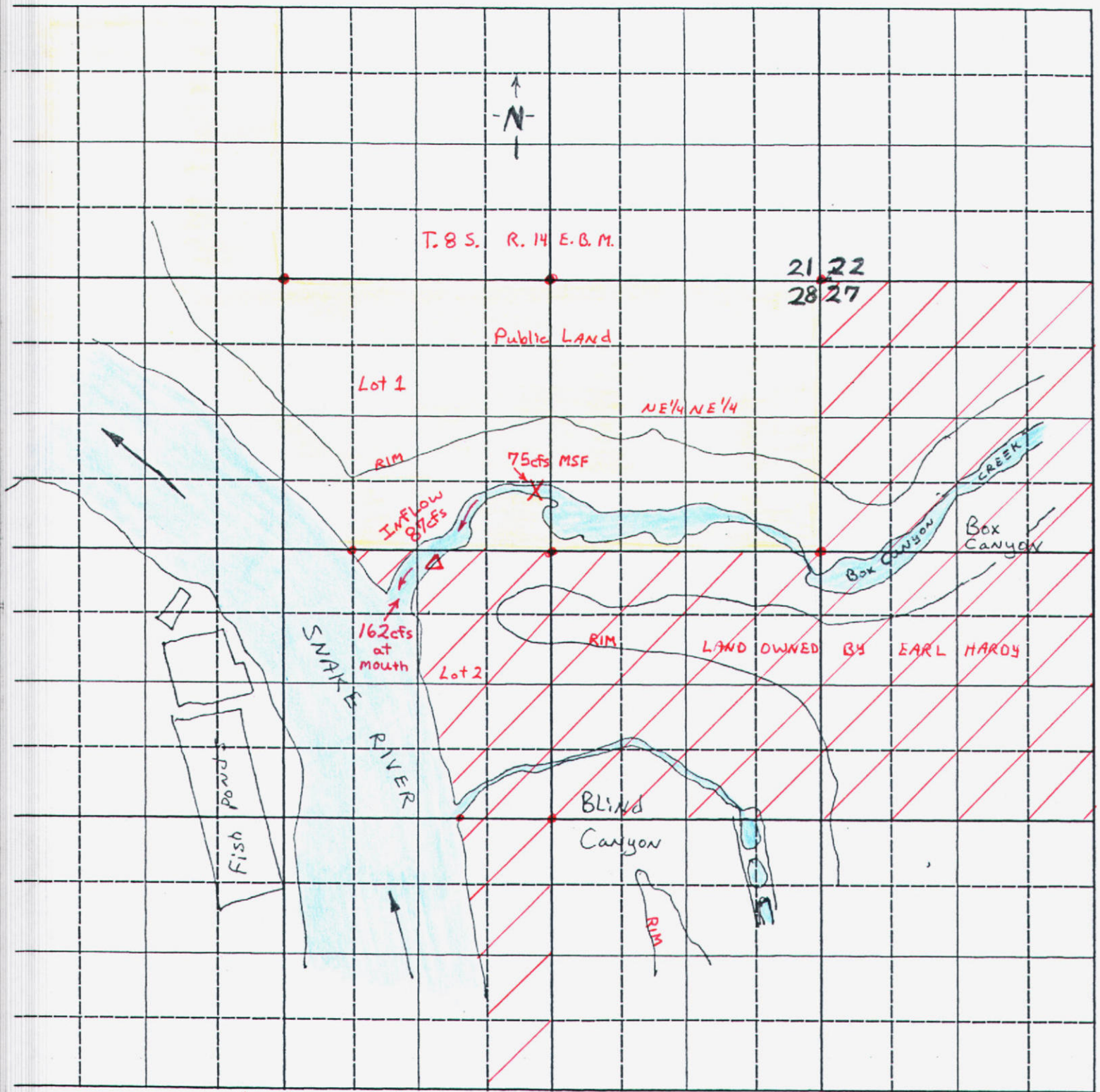
13. Map of proposed project: show clearly the proposed point of diversion, place of use, section number, township and range number.



Scale: 8 inches equal 1 mile.

