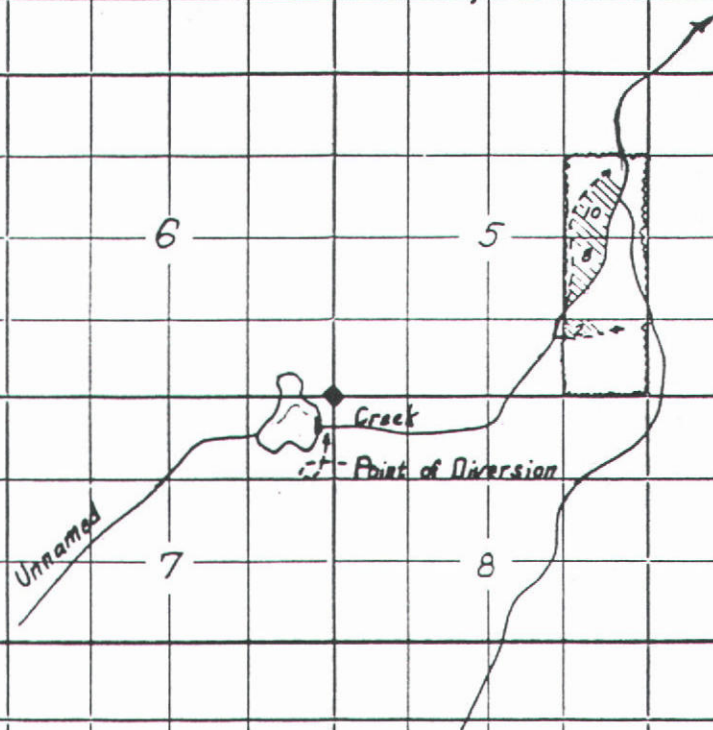
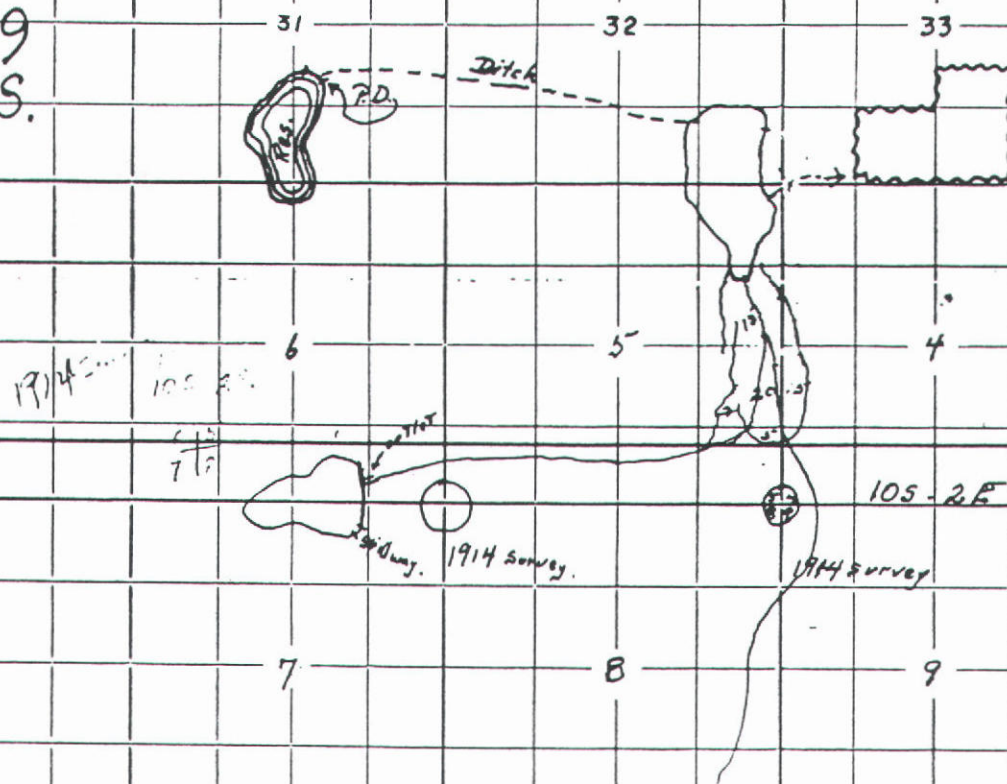


T. 10 S., R. 2 E.



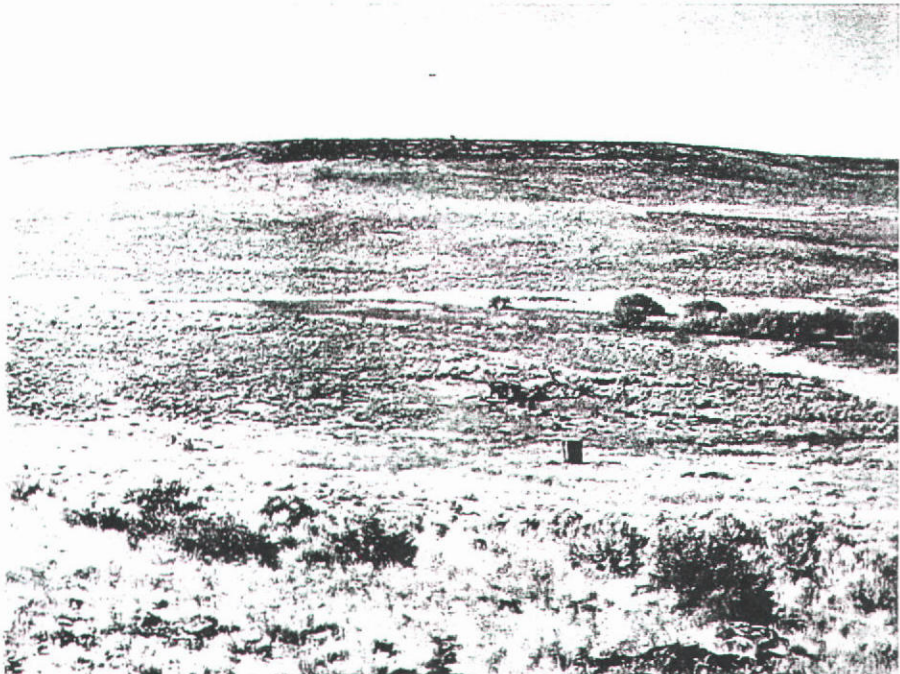
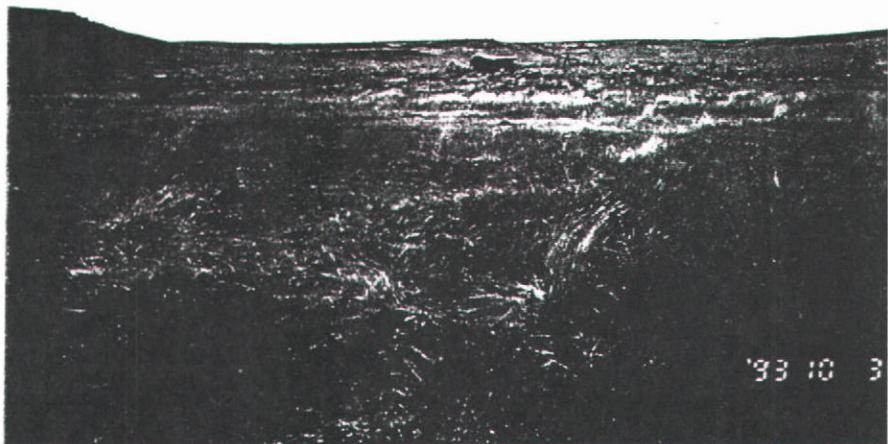
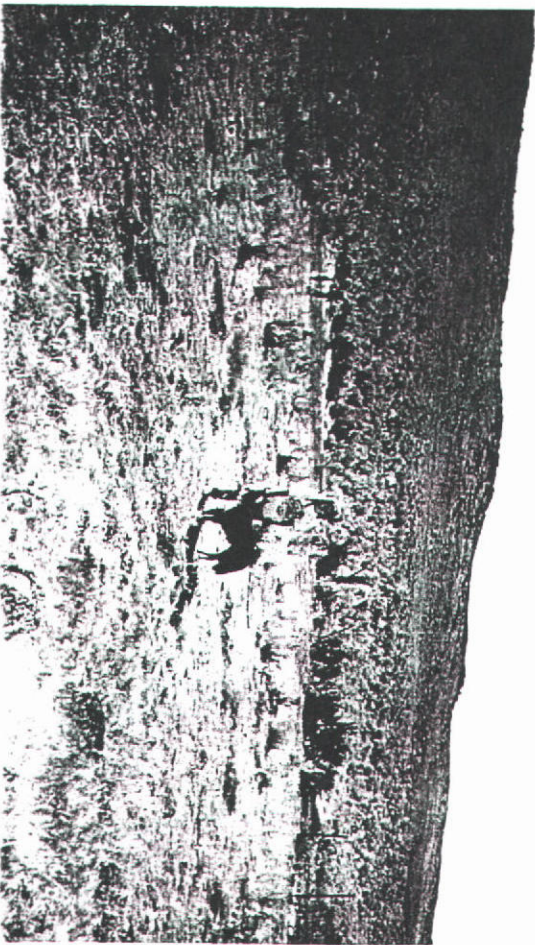
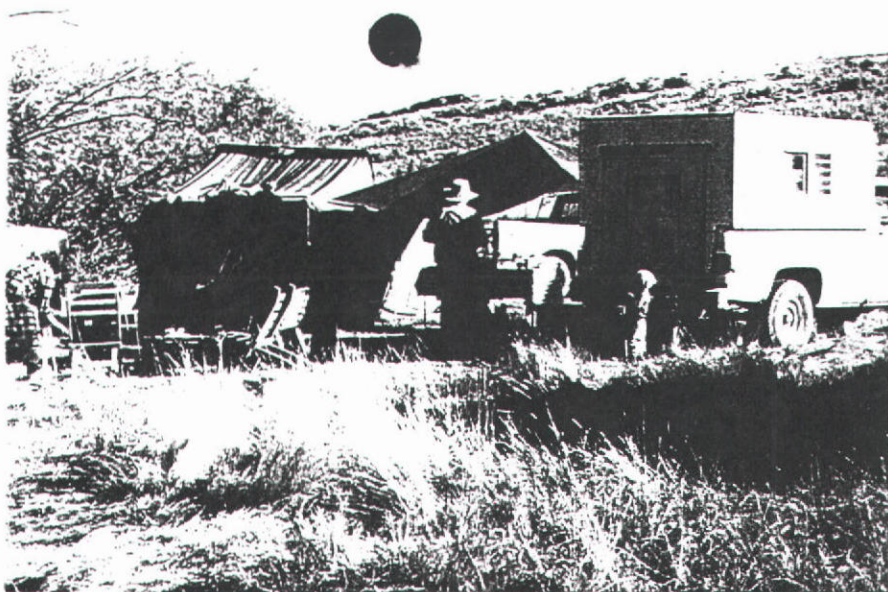
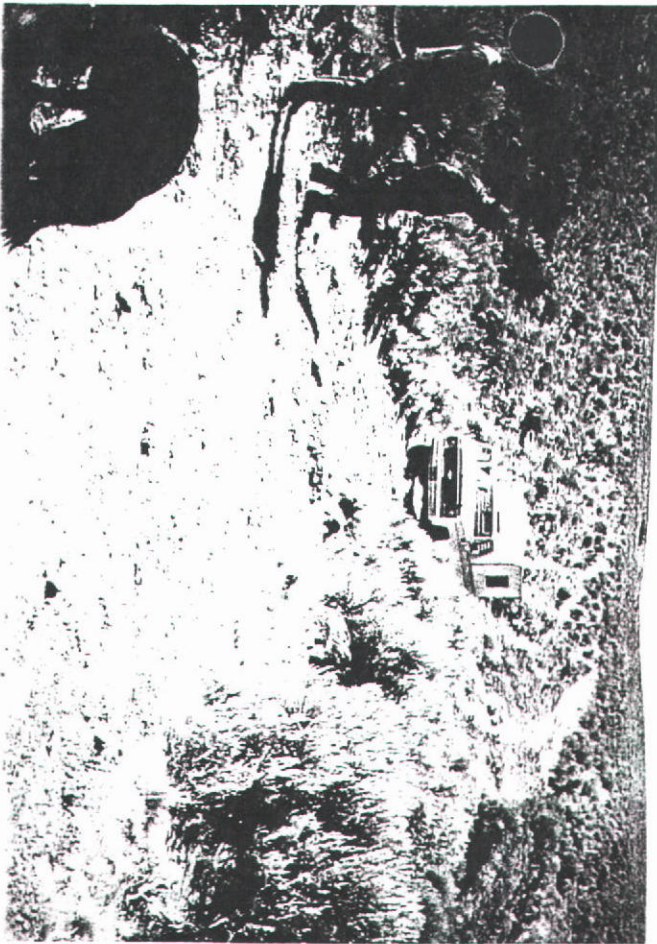
R-2E.

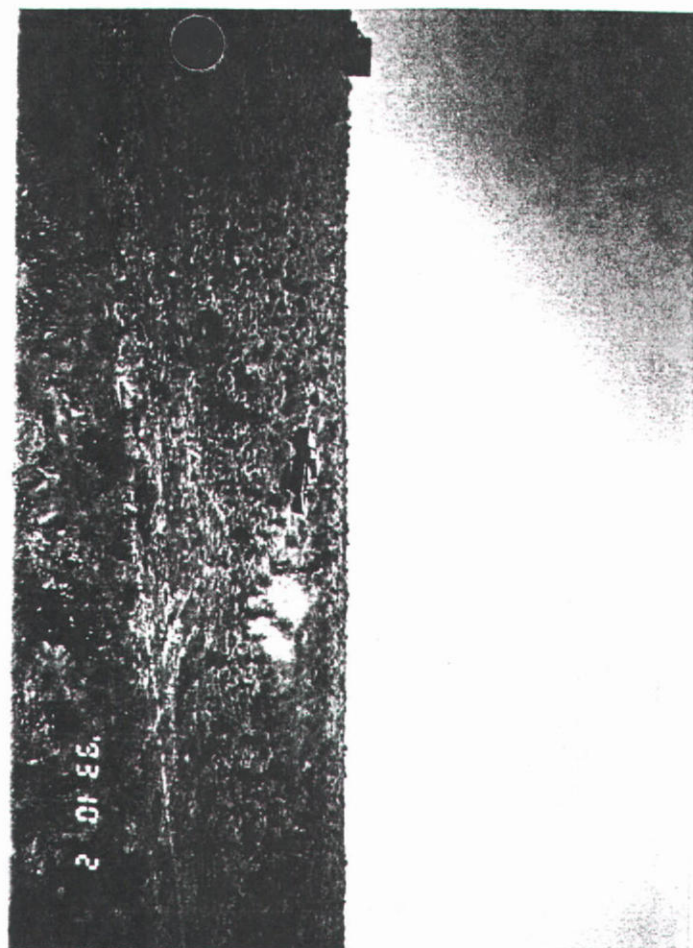
T.
9
S.

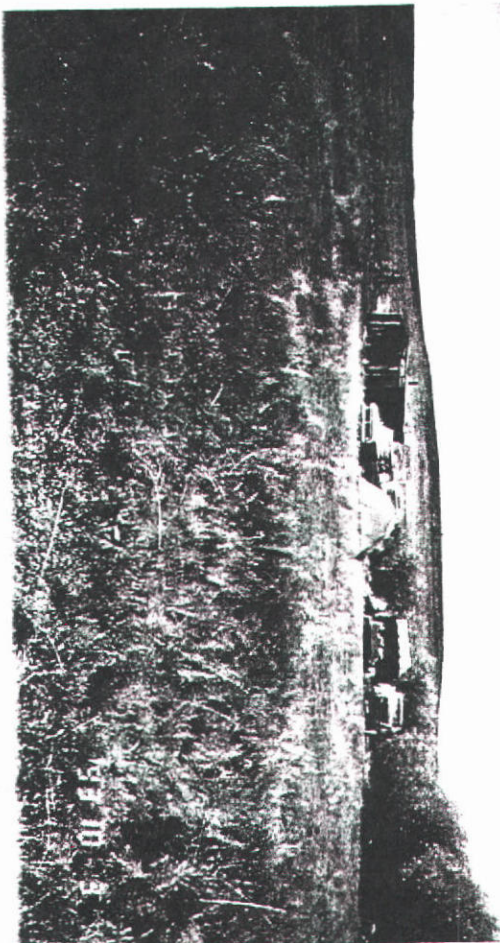
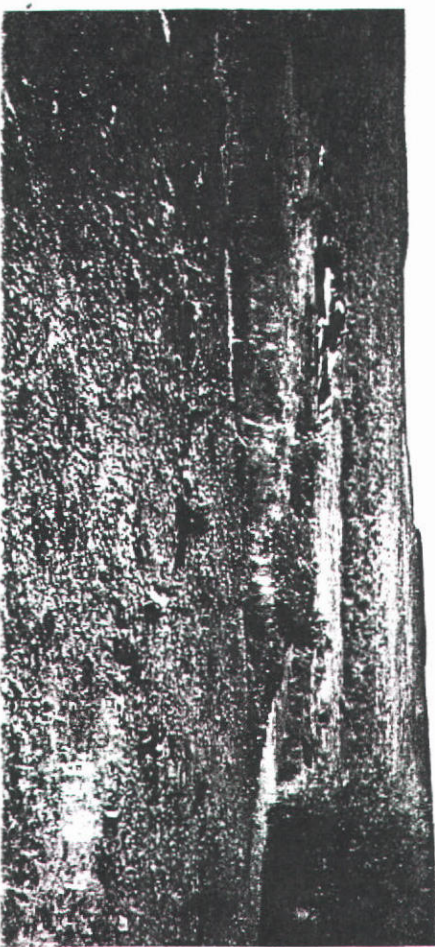
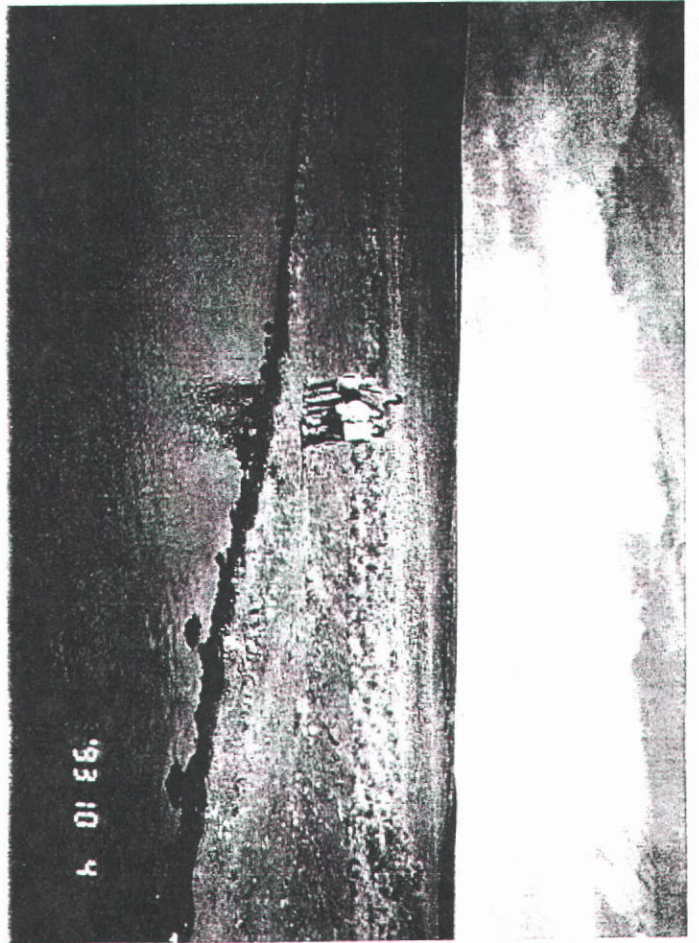
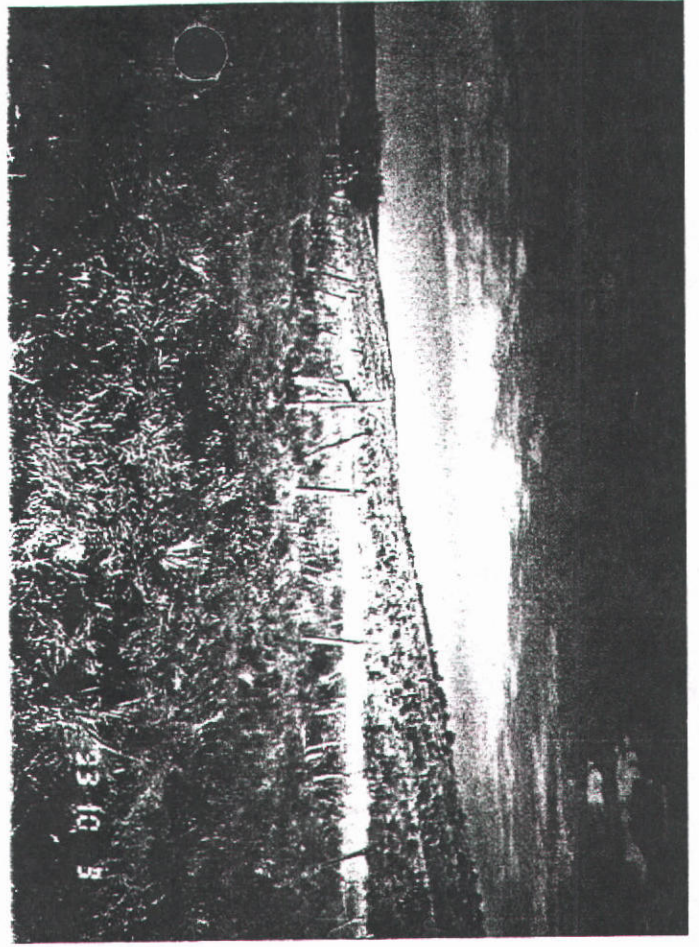


Three subdivisions
40 acres irrig.

Q = 200 acre feet

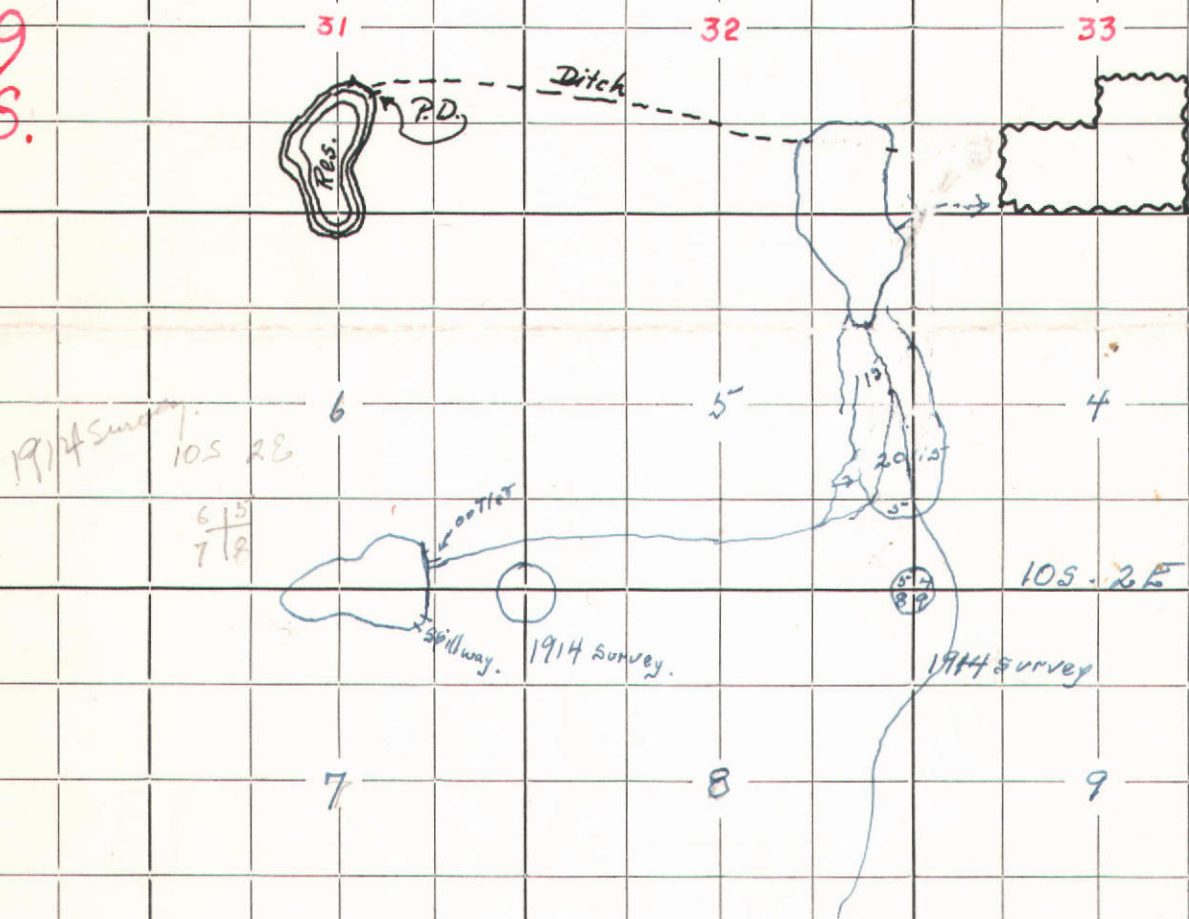






R-2E.

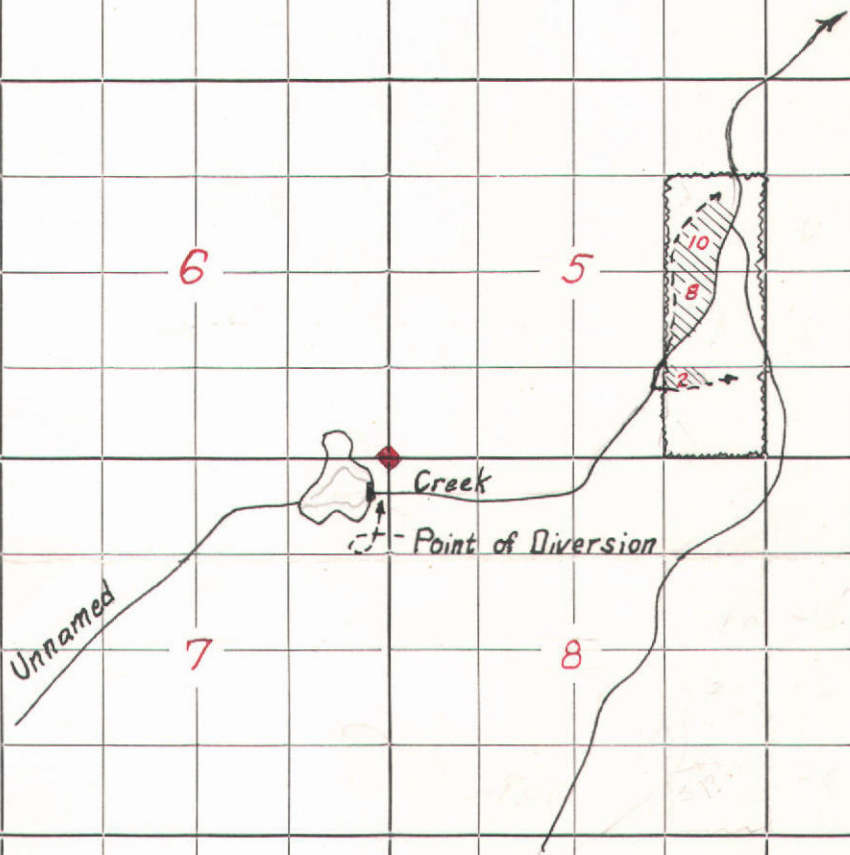
T.
9
S.



Three subdivisions
40 acres irrig.

Q = 200 acre feet

T. 10 S., R. 2 E.



PROOF OF PUBLICATION

State of Idaho, }
County of Owyhee, } ss.

I, RODNEY A. HAWES, being first duly sworn, on oath says that he is the Publisher of the OWYHEE NUGGET, a newspaper of general circulation, published weekly by Rodney A. Hawes, publisher and printer thereof, at Marsing, County of Owyhee, State of Idaho;

That the annexed notice was published in said newspaper once each and every week for four consecutive weeks, the first publication being on the 11 day of Aug. 19 49, and the last publication being on the 1 day of Sept., 19 49;

That the said newspaper has been published continuously and uninterruptedly in said county during a period of more than seventy-eight consecutive weeks prior to the first publication of the attached notice.

Rodney A. Hawes
PUBLISHER

Subscribed and sworn to before me this 7 day of Sept., 19 49

Leone D. Hawes
Notary Public

My commission expires 9-10-52

(SEAL)

NOTICE FOR PUBLICATION NOTICE OF PROOF APPLICATION OF WATER TO BENEFICIAL USE

Notice is hereby given that at 2:00 P. M. on the 3rd day of September, 1949, at Bruneau, County of Owyhee, State of Idaho, before Sam Noble, Notary Public, proof will be submitted of the application to beneficial use of 200 acre feet per annum of the waters of an unnamed stream tributary to Jack's Creek, in accordance with the terms and conditions of Permit No. R-766 heretofore issued by the Department of Reclamation of the State of Idaho.

The name and postoffice address of the person or corporation holding said permit are Hazel B. Owens, Bruneau, Idaho.

The use to which said water has been applied is stock water and irrigation.

The amount applied to beneficial use is 200 acre feet per annum.

