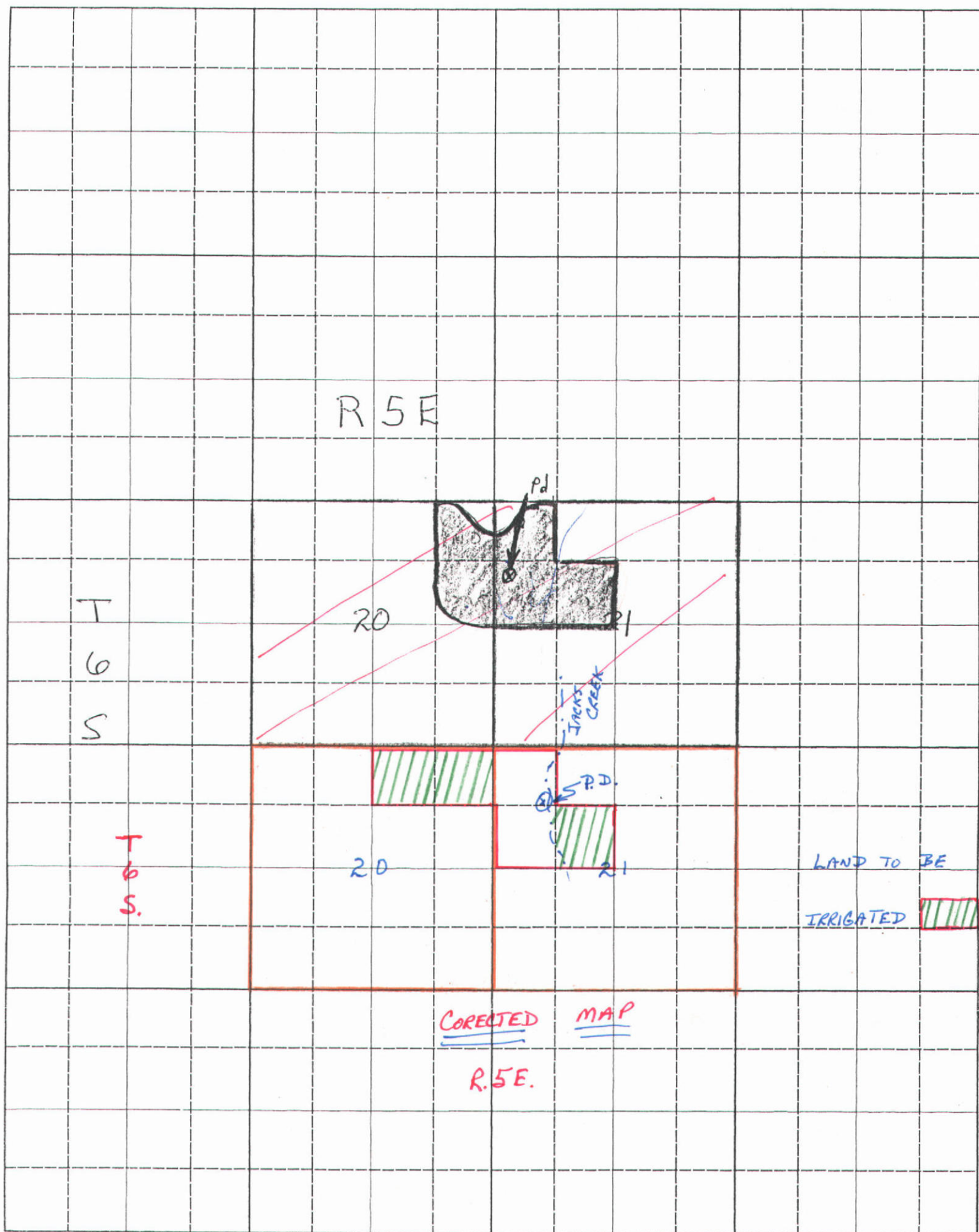


11. Map of proposed project: show clearly the proposed point of diversion, place of use, section number, township and range number.



Scale: 2 inches equal 1 mile.

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

MICROFILMED

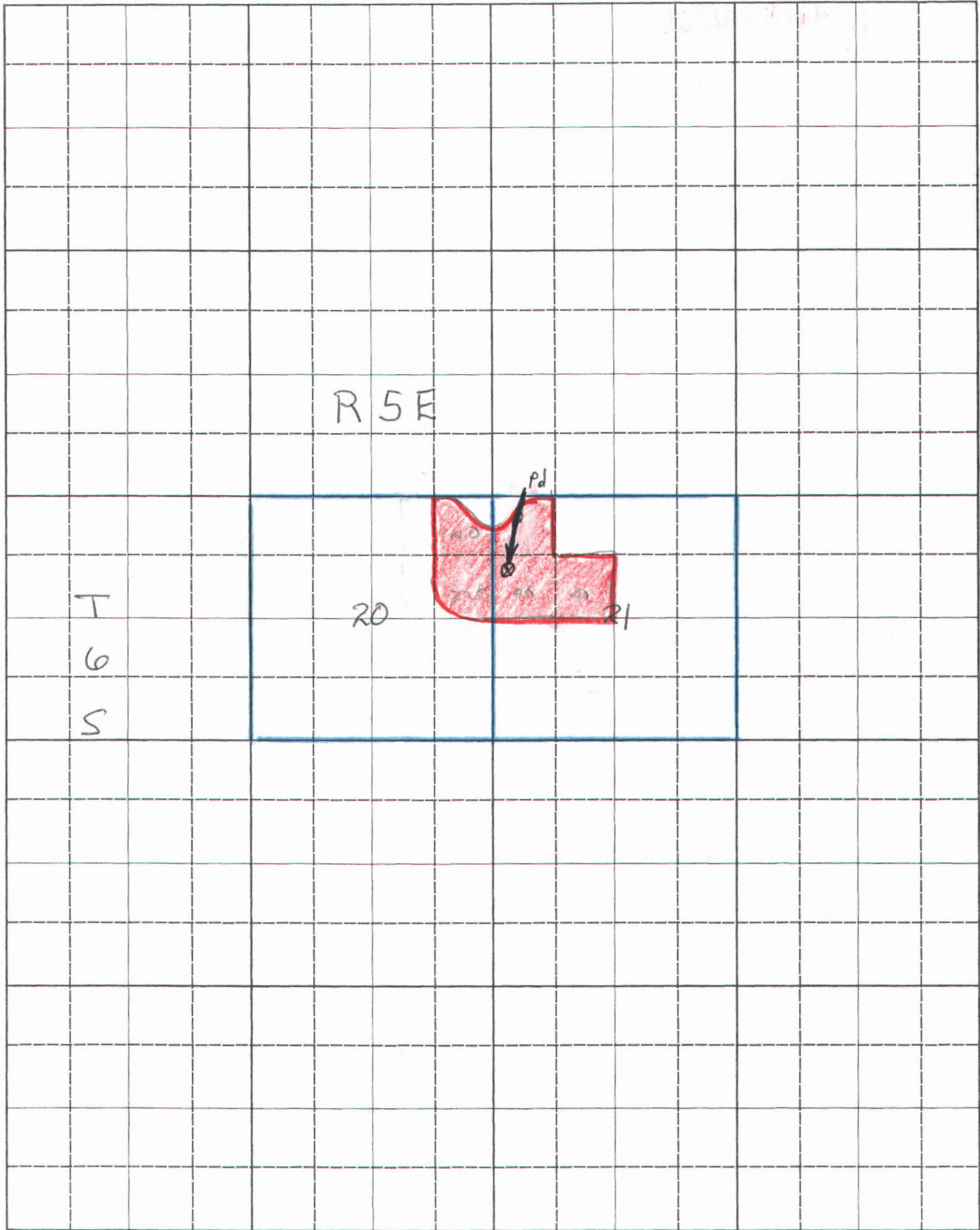
JUL 30 1990

5-24-90

M. L. Investment Co.
by Tom Blessinger
(Applicant)
Land Manager

Corrected by:
Frank L. Bachman
M. L. Investment Co.

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



Scale: 2 inches equal 1 mile.

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

MICROFILMED

JUL 30 1990

M. L. Investment Co.
by Tom Blessinger
(Applicant)
Land Manager



C. J. STRIKE
RESERVOIR

NORMAL POOL ELEVATION 2455

8

10

2529

2668

17

78

2557

Well

Poyd

2524

P/u

P/D

20

Valley

21

2559

29

28

PERMIT 51-7279 INIT CH
T. R. S. Q/Q
P/D 63 SE 21 NWNW
SCALE 1" = 100'
PHOTO ID. 107

91000m.E.

115°5:2'30"

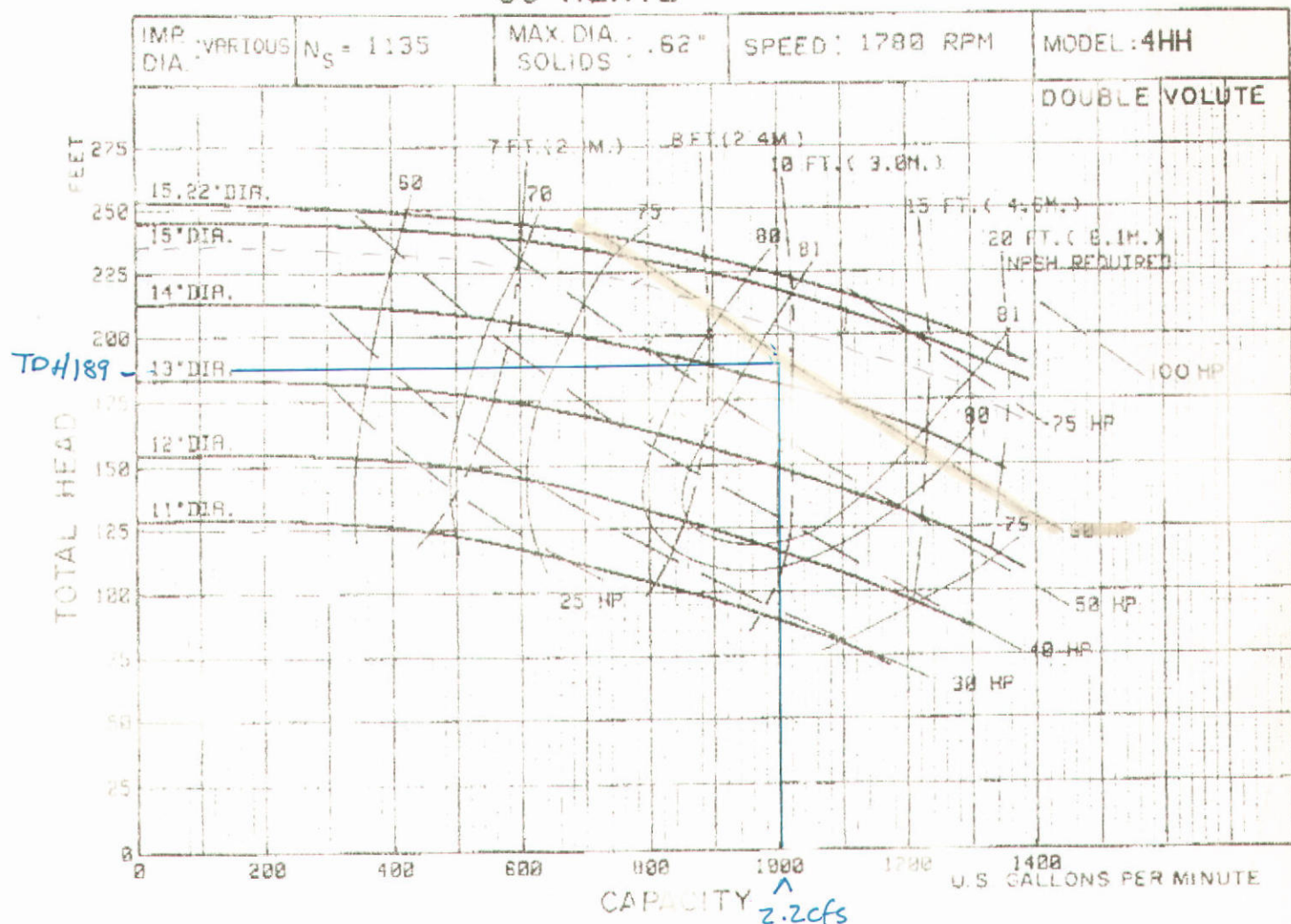
470 000 FEET

MAR 28 1996

JULY 1984

138-26

MODEL 4HH PUMP
SPEED - 1800 RPM
CLOSED IMPELLER
60 HERTZ



HP	MAXIMUM IMPELLER DIAMETER	
	FOR FULL MOTOR LOAD	FOR FULL MOTOR LOAD + 15% S.F.
100	A (15.22")	
75	B (14.69")	B+ (15.22")
60	C (13.69")	C+ (14.38")
50	D (12.81")	D+ (13.56")
40	E (12.00")	E+ (12.62")
30	F (11.00")	F+ (11.50")

FT. x (.305) = METERS

GPM x (.227) = CUBIC METERS PER HOUR

Microfilm

MAR 28 1996

Performances shown are for close coupled electric configuration with packing. Other mounting styles may require horsepower and/or performance adjustments.

