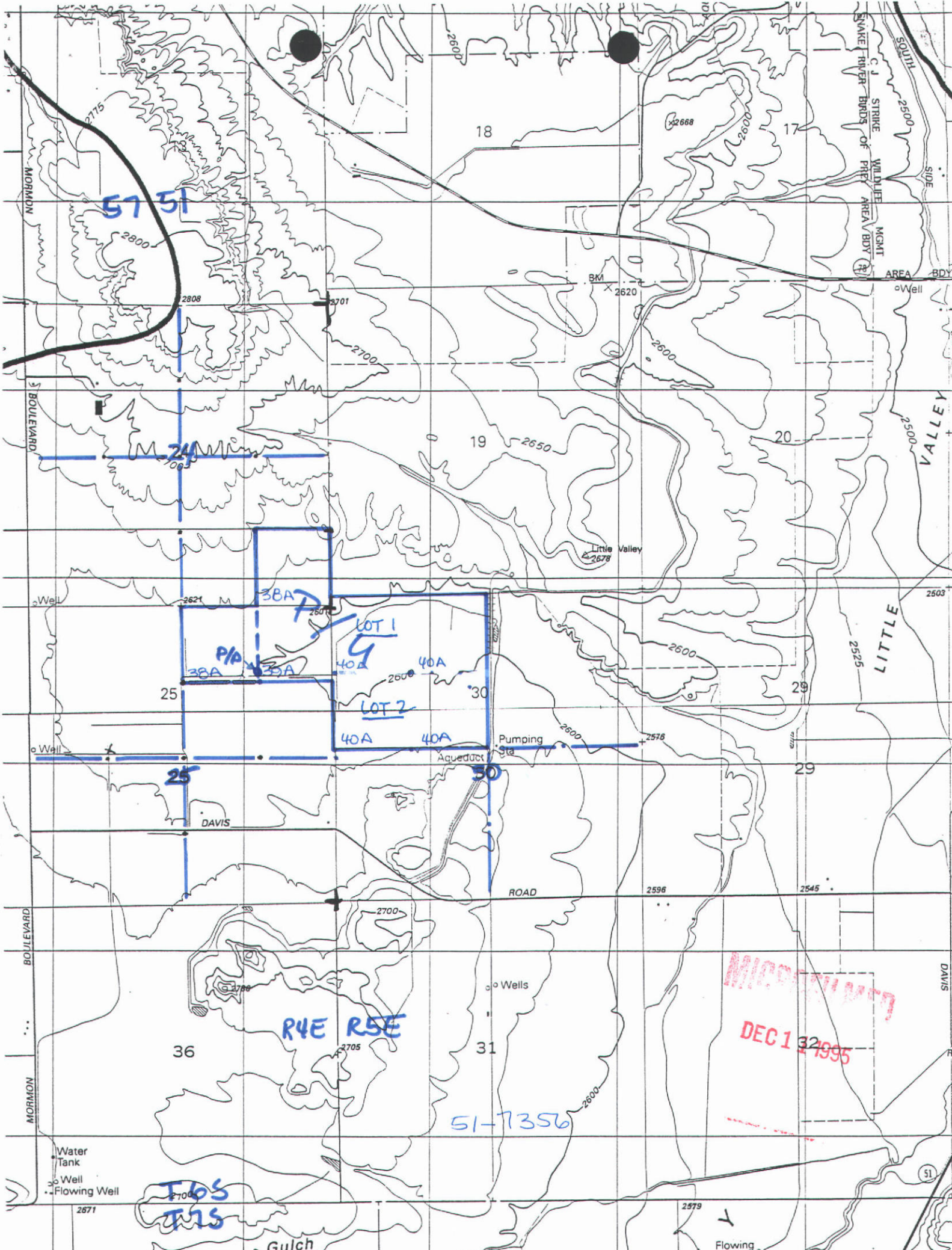




Sec. 24

Sec. 19

Sec. 20

Sec. 25

Sec. 30

Sec. 29

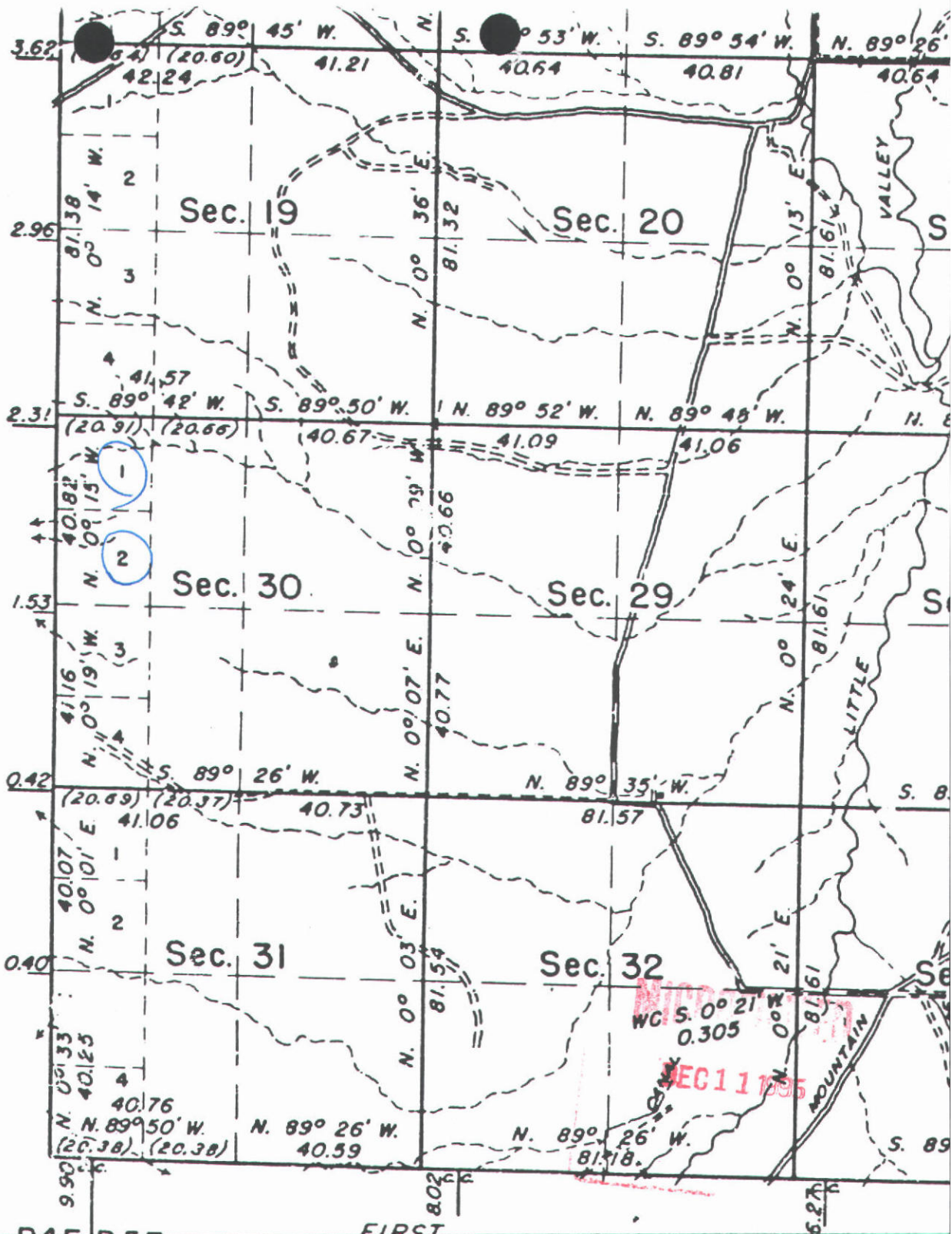
Sec. 36

Sec. 31

Sec. 32

655E

51-7356



11/99

For Office Use Only
\$25 filing fee PAID
Receipt # C065192
Date 10.17.02

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

RECEIVED

OCT 15 2002

Department of Water Resources

ASSIGNMENT OF PERMIT

To change the ownership of a permit

I, Kent Kohring of F. H. H. Inc. hereby assign to Kent Kohring
of, Vice Pres.
1085 Box 140 Bruneda, Id. 83604 (208) 845-2926
(Full Address) (Phone)

All my right, title, and interest in and to Permit No 51-7356 to
appropriate the public waters of the State of Idaho

OR (for partial assignments)

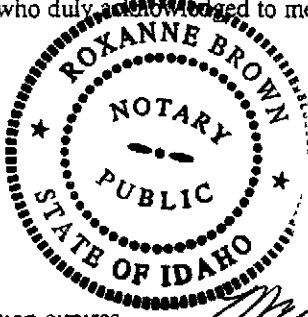
The following described portion of my right, title, and interest in and to for
Permit No _____ to appropriate the public waters of the State of Idaho.
(Describe portion of the application for permit assigned, listing the number of acres in each 40 acre
subdivision, point of diversion location, and amount of the water in cubic feet per second.)