X = Proposed Point of Diversion For WATER PERMIT 36-7091

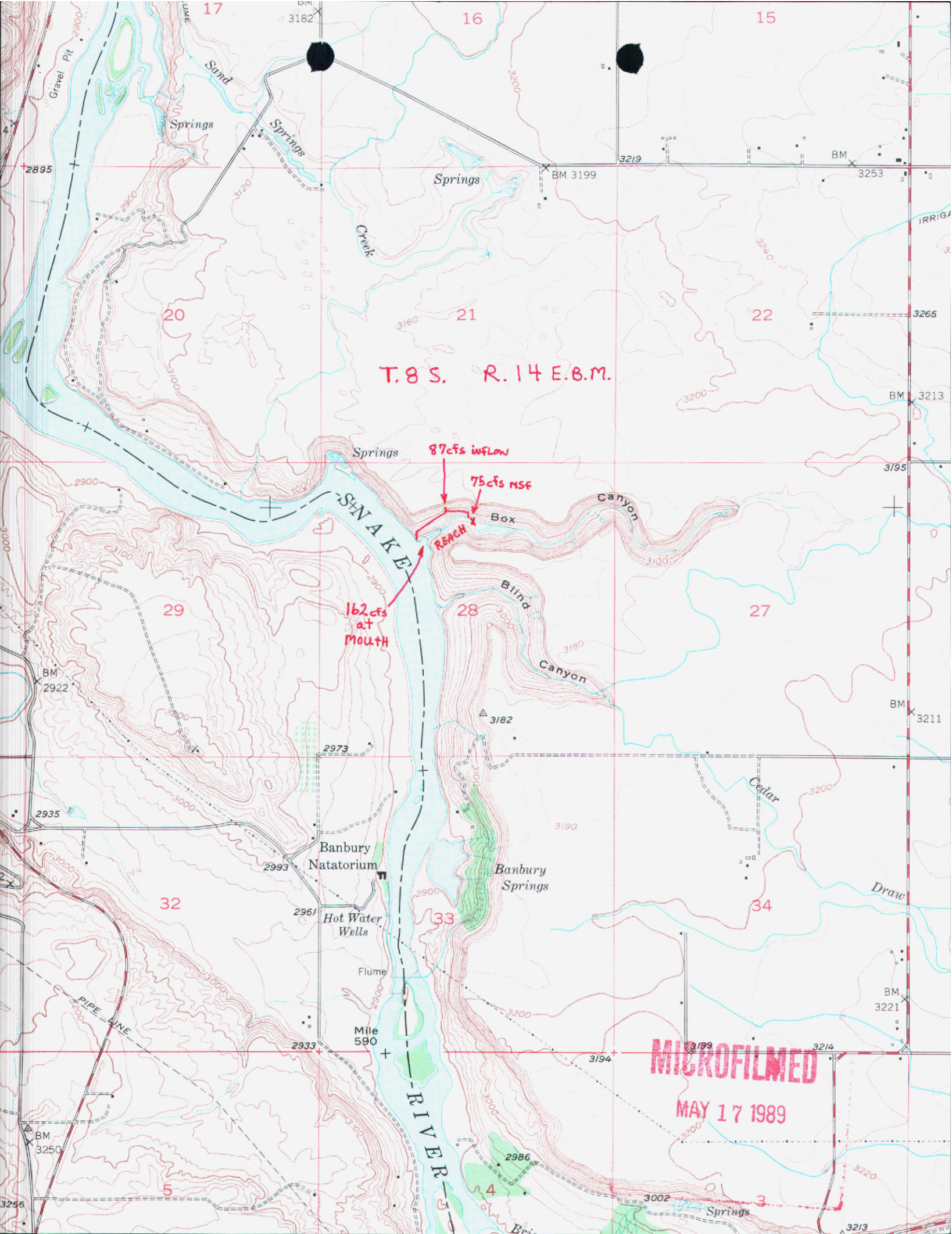
Δ = Proposed Point of Diversion For WATER PERMIT 36-7234