CORNELL PUMP CO. — PORTLAND, OREGON

10
700 HEL

15 HEL

557

1817
1820

755
1917

NHEL

20/21

298

2

313

51-7279

KK

26



P/O



Flu
SENW S21

Missouri

MAR 28 1996

51-7279



P/u
Sec 20



MISSOURI

MAR 28 1996

51-7279

Dept. of Water

THE OWYHEE AVALANCHE

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

AFFIDAVIT OF PUBLICATION

STATE OF IDAHO)
)ss
COUNTY OF OWYHEE)

I, 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):

June 20 & 27, 1990

Signed

Joe E. Aman

Subscribed and sworn to before me this

27th

day of

June

A.D., 19

90

Chris Bahem

Notary Public in and for the State of Idaho
Residing at Homedale, Idaho
Commission expires October 1996

NOTICE OF APPLICATION FOR TRUST WATER RIGHT

51-07279

M. L. INVESTMENT CO.

HC 85 BOX 275WAY

GRANDVIEW, ID 83624

Source: JACKS CREEK

Tributary: SNAKE RIVER

Diversion Pt: NWNW Sec 21 T

06S R 05E

Use: IRRIGATION (2.400
CFS)

Total Diversion: (2.400 CFS)

Date Filed 8/9/1983

In: T06S R05E S20 NENE

NWNE

S21 SENW

120.0 ACRES TOTAL

Permits will subject to all prior water rights. Protests may be submitted based on criteria of Sec. 42-203A, Idaho Code and/or the public interest criteria of Sec. 42-203C, Idaho Code. Protests must be filed with the Director, Dept. of Water Resources, Statehouse Mail, Boise, Idaho 83720 on or before JULY 6, 1990.

R. KEITH HIGGINSON,
Director

Publish June 20 & 27, 1990

R. T. J. 7-3-90

MICROFILMED

JUL 30 1990

State of Idaho
Department of Water Resources

WATER RIGHT LICENSE

WATER RIGHT NO. 51-07279

Priority: August 14, 1983

Maximum Diversion Rate: 1.96 CFS

Maximum Diversion Volume: 392.0 AF

This is to certify, that M L INVESTMENT CO

HC 85 BOX 275

GRANDVIEW ID 83624

has complied with the terms and conditions of the permit, issued pursuant to Application for Permit dated August 9, 1983; and has submitted Proof of Beneficial Use on July 6, 1995. An examination indicates that the works have a diversion capacity of 1.960 cfs of water from:

JACKS CREEK

tributary to BRUNEAU RIVER

source, and a water right has been established as follows:

<u>BENEFICIAL USE</u>	<u>PERIOD OF USE</u>	<u>RATE OF DIVERSION</u>	<u>ANNUAL VOLUME</u>
IRRIGATION	04/01 to 10/31	1.96 CFS	392.0 AF

LOCATION OF POINT(S) OF DIVERSION:

NWNW , Sec. 21, Township 06S, Range 05E
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>TOTAL</u>
06S	05E	20	NENE 33	NWNE 33		66
		21	SENE 32			32

Total number of acres irrigated: 98

CONDITIONS OF APPROVAL AND REMARKS

1. The maximum diversion volume is defined as the maximum allowable volume of water that may be diverted annually from the source under this right. The use of water confirmed by this right is limited to the amount that can actually be beneficially used. The maximum diversion volume may be adjusted to more accurately describe the beneficial use or to implement accepted standards of diversion and use efficiency.
2. This water right is appurtenant to the described place of use.
3. This right is subject to all prior water rights and may be forfeited by five years of non-use.
4. Modifications to or variance from this license must be made within the limits of Section 42-222, Idaho Code, or the applicable Idaho law.
5. This right is for the use of trust water and is subject to review 20 years after the issuance of the permit to determine availability of water and to re-evaluate the public interest.

6/1/95

State of Idaho
Department of Water Resources

WATER RIGHT LICENSE

WATER RIGHT NO. 51-07279

CONDITIONS OF APPROVAL AND REMARKS

6. 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.
7. This right when combined with all other rights shall provide no more than .02 cfs per acre nor more than 4.0 afa per acre for the lands above.
8. The Director of the Department retains jurisdiction to require a bypass flow for the maintenance of fish, wildlife, riparian and aquatic habitat.

This license is issued pursuant to the provisions of Section 42-219, Idaho Code.
Witness the seal and signature of the Director, affixed at Boise, this 13TH
day of MARCH, 1996.


Acting for KARL J. DREHER, Director

IN THE MATTER OF PERMIT NO. 51-07279)
)
) **ORDER OF**
IN THE NAME OF M.L. INVESTMENT CO.) **REINSTATEMENT**
)

AUG 09 1995

RECEIVED

JUL 06 1995

Department of Water Resources

1. Permit No. 51-07279 Telephone No. 208-834-2231

2. Name(s) of Permit Holder(s): M. L. Investment Co.

3. Mailing Address: HC 85 Box 275 GRANDVIEW, ID. 83624

4. Source of Water: JACKS CREEK If **GROUNDWATER** (well), Date Drilled: mo. / yr.

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

b. **OPTIONAL:**
 Pump Horsepower: 60 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): 500 head

Irrigation (No. of acres): 120 Other: _____

6. Total rate of diversion and/or volume for which proof is submitted: 2.52 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 x 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: \$ 150.00 (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: FRANK L. ZACHMAN Telephone Number: 208-834-2231

Address: HC 85 Box 275 GRANDVIEW, ID. 83624

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: Frank L. Pacheco Date: 7-1-95
(include your title, if on behalf of company or organization)

AUG 09 1994

State of Idaho
Department of Water Resources
Permit To Appropriate Water

NO. 51-07279

Proposed Priority: August 9, 1983 Maximum Diversion Rate: 2.52 CFS
This is to certify, that **M. L. INVESTMENT CO.**
HC 85 BOX 275WAY
GRANDVIEW, ID 83624
has applied for a permit to appropriate water from:

JACKS CREEK tributary of **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>
IRRIGATION	03/15 to 10/31	2.40 CFS
STOCKWATER	01/01 to 12/31	0.12 CFS
	Totals	2.52 CFS

LOCATION OF POINT(S) OF DIVERSION: NWNW Sec. 21, Township 06S, Range 05E
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>TOTAL</u>
06S	05E	20	NENE 40	NWNE 40		80
		21	SENW 40			40

Total number of acres irrigated: 120

PLACE OF USE: STOCKWATER, same as IRRIGATION use

CONDITIONS/REMARKS:

1. Proof of construction of works and application of water to beneficial use shall be submitted on or before **July 1, 1995**.
2. Subject to all prior water rights.
3. Prior to the diversion of water under this permit a flow measurement port or other device as specified by the Department shall be installed to provide for the installation of measuring equipment and the determination of the rate of diversion by the Department.
4. Permit holder shall commence the excavation or construction of diverting works within one year of the date this permit is issued and shall proceed diligently until the project is complete.
5. Any license issued by IDWR pursuant to the permit 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.
6. Diversion and use of water under this permit is subject to an annual use fee if rules are subsequently promulgated which provide for the submittal of the fee.

MICROFILMED

JUL 30 1990

State of Idaho
Department of Water Resources**Permit To Appropriate Water**

NO. 51-07279

CONDITIONS/REMARKS:

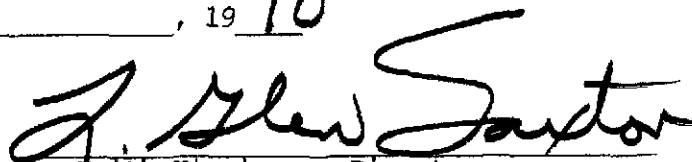
7. The Director retains jurisdiction of the permit and/or subsequent license issued to change, add or remove any requirement as determined to be appropriate.
8. The rate of diversion of water for irrigation under this permit and all other water rights on the same land shall not exceed 0.02 cubic feet per second for each acre of land.
9. 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.
10. The maximum rate of diversion for irrigation purposes under this permit shall not exceed 2.4 cfs.
11. Stockwater use is for 500 head.

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

27th day of

July

, 19 90

for 
R. Keith Higginson, Director

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
APPLICATION FOR PERMIT

AMENDED

AMENDED

To appropriate the public waters of the State of Idaho

1 Name of applicant M. L. Investment Company Phone 342-8194
Post office address HC 85 Box 275 GRANDVIEW ID 83624
2729 Airport Way Boise Idaho 83705
2. Source of water supply Jacks Creek which is a tributary of Snake River
3. Location of point of diversion is SW NW $\frac{1}{4}$ of NW $\frac{1}{4}$ of Section 21 Township 6S
Range 5E B.M. Owyhee County, additional points of diversion if any: N/A

4. Water will be used for the following purposes:

Amount 2.40 ~~3.75~~ cfs for irrigation purposes from Mar. 15 to Oct. 31 (both dates inclusive)
(cfs or acre-feet per annum)
Amount 0.12 for Stockwater purposes from 1/1 to 12/31 (both dates inclusive)
(cfs or acre-feet per annum) Added 7-18-90
Amount for purposes from to (both dates inclusive)
(cfs or acre-feet per annum)
Amount for purposes from to (both dates inclusive)
(cfs or acre-feet per annum)

5. Total quantity to be appropriated:

a. 3.75 2.52 7-18-90 cubic feet per second and/or b. acre-feet per annum.

6. Proposed diverting works:

a Description of ditches, flumes, pumps, headgates, etc. 1 - 50 hp pump setting on 36" galvanized pipe 10' long.

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

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

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

7. Time required for the completion of the works and application of the water to the proposed beneficial

use is 5 years (minimum 1 year - maximum 5 years).

8. Description of proposed uses:

a If water is not for irrigation:

(1) Give the place of use of water $\frac{1}{4}$ of $\frac{1}{4}$ of Section Township

Range B.M.

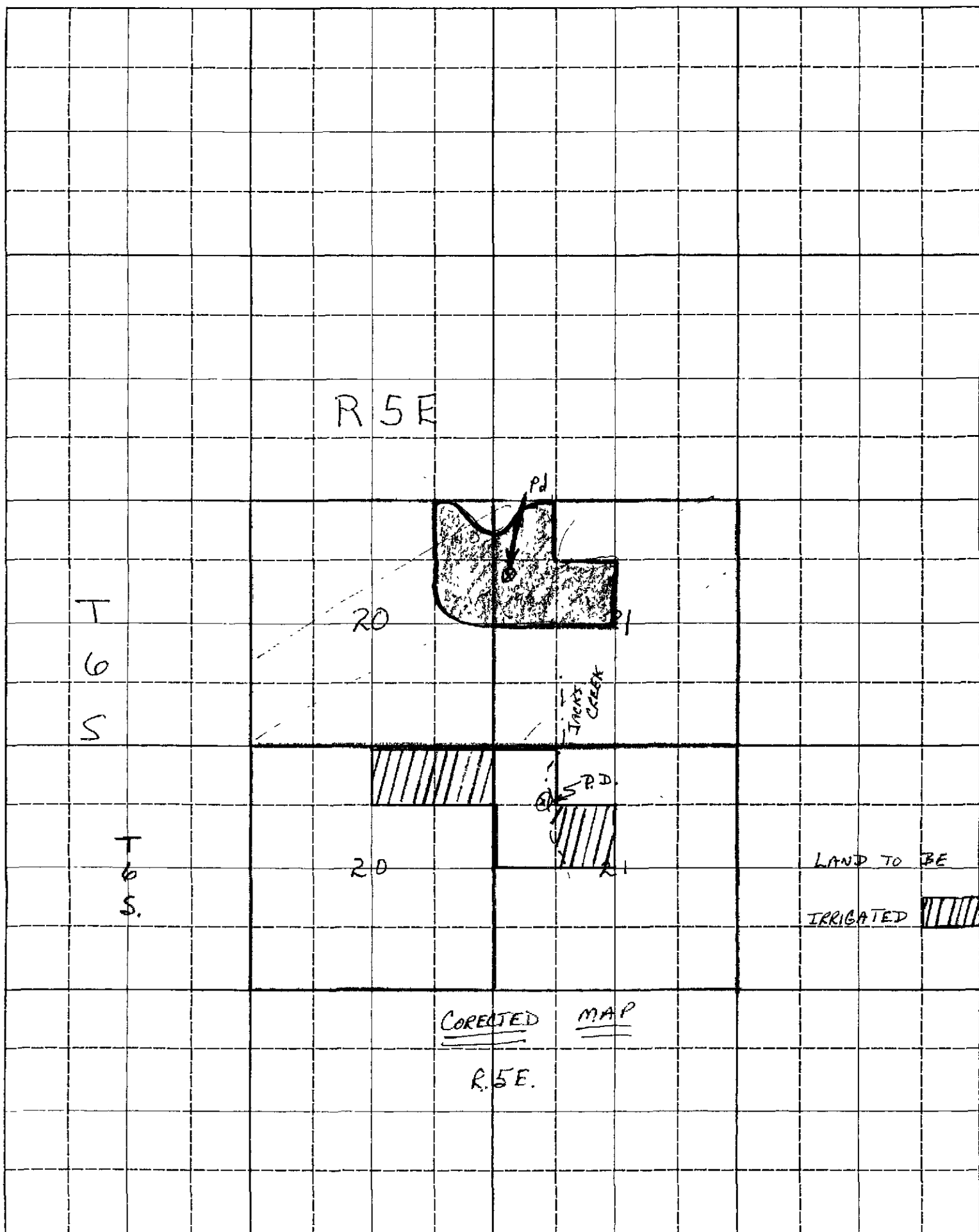
(2) Amount of power to be generated: horsepower under feet of head.

(3) List number of each kind of livestock to be watered 500 HEAD CATTLE

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

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

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



Scale 2 inches equal 1 mile

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

RECORDED

JUL 30 1990

M. L. Investment Co.
by Tom Blessinger
(Applicant)
Land Manager

Corrected by:
Frank L. Backman
M. L. Investment Co.

5-24-90

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

TWP	RANGE	SEC.	NE¼				NW¼				SW¼				SE¼				TOTALS
			NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	
6S	5E	21						~~30~~	~~40~~	40									~~110~~ 40
6S	5E	20	40	40		~~37.5~~													~~77.5~~ 80

by *Corrected 5-24-90*
Frank Backman for M.L. Investment Co. Total number of acres to be irrigated 187.5
120.0
 c. Describe any other water rights used for the same purposes as described above.