The place where said water is used is SE $\frac{1}{4}$ NE $\frac{1}{4}$ and E $\frac{1}{2}$ SE $\frac{1}{4}$ Section 5, Twp. 10 South, Range 2 East, B. M.

The name of the canal or ditch or other works by which said water is conducted to such place of use is - No Name.

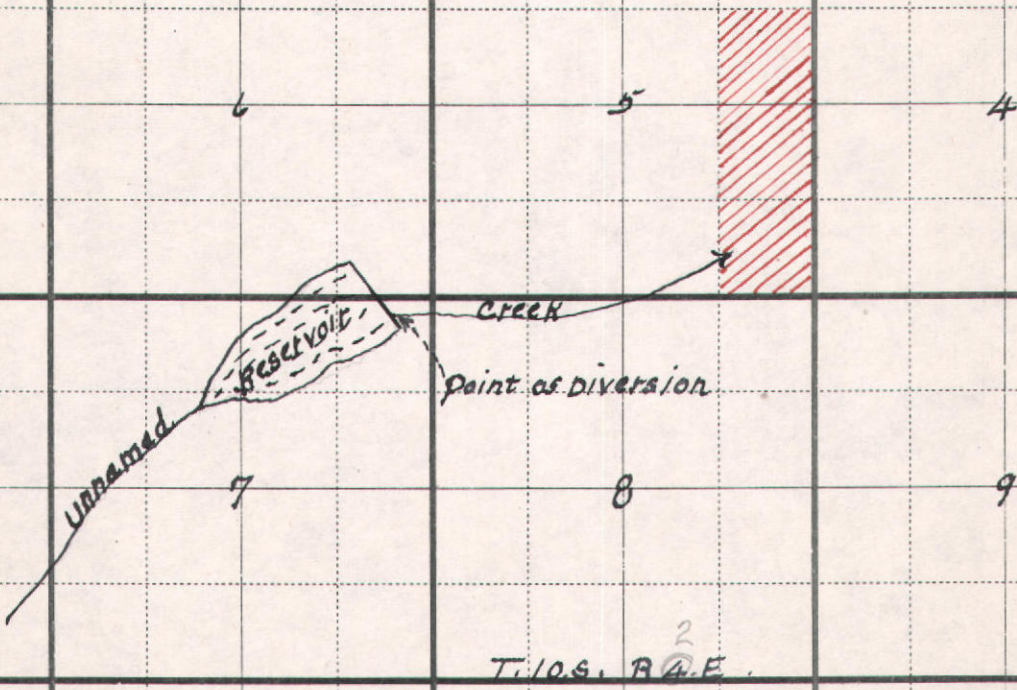
The right to take water from such works is based upon Permit No. R - 766.

The source of supply from which such water is diverted is an unnamed stream tributary to Jack's Creek.

The date of priority which said user is prepared to establish is August 15, 1946.

MARK R. KULP
State Reclamation Engineer
(Aug. 11 - Sept. 1)

R-766



Permit Map No. R-766.
As Approved
AUG 23 1946
MARK R. KULP
State Reclamation Engineer

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

IN THE MATTER OF USE OF WATER UNDER)
LICENSED WATER RIGHT NOS. 51-02058,)
51-02065, 51-02230 AND 51-02252 IN)
THE NAME OF JOHN URQUIDI)
_____)

PRELIMINARY ORDER

This matter having come before the Idaho Department of Water Resources (department), as a result of allegations from nearby waterusers (complainants) that the above captioned water rights have been forfeited through non-use, the department makes the following Findings of Fact, Conclusions of Law and Order:

FINDINGS OF FACT

1. The department has issued License No. 13961/51-02065 authorizing the diversion of 0.8 cubic feet per second (cfs) of water from an Unnamed Spring tributary of Little Jacks Creek for domestic use and for the irrigation of 40 acres of land located in SE1/4NE1/4 and E1/2SE1/4 Section 5, T10S, R2E, B.M., Owyhee County, Idaho. The point of diversion is located in the SE1/4NE1/4 Section 5, T10S, R2E, B.M. and the priority of use is April 5, 1919.

2. The department has issued License No. 12386/51-02058A authorizing the diversion of 0.6 cfs of water from an Unnamed Stream tributary of Little Jacks Creek for domestic use and for the irrigation of 30 acres in W1/2NE1/4 Section 4, T10S, R2E, B.M. The point of diversion is located in the NE1/4NE1/4 Section 5, T10S, R2E, B.M. and the priority of use is July 28, 1915.

3. The department has issued License No. 12386/51-02058B authorizing the diversion of 0.92 cfs of water from an Unnamed Stream tributary of Little Jacks Creek for domestic use and for the irrigation of 62 acres in W1/2SE1/4 and SESW Section 33, T9S, R2E, B.M. The point of diversion is located in the NE1/4NE1/4 Section 5, T10S, R2E, B.M. and the priority of use is July 28, 1922.

4. The department has issued License No. R150/51-02230 authorizing the diversion of water in an Unnamed Stream tributary to Little Jacks Creek and to store up to 380 Acre Feet (AF) of water in a reservoir located in NE1/4NE1/4 Section 5, T10S, R2E, B.M. (lower reservoir). The use of the water is for the irrigation of land in Section 33, T9S, R2E, B.M. The priority of use is July 15, 1919.

5. The department has issued License No. R766/51-02252 authorizing the diversion of water in an Unnamed Stream tributary

to Jack's Creek and to store up to 200 AF of water in a reservoir located in NE1/4NE1/4 Section 7, T10S, R2E, B.M. (upper reservoir). The use of the water is for the irrigation of 40 acres of land in the SE1/4NE1/4 and E1/2SE1/4 Section 5, T10S, R2E, B.M. The priority of use is August 15, 1946.

6. On February 27, 1992, the department received information from Chester W. Sellman and David Lahtinen (complainants) alleging that water right License Nos. 51-02065, 51-02058A and B, 51-02230 and 51-02252 had been forfeited through non-use.

7. The department investigated the matter and determined that the appurtenant lands to which the licensed water rights were issued are owned by John C. Urquidi and Harriett Urquidi (Urquidis). In October 1993 and in July 1995, department staff conducted on-site field investigations of the dams, ditches, real property in question, and the water use under the rights alleged to be forfeited.

8. On January 2, 1996, the department issued to the Urquidis an Order to Show Cause why water right Nos. 51-02065, 51-02058A and B, 51-02230 and 51-02252 should not be found to have been forfeited through non-use.

9. The Urquidis responded to the Order to Show Cause and have generally shown that during certain years they have diverted and used water when available. Among other matters, the Urquidis allege that water use by the Bureau of Land Management (BLM) has affected the Urquidis' ability to utilize their water rights.

10. The affidavit testimony of past water use provided by the Urquidis has not been subject to cross-examination by the complainants or the BLM, and evidence and testimony has not been taken from the complainants or the BLM.

11. Department records show that the complainants and the BLM have filed Snake River Basin Adjudication (SRBA) claims on the same water sources claiming priorities that compete with the Urquidi licensed water rights. The SRBA is an ongoing general adjudication of water rights in the Snake River Basin and is further identified as Civil Case No. 39576 in the District Court of the Fifth Judicial District in and for the County of Twin Falls.

12. Department records show that the upper and lower dams of the Urquidis originally were intended as storage structures but now are in general disrepair and essentially serve as diversion structures for natural flow in Little Jacks Creek and tributaries. The upper dam temporarily impounds approximately 10 to 15 AF of water. The lower dam which washes out each year can temporarily impound approximately 60 AF after the embankment is rebuilt each year.

13. Field examination showed that Urquidis irrigate some of the land shown on the licenses as the place of use but not all of it.

14. Urquidis water stock on their land from water impounded behind the diversion dams, from the creek, and from water diverted from springs and other water sources.

CONCLUSIONS OF LAW

1. On November 19, 1987, the Fifth Judicial District Court in and for the County of Twin Falls issued an order in Civil Case No. 39576 commencing a general adjudication of the rights to the use of water from the Snake River basin pursuant to section 42-1406A, Idaho Code [uncodified]. Claims involving the nature and extent of the water rights at issue in this administrative proceeding are before the Snake River Basin Adjudication District Court pending determination by the court.

2. Chapter 14, title 42, Idaho Code, governing the judicial adjudication of water rights, contains at section 42-1321(4), Idaho Code, a provision retaining administrative jurisdiction in the Director of the Department of Water Resources as follows:

The director retains jurisdiction of all applications, permits and licenses under chapter 2, 3, 6 or 15, title 42, Idaho Code, to take action authorized by the conditions contained in any permit or license or by applicable law and action on any application for transfer under section 42-222, Idaho Code.

3. Section 42-350, Idaho Code, provides in pertinent part as follows:

If the director of the department of water resources finds, on the basis of available information at any time after a license is issued, that the licensee has ceased to put the water to a beneficial use for a period of five (5) continuous years or that the licensee has wilfully or intentionally failed to comply with any of the conditions in the license, or has wilfully or intentionally failed to comply with the provisions of the law governing the license, then the director of the department of water resources may issue (a) an order to show cause before the director of the department or the director's designee on or before the date therein set, ... why the director of the department should not revoke said license;

4. Information presently available to the department shows that use of water by the Urquidis does not fully match the uses authorized by water right License Nos. 51-02065, 51-02058A and B, 51-02230 and 51-02252, but does not clearly show that the water

rights have been lost through non-use.

5. A determination regarding the extent of the water use under the Urquidi water right licenses should include consideration of the water right claims and uses of competing water users on the same water source.

6. The ongoing Snake River Basin Adjudication is the more appropriate forum to determine the nature, extent and validity of water rights represented by the Urquidi licenses, and to make similar determinations of the rights of complainants, the BLM, and other potential claimants.

ORDER

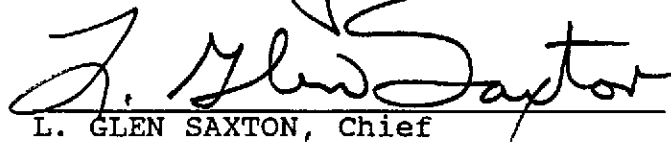
IT IS THEREFORE, HEREBY ORDERED that the Order to Show Cause issued by the department on January 2, 1996 is **SET ASIDE**; and

IT IS FURTHER HEREBY ORDERED as follows:

1. This Preliminary Order shall not be interpreted to hold that the department has determined that all or part of water right License Nos. 51-02065, 51-02058A and B, 51-02230 and 51-02252 are valid and have not been forfeited through non-use.

2. This Preliminary Order does not preclude a determination of the nature, extent, and validity of water rights represented by water right License Nos. 51-02065, 51-02058A and B, 51-02230 and 51-02252 in the ongoing Snake River Basin Adjudication.

Dated this 11th day of July, 1996.


L. GLEN SAXTON, Chief
Water Allocation Bureau

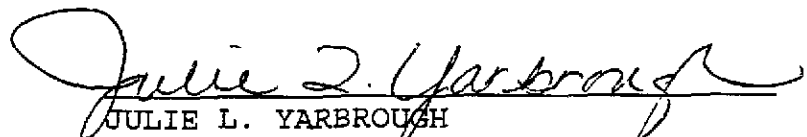
CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 11th day of July, 1996, I mailed a true and correct copy, postage prepaid, of the foregoing **PRELIMINARY ORDER** to the following:

Susan E. Buxton
MOORE & MCFADDEN CHARTERED
999 Main St. STE 910
Boise, ID 83702

John Urquidi
HC 85 Box 135
Bruneau, ID 83604-9703

IDWR - Western Region
2735 Airport Way
Boise, ID 83705


JULIE L. YARBROUGH
Senior Secretary

State of Idaho
License and Certificate of Water Right

Water License No. R-766 Amount 200 acre feet
Water District No. Priority August 15, 1946

THIS IS TO CERTIFY that HAZEL B. OWENS
of Bruneau, Idaho, made application for a permit to appropriate the
public waters of the State of Idaho, dated August 15, 1946; that Permit No. R-766
was issued under said application; that Certificate of Completion of works, with a ~~runoff~~ storage capacity of
200 ~~second~~ acre feet, was issued thereunder on August 4, 1949, showing that said works
were completed on the 4th day of August, 1949; and that on the 3rd
day of September, 1949,
HAZEL B. OWENS

of Bruneau, State of Idaho, made proof to the satisfaction of the
State Reclamation Engineer of Idaho, of the right to use the waters of an un-named
stream, a tributary of Jack's Creek, for the purpose of irrigation and stock
water, under Use Permit No. R-766 of the Department of Reclamation
and that said right to the use of said waters has been perfected in accordance with the laws of Idaho,
and is hereby confirmed by the State Reclamation Engineer of Idaho and entered of record in Volume
9 of Licenses at page 5362, on the 1st day of October, 1954;
The right hereby confirmed dates from August 15, 1946;
The Point of ~~Division~~ outlet is located

in the NE 1/4 NE 1/4, Sec. 7, Tp. 10 S., R. 2 E., B. M. Owyhee County

That the amount of water to which such right is entitled and hereby confirmed, for the purposes
aforesaid, is limited to an amount actually needed and beneficially used for said purposes, and shall
not exceed 200 acre ~~cubic~~ feet per second annum.

Description and location of use:

Twp.	Range	Sec.	Forty-acre Tract	No. Acres Described in Permit	No. Acres Actually Irrigated
10 S.	2 E.	5	SE 1/4 NE 1/4) E 1/2 SE 1/4)		40

The right to the use of the water aforesaid hereby confirmed is restricted to the lands or place
of use herein described, as provided by the laws of Idaho.

WITNESS the seal and signature of the State Reclamation Engineer, affixed at Boise, Idaho, this
1st day of October, 1954.

(SEAL) MARK R. KULP
State Reclamation Engineer.

State of Idaho

License and Certificate of Water Right

Water License No. G-22721

Amount 0.06 second foot

Water District No.

Priority April 14, 1952

THIS IS TO CERTIFY that WILLIAM A. YOUNG
 of Hailey, Idaho, made application for a permit to appropriate the
 public waters of the State of Idaho, dated April 14, 1952; that Permit No. G-22721
 was issued under said application; that Certificate of Completion of works, with a carrying capacity of
 0.06 second foot, was issued thereunder on October 1, 1954, showing that said works
 were completed on the 22nd day of April, 1954; and that on the 22nd
 day of April, 1954,

WILLIAM A. YOUNG

of Hailey, State of Idaho, made proof to the satisfaction of the
 State Reclamation Engineer of Idaho, of the right to use the waters of a well
 , tributary of (subterranean flow), for the purpose of irrigation and
 domestic use under Use Permit No. G-22721 of the Department of Reclamation
 and that said right to the use of said waters has been perfected in accordance with the laws of Idaho,
 and is hereby confirmed by the State Reclamation Engineer of Idaho and entered of record in Volume

9 of Licenses at page 5361, on the 1st day of October, 1954;

The right hereby confirmed dates from April 14, 1952;

The Point of Diversion is located in Block 95, City of Hailey, located in
 in the ~~1/4~~ Sec. 9, Twp. 2 N. R. 18 E., B. M. Blaine County

That the amount of water to which such right is entitled and hereby confirmed, for the purposes
 aforesaid, is limited to an amount actually needed and beneficially used for said purposes, and shall
 not exceed 0.06 cubic feet per second.

Description and location of use:

Twp.	Range	Sec.	Forty-acre Tract	No. Acres Described in Permit	No. Acres Actually Irrigated
2 N.	18 E.	9	Block 95 City of Hailey		2-plus

The right to the use of the water aforesaid hereby confirmed is restricted to the lands or place
 of use herein described, as provided by the laws of Idaho.

WITNESS the seal and signature of the State Reclamation Engineer, affixed at Boise, Idaho, this

1st day of October, 1954.

MARK R. KULP
 State Reclamation Engineer.

(SEAL)

IN TESTIMONY WHEREOF, We, ARNOLD WILLIAMS, Governor of the State of Idaho, and IRA H. MASTERS, Secretary of State of the State of Idaho, have caused this instrument to be executed in the name of the State of Idaho, and caused the Great Seal of the State of Idaho to be hereunto affixed, this 23rd day of August, 1946.

(J E A L)

Countersigned:
By IRA H. MASTERS
Secretary of State

STATE OF IDAHO
By ARNOLD WILLIAMS
Governor

PERMIT NO. R-766
CERTIFICATE OF COMPLETION OF WORKS

TO ALL WHOM IT MAY CONCERN:

This is to certify that Hazel B. Owens of Bruneau, County of Owyhee and State of Idaho, the holder of Permit No. R-766, issued upon Application No. R-27461, bearing date of priority of August 15, 1946, authorizing the construction of a reservoir, with the right to appropriate and store 250 acre feet per annum of the waters of an unnamed stream, a tributary of Jack's Creek, in the County of Owyhee, State of Idaho, for stock water and irrigation purposes, has fully complied with the provisions of the laws of the State of Idaho relating to the proof of completion of the works set out and described in said Permit; that said works include a dam and reservoir adequate for the storage of 200 acre feet of water per annum, with adequate diversion works and conduit to the reservoir, and a conduit capable of conducting said water to the place of intended use; that the point of outlet of said reservoir is located in the NE $\frac{1}{4}$ of the NE $\frac{1}{4}$ of Section 7, Township 10 South, Range 2 East, and that the place of use, or the lands proposed to be irrigated by the use of said water, are described as follows, to-wit: SE $\frac{1}{4}$ NE $\frac{1}{4}$ and E $\frac{1}{2}$ SE $\frac{1}{4}$ Section 5, Township 10 South, Range 2 East, B.M.

Witness my hand this 4th day of August, 1949.

Proof of Completion of Works made August 4, 1949.
Certificate of Completion of Works issued August 4, 1949.

MARK R. KULP
State Reclamation Engineer

A S S I G N M E N T

For value received, I hereby assign all my right, title, and interest in and to Permit to Appropriate the Public Waters of the State of Idaho, No. R-766 to William J. Owens of Riggins, Idaho.

/s/ HAZEL B. OWENS
Permit holder.

Wife of Permit holder.

State of Idaho)
) ss
County of Canyon)

On this 13th day of September, 1954 before me, a Notary Public for the State of Idaho, residing at Nampa, Idaho personally appeared Hazel B. Owens, a widow, known to me to be the person whose name is subscribed to the within instrument, and duly acknowledged to me that she executed the same.

In witness whereof, I have hereunto set my hand and affixed my Notarial seal, the day and year in this certificate first above written.

(SEAL)

/s/ WILLA HATFIELD
Notary Public, residing at Nampa, Idaho

My commission expires 4/13/56
Received and filed for record in the Department of Reclamation Sept. 24, 1954.

MARK R. KULP
State Reclamation Engineer.

LICENSE ISSUED FOR 200 ^{acre} ~~SE~~ EL
Ag. 5362
12

55-2178

51-2252

APPLICATION FOR PERMIT

To Construct a Reservoir and Store and Appropriate
The Public Waters of the State of IdahoApplication No. R 27461
Permit No. R 766

1. Name of Applicant: HAZEL B. OWENS

Postoffice address: Bruneau

County Owyhee

State Idaho

I. If applicant is a corporation, give:

(a) Date and place of incorporation:

(b) Amount of Capital Stock: \$

(c) Amount paid in: \$

(d) Names and addresses of directors:

II. The financial resources of the corporation are:

(a) Cash on hand: \$

(b) Treasury Stock: \$

(c) Bonds to be issued: \$

(d) Other resources:

2. Quantity of water to be stored: 250

acre feet per annum.

3. Source of water supply is an unnamed stream ~~(Creek) (River) (Spring)~~, a tributary of Jack Creek River.

4. The outlet of the proposed reservoir is located 600 feet, distant from the N E corner of Section 7, Township 10 S., Range 2 E., B. M. and is in the NE 1/4 of NE 1/4 of Section 7, Township 10 S., Range 2 E., B. M. County of Owyhee

5. Fill out either (a) or (b).

(a) The reservoir is located in the channel of said unnamed creek

~~(Creek) (River)~~.

(b) The reservoir is to be filled through a feeder canal, the point of diversion for which is located

(bearing)

feet distant from

the corner of Section, Township, Range, B. M., and is in the 1/4 of 1/4 of

Section, Township, Range, B. M.; width at bottom feet, width at top

feet, depth of water feet; average grade per mile feet; Capacity cubic feet per second.

6. (a) The area of the high water line of the reservoir is 40

acres.

(b) The reservoir capacity is 250

acre feet.

7. Height of reservoir dam feet, length at top 210 feet, length at bottom 62 feet, size of outlet 3 feet

by 10 feet. The dam is to be constructed of materials as follows: Dirt, cement and stone

(If height will exceed 10 feet, plans must be approved by Department of Reclamation, before beginning construction.)

8. (a) Will water stored in reservoir be diverted to canal or aqueduct, thence to land to be irrigated without commingling with natural flow of ditch in creek bed. ~~(Creek) (River)~~ ?

(b) Water stored in reservoir will be carried in the channel of unnamed stream

~~(Creek) (River)~~, a distance

of 3/4 miles to point of diversion located

(bearing)

feet, distant from the

corner of Section

Township, Range

B. M., and in the SE 1/4 of SE 1/4 of Section 5

, Township 10 S., Range

2 E. B. M.

9. Amount of water claimed from

~~(Creek) (River) (Spring)~~ in addition to that

stored in reservoir

cubic feet per second.

10. Water is to be used for stock water and irrigation

purposes.

11. If for mining, milling, power or manufacturing purposes give:

(a) Point of use of water feet, distant from

Corner of Section

, Township

, Range

(bearing)

B. M. and is in the

1/4 of

1/4 of Section

, Township

, Range

, B. M.

(b) Amount of power generated:

H. P., under

feet head.

(c) Water is to be returned to

~~(Creek) (River) (Spring)~~ at a point

feet

(bearing)

distant from the

corner of Section

, Township

, Range

, B. M., in

the

1/4 of

1/4 of Section

, Township

, Range

B. M.

12. Water stored in accordance with this Permit will be carried to place of use through a canal heretofore constructed under the terms of Permit No.

, which is hereby referred to and made a part hereof.

13. Kind of diversion works: Small dam and ditch

(Dam, canal, flume, pipe, etc.)

14. Height of diversion dam: $2\frac{1}{2}$ feet, length at top 30 feet, length at bottom 30 feet. The dam is to be constructed of materials as follows:

(If height will exceed 10 feet, plans must be approved by Department of Reclamation, before beginning construction.)

15. Size of headgate: Width 8" feet, Height 8" feet.

16. Diversion Canal: Width at bottom 2 feet, width at water line 3 feet, depth of water 2 feet, Dimensions of Flume Diameter of Pipe inches; Length of Conduit miles. Average grade per mile feet.

17. Estimated cost of Works: Storage Works: \$ 500.00 Diversion Works: \$

18. Time required for completion of work Five (5) years .

19. Time required for complete application of water to proposed beneficial use is Six (6) years.

20. The land to be irrigated is described in the following tabulation:

(Give Irrigable acreage in each 40-acre subdivision.)

Twp.	Range	Sec.	NE $\frac{1}{4}$				NW $\frac{1}{4}$				SW $\frac{1}{4}$				SE $\frac{1}{4}$				Totals
			NE $\frac{1}{4}$	NW $\frac{1}{4}$	SW $\frac{1}{4}$	SE $\frac{1}{4}$	NE $\frac{1}{4}$	NW $\frac{1}{4}$	SW $\frac{1}{4}$	SE $\frac{1}{4}$	NE $\frac{1}{4}$	NW $\frac{1}{4}$	SW $\frac{1}{4}$	SE $\frac{1}{4}$	NE $\frac{1}{4}$	NW $\frac{1}{4}$	SW $\frac{1}{4}$	SE $\frac{1}{4}$	
10 S.	2 E.	5				40									40			40	120

Total Number of Acres to be Irrigated

120

Remarks:

BE IT KNOWN That the undersigned hereby makes application for permit to construct a reservoir and store and appropriate the public waters of Idaho as herein set forth, and that the enclosed map is hereby made a part of this application.

HAZEL B. OWENS Applicant.

By

Earl D. Owens Agent.

Date of first receipt at office of Commissioner of Reclamation 10:00 A. M. August 15, 1946

Returned to applicant for correction

Corrected application received

STATE RECLAMATION ENGINEER APPROVAL OF COMMISSIONER OF RECLAMATION

The number of this permit is R 766

Recorded in book R 3, page 766

Approved August 23, 1946

This is to certify that I have examined the within application for a permit to construct a reservoir and store and appropriate the public waters of the State of Idaho, and hereby approve the same, subject to the following limitations and conditions:

Bond in the sum of \$, to be filed on or before

Work to begin on or before October 23, 1946

and to continue diligently and

uninterruptedly to completion, unless temporarily interrupted by circumstances over which the permit holder has no control.

One fifth of the work above specified to be completed on or before February 23, 1949

The whole of said work to be completed on or before August 23, 1951

Beneficial use of water stored in accordance herewith, to be made on or before August 23, 1957

Witness my hand this 23rd day of August

1946
MARK R. KULP
Commissioner of Reclamation
State Reclamation Engineer

MEMORANDUM

To: Steve Lester
Jan Shurte

From: L. Glen Saxton

RE: JOHN URQUIDI WATER RIGHT MATTER

Date: August 13, 1996

Returned for your information and use is the complaint file started in Western Region relative to allegations that certain water rights of John Urquidi had been forfeited.

As the file reflects, on July 11, 1996, the department issued a Preliminary Order in the matter setting aside an Order to Show Cause which was issued by the department on January 2, 1996. The Preliminary Order also suggests that the use of the rights have been changed through the years and that the SRBA is the more appropriate forum to determine the extent, nature and validity of the water right licenses in question.

I am specifically calling this matter to your attention, since the recommendation of the rights in the SRBA should not overlook the department's recent field inspections and investigation into the use of these rights.

c: 51-02065
51-02058A and B
51-02230
51-02252



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

July 11, 1996

PHILIP E. BATT
GOVERNOR

KARL J. DREHER
DIRECTOR

RE: In the Matter of use of water under Licensed Right Nos. 51-02058, 51-02065, 51-02230 & 51-02252 in the name of John Urquidi

Dear Interested Party:

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

PETITION FOR RECONSIDERATION

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

EXCEPTIONS AND BRIEFS

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

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

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

ORAL ARGUMENT

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

CERTIFICATE OF SERVICE

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

FINAL ORDER

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

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

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

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

APPEAL OF FINAL ORDER TO DISTRICT COURT

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

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

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

Sincerely,



L. GLEN SAXTON
Chief, Water Allocation Bureau

Enclosure

cc: IDWR - Region

ORIGINAL

RECEIVED

JUN 03 1996

Department of Water Resources

SUSAN E. BUXTON
MOORE & McFADDEN, CHARTERED
Attorneys at Law
999 Main Street, Suite 910
Boise, Idaho 83702
Telephone: (208) 331-1800
Facsimile: (208) 331-1202

Attorneys For J & J Ranches and John C. and
Harriett Urquidi and John B. and Alisa B. Urquidi

BEFORE THE DEPARTMENT OF WATER RESOURCES
STATE OF IDAHO

IN THE MATTER OF USE OF WATER)
UNDER LICENSED WATER RIGHTS NOS.) AFFIDAVIT OF
51-02058, 51-02065, 51-02230 AND) IRENE OWENS
51-02252 IN THE NAME OF JOHN)
URQUIDI)
_____)

STATE OF Oregon)
: ss.
COUNTY OF Malheur)

Irene Owens, being first duly sworn upon oath, deposes and says:

1. Your Affiant's address is Box 242, Pollock, Idaho 83547.
2. That your Affiant and her husband William Owens previously owned the property commonly referred to as the "Basin property" now owned by the Urquidis.
3. That your Affiant has ^{I.O.}~~regularly~~ visited the Basin property since its sale to the Urquidis in 1966, most recently in 1993.
4. That your Affiant has regularly kept a diary from 1982 to present which memorializes some of those occasions where your Affiant visited the Basin property. That your

Affiant has taken pictures of the Basin property and those pictures and excerpts of your Affiant's diary are attached hereto as Exhibit A.

5. That on October 4, 1993 your Affiant took pictures of the Basin property which indicates water irrigating the property.

6. That your Affiant leased the Basin property to Dave Lathinen in the early 1960s and that your Affiant observed Mr. Lathinen irrigating the property during the period of that lease.

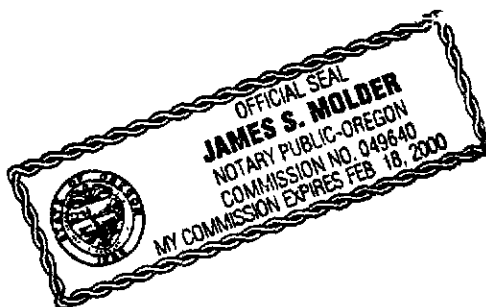
7. That your Affiant believes the Basin property has been regularly irrigated since its condition, as observed by her, has not changed over the years.

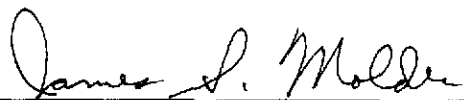
Further, your Affiant saith not.

DATED this 14th day of March, 1996.


Irene Owens

SUBSCRIBED AND SWORN to before me this 14th day of March, 1996.




