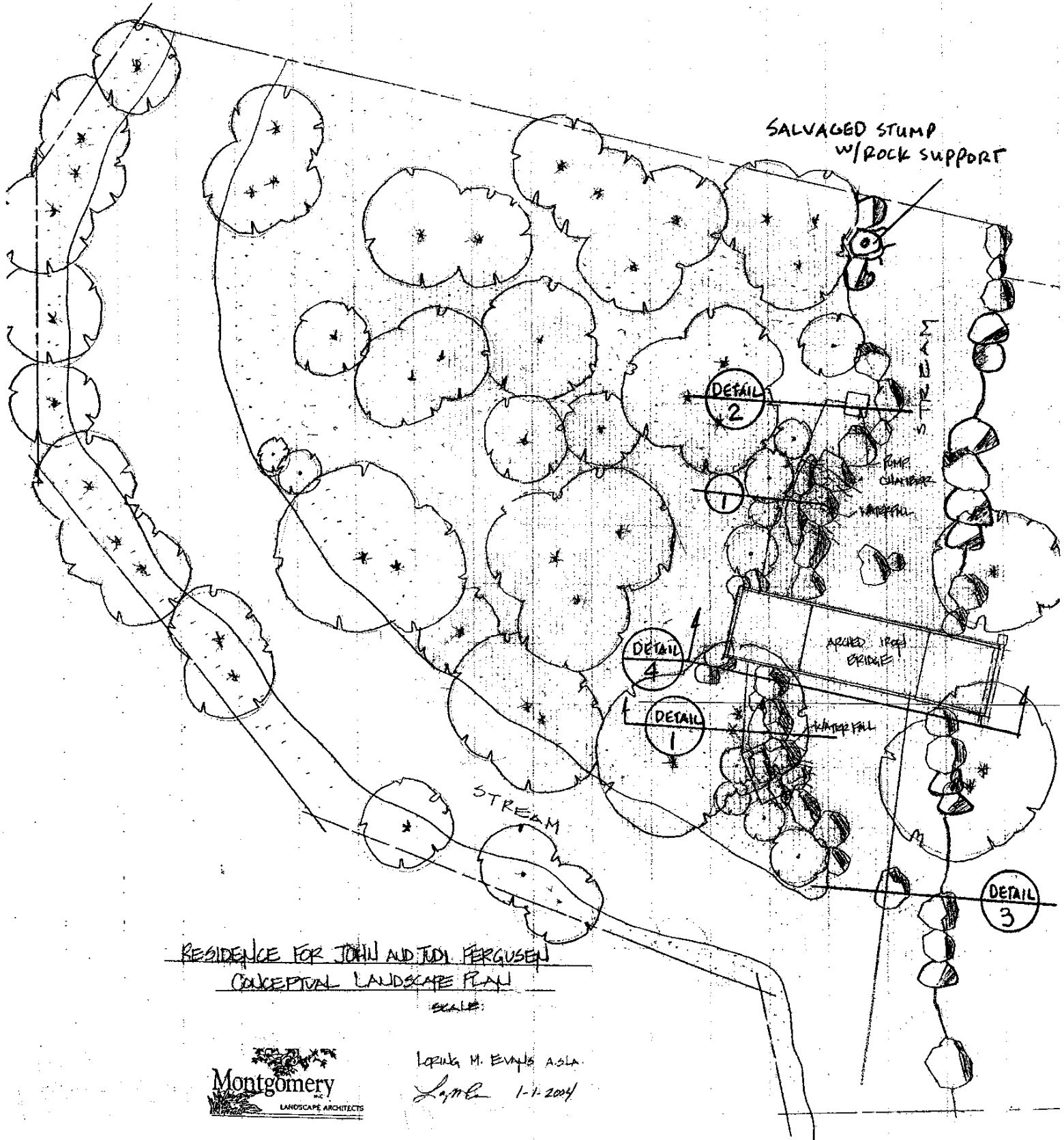
THE RANCHES
THE WOODS
AT RIVERSIDE SUB

SAND 2

Lot numbers and area measurements are provided throughout the map, such as RS 6104, RS 4999, RS 4906, RS 4907, RS 4908, RS 4909, RS 4910, RS 4911, RS 4912, RS 4913, RS 4914, RS 4915, RS 4916, RS 4917, RS 4918, RS 4919, RS 4920, RS 4921, RS 4922, RS 4923, RS 4924, RS 4925, RS 4926, RS 4927, RS 4928, RS 4929, RS 4930, RS 4931, RS 4932, RS 4933, RS 4934, RS 4935, RS 4936, RS 4937, RS 4938, RS 4939, RS 4940, RS 4941, RS 4942, RS 4943, RS 4944, RS 4945, RS 4946, RS 4947, RS 4948, RS 4949, RS 4950, RS 4951, RS 4952, RS 4953, RS 4954, RS 4955, RS 4956, RS 4957, RS 4958, RS 4959, RS 4960, RS 4961, RS 4962, RS 4963, RS 4964, RS 4965, RS 4966, RS 4967, RS 4968, RS 4969, RS 4970, RS 4971, RS 4972, RS 4973, RS 4974, RS 4975, RS 4976, RS 4977, RS 4978, RS 4979, RS 4980, RS 4981, RS 4982, RS 4983, RS 4984, RS 4985, RS 4986, RS 4987, RS 4988, RS 4989, RS 4990, RS 4991, RS 4992, RS 4993, RS 4994, RS 4995, RS 4996, RS 4997, RS 4998, RS 4999, RS 5000.

NOTES:

- 1- THE BRIDGE ELEVATION SHALL BE ABOVE FLOOD PLAIN.
- 2- EXISTING TREES SHALL BE THINNED OUT AND BRANCHES PRUNED.
- 3- ISLAND WILL BE OVERGROWN WITH CREEPING RED FESCUE.
- 4- STUMPS TIPPED OVER BY WIND AND DEBRIS SHALL BE REMOVED
- 5- CONCRETE SHALL BE PLACED & CURED ABOVE HIGH WATER LINE