9. a. Who owns the property at the point of diversion M. L. Investment Company
 b. Who owns the land to be irrigated or place of use M. L. Investment Company
 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 Water in Jacks Creek that applicant has filed on is presently run-off water and has not been appropriated.

This water had been filed on 12-4-78 but Idaho Power could not hook it up; an extension was granted but expired on February 1, 1983. The company had failed to renew within required length of time. Our prior permit number was 51 - 7137.

0.12 CFS Added For Stock Watering purposes After Amended By Applicant. Tj. Lake 7-18-90

RECORDED

JUL 30 1990

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
APPLICATION FOR PERMIT

To appropriate the public waters of the State of Idaho

1. Name of applicant M. L. Investment Company Phone 342-8194
Post office address 2729 Airport Way Boise, Idaho 83705
2. Source of water supply Jacks Creek which is a tributary of Snake River
3. Location of point of diversion is SW $\frac{1}{4}$ of NW $\frac{1}{4}$ of Section 21 Township 6S
Range 5E B.M. Owyhee County, additional points of diversion if any: N/A

4. Water will be used for the following purposes:

Amount 3.75 cfs for irrigation purposes from Mar. 15 to Oct. 31 (both dates inclusive)
(cfs or acre-feet per annum)
Amount _____ for _____ purposes from _____ to _____ (both dates inclusive)
(cfs or acre-feet per annum)
Amount _____ for _____ purposes from _____ to _____ (both dates inclusive)
(cfs or acre-feet per annum)
Amount _____ for _____ purposes from _____ to _____ (both dates inclusive)
(cfs or acre-feet per annum)

5. Total quantity to be appropriated:

a. 3.75 cubic feet per second and/or b. _____ acre-feet per annum.

6. Proposed diverting works:

a. Description of ditches, flumes, pumps, headgates, etc. 1 - 20 hp pump setting on 36" galvanized pipe 10' long.

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

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

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

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

8. Description of proposed uses:

a. If water is **not** for irrigation:

(1) Give the place of use of water: _____ $\frac{1}{4}$ of _____ $\frac{1}{4}$ of Section _____ Township _____
Range _____ B.M.

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

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

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

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

RECEIVED
JUL 30 1980

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

TWP	RANGE	SEC	NE¼				NW¼				SW¼				SE¼				TOTALS
			NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	
6S	5E	21						30	40	40									110
6S	5E	20	40			37.5													77.5

Total number of acres to be irrigated 187.5

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

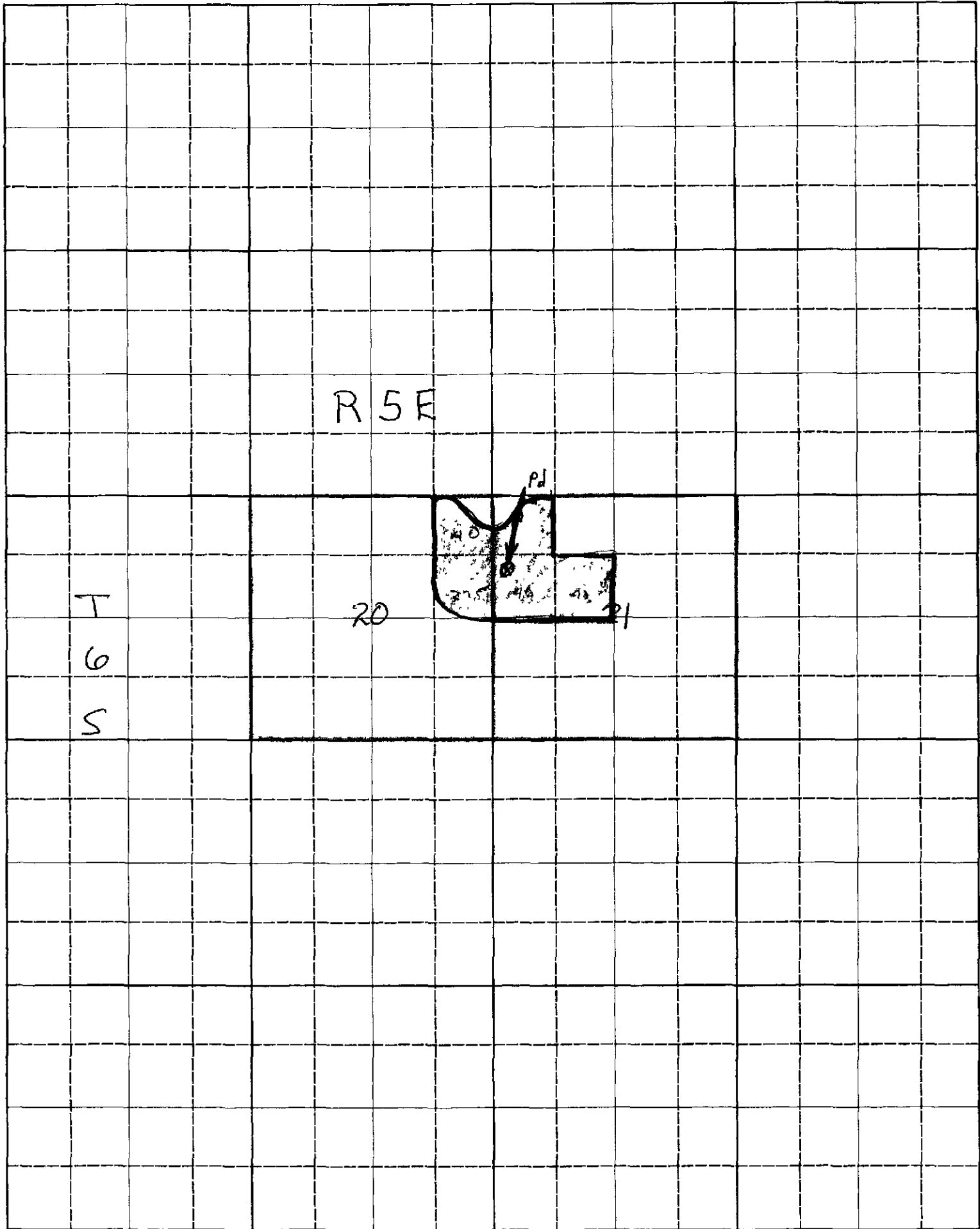
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- b. Who owns the land to be irrigated or place of use M. L. Investment Company
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This water had been filed on 12-4-78 but Idaho Power could not hook it up; an extension was granted but expired on February 1, 1983. The company had failed to renew within required length of time. Our prior permit number was 51 - 7137.

JUL 23 1980

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



Scale 2 inches equal 1 mile.

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

RECEIVED

JUL 30 1990

M. L. Investment Co.
by Tom Blessinger
(Applicant)
Land Manager

Received by HC Date 8-9-83 Time 4:18 pm
Preliminary check by 6AS Fee \$ 105.00
Receipted by CW Date 8-9-83 # 30182
Publication prepared by Jp Date 4/5/84
Published in Owyhee Nugget
Publication dates _____
Publication approved _____ Date _____
Protests filed by: none

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

ACTION OF THE DIRECTOR, DEPARTMENT OF WATER RESOURCES

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

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

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



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

March 13, 1996

M L INVESTMENT CO
HC 85 BOX 275
GRANDVIEW ID 83624

RE: WATER RIGHT NO. 51-07279

Dear Water Right Holder(s):

Enclosed is a copy of the Water Right License issued on the above referenced permit. If you have any questions, please contact me within 10 days of receipt of this license.

Sincerely,

Shelley W. Keen
Water Rights Supervisor

SK:rl

Enclosure

MAR 28 1996

LICENSE REVIEW CHECKLIST

PERMIT NO. 51-07279 DATE 3/1/96



Change OK

NAME ✓ Assignment Needed

PRIORITY DATE ✓ Advance? YES Advanced to: 1-14-83
Order to reinstate needed? DONE
Incorrect fee for rate recommended? NO

SOURCE Correct TRIB TO ✓ Changes or just clarification of originally
intended source? TO: Bureau (P. rev)
Notice of Intent to Void necessary?

POINT OF DIV ✓ Amendment needed?
 ✓ Overlaps?

PLACE OF USE ✓ Amendment needed?
 ✓ Overlaps?

DIV RATE ✓ Permit/fee limits: 2.52 CFS 120 acres @ 2.4
Est Meas Q = 1.98 Theo Q = 1.96 500 head of stock
DISCHARGE Recommend: 1.96
9.8 X .02 = 1.96
Combined rates exceed capacity

ANNUAL VOLUME ✓ Volume Limit: NEW Season: 4.0 (4-1 to 10-31)
Calculations: 4 x 48 = 392
Flow limit: cfs x x 1.9835 =
Combined volumes exceed capacity/allowable

USES Change in Nature of Use or additional uses?
Amendment necessary?

NEW CONDITIONS B31 Irrigation Overlap Replaces Surface Water 050
 Supplemental GW 065
 Water Quality/Dam Safety/Heat-Cool/Fish
 WM Control- District Meas/Lock Devices
NOTE Other DELETE ADDITION 7 (055) ADD R55 + R56

NEW REMARKS Supplemental GW [in Snake River Plain] WB8/WB7
 Irr/Dom Combination WB5 PPU Recommendation
 Boise River/Wood River Source Aes/Rec Uses W38
 Multiple p/d(s) in 1/4 1/4
 Fire Protection WB6
W13 Other in place of 1st condition #4

COMMENTS:

COMMENTS: _____

RECOMMENDATION	CFS	VOLUME	SRBA Claim Filed	
<i>Irrigation</i>	<i>1.96</i>	<i>342</i>	Adjustment Memo Needed	<i>NO</i>
			LICENSE	<i>✓</i>
			1ST AMEND LETTER	
			2ND AMEND LETTER	

CORPORATE HEADQUARTERS

RECEIVED

FEB 15 1996

Department of Water Resources

February 14, 1996

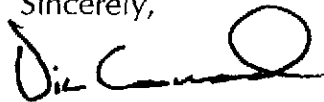
Norman C. Young
Administrator, Water Management Division
State of Idaho
Department of Water Resources
1301 North Orchard Street
Boise, Idaho 83706

Re: IDWR Applications for Permit No's 51-07357 and 51-07358 in the name of Little Basin Mutual Drainage Co., Inc. and IDWR Permit No. 51-07279 in the name of M. L. Investment Company.

Dear Mr. Young:

Enclosed is an original Withdrawal of Protests and Agreement of Conditions signed by the Applicant, Little Basin Mutual Drainage Co., Inc. for 51-07357 and 51-07358 and signed by the Protestant, M. L. Investment Company, owner of permit No. 51-07279.

Sincerely,



Vic Conrad
Simplot Land and Development

Enclosure

c: K. Kohring w/copy of enclosure
S. Buxton w/copy of enclosure

FEB 15 1996

RECEIVED

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE
STATE OF IDAHO

FEB 15 1996

Department of Water Resources

IN THE MATTER OF APPLICATIONS FOR) WITHDRAWAL OF PROTESTS
PERMIT NUMBERS 51-07357 AND)
51-07358 BOTH IN THE NAME OF) AND
LITTLE BASIN MUTUAL DRAINAGE)
CO., INC.) AGREEMENT OF CONDITIONS

The undersigned applicant agrees to abide by the following conditions. Accordingly, the undersigned protestant agrees to withdraw the protests to the approval of these applications.

1. The water rights identified in the above caption are subject to all prior water rights.
2. The holder of water right numbers 51-07357 and 51-07358 agrees to withdraw its challenge to water right number 51-07279 owned by M. L. Investment Company.
3. The holder of water right numbers 51-07357 and 51-07358 waives the right to protest and/or make any claim that M. L. Investment Company failed to satisfy the requirements set forth in IDWR permit No. 51-07279.

Little Basin Mutual Drainage Co., Inc.

Applicant: By: Kent Kohring DATE: 2/5/96
Kent Kohring, President

Protestant: M. L. Investment Company

By: Ronald N. Graves DATE: February 6, 1996
Ronald N. Graves, Secretary

KAD
Jef
Pruneau, Idaho

Dec. 21, 1995

Mr. Karl J. Dreher, Director
State Of Idaho
Dept. Of Water Resources
1301 North Orchard Street
Boise, Idaho 83706 - 2237

RECEIVED

DEC 26 1995

Department of Water Resources

RE: Status of M.L. Investment Co. permit NO. 51-07279

Dear Sir:

I visited L. Glen Saxton, of your department, Dec. 19th., to inquire as to the status of permit No. 51-07279 as it directly effects my applications NO. 51-07357 and NC. 51-07358. A review of my letter to Mr. Saxton, dated Nov. 29 will establish my interest in the matter. He informed me that, at his request, Vic Conrad of Simplot Land and Development, had supplied a letter with information which was to substantiate compliance with permit approval requirement NO. 4 and Sec. 42-204 of the Idaho Code. A copy of this letter was forwarded to me at my request. Mr. Saxton also informed me that either you or someone on your upper, echalon, staff would be making the final decision on the application.

I would like to make the following comments on Mr. Conrad's letter:

1. He admitted that construction of diversion of works did not start within one year of permit approval as required by law. In fact, the blue card, form 204-P dated 6-16-95 and signed by Frank Bachman, stated that construction began June 12, 1995, just 19 days before Proof Of Benificial Use was required. In a letter to Tim Luke, IDWR, dated May 24, 1990, Mr. Bachman stated that construction would start as soon as application for permit NO. 51-7279 was approved. It was approved July 27th. 1990. Both the 1990 approved permit and approval notice specifically stated that construction of diversion works begin within one year.