Notary Public for OREGON
Residing at: 2119 N.W. 2ND AVENUE OREGON, OR 97294
My Commission Expires: 2-18-2000

Wayne & Susan

Wasser

Oct 12 1992 Mo

after breakfast. Billy went back to the Cabin down the Canyon to take more pictures. Bill & I gathered up things, took the tent down we had spotted a white tail chipmunk so we gave it an apple core. if we could have stayed there longer, it might have become tame. Billy came back & helped load up we left then and are headed for the basin but this road is rough lots of boulders sure hope it doesn't hurt the pickup it's a real slow bumpy drive. but we finally made it. it is sure beautiful. from up on the hill we could see a camper over at the place where we had the trailer & big room. those buildings are all down, just looks like the roof collapsed. the tarpaper is all gone off the house. pack rats have invaded it. we seen lots of water. more than usual a small ditch was made above the Cabin out toward the outhouse. it had a nice stream in it. we crossed over. Bill fixed it back, after we drove acrossed it.)



Oct 12

continued

we unloaded things. it took us 20 min. to set the tent up. I fixed beef & noodles, we had bread & butter Cocoa coffee & smokies

EXHIBIT 1

Oct 12

Continued

we unloaded things, it took us 20 min. to
set up the tent cup. I fixed beef & noodles, we
had bread & butter Cocoa coffee & muffins
then I washed up the things, we all
went into the tent laying around visiting
I got up and saw the most beautiful
sun set. I called the guys Billy took a
picture of it. I did too. then we got the
wood and made a camp fire. pretty soon
Billy could hear a rig coming. he went over
& got the pistol (not knowing who it might
be) the pickup pulled around by one. it
was Wayne & Adam. we heated up the rest
of the noodles for them. we made Cocoa
& hot coffee & sat around the camp fire.
the guys put their bed rolls inside the
tent. we could hear them talking way
late. our beds is sure cozy. we have fannel
sheets & pillow cases. Bill was cold when
he came to bed. but it sure didn't take
him long to warm up. its 'cooler' up at
this altitude 6400 ft. but all had a nice
warm bedding.

the log walk

Oct 3

Sun

I'm pretty bruised and sore. had a hard time last night. we got up to a nice camp fire. it's still cold. the sun isn't up yet. then we started breakfast. I fried bacon ^{on} the portable kitchen stove. in the tent. the others were out frying potatoes & eggs. the kids sat around drinking hot chocolate. we did up the camp chores. then all but Bill & I went for a walk, over to the log house. it's a full hot, so we sat in the shade. then we drove over to the house. ~~and we found~~ we seen the gang there. Grace was in the house in the shade. she was real hot & tired. the rest wanted to walk farther. but I asked Bill to take Grace Sarah & Amanda back to camp. we seen Billy coming across the hill. he was going back to camp to fix a fence when he came back with ^{his} the pickup. Grace & I & girls took his pickup back to camp. Billy got in our pickup. the guys went back to get the girls & Sid. the girls

1993 ~~the story of the~~

Act 2 Continued Sunday

water left in the basin. all the crowd
was sitting around the camp. I could
see Linda by the pickup, so I
hurried the best I could getting up.
I'm sure bruised & battered.

we made a nice camp fire. lots
of coffee tea & hot chocolate. so much
fun to just sit around and listen to
Bill telling of his days out here.

it sure got cold. we finally went
to bed about 9:30 our bed is not
cozy. my knees are hurting. I sleep on
the back side of the bed. I'm not
sure I can crawl over Bill to get out
we will see. PS Penguin den

the place looks real good we crossed
a small ditch running full of water.
water all over the place. it sure
looks great

MOORE & McFADDEN, CHARTERED

ATTORNEYS AT LAW

ONE CAPITAL CENTER • SUITE 910
999 MAIN STREET • BOISE, ID 83702
TELEPHONE (208) 331-1800 • FAX (208) 331-1202

SUSAN E. BUXTON *
MONA DOBARAN MACK
JOHN J. McFADDEN *†
MICHAEL C. MOORE †
CATHY L. NAUGLE
PAUL A. TURCKE ‡

*Also Admitted in Oregon
† Also Admitted in Washington
‡ Also Admitted in South Dakota

RECEIVED

MAY 28 1996

Department of Water Resources

May 28, 1996

HAND DELIVERED

L. Glen Saxton
Chief Water Allocation Bureau
Department of Water Resources
1301 N. Orchard
Boise, Idaho 83720-9000

Re: Alleged Forfeiture of Water Right License Numbers 51-02058, 51-02065, 51-02230, and 51-02252 - John Urquidi

Dear Mr. Saxton:

Pursuant to your May 14, 1996 letter and our telephone conversations, we are submitting on behalf of our clients, John C. and Harriett Urquidi, John B. and Alisa Urquidi, and J & J Ranches, a partnership, the original and one copy of the Response to Order to Show Cause, Affidavits of John C. Urquidi, John B. Urquidi, William J. Owens, Irene Owens, and Orville "Bud" Hosford, and accompanying documents.

We are scheduled to meet with you tomorrow at 1:00 p.m. with regard to this matter. At this time, however, we reserve our right to request an administrative hearing depending on the outcome of our discussion and the Department's review of the information filed.

If you have any questions or need additional information with regard to tomorrow's meeting and our response to the Order to Show Cause, please do not hesitate to call me or Paul Turcke at the above number. I appreciate the Department's thoughtful consideration of this matter

L. Glen Saxton
May 28, 1996
Page 2

and its cooperation over the last few months. We too, would like to see closure of this matter as expeditiously as possible. Again, thank you for your courtesies.

Very truly yours,

MOORE & McFADDEN, CHARTERED


Susan E. Buxton

SEB:de
Enclosures
cc: Clients

ORIGINAL

SUSAN E. BUXTON
PAUL A. TURCKE
MOORE & McFADDEN, CHARTERED
Attorneys at Law
999 Main Street, Suite 910
Boise, Idaho 83702
Telephone: (208) 331-1800
Facsimile: (208) 331-1202

Attorneys For J & J Ranches and John C. and
Harriett Urquidi and John B. and Alisa B. Urquidi

BEFORE THE DEPARTMENT OF WATER RESOURCES

STATE OF IDAHO

IN THE MATTER OF USE OF WATER	)	
UNDER LICENSED WATER RIGHTS NOS.	)	URQUIDIS' RESPONSE TO
51-02058, 51-02065, 51-02230 AND	)	ORDER TO SHOW CAUSE
51-02252 IN THE NAME OF JOHN	)	
URQUIDI	)	
	)	

John C. Urquidi and Harriett Urquidi, John B. Urquidi and Alisa Urquidi, and J & J Ranches ("the Urquidis"), through the parties' counsel, Moore & McFadden, Chartered, hereby submit the Urquidis' Response to the Order to Show Cause issued by the Idaho Department of Water Resources dated January 2, 1996 and as requested by the letter dated May 14, 1996.¹ The Urquidis support this response with the Affidavit of John C. Urquidi, the Affidavit of John B. Urquidi, the Affidavit of William J. Owens, the Affidavit of A. Irene Owens, the Affidavit of Orville "Bud" Hosford, and the documents attached to the Order Show Cause that

¹ The Urquidis responded to the Order to Show Cause in a meeting on April 4, 1996 and were not instructed to file a written response until May 14, 1996.

are already part of the record in this matter. The Urquidis submit their response beyond the statutorily-prescribed thirty (30) day response period following negotiation with the Department and within the time for response agreed upon by counsel for the Urquidis and the Department.

I.

FACTUAL BACKGROUND

In 1966, John C. Urquidi and his wife Harriett Urquidi purchased real property in Owyhee County, Idaho from William J. Owens and A. Irene Owens. The property consisted of approximately 648 acres located in sections 4 and 5 of T.10.S., R.2.E. and section 33 of T.9.S., R.2.E., Boise Meridian (the "Owens Basin"). As is regular practice in Idaho, the transfer expressly included all water rights, ditch rights, and reservoir rights used in connection with the property. No legal proceeding has ever been initiated against the Urquidis to challenge the validity of any of the water rights used in connection with the Owens Basin property.

The present proceeding was initiated by a letter dated February 27, 1992 signed by Chester Sellman and David Lahtinen addressed to the Idaho Department of Water Resources ("the Department"). In that letter, Messrs. Sellman and Lahtinen indicate a desire to "protest" actions taken by John Urquidi regarding the springs in section 5, T.9(sic, 10)S., R.2.E. in August of 1991. The letter indicates that "this was the first time in over twenty five years that this creek flow [from the SE 1/4 of the SE 1/4 of section 5 into the NE 1/4 of the NE 1/4 of section 5]

has been disturbed." The letter does not identify any other action as a target of the signatories' protest. The signatories do not allege that they hold licensed water rights in the relevant area. The signatories do indicate that during the 1991 grazing season it was more difficult for them to locate sufficient water on the public lands where they exercise privileges, but the signatories, in the February 27, 1992 letter as well as later submissions to the Department, do not provide any information that tends to identify the alleged actions of John Urquidi on his deeded property as the sole cause of the dry conditions in the NE 1/4 of the NE 1/4 of section 5 in 1991.

The Department sent letters to and received written submissions from Messrs. Sellman and Lahtinen, John B. Urquidi and John C. Urquidi, and considered two field examination performed by the Department's Senior Water Agent Maria Minicucci in October of 1993 and July of 1995 in determining that the Urquidis be required to show cause why all of the water rights issued to the Urquidis by the Department should not be forfeited due to non-use for the statutory period. The order to show cause does not specify a particular time frame where the alleged non-use has occurred, but asks the Urquidis to provide evidence to rebut a proposed finding that all of the family's water rights in the Owens Basin "have been forfeited through non-use for the twenty five years prior to 1991." The Urquidis submit the present documentation as an initial response to the Department's query and reserve the right to submit

additional evidence in the event a hearing in this matter is required.

The Department has issued water licenses to the Urquidi family describing four water rights that have been used in connection with the Owens Basin property. License number 51-2252 was originally issued to Hazel B. Owens, who assigned her interest to William J. Owens. This right addresses storage for irrigation and stockwater uses, with storage in a reservoir located in the NE 1/4 of the NE 1/4 of section 7, T.10.S., R.2.E., and irrigation use downstream in the E 1/4 of section 5. The priority date for this license is August 15, 1946.

License number 51-2065 was also transferred from Mr. Owens with the sale of the Owens Basin property. The license on file for Mr. Owens indicates this water is applied to the beneficial uses of irrigation and domestic uses, while John Urquidi's filed license also indicates instream stockwater use of this licensed water. The point of diversion and place of use for this right are both in section 5 of T.10.S., R.2.E., with a priority date of April 5, 1919. The place of use for license 51-2065 is identical to the place of use for license 51-2252, and the reservoir addressed by license 51-2252 lies upstream of section 5, within the same drainage as license 51-2065.

License 51-2230 indicates a point of diversion in the NE 1/4 of the NE 1/4 of section 5, just downstream from the location benefitted by the two previously-described water rights. Like the previously-mentioned water rights, the Department displays profiles

for both William Owens and John Urquidi describing this water right. Both profiles provide the same point of diversion, and a priority date of July 15, 1919. The Owens profile does not specify a place of use, but states that the specified use of 51-2230 water is for irrigation and domestic storage. The Urquidi profile lists these purposes, as well instream stockwater and stockwater storage uses. The Urquidi profile indicates a place of use for at least a portion of the irrigation, domestic, and stockwater uses in the NE 1/4 of section 4, T.10.S., R.2.E. on the Owens Basin property.

License 51-2058 indicates the same point of diversion as license 51-2230 listed above, with a priority date of July 29, 1922. If the Hazel Owens profile is read in conjunction with the Urquidi profile for this license, the license allows for water use for irrigation, domestic, stockwater, and instream stockwater uses. The place of use is specified within the SE and SW quarters of section 33, T.9.S., R.2.E.

The Urquidi family has endeavored to maintain accurate records of all of the above-mentioned water rights. As is the case with any type of real property right, the Urquidis must rely heavily upon the public records pertaining to historical rights. These records are (and have been) maintained by the Department and its predecessor agencies. These administrative bodies have required re-licensing of the various water rights during the Urquidi's possession of the Owens Basin property. The Urquidis do not possess complete documentation of every occasion where this re-licensing has occurred, but all of the above-referenced profile

reports compiled by the Department indicate a "licensed date" of June 21, 1979.

While the legal descriptions of the Urquidi's affected water rights are important to the present action, a practical understanding of the mechanics of the system of reservoirs, springs, and ditches serving the Owens Basin property is essential in addressing the issue of forfeiture. The reservoir in the NE 1/4 of the NE 1/4 of section 5 lies on public land managed by the United States Department of Interior, Bureau of Land Management ("BLM"), and this reservoir is a convergence point for the various drainages involved. In other words, all of the water rights described above might eventually result in recharge of the reservoir in section 5. Water enters the reservoir from the south from one portion of the Owens Basin property, and from the north from a different unnamed intermittent stream. The entire region is arid. The passage of water downstream to the reservoir in section 5 and on through the Owens Basin property in section 33 to Little Jacks Creek depends upon the number of cattle utilizing the area, the soil conditions, the annual precipitation, and other factors. William J. Owens developed a system to capture the limited water that might be available, and the Urquidis continue to implement his plan to augment the natural production of the basin.

The historical use of water on the Owens Basin property has continued since the original time of appropriation. William J. Owens provides testimony via affidavit that he originally established a series of diversions to transfer water from the

springs to the "hay field" located in section 5. Mr. Owens, as well as Irene Owens, testify that they have visited the property intermittently since transferring ownership to the Urquidis, and that the location and condition of the ditches has remained the same over the course of their visits. The Owens specify two times, in 1983 and 1993, when such visits occurred and the irrigation system as well as the wild pasture in section 5 were in similar condition as when the Owens transferred to the property to the Urquidis in 1966. Based on over fifty years experience in the area, Mr. Owens opines that the meadow in section 5 "has been irrigated regularly since his sale to the Urquidis because its condition does not appear to have changed." Affidavit of William J. Owens, 3/14/96.

Upon purchasing the Owens Basin property in 1966, John C. Urquidi took possession and cleaned the existing ditches. After this initial maintenance, John C. Urquidi enlisted the help of various agents and employees to ensure the reservoirs and ditches remained operable. While the passage of time makes it difficult to locate all witnesses who could corroborate this history, Orville "Bud" Hosford details the existence and maintenance of the earthen dams and ditches used to irrigate the "hay field" on the Owens Basin property. See Affidavit of Bud Hosford, 2/26/96.

John C. Urquidi entered a series of lease agreements starting in the mid 1970's, and each separate agreement required the lessee

² Mr. Sabal, now deceased, worked for the Urquidis during the period in question.

of the Owens Basin property to maintain the improvements to the property, including ditches and established watercourses. See generally, Affidavit of John C. Urquidi, 5/24/96. Chester Sellman was one of the lessees during this time period, as was Frank Davis, who have both submitted documents alleging facts in support of the very forfeiture that the relevant lease provisions were designed to prevent.

The series of lease agreements ended in the late 1980's, when John B. Urquidi began to manage the property for the Urquidis' own cattle ranching business named J & J Ranches. John B. Urquidi indicates that he has performed regular maintenance of the retention dams, diversion dams, springs, and ditches associated with all of the Urquidis' water rights since 1988. Affidavit of John B. Urquidi, 5/24/96. In fact, while John B. Urquidi has utilized rights of way which pre-date the Federal Lands Policy and Management Act of 1976 and the BLM, the BLM has attempted to characterize those actions as unauthorized use of public lands. Id. While sufficient water has not always been available to apply to the entire Owens Basin property, John B. Urquidi has diligently maintained the system to utilize the available water.

Several factors have interfered with the Urquidis' efforts to apply water to the Owens Basin property. The reservoir located in the NE 1/4 of the NE 1/4 of section 7 has not held water since the early 1980's as a result of the BLM's construction of a reservoir immediately upstream of the Urquidis' reservoir. Gravity dictates that water would no longer reach the Urquidi's dam once the BLM's

dam was completed. The Department received and approved a water license application concerning the BLM activities in section 7.

The cyclical drought that was especially severe in the late 1980's and early 1990's hampered the Urquidis' water control efforts. At this stage in the proceedings, the Urquidis have not compiled extensive documentation specifying the extent of the drought, but common knowledge and information available to the Department indicate that water in Owyhee County was scarce during that time period. See also, Exhibit H to Affidavit of John B. Urquidi, 5/24/96 (explaining six years of consecutive drought prior to 1992 necessitated changes in BLM rangeland management). The region surrounding Owens Basin is a desert to begin with, and drought conditions prevented the Urquidis from applying water to all of their lands during and subsequent to this time period.

The investigation of Senior Water Agent Minicucci corroborates the historical use of water on the Owens Basin property described by the Urquidis. Unlike the twenty-five years of non-use that Messrs. Sellman and Lahtinen allege has occurred in section 5, Ms. Minicucci observes that "[s]prings have been developed in the SESE of section 5[,]" and that the series of dams and ditches, including "dams in the stream itself[,]" have created and maintained "a meadow that has been enhanced by the water control efforts of [John B. Urquidi]." Field Report of Maria Minicucci, 10/29/93. Ms. Minicucci did not indicate whether the reservoir in section 5 contained water in 1993, but she did note that water was being stored in the reservoir at the time of her second visit on July 19,

1995. Assuming, *arguendo*, that the basis for the "protest" which gave rise to the present forfeiture ever existed, there has subsequently been water in the reservoir for use by grazing permittees otherwise authorized to pasture cattle in the NE 1/4 of the NE 1/4 of section 5.

II.

LEGAL PRINCIPLES

Property rights in waters of the State of Idaho are regulated by a complex blend of statutory rules and common law principles. Since approximately 1895, this regulatory scheme has been administered by the Department. See Idaho Code § 42-1701 (1990). The executive and administrative authority granted to the Department and the concomitant responsibility are vested in the Director of the Department. Id. The many statutorily-imposed duties of the Director include the responsibility to make careful measurements of the flows of waters likely to be appropriated within the state, to collect facts and conduct surveys regarding suitable locations for reservoirs upon such waterways, to become familiar with the waterways and irrigable lands of the state, and to "keep full and complete records of all measurements of streams, surveys, examinations or other valuable information ... concerning any of the duties of the department." Idaho Code § 42-1706 (1990).

The Department frequently applies its expertise and consults its voluminous records when responding to applications for permits, certificates, and licenses to appropriate water within Idaho.

Chapter 2 of Title 41 makes the permit and license procedure administered by the Department the exclusive method for acquisition of water rights. Idaho Code § 42-201 (1990). Applicants are required to make sufficient showing to acquire water rights, and the Department must "carefully examine [all evidence in relation to proof of statutory requirements], and if the department is satisfied that the law has been fully complied with and that the water is being used at the place claimed and for the purpose for which it was originally intended, the department shall issue to such user or users a license confirming such use." Idaho Code § 42-219 (1990). The issuance of a water license has particular legal significance, since "[s]uch license shall be binding upon the state as to the right of such licensee to use the amount of water mentioned therein, and shall be prima facie evidence as to such right...." Idaho Code § 42-220 (1990) (emphasis added).

As the Department has the responsibility to issue and verify water rights, the Department is occasionally asked to forfeit rights previously granted. While courts have sometimes confused the common law doctrine of abandonment with forfeiture, the latter is governed entirely by statute. According to the Idaho formulation of the forfeiture doctrine:

[a]ll rights to the use of water acquired under this chapter or otherwise shall be lost and forfeited by a failure for the term of five (5) years to apply it to the beneficial use for which it was appropriated and when any right to the use of water shall be lost through nonuse or forfeiture such rights to such water shall revert to the state and be again subject to appropriation under this chapter....

Idaho Code § 42-222(2) (Supp. 1995). Judicial interpretation of this statute reflects an intense disfavor toward granting forfeiture, since "[f]orfeitures are abhorrent and all intendments are to be indulged against a forfeiture." Application of Boyer, 73 Idaho 152, 159, 248 P.2d 540, 551 (1952); see also, Jenkins v. State, Dept. of Water Resources, 103 Idaho 384, 647 P.2d 1256 (1982); McAtee v. Faulkner Land & Livestock, Inc., 113 Idaho 393, 744 P.2d 121 (Ct.App. 1987). In evaluating whether forfeiture of a water right has occurred, the finder of fact must determine that clear and convincing proof supports a finding of forfeiture. Jenkins, 103 Idaho at 389, 647 P.2d at 1261; McAtee, 113 Idaho at 396, 744 P.2d at 124. A finding of forfeiture may have drastic impact upon the water user who has relied upon his decreed rights, and Idaho law recognizes that forfeiture is an extreme remedy justified only by extraordinary circumstances.

The forfeiture analysis prescribed by Idaho appellate courts involves a twofold inquiry. The first step consists of a factual inquiry to determine "how, and for how long, the water has been used." Id. "The second question--whether the use to which the water has been put constitutes a 'beneficial use'--is a question of law." Id. Regarding the second issue, Idaho law has long established that diversion of water to increase the production of wild pasture constitutes a beneficial use. Id.; Rudge v. Simmons, 39 Idaho 22, 226 P. 170 (1924); Pyke v. Burnside, 8 Idaho 487, 69 P. 477 (1902). Water consumption by livestock also constitutes a beneficial use, even to the point where such use is included within

the statutory definition of "domestic purpose." Idaho Code § 42-111 (Supp. 1995). While a permit or license is not required for in-stream livestock consumption of water, see Idaho Code § 42-113 (1990), one can certainly protect historical livestock use by either obtaining an in-stream livestock use permit or by perfecting a licensed water right by completing a diversion and applying the affected water to the beneficial use of watering livestock.

Various defenses exist that allow a holder of decreed water rights to successfully refute allegations of forfeiture. When circumstances beyond the water user's control prevent the licensed exercise of the water right, a forfeiture shall not be declared. Jenkins, 103 Idaho at 389, 647 P.2d at 1261. Examples of such circumstances might include wrongful upstream diversion, Welch v. Garrett, 5 Idaho 639, 51 P. 405 (1897), failure of a water administrator to allow the complete volume of licensed flow to reach its user, Almo Water Co. v. Darrington, 95 Idaho 16, 501 P.2d 700 (1972), or drought resulting in the unavailability of the previously-applied flow. These holdings are necessary to insure that a water user can maintain property rights in water despite the wrongful interference of another or the unpredictable acts of nature.

Another defense to forfeiture exists when the licensed right has been resumed after the five year statutory period has run, but prior to the time that any third party asserts a claim to the water in question. Even though the technical elements of forfeiture are met on the first day of the sixth year of non-use, a forfeiture

will not exist and no change in the priority date, location of diversion, place of use, or volume of the water right will occur if the original appropriator resumes use "before any third parties make a claim in the water...." Jenkins, 103 Idaho at 389, 647 P.2d at 1261 (emphasis added); Carrington v. Crandall, 65 Idaho 525, 532, 147 P.2d 1009, 1016 (1944) ("the forfeiture is not effective if...the original owner or appropriator resumed the use...prior to the claim of right by a third party.") (emphasis added). In Application of Boyer, 73 Idaho 152, 248 P.2d 540 (1952), the court declined to enter a finding of forfeiture, determining that the water at issue "was in part at least used by respondent on some of his Arco lands before it was claimed it had been forfeited[,]" therefore suggesting that even minimal application of water is sufficient to invoke the resumption doctrine and prevent a declaration of forfeiture.

These principles comport with logic and common sense. The Department should not engage in a forfeiture analysis when there are no other competing or injured claimants to the water in question. Similarly, an administrative nightmare would develop if the Department was required to revise historically recognized priority dates to comport with every established five year period of non-use, when such revision would not benefit any identified downstream junior appropriator. There is little sense in evaluating the technical elements of forfeiture so that forfeiture can be declared on the final day of year five of non-use, if the water is diverted and applied once again by the original

appropriator before any other user acquires legal rights which might be impacted by the forfeiture decision.

Other jurisdictions have extended the resumption doctrine to require that an alleged forfeiture be asserted in a timely manner. The Wyoming Supreme Court, citing Boyer in support, has held that a delay of approximately sixteen years was fatal to a forfeiture action, particularly when the decreed holder of the right in question had performed repairs upon the reservoir used in connection with the water rights subsequent to the date of the supposed forfeiture. Sturgeon v. Brooks, 281 P.2d 675 (Wyo. 1955). The court summarized its position by reasoning:

when taken in conjunction with the fact that during the time of such recognition and acquiescence, Brooks, the defendant, twice repaired the reservoir at a substantial outlay and put the water stored therein to beneficial use, and in view of the fact that forfeitures are not favored and should be promptly asserted, it is difficult to perceive that Brooks would be dealt with equitably by now holding that his rights were forfeited.

Id. at 685 (emphasis added). It makes little sense, particularly in the context of an order to show cause proceeding where the burden to produce evidence is upon the party defending forfeiture allegations, to allow a lack of evidence due to the passage of time to effect a forfeiture of water rights. If water rights were allegedly forfeited decades ago, the parties who watched the years pass without any formal action should bear the loss, not a decreed water right holder who has continued to act as though he possessed valid water rights.

Idaho does not recognize partial forfeiture of a water right. In a recent development in the ongoing Snake River Basin

URQUIDIS' RESPONSE TO ORDER TO SHOW CAUSE - Page 15

Adjudication, the Presiding Judge held that forfeiture can only occur within the boundaries defined by section 42-222(2), and the plain meaning of that statute only allows for forfeiture of "all" of one's water right. In Re SRBA, Memorandum Decision on Basin-Wide Issue 10, Case No. 91-00010, 4/26/96 ("Partial Forfeiture Decision"). When several different rights are at issue, the Partial Forfeiture Decision suggests that independent analyses can occur for each right allowing forfeiture of some rights but not others. However, with regard to each single right, a decision-making body cannot declare that forfeiture of only a portion of the right has occurred, but instead must decline to enter a forfeiture unless clear and convincing evidence establishes forfeiture of the entire amount of the water right at issue. The failure of the Idaho appellate courts to squarely address the partial forfeiture issue provided the genesis of the Presiding Judge's inquiry, and appellate review of the Partial Forfeiture Decision seems a distinct possibility. Given the unique expertise of the Presiding Judge in conducting the SRBA, the Partial Forfeiture Decision establishes sound precedent in Idaho unless altered in the future by the Idaho Supreme Court.

III.

ARGUMENT

- A. The State of Idaho is Estopped from Asserting a Forfeiture of Water Rights by Alleging Non-Use Prior to 1979.

The express statutory language of Idaho Code section 42-220 prevents the Department from demanding proof of water use from the URQUIDIS' RESPONSE TO ORDER TO SHOW CAUSE - Page 16

Uriquidis prior to the Department's confirmation of a licensed water right. While one is often prevented from asserting estoppel against governmental entities by either common law principles or explicit statutory language, the Idaho legislature eschews such a restriction in the context of issuance of water licenses. Section 42-220 and related provisions of Chapter 42 place an affirmative duty upon the Department to investigate the necessary prerequisites to an appropriative water right prior to issuing a license for a water right.

All of the profile reports for the four water rights at issue indicate a licensed date of June 21, 1979. According to section 42-220, this determination is binding upon the State. The Department, in correspondence addressed to counsel of record for the Uriquidis dated May 14, 1996, has confirmed that no other person or entity is a party in the present forfeiture action. As the sole complainant, the State of Idaho should be both logically and legally prevented from asserting a forfeiture of water rights that it necessarily certified were fully compliant with statutory requirements at the time of licensure. In order to declare forfeiture, the Department must find, by clear and convincing evidence, that the Urquidis failed to exercise the entirety of a water right when water was available for appropriation for a continuous five-year period subsequent to June 21, 1979.

The Urquidis' interpretation of section 42-220 strikes an appropriate balance in the administration of water rights. The present case exists in a unique procedural context. The placement

of the statutory forfeiture provision as a subsection to the transfer rules is not coincidental, because forfeiture questions often arise when the Department evaluates transfer applications to determine if the proposed transfer will effect an injury to other water users. Other occasions where forfeiture issues arise include quiet title or injunctive relief actions where a plaintiff affirmatively brings an action asserting a superior claim to water that the plaintiff alleges has been forfeited by the license holder. In the present case, the Department has raised the forfeiture issue *sua sponte* at the request of individuals who are not parties to any legal action against the Urquidis and who do not possess adversely affected licensed water rights. The Department is effectively conducting a pre-litigation analysis for Messrs. Sellman and Lahtinen at public expense, with the risk that evidence has disappeared with the passage of time falling upon the Urquidis. Reason and basic principles of equity demand that the State be held to findings it at least implicitly made by confirming the validity of water licenses in 1979. Future parties wishing to properly raise valid issues of forfeiture need not worry; such parties can bring an action in a court of proper jurisdiction or participate in the transfer procedure to protect their established legal rights.

B. The Present Record Fails to Display the Clear and Convincing Proof of Forfeiture that would Allow the Department to Issue a Finding of Forfeiture.

There is no party before the Department who seeks a finding of forfeiture, and the evidence presently before the Department does not approach the clear and convincing quantum of proof required to

uphold a finding of forfeiture. In support of forfeiture, the Department has assertions from Chester Sellman and David Lahtinen stating that dams have never been placed in the main streambed in the SE 1/4 of section 5 and that the water has only been used for stockwater on the Urquidis' deeded portion of the Owens Basin property in section 5. The Sellman and Lahtinen allegations are supported by affidavits from T. Robert Tindall and Frank Davis, both indicating that no irrigation use ever occurred above the reservoir in the NE corner of section 5.

None of these submissions make any mention of the reservoir in section 7 involving the 51-2252 storage right, the 51-2230 storage right or the 51-2058 water right arising from a diversion at the section 5 reservoir. In fact, the Lahtinen/Sellman submissions tend to rebut allegations that the 51-2230 storage rights have been forfeited, since those documents indicate that all users, even those without licenses, have relied on water being present in the reservoir in section 5. In any event, the Lahtinen/Sellman documents refer solely to the lack of historical irrigation in the SE portion of section 5.