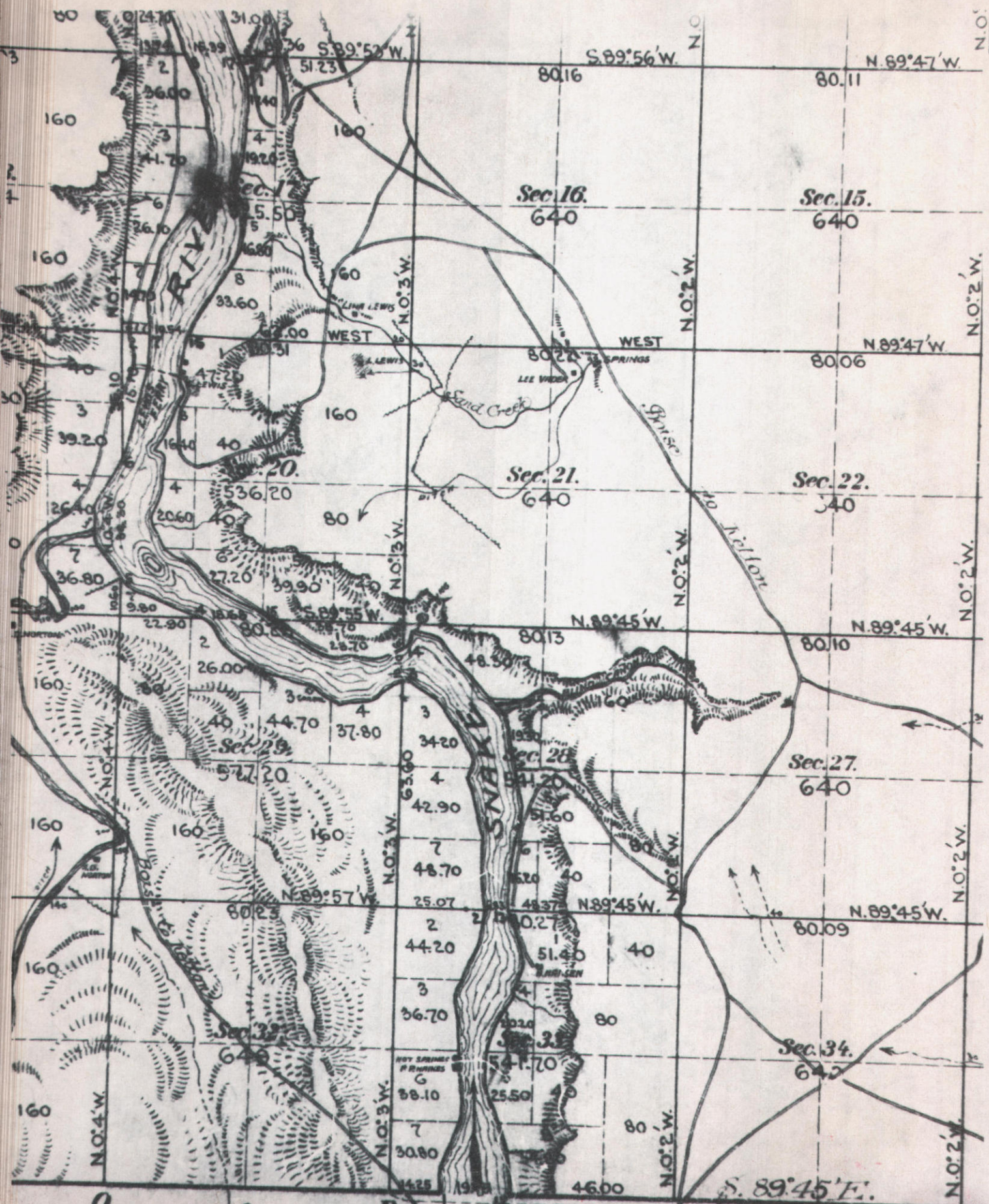
BE IT KNOWN that the undersigned hereby makes application for permit to appropriate the public waters of the State of Idaho as herein set forth.

MICROFILMED
MAY 17 1989

(Applicant)

Idaho Water Resource Board
Gene Gray, Chairman


T. 8 S. R. 14 E.B.M.
87cfs INFLOW
75cfs MSF
REACH
162cfs at MOUTH
SNAKE RIVER
Banbury Natatorium
Banbury Springs
Hot Water Wells
Flume
Mile 590
PIPE LINE
Box Canyon
Blind Canyon
Cedar Draw
Gravel Pit
Sand Springs
Springs
Creek
BM 3199
BM 3253
BM 3213
BM 3211
BM 3221
BM 3250
BM 2922
3182
3219
3265
3195
3182
2973
2935
2993
2961
2933
3199
3214
3194
2986
3002
3213
MICROFILMED
MAY 17 1989



O o P p Q q R

3 Acr;- of Public Land 22149.77 Acr; Total number of Acres 22829.43

Surveyed	Date of Contract	Amount of Survey M. Ch. Li.	When Surveyed	Mean Declination
Stevenson & Swenson	May 6. 1893	11 76 54	August 23-24, 1893	

MICROFILMED

Affidavit of Publication

Minimum Streamflow Applied for Box Canyon Springs

NOTICE OF APPLICATION FOR MINIMUM STREAMFLOW

Notice is hereby given that the IDAHO WATER RESOURCE BOARD has submitted an Application for Permit to the Department of Water Resources proposing to appropriate water for a minimum streamflow in Box Canyon Creek, tributary to the Snake River. The application is further described as follows:

Application No.: 36-8337

Source: Box Canyon Creek

Proposed Priority: October 16, 1987

Amount & Period of Use: A variable flow of 75-162 cfs from the beginning to the end of the minimum flow reach, respectively, from 01/01 through 12/31

Purpose of Minimum Instream Flow: To preserve fish and wildlife habitat.