MAR 28 1996

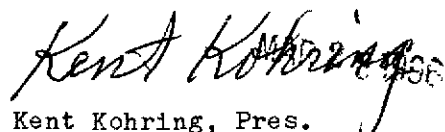
2. Mr. Conrad attempts to substitute other development activities, such as land clearance and soil preparation, for construction of diversion works. These may be necessary, but not specific requirements of law such as condition of approval NO. 4 of permit application and Sec. 42-204 of the Idaho Code. Perhaps, it would have been more prudent to start with the irrigation system!
3. Mr. Conrad argues that earlier application lapses were due, in part, to Idaho Power Co. denial of requests for electrical service. This may have happened, however it is hard to believe that Idaho Power Co. denied J.R.Simplot electrical service for any great length of time. In any event, IDWR does not require electrical service to meet requirements. Water could have been lifted and pressurized with gasoline, propane, or diesel operated motors and pumps.

In conclusion, I believe careful review of the file on permit NO. 51-07279 and the results of the 1995 field exam, will clearly show that M.L.Investment Co. procrastinated from 1979 until June of 1995. They Simply "dropped the ball". IDWR granted numerous re-applications and extensions and they still did not begin construction of works until June 12th. of 1995. With the resources of Simplot Land and Development behind M.L.Investment Co., the requirements could easily have been met in the required time.

Mr. Conrad's letter did not meet Mr. Saxton's requests for verification of excavation or construction of diversion works within the one year of approval of permit application on three differnt applications, extension, or renewal, or identify delay because of reasons beyound their control. I can see no reason for any further lienieny on the part of the IDWR in this matter and it is my hope that your decission will reflect the same.

cc. David Tuthill
L. Glen Saxton

Sincerely yours,


Kent Kohring, Pres.

Little Basin Mutual Drainage Co. Inc.



State of Idaho

DEPARTMENT OF WATER RESOURCES

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

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

PHILIP E. BATT
GOVERNOR

KARL J. DREHER
DIRECTOR

December 19, 1995

Kent G. Kohring
Star Route B, Box 140
Bruneau. ID 83604

RE: PERMIT NO. 51-07279 - M. L. INVESTMENT COMPANY

Dear Mr. Kohring:

After your visit to this office today, I did locate the above referenced water right file. Enclosed at your request is a copy of a letter dated December 7, 1995 from Vic Conrad which was submitted in response to my prior letter of November 2, 1995.

I also determined that the applications for permit which you have filed in connection with a Desert Land Entry are identified as 51-07357 and 51-07358. Department files show that ML Investment Co. has protested both of the applications.

Sincerely,

L. GLEN SAXTON, Chief
Water Allocation Bureau

Encl: 1

c: IDWR - W. Region

CORPORATE HEADQUARTERS

December 7, 1995

RECEIVED

DEC 07 1995

Department of Water Resources

L. Glen Saxton
Chief, Water Allocation Bureau
State of Idaho
Department of Water Resources
1301 North Orchard Street
Boise, Idaho 83702-9000

**Re: Response at the Request of and as an Accommodation to M. L. Investment Company
for Requested information about IDWR Permit No. 51-07279.**

Dear Mr. Saxton:

After reviewing your file for the above referenced permit we believe it is clear that the crucial substantive issue is whether or not M. L. Investment Company undertook and pursued development of the authorized project in substantial compliance with applicable Idaho water law.

At this point in our investigation there is no information confirming that construction of the actual diverting works themselves began within the year following permit approval. We contend, however, that compliance with permit requirements in an irrigation project involves many activities by the permittee in addition to simply constructing the diverting works. For a project like this one (in which new land is being cultivated), these elements include land clearing, fertilization, fence construction and other expenditures above and beyond the cost of constructing the diverting works.

M. L. Investment Company performed many of these required activities associated with beneficially using water under this project within the year following permit approval. For this reason, and because the project was completed within the IDWR approved development period, we think M. L. Investment Company is in compliance with the Idaho Code and with the provisions of this permit.

The irrigation project completed under this permit was originally applied for under IDWR Permit No. 51-07137. In the application M. L. requested 2 years to complete development of the project. The permit was issued in January 1979 (copy of permit approval transmittal cover letter attached). Following permit approval, M. L. Investment was prevented from proceeding with construction of the project because Idaho Power Company denied M. L.'s request for electrical service to the proposed pump station (copy of letter dated May 3, 1979 from John A. Rosholt to Ronald N. Graves recommending that power not be hooked up). Due to this unexpected delay beyond M. L.'s control in constructing the project, M. L.

requested additional time to complete the project, which was approved until February 1, 1983 (copy attached).

In 1982 M.L. Investment Company decided to proceed with project development with the expectation that Idaho Power would eventually provide electrical service once the Swan Falls controversy was resolved. All of the land owned by M. L. Investment Company located in the SE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 21 T. 6S R.5E was cleared and manure was worked in to the soil to improve the organic content, fertility, and water holding capabilities of the soil.

I have not located any correspondence to indicate that Idaho Power ever approved M. L.'s request for electrical service. The Swan Falls matter was well underway at that time, so it is reasonable to assume that Idaho Power's position about delivering service did not change until Swan Falls settled. The delay in completing the proposed development continued until the next Proof filing deadline, February 1, 1983.

M. L. Investment Company filed a second request for extension of time on May 18, 1983 (copy attached). This request was denied since it was filed beyond the 60 day period following the proof due date of February 1, 1983. In the letter denying approval of the second request to M. L. Investment Company dated August 25, 1983, the IDWR suggested filing a new application for permit as, "The only other option available to you at this time for potential future development.." (copy of August 25, 1983 letter attached).

In anticipation of the IDWR's denial of the second request, M. L. filed a second application for permit on August 9, 1983. The Swan Falls matter was not yet resolved at that time, and as a consequence the IDWR did not approve the permit until July 27, 1990. This application for permit was number 51-07279 by the IDWR.

Within a year after receiving the permit, field preparation was resumed and an additional fence was constructed around the NW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 20 T.6S R. 5E to protect the new farm from cattle grazing on adjoining rangeland. The full project was eventually completed in July, 1995 and Proof of Beneficial Use was filed. A licensing exam was performed in October, 1995 confirming project completion and we are currently awaiting for the license to be issued for this permit.

Idaho Code Section 42-204 states, "The department of water resources shall issue a permit for any approved application, make a record of the approval and provide a copy of the permit to the applicant, who shall be authorized, on receipt thereof, to proceed with the construction of the necessary works for the diversion of such water, and to take all steps required to apply the water to a beneficial use and perfect the proposed appropriation. The department shall require that actual construction work and application of the water to full beneficial use shall be complete within a period of five (5) years from the date of such approval, but may limit the permit to a less period than is named in the application, and the permit shall set forth the date when

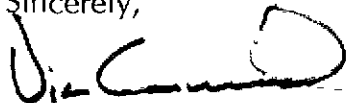
beneficial application of the water to be diverted by such works shall be made."

We believe the Idaho Code recognizes that several elements are required in an irrigation project before water can be beneficially used. This Section does not require that any specific aspect of the project, such as the diversion works, needs to be constructed within one year following permit approval. Perhaps most importantly in analyzing the issue at hand, the Code refers to construction of diversion works but also the taking of "all steps required to apply the water to a beneficial use and perfect the proposed appropriation."

It is our understanding that the IDWR more precisely indicates the type of construction under condition #4 on its permits to flush-out applications made for speculative purposes. Although development of the project was delayed several years by the Swan Falls controversy M. L. continuously pursued development of this project over a 16 year period until it was ultimately completed within the permitted development period.

We think the IDWR should bear in mind that this permit has a long history as a result of interference by the Swan Falls controversy with water right project development in this reach of the Snake River Basin. We believe permit compliance in an irrigation project involves the construction of several crucial elements before appropriated water can be beneficially used. Because we performed the construction of many of these elements within the time period in question, we believe M. L. complied with the Idaho Code and with the substantive provisions of this permit.

Sincerely,

A handwritten signature in black ink, appearing to read "Vic Conrad", with a large, stylized "C" at the end.

Vic Conrad

Land and Development

Enclosures



State of Idaho
DEPARTMENT OF WATER RESOURCES
STATE OFFICE, 373 W. Franklin Street, Boise, Idaho

JOHN V. EVANS
Governor

C. STEPHEN ALLRED
Director

Mailing address:
Statehouse
Boise, Idaho 83720
(208) 384-2215

January 22, 1979

Re: Permit No. 51-7137

M & L Investment Co.
Grandview,
Idaho 83625

Gentlemen:

Your approved copy of your Application for Permit is enclosed and we direct your attention to the conditions of approval on the fourth page.

Please note the special condition requiring you to install an access port or other device to provide for the installation of measuring equipment by the Department. The Department will provide the specifications for the installation to you.

The exercise of this permit may also be affected by the court's determination of water rights in the case of Idaho Power Company v. State of Idaho, et al., Civil No. 62237, currently pending before the District Court of Ada County.

Idaho Power officials tell us that because of Case No. U-1006-124 filed before the Idaho Public Utilities Commission, Idaho Power Company is asking the District Court of Ada County to determine whether the Power Company's water rights on the Snake River are protected against subsequent upstream appropriations in the waters of the Snake River and surface and subterranean tributaries between Milner Dam and Hells Canyon.

Since the use of water under your permit may affect the flows in this reach of the Snake River, the final decision in Idaho Power Company v. State of Idaho, et al. (Ada County Civil No. 62237) may determine to what extent the exercise of your permit may be subject to the water rights of Idaho Power.

While the Ada County court is examining this question, Idaho Power Company has not filed a specific protest to your permit. However, the Department of Water Resources has been advised that the Power Company is not waiving any of its rights to contest or limit the exercise of your permit or a subsequent license or water right. If you have any questions, please let us know.

Sincerely,

L. Glen Saxton

L. GLEN SAXTON
Chief, Operations Bureau

LGS:kw Enclosure

7/20/81 1936

NELSON, ROSHOLT, ROBERTSON, WALKER, TOLMAN & TUCKER

ATTORNEYS AT LAW

THE IDAHO FIRST NATIONAL BANK BUILDING
P. O. BOX 1906
TWIN FALLS, IDAHO 83301

THOMAS G. NELSON
JOHN A. ROSHOLT
J. EVAN ROBERTSON
THOMAS G. WALKER, JR.
STEVEN E. TOLMAN
JAMES C. TUCKER

TELEPHONE
AREA CODE 208
734-0700

May 3, 1979

Mr. Ronald M. Graves
Attorney at Law
999 Main Street
Suite 1300
P. O. Box 27
Boise, Idaho 83707

Re: M & L Investment Company - Request for Idaho
Power Company Hook-Up

Dear Ron:

I have been forwarded your April 19, 1979, letter to J. P. O'Connor of the Idaho Power Company together with a copy of Permit No. 51-7137 in the name of M & L Investment Company.

While I think it is inherent in everyone's water right to cease wasting water and recapture and use the same on the land to which it is originally appurtenant, this application smacks of a new diversion of waste water not necessarily from the farm involved.

In our opinion the 3.75 c/f/s of water would proceed to Strike Reservoir and be used for hydrogeneration through the remainder of Idaho Power's system if it were not diverted by M & L in this situation. My recommendation to the company is that they not hook-up your proposed facility for this reason.

If there are questions or facts which you think mitigate differently in this situation, do not hesitate to contact me.

Sincerely,



JOHN A. ROSHOLT

JAR:bg

cc: J. P. O'Connor

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
REQUEST FOR EXTENSION OF TIME

For additional time in which to submit
proof of beneficial use on a water right permit

M & L Investment Co. of 2729 Airport Way, Boise, Idaho 83705
(Name) (Address)

State of Idaho, deposes and says:

That he is the holder, or the duly authorized agent of the holder*, of Permit to appropriate the Public
Waters of the State of Idaho No. 51-7137.

That under the terms and conditions of said permit, work thereunder was required to be completed on or
before February 1, 19 81.

That I have performed the following work toward developing said permit _____
(This information must be provided on all extension requests, if none, so state)

Costing \$ _____

That I have been unable to complete the remainder of the work within the required time for the follow-
ing reasons: Idaho Power has a moratorium on water being used for irrigation out
of the Snake River that flows into Strike Dam.

I ask the Department of Water Resources to extend the time for the completion of obligations under
said permit to February 1, 19 83.
(1 to 5 years)

M & L INVESTMENT CO.
Jan Blessinger
(Signature)*
*IF OTHER THAN HOLDER, Power of Attorney must be supplied

ACTION OF THE DIRECTOR, DEPARTMENT OF WATER RESOURCES

IT IS HEREBY ORDERED that the above application for extension of time be APPROVED and the time
within which to submit the statement of beneficial use is extended to February 1, 1983.

Signed this 14th day of January, 19 81

L. Glen Saxton
L. GLEN SAXTON
Chief, Operations Bureau

Form 204
3-81
RECEIVED
MAY 18 1983
Department of Water Resources
Western Regional Office

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

For Office Use Only
File Received 15
Date 5/21/83
Received by JC/163

REQUEST FOR EXTENSION OF TIME

To provide additional time in which to submit
proof of beneficial use on a water right permit

M & L INVESTMENT CO. of 2729 Airport Way, Boise, ID 83705
(Name) (Address)

State of Idaho, deposes and says

That he is the holder or the duly authorized agent of the holder* of Permit to appropriate the Public Water of
the State of Idaho No 51-7137

That under the terms and conditions of said permit, work thereunder was required to be completed on or before
Feb. 3 19 83

That he has heretofore performed the following work described under said permit We are ready
(This must be filled out if no work has been completed put none)
to proceed on installation of pump and pipeline. We are going to out in diesel
powered pump and generators; therefore, not relying on Idaho Power

Costing \$ _____

That he is unable to complete the remainder of the work within the required time for the following reasons, to-wit
Idaho Power had a moratorium on power hook up being used for irrigation. I
did not receive notice of lapse of time extension

Wherefore, he asks that the Department of Water Resources extend the time for the completion of obligations
under said permit to May 15, 19 85
(1 yr. minimum 5 yrs. maximum)

NOTE
AS OF JULY 1, 1980
THERE IS A \$15.00
CHARGE FOR REQUESTS
FOR EXTENSION OF
TIME

M & L Investment Co
Tom Blessinger
(Signature)
*IF OTHER THAN HOLDER Power of Attorney must be supplied

ACTION OF THE DIRECTOR, DEPARTMENT OF WATER RESOURCES

IT IS HEREBY ORDERED that the above application for extension of time be DENIED, pursuant to Section
42-218a, Idaho Code, because the Request for Extension of Time was received on May
1, 1983, which is more than 60 days after the date the lapse letter was mailed,
February 7, 1983.

on this 23rd day of August

19 83

Kenneth Dunn
A KENNETH DUNN, Director



State of Idaho

DEPARTMENT OF WATER RESOURCES

STATE OFFICE, 450 W. State Street, Boise, Idaho

JOHN V. EVANS
Governor

A. KENNETH DUNN
Director

Mailing address:
Statehouse
Boise, Idaho 83720
(208) 334-4440

August 25, 1983

Tom Blessinger
M & L Investment Co.
2729 Airport Way
Boise, ID 83705

Dear Tom:

Re: Permit No. 51-7137

Enclosed is a copy of your request for extension of time which has been denied.