Made this 15 day of Oct., 2002

Kent Kohring
Permit Holder(s)

State of Idaho)
County of Ada)ss

On this 15TH day of October, 2002, personally appeared before me the signer(s) of the above
instrument, who duly acknowledged to me that he (she) (they) executed the same



Roxanne Brown
Notary Public residing at

SEAL

Boise, ID

MICROFILMED

My commission expires May 16, 2003

JUN 05 2003

RECEIVED

JUN 16 1997

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

Department of Water Resources

FOR OFFICE USE ONLY
Amt. of Fee \$: 100.00
Receipt No. W022378
Receipt By: K6
Date Received: 6/12/97

PROOF OF BENEFICIAL USE

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

1. Permit No. 51-07356 Telephone No. 208-845-21062. Name(s) of Permit Holder(s): Tri-Vial Inc.3. Mailing Address: HC 85 Box 139 Bruneau, Id. 836044. Source of Water: Wastewater If GROUNDWATER (well), Date Drilled: mo. ____ / yr. ____

a. Well Driller: _____ Drilling Permit Number: ____ - ____ - ____ - ____

b. OPTIONAL:

Pump Horsepower: _____ Pressure (psi): _____ Dynamic pumping level (ft): _____

5. Use(s) (as authorized by the water right permit):

Domestic (No. of households): _____ Stockwater (No. and type of stock): _____

Irrigation (No. of acres): 275 Other: _____6. Total rate of diversion and/or volume for which proof is submitted: 0.580 cfs OR _____ acre feet

7. Measuring Device Requirement: (refer to the approval conditions on your permit and respond accordingly)

(This question is not optional. Please check either yes or no. Proofs returned not checked accordingly, will be considered incomplete)

Measuring Device: Is a measuring device required?

Yes ____ or No ☒

Has the measuring device been installed?

Yes ____ or No ☒

Flow Measurement Port: Is a flow measurement port required?

Yes ____ or No ☒

Has the measurement port been installed?

Yes ____ or No ☒8. Fee Enclosed: \$ 100.00 (See Fee Schedule on back of the instructions for filing proof of beneficial use)

9. Person to contact to accompany the Department representative during field examination of the water system.

Name: Kent Kohring Telephone Number: 208-845-2926Address: HC 85 Box 140 Bruneau, Id. 83604

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

Signature of permit holder: Kent Kohring Vice Pres Tri-Vial Inc. Date: June 12, 1997
(include your title, if on behalf of company or organization)

MICROFILMED

JUN 12 1997

State of Idaho
Department of Water Resources
Permit To Appropriate Water

NO. 51-07356

Proposed Priority: July 18, 1995

Maximum Diversion Rate:

0.58 CFS

This is to certify, that **TRI-VIAL INC**

HC 85 BOX 139

BRUNEAU ID 83604

has applied for a permit to appropriate water from:

WASTE WATER

tributary of **JACKS CREEK**

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>
IRRIGATION	04/01 to 10/31	0.58 CFS

LOCATION OF POINT(S) OF DIVERSION:

NENE , Sec. 25, Township 06S, Range 04E

NWNE , Sec. 25, Township 06S, Range 04E

OWYHEE County

PLACE OF USE: IRRIGATION

<u>TWN</u>	<u>RGE</u>	<u>SEC</u>	<u>ACRES</u>	<u>ACRES</u>	<u>ACRES</u>	<u>ACRES</u>	<u>TOTAL</u>
06S	04E	24	SESE 38.0				38.0
		25	NENE 39.0	NWNE 38.0			77.0
	05E	30	NENW 40.0	Lot 1(NWNW) 40.0	Lot 2(SWNW) 40.0		160.0
			SENW 40.0				

Total number of acres irrigated: 275.0

CONDITIONS OF APPROVAL AND REMARKS

1. Proof of construction of works and application of water to beneficial use shall be submitted on or before **November 1, 1997**.
2. Subject to all prior water rights.
3. 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.
4. After specific notification by the department, the right holder shall install a suitable measuring device or shall enter into an agreement with the department to determine the amount of water diverted from power records and shall annually report the information to the department.
5. The rate of diversion of water for irrigation under this right and all other water rights on the same land shall not exceed 0.02 cubic feet per second for each acre of land.
6. Any license issued by IDWR pursuant to the right or portion thereof for the use of trust water is subject to a term review of 20 years after the date of this approval to determine availability of water for the use and to re-evaluate the public interest at the end of the term.

APPROVED
DEC 11 1995

State of Idaho
Department of Water Resources

Permit To Appropriate Water

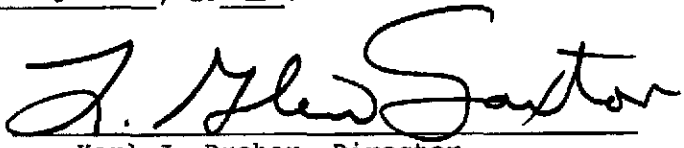
NO. 51-07356

CONDITIONS OF APPROVAL AND REMARKS

7. Diversion and use of water under this right is subject to an annual use fee if rules are subsequently promulgated which provide for the submittal of the fee.
8. The Director retains jurisdiction over this right and may change, add, or remove any requirement as determined to be appropriate.
9. Single point of diversion located on or near the line between NENE & NWNE, S25, T06S, R04E.

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

21st day of November, 1995.

for 
Karl J. Dreher, Director

RECEIVED
DEC 11 1995

RECEIVED
JUL 19 1995

WATER RESOURCES
WESTERN REGION

RECEIVED
NOV 8 1995

Department of Water Resources

Ident. No. 51-07356

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

RECEIVED

JUL 18 1995

APPLICATION FOR PERMIT

To appropriate the public waters of the State of Idaho

Department of Water Resources

1. Name: ~~Tri-Vial~~
TREVAIL INC
Address: HC 85 BOX 139
BRUNEAU ID 83604

208-845-2106

2. Source: WASTE WATER
3. Location of Point of Diversion:

Trib. to: JACKS CREEK
NENE Sec. 25, Township 06S, Range 04E
NWNE Sec. 25, Township 06S, Range 04E
OWYHEE County

4. Water will be used for the following purposes:

Purpose	From	To	CFS	(or)	AF
IRRIGATION	04/01	10/31	0.580		

5. Total quantity to be appropriated is:
0.580 CFS (and/or) AF

6. Proposed diverting works:

- Description of ditches, flumes, pumps, headgates, etc.
PUMP IN DITCH TO SPINKLERS.
- Height of storage dam feet; active reservoir capacity
acre-feet; total reservoir capacity acre-feet; period of
year when water will be diverted to storage: to inclusive.
- Proposed well diameter is inches; proposed depth of well is
feet.
- Is groundwater with a temperature greater than 85F being sought? NO
- If well is already drilled, when?
Drilling Firm
Well was drilled for

7. Time required for the completion of the works and application of
the water to the proposed beneficial use is 2 year(s).