RESIDENCE FOR JOHN AND JUDI FERGUSEN
CONCEPTUAL LANDSCAPE PLAN

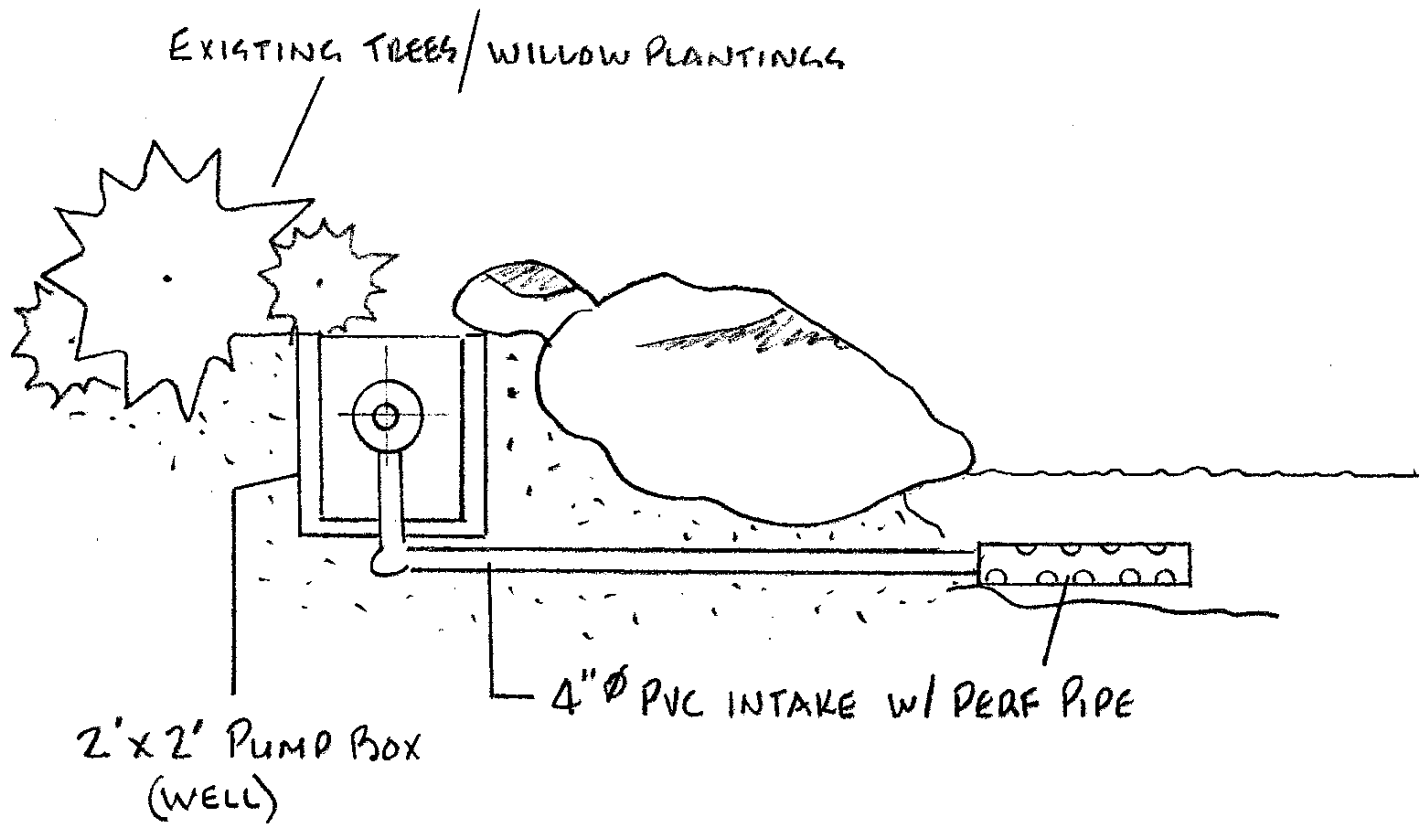
SCALE:



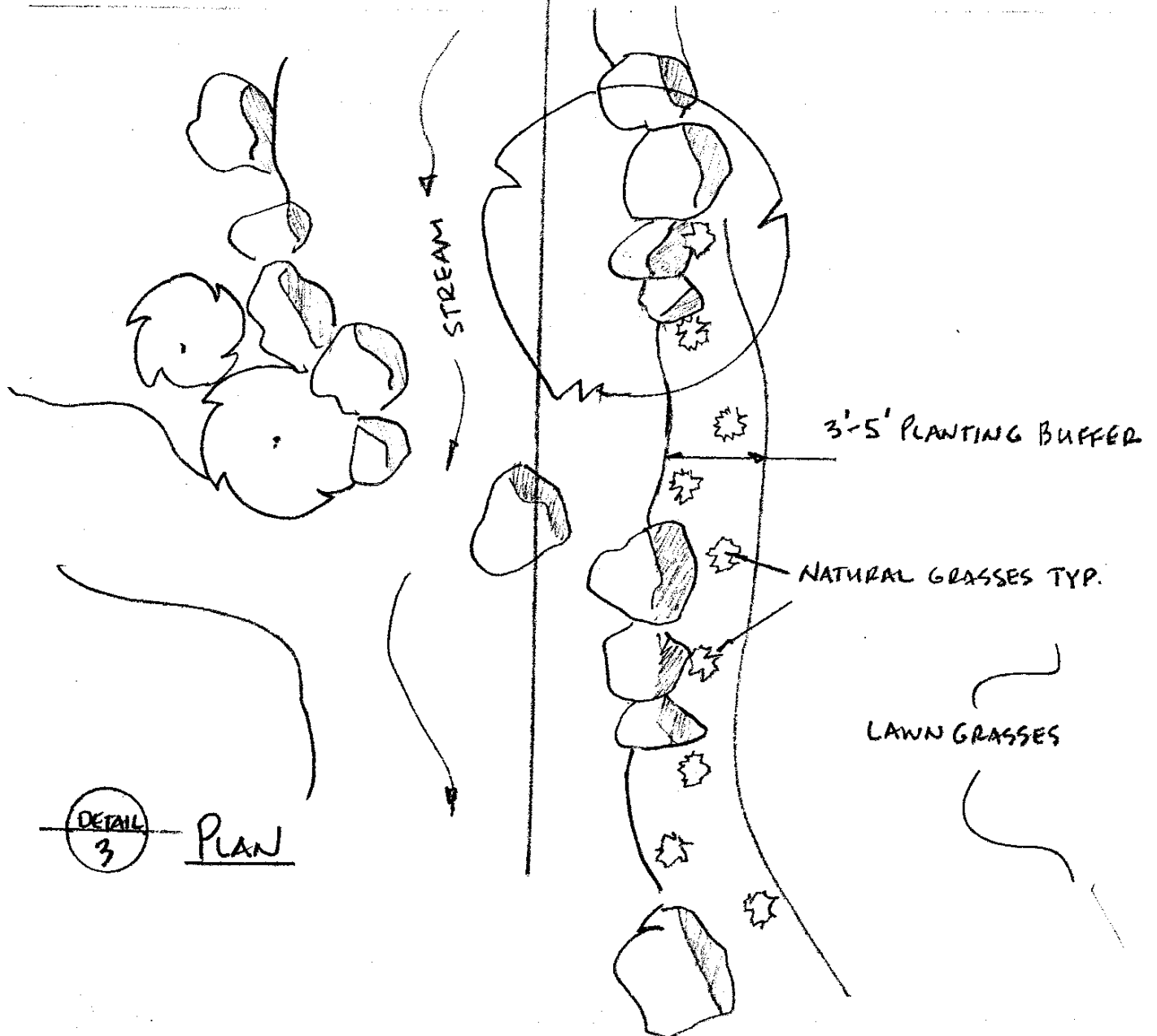
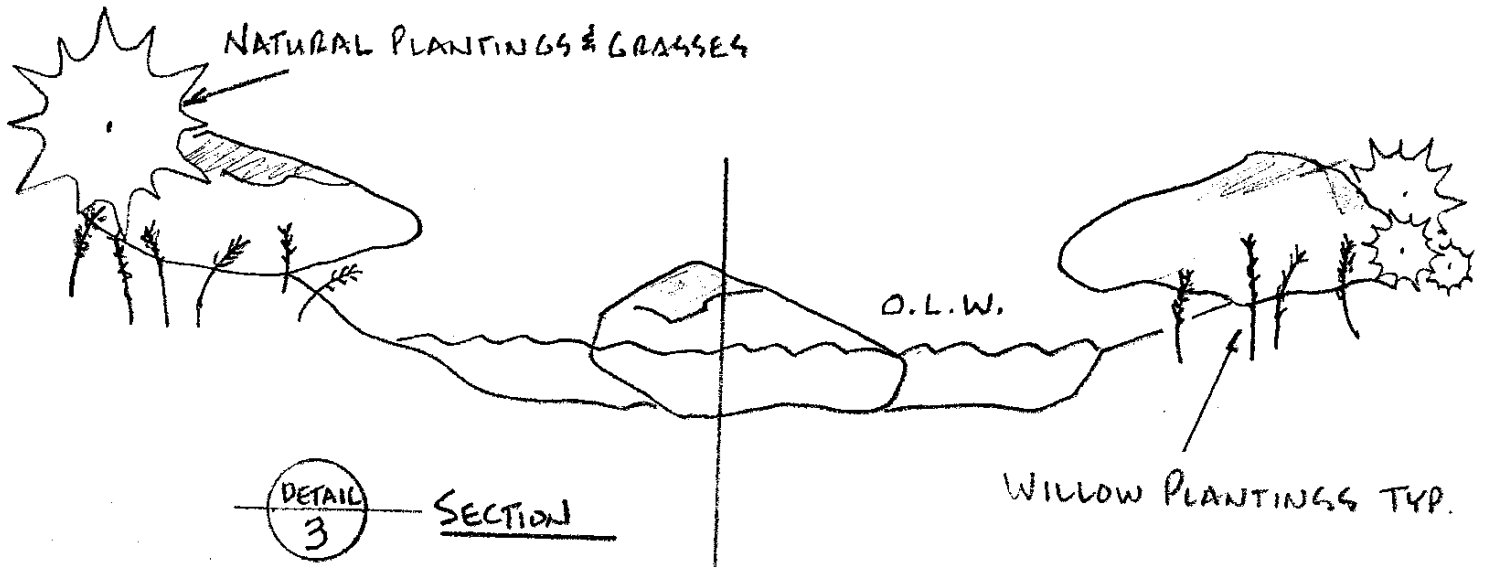
LORNA M. EVANS A.S.L.A.
LME 1-1-2004