This office reviewed your request for an extension of time in connection with the above-referenced permit and cannot approve the request since the request was not received in a timely fashion (within sixty days after the notice of lapsing). Idaho Code, Sec. 42-218a, now provides, however, for the submittal of a late proof of beneficial use provided the work and beneficial use of water was accomplished during the authorized development period (January 19, 1979 to February 1, 1983 and provided just cause can be shown for not submitting proof of beneficial use on time. I'm not sure this provision is applicable in your particular development situation.

The only other option available to you at this time for potential future development is the submittal of a new application. The unknowns relative to the Swan Falls issue, however, presently prevent the Department from approving such an application.

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

Sincerely,


L. GLEN SAXTON
Chief, Operations Bureau

LGS:rf

Enclosures

8/29/83

Bruneau, Idaho

Nov. 29, 1995

Mr. L. Glen Saxton, Chief
Water Allocation Bureau
State Of Idaho Dept. Of Water Resources
1301 North Orchard Street, Statehouse Mail
Boise, Idaho 83720-9000

RECEIVED

NOV 30 1995

Department of Water Resources

RE: Memo to you from David Tuthill , Western Division, dated Oct. 27,
1995 regarding Beneficial Use Examination for File No. 51-07279,
and your subsequent letter to M.L.Investment Co. dated Nov. 2, 1995.

Dear Mr. Saxton:

I have no standing to protest M.L.Investment Co. permit No. 51-07279,
however, your action will directly affect me as stated by Mr. Tuthill.
I would be remiss if I did not state my case.

I have no wish to see the ultimate loss of a water right by M.L.
Investment Co., but if they had to re-file, it would give me a window
of opportunity for my own application to be processed without M. L.
Investment Co. interference.

I believe my application will stand on its own merits, however,
Mr. Frank Bachman of M.L. Investment Co. has stated that he would
bring in Simplot lawyers at a protest hearing to block my permit
application. To counter this would be extremely costly to me.
Essentially, what is important to them, is to prevent my water
application approval, which in turn would cause the BLM to deny the
DLE application upon which the water was to be used. Simplot Farm
Group covet^{the} ground for their own use. (see enclosure). It is
adjacent to Simplot Farm #3 Grandview, Idaho.

I have been in communication with Frank Pachman and he stated
that they are gathering material to substantiate compliance with
Condition Of Approval No. 4. For this reason, I would like to
emphasize the following points for your consideration.

MAR 28 1996

1. M.L. Investment Co. has had more than sufficient time to perfect permit No. 51-07279. It actually started with permit No. 51-7137 Jan. 19, 1979 which lapsed. Refiled Aug. 9, 1983 No. 51-7279 which lapsed. Reinstatement No. 51-7279 to July 1, 1995 which lapsed. Reinstatement Aug. 3, 1995 with penalty date to Aug. 14, 1995. In all, 16½ ye rs before application to Benificial Use, while ordinary compliance is five years with a maximum extention of five years, for a totel of 10 years.

2. Your records show M.L. Investment Co. filed form 204-P dated 6-16-95 and signed by Frank Bachman, stateing construction of diversion of works began June 12, 1995 (see enclosure). They did not, at that time, claim "reasons beyound my control" for not starting sooner.

3. Jim Johnson of your office informed me that an ap roved ap- plication, in a sense, is a contract with strict laws and provisions regarding time and completion. I had to accept this when I was the recipient of an earlier decision by your office which was unfavorable to me. Now, I would hope that compliance with those same strict requirements would apply, equally, to M.L. Investment Co. and the Simplot Farm Group.

4. Idaho Code 42-204 p. 37 para. 2 states "The holder of any permit who shall fail to comply with the provisions of this section within the time or times specified shall be deemed to have abandoned all rights under his permit".

Idaho Code 42-20⁴ p.38 Decisions Under Prior Law - Necessity of Compliance. - " Total failure to commence work within time provided in permit, or to complete one fifth of work in limited time, cannot be cured by extending time for making proof of benificial use of water so attempted to be appropriated.

Mr. David Tuthill has assured me that the IDWR has always acted impartially and resisted pressure of power, politics, and money. It is my hope that this aigh standard will continue.

encl: 3

cc David Tuthill - Western Region

Sincerely yours,

Kent Kohring
Kent Kohring Pres. 8/8/96

Little Basin Mutual Drainage Co.

**U.S. DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT
IDAHO STATE OFFICE
CONVERSATION RECORD**

TIME 830a		DATE 5-15-95	
TYPE		ROUTING	
☐ VISIT ☐ CONFERENCE ☒ TELEPHONE		NAME/SYMBOL INT Sig'n SS Del Dan W	
Location of Visit/Conference:		INCOMING OUTGOING	
NAME OF PERSON(S) CONTACTED OR IN CONTACT WITH YOU		ORGANIZATION (Office, Dept., Bureau, etc.)	
Chuck Jones		Smplot - Battle Creek	
SUBJECT			
Re: Kent Koherses' land sale			

SUMMARY

Simplot wants to be on record as OPPOSING any sale of lands within the Battle Creek allotment. They also want to be on record as wishing to bid on any land sale Mr Kohersing proposes as they have farms in that area too.

They feel that loss of acreage in Battle, may adversely affect them if a cut is proposed following the A.E.

ACTION REQUIRED

NAME OF PERSON DOCUMENTING CONVERSATION	SIGNATURE	DATE
		5-15-95

ACTION TAKEN

SIGNATURE	TITLE	DATE
-----------	-------	------

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
COMMENCEMENT OF WORKS

Permit No. 951-07279

Name(s) of Permit Holder(s): HC 85 Box 275
M.L. Sweetheart Co.

Post Office Address: ED. BARNETT
834-2231

☒ I hereby certify that construction of diversion works for above referenced project began on June 12, 1995 (date) Aug 09 1995 to maintain a valid permit to develop the water system.

☐ I hereby certify that construction of diverting works on the above referenced permit.

☐ I hereby certify that construction of diverting works on the above referenced project has not yet begun due to the following reason beyond my control:

Note: A financing difficulty is

6-16-95 Date

David A. Beckman Signature of Permit Holder

not an acceptable reason

MAP 2 5 13-96

proceeding diligently and in good faith, shall extend the time so that the amount of time lost by such delays shall be added to the time given in the original permit for each and every action required.

2. The time for completion of works and application of the water to full beneficial use under any permit involving the diversion of more than twenty-five thousand (25,000) acre feet in one (1) irrigation season for a project of no less than five thousand (5,000) acres, may upon application to the director of the department of water resources supported by a showing that additional time is needed on account of the time required for organizing, financing and constructing works of such large size, be extended by the director of the department of water resources for an additional period of seven (7) years, but not to exceed twelve (12) years in all from the date of permit: Provided, that no such extension shall be granted unless the applicant for such extension shall show that there has been actually expended toward the construction of said diversion (including expenditures for the purchase of rights of way and property in connection therewith) at least one hundred thousand dollars (\$100,000).

3. The time for completion of works and application of the water to full beneficial use under any permit involving the construction of a reservoir of more than ten thousand (10,000) acre feet capacity or for the appropriation of water to be impounded in such reservoir of more than ten thousand (10,000) acre feet capacity, may be extended by the director of the department of water resources upon application to the director if the permittee establishes that the permittee has exercised reasonable diligence and that good cause exists for the requested extension.

4. In connection with permits held by the United States, or the Idaho water resource board, whether acquired as the original applicant, by assignment or otherwise, the director of the department of water resources may extend the time for completion of the works and application of the water to full beneficial use for such additional period or periods of time as he may deem necessary upon application supported by a showing that such additional time is required by reason of the status of plans, authorization, construction fund appropriations, construction, or any arrangements which are found to be requisite to completion of the construction of such works.

5. In all other situations not governed by these provisions the department may grant one (1) extension of time, not exceeding five (5) years beyond the date originally set for completion of works and application of the water to full beneficial use, upon request for extension received on or before the date set for completion, provided good cause appears therefor.

Any applicant feeling himself aggrieved by the decision of the department of water resources regarding his application may request a hearing before the director in accordance with section 42-1701A(3), Idaho Code, for the purpose of contesting the decision and may seek judicial review pursuant to section 42-1701A(4), Idaho Code, of any final decision of the director following the hearing.

Every holder of a permit which shall be issued under the terms and conditions of an application filed hereafter appropriating twenty-five (25) cubic feet or less per second must, within one (1) year from the date upon

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The holder
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§ 2; reen. R.C
p. 289; reen.
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ch. 374, § 3;
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Amendment, e
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rks and application of
tension received on or
use appears therefor
ecision of the depart-
ay request a hearing
1A(3), Idaho Code, for
judicial review pursu-
ecision of the director

under the terms and
ating twenty-five (25)
ar from the date upon

which said permit issues from the office of the department of water re-
sources, commence the excavation or construction of the works by which he
intends to divert the water, and must prosecute the work diligently and
uninterruptedly to completion, unless temporarily interrupted through no
fault of the holder of such permit by circumstances, over which he has no
control

The holder of any permit who shall fail to comply with the provisions of
this section within the time or times specified shall be deemed to have
abandoned all rights under his permit. [1903, p. 223, § 2; am. 1905, p. 357,
§ 2; reen R.C., § 3254; am. 1911, ch. 64, § 1, p. 184; am. 1915, ch. 133, § 1,
p. 289; reen C.L., § 3254; C.S., § 5570; am 1923, ch. 135, § 1, p. 196;
I C A., § 41-204, am. 1935, ch 145, § 3, p 353; am. 1941, ch. 161, § 1, p
320, am. 1949, ch. 127, § 1, p. 222; am. 1963, ch. 214, § 1, p. 618; am. 1967,
ch 374, § 3, p. 1079, am. 1980, ch. 238, § 3, p. 526; am 1982, ch. 62, § 1, p.
122; am. 1986, ch. 313, § 3, p. 763; am 1989, ch 96, § 1, p. 223]

Compiler's notes. The words enclosed in
parentheses so appeared in the law as en-
acted
Section 4 of S L 1980, ch 238 is compiled
as § 42-211
Sections 2 and 4 of S L 1986, ch 313 are
compiled as §§ 42-201 and 42-221, respec-
tively
Section 2 of S L 1963, ch 214 declared an
emergency Approved March 25, 1963
Section 2 of S.L. 1982, ch 62 declared an
emergency Approved March 15, 1982
Cross ref. Cancellation of permits,
§§ 42-208, 42-301 et seq
Sec. to sec. ref. This section is referred to
in §§ 42-218, 42-233a
Cited in: Shokal v. Dunn, 109 Idaho 330,
707 P 2d 441 (1985)

ANALYSIS

Amendment, effect of
Applicable to United States
Constitutionality.
Conveyance of water right
Effect of permit.
Trespass
Vested rights

Amendment, Effect of.
The 1935 amendment to this section did
not operate to amend §§ 42-216 (now re-
pealed), 42-224, 42-306 (now repealed) and
42-308 (now repealed) Twin Falls Canal Co
v. Huff, 58 Idaho 587, 76 P 2d 923 (1938)

Applicable to United States.
Restrictive five-year requirement for com-
pletion of irrigation appropriations was bind-
ing on United States, public waters not being
governed, in this respect, by same principle
applicable to public lands. Pioneer Irrigation
Dist v. American Ditch Ass'n, 50 Idaho 732,
1 P 2d 196 (1931)

Constitutionality.
One to whom water permit was granted by
the commissioner of reclamation could not
urge unconstitutionality of amendment to
statutes governing contests of permits in the
absence of a showing of injury by reason
thereof Twin Falls Canal Co. v. Huff, 58
Idaho 587, 76 P 2d 923 (1938)
Even if some provisions of an amendment
of this section were unconstitutional, the dis-
trict court should not have dismissed the ac-
tion, but should have proceeded under the
prior valid statute and such portion of the
amendment as could be held valid, and such a
proceeding would not be an action for a de-
claratory judgment, and the court could not
pass upon the question of unconstitutionality
until presented in a cause demanding rulings
thereon Twin Falls Canal Co v Huff, 58
Idaho 587, 76 P 2d 923 (1938)
The application of this act as amended in
1963 to a petition for a permit opposed by
parties because of its alleged adverse effect
on rights of such parties existing prior to the
1963 amendment was not unconstitutional as
retrospective. Keller v. Magic Water Co., 92
Idaho 276, 441 P 2d 725 (1968)
The provisions of this section granting to
persons or corporations owning irrigation
systems covering more than 25,000 acres ad-
ditional time in which to apply diverted
water to beneficial use are not unconstitu-
tional class legislation Keller v Magic
Water Co., 92 Idaho 276, 441 P 2d 725 (1968)

Conveyance of Water Right.
Water right is real estate and must be con-
veyed as real estate, and where one had a
valid water permit issued to him by state en-
gineer (department of water resources) he
could not convey water right secured thereby
by simply handing permit to would-be pur-

chaser *Gard v Thompson*, 21 Idaho 485, 123 P. 497 (1912).