Place of Use: The creek flowing in Box Canyon located in the following tracts:

Beginning at a point 300 feet downstream, from where Box Canyon Creek crosses the East 1/16 line into Lot 1 of Section 28, Township 8S, Range 14E, B.M., and proceeding downstream to the confluence of Box Canyon Creek and the Snake River, located in Lot 2, Section 28, Township 8S, Range 14E., B.M.

The Idaho Water Resource Board will hold a public meeting on the application on November 17, 1987, at 7:30 p.m. in Twin Falls, Idaho at the Aspen Vo-Tech Building Mini Auditorium, Room 108, College of Southern Idaho. The purpose of the meeting is to gather information on the public interest regarding the proposed minimum streamflow.

GENE GRAY, Chairman
IDAHO WATER RESOURCE BOARD
(46t2)

State of Idaho } ss.
County of Twin Falls }

I, **Robert M. Bailey,** do solemnly swear that I am the publisher of **The Buhl Herald,** a weekly newspaper of general circulation, published once each week at Buhl, Idaho; that the notice attached hereto was published in said newspaper November 4 and 11, 1987 ;

that said notice was published in the regular and entire issue of every number of the paper during the period and time of publication, and that the said notice was published in the newspaper proper, and not in the supplement thereof.

That said newspaper has been printed and published continuously in **Buhl, Twin Falls County, Idaho,** for a period of more than 78 weeks prior to the first publication of the attached notice.

Robert M. Bailey, Publisher

Subscribed and sworn to before me this 11th day of Nov., 1987

Tamra Burton

Tamra Burton, Notary Public.
Residing at Buhl, Idaho
My Commission Expires
October 1, 1992

MICROFILMED
MAY 1 / 1989

MB
3/3/88
Times News

NOTICE OF HEARING FOR APPLICATION FOR MINIMUM STREAMFLOW

Notice is hereby given that the Idaho Water Resource Board submitted an application for permit to appropriate water to the Department of Water Resources on October 16, 1987, proposing to appropriate water for a minimum streamflow in Box Canyon Creek, tributary of the Snake River. The application is further described as follows:

Application No.: 36-8337

Source: Box Canyon Creek

Proposed Priorty: October 16, 1987

Amount & Period of Use: A variable flow of 75-162 cfs from the beginning to the end of the minimum flow reach, respectively, from 01/01 through 12/31.

Purpose of Minimum Flow: to preserve fish and wildlife habitat.

Place of Use: The creek in Box Canyon flowing in the following tracts:

Beginning at a point 300 feet downstream from where Box Canyon Creek crosses the East 1/16 line into Lot 1 of Sectin 28, T8S, R14E, B.M. Gooding County, and proceeding downstream to the confluence of Box Canyon Creek and the Snake River, located in Lot 2, Section 28, T8S, R14E, B.M., Gooding County.

The Director of the Department of Water Resources will hold public hearing at the Gooding City Hall, 308 5th Avenue West, Gooding, Idaho, beginning at 9:30 a.m. on Wednesday, March 23, 1988, for the purpose of hearing evidence in regard to the application. The hearing will be held pursuant to the provisions of Section 42-1503, Idaho Code.

Any party who wishes to formally appear in this proceeding for the purpose of presenting evidence or cross examining witnesses should file a notice of appearance with the director of the Department of Water Resources, Statehouse Mail, 1301 North Orchard Street, Boise, ID 82720, five (5) days prior to the hearing. Other parties will be given an opportunity to informally present their views and comments without the necessity of filing a notice of appearance. Written informal views and comments may also be submitted to the Department of Water Resources prior to the hearing.

If issued, this permit will be subject to all prior water rights.

R. Keith Higginson, Director
Idaho Department Water Resources.

PUBLISH: Thursday, March 3 and 10, 1988.

MICROFILMED
MAY 17 1989

NOTICE OF HEARING FOR APPLICATION FOR MINIMUM STREAMFLOW

Notice is hereby given that the Idaho Water Resource Board submitted an application for permit to appropriate water to the Department of Water Resources on October 16, 1987, proposing to appropriate water for a minimum streamflow in Box Canyon Creek, tributary of the Snake River. The application is further described as follows:

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If issued, this permit will be subject to all prior water rights.

R. Keith Higginson, Director
Idaho Department Water Resources.

PUBLISH: **Thursday, March 3 and 10, 1988.**

Affidavit of Publication

RECEIVED
MAR 14 1988

No 18354

STATE OF IDAHO, }
COUNTY OF TWIN FALLS } ss.

I, Brenda Copps McGuire, being first duly sworn upon oath, depose and say that I am Public Clerk of the TIMES-NEWS, published daily, at Twin Falls, Idaho, and do solemnly swear that a copy of the notice of advertisement, as per clipping attached, was published in the regular and entire issue of said newspaper, and not in any supplement thereof, for Two consecutive Weeks, commencing with the issue dated March 3, 1988, and ending with the issue dated March 10, 1988.