DETAIL SECTION

DETAIL
2

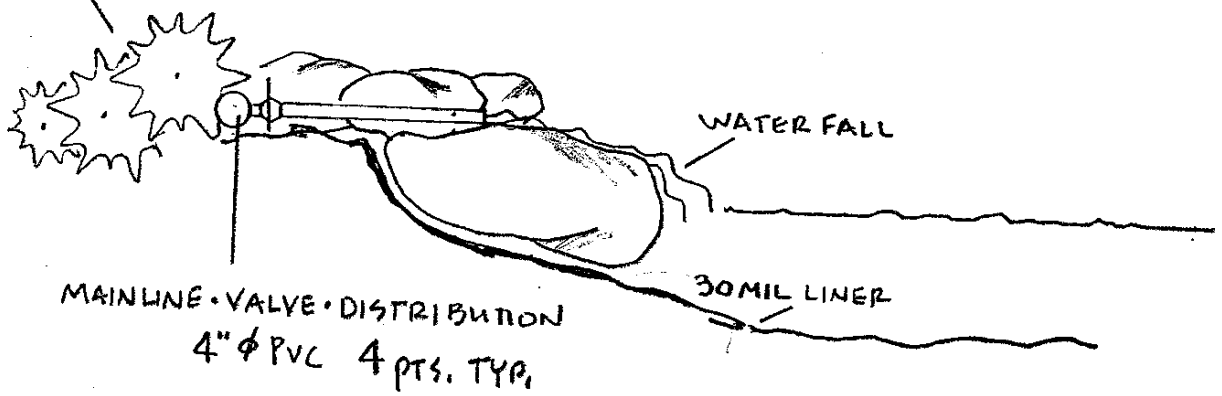


PUMP & INTAKE



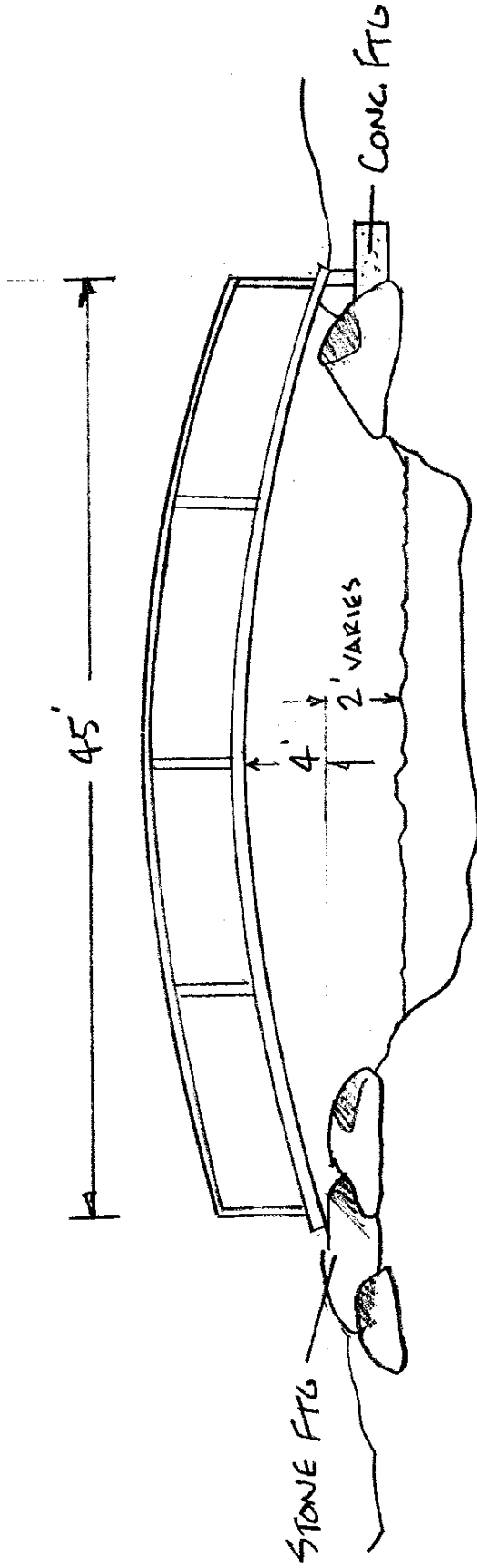
DETAIL SECTION

WILLOW SPRIGS / NATURAL PLANTINGS

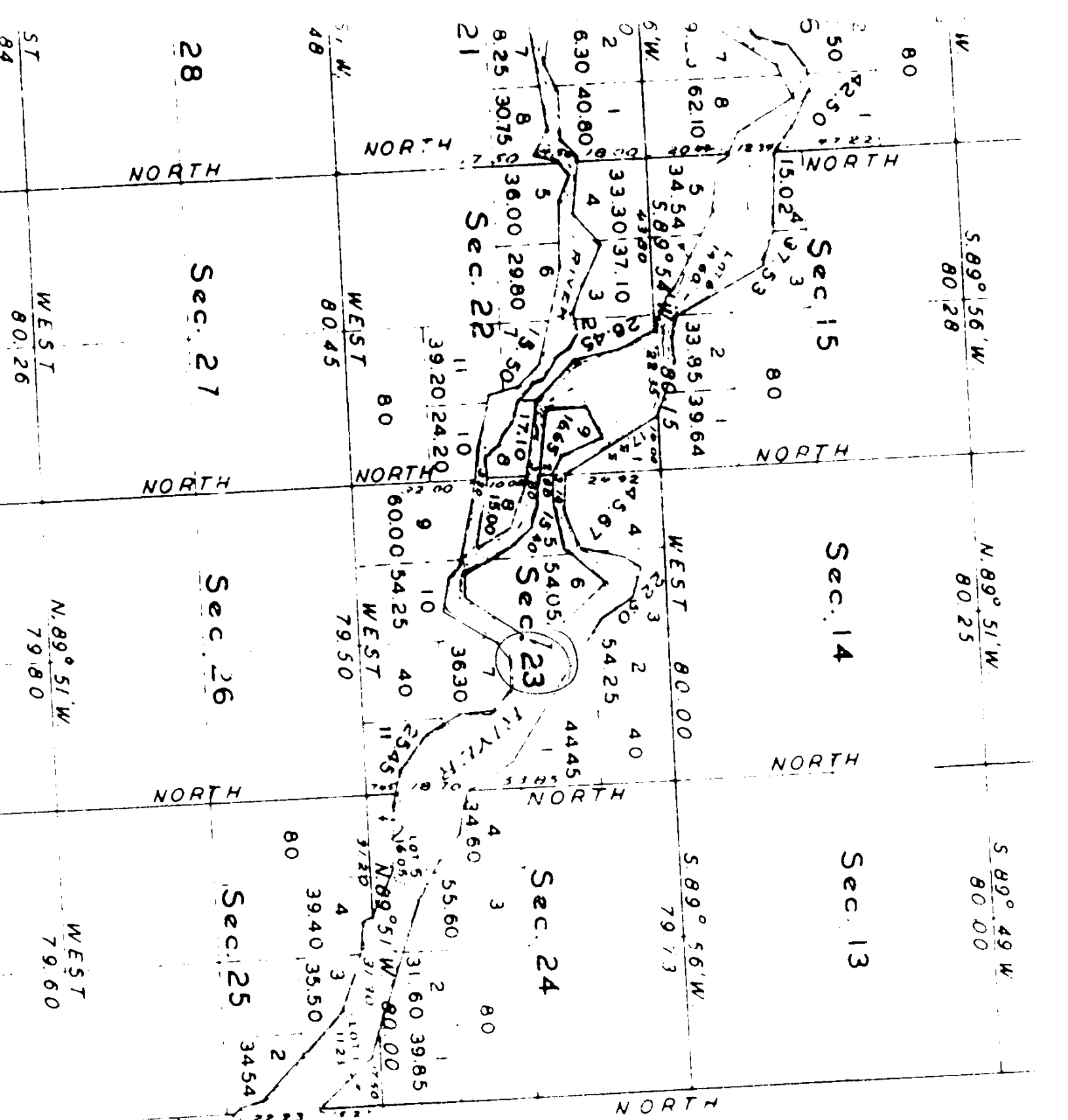


SERVICE LINE / WATERFALL

SECTION
DETAIL
4



ARCHED IRON BRIDGE
45' LONG x 5' WIDE



TAN
RIE

Now
Starting
Right Side
of file.



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

September 21, 2004

JOHN B FERGUSON
PO BOX 140737
BOISE ID 83714

RE: Permit No. 63-31869

Permit Approval Notice

Dear Permit Holder:

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

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

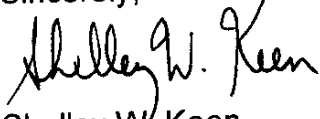
Enclosed is a form entitled 'Instructions for Proof of Beneficial Use.' Please read the instructions carefully since you must take further action to develop this permit into a licensed water right. Also enclosed is a form entitled 'Proof of Beneficial Use.' If your project is already completed, you should complete and submit this form immediately.

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

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

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

Sincerely,

A handwritten signature in black ink that reads "Shelley W. Keen". The signature is written in a cursive style with a large, stylized 'S' and 'K'.

Shelley W. Keen

Water Rights Supervisor

SWK:klt

Enclosure(s)

cc: US DEPT OF INTERIOR

CERTIFICATE OF SERVICE

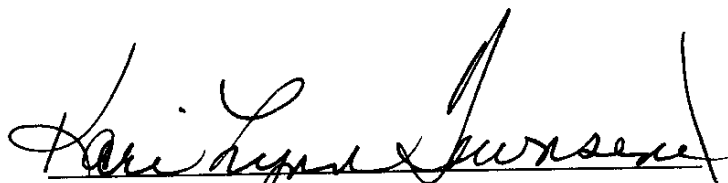
I hereby certify that on September 21, 2004 I mailed a true and correct copy, postage prepaid, of the foregoing PRELIMINARY ORDER(Approved Permit) to the person(s) listed below:

RE: WATER RIGHT NO.

63-31869