Effect of Permit.

Permit is not an appropriation of the public waters of state, but is the consent of state given in manner provided by law to construct and acquire real property, and it gives applicant an inchoate right, which will ripen into a legal and complete appropriation only upon completion of works and application of water to a beneficial use. *Speer v. Stephenson*, 16 Idaho 707, 102 P. 365 (1909); *Marshall v. Niagara Springs Orchard Co.*, 22 Idaho 144, 122 P. 208 (1912); *Basinger v. Taylor*, 30 Idaho 289, 164 P. 522 (1917).

Mere fact that state engineer (department of water resources) grants permit in no way confers any right to enter upon private land for the purpose of making appropriation. *Marshall v. Niagara Springs Orchard Co.*, 22 Idaho 144, 125 P. 208 (1912).

Granting of permit secures no rights to holder, but compliance with conditions of permit initiates right to use water, which right becomes vested and dates back to the issuance of permit. *Washington State Sugar Co. v. Goodrich*, 27 Idaho 26, 147 P. 1073 (1915).

Trespass.

In order to initiate right to appropriate water under this section at a point upon land belonging to state, if it is necessary for applicant to enter upon land owned by state for purpose of making necessary examination, surveys, maps and plans required in order to make a proper application to state engineer (department of water resources) for a permit, by so entering, such party would be a trespasser upon said land, under R. C., § 1578. *Tobey v. Bridgewood*, 22 Idaho 566, 127 P. 178 (1912), overruled on other grounds, *Idaho-Iowa Lateral and Reservoir Co. v. Fisher*, 27 Idaho 695, 151 P. 998 (1915).

Vested Rights.

State engineer (department of water resources), by granting subsequent water permit, cannot interfere in any manner with vested rights of prior appropriators. *Lockwood v. Freeman*, 15 Idaho 395, 98 P. 295 (1908); *Nielson v. Parker*, 19 Idaho 727, 115 P. 488 (1911); *Gard v Thompson*, 21 Idaho 485, 123 P. 497 (1912).

DECISIONS UNDER PRIOR LAW

ANALYSIS

Action at law
Necessity of compliance
Trespass

Action at Law.

Holders of subsequent permits, upon a proper showing, are entitled to judgment in action at law canceling prior permits issued without statutory compliance, when state engineer (department of reclamation) refuses to cancel such permits. *Clark v. Hansen*, 35 Idaho 449, 206 P. 808 (1922).

Necessity of Compliance.

Total failure to commence work within time provided in permit, or to complete one fifth of work in limited time, cannot be cured by extending time for making proof of beneficial use of water so attempted to be appropriated. *Washington State Sugar Co. v. Goodrich*, 27 Idaho 26, 147 P. 1073 (1915).

Trespass.

Where necessary data can be furnished from observation or survey made beyond the premises where the diversion is to take place, there is no trespass, since trespass must be physical not merely mental. *Idaho Power Co. v. Buhl*, 62 Idaho 351, 111 P.2d 1088 (1941).

42-205. Issuance of permit — Restrictions — Preference. — (1) No permit shall be issued by the department of water resources of the state of Idaho, for the appropriation of water for power purposes, nor shall any such permit be assigned, transferred, mortgaged, sold or conveyed to any person, firm or corporation except in accordance with the provisions of this act.

(2) Water cannot be appropriated for hydropower development uses within or using existing man-made irrigation facilities without the permission of the owner thereof.

(3) When competing applications for a permit have been filed prior to the effective date [April 1, 1981] of this act for the additional use for hydropower purposes that would utilize facilities that are owned or controlled by the holder of an existing water permit, license, decree, or estab-

lished constitutional application of the ov § 1, p. 233; am. 194

Compiler's notes. T
ence "April 1, 1981" was
piler

The words "this act" r

42-206. Resident
ate water for power
granted to any per
resident or resident
ship unless organiz
the state of Idaho. l
am. 1986, ch 217.

42-207. Sale, tr
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signee of such pe
under any mortga
in section 42-206,
purposes of specu
mortgaging of any
being the express
permits to approp
otherwise, except
142, § 3, p. 233

Compiler's notes
"this act" is comple

The name of the dir
of water administrat
reclamation engineer
the director of the d

42-208. Canc
permit to approp
director of the d
thereon, that the
the event of its s
a compliance wit
ately canceled a
resources. 1937

From: DWR06::"vconrad@corpadmin.simplot.com" 29-NOV-1995 09:58
To: "Saxton, Glen L. - IDWR" <GSAXTON@idwr.state.id.us>
CC:
Subj: IDWR Permit No. 51-07279.

In reference to your letter dated November 2, 1995, I want to confirm your agreement by telephone conversation this morning to extend M. L. Investment Company's response deadline until December 8, 1995. As I mentioned during our conversation we recently completed gathering the information you requested in your November 2, 1995, letter. We are requesting the extension to allow enough time for M. L. Investment Company to review the IDWR's permit file located at your office.

We appreciate the extension and if you need any additional correspondence confirming our telephone conversation please call me. My phone number is 389-7359.

Vic Conrad

At the request of and as an accommodation to M. L. Investment Company

NOV 29 1995

FROM

Glen

TO

M-L Invest File

DATE

11-29-95

SUBJECT

- Vic Connors called today & asked for a time ext to Dec 8, 1995 in which to submit requested information.

- I advised that the ext was OK w/ the dept.

MAR 2 8 1996

SIGNATURE

MEMORANDUM

To: File 51-07279
From: L. Glen Saxton *LS*
RE: OFFICE VISIT BY KENT KOHRING
Date: November 20, 1995

On this date, Kent Kohring visited this office in connection with Permit No. 51-07279 in the name of M. L. Investments. He inquired about any follow-up to Dave Tuthill's October 27, 1995 memo to me. I advised him that I had written a letter dated November 2, 1995 and at his request provided a copy to him.



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

November 2, 1995

PHILIP E. BATT
GOVERNOR

KARL J. DREHER
DIRECTOR

M.L. Investment Co.
c/o Frank Bachman
HC 85, Box 275
Grandview, ID 83624

RE: PERMIT NO. 51-07279 IN THE NAME OF M.L. INVESTMENT CO.

Dear Mr. Bachman:

As you likely are aware, on October 16, 1995, the department of Water Resources conducted a license examination in connection with the above referenced permit.

Department records show that on July 27, 1990, the department issued the permit with certain conditions including the following:

4. Permit holder shall commence the excavation or construction of diverting works within one year of the date this permit is issued and shall proceed diligently until the project is complete.

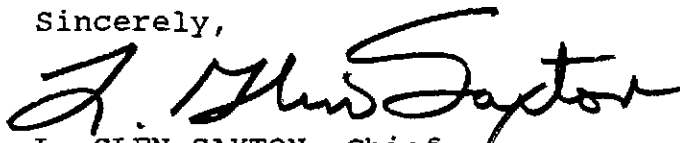
This condition is based on the provisions of Section 42-204, Idaho Code, which also provides that the start of construction within one year may be temporarily interrupted through no fault of the permit holder by circumstances over which he has no control.

The purpose of this letter is to inquire if you started construction as required by condition of permit approval no. 4, and if so, to provide appropriate supporting evidence to the department. If such construction did not timely occur, you need to provide information to the department to show that you were temporarily interrupted by circumstances over which you had no control.

As reference for you, Section 42-311, Idaho Code, provides for the cancellation of permits where the permit holder has not complied with the conditions in the permit.

Please provide the requested information within thirty (30) days of the date of this letter.

Sincerely,


L. GLEN SAXTON, Chief
Water Allocation Bureau

MAR 28 1996

c: W. Region

MEMORANDUM

TO: Glen Saxton

FROM: Dave Tuthill *DT*

DATE: October 27, 1995

RE: Beneficial Use Examination for File No. 51-07279

REC-1111

OCT 31 1995

Dep. Dir.

Attached I am forwarding to you a beneficial use field examination conducted by Cindy Hodges of this office. There are three reasons to accompany the examination with this memorandum.

First, Western Region is presently processing two protested water right applications which propose to utilize wastewater tributary to Jacks Creek, which thus could impact water supplies available under this permit. The applicant (Mr. Kohring) brought to our attention the next two items.

Second, there is some question as to whether the permit holder applied the water to beneficial use prior to the date when proof of beneficial use was filed (July 7, 1995). Mr. Kohring's concerns precipitated the quick beneficial use field examination, and resulted in a finding that the July irrigation had been a pre-planting irrigation. Due to the importance of timing in this matter we inquired with the NRCS about whether such pre-irrigation is beneficial, and received the attached letter dated October 13, 1995. While there might be some question as to the beneficial nature of pre-irrigation, it appears to me that the NRCS letter adequately supports a finding that the irrigation was beneficial in this situation.

The third item, and to me the most problematic, regards compliance with Condition of Approval No. 4 on the permit which requires that work be commenced within one year after issuance of the permit. We do not see evidence that this occurred, but it appears appropriate that the permit holder be given a chance to respond to this issue. Because the permanent file is located at the State Office, I am requesting that you or your staff make this inquiry and pursue the matter from this point.

Due to the interest shown in this regard by Mr. Kohring, I will advise him of the present status of this processing by sending to him a copy of this memorandum.

cc: Kent Kohring

MEMORANDUM

October 19, 1995

TO: File No. 51-07279
FROM: Cindy Hodges
RE: *BENEFICIAL USE EXAMINATION*

A beneficial use examination was conducted October 16, 1995, in response to a request from Kent Kohring. The purpose of the field examination was to verify the validity of the above permit with respect to finding adequate standing by the permit holder to file protest against applications for permit made by Mr. Kohring. My field report is attached.

Mr. Kohring is concerned that applications of water from Jacks Creek under this permit between June and October of 1995 cannot be considered as beneficial use because no crop was planted. I first asked John Glime, Canyon County NRCS, about the necessity of pre-planting applications of water during development of native (sagebrush rangeland) lands to pasture. John referred the question to Bob Bartholomew, District Conservationist out of Marsing, who kindly sent the attached letter. Mr. Bartholomew's conclusion was that pre-irrigation "on newly broken out rangeland is beneficial to the establishment of the new seeding and should be done when possible."

Beneficial use of water under this permit, in the form of pre-irrigation for pasture development, began in mid-June, 1995. Proof of beneficial use was submitted July 7, 1995.

United States
Department of
Agriculture

Natural
Resources
Conservation
Service

P.O. Box 486
Marsing, ID
83639

RECEIVED

OCT 16 1995

WATER RESOURCES
WESTERN REGION

October 13, 1995

Subject: Range Conversion Pasture Seeding

Dave Tuthill *DT*
Idaho Dept. of Water Resources
2735 Airport Way
Boise, ID 83705

I was requested by John Gleim, NRCS District Conservationist in Caldwell, to respond whether or not it was useful to apply irrigation prior to a Fall pasture seeding. John asked that I respond due to my 20 year background in Range Management for NRCS.

As I understand the situation, the question revolves around rangeland which is broken out from native vegetation in the Spring with the intention of planting pasture grass in the Fall.

Two general conditions usually occur when land in native vegetation is broken out for use as irrigated pasture. The first is the large amount of plant materials which are incorporated into the top several inches of the soil surface and the second, the dry, powdery condition of those top inches of soil. These conditions make it difficult to plant the new grass seeds at the proper depth (1/4 - 3/4 inch deep) and to get good soil to seed contact.

In our warm, dry summer conditions, the vegetative matter incorporated into the soil surface does not adequately "compost", and release their nutrients through biological action into the mineral soil. The application of irrigation water after breakout provides two primary benefits. It supplies the needed moisture for soil bacteria to break down the incorporated vegetation and release its nutrients and helps to settle the soil into a condition that allows the seeding equipment to place the new seeds at the proper depth for best survival.

Pastures are also sometimes "pre-irrigated" to allow the germination of undesirable plants so that they can be removed and reduce competition for the new grass seeding.

MAR 28 1996

In my opinion, the practice of applying irrigation on newly broken out rangeland is beneficial to the establishment of the new seeding and should be done when possible. It greatly increases the chances for survival and often results in a much healthier stand.