8. Place of Use: IRRIGATION

TWN	RGE	SEC	ACRES	ACRES	ACRES	TOTAL
06S	04E	24	SESE 38			38
		25	NENE 39	NWNE 38		77
6S SE		30	NENW 40	lot 1 (NWNW) 40	lot 2 (SWNW) 40	160
			SENW 40			

data entry error
corrected 8-2-95 gy

Total number of acres irrigated: 275

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

10. Remarks:

Single point of diversion located on or near the line between
NENE & NWNE, S25, T06S, R04E.

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

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

Kent Kohring - Vice pres.
Applicant

Received by CZ Date 7/18/95 Time 11:30 Preliminary check by CZ

Fee \$ 150.00 Receipted by CZ #C033208 Date 7/18/1995
100.00

Publication prepared by AT Date 8-8-95 Published in Owyhee Avalanche

Publication approved AT Date 9-28-95

51-07356

DEC 11 1995

Comments: Date: 7/ 18/ 1995User-ID: CZIMMERM

Subject:

CORPORATE OFFICERS

The officers of Trivail Inc are:

Susan Robertson, President;

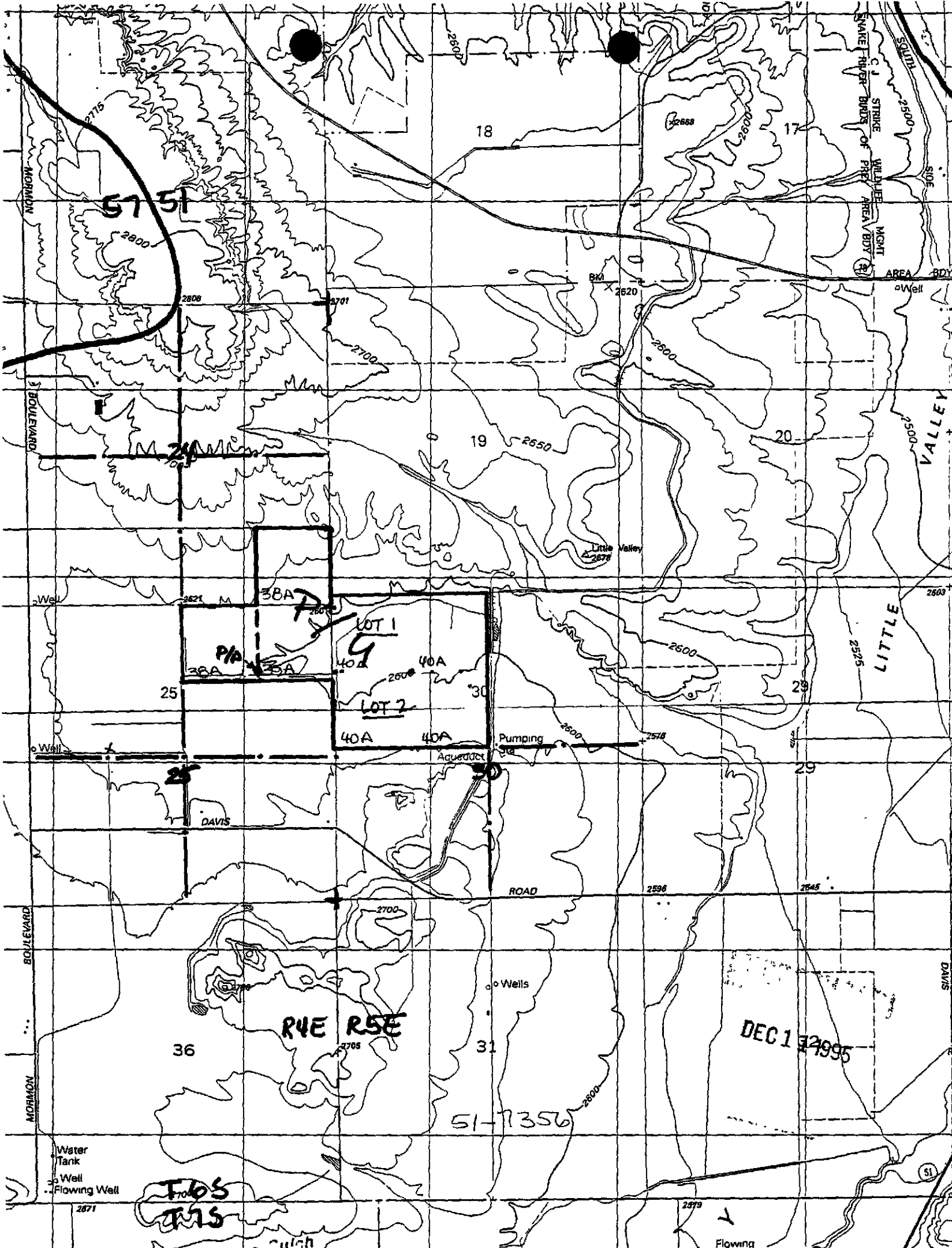
Kent Kohring, Vice President;

Virginia Kohring, Vice President; and

Eugene Robertson, Secretary/Treasurer.

overlapping P/u right 51-2214 same acres

DEC 11 1995



Sec. 24

Sec. 25

Sec. 36

Sec. 19

Sec. 30

Sec. 31

Sec. 20

Sec. 29

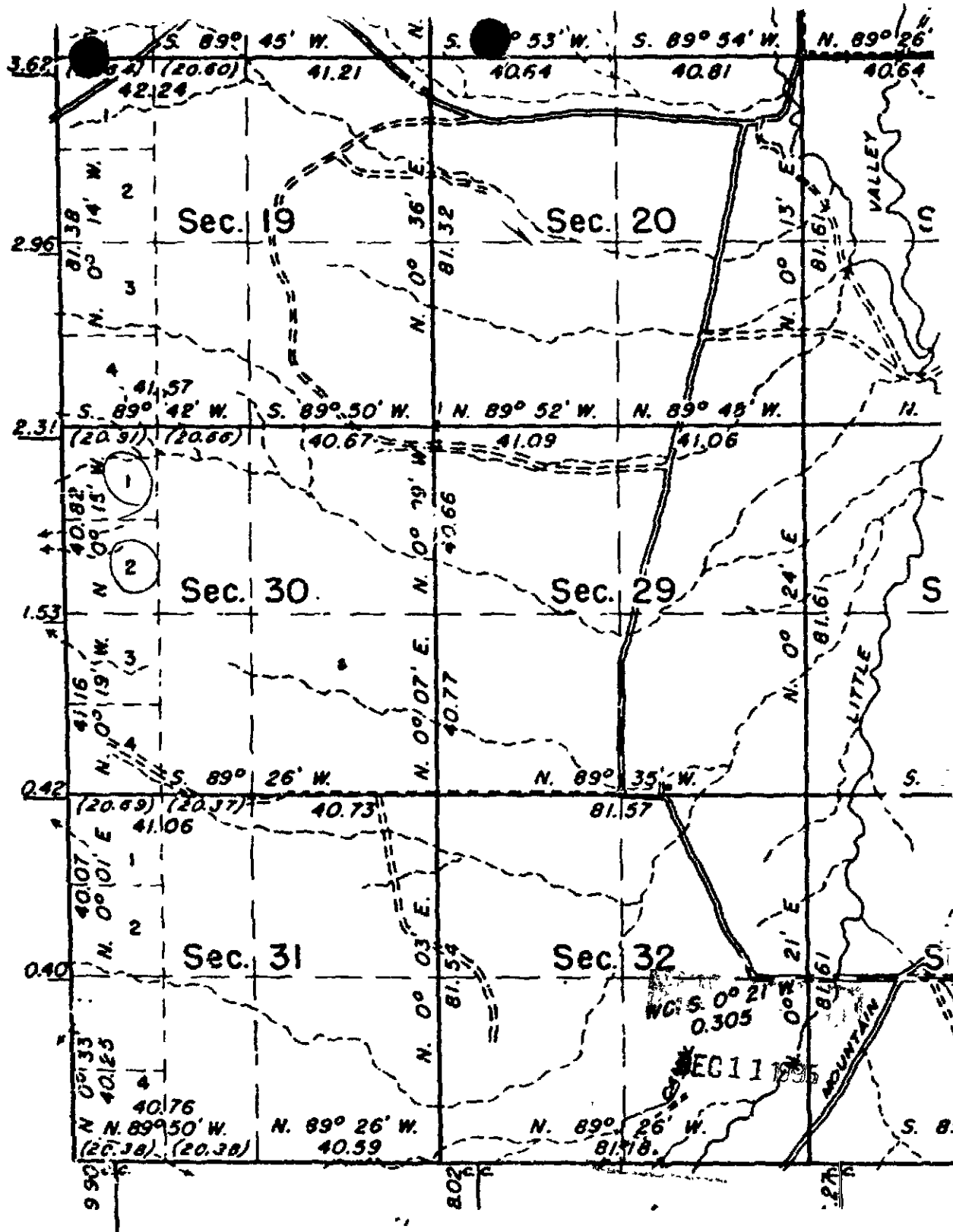
Sec. 32

VALLEY

LITTLE

MOUNTAIN

SEC 11 1995





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

October 18, 2002

KENT KOHRING
HC 85 BOX 140
BRUNEAU ID 83604

RE: Change of Ownership for Water Rights Permits 51-7355 and 51-7356

Dear Water Right Holder(s):