Senior Water Agent Minicucci's report does not rescue the incorrect assertions of the non-party complainants, and her report actually supports the finding that irrigation has occurred in section 5. Maria Minicucci specifically states that springs were developed, irrigation structures were located in the ditch, and diversion structures diverted water to the pasture. Idaho law establishes that diversion to wild pasture is a beneficial use, and

Ms. Minicucci concluded that the water control efforts of the Urquidis had apparently increased the production of forage in section 5. Ms. Minicucci's observations also refute the attempts by the Tindall and Lahtinen affidavits to characterize John B. Urquidi's maintenance efforts as a malicious scheme to "dry up" the section 5 reservoir, since she notes that water was present in the reservoir in July of 1995.

In response to the factually deficient and internally contradictory affidavits mentioned above, the Urquidis provide evidence establishing that use of the water rights has not been forfeited. The Urquidis contend that this evidence need only be presented since 1979, but even if one rejects this position, the evidence submitted by the Urquidis is sufficient to reject any allegation of forfeiture. John C. Urquidi testifies that maintenance of the existing ditches was completed immediately after acquiring the property in 1966. John C. Urquidi describes an uninterrupted time line that extends to the present day in which these water diversion efforts have continued. To the extent that these efforts were interrupted, the interruption would be attributable to lessees who disregarded maintenance duties. As detailed in John C. Urquidi's affidavit, these lessees were Frank Davis, Robert Tindall, and Chester Sellman, who now apparently wish to benefit from any deficiency in their performance as tenants on the Owens Basin property. Even the affidavits of these lessees of the Urquidi property establish that stockwater use of the water available in section 5 has been uninterrupted, which would

constitute an authorized use under the original license granted to the Owens family. See Idaho Code § 42-111 (Supp. 1995) (domestic use includes use by livestock if not in excess of 13,000 gallons per day).

While the Urquidis certainly would suffer by a declaration of forfeiture, William J. Owens will not gain or lose through any outcome to the present proceedings. Mr. Owens' affidavit establishes that development occurred in the SE portion of section 5, that this development existed at the time of transfer to the Urquidis, and that signs of this development remain to the present day. Specifically, the wild pasture that is irrigated by the maintained diversion works and ditches produces a greater forage yield than uncontrolled flow or natural runoff would produce.

While the procedural context of this case is unique, the factual scenario is not. When confronted with similar instances of diversion benefitting wild pasture, Idaho judges have concluded that insufficient evidence exists to justify the extreme finding of forfeiture. The McAtee case presents a direct analogy to the present facts, for the family members defending against allegations of forfeiture "explained that they regularly had built small earthen diversion on Croy Creek with native materials and that these diversions had been functional until they were washed out or trampled by cattle." McAtee, 113 Idaho at 396, 744 P.2d at 124. While the method employed is perhaps not the most efficient method of irrigation, the Department should find, as did the district court in McAtee, that sufficient diligence is demonstrated by the

record to rebut any forfeiture of the Urquidis' water rights applied to section 5.

Portrayed in the light most favorable to a finding of forfeiture, the present record reflects a conflict of the affidavits that can hardly be characterized as supplying clear and convincing evidence of forfeiture. The available evidence suggests that water was applied to supplement wild pasture prior to 1966, and that the condition of the improved pasture has remained unchanged to the present day as a result of the Urquidis' water control efforts. The Department cannot issue a finding of forfeiture on the available evidence, and the likelihood of discovering sufficient evidence in light of the present record is so remote as to justify a revocation of the order to show cause.

C. Any Non-Use of the Urquidis' Licensed Water Rights is Attributable to Factors beyond the Urquidis' Control and such Non-Use Cannot Form the Basis for a Declaration of Forfeiture.

The Urquidis have made every reasonable effort to capture available water at the locations specified by their water licenses, and they have applied the available water to the appropriate beneficial uses. To the extent that the Urquidis have failed to succeed in either of these goals, such failure is attributable to upstream interference by the BLM and the cyclical drought of the late 1980's and early 1990's. With regard to license number 51-2252, the Affidavit of John B. Urquidi and supporting exhibits demonstrate that the BLM constructed a reservoir immediately upstream of the Urquidis' storage facility in the NE 1/4 of the NE

1/4 of section 7 in the early 1980's. This interference would explain Maria Minicucci's observation that the Urquidis' reservoir in section 7 was dry, but would prevent declaration of forfeiture of license 51-2252 since any non-use cannot be attributed to the Urquidis.

With regard to all of the water rights at issue, and particularly with regard to the irrigation rights in the lower portions of the drainage impacting sections 4 and 33, the prevalence of drought in the area has limited the availability of water so as to prevent a declaration of forfeiture. As correspondence from the BLM incorporated within the Affidavit of John B. Urquidi indicates, the impact of this drought was at its zenith in the early 1990's. The porosity and dry condition of the soil below the section 5 reservoir have always made irrigation difficult, and the drought conditions certainly exacerbated this difficulty. In fact, the drought conditions probably provide a better explanation for the "dry" reservoir in section 5 in the late summer and autumn of 1991 than any alleged wrongful diversion by John B. Urquidi. The section 5 reservoir receives recharge from two intermittent streambeds, not just the one flowing through section 5 that was supposedly blocked completely in August of 1991. Further, water has been present in the reservoir following the recovery from the drought in recent years. The existence of such a period of drought casts sufficient doubt upon the factual issues in these proceedings to prevent the Department from declaring that forfeiture has occurred.

D. Resumption of Use Prior to Assertion of Adverse Claims Prevents a Declaration of Forfeiture.

Assuming that one can find a hypothetical continuous five year period since 1979 when the Urquidis have failed to apply the licensed water to the prescribed beneficial uses, no adverse claims to the Urquidis' rights have been asserted before the Department, or any administrative or judicial body, prior to the Urquidis' resumption of use. Idaho law mandates that resumption of even a portion of a water right "before any third parties make a claim in the water" will prevent a finding of forfeiture. Jenkins, 103 Idaho at 389, 647 P.2d at 1261. Even if one defines the "claim" that must be asserted to be a claim of forfeiture, as the Boyer court apparently did, John B. Urquidi testifies that he conducted maintenance of the ditches and fortification of the diversion structures prior to 1992 when the non-party complainants first wrote to the Department.

The non-party complainants do not possess water rights that are injured by any application of the doctrine of resumption in favor of the Urquidis. Since the non-party complainants have presented no evidence substantiating the rights, if any, that they assert to the water at issue, it is difficult to characterize the interest that they claim in the reservoir of section 5.

As permittees utilizing grazing privileges on BLM-managed lands, they do not and cannot ascend to any property right in resources of the United States by virtue of their permittee status. 43 C.F.R. § 4130.2(c)(1995) ("Grazing permits or leases convey no right, title, or interest held by the United States in any lands or

URQUIDIS' RESPONSE TO ORDER TO SHOW CAUSE - Page 24

resources."). While Idaho law allows instream stockwater use without a license, such use is arguably subject to valid upstream uses, and an operator wishing to protect whatever right they have to insure the availability of water for instream stockwater use should at least obtain a permit as specified in Idaho Code section 42-113. No individual has provided the Department with evidence that documents a water right that was affected at any conceivable time that the Urquidis resumed their use of hypothetically forfeited rights. As an aside that perhaps speaks more to credibility issues than any others, Mr. Lahtinen has filed numerous claims in the SRBA asserting water rights with a priority date of March 31, 1882 in the affected area, including claims on locations that lie within the Owens Basin property that the Urquidis hold in fee simple.³ Exhibit I to Affidavit of John B. Urquidi, 5/24/96. However, these filings on record as of August 4, 1992 do nothing to address any resumption of use that occurred prior to Mr. Lahtinen's filings.

John B. Urquidi has diligently maintained the Owens Basin property water system since he entered the area in the late 1980's. John B. Urquidi's diligence has carried its own price, since the BLM apparently feels that he should not be allowed to venture beyond the boundaries of the Owens Basin deeded property to maintain state-issued water rights that arise on what is now public land. See Exhibits C and D to Affidavit of John B. Urquidi,

³ One cannot acquire a valid water right by trespass.

5/24/96. The Department cannot now determine that the Urquidi family forfeited their water rights at some time in the past when significant time has passed and the Urquidis have expended time and money to continue use of their licensed water rights.

E. The Department Cannot Enter a Finding of Forfeiture without Violating the Proscription Against Partial Forfeitures.

Given the interrelated nature of the Owens Basin property water system, the nature of the Urquidis' use of water on the Owens Basin property, and the intermittent flow of water in the area, the Department cannot issue a finding of forfeiture that is consistent with the Partial Forfeiture Decision. The latest development water right forfeiture law in Idaho holds that the Idaho forfeiture statute only allows forfeiture of all of one's water right. While individual water rights within a framework of rights may still be forfeited even after the Partial Forfeiture Decision, that holding effectively elevates the factual showing necessary far beyond the evidence in the present record.

The water covered by licenses 51-2252 and 51-2065 both flow through the Owens Basin deeded property in section 5. The uncontradicted evidence from affiants on all sides indicates that at least a portion of the water flowing through that area has been utilized by livestock. The documents issued by the Department specify such use as the licensed use of this water. Similarly, the storage use authorized by license 51-2230 is the ultimate result of commingling of water from various origins, including excess water that is not consumed upstream in section 5. At least a portion of

the water addressed by these rights has been applied to licensed uses in the specified locations.

The Department cannot issue a determination that forfeiture has occurred unless it ignores the uninterrupted partial use of water on the Owens Basin property. While the Partial Forfeiture Decision seems destined for review by the Idaho Supreme Court, the present case seems an inappropriate vehicle to carry the partial forfeiture issue to the appellate level. Assuming that the Department feels the evidence establishes complete non-use of one component of the interrelated water rights, the commingled nature of the water within the Urquidis' system prevents adequate identification of the water that is identified as subject to forfeiture. The nature of use and volume of water at issue in this case do not justify the administrative nightmare that a finding of forfeiture will create.

IV.

CONCLUSION

The Urquidis have not forfeited the water rights at issue in this matter. To the contrary, the Urquidis have been battling interference by the BLM and the Department in allowing the BLM to overfile on the Urquidis' water rights. Even if the Urquidis had made a call on the water, the BLM's prosecution of numerous trespass actions (one still pending before the Interior Board of Land Appeals) evidences the Urquidis' consistent attempt to put their licensed water rights to beneficial use. Similar to the BLM's interference, Messrs. Sellman, Lahtinen and Tindall, come to

URQUIDIS' RESPONSE TO ORDER TO SHOW CAUSE - Page 27

the Department with unclean hands to strip the Urquidis of their water rights so that their actions, as former lessees of the Urquidis, will inure to their benefit. The Department's own investigation has failed to show, by clear and convincing evidence, that the Urquidis' licensed water rights have been forfeited. Accordingly, this matter should reflect the validity of the Urquidis' water rights in the Director's report to the SRBA, and the order to show cause should be rescinded.

DATED this 28th day of May, 1996.

MOORE & McFADDEN, CHARTERED



Susan E. Buxton
Paul A. Turcke
Attorneys for Urquidis

SUSAN E. BUXTON
MOORE & McFADDEN, CHARTERED
Attorneys at Law
999 Main Street, Suite 910
Boise, Idaho 83702
Telephone: (208) 331-1800
Facsimile: (208) 331-1202

Attorneys For J & J Ranches and John C. and
Harriett Urquidi and John B. and Alisa B. Urquidi

BEFORE THE DEPARTMENT OF WATER RESOURCES
STATE OF IDAHO

IN THE MATTER OF USE OF WATER)
UNDER LICENSED WATER RIGHTS NOS.) AFFIDAVIT OF
51-02058, 51-02065, 51-02230 AND) WILLIAM J. OWENS
51-02252 IN THE NAME OF JOHN)
URQUIDI)
)

STATE OF OREGON)
COUNTY OF MALHEUR) ss.

William J. Owens, being first duly sworn upon oath, deposes and says:

1. That your Affiant's address is P.O. Box 242, Pollock, Idaho 83547.
2. That your Affiant previously owned the real property in the vicinity of Little Jacks Creek In Owyhee County, Idaho, Section 33, T9 R2E; Section 4, T10S, R2E, and Section 5, T10S, R2E, commonly known as the "Basin Property" which we sold to John and Harriett Urquidí in 1966.

3. Your Affiant last visited the property on October 3 and 4, 1993. That in both 1992 and 1993 your Affiant saw water on the Basin property that was irrigating a hay field. That on a trip to the Basin property in 1983 your Affiant observed grass tall enough that it could have been cut.

4. Your Affiant and his wife Irene and other family members made trips to the Basin property ^{W.B.D.} regularly over the years since its sale to the Urquidis.

5. That on your Affiant's trip in 1993, your Affiant noted water running in the ditch near the tar paper shack so when your Affiant went across the ditch he had to get out and go back to avoid getting stuck. Your Affiant then shoveled the ditch bed lower so that water would not run out by the house. Water was running back toward the corral and in that area and both ditches on the left side were full of water. Your Affiant wanted to go down to the site where they had a house in the past to see if they could camp there but the ditch was full and it looked like a good place to get stuck so they did not approach it from that side.

6. When your Affiant lived on the property he personally diverted water from the spring onto the hay field for irrigation through the ditches using small earthen dams. That the ditches observed by your Affiant in 1993 were the same ditches that your Affiant worked on the property while he owned it up to 1966 and that those ditches were approximately the same height and width.

7. That during the drought years of the late 19⁸⁰s, your Affiant went to the Basin property and noticed that the spring was not running water due to drought.

8. That your Affiant placed a reservoir on top above the springs in question and that the reservoir was put in place approximately 1948 or thereabouts for the purpose of irrigation.

9. That your Affiant had personally observed Dave Lathinen irrigate the Basin property in the 1960s when your Affiant leased the Basin property to Mr. Lathinen.

10. That the Sellman cattle did not graze on the Basin property to your Affiant's knowledge or at least did not have permission to graze it. That neither the Sellmans nor David Lathinen nor any other party ever complained about your Affiant irrigating the hay field from the spring source through the ditches and series of small dams.

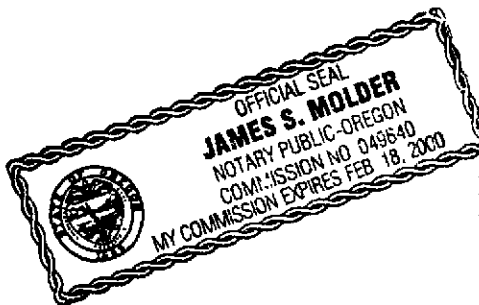
11. Your Affiant had never observed washes and that the area was more properly described as a meadow which had been irrigated. That your Affiant believes the hay field has been irrigated regularly since his sale to the Urquidis because its condition does not appear to have changed and that your Affiant has ^{W.J.O.} regularly visited the Basin property to observe its condition including the 1980s and 1990s.

Further, your Affiant saith not.

DATED this 14TH day of March, 1996.

William J. Owens
William J. Owens

SUBSCRIBED AND SWORN to before me this 14TH day of March, 1996.



James S. Molder
Notary Public for Oregon
Residing at: 2119 N.W. 2ND AVE, OREGON, OR, 97914
My Commission Expires: 2-18-2000

SUSAN E. BUXTON
PAUL A. TURCKE
MOORE & McFADDEN, CHARTERED
Attorneys at Law
999 Main Street, Suite 910
Boise, Idaho 83702
Telephone: (208) 331-1800
Facsimile: (208) 331-1202

Attorneys For J & J Ranches and John C. and
Harriett Urquidi and John B. and Alisa B. Urquidi

BEFORE THE DEPARTMENT OF WATER RESOURCES

STATE OF IDAHO

IN THE MATTER OF USE OF WATER)
 UNDER LICENSED WATER RIGHTS NOS.) AFFIDAVIT OF
 51-02058, 51-02065, 51-02230 AND) JOHN B. URQUIDI
 51-02252 IN THE NAME OF JOHN)
 URQUIDI)
)

STATE OF IDAHO)
 : ss.
COUNTY OF ADA)

John B. Urquidi, being first duly sworn upon oath, deposes and says:

1. I am the son of John C. Urquidi and Harriett Urquidi. I am a partner in a cattle ranch named J & J Ranches with my father, John C. Urquidi. The property utilized by J & J Ranches in cattle operations includes the E 1/2 of the SE 1/4 and the SE 1/4 of the NE 1/4 of Section 5 in T.10.S., R.2.E., as well as additional property located in section 4 of T.10.S., R.2.E.

and section 33 of T.9.S., R.2.E., Boise-Meridian, located in Owyhee County, Idaho. The described property, totaling approximately 648 acres and hereinafter referred to as the "Owens Basin," is owned in fee by my parents. In the course of the daily business operation of J & J Ranches, I observe and maintain the irrigation structures owned by J & J Ranches. I perform those maintenance duties as an authorized agent of J & J Ranches.

2. I first visited the Owens Basin property in 1988, and have regularly visited the property in my capacity as a partner in J & J Ranches since that time. I presently reside at Bruneau, Idaho, and my address is HC 85 Box 135, Brunèau, ID 83604.

3. The Owens Basin property is serviced by an interconnected system of ditches utilizing intermittent streams and springs which provide water that was historically, and is presently, used for irrigation of wild pasture, stockwater, domestic purposes, and storage for the named uses. Specifically, if one approached the property from the southwest, there is a retention dam along an unnamed intermittent tributary of Little Jacks Creek located in the NE 1/4 of the NE 1/4 of section 7, T.10.S., R.2.E. which creates a reservoir at that location when sufficient water is available. As one follows the drainage downstream to the east, one encounters diversion dams in the SE 1/4 of the SE 1/4 of section 5, T.10.S., R.2.E. In the E 1/2 of the SE 1/4 there are various natural springs which arise on the Owens Basin property owned in fee by my parents, and several of those springs have been developed to supplement any water that remains following transmission from the reservoir. The water is diverted to the natural stream bed, where a series of earthen diversion structures apply the water to the meadow located on the Owens Basin deeded property in the E 1/2 of the SE 1/4 of section 5. Attached as Exhibit "A" to this affidavit is a copy

of an engineering report completed on November 30, 1949 compiled and recorded in the course of the official and legally prescribed business of the licensing agency, with a diagram displaying the diversion system described in this paragraph.

4. As one continues to follow the drainage downstream to the north through section 5, one crosses the boundary of the Owens Basin deeded property and re-enters public land. In the NE 1/4 of the NE 1/4 of section 5 is located another reservoir created by a retention dam. In addition to the unnamed intermittent stream described above in paragraph 4, which enters this reservoir from the south, there is another unnamed intermittent tributary of Little Jacks Creek which enters the reservoir from the north. As one follows the latter upstream to the north and west, one approaches a retention dam and reservoir in the SE 1/4 of the SE 1/4 of section 31, T.9.S., R.2.E. Thus, the reservoir located in the NE 1/4 of the NE 1/4 of section 5 is filled and recharged by surface water, intermittent flow and release of storage from the reservoir in section 31, intermittent flow and storage from the reservoir in section 7, and flow from the springs in section 5. Of course, with regard to the water entering from the south which flows through the Owens Basin deeded property in the E 1/4 of section 5, only the water which is not diverted to irrigate the wild pasture in the E 1/4 is available to recharge the reservoir in the NE 1/4 of the NE 1/4 of section 5. The water collected by the reservoir in section 5 drains from the northeast corner of the reservoir, and the stream continues to the northeast where it re-enters the Owens Basin deeded property in section 33 of T.9.S., R.2.E. This interrelated system of reservoirs and streams is depicted in a later engineering report attached as Exhibit "B" to this affidavit completed on April 16, 1954, and compiled and recorded in the course of the official and legally prescribed

business of the licensing agency, with a diagram displaying the entire diversion system described in paragraphs 3 and 4.

5. Since 1988, I have regularly performed maintenance upon all aspects of the above-described diversion system. The unnamed streams in the area are susceptible to fluctuating annual flows, and there are times when little or no water is available. As a general proposition, water in the described area of Owyhee County flows in the intermittent streams from approximately March until early June and then resumes in late August or early September without some form of diversion allowing storage.

6. On various occasions when I have been performing maintenance on the diversion system described above, I have been threatened with legal action by the United States Department of Interior, Bureau of Land Management ("BLM") personnel for alleged "unauthorized use" of public lands. In other words, the BLM has previously demanded that I cease the very activities that the Idaho Department of Water Resources ("IDWR") now demands proof of from my family. Specifically, in 124 IBLA 353, the BLM prosecuted an action seeking cancellation of a right-of-way for maintenance of J & J ditches and canals, arguing that the water rights that IDWR now asserts were forfeited never existed at all. Attached as Exhibit "C" to this affidavit is a copy of the Administrative Judge in 124 IBLA 353, issued on December 4, 1992. That dispute was eventually resolved, with the BLM taking the position that I am authorized to enter public lands to maintain what BLM refers to as the "upper reservoir" located in section 31, but that no maintenance of the "lower reservoir" in section 5 was allowed. A separate action was initiated with regard to maintenance of a diversion dam located on BLM-managed property in section 5

near the boundary of the Owens Basin deeded property which also proceeded to an administrative hearing and subsequent appeals. Attached as Exhibit "D" to this affidavit is a copy of the Administrative Judge's latest Order issued on March 20, 1996 in case IBLA 93-42. In that matter, the BLM has charged me with trespass and unauthorized construction on public lands for attempting to maintain the wing dam in the SE 1/4 of the SE 1/4 of section 5. Through counsel, I have filed a motion for reconsideration of that order seeking clarification of the Administrative Judge's findings.

7. In addition to discouraging my efforts to maintain diversion structures and maintain the water rights that J & J Ranches holds under Idaho law, the BLM has physically interfered with J & J Ranches' ability to divert and store water in the reservoir located in section 7 described in paragraph 3 above. To be blunt, BLM construct a dam upstream of our reservoir which cuts off our section 7 reservoir's recharge source. I have reviewed records obtained from the BLM concerning claims that the BLM is presently submitting in the on-going Snake River Basin Adjudication ("SRBA").

Attached as Exhibit "E" to this affidavit is a copy of an Application for Permit, stamped "APPROVED," which the BLM submitted to IDWR on October 1, 1981. This Application indicates that BLM sought, and apparently obtained, permission from IDWR to initiate dam-building and accompanying storage in the NW 1/4 of the NE 1/4 of section 7. Review of the attached diagram, as well as my personal experience on the property, indicates that the NW 1/4 of the NE 1/4 of section 7 is upstream from the NE 1/4 of the NE 1/4 of section 7.

Attached as Exhibit "F" to this affidavit is a copy of an Adjudication Claim Profile Report dated 3/27/96, indicating that BLM has filed a claim upon a diversion at the NE 1/4 of the NE 1/4 of section 7 for stockwater and wildlife use, with an alleged priority date of 1874. The NE 1/4, NE 1/4 diversion is, of course, the Urquidi's licensed location. This does not appear an inadvertent error, for the BLM is certainly aware that two potential storage dams exist in the NE 1/4 of section 7. See Exhibit "G" to this affidavit, which is a copy of a letter to IDWR signed by the acting Area Manager dated June 3, 1993 inquiring about SRBA claims in the NE 1/4 of the NE 1/4 as well as the NW 1/4 of the NE 1/4 of section 7.

8. In my experience managing the Owens Basin property and as a permittee utilizing grazing privileges on lands in the surrounding area, the late 1980's and early 1990's were extremely dry years, which greatly impeded the abilities of all cattle operations in the area to locate and store even dependable sources of water. Attached as Exhibit "H" to this affidavit is a copy of a letter transmitted by the Area Manager on January 7, 1993, pursuant to his official duties and in the regular course of the BLM's discharge of duties imposed by law, indicating that the public rangelands continued to suffer significant stress "due to the six consecutive years of drought...." At times during this period, there was no water available for storage in either the section 7 reservoir or the section 5 reservoir.

9. I have obtained and reviewed a claim profile report for filings in the SRBA submitted by David Lahtinen. A copy of the Adjudication Claim report received from IDWR dated August 4, 1992 is attached as Exhibit "I" to this affidavit. Mr. Lahtinen has filed a claim on locations previously described within this affidavit, specifically the NW 1/4 of the SE 1/4 of

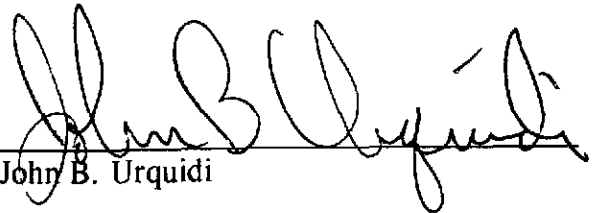
section 31 and the NE 1/4 of the NE 1/4 of section 5. I also note that Mr. Lahtinen has filed a claim with both a diversion location and place of use at the NE 1/4 of the SW 1/4 of section 4, which I find interesting since that described location is entirely within the boundaries of the Owens Basin deeded property. Mr. Lahtinen seeks a priority date of 3/31/1882 for all of his filings, which pre-dates creation of several of the reservoirs that now exist at the locations of Mr. Lahtinen's alleged claims. Altogether, Mr. Lahtinen had submitted claims for stockwater use at twenty (20) separate locations in townships 9 and 10 S. in the area of Owyhee County relevant to the present dispute.

10. At the same time that I requested a claims profile report for Mr. Lahtinen, I requested a claims profile report for Chester Sellman. I was informed that no filings were located for Mr. Sellman.

11. Despite the various difficulties and interferences described above, the diversion system originally completed by William Owens in the mid 1900's continues to augment production of cattle and wild pasture on the Owens Basin property. There is a meadow with wild hay in the E 1/4 of section 5 that is irrigated by the commingled waters of the springs and the stream bed transmitted in the stream bed and diverted upon the meadow by our canals and ditches. Based on my experience upon the property and in the vicinity, this meadow either would not exist or would exist at a much lower productive forage capacity without the irrigation efforts of J & J Ranches. When J & J Ranches pastures cattle in the meadow, the cattle consume water from the stream bed and the maintained ditches and springs. This pattern of use has continued without interruption since I visited the property in 1988.

Further, your affiant sayeth naught.

DATED this 24 day of May, 1996.


John B. Urquidi

SUBSCRIBED AND SWORN to before me this 24 day of May, 1996.

(SEAL)


Notary Public for Idaho
Residing at Boise, Idaho
My commission expires: 12.27.2000

STATE OF IDAHO
DEPARTMENT OF RECLAMATION
BOISE

REPORT OF ENGINEER

PERMIT NO. R-766

REPORT ON PROOF OF Beneficial use

5000 ft
7740 ft

5000 ft
7740 ft

11/250 a.f.

20 1111
3 1111

STATE OF IDAHO
DEPARTMENT OF RECLAMATION
BOISE, IDAHO
REPORT OF ENGINEER

Permit No. R-766This proof is for Beneficial use In Water District No. _____

1. Name of applicant Mrs. Hazel B. Owens, Bruneau, Idaho
2. Source of water supply: An unnamed stream, tributary to Jack's Creek
3. Location of ^{outlet} point of diversion: Is in the NE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 7
T. 10 S. R. 2 E. County of Owyhee

4. Describe works as they exist, giving dimensions and capacities of same: _____
Dam 10 ft. high and 300 ft. long. The side slopes are 2:1 and 3:1. Lava rip rap
and a 10 to 12 ft. top width. The outlet control is a vertical screw stem gate.
The reservoir area is about 10 acres. The ditches are 2 ft. wide and 1 ft. deep.

5. Water is used for: irrigation and stock water.

6. State whether or not water has been turned into works of diversion: Yes

7. List legal subdivisions of lands to be irrigated. If proof is for beneficial use, give exact number of acres under cultivation in each forty-acre tract. (Describe manner and place of use if other than irrigation):

SE $\frac{1}{4}$ NE $\frac{1}{4}$, E $\frac{1}{2}$ SE $\frac{1}{4}$ Section 5, Twp. 10 S., Range 2 E., B. M.

(Submit map on attached plat, showing location and details of above description.)

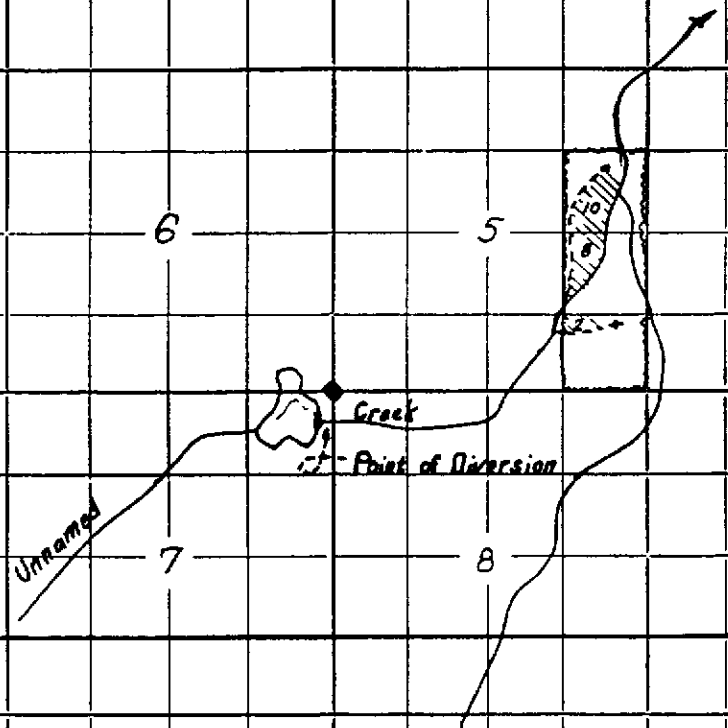
8. What large stream would the water here appropriated finally reach? Intermittent stream

Remarks: At the time of the investigation, the stream was dry.