Sincerely,

Bob Bartholomew
District Conservationist
Marsing Field Office

cc. John Gleim, Caldwell

87065

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
BENEFICIAL USE FIELD REPORT

RECEIVED
OCT 3 1995

Department of Water Resources

A. GENERAL INFORMATION

Permit No. 51-7279

1. Owner: M.L. Investments Phone No. 834 2231

Current Address: HC 85 Box 275 GRANDVIEW ID

2. Accompanied by: CHUCK JONES EXAM DATE: 10.16.95

Address: above (Simplot Livestock) Phone No. _____

Relationship to Permit Holder: PUBLIC LANDS ADMINISTRATOR

3. Source: JACKS CK tributary to BRUNEAU * SNAKE RIVER

B. OVERLAP REVIEW

1. Other water rights with the same place of use: NONE **Improperly permitted. Jacks is trib. to Bruneau arm of C.J. Snake R. S*
2. Other water rights with the same point of diversion: NONE

C. DIVERSION AND DELIVERY SYSTEM

1. Point(s) of Diversion:

Ident No.	Gov't Lot	1/4	1/4	1/4	Sec.	Twp.	Rge	County	Method of Determination/Remarks
		SE	NW	NW	21	6S	5E	Owyhee	Site Visit, Map

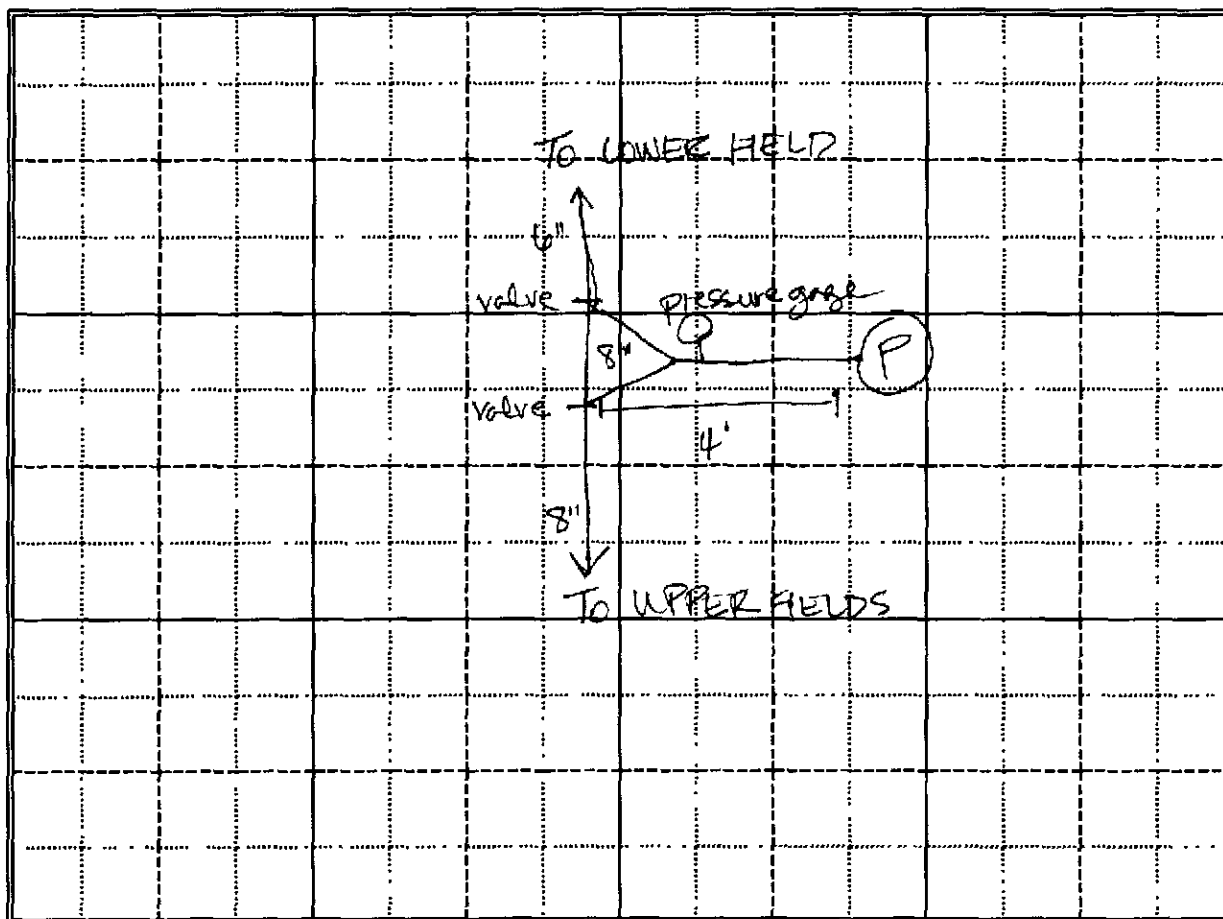
2. Place(s) of Use:

Indicate Method of Determination Planimeter from ASCS photo

TWP	RGE	SEC	NE				NW				SW				SE				Totals
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
6S	5E	20	33	33															66
		21								32									32
																			98

10/28/95

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



Scale: 1" = _____

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

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

☐ Photo of Diversion and System Attached

4.

Well or Diversion Identification No.*	Motor Make	Hp	Motor Serial No.	Pump Make	Pump Serial No. or Discharge Size
	Marathon	60	FN AI 509TV 55	Correll	89757 14.75 ~~14.75~~
				Model 4H4	60-4

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

D. FLOW MEASUREMENTS

1.

Measurement Equipment	Type	Make	Model No.	Serial No.	Size	Calib. Date
						3/27/95

2. Measurements: top-mount centrifugal pump, 6" intake 4" discharge
runs ~ ~~80~~ 80 psi at pump. Curve available from
Silver Creek Irrigation. (attached) 4' lift from creek to pressure
gauge
incorrect curve sent. Recommendation made
independent of pump curve.
10-25-95 correct curve obtained - supports

E. NARRATIVE/REMARKS/COMMENTS

Single pump station to 2 Mainlines - 1, 8" & 1, 6"
System runs ~6 1/4 mile lines. Pipeline to east
crosses Jacks creek to risers for field in SE 1/4 S. 21.
Pipeline to west is buried PVC across field in SW 1/4 (not
part of system) to an existing drain; above ground steel
line crosses drain into NE 1/4 S. 20 to risers for NW 1/4.

This permit was not issued until 1990 (trust water had).
Development occurred early this summer (June 1995).
After system was installed and operational, pre-irrigation
occurred until early Oct when winter barley was seeded.
Normally, pre-irrigation is not considered beneficial use,
however, information from NRCS indicates that irrigations
of newly broken out land may be essential in some
circumstances. (see attached letter & memo).
Therefore I have concluded that proper beneficial
use ^(for irrigation) occurred under this system prior to proof filing
in July 1995. However, no ^{diverted} stock watering has ~~occurred~~ under
this right, as pasture has yet to mature.
No overlaps. Jacks Creek is primary source.

Pump was operating at exam but lines could not be
pressurized due to a mainline break in the west extension.
(east extension smaller and does not accommodate full flows).
Used theoretical discharge and recent pump curve/installation
record to assess flow.

Have conditions of permit approval been met? ☒ yes ☐ no - no ^{meas. device or} access port, but
permit holder requested waiver in July 13, 1995 letter. System
measurable at point of discharge, or with polysonic meter.
MPS 5100

F. FLOW CALCULATIONS

Measured Method: *HP equation*

$$\frac{60 \times 8.8 \times 1.7}{4 + (50 \times 2.31)} = 1.96 \text{ cfs}$$

z $\uparrow$ pumping plant pressure

Additional Computation Sheets Attached

Line discharge (estimated)
6 lines @ 32 heads/line = 198 heads
198 x 4.5 gpm avg discharge = 891 gpm
1.98 cfs

G. VOLUME CALCULATIONS

1. Volume Calculations for Irrigation:

$$V_{IR} = (\text{Acres Irrigated}) \times (\text{Irrigation Requirement}) = 98 \times 4 = 392 \text{ AFA}$$

$$V_{D.R.} = [\text{Diversion Rate (cfs)}] \times (\text{Days in Irrigation Season}) \times 1.9835 = 1.96 \times 214 \times 1.9835 = 831.4$$

$$V = \text{Smaller of } V_{IR} \text{ and } V_{D.R.} = 392$$

allow 1.96 for 95 acres.

2. Volume Calculations for Other Uses:

H. RECOMMENDATIONS

1. Recommended Amounts

Beneficial Use	Period of Use		Rate of Diversion Q (cfs)	Annual Volume V (afa)
	From	To		
<i>IRRIGATION</i>	<i>4/1</i>	<i>10/31</i>	<i>1.96</i>	<i>392</i>
	<i>(std season)</i>			
Totals:				

2. Recommended Amendments

☐ Change P.D. as reflected above ☐ Add P.D. as reflected above ☐ None
☐ Change P.U. as reflected above ☐ Add P.U. as reflected above ☒ Other *tributary clarification*

I. AUTHENTICATION

Field Examiner's Name *Cindy J Hodges* Date _____

Reviewer _____ Date _____

SEAL

NORMAL POGE/ELEVA

2528

2668

17

78

2557

Wa)

20

255\$

29

PERMIT 51-7279 INIT 4
T. R. S. Q/Q
P/D 65 SE 21 NWNW
SCALE _____
PHOTO ID. _____

5 9100um.5

115 5.2'30"

470 000 FEET

DATE: 5/2/20

RECEIVED

AUG 28 1995

WATER RESOURCES
WESTERN REGION

August 25, 1995

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,

AUG 28 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.

11/21/95

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

6-10-95

700 HEL

15 HEL

657

755

33 ac

8" line

2021

298

313

910

32 ac

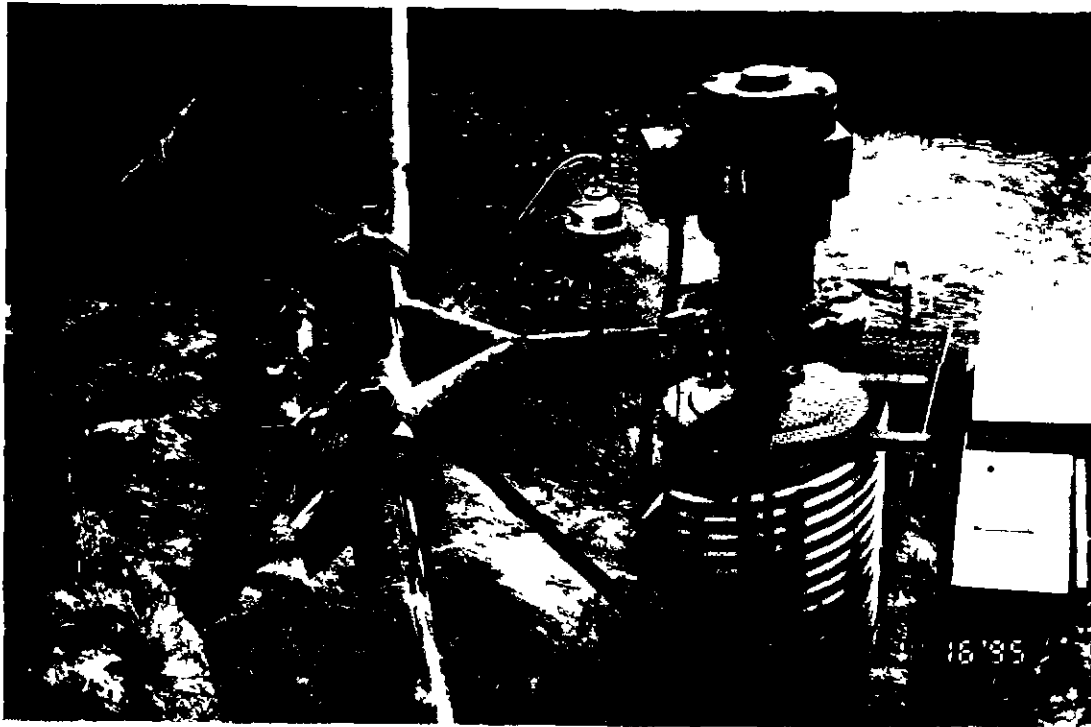
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51-7279

KKK

26



P/O



P/O
SENW S21

51-7273



P/u
Sec 20



1125 p 100

51-7279

**ANALYSIS SHEET
FOR
PROOF OF BENEFICIAL USE**

Permit No. 51-7279 Reviewed by aj Date 8-1-95

GENERAL CONSIDERATIONS

TYPES OF USE

yes Name same as permit?
yes Address same as permit?
no 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?
150- Amount Submitted
yes Correct?
yes Required?
yes Installed?
Waiver requested?

PRIORITY CALCULATION

Date proof received 7-6-95
Date proof due 7-1-95 -
No. of days late 5 =
Priority Date 8-9-83 +
New Priority Date 8-14-83

8/14/83

DEFICIENCIES OR ACTION ITEMS

Reinstated + advance to Aug. 14, 1983.
Proof acceptable

DATA ENTRY

New Address X Proof Made 7-6-95



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

August 3, 1995

M L INVESTMENT CO
HC 85 BOX 275
GRANDVIEW ID 83624

PROOF ACKNOWLEDGEMENT LETTER

RE: PERMIT NO. 51-07279

Dear Permit Holder:

The department acknowledges receipt of the proof of beneficial use form submitted for the above referenced permit.

Enclosed is an order reinstating your permit since proof of beneficial use was received after the proof due date. Please note that the priority date has been advanced to August 14, 1983.

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.

If you have questions concerning the field examination, please feel free to contact the WESTERN Regional Office in Boise at (208) 334-2190.

Sincerely,

JULIE L. YARBROUGH
Senior Secretary

Enclosure

c: IDWR - Region

AUG 09 1995



AGRICULTURE GROUP

SIMPLOT LIVESTOCK COMPANY

HC-85 BOX 275

GRAND VIEW, IDAHO 83624

(208) 834-2231

RECEIVED

JUL 14 1995

Department of Water Resources

Handwritten: if needed

July 13, 1995

State of Idaho
Department of Water Resources
PO Box 83720
Boise, ID 83720

Attn: Julie L. Yarbrough

Re: Permit NO. 51-07279

Dear Julie:

You recently received from me a completed proof of beneficial use form for water right 51-07279.

The permit requested a measurement port be installed to allow flow calculations by your department. I can install the port anytime if so desired, however I would prefer to have this requirement waived.

The Western Region has an ultra-sound device which measures flow on the outside of the pipe. I respectfully request this device be used to determine our volume of water diverted.

I anticipate a field exam by your Department soon and will not install a measurement port unless requested.

Should you have any questions regarding the beneficial use application please contact me at 208-834-2231.

Sincerely yours,

Frank L. Bachman
M.L. Investment Co.

AUG 09 1995

July 7, 1995

M. L. INVESTMENT CO.
HC 85 BOX 275WAY
GRANDVIEW ID 83624

LAPSE NOTICE

RE: PERMIT NO. 51-07279

Dear Permit Holder:

You are hereby notified that under the provisions of Section 42-218A, Idaho Code, the above referenced permit has lapsed and is of no further force nor effect. The department provided the proper forms to you in our proof due notice dated April 30, 1995. No further construction or additional development is authorized under this permit unless it is reinstated.