OK NMB 3/24/88

And I do further certify that said newspaper is a consolidation, effective February 16, 1942, of the Idaho Evening Times, published theretofore daily except Sunday, and the Twin Falls News, published theretofore daily except Monday, both of which newspapers prior to consolidation had been published under said names in said city and county continuously and uninterruptedly during a period of more than twelve consecutive months, and said TIMES-NEWS, since such consolidation, has been published as a daily newspaper except Saturday, until July 31, 1978, at which time said newspaper began daily publication under said name in said city and county continuously and uninterruptedly.

And I further certify that pursuant to Section 60-108 Idaho Code, Thursday of each week has been designated as the day on which legal notice by law or by order of any court of competent jurisdiction within the state of Idaho, to be published weekly, will be published; and that at the head of the editorial column of said combined newspapers, and in each issue thereof, Thursday is announced as the day on which said legal notices will be published.

MICROFILMED
MAY 19 1988

Brenda Copps McGuire

Subscribed and sworn to before me on this 10 day of March, 1988.

Brenda Parker

Notary Public in and for the County of Twin Falls, State of Idaho, residing at Twin Falls, Idaho

Proof of Publication

The Post-Register

State of Idaho,
County of Bonneville } ss

I, Richard Hardy, first being duly sworn, depose and say: That I am the Asst. Foreman of The Post Company, a corporation of Idaho Falls, Bonneville County, Idaho, publishers of The Post-Register, a newspaper of general circulation, published daily, except Saturday, at Idaho Falls, Idaho; said Post-Register being a consolidation of the Idaho Falls Times, established in the year 1890, The Idaho Register, established in the year 1880 and the Idaho Falls Post, established in 1903, such consolidation being made on the 1st day of November, 1931, and each of said newspapers have been published continuously and uninterruptedly, prior to consolidation, for more than seventy-eight (78) weeks and said Post-Register having been published continuously and uninterruptedly from the date of such consolidation, up to and including the last publication of notice hereinafter referred to.

That the notice, of which a copy is hereto attached and made a part of this affidavit, was published in said Post-Register for two consecutive weeks, first publication having been made on the 3rd day of March, 19 88, last publication having been made on the 10th day of March, 19 88, and that the said notice was published in the regular and entire issue of said paper on the respective dates of publication, and that such notice was published in the newspaper and not in a supplement.

Richard Hardy

Subscribed and sworn to before me, this 14th day of March, 19 88

Notary Public

My commission expires September 30, 19 88

B10

NOTICE OF HEARING
FOR APPLICATION
FOR MINIMUM STREAMFLOW

Notice is hereby given that the Idaho Water Resource Board submitted an application for permit to appropriate water to the Department of Water Resources on October 16, 1987, proposing to appropriate water for a minimum streamflow in Box Canyon Creek, tributary to the Snake River. The application is further described as follows:

Application No.: 36-8337
Source: Box Canyon Creek
Proposed Priority: October 16, 1987

Amount & Period of Use: A variable flow of 75-162 cfs from the beginning to the end of the minimum flow reach, respectively, from 01/01 through 12/31.

Purpose of Minimum Flow: To preserve fish and wildlife habitat.

Place of Use: The creek in Box Canyon flowing in the following tracts:

Beginning at a point 300 feet downstream from where Box Canyon Creek crosses the East 1/16 line into Lot 1 of Section 28, T8S, R14E, B.M. Gooding County, and proceeding downstream to the confluence of Box Canyon Creek and the Snake River, located in Lot 2, Section 28, T8S, R14E, B.M., Gooding County.

The Director of the Department of Water Resources will hold a public hearing at the Gooding City Hall, 308 5th Avenue West, Gooding, Idaho beginning at 9:30 a.m. on Wednesday, March 23, 1988, for the purpose of hearing evidence in regard to the application. The hearing will be held pursuant to the provisions of Section 42-1503, Idaho Code.

Any party who wishes to formally appear in this proceeding for the purpose of presenting evidence or cross examining witnesses should file a notice of appearance with the director of the Department of Water Resources, Statehouse Mail, 1301 North Orchard Street, Boise, ID 83720, five (5) days prior to the hearing. Other parties will be given an opportunity to informally present their views and comments without the necessity of filing a notice of appearance. Written informal views and comments may also be submitted to the Department of Water Resources prior to the hearing.

If issued, this permit will be subject to all prior water rights.