**JOHN B FERGUSON
PO BOX 140737
BOISE ID 83714**

**US DEPT OF INTERIOR
1150 N CURTIS RD STE 100
BOISE ID 83706-1234**

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

**Kari Lynn Townsend
Secretary**

**EXPLANATORY INFORMATION
TO ACCOMPANY A
PRELIMINARY ORDER**

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

(Required by Rule of Procedure 730.02)

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

PETITION FOR RECONSIDERATION

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

EXCEPTIONS AND BRIEFS

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

REQUEST FOR HEARING

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

ORAL ARGUMENT

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

CERTIFICATE OF SERVICE

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

FINAL ORDER

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

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

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

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

APPEAL OF FINAL ORDER TO DISTRICT COURT

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

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

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



State of Idaho

DEPARTMENT OF WATER RESOURCES

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

FAX (208) 334-2348

DIRK KEMPTHORNE
Governor

KARL J. DREHER
Director

August 6, 2004

E GAIL MCGARRY
US BUREAU OF RECLAMATION
1150 N CURTIS RD STE 100
BOISE ID 83706-1234

JOHN FERGUSON
PO BOX 140737
BOISE ID 83714

Re: Application for Permit No. 63-31869 in the Name of John Ferguson

Dear Parties:

This letter acknowledges the withdrawal of protest of the above referenced application for permit.