The department acknowledges receipt of correspondence changing ownership of the above referenced water rights permits to you. The department has modified its records to reflect the changes in ownership and has enclosed computer-generated reports for your records. Also enclosed is a receipt for the \$50.00 filing fee.

Please note that as of July 1, 1996, water right owners are required to report any change of water right ownership and any change of mailing address of the owner of a water right to the department. Notice of the change must be provided to the department within 120 days of the change. Change reporting forms are available from any office of the department.

Please feel free to contact this office if you have any questions regarding this matter.

Sincerely,

Jeff Peppersack, Manager
Water Right Permits Section

JP:kit

Enclosures

MICROFILMED

JUN 05 2003

**ANALYSIS SHEET
FOR
PROOF OF BENEFICIAL USE**

Permit No. 51-07356 Reviewed by [Signature] Date 7-9-97

GENERAL CONSIDERATIONS

TYPES OF USE

yes Name same as permit?
yes 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?
100- 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

DATA ENTRY

New Address [Signature] Proof Made 6-12-97



State of Idaho

DEPARTMENT OF WATER RESOURCES

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

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

PHILIP E. BATT
GOVERNOR

KARL J. DREHER
DIRECTOR

July 10, 1997

TRI VIAL INC
HC 85 BOX 140
BRUNEAU ID 83604

PROOF ACKNOWLEDGMENT LETTER

RE: PERMIT NO. 51-07356

Dear Permit Holder:

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

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 questions concerning the field examination, contact the **WESTERN** Regional Office in Boise, at (208)334-2190.

Sincerely,

A handwritten signature in cursive script that reads "Julie L. Yarbrough". The signature is written in dark ink and is positioned above the printed name and title.

JULIE L. YARBROUGH
Senior Secretary

C: IDWR - Region

MICROFILMED

AUG 19 1997



State of Idaho

DEPARTMENT OF WATER RESOURCES

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

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

PHILIP E. BATT
GOVERNOR

KARL J. DREHER
DIRECTOR

November 21, 1995

TRI-VIAL INC
HC 85 BOX 139
BRUNEAU ID 83604

PERMIT APPROVAL NOTICE

RE: PERMIT NO. 51-07355 and 51-07356

Dear Permit Holder:

Enclosed is a copy of your approved application for permit. Please be sure to thoroughly review the "CONDITIONS/REMARKS:" listing on the permit.

As a permit owner you must commence the excavation or construction of the diverting works within one year of the date the permit was issued, and you must proceed diligently until the project is completed. The date shown under condition no. 1 is the date when the project must be completed.

The Department will send you a "Proof Due Notice" approximately 60 days prior to the above referenced date requesting you to file either a Proof of Beneficial Use form or a Request for Extension of Time form.

This permit authorizes the appropriation of trust water. Trust water is defined as that portion of a particular hydropower water right which exceeds certain minimum stream flows established by state action, and is held in trust by the State of Idaho for the use and benefit of the people within the state. Conditions pertaining to a term review, annual use fee and jurisdiction of the permit are trust water conditions.

Sincerely,

Shelley W. Keen
Water Rights Supervisor

SK:rl

Enclosures

RECEIVED
DEC 11 1995

APPLICATION FOR PERMIT
STATE OFFICE REVIEW
by Cindy Zimmerman

No.: 51-7356 Name: Tri-Vial Inc. Date: 11/9/95 Ad OK? ✓
Correct Fee? ✓ Receipt #: C038208 Priority: 7/18/95 ✓ Gvmt Lts: ✓

AREA OF CONCERN? ^{wastewater} ~~water~~ - ~~NA~~/Yes Mor B-G GWMA Trust/Non-trust
PROTESTED: ^{efempt} ~~withdrawn~~ - 020(Protest Agr) or W19(See Final/Prelim Order)
SYSTEM COMPLETED:

Yes/proof filed - NA
1 year/no proof - P16
+1 year - 26A-P17

GROUNDWATER: <✓ FLO-CH>

+ 0.2 cfs - 01M
=/- 0.2 cfs - No MD
=/+ 5 a. - 01M, 065(if GW use SW 1st)

Drilling Permit:

Existing well - NA (pre 7/1/87)
Included w/permit - Permit No. _____, P99
No WD permit? - 046-46B-P23 (post 7/1/87)
irr. in WD - P05 (new well)

SURFACE WATER <✓ FLO-CH> (Surface water that doesn't sink is regulated):

Water District(dam) - 005 (req) WD # _____ <SEE MAP & LISTING>
+ 0.2 cfs - 028(may report)-01J(meas dev)-P08
=/- 0.2 cfs - 028(may report)-01H(lock dev)-P01 or No MD
=/+ 5 a. irr. - 028(may report)
~~In~~ WD + 0.2 cfs - 01M or No MD (in-stream)
- 0.2 cfs - No MD
=/+ 5 a. irr. - 01M

RIVER BASINS (*Surface water):

Snake R (01) - 11A-P04, NA
(02/03-irr) - 007-P07 (w/remark WB9-† Weiser), NA
Boise R (63) - 05A (if WD), 11E (not 42-111 use), NA
Payette R (65) - 064(regulated uses), 047-P04(Payette Lake), NA

USE:

Domestic (surface) - 021(Boise R † L Peak); 27A(Payette R); NA
Fish Propagation - 07A-042(rq)-010/06A/09E(WQ)-P10; 044(N 1000 Spr)
Irr <POU> =/- 5 a - 057 (0.03 cfs/A)
+ 5 a - 03A (0.02 cfs/A)
Mining - 054 (req) & 06A/010/09E-P10
Power - 08A-17K-025-027-01M-01F(P19)-09E(P10);
+25 cfs-P18; 17G(FERC) or 17M(FERC); 18B-P09
Storage(✓ 3 compo.) - 18A(multi MD in WD), 18B-P09 (+10' dam), NA

LOCATION:

Boise Front LoGeo - 058 (-85° GW temp only)
In-stream dev. - P52 (stream channel alteration)
Irr Dist/Canal Co. - 023 (Twin Falls area)
Swan Falls Flag - 7 <SEE CODE CHART>
Trust - 051-052-053(P74) (Consumptive Uses), NA
Non-Trust <1> - 048-049 (Consumptive Uses), NA

OWNERSHIP: Non-land owner - 004 (PD/PU)

OTHER CONDITIONS:

~~STANDARD REMARKS:~~

BENEFICIAL USE DUE:

COMMENTS:

0 W33

11-1-1997

MEMORANDUM

DATE: November 9, 1995
TO: File No. 51-07356
FROM: Cindy Zimmerman
SUBJECT: Trustwater Review

=====

This application proposes to divert 0.58 cfs of trustwater from waste water tributary to Jacks Creek to irrigate 275 acres located within SESE (38 A), S24; NENE (39 A) & NWNE (38 A), S25; and, NENW (40 A), L1-NWNW (40 A), L2-SWNW (40 A), & SENW (40 A), S30, T06S, R05E. This application satisfies 42-203A & C requirements.