R. KEITH HIGGINSON, Director
Idaho Department Water Resources

Published: March 3, 10, 1988

OK MB 3/24/88

RECEIVED
MAR 17 1988
Department of Water Resources
Southern Region Office

MICROFILMED
MAY 17 1989

TRIBUNE PUBLISHING COMPANY, INC.
The Lewiston Morning Tribune
505 C St., P.O. Box 957
Lewiston, Idaho 83501
(208) 743-9411

Date 031088 INVOICE No L00128732

Account No. 44662

Description 28732NOTIC

Times 2 Lines 70

Tab Lines

LEGAL ADVERTISING
INVOICE

SOLD TO:
STATE OF IDAHO
DEPT. OF WATER RESOURCES
2148 4TH AVE. E.
TWIN FALLS
ID 83301

RECEIVED $ 61.25

MAR 16 1988

Department of Water Resources
Southern Region Office

NOTICE: This is an invoice of Purchase made by you. Statement will be rendered the first of the month.
Please Retain This Invoice as Your Statement Will Refer To Invoice by No. Only.

28732

NOTICE OF HEARING FOR APPLICATION FOR MINIMUM STREAMFLOW

Notice is hereby given that the Idaho Water Resource Board submitted an application for permit to appropriate water to the Department of Water Resources on October 16, 1987, proposing to appropriate water for a minimum streamflow in Box Canyon Creek, tributary to the Snake River. The application is further described as follows:

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If issued, this permit will be subject to all prior water rights.

R. KEITH HIGGINSON, Director
Idaho Department Water Resources

OK MB 3/24/88

AFFIDAVIT OF PUBLICATION

STATE OF IDAHO, ss.
County of Nez Perce

C. M. Viers, being duly sworn, deposes and says, I am the Legal Clerk of the Tribune Publishing Company, a corporation organized and existing under and by virtue of the laws of the State of Idaho, publishers of the LEWISTON MORNING TRIBUNE, a newspaper of general circulation published at Lewiston, Nez Perce County, Idaho; That the said Lewiston Morning Tribune is an established paper and has been published regularly and issued regularly at least once a day for more than 21 consecutive years next immediately preceding the first publication of this notice, and has been so published uninterrupted for said period; that the

NOTICE OF HEARING

attached hereto and which is made a part of this affidavit was published in the said Lewiston Morning Tribune, 2 time(s). Publication being on 030388, or once a WEEK for 2 consecutive WEEKS, the first publication thereof being on the 030388, and the last publication thereof being on the 031088, and said NOTICE OF HEARING was so published in the regular and entire issue of said newspaper and not in a supplement thereof and was so published in every issue and number of the said paper, during the period and times of publication as set forth above.

C. M. Viers

SUBSCRIBED AND SWORN BEFORE ME THIS THE 10 day of March 1988

RECEIVED
MAY 17 1989

Sheral M Lentz

Notary Public in and for the State of Idaho, residing at Lewiston, therein.

The Idaho Statesman

P.O. BOX 40, BOISE, IDAHO 83707

LEGAL ADVERTISING INVOICE

Amount Due
58.38

Account Name	Account Number
Idaho Department of Water Resources (Southern)	#100632

Address	City/State	Zip
2148 4th Avenue	Twin Falls, ID	83301

Ordered By	P.O. Number	Rate	Run Dates
Rita I. Fleck		NT	1988 Mar. 3, 10

Identification	Estimated Inches	Real Inches
Application for Minimum Streamflow: No. 36-8337 Box Canyon Creek		

[1] Number of Affidavits Requested

Legal Number #7844

RECEIVED
MAR 11 1988
Department of Water Resources
Southern Region Office

OK MB 3/11/88

STATE OF IDAHO)
) ss.
COUNTY OF ADA)

Deborah Gregory, being duly sworn, deposes and says: That she is the Principal Clerk of The Idaho Statesman, a daily newspaper printed and published at Boise, Ada County, State of Idaho, and having a general circulation therein and which said newspaper has been continuously and uninterruptedly published in said County during a period of twelve consecutive months prior to the first publication of the notice, a copy of which is attached hereto; that said notice was published in The Idaho Statesman in conformity with Section 60-108, Idaho Code as amended, for Two (2)
☒ consecutive weekly ☐ consecutive daily ☐ single ☐ odd skip

insertion(s) beginning with the issue of March 3, 1988

and ending with the issue of March 10, 1988

Deborah Gregory

Subscribed and sworn to before me this 10th

day of March, 1988

Linda Smiley 12/93
Notary Public for Idaho, Residing at Boise, Idaho

NOTICE OF HEARING FOR APPLICATION FOR MINIMUM STREAMFLOW

Notice is hereby given that the Idaho Water Resource Board submitted an application for permit to appropriate water to the Department of Water Resources on October 16, 1987, proposing to appropriate water for a minimum streamflow in Box Canyon Creek, tributary to the Snake River. The application is further described as follows:

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Source: Box Canyon Creek

Proposed Priority: October 16, 1987

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The Director of the Department of Water Resources will hold a public hearing at the Gooding City Hall, 308 5th Avenue West, Gooding, Idaho, beginning at 9:30 a.m. on Wednesday, March 23, 1988, for the purpose of hearing evidence in regard to the application. The hearing will be held pursuant to the provisions of Section 42-1503, **Idaho Code.**

Any party who wishes to formally appear in this proceeding for the purpose of presenting evidence or cross examining witnesses should file a notice of appearance with the director of the Department of Water Resources, Statehouse Mail, 1301 North Orchard Street, Boise, ID 83720, five (5) days prior to the hearing. Other parties will be given an opportunity to informally present their views and comments without the necessity of filing a notice of appearance. Written informal views and comments may also be submitted to the Department of Water Resources prior to the hearing.

Pub. Mar. 3, 10, 1988 7844

AFFIDAVIT of PUBLICATION

RECEIVED

MAR 10 1988

Department of Water Resources
Region Office

State of Idaho,)
) SS.
County of Gooding)

S Lila Fullmer, being first duly sworn, deposes and says that he is the printer (publisher) of the Gooding County Leader, a newspaper published every week in Gooding, County of Gooding, State of Idaho, that said newspaper has been continuously and uninterruptedly published for a period of seventy-eight consecutive weeks prior to the first publication of the annexed notice, and is a newspaper qualified to publish legal notices as provided by act of the 1919 session of the legislature of the State of Idaho, known as House Bill 145; that the annexed advertisement was published once each week for 2 consecutive issues in said newspaper proper and not in a supplement; that the date of the first publication of said advertisement was on the 2 day of March 19 88, and the date of the last publication was on the 9 day of March, 19 88.

S Lila Fullmer

Subscribed and sworn to before me this 9th day of March, 19 88.
(SEAL)

Shirla Thurmond
NOTARY PUBLIC

GOODING COUNTY LEADER
Gooding, Idaho

COST OF PUBLICATION

OK MB 3/11/88

Number of Lines in Notice 59

Number of Insertions 2

MICROFILMED
MAY 17 1989

	Lines tabular at		5¢/Pica
59	Lines straight at	30.68	4¢/Pica
59	Subsequent lines at	23.01	3¢/Pica
	TOTAL COST	53.69	

COPY OF NOTICE
(Paste Here)

Box Canyon Creek
TITLE OF NOTICE

PLAINTIFF ATTORNEY

DEFENDANT

PLAINTIFF

Dept of Water Resources
2148 4th Ave E.
Twin Falls, ID
83301
BILL TO

NOTICE OF HEARING FOR APPLICATION FOR MINIMUM STREAMFLOW

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If issued, this permit will be subject to all prior water rights.

R. KEITH HIGGINSON
Director
Idaho Department Water Resources
394747 - G03-02-2tc

AFFIDAVIT of PUBLICATION

RECEIVED

NOV 13 1987

Department of Water Resources
Southern Region Office

State of Idaho,)
) SS.
County of Gooding)

S L Fullen

S L Fullen, being first duly sworn, deposes and says that he is the printer (publisher) of the Gooding County Leader, a newspaper published every week in Gooding, County of Gooding, State of Idaho, that said newspaper has been continuously and uninterruptedly published for a period of seventy-eight consecutive weeks prior to the first publication of the annexed notice, and is a newspaper qualified to publish legal notices as provided by act of the 1919 session of the legislature of the State of Idaho, known as House Bill 145; that the annexed advertisement was published once each week for 2 consecutive issues in said newspaper proper and not in a supplement; that the date of the first publication of said advertisement was on the 4 day of Nov 19 87, and the date of the last publication was on the 11 day of Nov, 19 87.

S L Fullen

Subscribed and sworn to before me this 11 day of Nov, 19 87.
(SEAL)

Shirla Schwendiman
NOTARY PUBLIC

GOODING COUNTY LEADER
Gooding, Idaho

COST OF PUBLICATION

OK
MB
11/20/87

Number of Lines in Notice 41

Number of Insertions 2

BILL FILED
MAY 17 1989

	Lines tabular at		5¢/Pica
41	Lines straight at	21.32	4¢/Pica
41	Subsequent lines at	15.99	3¢/Pica
	TOTAL COST	37.31	

COPY OF NOTICE
(Paste Here)