Est. capacity of dam to be constructed (approx.)

This examination was made on the 30 day of Nov., 19 49.

T. 10 S., R. 2 E.



STATE OF IDAHO
DEPARTMENT OF RECLAMATION
BOISE

REPORT OF ENGINEER

PERMIT NO. R-⁷⁶⁶~~826~~

REPORT ON PROOF OF Beneficial Use

WILLIAM J. OWENS, Riggins, Idaho

aff 250 ac?

c/w 200 ac

3-1105

STATE OF IDAHO
DEPARTMENT OF RECLAMATION
BOISE, IDAHO

REPORT OF ENGINEER

Permit No. R-766
836

This proof is for Beneficial Use In Water District No. _____

1. Name of applicant William J. Owens, Riggs, Idaho

2. Source of water supply: Snow and rain drainage tributary to Jack's Creek

3. Location of point of diversion: Is in the NE NE of Section 7

10 S. R. 2 E. County of Owyhee

4. Describe works as they exist, giving dimensions and capacities of same: _____

Dam = 110 yds long x 12' w. x 11' h. Earth dam. Concrete outlet R'd. C.I. gate on
upstream end. 3:1 slope upstream 2:1 down. Spillway over a small saddle.
Good riprap. Small low embankment by spillway.
Stream channel used for ditch. Small ditch 12" to 18" w. on bottom.
No water in reservoir this year.

5. Water is used for: Irrigation and stock water

6. State whether or not water has been turned into works of diversion yes

7. List legal subdivisions of lands to be irrigated. If proof is for beneficial use, give exact number of acres under cultivation in each forty-acre tract. (Describe manner and place of use if other than irrigation):

N. 1/2 SE 1/4, SE 1/4 SW 1/4 Section 33, Twp. 9 South, Range 2 East, B. M.

W. 1/2 SE 1/4, SE NE 1/4, S. 5, 10, 3, 2 E.

This is actually a re-inspection for R-766

(Submit map on attached plat, showing location and details of above description.)

8. What large stream would the water here appropriated finally reach? _____

Remarks: _____

Pasture. crops.

Some brome grass.

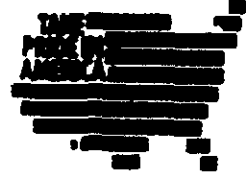
Estimated capacity = 40 a area x 6' deep = 240 acre feet.



United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS

Interior Board of Land Appeals
4015 Wilson Boulevard
Arlington, Virginia 22203



REPLY REFER TO:

missed 9/3/93 by A -
B.M. sought remand -
remanded to allow acceptance of
Re as fully developed
IBLA 91-150

JOHN C. URQUIDI

Decided December 4, 1992

Appeal from a decision of the Boise District Office, Idaho, Bureau of Land Management, cancelling right-of-way IDI-0603.

Decision set aside, case referred to Hearings Division.

1. Act of March 3, 1891—Rights-of-Way: Act of March 3, 1891—Rights-of-Way: Cancellation

Where a right-of-way grant issued under the Act of Mar. 3, 1891, does not contain provisions expressly mandating the filing of proof of construction of required improvements, failure to file does not, by itself, justify cancellation of the right-of-way.

2. Act of March 3, 1891—Rights-of-Way: Act of March 3, 1891—Rights-of-Way: Cancellation—Rules of Practice: Appeals: Hearings—Rules of Practice: Hearings

The holder of a right-of-way issued under the Act of Mar. 3, 1891, is entitled to a fact-finding hearing prior to cancellation for failure to construct improvements within 5 years of issuance as required by sec. 20 of that Act, where the case record does not demonstrate that improvements were not timely constructed, and where the right-of-way holder has expressly asserted that construction has been completed. In such hearing, BLM, as the proponent of the invalidity of the right-of-way, has the burden of proving that authorized improvements were not timely constructed.

APPEARANCES: John C. Urquidi, pro se; J. David Brunner, District Manager, Glen E. Cooper, Acting District Manager, Boise District Office, for the Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE HUGHES

John C. Urquidi has appealed from a December 20, 1990, decision of the Boise District Office, Idaho, Bureau of Land Management (BLM), cancelling canal and reservoir right-of-way IDI-0603.

Right-of-way IDI-0603 for an irrigation ditch was originally issued to Hazel B. Owens on May 8, 1954, pursuant to the Act of May 3, 1891, 43 U.S.C. § 946 (1970), under serial number Idaho 0603, for irrigation purposes. 1/ On January 14, 1963, BLM issued a notice requesting from Owens proof of construction of the canal. The record contains nothing indicating that proof of construction had been filed. On the other hand, it contains nothing, such as an inspection or land report, indicating that improvements had not been constructed as of January 1963. BLM's January 14, 1963, notice evinced uncertainty as to the status of construction, in that it offered Owens various options depending on whether the construction was complete, incomplete, or in progress. Owens evidently did not respond to BLM's request for proof of construction.

On December 23, 1968, BLM issued a contest complaint to Owens against right-of-way grant Idaho 0603, specifically alleging that "[t]he canal and reservoir have not been constructed as required by the provisions of section 20 of the Act of March 3, 1891," although nothing in the present record confirms that allegation. BLM requested that it be allowed to offer proof and asked that the right-of-way grant be revoked and canceled in its entirety. No proof was ever made, however, as the complaint was returned to BLM undelivered on December 27, 1968, with a notation that Owens was deceased.

BLM evidently took no further action on the matter until the end of 1989. On November 3, 1989, BLM received a copy of a warranty deed showing that title to the irrigation ditch and associated private land had passed to John C. and Harriett Urquidi from William J. and A. Irene Owens (apparently the heirs of Hazel B. Owens). In an internal memorandum dated February 9, 1990, BLM decided to "attempt to have the new right-of-way holder file the Proof of Construction so that the grant can be perfected and the records updated as to the new holder's name and address." By letter of July 13, 1990, BLM requested Urquidi to furnish proof of construction. BLM enclosed a form for this purpose. The record contains no response. BLM again requested Urquidi to furnish proof of construction on October 26, 1990, when it issued a decision holding the right-of-way for cancellation. Having again received no response, BLM, by its decision of December 20, 1990, canceled the right-of-way.

In his statement of reasons on appeal Urquidi (appellant) contends "that proof of construction was supplied, and construction was completed." He further asserts that BLM's action reduced the value of his property and denied him his water rights.

In its response, BLM initially requests that the appeal be dismissed as untimely filed. BLM also explains that its policy is to conduct a field

1/ The Act of May 3, 1891, has been interpreted as applicable to rights-of-way for pipelines, flumes, or other conduits, if water is conveyed primarily for irrigation or drainage purposes. See, e.g., 43 CFR 244.15(a) (1949); Fred Markle, 6 IBLA 52, 53 n.2 (1972).

APR - 5 1996

examination after proof of construction is received from the right-of-way holder. It notes that, since no proof of construction was ever received, no field examination was conducted, and no decision accepting proof of construction was issued.

As to the timeliness of the appeal, the record shows that appellant received BLM's decision on December 28, 1990. Departmental regulation 43 CFR 4.411(a) provides that "[a] person served with the decision being appealed must transmit the notice of appeal in time for it to be filed in the office where it is required to be filed within 30 days after the date of service." Thus, his notice of appeal was due to be filed on or before January 28, 1991, the first day BLM's offices were open after the expiration of the 30-day appeal period. The notice of appeal was not received by BLM until Tuesday, January 29, 1991.

However, a grace period is provided by 43 CFR 4.401(a), which states that a delay in filing will be waived if the document is filed no later than 10 days after it was required to be filed and the document was transmitted before the filing deadline. Here, the record establishes both that the notice of appeal was transmitted on January 26, 1991, before the filing deadline, and that it was received within 10 days thereafter. Accordingly, the provisions of 43 CFR 4.401(a) apply, the delay in filing is waived, and the appeal is properly considered timely filed.

Turning to the merits, we note that although the Act of May 3, 1891, was repealed by section 706(a) of the Federal Land Policy and Management Act of 1976 (FLPMA), P.L. 94-579, 90 Stat. 2743, 2793, that section expressly provided that nothing in FLPMA should be construed as terminating any valid right-of-way existing on October 21, 1976. The instant right-of-way was so existing and was therefore not affected by FLPMA. See James L. Morrison Sr., 87 IBLA 236, 238 (1985).

Section 20 of the Act of March 3, 1891, 43 U.S.C. § 948 (1970), authorizing the issuance of rights-of-way for ditches and canals, imposed the following proviso:

Provided, That if any section of said canal or ditch shall not be completed within five years after the location of said section, the rights therein granted shall be forfeited as to any uncompleted section of said canal, ditch, or reservoir, to the extent that the same is not completed at the date of the forfeiture.

That forfeiture proviso was also set out in Departmental regulations in effect at the time of issuance of the right-of-way (43 CFR 244.14(c) (1949)) and throughout the 5-year period following issuance. 43 CFR 244.22(c) (1954) and 43 CFR 2234.3-1(a)(iii) (1969). We have held that section 20 of the Act "requires forfeiture of the grant to the extent the improvements are not completed," and that, under the statute, "no extension of the original grant may be authorized." Fred Markle, 6 IBLA 52 (1972).

[1] We first consider whether the failure to file the proof of construction, by itself, constitutes grounds for cancellation of the right-of-way. In Grindstone Butte Project v. Kleppe, 638 F.2d 100 (9th Cir. 1981), cert. denied, 454 U.S. 965, the court held that entitlement to a right-of-way under the 1891 Act was qualified by the Act of February 15, 1901, ch. 372, 31 Stat. 790 (formerly codified at 43 U.S.C. § 959 (1970)) repealed, section 706(a) of FLPMA, supra, which authorized the Secretary to condition the grant of a right-of-way "upon compliance with reasonable regulations and terms designed to protect the public interest." 638 F.2d at 103. Thus, the Secretary has authority to cancel a right-of-way for violations of the conditions set out in its terms. See James L. Morrison Sr., supra at 243-44 (Grant, A.J., concurring).

The regulations in effect during the time after issuance of the right-of-way state as follows concerning filing proof of construction: "Upon completion of construction, proof thereof should be submitted to [BLM], consisting of a statement and certificate furnished by the holder of the right-of-way." 43 CFR 244.9(a) (1949); 43 CFR 244.15(a) (1954); and 43 CFR 2234.1-4(b)(1) (1969) (emphasis supplied). That language is not mandatory, but merely precatory. 2/ To the contrary, failure to file timely proof of construction is a curable defect. See Grace Belle Wilkerson, 10 IBLA 279 (1973). We find nothing in the grant of the right-of-way itself requiring the filing of such report. Cf. James L. Morrison Sr., supra at 240-41 (emphasizing that section 3 of the right-of-way form used in that case expressly required the "filing of proof of construction within 5 years of the date of grant"). In the absence of a mandatory rule requiring that proof of construction be filed within 5 years of issuance of the right-of-way or a provision in the right-of-way grant expressly so requiring, we decline to affirm BLM's decision cancelling the right-of-way on account of that failure. 3/

[2] The present record does not provide an adequate basis to determine whether this right-of-way may be canceled under the authority of section 20 of the Act of March 3, 1891, quoted above, for failure to timely construct improvements. Although it would seem a simple matter to examine the lands in question to ascertain whether improvements have been constructed, BLM

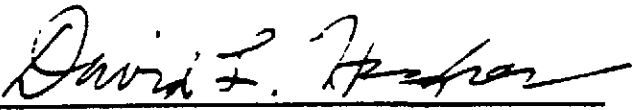
2/ The right-of-way is expressly made subject to "all future regulations issued" under the Act of Mar. 3, 1891. The proof-of-construction regulation was subsequently redesignated, but retained the significant phrase "should be submitted." 43 CFR 2802.2-2 (1979).

3/ Failure to file proof of construction has been considered in previous cases, but never as the sole ground for cancellation. Thus, although we stated in James L. Morrison Sr., supra at 242 n.7, that failure to file proof of construction was a violation that supported cancellation of the right-of-way, there was other noncompliance presented in that case not shown here, including failure to maintain the right-of-way site as required and to maintain an adequate performance bond. See also Fred Markle, supra at 54. Also, as noted above, the provisions of the right-of-way in Morrison expressly required the filing of proof of construction.

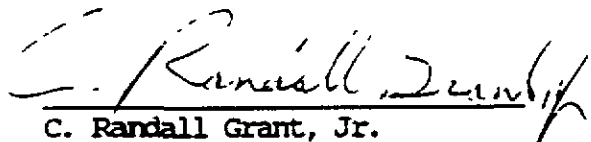
states that it presumed that no construction has occurred, based on the admitted failure both of Owens and, more recently, Urquidi to file proof of construction. However, Urquidi has directly asserted in his statement of reasons that construction has been completed. 4/ In such circumstances, the right-of-way holder is entitled to a fact-finding hearing prior to cancellation, as provided by 43 CFR 4.415. Cf. Fred Markle, supra at 55-56 (ruling that no hearing was required in that case, as there was no dispute that improvements had never been constructed, but observing that the right-of-way holder has a right to a hearing if that fact were disputed).

Accordingly, BLM's decision is set aside and the matter is referred to the Hearings Division to convene a factfinding hearing. BLM, as the proponent of the invalidity of the right-of-way, shall have the burden of proving that the authorized improvements have not been constructed as required by section 20. 5/ The Administrative Law Judge to whom the case is assigned shall issue a decision which, if not appealed, shall be final for the Department.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is set aside, and the case is referred to the Hearings Division as discussed above.


 David L. Hughes
 Administrative Judge

I concur:


 C. Randall Grant, Jr.
 Administrative Judge

4/ We note that this dispute could have been avoided if appellant had responded as requested to BLM's repeated requests for confirmation that improvements had been constructed.

5/ BLM should confirm forthwith appellant's statement that construction was completed. It would appear that BLM's decision could be summarily affirmed if, at this late date, no improvements have been constructed.

*improvements
have been
constructed*



United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS

Interior Board of Land Appeals
4015 Wilson Boulevard
Arlington, Virginia 22203

2025 CERTIFIED

IN REPLY REFER TO:

MAR 22 1996

IBLA 93-42

: IDI 29514

JOHN B. URQUIDI

: Trespass

: Affirmed as Modified

ORDER

By letter dated September 29, 1992, the Acting Bruneau Area Manager, Bruneau Area Office, Bureau of Land Management (BLM), informed John B. Urquidi that staff specialists from the Area Office had inspected public lands in the Little Jacks Creek drainage and determined that a dam had been constructed across a tributary to Little Jacks Creek without apparent authorization. He described the dam as being located in the SE $\frac{1}{4}$ SW $\frac{1}{4}$ SE $\frac{1}{4}$ section 5, T. 10 S., R. 2 E., Boise Meridian, Idaho. The Area Manager continued:

On September 23, 1992, you spoke to John Sullivan, Realty Specialist for this office, and admitted that you were the person responsible for this unauthorized construction. Pursuant to that admission, I am enclosing a Trespass Notice. This trespass is considered a repeated nonwillful trespass, since you were previously found responsible for the nonwillful trespass of a fence on public lands.

In accordance with 43 CFR 2801.3(b) and (c)(2), I have calculated the trespass rental and administrative charges, which total \$434.34. A Bill for Collection in this amount is enclosed.

The Area Manager noted that Urquidi had inquired about submitting a right-of-way application to legitimize the trespass, but he stated that no action on such an application would proceed until full payment of the trespass charges. Urquidi filed a timely appeal of the trespass notice.

The regulations provide at 43 CFR 2801.3(a):

Any use, occupancy, or development of the public lands that requires a right-of-way, temporary use permit, or other authorization pursuant to the regulations of this part and that has not been authorized, or that is beyond the scope and specific limitations of an authorization, or that causes unnecessary or undue degradation, is prohibited and shall constitute a trespass as defined in §2800.0-5.

Further, anyone found to be in violation of 43 CFR 2801.3(a) by the BLM authorized officer must be notified in writing of the trespass and is liable to the United States for reimbursement for all costs incurred by the United States in investigating and terminating the trespass, the rental

value for the lands, and rehabilitating and stabilizing any lands that were harmed by the trespass. 43 CFR 2801.3(b).

On appeal, Urquidi suggests the trespass might best be resolved in a conjunction with another case in which he had challenged a December 20, 1990, decision of the Boise District Office, BLM, cancelling a canal and reservoir right-of-way, IDI-0603, for failure to file proof of construction. The Board set aside that BLM decision and referred the case to the Hearings Division for assignment of an administrative law judge to determine whether the authorized improvements had been constructed as required. John C. Urquidi, 124 IBLA 353 (1992). Thus, Urquidi suggests that the administrative law judge should decide both cases. There is no evidence that the dam in question in this case was constructed in right-of-way IDI-0603. In the absence of any such evidence, we find no relationship between the cases. In addition, by order dated September 3, 1993, the administrative law judge dismissed the appeal involving IDI-0603 because BLM had requested remand to allow acceptance of the right-of-way as fully developed. Urquidi has made no further filing in this case since the issuance of that order to establish that the dam in question in this case is authorized by IDI-0603.

Urquidi argues that BLM's trespass notice "directly reduces my private property value, denying me the water the state of Idaho allows me to divert onto my private property * * *." He states that the dam "probably is on private ground, but if it is not on private ground and is on federal ground the authorization would have already been granted for this is only a wing dam, diverting water into ditches from established an[d] authorized storage dams up stream."

Urquidi has produced no evidence that the dam in question is on private ground. The record shows that it is located on public land. See Unauthorized Use Investigation Report, dated September 9, 1992. The fact that Urquidi may hold a water right from the State of Idaho does not provide authorization for construction of a dam on public land.

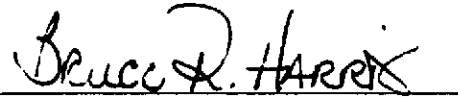
Urquidi also states: "I also protest George Farrows nonwillful trespass of a fence on public lands, approximately forty miles away from current trespass [IDI] 29514, that was shown constructed before I was born as not relevant." Presumably, this statement is made to refute the Area Manager's assertion that Urquidi had previously been found responsible for the nonwillful trespass of a fence on public lands and his finding that a repeated nonwillful trespass was justified in this case. The record is completely devoid of any evidence regarding an earlier trespass by Urquidi. Thus, there is not an adequate basis for concluding that the trespass in this case is repeated nonwillful. The trespass may only be considered nonwillful and BLM should adjust the trespass charges accordingly. See 43 CFR 2801.3(c)(1).

In addition, we note that it appears that the last four entries on BLM's trespass log describe charges for processing the appeal in this case for transmission to the Board. BLM Handbook H-9232-1, "Realty Trespass Abatement," which is incorporated as part of the BLM Manual, provides at

Chapter VII, E. Administrative Cost - Liability and Calculation:

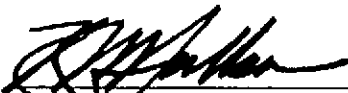
"Administrative costs and the log cover the period from case file establishment to the point the Bureau no longer controls the resolution action." Chapter V, E. 4. of the same Handbook states that "[w]hen an appeal has been filed, IBLA has exclusive jurisdiction over the matter and BLM can take no action on the case." Because BLM no longer controls resolution of the action when an appeal has been filed, an alleged trespasser should not be responsible for BLM's costs in processing the appeal for transmission to the Board. BLM should adjust the trespass charges in this case accordingly.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed as modified.



Bruce R. Harris
Deputy Chief Administrative Judge

I concur:


R. W. Millen
Administrative Judge

APPEARANCES:

John Urquidi
HC 85 Box 135
Bruneau, ID 83604

cc: Office of the Field Solicitor
U.S. Department of the Interior
Federal Building, U.S. Courthouse
550 West Fort Street, Box 020
Boise, Idaho 83724-0020

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

APPLICATION FOR PERMIT **APPROVED**

To appropriate the public waters of the State of Idaho

1. Name of applicant Bureau of Land Management Phone 334-1582

Post office address 3948 Development Avenue, Boise, Idaho 83705

2. Source of water supply unnamed stream which is a tributary of sinks

3 Location of point of diversion is NW $\frac{1}{4}$ of NE $\frac{1}{4}$ of Section 7 Township 10 S

Range 2 E B.M. Owyhee County, additional points of diversion if any

4 Water will be used for the following purposes:

Amount 1 ac/ft for storage for stockwater purposes from 1/1 to 12/31 (both dates inclusive)
(cfs or acre-feet per annum)

Amount 1 af/ft for stockwater from storage purposes from 1/1 to 12/31 (both dates inclusive)
(cfs or acre-feet per annum)

Amount 1 af/ft for storage for wildlife purposes from 1/1 to 12/31 (both dates inclusive)
(cfs or acre-feet per annum)

Amount 1 ac/ft for wildlife from storage purposes from 1/1 to 12/31 (both dates inclusive)
(cfs or acre-feet per annum)

5. Total quantity to be appropriated:

a. cubic feet per second and/or b. 1 acre-feet per annum.

6. Proposed diverting works:

a. Description of ditches, flumes, pumps, headgates, etc. dams

b. Height of storage dam 8 feet, active reservoir capacity 1 acre-feet, total reservoir capacity 1 acre-feet, materials used in storage dam earth-fill

Period of year when water will be diverted to storage 1/1 to 12/31 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 NW $\frac{1}{4}$ of NE $\frac{1}{4}$ of Section 7 Township 10 S

Range 2 E B.M.

(2) Amount of power to be generated N/A horsepower under feet of head

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

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

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

RECEIVED

OCT 1 1981

Department of Water Resources
Western Regional Office

[illegible]

Total number of acres to be irrigated

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 BLM

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

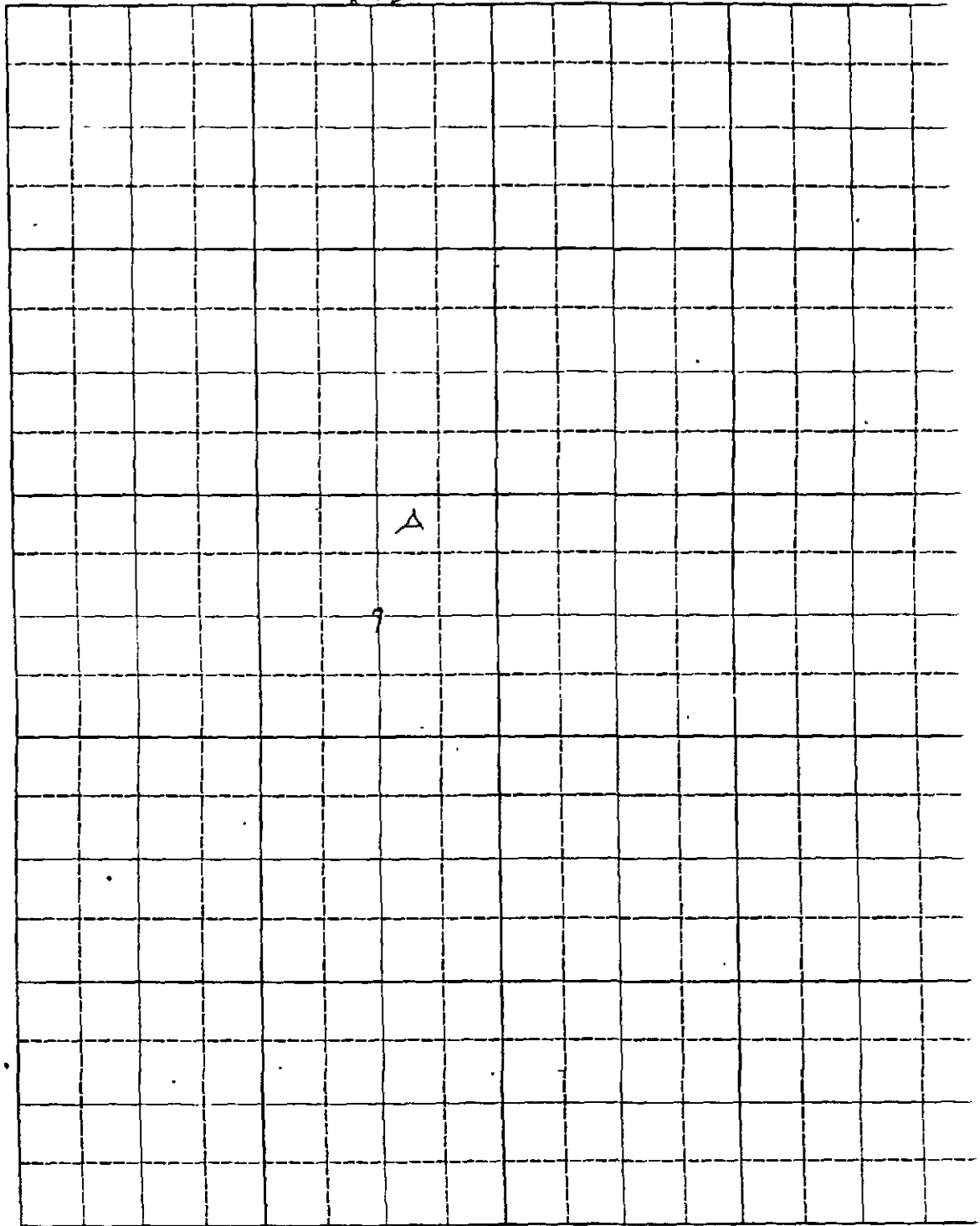
c. If the property is owned by a person other than the applicant, describe the arrangement enabling the applicant to make this filing _____

10. Remarks BLM Project Name is Basin Reservoir No. 2 and Project No. is 6229.

This image shows a single sheet of white paper with horizontal blue or grey ruling lines. The lines are evenly spaced and run across the width of the page. There are approximately 20 lines visible. A few small dark specks are scattered across the surface, likely due to scanning artifacts or dust. The paper appears to be a standard notebook or legal pad style.

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

R 2 E



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.

[Signature]
(Applicant)

Received by Hy Date 7-30-81 Time 4:45 PM
 Preliminary check by Am Fee \$ 30.00
 Receipted by Hy Date 7-30-81 # 19728
 Publication prepared by Hy Date 8-13-81
 Published in Idaho Water
 Publication dates 8-13-81
 Publication approved Hy Date 8-17-81
 Protests filed by: None

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

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. 55-7142, and said application is hereby APPROVED.

- 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 September 1, 19 86.
 - c The rate of diversion, if water is to be used for irrigation under this permit, when combined with all other water rights for the same land shall not exceed 0.02 cubic feet per second for each acre of land
 - d Other:

Witness my hand this 17th day of September, 19 81.