The department will now continue to process this application, subject to certain conditions of approval.

If you have any questions please call this office.

Sincerely,

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

Steve Lester
Water Rights Supervisor

SL:sk

CC: Gene Gibson



United States Department of the Interior

BUREAU OF RECLAMATION
Pacific Northwest Region
1150 North Curtis Road, Suite 100
Boise, Idaho 83706-1234

AUG 05 2004

IN REPLY
REFER TO:

PN-3130
WTR-4.10

RECEIVED

AUG 06 2004

WATER RESOURCES
WESTERN REGION

Mr. John Westra
Regional Manager
Idaho Department of Water Resources
Western Region
2735 Airport Way
Boise, ID 83705

Subject: Application for Permit No. 63-31869 in the Name of John Ferguson

Dear Mr. Westra:

Based upon the July 16, 2004, letter from Mr. John Ferguson, I understand the applicant has agreed to inclusion of the following approval condition on any permit or license issued pursuant to the pending Application for Permit No. 63-31869:

Water used under this water right is limited to the beneficial use for aesthetic purposes for two existing water falls occupying a combined surface area of not more than 100 square feet. There can be no enlargement of the surface area of the existing water falls and use of water under this water right.

Pursuant to your July 26, 2004, letter, I understand the Idaho Department of Water Resources (IDWR) will include the above condition on any permit or license issued for 63-31869. Based upon the representations of the applicant and IDWR, please accept this letter as formal notice of withdrawal of the protest filed by the Bureau of Reclamation to the above-referenced application. This withdrawal is subject, of course, to Reclamation's right to reassert its protest in the future in the event the above condition is not included on any subsequent permit and license for 63-31869.

If you have any questions, please feel free to contact me at 208-378-5306.

Sincerely,

E. Gail McGarry
Program Manager
Water Rights and Acquisition

cc: Mr. John Ferguson
6451 W. Gowen Road
Boise, ID 83709

Mr. Gene Gibson
15409 Cartwright Road
Boise, ID 83714



State of Idaho

DEPARTMENT OF WATER RESOURCES

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

FAX (208) 334-2348

July 26, 2004

DIRK KEMPTHORNE
Governor

KARL J. DREHER
Director

Gail McGarry, Manager Water Rights & Acquisition
Bureau of Reclamation
1150 North Curtis Rd Suite 100
Boise, ID 83706

John B Ferguson
Concrete Placing Co., Inc.
6451 W Gowen Rd
Boise ID 83709

RE: Application for Permit 63-31869—John Ferguson
Conditions of Approval

Dear Ms. McGarry and Mr. Ferguson:

In response to the Bureau of Reclamation's Letter of 7/15/04 and Mr. Ferguson's letter of 7/22/04, The Department will place the following approval condition on the above potential permit as part of a protest settlement by the parties:

Water used under this water right is limited to the beneficial use for aesthetic purposes for two excising water falls occupying a combined surface area of not more than 100 square feet. There can be no enlargement of the surface area of the excising water falls and use of water under this water right.

If a protest agreement is reached by the parties, please submit a protest withdrawal. Once the withdrawal is received, the Department will continue processing the application..

Should you have any questions, please contact me at the Western Regional Office, phone 334-2190.

Sincerely,

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

John Westra
Manager, Western Region

cc; Gene Gibson



CONCRETE PLACING CO., INC.



6451 West Gowen Road ■ Boise, Idaho 83709 ■ (208) 362-2100 ■ Fax (208) 362-2220

July 22, 2004

RECEIVED

JUL 23 2004

WATER RESOURCES
WESTERN REGION

E. Gail McGarry
Bureau of Reclamation
1150 N Curtis Road, Suite 100
Boise, ID 83706-1234

SUBJECT: Application for Permit No. 63-31869 in the Name of John Ferguson

Dear Gail McGarry:

I received your letter dated July 15, 2004, concerning my water right permit application and the tentative settlement reached by the Bureau Of Reclamation and my representative Mr. Gibson. The following conditions to be included in my water right permit stated in your letter:

Water used under this water right is limited to the beneficial use for aesthetic purposes for two existing water falls occupying a combined surface area of not more than 100 square feet. There can be no enlargement of the surface area of existing water falls and use of water under this water right.

are acceptable to me. I will forward a copy of this letter to Mr. John Westra, IDWR Western Region Manager and Mr. Gene Gibson.

If you have any questions please feel free to contact me at (208) 362-2100.

Sincerely,

John B. Ferguson

cc ✓ Mr. John Westra
Mr. Gene Gibson

JBF/sp

Westra, John

From: Keen, Shelley
Sent: Friday, July 16, 2004 2:27 PM
To: Westra, John
Subject: RE: Ferguson Protested Application 63-31869

John,

I think the concept is okay, but we might want to be careful about what is to be 100 square feet. Is it the waterfall, or the pool below the waterfall, or the total water surface area above, in, and below the waterfall?

Shelley

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

From: Westra, John
Sent: Friday, July 16, 2004 1:49 PM
To: Keen, Shelley
Subject: Ferguson Protested Application 63-31869

Shelley

This application is protested by BOR. They are will to withdraw their protest if the following condition of approval is added:

"Water used under this water right is limited to the beneficial use for aesthetic purposes for 2 existing water falls occupying a combined surface area of not more than 100 square feet. There can be no enlargement of the surface area of the existing water falls and use of water under this right."

I don't think this verbiage would be a problem, but wanted to run it by you for input.
Have good weekend, stay cool

John W.



IN REPLY
REFER TO:

PN-3130
WTR-4.10

Mr. John Ferguson
P.O. Box 140737
Boise, ID 83714

United States Department of the Interior

BUREAU OF RECLAMATION
Pacific Northwest Region
1150 North Curtis Road, Suite 100
Boise, Idaho 83706-1234

JUL 15 2004

RECEIVED

JUL 16 2004

WATER RESOURCES
WESTERN REGION

Subject: Application for Permit No. 63-31869 in the Name of John Ferguson

Dear Mr. Ferguson:

This letter is a follow-up to the prehearing conference held on July 8, 2004, concerning your Application for Water Right Permit No. 63-31869. At the prehearing conference, your representative, Mr. Gene Gibson, and the Bureau of Reclamation reached a tentative settlement concerning Reclamation's protest to your application. Pursuant to our settlement discussions, Reclamation tentatively agreed to withdraw its protest to your application provided that your water right permit and license contain a condition to prevent against future enlargements of the proposed water right. Reclamation agreed to draft the proposed condition and submit it to you and the Idaho Department of Water Resources (IDWR) for review. Reclamation proposes that the following condition be placed in any permit and license issued for Permit No. 63-31869:

Water used under this water right is limited to the beneficial use for aesthetic purposes for two existing water falls occupying a combined surface area of not more than 100 square feet. There can be no enlargement of the surface area of the existing water falls and use of water under this water right.