The permit can only be reinstated if you submit an acceptable proof of beneficial use or an acceptable request for extension of time to the department within sixty (60) days of the mailing of this lapse notice. An acceptable proof of beneficial use submittal must include the examination fee or a completed field examination report. A request for extension of time must be accompanied by a fifty dollar (\$50.00) fee.

Enclosed again for your use are a proof of beneficial use form and a request for extension of time form. Please note that only one extension of time can be granted unless the project has not been completed because of lack of a necessary approval by a government agency or by litigation which may bring title to the water in question.

L. GLEN SAXTON
Chief, Water Allocation Bureau

Enclosures

Enclosures

CERTIFICATION OF MAILING
I hereby certify that on 7/7/95
~~a copy~~ an original of this document was
deposited in the United States mail,
postage prepaid addressed to the
individual(s) named above.


STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

COMMENCEMENT OF WORKS

Permit No. P51-07279
Name(s) of Permit Holder(s): M L Investment Co.
Post Office Address: HC 85 Box 275
GRANDVIEW, ID. 83426 Phone No. 834-2231

- ☒ I hereby certify that construction of diversion works for the above referenced permit began on JUNE 12, 1995 (date). I understand that I must continue to develop the water system with diligence to maintain a valid permit.
- ☐ I hereby certify that construction of diverting works on the above referenced project has not yet begun due to the following reason beyond my control*.

*Note: A financing difficulty is
not an acceptable reason

6-16-95
Date

Frank L. Bachman
Signature of Permit Holder

M L Investment Co.
HC 85, Box 275
Grandview, Id. 83624

PLACE
STAMP
HERE



RECEIVED

JUN 20 1995

NOT RECORDED

IDAHO DEPARTMENT OF WATER RESOURCES
STATEHOUSE
BOISE, IDAHO 83720

AUG 09 1995



April 30, 1995

M. L. INVESTMENT CO.
HC 85 BOX 275WAY
GRANDVIEW ID 83624

RE: PERMIT NO. 51-07279 PROOF DUE NOTICE

Dear Permit Holder:

One of the conditions of approval of the above referenced water permit was that proof of the extent of your beneficial use must be submitted to this office on or before July 1, 1995.

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

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

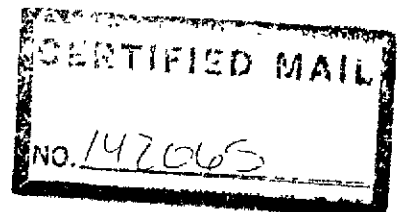
Either an acceptable proof of beneficial use submittal or an acceptable request for an extension of time must be received by this department on or before the above described proof due date. If neither is received, the department will send you a lapse notice. Within sixty (60) days of the mailing of the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

SINCERELY,

JULIE L. YARBROUGH
Senior Secretary

Enclosures

AUG 09 1995



✓
51- 7279

September 10, 1992

MEMO TO FILE:

From: Carolyn Andregg

During the spring and summer of 1992, drought conditions caused record low flows in the Snake River. Twice, the flow of the Snake River fell below 4,750 cfs, the minimum stream flow at the Weiser gauge. Notices were mailed to the water user listed under this right because the priority is later than July 1, 1976, in order to protect the Snake River minimum stream flow. The following is a chronological history of the mailings.

May 19, 1992: Letter sent to water right holder informing holder of possible temporary cessation of diversion rights and notice of public meetings.

June 8, 1992: Letter sent informing water right holder directing immediate cessation of diversion of water until further notice.

June 12, 1992: Letter sent to water right holder authorizing resumption of diversion of water.

June 26, 1992: Letter sent to water right holder directing immediate cessation of diversion of water until further notice.

June 29, 1992: Letter sent to water right holder authorizing resumption of diversion of water.

REC 08:37

May 19, 1992

M. L. INVESTMENT CO.
HC 85 BOX 275WAY
GRANDVIEW ID 83624

RE: Water Right No. 51-07279

Dear Water Right Holder(s):

Department water right records show that you divert water from the Snake River or its tributaries under a water right that has a priority date later than December 29, 1976. This is the priority of the established minimum stream flow of the Snake River at the Weiser Gage (Weiser) in the amount of 4,750 cubic feet per second.

Because of the continuing drought conditions in the Snake River Basin, department hydrologists project that during 1992, there could be periods when the required minimum flow will not be satisfied due to low flows of the Snake River. The department urges you to not divert at a higher rate than authorized by your water right and to not use your right in any manner different than authorized. In addition, when the minimum flow will not be satisfied or is not being satisfied, you are required to cease diverting water under your water right, because your right is of later priority than the minimum stream flow at Weiser.

If the department determines the minimum flow will not be satisfied, the department will advise you and will provide as much lead time as possible in requiring that you temporarily cease your diversion of water. The greatest likelihood for this to occur is during a period from mid-June to late June.

While the department expects good cooperation from junior water right holders, water users should be aware that Section 42-352, Idaho Code, provides for penalties of up to \$100 per day for unauthorized diversions of water.

The department has contacted both the Idaho Power Company and the U.S. Bureau of Reclamation with respect to the timing of storage releases from upstream reservoirs for flow enhancement purposes. This type of coordination could minimize the impact on

AUG 06 1992

existing water users and reduce the need to curtail diversions.

The department has scheduled public information meetings relative to this potential regulation as follows:

Mountain Home - June 4, 1992 - 10:00 a.m. - gymnasium at
North Elementary School, 290 E. 12th N.

Caldwell - June 4, 1992 - 7:00 p.m. - Ballroom in the
Student Union Building, Albertson College of Idaho,
2112 Cleveland

If you have questions concerning this letter or wish to provide the name of a different contact person or address to receive department correspondence, please contact the department.

Sincerely,

L. GLEN SAXTON
Chief, Water Allocation Bureau

LGS:klg

101395

S T A T E O F I D A H O

DEPARTMENT OF WATER RESOURCES

Statehouse
Boise, Idaho 83720
(208) 327-7900
July 27, 1990

M. L. INVESTMENT CO.
HC 85 BOX 275WAY
GRANDVIEW, ID 83624

PERMIT APPROVAL NOTICE

RE: PERMIT NO. P51-07279

Dear Permit Holder:

Enclosed is a copy of your approved application for permit. We direct your attention to the conditions of approval on the final page.

Be sure to note the special condition requiring you to install a measuring device, or a flow measurement port to provide for the installation of measuring equipment by the Department. Enclosed please find a list of measuring device options, and specifications for the installation of the flow measurement port.

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. The enclosed blue card must be completed and returned to this office as soon as you commence construction, no later than one year from the date the permit was approved.

We have enclosed a form entitled "Instructions for Proof of

Minutemen

JUL 30 1990

Beneficial Use". Please read the instructions carefully since you must take further action to develop this permit into a license.

Sincerely,

GARY SPACKMAN, Supervisor
Water Right Permits Section

GS: SC
Enclosures

Dept of Water

THE OWYHEE AVALANCHE

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

AFFIDAVIT OF PUBLICATION

STATE OF IDAHO)
)ss
COUNTY OF OWYHEE)

I, 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).

June 20 & 27, 1990

Signed

Joe E. Aman

Subscribed and sworn to before me this

27th

day of

June

A.D., 19

90

Chris Bahem

Notary Public in and for the State of Idaho
Residing at Homedale, Idaho
Commission expires October 1996

NOTICE OF APPLICATION FOR TRUST WATER RIGHT

51-07279

M. L. INVESTMENT CO.
HC 85 BOX 275WAY
GRANDVIEW, ID 83624
Source: JACKS CREEK
Tributary: SNAKE RIVER
Diversion Pt: NWNW Sec 21 T
06S R 05E
Use: IRRIGATION (2.400
CFS)
Total Diversion: (2.400 CFS)
Date Filed 8/9/1983
In: T06S R05E S20 NENE
NWNE ✓
S21 SENW ✓
120.0 ACRES TOTAL ✓

Permits will subject to all
prior water rights. Protests
may be submitted based on
criteria of Sec 42-203A,
Idaho Code and/or the
public interest criteria of
Sec. 42-203C, Idaho Code.
Protests must be filed with
the Director, Dept of Water
Resources, Statehouse Mail,
Boise, Idaho 83720 on or
before JULY 6, 1990

R. KEITH HIGGINSON,
Director

Publish June 20 & 27, 1990

OK Tj1
7-3-90

RECEIVED

JUL 30 1990

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
State Office
1301 North Orchard St.

Statehouse Mail
Boise, Idaho 83720
(208) 327-7900

JUNE 12, 1990

Owyhee Avalanche
P.O. Box 97
Homedale, ID 83628

Dear Legal Dept.:

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

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

Please send the affidavit of publication and publication billing to this office before JULY 6, 1990.

Yours truly,

SHARLA CURTIS
Secretary

Encl.

MICROFILMED

JUL 30 1990

51-07279

JUL 30 1990

RECEIVED
MAY 30 1990

Department of Water Resources

M.L. Investment Co.
HC 85, Box 275
Grandview, ID 83624
(208) 834-2231
May 24, 1990

Mr. Tim Luke
Idaho Department of Water Resources
Statehouse Mail
Boise, Idaho 83720

Re: Application for Permit No. 51-7279

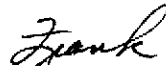
Dear Mr. Luke:

M.L. Investment Co. continues to seek approval of the above referenced application.

I have made several corrections to the original application which better reflects the existing situation. Should you need any additional information, please contact me.

We will commence construction on this application as soon as we receive approval from your office.

Sincerely yours,



Frank L. Bachman

FLB:mpu
Enclosures

RECEIVED

JUL 30 1990

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
TRUST WATER INFORMATION QUESTIONNAIRE

Application No. 51-7279

INSTRUCTIONS: IF YOU ARE NOT INTERESTED IN HAVING THE APPLICATION PROCESSED, PLEASE COMPLETE AND RETURN THE ENCLOSED WITHDRAWAL FORM.

IF YOU WISH TO HAVE THE APPLICATION PROCESSED, PLEASE ANSWER THE FOLLOWING QUESTIONS AS THOROUGHLY AS POSSIBLE. FAILURE TO RETURN EITHER THE WITHDRAWAL FORM OR QUESTIONNAIRE IS CAUSE FOR THE DEPARTMENT TO VOID THE APPLICATION.

1a. Are you the current owner of the land or place of use described under this application? Yes X No
b. If you are not the propoerty owner, please describe the arrangement enabling you to develop the proposed project.

2a. Has the source of water listed on this application been used to irrigate any of the land described under this same application prior to October 1, 1984? Yes No X
b. If yes, please describe the extent of development and number of acres irrigated. (Note: Uses developed after October, 1984 are considered trust water diversions and may be subject to certain restrictions and/or conditions. You may be asked to verify uses established prior to October, 1984.)

3. If you answered NO to ques #2a, please state the number of acres you have irrigated with this source after October 1, 1984. -0-

4. If you have not irrigated lands under this application, please state the number of acres you plan to complete. 120 acres

5. If the permit is a supplemental filing please identify other water rights which are used on the same land.

Use the reverse side of this form if you wish to add any comments. You may mark changes on the enclosed application to designate any proposed amendments. (Note: Proposed changes which result in an expansion of use will not be considered by the department.)

I hereby assert that the responses provided above are true to the best of my knowledge. I understand that any willful misrepresentations may result in voiding of the application.

Applicant Frank L. Bachman
for M.L. Investment Co.

Date 5-24-90

RECEIVED

JUL 30 1990



State of Idaho
DEPARTMENT OF WATER RESOURCES

1301 North Orchard Street, Statehouse Mail, Boise, Idaho 83720 - (208) 327-7900

CECIL D. ANDRUS

GOVERNOR

R. KEITH HIGGINSON

DIRECTOR

May 4, 1990

*TRIST LTR & QUESTIONNAIRE
RETURNED by mail, re-sent
to new ADDRESS on 5-8-90*

RE: APPLICATION FOR PERMIT NO. 51-7279

Dear APPLICANT:

Due to the Swan Falls litigation, Department approval of the enclosed application may have been delayed. The Department is presently reviewing your application and may authorize the proposed development.

The purpose of this letter is to determine: (1) if you are still interested in developing the project, and (2) the extent of development if any, that has already occurred under the application. Enclosed are two forms requesting information which will help the Department expedite the processing of the application.

1. If you have abandoned or have no interest in continuing with your plans for development of the project, please complete the enclosed withdrawal form and return it to the Department. If you request a withdrawal of the application and the application was not previously advertised, the department will refund your original filing fee.

2. If you wish to continue with your proposed development plans, or have completed all or a portion of the proposed development before October 1, 1984, then you must complete and return the enclosed questionnaire. You may use the questionnaire and enclosed application to make any comments &/or amendments concerning the application. Your completion of the questionnaire will expedite processing and help the department determine if the water diverted under the application is public water or trust water. Approved trust water applications may be subject to additional conditions.

Failure to return either of the above forms within thirty (30) days of the date of this letter is cause for the Department to void the application.

Please be further advised that if any undeveloped portion of your proposed project is greater than 200 acres, the Department will issue a notice requesting additional information as required by Water Appropriation Rule 4,5. (in particular, Rules 4,5,3. thru 4,5,3,5, apply to your project if it is more than 200 acres).

MICROFILMED

JUL 30 1990

Page 2

If you have questions concerning the content of this letter or about completing the forms, please contact Tim Luke at the address below or by calling directly at 327-7864. The enclosed forms and all other relative information must be returned within thirty (30) days to:

Idaho Department of Water Resources
Statehouse Mail
Boise, Idaho 83720
Attn: Tim Luke

Please note that a copy of your application is enclosed. The application number is also shown on the enclosed questionnaire.

Sincerely,



TIM LUKE
Sr. Water Resource Agent

Enclosures

RECEIVED
JUL 3 1977