J. Glen Saxton
 Chief, Operations Bureau

OWNER CODE	NAME & ADDRESS	PRIORITY DATE	WATER USE	USE PERIOD FROM TO	DIVERSION RATE	DIVERSION VOLUME
C	US DEPT OF INTERIOR	01/01/1874	STOCKWATER STORAGE	01-01 12-31	0.53 CFS	
			STOCKWATER FROM STORAGE	01-01 12-31	0.53 CFS	
			WILDLIFE STORAGE	01-01 12-31	0.02 CFS	
			WILDLIFE FROM STORAGE	01-01 12-31	0.02 CFS	
TOTAL DIVERSION:					0.55 CFS	

Water Source: LITTLE JACKS CREEK

Tributary to: JACKS CREEK

Stage: BENEFICIAL USE

Point(s) of Diversion: *1 T10S R02E S06 SESE
S07 NENE
OWYHEE County
OWYHEE County

Place of use Legal Description for: STOCKWATER STORAGE

NE				NW				SW				SE			
NENE	NWNE	SWNE	SENE	NENW	NWNW	SWNW	SENW	NESW	NWSW	SWSW	SESW	NESE	NWSE	SWSE	SESE
T	R	S	: Lt Ac Lt Ac Lt Ac Lt Ac	: Lt Ac Lt Ac Lt Ac Lt Ac	: Lt Ac Lt Ac Lt Ac Lt Ac	: Lt Ac Lt Ac Lt Ac Lt Ac	: Lt Ac Lt Ac Lt Ac Lt Ac	: Lt Ac Lt Ac Lt Ac Lt Ac	: Lt Ac Lt Ac Lt Ac Lt Ac	: Lt Ac Lt Ac Lt Ac Lt Ac	: Lt Ac Lt Ac Lt Ac Lt Ac	: Lt Ac Lt Ac Lt Ac Lt Ac	: Lt Ac Lt Ac Lt Ac Lt Ac	: Lt Ac Lt Ac Lt Ac Lt Ac	: Lt Ac Lt Ac Lt Ac Lt Ac
*1 10S 02E 7 : S															

Place of use Legal Description for: STOCKWATER FROM STORAGE

NE				NW				SW				SE			
NENE	NWNE	SWNE	SENE	NENW	NWNW	SWNW	SENW	NESW	NWSW	SWSW	SESW	NESE	NWSE	SWSE	SESE
T	R	S	: Lt Ac Lt Ac Lt Ac Lt Ac	: Lt Ac Lt Ac Lt Ac Lt Ac	: Lt Ac Lt Ac Lt Ac Lt Ac	: Lt Ac Lt Ac Lt Ac Lt Ac	: Lt Ac Lt Ac Lt Ac Lt Ac	: Lt Ac Lt Ac Lt Ac Lt Ac	: Lt Ac Lt Ac Lt Ac Lt Ac	: Lt Ac Lt Ac Lt Ac Lt Ac	: Lt Ac Lt Ac Lt Ac Lt Ac	: Lt Ac Lt Ac Lt Ac Lt Ac	: Lt Ac Lt Ac Lt Ac Lt Ac	: Lt Ac Lt Ac Lt Ac Lt Ac	: Lt Ac Lt Ac Lt Ac Lt Ac
*1 10S 02E 7 : S															

Place of use Legal Description for: WILDLIFE STORAGE

NE				NW				SW				SE			
NENE	NWNE	SWNE	SENE	NENW	NWNW	SWNW	SENW	NESW	NWSW	SWSW	SESW	NESE	NWSE	SWSE	SESE
T	R	S	: Lt Ac Lt Ac Lt Ac Lt Ac	: Lt Ac Lt Ac Lt Ac Lt Ac	: Lt Ac Lt Ac Lt Ac Lt Ac	: Lt Ac Lt Ac Lt Ac Lt Ac	: Lt Ac Lt Ac Lt Ac Lt Ac	: Lt Ac Lt Ac Lt Ac Lt Ac	: Lt Ac Lt Ac Lt Ac Lt Ac	: Lt Ac Lt Ac Lt Ac Lt Ac	: Lt Ac Lt Ac Lt Ac Lt Ac	: Lt Ac Lt Ac Lt Ac Lt Ac	: Lt Ac Lt Ac Lt Ac Lt Ac	: Lt Ac Lt Ac Lt Ac Lt Ac	: Lt Ac Lt Ac Lt Ac Lt Ac
*1 10S 02E 7 : W															

Place of use Legal Description for: WILDLIFE FROM STORAGE

NE				NW				SW				SE			
NENE	NWNE	SWNE	SENE	NENW	NWNW	SWNW	SENW	NESW	NWSW	SWSW	SESW	NESE	NWSE	SWSE	SESE
T	R	S	: Lt Ac Lt Ac Lt Ac Lt Ac	: Lt Ac Lt Ac Lt Ac Lt Ac	: Lt Ac Lt Ac Lt Ac Lt Ac	: Lt Ac Lt Ac Lt Ac Lt Ac	: Lt Ac Lt Ac Lt Ac Lt Ac	: Lt Ac Lt Ac Lt Ac Lt Ac	: Lt Ac Lt Ac Lt Ac Lt Ac	: Lt Ac Lt Ac Lt Ac Lt Ac	: Lt Ac Lt Ac Lt Ac Lt Ac	: Lt Ac Lt Ac Lt Ac Lt Ac	: Lt Ac Lt Ac Lt Ac Lt Ac	: Lt Ac Lt Ac Lt Ac Lt Ac	: Lt Ac Lt Ac Lt Ac Lt Ac
*1 10S 02E 7 : W															

POU County: OWYHEE

Non-Irrigation Uses: STOCKWATER, 2314 RANGE CATTLE; WILDLIFE VAR. AMT.

Other Rights: NONE

Remarks: GEN BLM RECORD ID = 5101680123
FIRST DATE OF BENEFICIAL USE - 1874

EXHIBIT "F"



United States Department of the Interior

BUREAU OF LAND MANAGEMENT
Boise District Office
3948 Development Avenue
Boise, Idaho 83705



June 3, 1993

Mr. Steve Lester
Idaho Department of Water Resources
2734 Airport Way
Boise, ID 83705

Dear Mr. Lester:

Some contention has occurred between some of our permittees regarding water rights on a number of springs and reservoirs in the head waters area of Little Jack's Creek.

I have listed the legal description below of the waters in question. I would appreciate a complete listing of existing water rights and water right claims submitted under the Snake River Adjudication process for the legal descriptions listed below.

T. 9S,	R. 2E	Sec. 31	NENE
T. 9S,	R. 2E	Sec. 31	SWSE
T. 10S,	R. 2E	Sec. 05	SWSE
T. 10S,	R. 2E	Sec. 05	NENE
T. 10S,	R. 2E	Sec. 04	NWSE
T. 10S,	R. 2E	Sec. 07	NENE
T. 10S,	R. 2E	Sec. 07	NWNE

Please contact Steve Jirik at 384-3337 if you have any questions.
Thank you for your help.

Sincerely,

Fred Schley
Fred Schley
Bruneau Acting Area
Manager

EXHIBIT "G"



United States Department of the Interior

BUREAU OF LAND MANAGEMENT

Boise District Office
3948 Development Avenue
Boise, Idaho 83705



4110

JAN 7 1993

Dear Grazing Permittee:

The 1992 grazing season was an extremely difficult year for operators who grazed livestock on public lands across the western United States and more particularly within the Bruneau Resource Area. Your effort to reduce possible impacts to the rangeland resources is greatly appreciated. Many of you voluntarily took complete non-use or reduced use, as well as contributed significantly to improve livestock distribution through increased riding and water hauling and improved salting practices. I appreciate the time and the sacrifices you have endured to coordinate these efforts with my staff and work out mutually agreeable and beneficial solutions.

Next year is shaping up to be a challenging one as well. Recent weather patterns have given some favorable indications that perhaps this area may experience a "normal" precipitation year, however, there remain many areas that indicate through obvious signs of stress due to the six consecutive years of drought that they will not respond quickly. My staff closely monitored many rangeland areas this past year, and regardless of the amount of moisture and favorable growing conditions we may receive throughout this winter and the coming spring, the majority of these areas will not "bounce back" to their pre-drought condition.

Therefore, I am recommending that grazing management alternatives continue to be considered for your allotment(s) and/or pastures during the 1993 grazing year. I am suggesting that you begin to seriously consider the possibility that continued rest, additional reductions or a change in your season of use may be necessary. Many of you may need to delay your turn-outs by as much as two weeks to two months, depending on conditions. I am making these recommendations based upon the observed poor plant vigor, reduced forage production, loss of desirable perennial plant species, lack of carry over forage (old feed), utilization levels in excess of the allowable use level, establishment of undesirable vegetation, lack of litter and potential soil erosion that have appeared in many areas in the resource area. The Grazing Advisory Board has indicated their support and recognition of the need to continue to address the drought impacts during the upcoming year.

EXHIBIT "H"

I would like to review the available monitoring data and use supervision inspections for last grazing season with you for your allotment(s) prior to the upcoming grazing season that may have been collected by the BLM or yourself. I would like to meet with you to discuss possible steps that could be taken during the 1993 grazing season to protect the resources for the multiple-uses of the public rangelands. As in the past, the BLM remains open to suggestions and voluntary adjustments that are consistent with the achievement of management objectives for the allotment(s). If necessary, an allotment inspection may be conducted prior to turn-out. I would prefer to meet with each of you on an allotment-by-allotment basis as early as possible in order to provide each of us with ample opportunity to assess your individual situations and make contingency plans accordingly, however, some adjustments may be handled by phone.

Please give some serious thought to these meetings and have some options and ideas ready for us to discuss. I would prefer to schedule these meetings a minimum of two weeks before your normally scheduled turn-out date. Please contact Abbie Jossie at (208) 384-3340 or your respective range conservationist to schedule a meeting. Due to the anticipated workload, I request that these meetings take place in the BLM Boise District Office, in order to provide my staff maximum flexibility in scheduling multiple meetings during the day.

I look forward to your continued cooperation in the proper management of the public rangelands. I am certain that if we work together, mutually agreeable options for grazing in 1993 can be implemented.

Sincerely,


Acting Area Manager
Bruneau Resource Area

cc: as per attached mailing list

Mail to the permittees for the following allotments:

Center
Big Lake
Northwest
M&L field
West Canyon View
Miller Table
East Canyon View
JP Point
Grasmere Field
N. Grasmere Seeding
S. Grasmere Seeding
Tokum Bambi
N. Sheep Creek Seeding
S. Sheep Creek Seeding
JP Field
Highway Field
Mary's Creek
Trout Creek
Tindall Resv. Field
Bruneau Canyon
Antelope Field
Cat Creek
South JP Seeding
Big Springs
Mud Springs
Chalk Flat
Hammett #4
Hammett #5
Hammett #6
Hot Springs
S. Cold Springs
SE Alkali
SW Alkali
Sugar Bowl
Lower Bennett
N. Cold Springs
Emigrant Crossing
Sunnyside Spring/Fall
Sunnyside Winter
Castle Creek
Battle Creek
Crater Rings
West Slater Flat
Little Canyon

Water Right Number - ~~153-10100~~

Prefix Translation: ADJUDICATION CLAIM

Old (D) Number -

+ - - - - Last Name - - - + + - First Name - - + + - - - - - Address - - - - - +

*** C - CURRENT OWNER ***

LAHTINEN

BARBARA

1 - P.O. BOX 167A

2 -

3 -

City- BRUNEAU

State- ID Zip- 83604

Phone - 208-845-2208

LAHTINEN

DAVID

1 - P.O. BOX 167A

2 -

3 -

City- BRUNEAU

State- ID Zip- 83604

Phone - 208-845-2208

+ - - Priority Date - - +
03/31/1882

+ - - - Region - - - +

+ - - - Stage - - - +
J - BENEFICIAL USE

+ - - - Status - - - +

+ - - - - Source - - - - +
UNNAMED STREAMS
SPRINGS+ - - - - Tributary - - - - +
SINKS
SINKS*Basis of
claim =
beneficial use
of water*

Tran	Rng.	Sec	Tract.	Lot	RFlg	County	Point of Diversion	Stream Index (Blank if no Index Code)
008	01E	20	SW SE			(73)	OWYHEE	
		22	SW NE			(73)	OWYHEE	
			NW SE			(73)	OWYHEE	
	02E	13	NW SW			(73)	OWYHEE	
		14	NE SE			(73)	OWYHEE	
		20	NE NE			(73)	OWYHEE	
		31	NW SE			(73)	OWYHEE	
		32	NW NW			(73)	OWYHEE	
	01W	35	SE SW SE			(73)	OWYHEE	
008	02E	4	NE SW			(73)	OWYHEE	
		5	NE NE			(73)	OWYHEE	
		6	SE SE			(73)	OWYHEE	
		13	NW NW			(73)	OWYHEE	
		14	SE NW			(73)	OWYHEE	
		15	SE NW			(73)	OWYHEE	
		20	NE SW			(73)	OWYHEE	
		21	SW NE			(73)	OWYHEE	
	03E	3	NW SW			(73)	OWYHEE	
		8	NW SE			(73)	OWYHEE	
		9	NW SW			(73)	OWYHEE	

+ - - - - Water Use - - - - +
Code Description Period From Period To Diversion Rate Diversion Volume04 - ~~153-10100~~

01/01 12/31

0.070

= .07 cfs about 51 gpm

EXHIBIT "P"

Prefix Translation: ADJUDICATION CLAIM

+	-	Total Div. Rate	-	+	-	Total Div. Volume	-	+	-	Total Div. Capacity	-	+	-	Total Consumptive Use	-	+	-	KW Usage	-	+
		0.070												0.0						

+	Turn	Ring	Sec	Tract	Lot	Acres	Place of Use Code	Description	County	+
09S	01E	20	SW SE				04	STOCKWATER	(73) OMYHEE	
09S	01E	22	SW NE				04	STOCKWATER	(73) OMYHEE	
09S	01E	22	NW SE				04	STOCKWATER	(73) OMYHEE	
09S	02E	13	NW SW				04	STOCKWATER	(73) OMYHEE	
09S	02E	14	NE SE				04	STOCKWATER	(73) OMYHEE	
09S	02E	20	NE NE				04	STOCKWATER	(73) OMYHEE	
09S	02E	31	NW SE				04	STOCKWATER	(73) OMYHEE	
09S	02E	32	NW NW				04	STOCKWATER	(73) OMYHEE	
09S	01W	35	SW SE				04	STOCKWATER	(73) OMYHEE	
10S	02E	4	NE SW				04	STOCKWATER	(73) OMYHEE	
10S	02E	5	NE NE				04	STOCKWATER	(73) OMYHEE	
10S	02E	6	SE SE				04	STOCKWATER	(73) OMYHEE	
10S	02E	13	NW NW				04	STOCKWATER	(73) OMYHEE	
10S	02E	14	SE NW				04	STOCKWATER	(73) OMYHEE	
10S	02E	15	SE NW				04	STOCKWATER	(73) OMYHEE	
10S	02E	20	NE SW				04	STOCKWATER	(73) OMYHEE	
10S	02E	21	SW NE				04	STOCKWATER	(73) OMYHEE	
10S	03E	3	NW SW				04	STOCKWATER	(73) OMYHEE	
10S	03E	8	NW SE				04	STOCKWATER	(73) OMYHEE	
10S	03E	9	NW SW				04	STOCKWATER	(73) OMYHEE	

♦ - - Diversion Means - EARTHEN DAMS, CATCHMENT PONDS, TANKS

+ - - Non-Irrigation Use - 8/205 RANGE CATTLE

+ - - Other Rights for Same Use - IN-STREAM STOCKWATER

BLM LESSEE		Remarks

```
+-----Old Water Right Numbers-----+  
No Old Water Right Numbers found.
```

----- Conditions of Approval -----
No Conditions of Approval found.

+ - - - Decree Plaintiff - - +	+ - - - Decree Defendant - - +	+ - Decree Date - + 00/00/0000
--------------------------------	--------------------------------	-----------------------------------

* - - Audit Fields - 01/11/89 HARRINGT 01/17/89 HARRINGT 10/24/89 REFUNDML

+-----+-----+-----+-----+-----+-----+-----+-----+-----+-----+-----+-----+-----+-----+
 -Comments-
 No Comments Found

Water right number - A51-10199

Prefix Translation: ADJUDICATION CLAIM

+ - - - - Adjudication Rights Dates and Flags Area - - - - +

Court Report Filing	- 00/00/0000	Field Inspection Made	- 00/00/0000	Civil Case Number	- 39576
Objection Filed Date	- 00/00/0000	Field Inspection Flag	-	Old Case Number	-
Response Filed Date	- 00/00/0000	Verified Date	- 00/00/0000	Old Judicial District	-
Claim Received Date	- 01/11/1989	Last Amended Date	- 01/17/1989	Temporary Right	- P
Proof Due Date	- 00/00/0000	Proof Made Date	- 00/00/0000	Water District	-
Licensed Date	- 00/00/0000	Receipt Number	- C005053	Federal/State Indicator	- S
Claims Tape Error Flag	-	POU Ownership Flag	- N	Presumption Flag	-
Fee Exempt Flag	-	Name Connector	- AND/OR	Notice of Error Flag	-

*This is the only adjudication
claim for Lashman in the
area you are interested in.*

None found for Salkman.

ORIGINAL

SUSAN E. BUXTON
MOORE & McFADDEN, CHARTERED
Attorneys at Law
999 Main Street, Suite 910
Boise, Idaho 83702
Telephone: (208) 331-1800
Facsimile: (208) 331-1202

Attorneys For J & J Ranches and John C. and
Harriett Urquidi and John B. and Alisa B. Urquidi

BEFORE THE DEPARTMENT OF WATER RESOURCES

STATE OF IDAHO

IN THE MATTER OF USE OF WATER	)	
UNDER LICENSED WATER RIGHTS NOS.	)	
51-02058, 51-02065, 51-02230 AND	)	
51-02252 IN THE NAME OF JOHN	)	
URQUIDI	)	
_____	)	

AFFIDAVIT OF
JOHN C. URQUIDI

STATE OF IDAHO)

: ss.

COUNTY OF ADA)

John C. Urquidi, being first duly sworn upon oath, deposes and says:

1. That your Affiant's address is 2006 Curtis Circle, Boise, Idaho 83705
2. That in the fall of 1966 your Affiant purchased 648 acres in Little Jack Creek Basin, also known as Owens Basin, with all improvements, fences, water licenses, and AUMs, from William J. and Irene Owens. In the ensuing years until 1974, Affiant and Mr. Dan Sabal, as well as any other help needed, hauled a Chattin ditcher to the deeded property and cleaned the

ditches, so the meadows would be irrigated by those of us who were available at the time. Most of the irrigation started in early May through the high water, then slowed down to the springs being the main source of water

3. That Mr. Sabal was very diligent in irrigating and all other maintenance on the improvements, whether Affiant was there or not. He would use the other help who were on the payroll at the time. These employees included some of the following people: John Lewis, Bud Hosford, Clarence Sporleder, Francis Deforest and a few Native Americans as temporary employees, as needed. In the summers that Bud Hosford worked for Affiant, Bud and your Affiant hauled our swather up to the basin and harvested the meadows, and did any maintenance that was necessary.

4. That in 1975 Mr. Sabal retired, and Affiant then hired Henry Rubelt and his son Jesse to look after the cows, irrigate the meadows, and keep up with the maintenance as needed.

5. That in 1977 Affiant leased the ranch to Frank Davis. Mr. Davis arranged the terms of the lease through FHA. He submitted the lease for your Affiant and Affiant's wife to sign, which was done. A copy of the executed lease is attached as Exhibit "A" to this affidavit. Provisions of the lease required the lessee to maintain all improvements on the property, including a duty to keep all ditches in good repair. In 1985, Frank Davis approached Affiant about subleasing the Owens Basin to Robert Tindall. Affiant agreed, as long as it was operated under the provisions of the original lease. Mr. Tindall then leased from Frank Davis for the years of 1985 and 1986. Following expiration of the 1986 lease term, Affiant was notified that the lease was not to be renewed.

6. Beginning in April of 1987, the property was leased for a period of two years to Chester Sellman. Attached to this affidavit as Exhibit "B" is a copy of a handwritten document entitled "Lease of Base Property" which is not signed. Also attached is Exhibit "C" to this affidavit, which is a typewritten lease signed by John B. Urquidi and Mr. Sellman. Both of these documents were apparently relied upon in issuing the order to show cause in this matter, and both documents specifically mention that the lessee, Mr. Sellman, bore the responsibility of maintaining all improvements upon the property. Thus, Mr. Sellman, who now is providing information to the Idaho Department of Water Resources ("IDWR") to support a finding of forfeiture, was himself responsible for ensuring that the Urquidi's system of diverting and storing water, transmitting that water for livestock use, and applying that water upon wild pasture to increase its yield. In my interpretation of the lease and the understanding of the parties at the time of entering that lease, Mr. Sellman had a duty to prevent the very finding of forfeiture that he is now attempting to provoke IDWR into declaring for his own benefit.

7. In your Affiant's experience in Owyhee County and general and on this particular property in particular since 1966, the unnamed streams in the area are susceptible to fluctuating annual flows, and there are times when little or no water is available. As a general proposition, water in the described area of Owyhee County flows in the intermittent streams from approximately March to early June without some form of diversion allowing storage.

8. In your Affiant's opinion based upon experience in Owyhee County and on the Owens Basin property, the meadow and wild hay pasture located in the E 1/4 of section 5, T.10. S., R.2.E., Boise meridian, either would not exist or would exist at a much lower productive

forage capacity without the irrigation system created by my predecessor's and utilized since I acquired the property in 1966. Based on my personal observation, the condition of the above-described wild pasture has remained largely the same, which I attribute to regular irrigation and sound management practices.

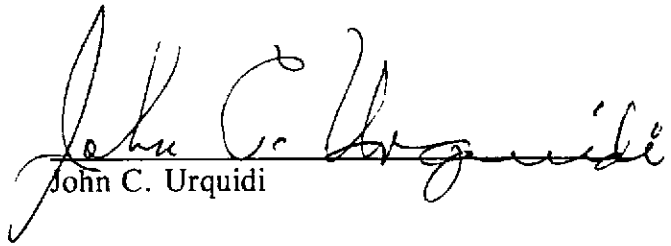
9. At no time prior to the institution of the present forfeiture proceeding has anyone informed your Affiant that water rights appurtenant to the Owens Basin property had been forfeited by non-use. At no time prior to the institution of the present forfeiture proceeding has your Affiant learned that any individual claims a property right in water that is presently licensed to the Urquidí family.

10. That the water in the ditches cannot be seen from the road because of the lower head of water and the height of the meadows, which are tall enough to hide the water. An individual standing on the road leading to the Owens Basin property would not be able to view any ditches in the meadow in section 5, and one would have to trespass upon our private property to enter the meadow to determine whether ditches existed in the meadow, unless such an entrant obtained permission to visit the meadow.

11. That in the early 1980s Mr. Gene Davis spearheaded a dam above Affiant's southwest reservoir in section 7, which kept the reservoir dry, consequently lowering the amount of water flow and length of time for the higher flow of water. Affiant was not notified about the building of the dam, resulting in an infringement of our water licenses.

Further, your affiant sayeth naught.

DATED this 24 day of May, 1996.


John C. Urquidi

SUBSCRIBED AND SWORN to before me this 24 day of May, 1996.

(SEAL)


Notary Public for Idaho
Residing at Borise, Idaho
My commission expires: 1.27.2000

THIS LEASE is entered into this 16th day of January, 19 77,
between John C. Urquidi, landlord, of Bruneau, Idaho (Address)
and Leland Frank Davis, tenant, of Bruneau, Idaho (Address)

A. PROPERTY RIGHTS.—The landlord hereby leases to the tenant, to occupy and use for agricultural and related purposes, the following-described property, hereinafter referred to as the "farm," located in Owyhee County, State of Idaho

and commonly known as the _____ farm.

Clara Ocamica and Harriet Urquidi property in 32-10S-4E: 32, 23, 24, 26, 27, of 12S-4E: 19-12S-5E: 21-7S-6E: 22-7S-6E: 17-10S-4E: 18-10S-4E: 19-10S-4E; Harriet Urquidi property in 15, 16, 21, 22 of 6S-5E; John C. Urquidi property in 33-9S-2E: 4-10S-2E: 5-10S-2E

and consisting of 2713 acres, more or less, together with all buildings and improvements thereon and all rights thereto except as specified below:

1. Reservation of land and buildings.—The landlord reserves the right to use the following land and buildings for the following purposes:

Clara Ocamica home, outbuildings, and approximately 5 acres

2. Right of entry.—The landlord reserves the right of himself, his agents, his employees, or his assigns to enter the farm at any reasonable time for purposes (a) of consultation with the tenant; (b) of making repairs, improvements, and inspections; (c) of developing mineral resources; and (d) after notice of termination of the lease is given, of plowing, seeding, fertilizing and such customary seasonal work, none of which is to interfere with the tenant in carrying out regular farm operations.

3. No right to sublease.—The landlord does not convey to the tenant the right to lease or sublet any part of the farm or to assign the lease to any person or persons whomsoever.

4. Transfer of farm.—If the landlord should sell or otherwise transfer title to the farm, he will do so subject to the provisions of this lease.

5. Heirs and successors.—The terms of this lease shall be binding upon the heirs, executors, administrators, and successors of both landlord and tenant in like manner as upon the original parties. However, in event the lease is for more than one year, the heirs or successors of the tenant shall have the option to give written notice of termination effective at the end of the lease year in which death occurs.

6. Right to lease.—The landlord warrants that he has the right to lease the farm, and will defend the tenant's possession against any and all persons whomsoever.

7. Rent additional land.—The tenant will not, unless he shall first have obtained written consent of the landlord, farm more than _____ acres of additional land and will not enter into any other business, occupation, or sideline.

8. Additional agreements regarding property rights:

B. LAND USE AND LIVESTOCK PRODUCTION

1. Land use.—The agreed-upon use of the land is outlined in the following table:

USE OF LAND	ACRES	FIELDS	SEED VARIETY	KIND AND AMOUNT OF FERTILIZER PER ACRE
FOR FAMILY LIVING				
WOODLAND				
FARMSTEAD AND LOTS				
TOTAL		xxxxxxxx	xxxxxxxxxxxxxxxx	xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx

2. Livestock production.—The tenant on his own may engage in the following production of livestock.

KIND OF LIVESTOCK	MAXIMUM NUMBERS	SPECIAL HEALTH SANITATION OR FEEDING PRACTICES

which grow on the farm
for the first year of the
year or from year to year.

4. Crop and livestock insurance.—The tenant will keep within the number of livestock on the farm appropriate adjustments will be made by mutual agreement between the parties.

5. Restriction on livestock.—Neither the owner nor the tenant shall bring livestock that is not covered by this agreement on the farm during the period of the lease, or the permission of the other party.

6. Home use.—The tenant and landlord may use for home use the following kinds and quantities of jointly owned crops:

7. Buying and selling.—The two parties will buy and sell jointly owned property according to the following agreement:

8. Division of property.—At the termination of this lease, all jointly owned property will be divided or disposed of as follows:

C. IMPROVING, CONSERVING, AND MAINTAINING THE FARM.—To improve the farm, conserve its resources, and maintain it in a high state of cultivation, the two parties agree as follows:

1. General maintenance.—The tenant will maintain the farm during his tenancy in as good condition as at the beginning, normal wear and depreciation and damages from causes beyond the tenant's control excepted.

2. Good husbandry.—The tenant will operate the farm in an efficient and husbandlike way, will do the plowing, seeding, cultivating, and harvesting in a manner that will conserve the landlord's property.

3. Cropping practices.—The tenant will not, without oral consent of the landlord, (a) plow permanent pasture or meadowland, (b) cut live trees for sale or personal uses, but will take for fuel or use on the farm only dead or unmarketable timber designated by the landlord, (c) allow livestock other than his own on stalkfields or stubblefields, (d) burn or remove cornstalks, corncobs, straw, or other crop residues grown on the farm, (e) pasture new seedlings of legumes or grasses in the year they are seeded, and (f) plant legumes on land not known to be thoroughly inoculated without first inoculating the seed.

4. Livestock practices.—In caring for his livestock, the tenant will follow health and sanitation measures and guard against disease.

5. Manure and crop residue.—The tenant will spread the manure, straw, or other crop residues on the farm as soon as practicable on fields agreed upon by the two parties, except as follows:

6. Pasturing.—The tenant will prevent tramping of fields by stock and rooting by hogs when injury to the farm will be done.

fire protection.—The tenant will not, without written consent of the landlord, house automobiles, motortrucks, or tractors, or otherwise violate restrictions in the landlord's insurance policy, which restrictions the landlord shall make known to the tenant.

9. Replace losses.—The landlord will replace or repair as promptly as possible the dwelling or any other building that may be destroyed or damaged by fire, flood, or other cause beyond the control of the tenant or make rental adjustments in lieu of replacement.

10. Noxious weeds.—The tenant will use diligence to prevent noxious weeds from going to seed on the farm and will destroy the same, and will keep the weeds and grass cut or destroyed on the fields, farmstead, roadside, and fence rows. Treatment of weed infestation and cost thereof shall be handled as follows.

11. Maintenance of improvements.—The tenant will keep the buildings, fences, and other improvements on the farm in as good repair and condition as they are when he takes possession, and in as good repair and condition as they may be put during the term of the lease, ordinary wear and tear, loss by fire, or unavoidable depreciation or destruction excepted.

12. Materials and labor.—The landlord will furnish materials and the tenant will perform labor for normal maintenance and repairs, except that skilled labor which the tenant himself is unable to perform satisfactorily will be furnished by the landlord. Additional agreements regarding materials and labor.

13. Purchase of materials.—The tenant may buy, without further authorization, materials for normal maintenance and repairs in a total amount not to exceed \$_____ within each year, and the landlord will credit or reimburse the tenant for such expenditures, as follows:

14. Add improvements.—The tenant will not, without written consent of the landlord, (a) erect or permit to be erected on the farm any nonremovable structure or building, or (b) incur any expense to the landlord for such purpose, or (c) add electrical wiring, plumbing, or heating to any buildings, and, if consent is given, he will make such additions meet standards and requirements of power and insurance companies.

15. Conservation practices.—The tenant will control soil erosion as completely as practicable by stripcropping and contouring, and by filling in or otherwise controlling small washes or ditches that may form.

16. Conservation structures.—The tenant will keep in good repair all terraces, open ditches, and inlets and outlets of tile drains, preserve all established watercourses or ditches including grass waterways when seed and fertilizer are furnished by the landlord, and refrain from any operation or practice that will injure them.

17. Compensation for improvements.—The two parties will carry out new conservation practices and measures and make other improvements, and share contributions and costs necessary for completion of such practices and improvements as set forth below. The tenant will be reimbursed by the landlord when the practice, measure, or improvement is completed, or the tenant will be compensated for its unexhausted value when he leaves the farm, according to the table below:

17 (Continued). Compensation for Improvements Table.

[illegible]

18. Additional agreements relative to conservation and improvements:

19. **Review of conservation program.**—A new schedule covering conservation practices and improvements will be prepared each year on an appropriate form which will become a part of this lease when signed by the two parties.

20. Preparing or seeding land.—When the tenant leaves the farm, if the total acreages of prepared or seeded land are greater than at the beginning of his tenancy, he will be compensated by the landlord on the basis of the value of such excess acreages.* If such total acreages are less than at the beginning of his tenancy, the tenant will compensate the landlord on the basis of the value of such deficiency, provided that the deficiency is not due to drought, flood, or other cause beyond the control of the tenant. The acreages at the beginning of the tenancy and the basis of payment are as shown in the table at the bottom of the page.

D. **SHARING COSTS AND RETURNS.** All costs and returns shall be divided between landlord and tenant as provided below, unless otherwise specified in writing, in which case the written agreement shall prevail.

1. KUSA will compensate the parties to the extent of the proceeds of the sale of the shares of KUSA, and cash as indicated below:

[illegible]

3. Additional agreements in regard to rental rates:

25.00.00 per year for the first 2 years with provision for this amount to be increased

increase or decrease not to exceed 10%.