If the proposed condition is acceptable to you, please provide me and Mr. John Westra, the IDWR Western Region Manager, with written confirmation of your acceptance. Upon receipt of written confirmation from Mr. John Westra that IDWR will include the proposed condition in the permit and license for Permit No. 63-31869, Reclamation will withdraw its protest to your application. For your convenience, I am also sending a copy of this letter to Mr. Gene Gibson.

If you have any questions, please feel free to contact me at 208-378-5306.

Sincerely,

E. Gail McGarry
Program Manager
Water Rights and Acquisition

cc: Mr. John Westra
Regional Manager
Idaho Department of Water Resources
Western Region
2735 Airport Way
Boise, ID 83705

Mr. Gene Gibson
15409 Cartwright Road
Boise, ID 83714

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

Conducted by: John Westra

NAME

ADDRESS

PHONE

Alex Viscusi Solicitor's Office 334-1911

Gene Gibson 15409 Cartwright Rd. 83714 938-4093

RUTH PAGE BOR- Regional Office 378-5382

Marl Howard BOIR - Regional office 378-5003

Gail McGarry " 378-5306

View 1



BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE
STATE OF IDAHO

IN THE MATTER OF APPLICATION)
FOR PERMIT NO. 63-31869 IN THE)
NAME OF JOHN FERGUSON)
_____)

**NOTICE OF PREHEARING
CONFERENCE**

On January 23, 2004 John Ferguson filed with the Department of Water Resources (IDWR) an application for permit to appropriate the public waters of the State of Idaho. The application was protested by the US. Bureau of Reclamation.

IDWR has scheduled a prehearing conference for the protest to be held on **Thursday, July 8, 2004 at 10:00 a.m. at the Idaho Department of Water Resources, Western Region, 2735 Airport Way, Boise, Idaho 83705**. The conference will be held in accordance with provisions of Chapters 2 and 17, Title 42, and Chapter 52, Title 67, of the Idaho Code, the adopted Rules of Procedure of the Department of Water Resources, and Rules 40 and 45 of the adopted Rules of Water Appropriation of the Department of Water Resources.

The conference will be conducted in a facility that satisfies the accessibility requirements of the Americans with Disabilities Act. If you require special accommodations in order to attend, participate in or understand the conference, please advise IDWR at least ten (10) days prior to the conference.

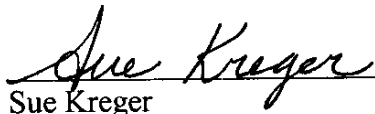
Dated this 11th day of May 2004,



JOHN WESTRA
Western Regional Manager

CERTIFICATE OF MAILING

I hereby certify that on the 11th day of May 2004, I mailed a true and correct copy, postage prepaid, of the Notice of Prehearing Conference to those listed:

A handwritten signature in cursive script, reading "Sue Kreger", is written over a horizontal line.

Sue Kreger
Administrative Assistant

JOHN FERGUSON
PO BOX 140737
BOISE ID 83714

US BUREAU OF RECLAMATION
E GAIL MCGARRY PN 1300
1150 N CURTIS RD STE 100
BOISE ID 83706-1234

KATHLEEN CARR ATTORNEY
BOR OFFICE OF FIELD SOLICITOR
FEDERAL BLDG RM 365
550 W FORT ST
BOISE ID 83724

CONFERENCE AND HEARING PROCEDURE

APPLICATION FOR PERMIT

Section 42-203A, Idaho Code, requires the department to consider the following issues in connection with an application for permit:

- 1) Will the proposed appropriation injure other water rights?
- 2) Is the proposed water supply sufficient for the purpose for which it is sought to be appropriated?
- 3) Was the application made in good faith or for delay or speculative purposes?
- 4) Does the applicant have sufficient financial resources with which to complete the proposed project?
- 5) Is the proposed appropriation in the local public interest, which is defined as the affairs of the people in the area directly affected by the proposed use?
- 6) Is the proposed use contrary to conservation of water resources within the state of Idaho?

BURDEN OF PROOF

The applicant has the initial burden of proof on issues 1, 2, 3, 4, & 6 above and must provide evidence for the department to evaluate these criteria.

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

PROCEDURE

The department generally conducts an informal conference with the parties to determine the issues and to try to settle a protested matter before a hearing is scheduled. If a hearing is held, the department will issue a written decision based on the hearing record.

CONFERENCE

The purpose of a prehearing conference is to provide the opportunity for the parties and the department to familiarize themselves with a contested matter and to attempt to resolve the matter. At the conference, the department may also formulate and simplify the issues, identify documents to avoid unnecessary proof, exchange proposed exhibits or prepared testimony, limit witnesses, discuss settlement offers, schedule hearings, establish procedure at hearings and address other matters that may expedite orderly conduct and disposition of the proceeding or its settlement.

HEARING

The department will tape record the hearing. Copies of a hearing tape are available upon written request and the payment of the cost of reproducing the tape.

The hearing likely will be conducted by a hearing officer appointed by the Director rather than the Director himself. If so, the hearing officer will prepare a preliminary order for the Director's consideration. Parties can file exceptions to a preliminary order, briefs in support of the exceptions or may request oral argument. Parties may seek judicial review of any final order issued by the Director.

Parties may, by written stipulation, waive their right to a preliminary order, particularly when a shortened decision process is desirable or necessary. Such a waiver does not eliminate any rights of the parties in connection with the final order of the Director and judicial review of the order.

EXHIBITS

A party who plans to offer an exhibit as part of the hearing record must provide a copy of the proposed exhibit to the parties and to the hearing officer prior to any scheduled hearing.

AMERICANS WITH DISABILITIES ACT

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



State of Idaho

DEPARTMENT OF WATER RESOURCES

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

FAX (208) 334-2348

May 10, 2004

DIRK KEMPTHORNE
Governor

KARL J. DREHER
Director

JOHN FERGUSON
PO BOX 140737
BOISE ID 83714

Re: Application for Permit No. 63-31869

Dear Applicant:

Enclosed is a copy of a protest filed against the issuance of a permit pursuant to the above-referenced application.

The following are the criteria the department must consider in either approving or denying an application for permit (per Section 42-203A, Idaho Code):

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

Enclosed is a Notice of Prehearing Conference scheduled for Thursday, July 8, 2004 at the Western Region of the Idaho Department of Water Resources, 2735 Airport Way, Boise, Idaho 83705. At the conference, the department will review possibilities for resolution of the protest. If the matter cannot be resolved at that time, a formal hearing will be arranged for a future date.