MICROFILMED

DEC 11 1995

NOV 8 1995

Department of Water Resources
Department of Water Resources

cx4 DATE: 8-2-95 APPLICATION: 51-7356

Name: (If applicant is a corporation or partnership, names and addresses for the director, officers, and other partners must be included.) *See d.b. comments*

Address:

Source: (See USGS Quad for names of water sources)

Point of Diversion: (10 acres for spring, lot & block descriptions for Subdivisions, local name)

County:

Quantity: (flow and/or volume)

Period of use:

Nature of proposed use: (Include description of use)

Description of diverting works:

Time required for beneficial use of water:

Place of use or acres irrigated:

Map: (show T, R, S, QQ &/or QQQ)

Subdivision plat: (for > 1 home in restricted area. ≥ 5 homes in non-restricted area)

Signature: (If applicant is corp., partnership, or municipality, title of signatory is required)

Fee:

Yes ☐ No* ☐ In form to receipt:

Gov't. Lots:
☐ P/D
☒ P/U

YES NO

Overlapping place of use: (Describe source & relationship to present application on the back.)

Overlapping point of diversion:

Field check required: Field check by: _____

Field report attached:

Critical groundwater area:

Groundwater management area: *OK to adv - Surface water*

1992 moratorium:

Copy to SCA staff: (perennial stream, non-pump diversion)

Copy to Dam Safety staff: (for any storage)

Basin 63 mitigation plan: (where ground water replaces surface water for irrigation, request additional information &/or mitigation plan to address reduced aquifer recharge)

Send power requirement letter:

Send fish farm requirement letter:

Power residency affidavit:

Power efficiency form:

Diversion greater than 5 cfs or 500 af or irrigation greater than 200 acres: (If yes, attach Large Diversion supplementary analysis sheet.)

***REQUEST ADDITIONAL INFORMATION FROM THE APPLICANT**

DATE REQUESTED:

Additional information on reverse side:

PROCESSING

APPLICATION NO

51-7356

YES NO

☒ ☒
☒ ☒
☒ ☒

In form for advertising:

Statewide advertising: (> 10 cfs &/or 1000 af)

Fee amount, receipt number and date recorded on application:

SEND COPIES TO

YES NO

☐ ☒
☐ ☒
☐ ☒
☐ ☒
☐ ☒

I.D. Health and Welfare

I.D. District Health

I.D. Fish and Game

I.D. Lands

Adjudication Bureau

YES NO

☐ ☒
☐ ☒
☐ ☒
☐ ☒

U.S. BLM

U.S. Forest Svc.

Water Dist. # _____

Other _____

FINAL REGIONAL PROCESSING REVIEW

YES NO

☒ ☒
☒ ☒

Affidavit of publication received:

Application published correctly: If not, record action taken.

Publication dates and paper recorded on application:

Protests received. Final date for protest 9-5-95

Protest dates, resolution of protest recorded on application:

Recommendations attached: Approve, Dkr

Measuring device required:

Measuring port required:

Water delivered by water master? District # _____

Special conditions of approval or cover letter: _____

26A (Allow 2 yrs)

See below for additional information

Recommended Date or Priority 7/18/1995

Recommended by: Dkr Date 11/6/95

STATE OFFICE REVIEW

See below for additional information. By _____ Date _____

ADDITIONAL INFORMATION

P/D 0-1ap 51-7357 Same Source & P/D, different acres.
Processed on separate ops due to DLE request
on acres under 7357.

Fla 0-1ap 51-2214 G.W. Source Same acres



State of Idaho
DEPARTMENT OF WATER RESOURCES

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

PHILIP E. BATT
GOVERNOR

KARL J. DREHER
DIRECTOR

October 27, 1995

EUGENE C DAVIS
BRUNEAU CATTLE CO
HC 85 BOX 138
BRUNEAU ID 83624

FRANK L BACHMAN
M L INVESTMENT CO
HC 85 BOX 275
BRUNEAU ID 83624

Re: Applications for Permit Nos. 51-7355 and 51-7356 in the Name
of Tri-Vial, Inc.

Dear Protestants:

This letter is to acknowledge your withdrawal of protest against
the above-referenced applications for water rights.

The Department now will continue to process the applications,
subject to certain conditions of approval.

If you have any questions please call this office.

Sincerely,

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

DRT:st

CC: Applicants

RECORDED

DEC 11 1995

In the Matter of
Protested Water Right
Applications for Permit

Nos. 51-07355 and

51-07356 in the Name of

Tri-Vial Inc.

Withdrawal of
Protests

We, the undersigned, hereby withdraw our protests

to the two above-referenced applications for permit.

Dated this 27th day of October, 1995.

X Frank L. Bachma
Representing M.L. Investment Co.

X James C. Smith
Representing Bruneau Cattle Co.

RECEIVED

DEC 11 1995

Notes by D. Tuttle

Notes for Trivail / Little Basin Conference

10/27/95

10:00

Elmore Co Courthouse

Present: Kent Kohring representing Trivail Inc., and
Little Basin Mutual Drainage Co., Inc.

Gene Davis, representing Bruncan Cattle Co.

Frank Bachman & Chuck Jones, representing M.L. Investments.

Applicant - See notes attached.

Protestants

M.L. Investments (Frank Bachman)

Located downstream on Jacks Creek drainage.

The more water that comes through the Kohring property,
the more water is available to M.L. Investments

Opposed to bringing in new lands for irrigation

Bruncan Cattle Co (Gene Davis)

Echos the ML Concerns

Also concerned about winter icing flows of drainage water

Protests to Tri-Vial apps withdrawn

Put on hold for 6 months to allow M.L. KOTC 11/1995

ROSTER OF ATTENDANCE

IDAHO DEPARTMENT OF WATER RESOURCES 2735 Airport Way, Boise, ID 83705

Re: Applications Nos. 51-7357, 51-7358, 51-7355 and 51-7356

Place: Elmore County Courthouse, 150 S. 4th St. E., Mountain Home,
ID

Date: Friday, October 27, 1995

Conducted by: David R. Tuthill, Jr., P.E.

NAME

ADDRESS

Kent Kohring

HC 85 Box 140
Bruneau, ID 83604

Gene Davis

HC 85 Box 139 Bruneau, ID 83604

Chuck Jones

HC 85 Box 275 Grandview, ID 83624

Frank L. Buchanan

HC 85 Box 275 Grandview, Id. 83624

DEC 11 1995

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE
STATE OF IDAHO

IN THE MATTER OF APPLICATIONS)
FOR PERMIT NOS. 51-7357 AND)
51-7358 IN THE NAME OF LITTLE)
BASIN MUTUAL DRAINAGE CO. INC. AND)
51-7355 AND 51-7356 IN THE NAME OF)
TRIVAIL INC.)

NOTICE OF CONFERENCE

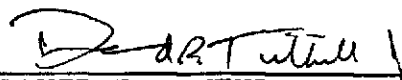
On July 18, 1995, Little Basin Mutual Drainage Co. Inc. filed with the Department of Water Resources two applications for permit to appropriate the public waters of the State of Idaho. The applications were protested by Bruneau Cattle Co. and M. L. Investment. On July 18, 1995, Trivial, Inc. filed with the Department of Water Resources two applications for permit to appropriate the public waters of the State of Idaho. These applications were also protested by Bruneau Cattle Co. and M. L. Investment Co.

The Department has set the matter of protest for a conference to be held on Friday, October 27, 1995, at 10:00 a.m., at the Elmore County Courthouse, 150 S 4th St. E., Mountain Home, Idaho 83647. 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 40 and 45 of the adopted Rules and Regulations of Water Appropriation of the Department of

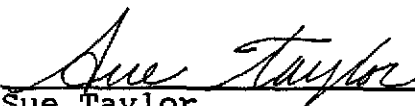
DEC 11 1995

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

Dated this 11th day of October, 1995.