... shall be supplied by the tenant, except in so far as

DATE	THRESHOLD	FURNISHED BY LANDLORD	FURNISHED BY LANDLORD	EXPENSE
		LABOR		PLANTING
		MAINTENANCE		PESTICIDES
				SEED
		FUEL-TRACTOR		
		FUEL-TRUCK		PLM
		FUEL-OTHER		ELB-TRACTY
		CUSTOM WORK AND HAULING		TELEPHONE
		WEED CONTROL MATERIAL		INSURANCE
		INSECTICIDES		INSURANCE
		FEED PURCHASED OR SUPPLIED		TAXES

1998

Additional agreements relative to expenses:

E. TERM OF LEASE

1. Term.—The term of this lease shall be five year(s) from January 16, 1977, to January 16, 1982, and this lease shall continue in effect from year to year thereafter until written notice of termination is given by either party to the other at least months before expiration of this lease or any renewal.

2. Continuous occupancy.—The tenant agrees that he or his agent will possess and occupy the farm continuously during the term of the lease.

3. Surrender of possession.—The tenant agrees to surrender possession and occupancy of the premises peaceably at the termination of the lease.

4. Review of lease.—A request for general review of the lease may be made at least days prior to the final date for giving notice to terminate this lease. Amendments and alterations to this lease shall be made in writing.

F. MISCELLANEOUS PROVISIONS

1. No partnership created.—This lease shall not be deemed to give rise to a partnership relation, and neither party shall have authority to obligate the other without written consent, except as specifically provided in this lease.

2. Government programs.—The farm will be operated in compliance with Government programs as follows:

3. Debts and accidents.—Each party agrees that the other shall in no way be responsible for the debts of, or liabilities, accidents or damages caused by, the other party.

4. Willful neglect.—Willful neglect, failure, or refusal by either party to carry out any substantial provision of this lease shall deprive the other party the benefits of any proceedings provided for in this lease.

5. Farm records.—The tenant agrees to keep and maintain production records of all income and expenses of mutual interest which records shall be accessible to the landlord at all times, and furnish an annual report to the landlord on or before the following date Accounts between the two parties

shall be settled on or about

6. Arbitration of differences.—Any differences between the parties as to their several rights and obligations under this lease that are not settled by mutual agreement after thorough discussion shall be submitted for arbitration to a committee of three disinterested persons, one selected by each party hereto and the third by the two thus selected, and the committee's decision shall be accepted by both parties.

7. Additional agreements:

IN WITNESS WHEREOF, the parties have signed this lease on the date first above written.

Witnesses:

Raymond E. Bailey
John C. Whaley

Clara Ocamina
John C. Whaley
Nathalie A. David

(Acknowledgment of appropriate form to be attached)

AD 509-1
from year to year or for a term of years for each year

AUG 09 1995

WATER RESOURCES
WESTERN REGION

Lease of Base Property

For considerations received I John Ugrindi (lessor) agree to lease the following described lands and associated grazing rights to Chester Sellman (lessee) for a period of one year beginning March 1, 1989 and ending February 28, 1990.

Lessor shall not assign the Lessee's interest in this lease to a third Party nor sublet any of the leased assets to anyone. Lessee also covenants and warrants to Lessor that he will not enter into any agreement with any third party to sell assign or change the scope of the associated grazing rights incumbent on leased lands without consultation and written approval of lessor.

Lessor shall at all reasonable times have the right to come upon the leased lands for the purpose of inspecting Lessor's property, making repairs or capital improvements.

Maintenance of all improvements on leased property and associated range will be the responsibility of lessee for term of lease.

Leased Lands

Quens Flare - (648 acres 364 AUMs active preference)

- SE $\frac{1}{4}$ SW $\frac{1}{4}$, SW $\frac{1}{4}$ SE $\frac{1}{4}$, NW $\frac{1}{4}$ SE $\frac{1}{4}$ sec 33 T9S R2E
- NE $\frac{1}{4}$, N $\frac{1}{2}$ SE $\frac{1}{4}$, E $\frac{1}{2}$ NW $\frac{1}{4}$, NW $\frac{1}{4}$ NN $\frac{1}{4}$, NE $\frac{1}{4}$ SW $\frac{1}{4}$
sec. 4 T10S R2E
- E $\frac{1}{2}$ SE $\frac{1}{4}$, SE $\frac{1}{4}$ NE $\frac{1}{4}$ sec. 5 T10S R2E

✓ Chester Sellman agree to Pay John Uman
\$ 1000 on, or before April 1, 1989 and \$1500
at the end of the grazing season for lease
of Base Property.

See attachment for terms;

Lessor:
Lessee:

RECEIVED

AUG 09 1995

WATER RESOURCES
WESTERN REGION

RECEIVED

AUG 09 1995

WATER RESOURCES
WESTERN REGION

LEASE OF BASE PROPERTY

For consideration received I, John Urquidi, (Lessor)
agree to lease the following described lands and
associated grazing privileges to Chester W. Sellman (lessee)
for a period of two years beginning April 1, 1987
and ending April 1, 1989.

All range improvements associated with this lease will
be the responsibility of Chester W. Sellman (lessee)
as far as maintenance is concerned.

Leased lands offered as base property:

Owens Place - (648 acres, 364 AUMs active preference).

- SE $\frac{1}{4}$ SW $\frac{1}{4}$, SW $\frac{1}{4}$ SE $\frac{1}{4}$, NW $\frac{1}{4}$ SE $\frac{1}{4}$, Section 33 T9S, R2E.
- NE $\frac{1}{4}$, N $\frac{1}{2}$ SE $\frac{1}{4}$, E $\frac{1}{2}$ NW $\frac{1}{4}$, NW $\frac{1}{4}$ NW $\frac{1}{4}$, NE $\frac{1}{4}$ SW $\frac{1}{4}$, Section 4,
T10S, R2E.
- E $\frac{1}{2}$ SE $\frac{1}{4}$, SE $\frac{1}{4}$ NE $\frac{1}{4}$, Section 5, T10S, R2E.

LESSOR:

John Urquidi

Date

3/16/87

LESSEE:

Chester W. Sellman

Date

3/16/87

ORIGINAL

SUSAN E. BUXTON
 MOORE & McFADDEN, CHARTERED
 Attorneys at Law
 999 Main Street, Suite 910
 Boise, Idaho 83702
 Telephone: (208) 331-1800
 Facsimile: (208) 331-1202

Attorneys For J & J Ranches and John C. and
 Harriett Urquidí and John B. and Alisa B. Urquidí

BEFORE THE DEPARTMENT OF WATER RESOURCES STATE OF IDAHO

IN THE MATTER OF USE OF WATER)
 UNDER LICENSED WATER RIGHTS NOS)
 51-02058, 51-02065, 51-02230 AND) Affidavit of
 51-02262 IN THE NAME OF JOHN) Orville "Bud" Hosford
 URQUIDI)
 _____)

State of ~~Nevada~~ ^{IDAHO OK})
 County of ~~Clark~~ ^{ELMORE OK})

Orville "Bud" Hosford, being first duly sworn upon oath,
 deposes and says:

1. That your Affiant's address is P.O. Box 506, Owyhee, Nevada 89832.
2. That you Affiant is familiar with the real property owned by John C. and Harriett Urquidí in the vicinity of Little Jacks Creek in Owyhee County, Idaho, Sections 33, T4S, R2E, Section 4, T4S, R2E and Section 5, T4S, R2E formerly owned by William and Irene Owens and commonly referred to as the Urquidís' "Basin Property"
3. That your Affiant worked for John C. Urquidí at the Basin property with Dan Saba, now deceased, from 1967 to 1969.

4. That during the time your Affiant was employed by the Urquidis, he both assisted and observed Dan Sabala divert water from the springs in question, and the stream formed by the springs, onto the hay field with a series of small dams and ditches.
5. That the diversions consisted of shoveling dirt dams for use in spreading the water from the springs and stream onto the hay field.
6. That the ditches carried water from the stream onto the hay field. Those ditches averaged in size from one foot deep to one foot wide.
7. That the dirt diversion dams and ditches essentially flood-irrigated the hay field.
8. That your Affiant participated in putting up hay grown on that hay field irrigated from the springs by way of the dirt dams and ditches.
9. That the stream from the springs were often dammed on the Urquidis' Basin property for domestic water supply to the cabin and people as well as the few livestock owned by the Urquidi family grazing on the Basin property.
10. That the ditches nor the stream bed from the springs were washed out.
11. That your Affiant remembers the Basin property being irrigated from May to August and that when haying in August he had to be careful not to get equipment stuck because the ground in the hay field was still being irrigated.
12. That neither the hay field being irrigated was between ten (10) and fifteen (15) acres in size.
13. That your Affiant was partly responsible for maintaining the fences on the Basin property and does not recollect water flowing from the springs down the stream reaching the BLM property.
14. That your Affiant is familiar with Chester W. Sellman and David Lahtinen and remembers seeing them on the road adjacent to

the Urquidis' Basin property and visiting with them in the area during the period your Affiant worked for the Urquidis.

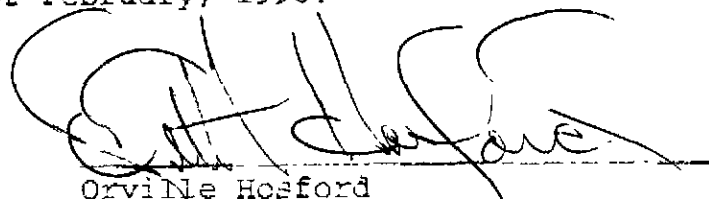
15. That the hay field could be clearly seen by the adjacent road and that it was obviously an irrigated parcel.

16. That your Affiant does not remember observing water from the springs flowing below the Urquidis' Basin property because the water would have to travel approximately three-quarters (3/4) of a mile to reach the BLM property where the Sellman's and Lahtinen's cattle were grazing and that the soil on the property is very clayey and would absorb the water before it reached the fence bordering the BLM and Basin property.

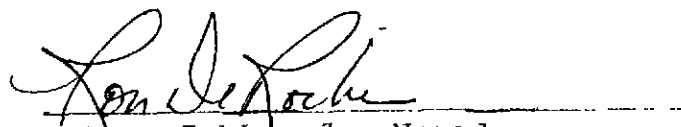
17. That no person, including the Sellmans nor Mr. Lahtinen ever complained about irrigating of the hay field or erecting dirt dams to divert the water from the springs or the stream for irrigation, domestic or any other uses made by the Urquidis

Further your Affiant saith not.

DATED this 26 day of February, 1996.

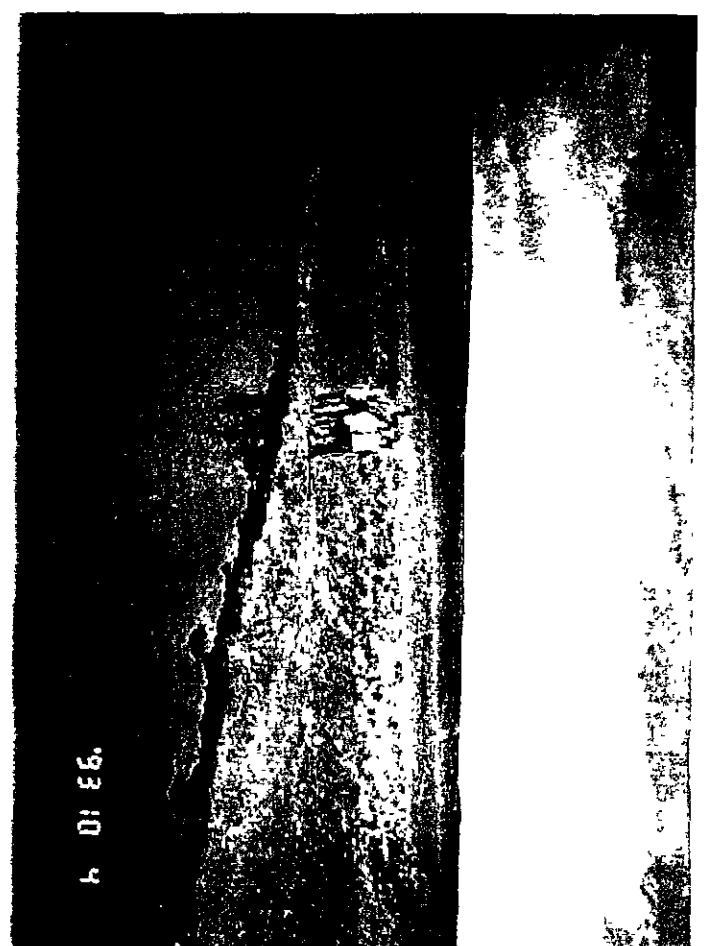

Orville Hosford

SUBSCRIBED AND SWORN to before me this 26th day of February, 1996.


Notary Public for Nevada
Residing at: MTN HOME, ID
My Commission Expires: MAY 4, 1999









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

July 11, 1996

PHILIP E. BATT
GOVERNOR

KARL J. DREHER
DIRECTOR

RE: In the Matter of use of water under Licensed Right Nos. 51-02058, 51-02065, 51-02230 & 51-02252 in the name of John Urquidi

Dear Interested Party:

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

PETITION FOR RECONSIDERATION

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

EXCEPTIONS AND BRIEFS

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

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

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

ORAL ARGUMENT

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

CERTIFICATE OF SERVICE

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

FINAL ORDER

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

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

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

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

APPEAL OF FINAL ORDER TO DISTRICT COURT

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

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

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

Sincerely,



L. GLEN SAXTON
Chief, Water Allocation Bureau

Enclosure

cc: IDWR - Region

THIS INDENTURE, Made this 1st day of July

In the year of our Lord one thousand nine hundred and sixty-six (1966), between

WILLIAM J. OWENS and A. IRENE OWENS, husband and wife,

of Pollock, County of , State of Idaho

the parties of the first part, and

JOHN C. URQUIDI and HARRIETT URQUIDI, husband and wife,
8422 Vincent

of Boise, County of Ada, State of Idaho 83705

the parties of the second part.

WITNESSETH, That the said parties of the first part, for and in consideration of the sum of

---TWENTY-ONE THOUSAND TWO HUNDRED & 00/100 (\$21,200.00) DOLLARS,

lawful money of the United States of America,

to them in hand paid by the said parties of the second part, the receipt whereof is hereby acknowledged, have granted, bargained and sold, and by these presents do grant, bargain, sell, convey and confirm unto the said parties of the second part, and to their heirs and assigns forever, all of the following described real estate, situated in the County of Owyhee, State of Idaho, to-wit:

Lots 1, 2, 3 and 4, SW{NE}, SE{NW}, N{SE},
SE{NE}, NE{SW} of Section 4; SE{NE}, E{SE}
of Section 5, all in Township 10 South,
Range 2 East, Boise-Meridian; W{SE}, SE{SW},
Section 33 in Township 10 South, Range 2
East, Boise-Meridian;

All of which property above described is
sometimes hereinafter referred to as the
deeded land;

TOGETHER WITH the rights to the use of
the public domain for grazing purposes
for which said described lands stand as
commensurate property, commonly known
as Tazewell Grazing Rights.

TOGETHER WITH all water rights, ditch
rights, and reservoir rights thereto be-
longing or used in connection therewith.

RECEIVED
JAN 14 1994

Department of Water Resources

51-2065
51-2230
51-2252
51-2058
1-14-94

I now own the property described and would like to have
all future correspondence sent to me regarding the above
referenced numbers

John Urquidi

TOGETHER, With all and singular the tenements, hereditaments and appurtenances thereto
belonging or in anywise appertaining, the reversion and reversions, remainder and remainders, rents,
issues and profits thereof; and all estate, right, title and interest in and to the said property, as well
in law as in equity, of the said parties of the first part.

TO HAVE AND TO HOLD, All and singular the above mentioned and described premises, together
with the appurtenances, unto the parties of the second part, and to their heirs and assigns forever
and the said parties of the first part, and their heirs, the said premises in the quiet and peaceable
possession of the said parties of the second part, their heirs and assigns, against the said parties
of the first part, and their heirs, and against all and every person and persons whomsoever, lawfully
claiming or to claim the same shall and will WARRANT and by these presents forever DEFEND

Dear Sir:

We received a letter from you acknowledging \$16.00
we sent. we are sending you 20 cents. we haven't as
yet gotten the balance for the permits. (K-766.
thank you.

William L. Jones.

Box 366

Riggins

RECEIVED

SEP 24 1954

Department of Reclamation

R-766

✓
September 17, 1954

RE: Permit No. R-766

Mr. William J. Owens
Riggins
Idaho

Dear Mr. Owens:

We acknowledge receipt of the assignment of Permit No. R-766 from Hazel B. Owens to yourself accompanied by postal money order for the \$6.00 license fee.

There is a fee of 50 cents for recording the assignment which you may send us at your convenience.

Very truly yours,

MARION R. KULM
State Reclamation Engineer
By

Chief Clerk

A:br

R-766

May 3, 1954

RE: Permits Nos. R-816, R-766

Mr. William J. Owens
Riggins
Idaho

Dear Mr. Owens:

Since returning to the office, I have checked regarding Permits Nos. R-816 and R-766. Following is the information pertaining to them.

Permit No. R-766 was made to Hazel B. Owens for an amount of 250 acre feet. The source of the water was a tributary to Jacks Creek with dam in the NE¹/₄NE¹/₄ Section 7, Township 10 South, Range 2 East. This Permit was approved on August 23, 1946. Completion of Works was due August 23, 1951, and Beneficial Use Proof was due August 23, 1957.

Completion of Works was made on August 4, 1949, and Beneficial Use Proof was submitted in September of 1949. An inspection on this reservoir was made by Mr. F. A. Toleman, field engineer, for this Department, on November 30, 1949 and a letter dated January 6, 1951 was sent to Mr. Earl D. Owens of Bruneau stating the number of acre feet that could be licensed and the fee for same. Since this fee was never received, nothing more has been done regarding this Permit.

Due to the re-inspection, which I made on the 16th, with you accompanying me, the amount licensed can be raised to 200 acre feet which is the amount for which Completion of Works was made. License will be made in the name of Hazel B. Owens unless an assignment from Hazel B. Owens to you, is submitted before issuance of the license. The fee of \$6.00 must be submitted to this department before a license can be issued.

Permit No. R-816 in the name of Hazel B. Owens by Earl D. Owens of Bruneau, for an amount of 150 acre feet with the source being a tributary of Jacks Creek and the outlet of the reservoir in the NW¹/₄ of the SE¹/₄ of Section 31, Township 9 South, Range 2 East B.M., to be used for irrigation on the SE¹/₄SW¹/₄ and W¹/₂SE¹/₄ Section 33, Township 9 South, Range 2 East B.M. Total to be irrigated is 100 acres. Completion of Works was due on this on October 20, 1953 and Beneficial Use Proof was due also on October 20, 1953.

This was assigned to William J. Owens October 27, 1953. Proof of Beneficial Use was properly made on November 27, 1953. Letter was sent you April 5, 1954 regarding inspection requirements. Then on April 16 an inspection was made but we find that the inspection was merely a re-inspection on the reservoir covered under Permit No. R-766, so before anything can be done further, regarding Permit No. R-816, it will be necessary for us to go back and inspect the other reservoir.

R-766

Mr. William J. Owens

-2-

May 3, 1954

However, if I remember correctly, you advised me that the dam for Permit No. R-816 was built by Mr. Noble and that he had failed to provide any outlet so that the only water that could be used must run through the spillway or over the top of the dam. If this is correct, there will be no use making an inspection because the works were never completed in the time required by statute and the proofs are therefore, rejected and we are sending cancellation notice as required by law.

You may file again when you are ready to build the reservoir.

Yours truly,

MARK R. KULP
State Reclamation Engineer
By

E. N. Humphrey
Deputy State Reclamation Engineer

H:hll

R-766

✓
October 4, 1954

RE: Permit No. R-766

Mr. William J. Owens
Box 366
Riggins, Idaho

Dear Mr. Owens:

We return the Assignment of Permit No. R-766 from Hazel B. Owens to you which has been recorded in this department.

We also enclose License and Certificate of Water Right issued under this Permit confirming your right to the use of 200 acre feet of water from an un-named stream, tributary to Jack's Creek with priority of August 15, 1946, and point of outlet in the NE $\frac{1}{4}$ NE $\frac{1}{4}$ Section 7, Township 10 South, Range 2 East B.M. for irrigation and stock water use in the SE $\frac{1}{4}$ NE $\frac{1}{4}$ and E $\frac{1}{2}$ SE $\frac{1}{4}$ Section 5, same Township and Range.

We also enclose departmental receipt No. 26940 for the \$6.50 which includes \$6.00 for beneficial use proof and fifty cents for recording the assignment.

Very truly yours,

MARK R. KULP
State Reclamation Engineer
By

Chief Clerk

A:hll
Enc.

R-766

STATE OF IDAHO
DEPARTMENT OF RECLAMATION
BOISE

REPORT OF ENGINEER

PERMIT NO. R-⁷⁶⁶~~816~~

REPORT ON PROOF OF Beneficial Use

WILLIAM J. OWENS, Riggins, Idaho

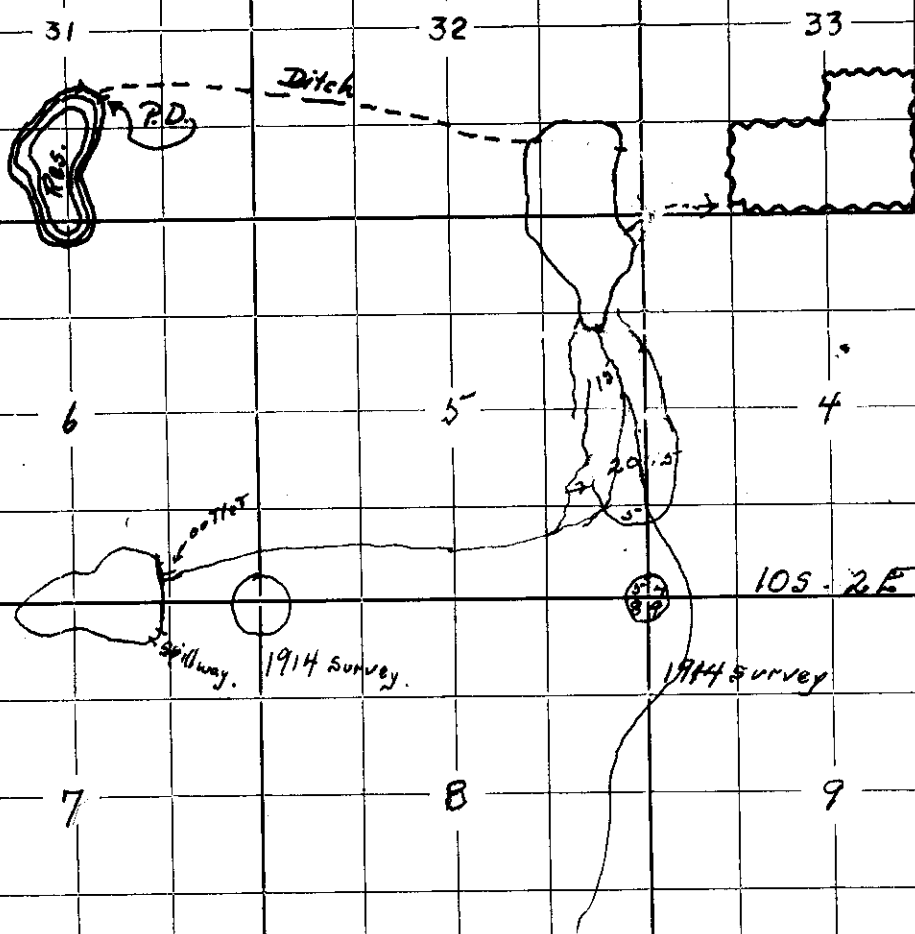
app 250 ac?
C/W 200 ac

3-40²

R-766

R-2E.

T.
9
S.



Three subdivisions
40 acres irrig.

Q = 200 acre feet

STATE OF IDAHO
DEPARTMENT OF RECLAMATION
BOISE, IDAHO

REPORT OF ENGINEER

Permit No. R-766
~~R-816~~

This proof is for Beneficial Use In Water District No. _____

1. Name of applicant William J. Owens, Rigins, Idaho

2. Source of water supply: Snow and rain drainage tributary to Jack's Creek

3. Location of point of diversion: Is in the NE NE
NW SE of Section 7
10 S. R. 2 E. County of Owyhee

4. Describe works as they exist, giving dimensions and capacities of same:

Dam = 110 yds. long x 12' w x 11' h. Earth dam. concrete outlet 8" c.I gate on
upstream end. 3:1 slope upstream 2:1 down. Spillway over a small saddle.
Good riprap. Small low embankment by spillway.
Stream channel used for ditch. Small ditch 12" to 18' w. ok bottom.
No water in reservoir this year.

5. Water is used for: Irrigation and stock water

6. State whether or not water has been turned into works of diversion: yes

7. List legal subdivisions of lands to be irrigated. If proof is for beneficial use, give exact number of acres under cultivation in each forty-acre tract. (Describe manner and place of use if other than irrigation):

W 1/2 SE 1/4, SE 1/4, SW 1/4 Section 33, Twp. 9 South, Range 2 East, B. M.

W 1/2 SE 1/4, SE NE 1/4, S 5, 10 S, 2 E

This is actually a re-inspection for R-766

(Submit map on attached plat, showing location and details of above description.)

8. What large stream would the water here appropriated finally reach?

Remarks:

Pasture crops.

Some brome grass.

Estimated capacity = 40 a area x 6' deep = 240 acre feet.

This examination was made on the 16 day of April, 1954

(Signed) E. N. Humphrey Examiner.

R-766

INSTRUCTIONS TO EXAMINERS

1. Always carefully note the location of the point of diversion and accurately plat same.
2. When proof is for beneficial use, carefully check up the number of acres actually irrigated in each forty and accurately plat same.
3. Make a map showing the correct location of streams and ditches, and the irrigated lands, and any adjacent permanent landmarks, such as towns, lakes, large streams and public roads.
4. If any unusual conditions are discovered, make plain statement of them under remarks.
5. Always see the holder, if possible, and go over the whole ground with him and make your report only upon actual existing facts and conditions.
6. Give general characteristics of soils, topography, and crops raised.

William K. Owens

Riggins, Idaho

Permit No. R-616

Examination for Beneficial Use

County Owyhee

31-95-2E.

Q = 150 acre feet.

S = Snow & Rain drainage, Trib.
Jack's Creek

P.L. = NW. 1/4, Sec. 31, T. 9S, -R. 2E.

Use = irrigation & domestic

6 Rods = 14 -

= 30 1/2 - 113 -

= 8 1/2 -

Priority = Oct. 14, 1948

Due = Oct. 20, 1953

Dam 110 yds long, 8 1/2 ft.

12' W.

10" concrete pipe

Center gate vertical
no cat walk 4' floodwood

R-766

Hazel B. Owens. Q = 250 a. F
Lib. Jack's Creek in NE NE S7
105 2E

Use on Sec 5. SENE
E 1/2 SE 120 a

Approved Aug 23-46

C/w due Aug 23-51

B/u " " " 57

C/w made for 200 a. F.

R-766

✓
January 6, 1951

Re: Permit No. R-766

Mr. Earl Owens
Bruneau, Idaho

Dear Mr. Owens:

The report of our Field Engineer on examination for beneficial use under Permit No. R-766 in the name of Mrs. Hazel B. Owens, shows that your reservoir is capable of storing fifty (50) acre feet of water from an unnamed stream, tributary to Jack's Creek, and that the water has been used to irrigate 10 acres in the SE¹ NE¹₄, 8 acres in the NE¹ SE¹₄ and 2 acres in the SE¹ SE¹₄ Section 5, Township 10 South, Range 2 East, B.M.

Therefore, upon receipt of the statutory fee of \$6.00, being at the rate of \$2.00 for each subdivision in which the land is located, a License will be issued for fifty (50) acre feet of water.

Very truly yours,

MARK R. KULP
State Reclamation Engineer
By

Chief Clerk

Aibh

R-766

STATE OF IDAHO
Department of Reclamation

Proof of Completion of Works

AFFIDAVIT OF HOLDER

STATE OF IDAHO

County of Ada

ss.

Earl Owens agent or , being first duly sworn, upon his oath deposes and says:

First: That he is the holder and owner of Permit to appropriate the Public Waters of the State of Idaho, No. R-766, and that his postoffice address is Bruneau

State of Idaho

Second: That the name of the stream which said water is to be ~~directed~~ ^{diverted} is an unnamed stream, tributary to Jack Creek,

Third: That the point of ~~diversion~~ ^{outlet} of said water is 600 ft. distant from the N. E. corner of Section 7, Twp. 10 S., Range 2 E., B.M. and in NE $\frac{1}{4}$ NE $\frac{1}{4}$ of said section 7.

Fourth: That under the terms and conditions of said permit, construction thereunder was required to be completed by August 23, 1951.

Fifth: That the use for which said water is intended is stock water & irrigation

Sixth: That on the date above mentioned, the works constructed under said permit were (~~overcome~~) fully completed and consisted of the following:

I. Kind of works: Dam and reservoir and ditch

(Reservoir, dam, ditch, flume, pipe or otherwise)

II. Dimensions of work:

(a) Height of dam 8 feet, length of dam at top 210 feet, length of dam at bottom 62 feet. Material used in construction Earth

(State whether wood, earth, stone or concrete)

(b) Capacity of reservoir 200 acre feet.

(c) Size of headgate: Width feet, height feet.

(d) Conduit Ditch width at bottom 18 " feet, width at water line 18"

(State whether ditch, flume or pipe)

feet, depth of water feet; diameter of pipe inches, average grade per mile is feet. Length of conduit is miles.