The department suggests you contact the protestant(s) directly in an effort to determine what is in dispute in the application and to attempt to resolve the protest. Direct, sincere conversation between the parties prior to initiation of formal proceedings can often resolve a protest.

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

Sincerely,

JOHN WESTRA
Western Regional Manager

JW:sk

Enclosure: Copy of protest(s)
Notice of Prehearing Conference



State of Idaho

DEPARTMENT OF WATER RESOURCES

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

FAX (208) 334-2348

May 10, 2004

DIRK KEMPTHORNE
Governor

KARL J. DREHER
Director

US BUREAU OF RECLAMATION
E GAIL MCGARRY PN 1300
1150 N CURTIS RD STE 100
BOISE ID 83706-1234

Re: Application for Permit No. 63-31869 in the Name of John Ferguson

Dear Protestant:

This office acknowledges receipt of your protest to the issuance of a permit pursuant to the above referenced application.

The following are the criteria the department must consider in either approving or denying an application for permit (Section 42-203A, Idaho Code):

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

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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 prior to the prehearing conference. Direct, sincere conversation between the parties prior to initiation of formal proceedings can often resolve a protest.

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

Sincerely,

JOHN WESTRA
Western Regional Manager

JW:sk

Encl: Copy of Application
Notice of Prehearing Conference



State of Idaho

DEPARTMENT OF WATER RESOURCES

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

May 10, 2004

DIRK KEMPTHORNE
Governor

KARL J. DREHER
Director

KATHLEEN CARR ATTORNEY
BOR OFFICE OF FIELD SOLICITOR
FEDERAL BLDG RM 365
550 W FORT ST
BOISE ID 83724

Re: Application for Permit No. 63-31869 in the Name of John Ferguson

Dear Protestant:

This office acknowledges receipt of your protest to the issuance of a permit pursuant to the above referenced application.

The following are the criteria the department must consider in either approving or denying an application for permit (Section 42-203A, Idaho Code):

1. Will the proposed use reduce the quantity of water under existing water rights?
2. Is the proposed water supply insufficient for the purposes intended?
3. Is the application made in good faith or for delay or speculative purposes?
4. Has the applicant sufficient financial resources with which to complete the project?
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At the conference, the department will review possibilities for resolution of the protest. If the matter cannot be resolved at that time, a formal hearing will be arranged for a future date.

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 prior to the prehearing conference. Direct, sincere conversation between the parties prior to initiation of formal proceedings can often resolve a protest.

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

Sincerely,

JOHN WESTRA
Western Regional Manager

JW:sk

Encl: Copy of Application
Notice of Prehearing Conference

RECEIVED
MAY 04 2004
WATER RESOURCES
WESTERN REGION

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

RECEIVED
MAY 03 2004
Department of Water Resources

NOTICE OF PROTEST

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

1. Matter being protested Application for Permit No. 63-31869 in the name of John B. Ferguson, P.O. Box 140737, Boise ID 83714

2. Name of Protestant United States Department of Interior Bureau of Reclamation

3. Protestant's representative for service (if different than Protestant)
E. Gail McGarry, Program Manager, Water Rights and Acquisitions, Bureau of Reclamation, Pacific Northwest Region

4. Service mailing address
E. Gail McGarry, PN-3100, Bureau of Reclamation, 1150 North Curtis Road, Suite 100, Boise, ID 83706-1234

5. Service telephone number (208)378-5306

6. Basis of protest (including statement of facts and law upon which the protest is based)
Proposed use will cause injury to Reclamation's Boise Project water rights.

7. What would resolve your protest?
Demonstration of no additional conveyance or evaporation losses from the proposed diversion.

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

Signed this 3rd day of May, 2004

United States, Protestant

E. Gail McGarry

PROTESTANT'S REPRESENTATIVE

Certificate of Service

The undersigned does hereby certify that on this 3rd day of May, 2004, he or she caused a true and correct copy of the Protest Application for Permit No. 63-31869 transmitted by the following means:

Original hand delivered (w/protest fee) to:
Idaho Department of Water Resources
Attn: Director
1301 North Orchard
Boise, Idaho 83706-2237

U.S. mail to:
John B. Ferguson
P.O. Box 140737
Boise, ID 83714

Katy Loomis

State of Idaho
Department of Water Resources

RECOMMENDATION OF WATERMASTER

Application Number: 63-31869Applicant's Name: John Ferguson

Watermaster's Recommendation:

a) ☐ I do not oppose approval of this application.b) ☒ I do not oppose approval of this application if it is conditioned as follows:

Standard watermaster conditions, applicant
needs to mitigate evaporation loss and
the season of use should be limited to
the irrigation season since the water

c) ☐ I oppose approval of this application for the following reasons:

in the river after the irrigation season
belongs to the USBR & Fish & Game and
not subject to appropriation unless
applicant can mitigate or make arrange-
ment with those agencies.

d) Additional Comments: May need rental pool water if available,
for all the mitigation.

Dated this 29 day of April, 2004Water District Number: 63

Watermaster's Signature

Lee Lino

The Idaho Statesman

RECEIVED

APR 27 2004

P.O. Box 40, Boise, Idaho 83707-0040

LEGAL ADVERTISING PROOF OF PUBLICATION

WATER RESOURCES
WESTERN REGION

Account #	DTI#	Identification	Amount
047628	1066286	APPLICATION	\$117.00
Attention:	P.O. #	Run Dates	
SUE KREGER		APRIL 15, 22, 2004	
IDAHO DEPT. WATER RESOURCES WEST 2735 AIRPORT WY. BOISE, ID 83705			Number of Lines 2 X 32
			Affidavit 1
			Legal # 19085

LEGAL NOTICE

The following application(s) have been filed to appropriate the public waters of the State of Idaho:
63-31869
JOHN B FERGUSON
PO BOX 140737
BOISE ID 83714

Point(s) of Diversion L6 (SWNE) S23 T04N R01E
ADA County Source BOISE RIVER

Tributary To SNAKE RIVER

Use: AESTHETIC

Total Diversion:

01/01 To 12/31 0.2 CFS

Date Filed: 01/23/2004

Place Of Use: AESTHETIC

0.2 CFS

T04N R01E S23 SWNE Lot 6

Remark:

Water is diverted from slough of the Boise River also known as Riverside Creek to create water falls along the banks of existing channel. Permits will be subject to all prior water rights. Protests may be submitted based on the criteria of Sec 42-203A, Idaho Code. Any protest against the approval of this application must be filed with the Director, Dept. of Water Resource, Western Region, 2735 Airport Wy, Boise ID 83705 together with a protest fee of \$25.00 for each application on or before 05/03/2004. The protestant must also send a copy of the protest to the applicant.