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

I hereby certify that on the 11th day of October, 1995, 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

TRIVIAL INC.
HC 85 BOX 139
BRUNEAU ID 83604

KENT KOHRING PRESIDENT
LITTLE BASIN MUTUAL DRAINAGE CO INC
HC 85 BOX 140
BRUNEAU ID 83604

ERIC DAVIS
BRUNEAU CATTLE CO
HC 85 BOX 138
BRUNEAU ID 83604

M L INVESTMENT CO
HC 85 BOX 275
BRUNEAU ID 83624

SEP 11 1995

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

DEC 11 1995

- 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 request and the payment of the cost of reproducing the tape.

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

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

EXHIBITS

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

AMERICANS WITH DISABILITIES ACT

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

11/11/95

DEC 11 1995



State of Idaho

DEPARTMENT OF WATER RESOURCES

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

PHILIP E. BATT
GOVERNOR

KARL J. DREHER
DIRECTOR

October 10, 1995

Mr. Kent Kohring, President
Little Basin Mutual Drainage Company, Inc.
HC 85 Box 140
Bruneau, ID 83604

RE: Protested Applications for Permit Nos. 51-07355 through
51-07358

Dear Mr. Kohring:

Thank you for visiting the office last week and this week. Our discussions were helpful in the analysis of your four above-referenced protested applications. The purpose of this letter is to respond in writing to your letter dated September 12, 1995 regarding Applications for Permit Nos. 51-07355 and 51-07356, and your letter dated September 26, 1995 regarding Applications for Permit Nos. 51-07357 and 51-07358. As we discussed, relative to your earlier correspondence, I had felt that our standard protest response letters had provided adequate responses.

One concern that you have addressed regards the validity of water right Permit No. 51-07279 in the name of M.L. Investment Company. As per our discussion we will make every attempt to perform a beneficial use examination on this water right prior to our water right conference in this matter.

The other concern that you have addressed regards the validity of Bruneau Cattle Company's claimed water right no. A51-10377. As per our discussion, this claim has been field examined in the Snake River Basin Adjudication and a preliminary approval recommendation has been prepared for submittal to the court. The validity of this claimed water right can be the topic of further discussion, but at this juncture the Bruneau Cattle Company is found to have adequate standing to have filed a valid protest to approval of your applications.

Please find enclosed with this letter a copy of another protest that has been received from Bruneau Cattle Company, along with the protest response letter, as well as a Notice of Conference which sets October 27, 1995 as the conference date for this matter in Mountain Home.

Handwritten: MIPBATT

DEC 11 1995

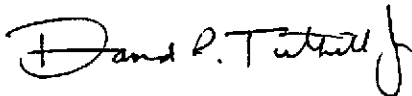
Mr. Kent Kohring

-2-

October 10, 1995

Please feel free to discuss this matter further with me if you desire.

Sincerely,



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

cc: Karl J. Dreher
Jim Johnson
Susan Buxton, Esq.

Enclosures: Copy of Bruneau Cattle Company protest
Protest Response Letter
Notice of Conference

DEC 11 1995



State of Idaho

DEPARTMENT OF WATER RESOURCES

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

October 8, 1995

PHILIP E. BATT
GOVERNOR

KARL J. DREHER
DIRECTOR

ERIC DAVIS
BRUNEAU CATTLE CO
HC 85 BOX 138
BRUNEAU ID 83604

Re: Applications for Permit Nos. 51-7357 and 51-7358 in the Name
of Little Basin Mutual Drainage Co.

Dear Protestant:

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

The matter is being scheduled for conference. At such a conference, the following are the principle items the Department can consider in either approving or denying an application or permit (Section 42-1203, Idaho Code):

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

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

Sincerely,

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

DRT/st

Handwritten note: 11/1/95

DEC 11 1995

7/94

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
NOTICE OF PROTEST

RECEIVED

SEP 25 1995

WATER RESOURCES
WESTERN REGION

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

1. Matter being protested APPLICATIONS 51-07357 51-07358

2. Name of protestant BRUNEAU CATTLE CO

3. Protestant's representative for service (if different than protestant)
GENE DAVIS

4. Service mailing address BRUNEAU CATTLE CO
C/O ERIC DAVIS
HC 85 BOX 138 BRUNEAU ID 83604

5. Service telephone no. (208) 845-2762

6. Basis of protest (including statement of facts and law upon which the protest is based) _____
(The 2 applications by Little Basin Mutual) If the applications are approved by the dept

~~the amount of water available would be reduced well below what would be sufficient for~~
~~Bruneau Cattle Co's use. Our P/D 1 of claim A51-10377 was measured at 2.55 CFS by IDWR.~~

~~The applications would divert water ahead of our points of diversion as listed by~~

~~Little Basin Mutual in the following locations: T6S,R4E,S25, NENE, NWNE & T6S,R5E,S30,NWNE~~

~~"WE FEEL THAT THE AMOUNT OF WASTE WATER AVAILABLE IN THIS TRIBUTARY IS ONLY SUFFICIENT NENE~~
~~TO SATISFY BRUNEAU CATTLE CO.'S CLAIM."~~

(additional pages may be attached to describe the nature of the protest)

7. What would resolve your protest? DISALLOWANCE OF THE APPLICATIONS

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 25 day of Sept., 19 95

Bruneau Cattle Co.
PROTESTANT

Gene C. Davis
PROTESTANT'S REPRESENTATIVE

RECEIVED

DEC 11 1995

NOTE:

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

INSTRUCTIONS

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

FOR DEPARTMENT USE ONLY

Received by Rdh Date 9-25-95 Time 14:47
50.00
~~\$25.00~~ fee Received by Rdh # W019909 Date 9-25-95

MINNESOTA

DEC 11 1995

Bruneau, Idaho
Sept. 11, 1995

RECEIVED
SEP 12 1995
WATER RESOURCES
WESTERN REGION

Dr
David R. Tuthill Jr., P.E.
Manager - Western Regional Office
State of Idaho Dept. of Water Resources
2735 Airport Way
Boise, Idaho 83705 - 5082

Re: Our letters of Aug. 26th. and Sept. 6th. challenging ML
Investment Co.'s and Bruneau Cattle Company's protest of
our applications (51-07355 & 51-07356).

Dear Sir:

We, Tri-Vial Inc., wish to know; do you concur with our
challenge of the right of the protestants, ML Investment
Co. and Bruneau Cattle Co., to protest our applications?
If so, what is the status of our applications?
If not, on what grounds do you uphold their protests?

Please advise!

Sincerely yours,

Kent Kohring
Kent Kohring - Vice Pres.
Tri-Vial Inc.
HC 85 Box 139 E
Bruneau, Idaho 83604

c.c. Jim Johnson - State Off.IDWR
attorney - Susan Buxton

DEC 11 1995

Bruneau, Idaho
September 6, 1995

Director, Department of Water Resources
Western Region
2735 Airport Way
Boise, Idaho 83705

RECEIVED
SEP 07 1995
WATER RESOURCES
WESTERN REGION

Re: Protest of applications 51-07355 & 51-07356 by Bruneau
Cattle Co.

Dear Sir:

We, Tri-Vial Inc., challenge the right of Protestant under
claim A51-10377.

Your files show claim A51-10377 has a priority date of 1952.

The water we claim was developed well after 1952.

It is our understanding that water cannot be filed on as a
future possibility, therefor the water claim A51-10377 was filed
on for water that was, in fact, available in 1952. For this
reason, we feel their protest has no standing and should be
disregarded.

Sincerely yours,

Kent Kohring
Kent Kohring VicePres.

Tri-Vial Inc.

HC 85 Box 139

Bruneau, Idaho 83604

c.c. Jim Johnson - State Office IDWR
Attorney - Susan Buxton

No response required at this time.
DA 9/7/95

DEC 11 1995



State of Idaho
DEPARTMENT OF WATER RESOURCES

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

September 6, 1995

PHILIP E. BATT
GOVERNOR

BRUNEAU CATTLE CO
C/O ERIC DAVIS
HC 85 BOX 138
BRUNEAU ID 83604

KARL J. DREHER
DIRECTOR

Re: Applications for Permit Nos. 51-07355 and 51-07356 in the Name
of Trivial, Inc.