Seventh: That said works are capable of ~~conducting~~ ^{storing and conducting} to the place of intended use 200 acre second feet of water.

Eighth: That water appropriated under said permit is available for 120 acres of land described as follows: SE $\frac{1}{4}$ NE $\frac{1}{4}$ and E $\frac{1}{2}$ SE $\frac{1}{4}$ Section 5, Twp. 10 S., Range 2 East, B. M.

Ninth: Remarks: That

Earl D. Owens agent of Mrs. H. B. Owens
(Sign Here)

Subscribed and sworn to before me this 4th day of August, 1949.

My commission expires Feb. 16, 1952

Dillon W. Lator
Notary Public.

✓
August 4, 1949

Re: Permit No. R-766

Mr. Earl Owens
Bruneseu, Idaho

Dear Mr. Owens:

We enclose Certificate of Completion of Works issued under your Permit No. R-766 for the storage of 200 acre feet of water from an unnamed stream tributary to Jack's Creek, with point of outlet in the NE $\frac{1}{4}$ NE $\frac{1}{4}$ Section 7, Township 10 South, Range 2 East, B.M. for stock water and irrigation on the SE $\frac{1}{4}$ NE $\frac{1}{4}$ and E $\frac{1}{2}$ SE $\frac{1}{4}$ Section 5, Township 10 South, Range 2 East, B.M.

We have sent to the Owyhee Nugget at Marsing, Idaho, copy of Notice of Beneficial Use Proof to be made under this Permit at 2:00 P. M. September 3, 1949, at Bruneseu, Idaho, before Sam Noble, Notary Public, with instructions to publish it once a week for four consecutive weeks prior to that date and to send Mrs. Hazel B. Owens the Affidavit of Publication, together with statement of costs.

About ten days prior to the date set for proof, we shall send Mr. Noble the necessary forms of deposition, consisting of one for Mrs. Owens and one for each of two witnesses, so that he may have them in ample time for the proof.

At the time set, either you or your mother should appear before the Notary Public together with two disinterested witnesses who are familiar with the terms of the Permit and the work done thereunder for the purpose of executing the depositions.

Very truly yours,

MARK R. KULP
State Reclamation Engineer
By

Chief Clerk

A:hh
Enc.

R-766

STATE OF IDAHO
DEPARTMENT OF RECLAMATION
BOISE

REPORT OF ENGINEER

PERMIT NO. R-766

REPORT ON PROOF OF Beneficial use

50 ac ft
mrr

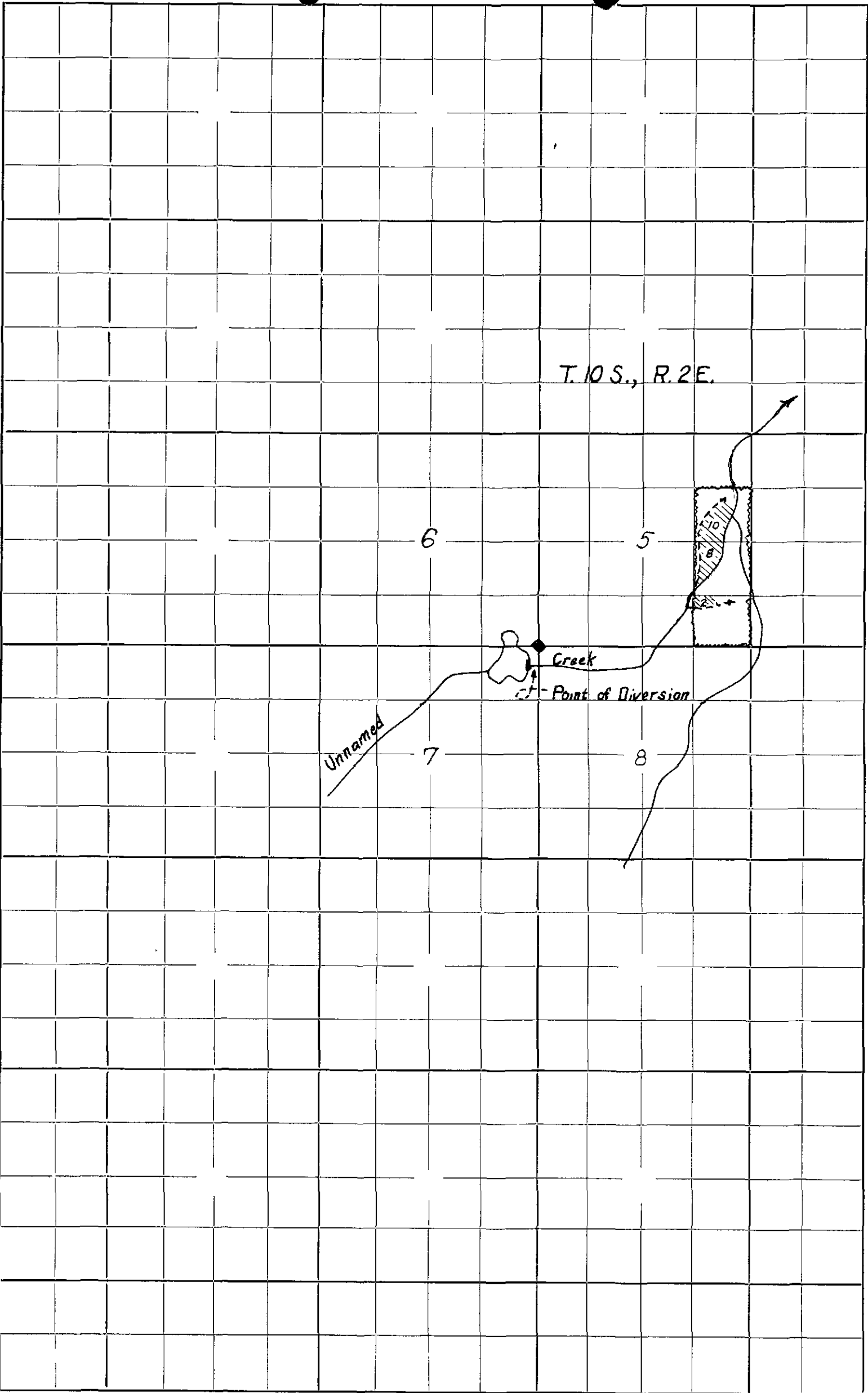
See inspection
report of Apr 16 1952

app. 250 a.f.

20 acres
3-4/6's

SCANNED
OCT 13 2004

R-766



Scale: 2 Inches Equals 1 Mile. Draw Map In Ink.

STATE OF IDAHO
DEPARTMENT OF RECLAMATION
BOISE, IDAHO
REPORT OF ENGINEER

Permit No. R-766This proof is for Beneficial use

In Water District No. _____

1. Name of applicant Mrs. Hazel B. Owens, Bruneau, Idaho
2. Source of water supply: An unnamed stream, tributary to Jack's Creek
3. Location of ^{outlet} point of diversion: Is in the NE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 7
T. 10 S. R. 2 E. County of Owyhee

4. Describe works as they exist, giving dimensions and capacities of same: _____
Dam 10 ft. high and 300 ft. long. The side slopes are 2:1 and 3:1. Lava rip-rap
and a 10 to 12 ft. top width. The outlet control is a vertical screw stem gate.
The reservoir area is about 10 acres. The ditches are 2 ft. wide and 1 ft. deep.

5. Water is used for: irrigation and stock water.
6. State whether or not water has been turned into works of diversion: Yes
7. List legal subdivisions of lands to be irrigated. If proof is for beneficial use, give exact number of acres under cultivation in each forty-acre tract. (Describe manner and place of use if other than irrigation):

SE $\frac{1}{4}$ NE $\frac{1}{4}$, E $\frac{1}{2}$ SE $\frac{1}{4}$ Section 5, Twp. 10 S., Range 2 E., B. M.

(Submit map on attached plat, showing location and details of above description.)

8. What large stream would the water here appropriated finally reach? Intermittant stream

Remarks: At the time of the investigation, the stream was dry.

Est capacity of res 50 acre feet (approx.)

This examination was made on the 30 day of Nov., 19 49.

(Signed)

H. B. Tolman

Examiner.

R-766

Mrs. Hazel B. Owens
C/o Earl Owens
Bruneau, Idaho
Permit No. R-766

Examination for Beneficial use

County Owyhee

INSTRUCTIONS TO EXAMINERS

1. Always carefully note the location of the point of diversion and accurately plat same.
 2. When proof is for beneficial use, carefully check up the number of acres actually irrigated in each forty and accurately plat same.
 3. Make a map showing the correct location of streams and ditches, and the irrigated lands, and any adjacent permanent landmarks, such as towns, lakes, large streams and public roads.
 4. If any unusual conditions are discovered, make plain statement of them under remarks.
 5. Always see the holder, if possible, and go over the whole ground with him and make your report only upon actual existing facts and conditions.
 6. Give general characteristics of soils, topography, and crops raised.
-

1930
EXAMINER OF RECLAMATION

Aug. 11-1949

Marsing, Owyhee

M.

Terms of sale. — Cash.

The County Commissioners reserve the right to accept or reject all bids.

Dated August 8th, 1949

ALBERT L. HARLEY

Chairman of the Board
of County Commissioners
Owyhee County, Idaho.
(Aug. 11 — Sept. 8)

**NOTICE FOR PUBLICATION
NOTICE OF PROOF APPLICATION
OF WATER TO BENEFICIAL USE**

Notice is hereby given that at 2:00 P. M. on the 3rd day of September, 1949, at Bruneau, County of Owyhee, State of Idaho, before Sam Noble, Notary Public, proof will be submitted of the application to beneficial use of 200 acre feet per annum of the waters of an unnamed stream tributary to Jack's Creek, in accordance with the terms and conditions of Permit No. R-766 heretofore issued by the Department of Reclamation of the State of Idaho.

The name and postoffice address of the person or corporation holding said permit are Hazel B. Owens, Bruneau, Idaho.

The use to which said water has been applied is stock water and irrigation.

The amount applied to beneficial use is 200 acre feet per annum.

The place where said water is used is SE $\frac{1}{4}$ NE $\frac{1}{4}$ and E $\frac{1}{2}$ SE $\frac{1}{4}$ Section 5, Twp. 10 South, Range 2 East, B. M.

The name of the canal or ditch or other works by which said water is conducted to such place of use is - No Name.

The right to take water from such works is based upon Permit No. R - 766.

The source of supply from which such water is diverted is an unnamed stream tributary to Jack's Creek.

The date of priority which said user is prepared to establish is August 15, 1946.

MARK R. KULP

State Reclamation Engineer
(Aug. 11 — Sept. 1)

STATE LAND SALE

NOTICE IS HEREBY GIVEN that the following described tract of land, belonging to the State of Idaho and situated in Owyhee County will be offered for sale at public auction at the office of Land Commissioner, Room 301, State House, Boise, Idaho, September 3, 1949 at 11 o'clock Mountain Standard Time as follows:

NW $\frac{1}{4}$, Sec 3, Twp. 15 N., R. 2 E., containing 160 acres and appraised as \$1600.00

TERMS OF SALE

This land to be sold as listed above, and not less than the appraised price accepted.

One tenth (1/10) of the purchase price and in addition 4 percent (4%) on balance principal for remainder on day of sale, and (40) annual interest

✓
September 13, 1949

Re: Permit No. R-766

Mr. Carl Owens
Bruneau, Idaho

Dear Mr. Owens:

We acknowledge receipt of the depositions of Mrs. Hazel B. Owens and two witnesses, also Affidavit of Publication in the Owyhee Narket, all in Proof of Beneficial Use under Permit No. R-766.

As you know, before final action is taken in the matter, an inspection must be made by an Field Engineer from this Department. Our Mr. Tolman expects to make this examination in the near future and also an examination in connection with the later application, about which we have written you.

If it is possible, he will try to advise you ahead of time, but it is not always so that he can arrange his work sufficiently far ahead to do so.

In any event, he will follow the instructions which you gave us in regard to locating the place.

We return Permit No. R-766 which was sent in with the Proof of Beneficial Use.

Very truly yours,

MARK R. KULP
State Reclamation Engineer
By

Chief Clerk

A:bn
Enc.

R-766

NOTICE FOR PUBLICATION
NOTICE OF PROOF APPLICATION OF WATER
TO BENEFICIAL USE

Notice is hereby given that at 2:00 A. M. on the 3rd day of September, 1949,
at Bruneau, County of Cwyhee, State of Idaho, before
Sam Noble, Notary Public, proof will be submitted of the
application to beneficial use of 200 ^{acre} cubic feet per ^{annum} second of the waters of an unnamed stream
Creek,
tributary to Jack's / in accordance with the terms and conditions of Permit No. R-766
heretofore issued by the Department of Reclamation of the State of Idaho.

The name and postoffice address of the person or corporation holding said permit are
Hazel B. Owens, Bruneau, Idaho.

The use to which said water has been applied is stock water and irrigation.

The amount applied to beneficial use is 200 acre ft. per annum.

The place where said water is used (~~if for irrigation, give full and accurate description of the~~
~~lands irrigated~~) SE 1/4 NE 1/4 of SW 1/4 Section 5, Twp. 10 South, Rng. 2 East, E. M.

The name of the canal or ditch or other works by which said water is conducted to such place of
use is -

The right to take water from such works is based upon Permit No. R-766

The source of supply from which such water is diverted is an unnamed stream tributary to
Jack's Creek.

The date of priority which said user is prepared to establish is August 15, 1946.

MA & R. KUTP
State Reclamation Engineer.

R-766

NOTICE TO ACCOMPANY THIS LETTER MUST BE MADE IN DUPLICATE

(Date) August 4, 1949
(P. O.) Boise, Idaho

TO THE STATE RECLAMATION ENGINEER:

Boise, Idaho.

Dear Sir:

You are hereby authorized to have the attached notice published at my expense in the
Argyee Nugget of Marsing, Idaho published in
the county in which the works are situated.

Earl Owens

(In case of canals or other works designed to divert and carry more than 50 cubic feet of water per second, the following certificate must be signed by a well-known and competent engineer.)

I hereby certify that the facts set forth in the attached notice are true.

.....
Engineer.

STATE OF IDAHO
DEPARTMENT OF RECLAMATION
BOISE, IDAHO

Date: August 4, 1949

Re: Permit No. R-766

Owyhee Nugget

Marsing, Idaho

Gentlemen:

Enclosed you will find notice for publication once a week for four consecutive weeks prior to September 3, 1949 the date set for proof, the expense of the publication to be paid by the applicant, Mrs. Hazel E. Owens of Bruneau, Idaho, to whom you should furnish proof of publication on or prior to the date set for proof.

Please acknowledge receipt of this notice, and furnish this office with a copy of the first publication.

Very truly yours,

MARK R. KULP

State Reclamation Engineer

By

Chief Clerk

R-766

PROOF OF PUBLICATION

State of Idaho, { ss.
County of Owyhee,

I, RODNEY A. HAWES, being first duly sworn, on oath says that he is the Publisher of the OWYHEE NUGGET, a newspaper of general circulation, published weekly by Rodney A. Hawes, publisher and printer thereof, at Marsing, County of Owyhee, State of Idaho;

That the annexed notice was published in said newspaper once each and every week for FOUR consecutive weeks, the first publication being on the 11 day of Aug..... 19 49, and the last publication being on the 1 day of Sept..... 19 49;

That the said newspaper has been published continuously and uninterruptedly in said county during a period of more than seventy-eight consecutive weeks prior to the first publication of the attached notice.

Rodney A. Hawes
PUBLISHER

Subscribed and sworn to before me this 7..... day of
.....Sept....., 19 49

Leona J. Hawes
Notary Public

My commission expires 9-10-52

(SEAL)

NOTICE FOR PUBLICATION NOTICE OF PROOF APPLICATION OF WATER TO BENEFICIAL USE

Notice is hereby given that at 2:00 P. M. on the 3rd day of September, 1949, at Bruneau, County of Owyhee, State of Idaho, before Sam Noble, Notary Public, proof will be submitted of the application to beneficial use of 200 acre feet per annum of the waters of an unnamed stream tributary to Jack's Creek, in accordance with the terms and conditions of Permit No. R-766 heretofore issued by the Department of Reclamation of the State of Idaho.

The name and postoffice address of the person or corporation holding said permit are Hazel B. Owens, Bruneau, Idaho.

The use to which said water has been applied is stock water and irrigation.

The amount applied to beneficial use is 200 acre feet per annum.

The place where said water is used is SE $\frac{1}{4}$ NE $\frac{1}{4}$ and E $\frac{1}{2}$ SE $\frac{1}{4}$ Section 5, Twp. 10 South, Range 2 East, B. M.

The name of the canal or ditch or other works by which said water is conducted to such place of use is No Name.

The right to take water from such works is based upon Permit No. R - 766.

The source of supply from which such water is taken is

user is prepared to establish as August 15, 1949.

MARK R. KULP
State Reclamation Engineer

STATE OF IDAHO
DEPARTMENT OF RECLAMATION
BOISE, IDAHO



Permit No. R766

Proof of Application of Water to Beneficial Use

Deposition of Holder

Ques. 1. State your name, residence, occupation and postoffice address.

Ans. Hazel B. Owens Bruneau, Ida. Livestock raiser and Farmer.
Bruneau, Ida. Residence--Section 31, T7S-R4E, BM.
Section 5-8 T10S-R2E, BM.

Ques. 2. If acting in behalf of corporation, state its name, principal place of business (if a foreign corporation, give name of postoffice of statutory agent), your position with reference to same, and your authority for appearing in its behalf.

Ans. _____

Ques. 3. State number and date of permit, and date of priority you propose to establish under the permit.

Ans. Permit No. R766 Date August 23, 1946

Ques. 4. State source of water supply and give exact location of point of diversion.

Ans. Reservoir located in channel of unnamed creek, a tributary of Jack
Creek. N $\frac{1}{4}$ NE $\frac{1}{4}$, Section 7. T10S-R2E, BM.

Ques. 5. Describe your works of diversion, and state amount of water they are capable of conveying from point of diversion to place of use, and give name of canal or ditch or other works by which water is conducted to such place of use.

Ans. From reservoir in channel of creek to a point approximately
feet from the NW corner of SE $\frac{1}{4}$ SE $\frac{1}{4}$, section 5, a small diversion
dam and ditch to place of use. 2.5 cu feet.

Ques. 6. State for what purpose water is used and describe place of use. (If for irrigation, name each subdivision in which used, and number of acres in each subdivision that have actually been irrigated with said water.) State whether cultivated or natural meadow land and the nature of all improvements which have been made as a direct result of said use.

Ans. Domestic, irrigation, livestock. SE $\frac{1}{4}$ NE $\frac{1}{4}$ acres. NE $\frac{1}{4}$ SE $\frac{1}{4}$
acres. SE $\frac{1}{4}$ SE $\frac{1}{4}$ 8 acres. Natural meadow acres, cultivated
acres, Hay or pasture. Section 5, Twp. 10 S., Range 2 E., B.M.

Ques. 7. If for other than irrigation purposes; state how applied, amount of horse power generated, etc.

Ans. 1,231.675 gallons for livestock purposes.

R-766
mmt

Ques. 8. What is the minimum amount of water required for the purpose specified above?
Ans. 2.5 cu feet for domestic, irrigation, 1,231.875 gallons for livestock.

Ques. 9. If you are not the person or representative of the corporation to whom above mentioned permit was originally issued, please state how ownership was acquired by present holder.
Ans. None.

Ques. 10. State when, how, in what amount and to what extent the water diverted under above mentioned permit has been used.
Ans. 1949, livestock, 8 acres irrigated, water not available for other irrigation.

Ques. 11. State when, how, in what amount and to what extent waters other than those diverted under the above mentioned permit have been diverted and applied to beneficial use upon the lands herein described. Give full particulars regarding such other appropriations and rights claimed thereunder.
Ans. Permit R-716, acres irrigated under, livestock watered.

(Sign) + *Hazel B. Branson*

I hereby certify that the foregoing testimony was read to the above subscribed before its signing, that I believe him to be the person he represents himself to be, and that said testimony was subscribed and sworn to before me, at my office in *Bruneau*, County of *Crocker*, State of Idaho, on this *3rd* day of *September*, A. D. 19*49*.

Sam C. Hinkle

My commission expires *Jan. 9, 1953*

STATE OF IDAHO
DEPARTMENT OF RECLAMATION
BOISE, IDAHO

PERMIT NO. R766

Proof of Application of Water to Beneficial Use

Deposition of Witness

The deposition of two witnesses, on this form, taken separately, required in each case.

Ques. 1. State your name, age, residence, occupation and postoffice address.

Ans. Elmer C. Greenbank, 28, Bruneau, Idaho. Farmer.
Bruneau, Idaho.

Ques. 2. Are you acquainted with Hazel B. Owens, the holder of Permit No. R-766? How long have you known ^{xx}him and where does he reside?
_{her}

Ans. Two years. Bruneau, Idaho.

Ques. 3. Have you read or heard read said Permit No. R-766, and are you familiar with its provisions and conditions?

Ans. Yes.

Ques. 4. State source of water supply, place of diversion, and describe works for conveying water from point of diversion to place of use.

Ans. Reservoir in unnamed creeks, tributary of Jacks Creek
SE $\frac{1}{4}$ SE $\frac{1}{4}$ Section 5, Township 10 S, Range 2 E. B. M.
Small dam and ditch to place of use.

Ques. 5. How many second feet of water do you estimate said works will safely conduct to place of use, and how much water have you seen being so conveyed?

Ans. 2.5 second ft. 1 second ft.

Ques. 6. State for what purpose water is used and at what place. (If for irrigation, give each subdivision in which water has been used and number of acres irrigated in each subdivision.) State whether cultivated or natural meadow land and the nature of all improvements which have been made as a direct result of said use

Ans. Domestic, irrigation, livestock. SE $\frac{1}{4}$ NE $\frac{1}{4}$ 6 acres.
NE $\frac{1}{4}$ SE $\frac{1}{4}$ 6 acres. SE $\frac{1}{4}$ SE $\frac{1}{4}$ 8 acres. Natural meadow 5 acres.
Cultivated 15 acres.

R-766

Ques. 7. If for power or other purposes than irrigation, state how water has been applied and to what extent.

Ans. Livestock.

Ques. 8. (If for irrigation) state character of land that has been reclaimed, and give your estimate of the amount of water required for its profitable cultivation.

Ans. Sagebrush land, about 20 acres. 20 inches.

Ques. 9 Have you any interest in the works, water or lands above mentioned? If so, in what way and to what extent?

Ans. None.

Ques. 10. State when, how, in what amount and to what extent you have witnessed the application to beneficial use of water diverted under said permit

Ans. 1949. Livestock. 6 acres irrigated, water not available for other irrigation this year.

(Signed) Elmer C Greenbank.

I hereby certify that the foregoing testimony was read to the above subscriber before its signing, that I believe him to be the person he represents himself to be, and that said testimony was subscribed and sworn to before me in Brunswick

County of Cuyahoga, State of Idaho, on this 3rd day of September, A. D. 1949.

Sam C. Hable

Notary Public.

My commission expires

Jan 9, 1953

STATE OF IDAHO
DEPARTMENT OF RECLAMATION
BOISE, IDAHO

PERMIT NO. R-766

Proof of Application of Water to Beneficial Use

Deposition of Witness

The deposition of two witnesses, on this form, taken separately, required in each case.

Ques. 1. State your name, age, residence, occupation and postoffice address

Ans. J. E. Sullivan, 33, Bruneau, Idaho, Farmer, Bruneau Idaho

Ques. 2. Are you acquainted with Hazel B. Owens, the holder of Permit No R-766? How long have you known ^{her} him and where does he reside?

Ans. Thirty years Bruneau, Idaho

Ques. 3. Have you read or heard read said Permit No. R-766, and are you familiar with its provisions and conditions?

Ans. Yes

Ques. 4. State source of water supply, place of diversion, and describe works for conveying water from point of diversion to place of use

Ans. Reservoir in unnamed creek tributary of Jack Creek
SE 1-4 of SE 1-4 of Section 5 Township 10 S Range 2 E. B. M.
Small Dam and Ditch to place of use

Ques 5 How many second feet of water do you estimate said works will safely conduct to place of use, and how much water have you seen being so conveyed?

Ans. 2.5 second ft. 1 second ft.

Ques 6. State for what purpose water is used and at what place. (If for irrigation, give each subdivision in which water has been used and number of acres irrigated in each subdivision) State whether cultivated or natural meadow land and the nature of all improvements which have been made as a direct result of said use.

Ans. Domestic, irrigation, livestock. SE 1/4 NE 1/4, 6 acres. NE 1/4 SE 1/4 6 acres
SE 1/4 SE 1/4 8 acres Natural meadow 5 acres. Cultivated 15 acres

R-766

Ques. 7. If for power or other purposes than irrigation, state how water has been applied and to what extent.

Ans. Livestock.

Ques. 8. (If for irrigation) state character of land that has been reclaimed, and give your estimate of the amount of water required for its profitable cultivation.

Ans. Sage brush land 20 acres

Ques. 9 Have you any interest in the works, water or lands above mentioned? If so, in what way and to what extent?

Ans. None

Ques. 10 State when, how, in what amount and to what extent you have witnessed the application to beneficial use of water diverted under said permit.

Ans. 1949 Livestock 8 acres irrigated, water not available
for other irrigation.

(Signed)

J E Sullivan

I hereby certify that the foregoing testimony was read to the above subscriber before its signing, that I believe him to be the person he represents himself to be, and that said testimony was subscribed and sworn to before me in Bruneau

County of Cuyahoga, State of Idaho, on this 3rd day of September

A. D 1949

Sam Noble

Notary Public.

My commission expires Jan 9, 1953

State of Idaho

DEPARTMENT OF RECLAMATION

BOISE

INSTRUCTIONS

PROOF OF BENEFICIAL USE OF WATER

BOISE, IDAHO, August 23, 1949

Re: Permit No. R-766
Hazel B. Owens

Mr. Sam Noble
Notary Public
Brunau, Idaho

DEAR SIR:

I enclose herewith the following forms to be used in connection with proof of beneficial use of water under Permit No. R-766.....

DEPOSITION OF PERMIT HOLDER,
DEPOSITIONS OF TWO WITNESSES.

In submitting this proof the following instructions should be CAREFULLY followed out, since failure to do so may result in the loss of rights:

1. On.....September 3, 1949....., the date set for proof, the enclosed forms (one for permit holder and one each for two disinterested witnesses) should be filled out and sworn to, at.....
Brunau, Idaho.....before Sam Noble, Notary Public.....

2. When the depositions have been taken they should be mailed to this office, together with affidavit of publication of notice.

When these have been received, together with report of the examining engineer, if everything is properly executed, you will be further advised as to fees due, etc., before certificate is issued.

Yours truly.

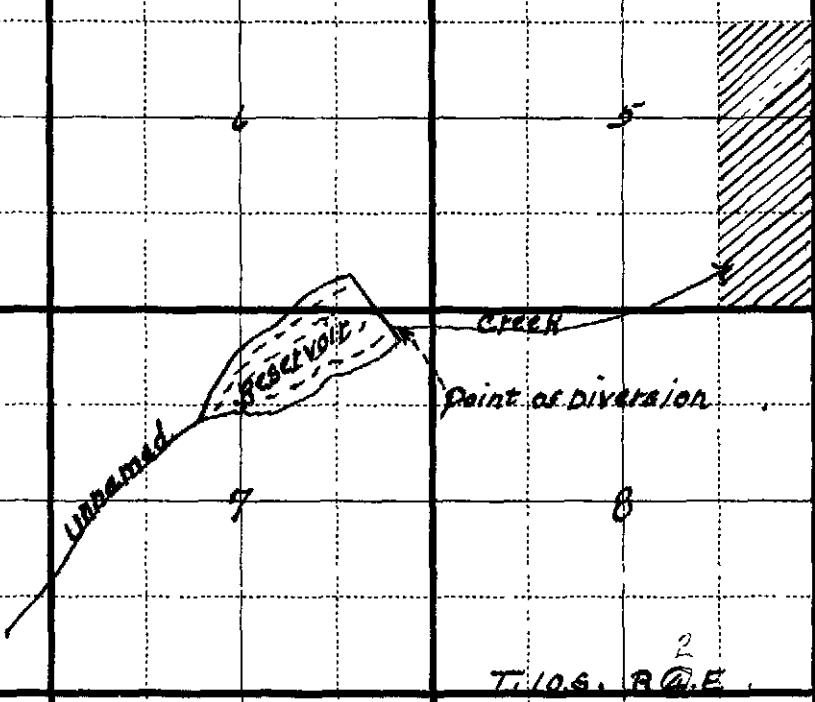
MARK R. KUIP

Commissioner of Reclamation
State Reclamation Engineer

R-766

NAME OF APPLICANT Hazel B. Owens,

FORM No. 0



Permit Map No. R-766.
As Approved
AUG 23 1946
MARK R. KULP
State Reclamation Engineer

SCALE: 2 INCHES EQUALS 1 MILE. DRAW PLAN IN INK.

R-766

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

D E P A R T M E N T O F R E C L A M A T I O N

B O I S E

Permit No. R-766

Date August 27, 1946

Dear Sir:

We enclose herewith the above numbered permit. BE SURE AND
NOTE LIMITATIONS AND CONDITIONS OF SAME as given under approval of the
State Reclamation Engineer, on the fourth page.

Hazel B. Owens
Bruneau, Idaho

MARK R. KULP
State Reclamation Engineer