KARL J DREHER, Director

Pub. Apr. 15, 22, 2004

19085

JANICE HILDRETH, being duly sworn, deposes and says: That she is the Principal Clerk of *The Idaho Statesman*, a daily newspaper printed and published at Boise, Ada County, State of Idaho, and having a general circulation therein, and which said newspaper has been continuously and uninterruptedly published in said County during a period of twelve consecutive months prior to the first publication of the notice, a copy of which is attached hereto: that said notice was published in *The Idaho Statesman*, in conformity with Section 60-108, Idaho Code, as amended, for:

TWO

☒ consecutive weekly ☐ single
☐ consecutive daily ☐ odd skip
insertion(s)

beginning issue of: APRIL 15, 2004

ending issue of: APRIL 22, 2004

Janice Hildreth

STATE OF IDAHO)
.ss

COUNTY OF ADA)

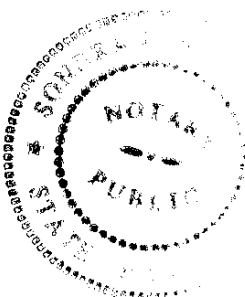
On this 22 day of APRIL in the year of 2004 before me, a Notary Public, personally appeared before me Janice Hildreth known or identified to me to be the person whose name subscribed to the within instrument, and being by me first duly sworn, declared that the statements therein are true, and acknowledged to me that she executed the same.

Dorenda Z Brightman

Notary Public for Idaho

Residing at: Boise, Idaho

My Commission expires: 6/20/06



Kreger (Taylor), Sue

From: Kreger (Taylor), Sue
Sent: Thursday, April 08, 2004 2:49 PM
To: 'eleitzin@idfg.state.id.us'
Cc: Kreger (Taylor), Sue

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

April 8, 2004

ERIC LEITZINGER, IDFG
PO BOX 25
BOISE ID 83707

Re: Applications for Permit

Dear Eric:

Attached are copies of one or more applications that may be of interest to you. Please review the application(s) and submit any comments you may have.

This office normally completes the processing of an application within a six-week period and is required to take final action shortly thereafter. However, if your agency desires to file a formal protest against the approval of any of these applications, your written protest along with the \$25.00 protest fee for each application protested, must be received in this office by April 26, 2004.

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

Sincerely,

Sue Kreger
ID Dept Water Resources

63-31869

4/8/2004

Kreger (Taylor), Sue

From: Kreger (Taylor), Sue
Sent: Thursday, April 08, 2004 3:03 PM
To: WD63 (E-mail)
Cc: Kreger (Taylor), Sue
Subject: comment letter

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

April 8, 2004

LEE SISCO
WATERMASTER DIST. NO. 63
6616 OVERLAND RD
BOISE ID 83709

Re: Application(s) for Water Right(s)

Dear Watermaster:

Attached are copies of one or more applications. Also attached is a form for your recommendation concerning these application(s).

Please review the application(s) that are in your area. We must have your comments within two weeks. If you have any questions or need information, feel free to contact this office at 334-2190.

Sincerely,

Sue Kreger
(208) 334-2190
Id Dept Water Resources
skreger@idwr.state.id.us



63-31869.pdf



Application.pdf



Copy of
commendation of Wa



State of Idaho

DEPARTMENT OF WATER RESOURCES

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

DIRK KEMPTHORNE
Governor

KARL J. DREHER
Director

April 8, 2004

CORPS OF ENGINEERS
304 N 8TH ROOM 140
BOISE ID 83702-5820

Re: Water Right Application

Enclosed is a copy of an application(s) that may be of interest to you. Please review the application(s) submit any comments you may have.

This office normally completes the processing of an application within a six-week period and is required to take final action shortly thereafter. However, if you desire to file a formal protest against the approval of this application(s), your written protest along with the \$25.00 protest fee must be received in this office by May 3, 2004.

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

Sincerely,

A handwritten signature in cursive script, appearing to read 'Sue', is written over a horizontal line.

Sue Kreger
Administrative Assistant

Encl. Copy of Application



State of Idaho

DEPARTMENT OF WATER RESOURCES

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

FAX (208) 334-2348

DIRK KEMPTHORNE
Governor

KARL J. DREHER
Director

April 8, 2004

MEADOW CREEK HOMEOWNERS ASSN
C/O ONEIL ENTERPRISES
871 E PARKCENTER BLVD
BOISE ID 83706

Re: Water Right Application(s)

Enclosed is a copy of an application(s) that may be of interest to you. Please review the application(s) submit any comments you may have.

This office normally completes the processing of an application within a six-week period and is required to take final action shortly thereafter. However, if you desire to file a formal protest against the approval of this application(s), your written protest along with the \$25.00 protest fee must be received in this office by May 3, 2004.

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

Sincerely,

A handwritten signature in cursive script, appearing to read 'Sue', is written over a horizontal line.

Sue Kreger
Administrative Assistant

Encl. Copy of Application



State of Idaho

DEPARTMENT OF WATER RESOURCES

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

FAX (208) 334-2348

DIRK KEMPTHORNE
Governor

KARL J. DREHER
Director

April 8, 2004

THE WOODS ASSN INC
C/O JOHN EVANS
4920 RIVER VISTA WY
BOISE ID 83703

Re: Water Right Application(s)

Enclosed is a copy of an application(s) that may be of interest to you. Please review the application(s) submit any comments you may have.

This office normally completes the processing of an application within a six-week period and is required to take final action shortly thereafter. However, if you desire to file a formal protest against the approval of this application(s), your written protest along with the \$25.00 protest fee must be received in this office by May 3, 2004.

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

Sincerely,

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

Sue Kreger
Administrative Assistant

Encl. Copy of Application

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

April 07, 2004

Legal Notice Department
IDAHO STATESMAN
PO BOX 40
BOISE ID 83707

RE: Application for Water Right Nos. 63-31877 and 63-31869 and
Application for Transfer No. 71075

Dear LEGAL NOTICE DEPARTMENT:

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

An affidavit of publication must be submitted to the Department along with the publication bill. Please send the affidavit and bill to this office before 05/03/2004. Your cooperation is appreciated.

Sincerely

Sue Kreger
Administrative Assistant

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

63-31869

JOHN B FERGUSON
PO BOX 140737
BOISE ID 83714

Point(s) of Diversion L6 (SWNE) S23 T04N R01E ADA County Source BOISE RIVER

Tributary To SNAKE RIVER

Use: AESTHETIC 01/01 To 12/31 0.2 CFS

Total Diversion: 0.2 CFS

Date Filed: 01/23/2004

Place Of Use: AESTHETIC

T04N R01E S23 SWNE Lot 6

Remark: Water is diverted from slough of the Boise River also known as Riverside Creek to create water falls along the banks of existing channel.

Permits will be subject to all prior water rights. Protests may be submitted based on the criteria of Sec 42-203A, Idaho Code.

Any protest against the approval of this application must be filed with the Director, Dept. of Water Resource, Western Region,

2735 Airport Wy, Boise ID 83705 together with a protest fee of \$25.00 for each application on or before 05/03/2004. The protestant must also send a copy of the protest to the applicant.

KARL J DREHER, Director

Published in the Idaho Statesman on April 15 and 22, 2004.