Dear Protestant:

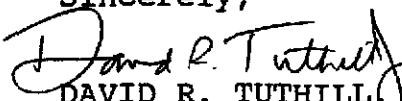
This office acknowledges receipt of your protest to the issuance of a permit pursuant to the above referenced application. The Department suggests you contact the applicant(s) directly in an effort to determine what is proposed by the application and to attempt to resolve the protest.

If this office has not been advised within twenty (20) days that the protest has been resolved, the matter will be scheduled for conference. At such a conference, the following are the principle items the Department can consider in either approving or denying an application or permit (Section 42-1203, Idaho Code):

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

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

Sincerely,


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

DRT/st

SEP 11 1995



State of Idaho

DEPARTMENT OF WATER RESOURCES

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

FAX (208) 334-2348

PHILIP E. BATT
GOVERNOR

KARL J. DREHER
DIRECTOR

September 6, 1995

TRIVIAL INC
HC 85 BOX 139
BRUNEAU ID 83604

Re: Applications for Permit Nos. 51-07355 and 51-07356

Dear Applicant:

Enclosed is a copy of a protest(s) filed against the issuance of a permit pursuant to the above-referenced applications. The Department suggests that you contact the protestant(s) and 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 a conference. At such a conference, the following are the principle items the Department will review (per 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?
6. Will the proposed use be contrary to conservation of water resources within the state of Idaho?

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

Sincerely,

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

Enclosure: Copy of protest(s)

DEC 13

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

RECEIVED

SEP 05 1995

WATER RESOURCES
WESTERN REGION

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

1. Matter being protested APPLICATIONS 51-07355 & 51-07356
2. Name of protestant BRUNEAU CATTLE CO
3. Protestant's representative for service (If different than protestant)
GENE DAVIS
4. Service mailing address BRUNEAU CATTLE CO
C/O ERIC DAVIS
HC 85 BOX 138 BRUNEAU ID 83604
5. Service telephone no. (208) 845-2762
6. Basis of protest (including statement of facts and law upon which the protest is based) (THE 2 APPLICATIONS BY TRIVIAL INC)"IF THE APPLICATIONS ARE APPROVED BY THE DEPT THE AMOUNT OF WATER AVAILABLE WOULD BE REDUCED WELL BELOW WHAT WOULD BE SUFFICIENT FOR BRUNEAU CATTLE CO'S USE . OUR P/D 1 OF CLAIM A51-10377 WAS MEASURED AT 2.55 CFS BY IDWR. THE APPLICATIONS WOULD DIVERT WATER AHEAD OF OUR POINTS OF DIVERSION AS LISTED BY TRIVIAL INC IN THE FOLLOWING LOCATIONS OF WASTE WATER: T6S,R4E, S25, SWNW & NENE."
(CONTINUED) *(additional pages may be attached to describe the nature of the protest)*
"WE FEEL THAT THE AMOUNT OF WASTE WATER AVAILABLE IN THIS TRIBUTARY IS ONLY SUFFICIENT TO SATISFY BRUNEAU CATTLE CO.'S CLAIM."
7. What would resolve your protest? DISALLOWANCE OF THE APPLICATIONS

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 5th day of Sept. 19 95

Bruneau Cattle Co
PROTESTANT

Gene C. Davis
PROTESTANT'S REPRESENTATIVE

MIP

DEC 11 1995

NOTE:

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

INSTRUCTIONS

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

FOR DEPARTMENT USE ONLY

Received by Rdh Date 5 SEPT '95 Time 13:55
\$50.00
~~-\$25.00 fee~~ Received by Rdh # W019832 Date 5 SEPT '95

MICROFILMED

DEC 11 1995

The Owyhee Avalanche

P.O. BOX 97 • HOMEDALE, ID 83628 • 208/337-4681

AFFIDAVIT OF PUBLICATION

STATE OF IDAHO)
) ss
COUNTY OF OWYHEE)

Joe E. Aman, being first duly sworn, depose and say:

1. That I am a citizen of the United States of America, and at all times hereinafter mentioned was and now over the age of twenty-one years, not a party to nor interested in the proceedings hereinafter mentioned.

2. That during the time of the publication of the notice hereinafter mentioned, I was and now am the publisher of **The Owyhee Avalanche**, a newspaper of general circulation printed and published weekly, on Wednesday of each and every week, in the City of Homedale, County of Owyhee and State of Idaho.

3. That the said **The Owyhee Avalanche** has been printed and published continuously and uninterruptedly in said County during a period of more than seventy-eight weeks prior to the first publication of the attached notice.

4. That said notice of which a printed copy, taken from said newspaper, is hereto affixed, was published in the regular issue thereof, and not a supplement thereto, in

said newspaper, in Two (2)

consecutive) calendar weekly issue(s) of said newspaper, in the following date(s).

August 16 & 23, 1995

Signed Joe E. Aman

Subscribed and sworn to me this 23th day of August A.D., 19 95

Glenn Black

Notary Public in and for the State of Idaho
Residing at Homedale, Idaho
Commission expires October 7, 1997

NOTICE OF APPLICATION FOR WATER RIGHT

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

51-07355

TRIVIAL INC
HC 85 BOX 139
BRUNEAU, ID 83604
Source: WASTE WATER
Tributary: JACKS CREEK
Diversion Pt:
SWNW Sec 25 T 06S R 04E
in OWYHEE County.
SENW Sec 25 T 06S R 04E
in OWYHEE County.
Use: IRRIGATION(0.080 CFS)
Total Diversion: (0.080 CFS)
Dated Filed: 7/18/1995
In: OWYHEE County
T06S R04E S25 NENW
37.0 ACRES TOTAL
51-07355

TRIVIAL INC
HC 85 BOX 139
BRUNEAU, ID 83604
Source: WASTE WATER
Tributary: JACKS CREEK
Diversion Pt:
NENE Sec 25 T 06S R 04E in
OWYHEE County.
NWNE Sec 25 T 06S R 04E
in OWYHEE County.
Use: IRRIGATION(0.580 CFS)
Total Diversion: (0.580 CFS)
Dated Filed: 7/18/1995
In: OWYHEE County
T06S R04E S24 SESE
S25 NENE NWNE
R05E S30 NENW
Lot1 (NWNW)
Lot2 (SWNW) SENW
275.0 ACRES TOTAL

Permits will be subject to all prior water rights. Protests may be submitted based on the criteria of Sec. 42-203A, Idaho Code. Any protest against the approval of this application must be filed with the Director, Dept. of Water Resources, Western Region, 2735 Airport Way,

Boise, Idaho 83705 together with a protest fee of \$25.00 on or before SEPTEMBER 5, 1995. The protestant must also send a copy of the protest to the applicant.

Karl J. Dreher, Director

Published, August 16 & 23, 1995

RECEIVED

SEP 05 1995

WATER RESOUR
WESTERN REGION

DEC 11 1995

Aug. 26, 1995

RECEIVED
AUG 28 1995
WATER RESOURCES
WESTERN REGION

David R. Tuthill, Jr., P.E.
Manager, Western Regional Office
State of Idaho Dept. of Water Resources
2735 Airport Way
Boise, Idaho 83705-5082

Re: Your letter to Tri-vial Inc. dated Aug. 23, 1995

Dear Sir:

Our letters must have crossed in the mail.
I refer to our Certified letter (P912 847 916)
to you dated Aug. 25, 1995.

It is our assumption that, because of
Chronological Order of events, your office
would wish to address our letter of
Aug. 25th before we would be required
to act on your letter to us dated Aug. 23, 1995.

Please advise!

DEC 11 1995

Sincerely,

Kent Kohring, Vice Pres.
Tri-Vial Inc.
HC85 Box 130
Bismarck, ND 58104

RECEIVED

AUG 28 1995

Department of Water Resources

August 25, 1995

RECEIVED

AUG 31 1995

WATER RESOURCES
WESTERN REGION

Director, Department of Water Resources
Western Region
2735 Airport Way
Boise, Idaho 83705

RE: Protest by M L Investment Co., under
Permit No. 51-07279 (letter dated 8/18/95)
of our Applications for Water under
51-07355 and 51-07356

Gentlemen:

We challenge the right to protest under Permit
No. 51-07279 for the following reasons:

1. Your records show the following:

M L Investment Co. failed to file proof of
beneficial use by July 1, 1995, as required by law. This
after a full allotted time and Advance Lapse Notice dated
July 7, 1995. It should also be noted they have received
approved Applications dating back to January 19, 1979 (No.
51-7137) (lapsed) August 9, 1983 (No. 51-7279) (lapsed)
Reinstatement (No. 51-7279) to July 1, 1995.

2. M L Investment Co. submitted a late proof (July 6,
1995) of beneficial use and was reinstated (Order of
Reinstatement) August 3, 1995 with an advance in priority
date to August 14, 1983. It is our position that even
though they complied by filing to Beneficial Use on July 6,
1995, they in fact failed to fulfill all requirements. An
immediate field exam of the property will show no crop
grown. Shelly Keene of IDWR State Office, and STEVE LESTER
IDWR Western Region told us this would be required.

3. An approved Application in a sense is a contract
with strict laws and provisions regarding time and
completion. Though M L Investment Co. made a heroic effort
from June 12, 1995 with Commencement of Work (June 6, 1995),
to July 6, 1995 (proof of Beneficial Use), they failed.
Perhaps if they had adhered to the Permit Approval Notice
(July 27, 1990) paragraph Three, which states in part,

RECORDED
DEC 11 1995

Director of Water Resources
August 25, 1995
Page 2

"Please note the requirement that as a permit holder you must commence the excavation or construction of diverting works within one year of the date the permit was issued, and you must proceed diligently until the project is completed," they could easily have fulfilled their requirements. They did not start until nineteen days before the maximum due date of July 1, 1995.

We, Tri-Vial, Inc., Permit Application No. 51-07355 and 51-07356 request the following:

1. An immediate field examination of M L Investments Co., Permit No. 51-07279 to verify our contention that they did not truly and in fact complete the proof of beneficial use by July 6, 1995.

2. A review of M L Investment Co. file permit No. 51-07279 to verify our findings.

3. Upon verification of the two above contentions, that you send notice to M L Investment Co., Permit No. 51-07279 that their permit is in default and lapsed as of July 6, 1995, as does their priority date of August 14, 1983.

4. That no further leniency be given to M L Investment Co, in that they have not perfected allowed permits since January 19, 1979. With their affiliations, they easily could have done so.

5. M L Investment Co. immediately suspend all further activity and diversion of water under Permit No. 51-07279.

6. That any further application by M L Investment Co. for a water right on this property be a new application, and not a reinstatement, with a priority date of the time of reapplication. That a notice of this be placed in their file to flag any further activity.

MICROFILMED

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Director of Water Resources
August 25, 1995
Page 3

7. That M L Investment Co. protest of our water application 51-07355 and 51-07356 (July 18, 1995) under their Permit No. 51-07279 be denied because their permit should be forfeited as of July 6, 1995, while our applications were not submitted until July 18, 1995.

Very truly yours,

TRI-VIAL, INC.

BY:

Kent Kohring
Kent Kohring,
Vice President for Tri-Vial, Inc.
HC 85, Box 139
Bruneau, Idaho 83604

KK/s

CC:

State Director of Water Resources
Jim Johnson, Water Rights Division
Susan Buxton, Attorney at Law

RECEIVED
DEC 11 1995



State of Idaho
DEPARTMENT OF WATER RESOURCES

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

PHILIP E. BATT
GOVERNOR

KARL J. DREHER
DIRECTOR

August 23, 1995

SIMPLOT LIVESTOCK CO
HC 85 BOX 275
GRAND VIEW ID 83624

Re: Applications for Permit Nos. 51-7355 and 51-7356 in the Name of
Trivail Inc.

Dear Protestant:

This office acknowledges receipt of your protest to the issuance of a permit pursuant to the above referenced applications. The Department suggests you contact the applicant(s) directly in an effort to determine what is proposed by the applications 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. At such a conference, the following are the principle items the Department can consider in either approving or denying an application or permit (Section 42-1203, Idaho Code):

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

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

Sincerely,

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

DRT/st

DEC 11 1995



State of Idaho
DEPARTMENT OF WATER RESOURCES

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

FAX (208) 334-2348

August 23, 1995

PHILIP E. BATT
GOVERNOR

KARL J. DREHER
DIRECTOR

TRIVAIL INC
HC 85 BOX 139
BRUNEAU ID 83604

Re: Applications for Permit Nos. 51-7355 and 51-7356

Dear Applicant:

Enclosed is a copy of a protest(s) filed against the issuance of a permit pursuant to the above-referenced applications. The Department suggests that you contact the protestant(s) and 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 a conference. At such a conference, the following are the principle items the Department will review (per 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?
6. Will the proposed use be contrary to conservation of water resources within the state of Idaho?

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

Sincerely,

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

Enclosure: Copy of protest(s)

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AGRICULTURE GROUP

RECEIVED

AUG 23 1995

WATER RESOURCES
WESTERN REGION

August 18, 1995

Director, Department of Water Resources
Western Region
2735 Airport Way
Boise, Idaho 83705

Re: Water Applications 51-07355 and 51-07356

Dear Director:

Please consider this letter an official protest to water applications 51-07355 and 51-07356. The grounds for this protest are as follows:

Interest of Protestant

Protestant (ML Investment Co.) presently owns water permit no. 51-07279 which allows for the diversion of 2.52 CFS of water from Jack Creek. The present point of diversion for this right is located in Township 6 South, Range 5 East, Section 21, NWNW. This point of diversion is downstream from the above identified water applications. Water diverted from permit no. 51-07279 has a priority date of August 14, 1983 and is used for irrigating 120 acres of cropland, watering livestock, and maintaining wildlife habitat. Protestants right is senior to applicants proposal project.

Reducing the Quantity of Water

Applicant proposes two diversions from a tributary to Jack Creek which are upstream from ML Investment Co.'s point of diversion. Applicants new diversions when combined (.66 CFS) is large enough to likely reduce the quantity of water available downstream at ML Investment's diversion, thereby reducing the quantity of water available to satisfy our right.

ML Investments ability to divert is entirely dependant on return flow to Jack Creek. A reduction of the quantity of return flow water to Jack Creek will reduce the quantity of downstream water that is now available at ML Investment's diversion.

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Application is Contrary to the Local Public Interest

The diversion as proposed by the applicant may in fact decrease the quantity of water in Jack Creek and the Tributary to Jack Creek to the point that stream channel flow, riparian vegetation and wildlife are adversely impacted. The State of Idaho Department of Fish and Game could be adversely impacted should the stream go dry.

ML Investment's right (51-7279) specifically notes on the permit under conditions for approval that "during periods of low flow, the permit holder shall leave enough flow in the channel to maintain riparian vegetation and wildlife as determined by the Director".

Conclusion

For the reasons stated above, applicants application for permit should be denied.

Submitted August 21, 1995.

ML Investment Company

By: Frank L. Bachman
Frank L. Bachman
Agent for ML Investment Co.

cc: Trivial, Inc.
HC 85 Box 139
Bruneau, Id 83604

PA \$50 -
8-23-95
#W019793
By: VR

DEC 11

51-07356

TRIVIAL INC
HC 85 BOX 139
BRUNEAU, ID 83604

Source: WASTE WATER

Tributary: JACKS CREEK

Diversion Pt: NENE Sec 25 T 06S R 04E in OWYHEE County.
 NWNE Sec 25 T 06S R 04E in OWYHEE County.

Use: IRRIGATION (0.580 CFS)
 Total Diversion: (0.580 CFS)

Date Filed: 7/18/1995

In: OWYHEE County
 T06S R04E S24 SESE
 S25 NENE NWNE
 R05E S30 NENW Lot 1(NWNW) Lot 2(SWNW) SENW

 275.0 ACRES TOTAL

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