Applications Nos. 36-8337
TITLE OF NOTICE

PLAINTIFF ATTORNEY

DEFENDANT

PLAINTIFF

Dept of Water Resources
450 W State Street
Boise, ID 83720
BILL TO

NOTICE OF APPLICATION FOR MINIMUM STREAMFLOW

Notice is hereby given that the IDAHO WATER RESOURCE BOARD has submitted an Application for Permit to the Department of Water Resources proposing to appropriate water for a minimum streamflow in Box Canyon Creek, tributary to the Snake River. The application is further described as follows:

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Purpose of Minimum Instream Flow: To preserve fish and wildlife habitat.
Place of Use: The creek flowing in Box Canyon located in the following tracts:

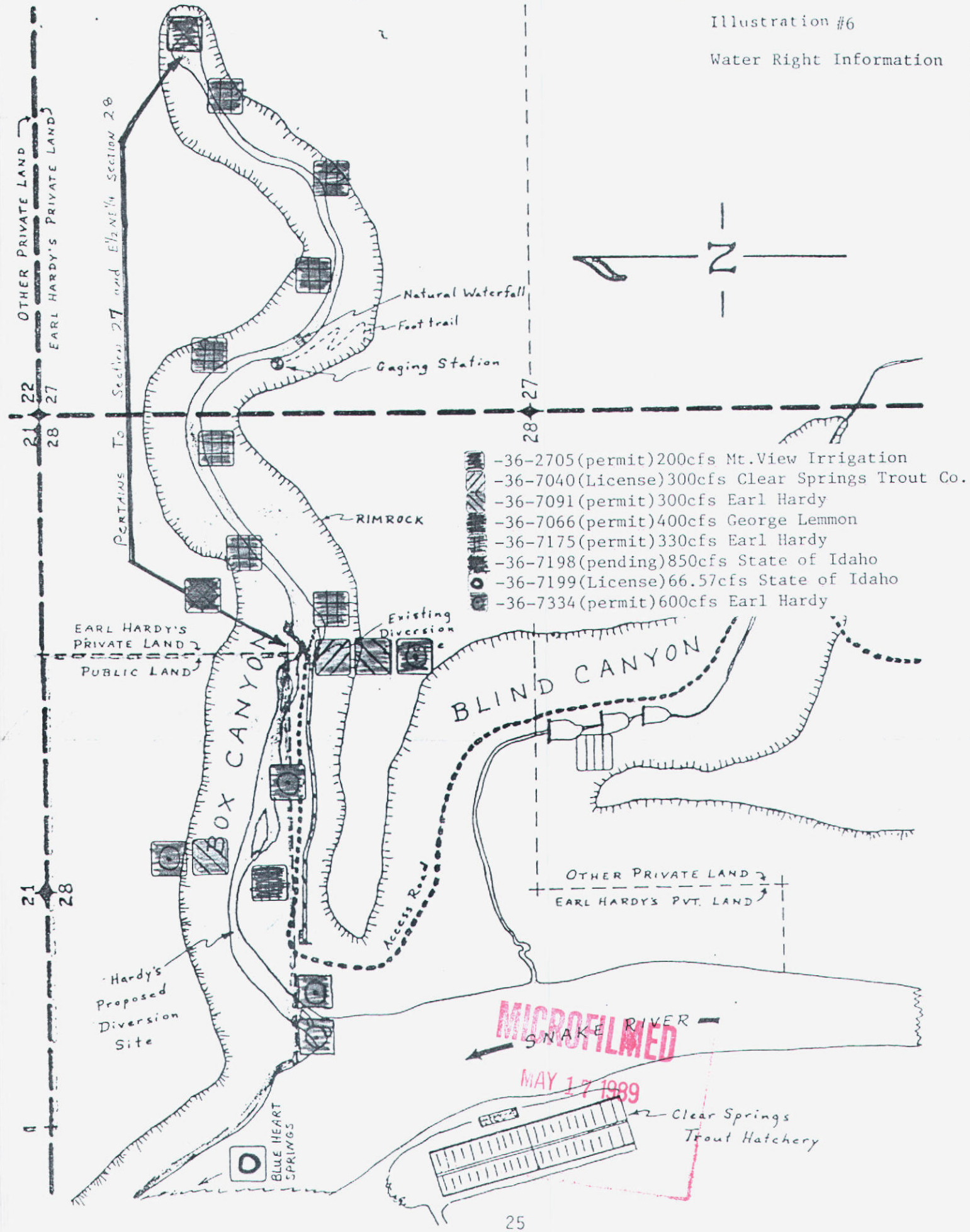
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The Idaho Water Resource Board will hold a public meeting on the application on November 17, 1987, at 7:30 p.m. in Twin Falls, Idaho at the Aspen Vo-Tech Building Mini Auditorium, Room 108, College of Southern Idaho. The purpose of the meeting is to gather information on the public interest regarding the proposed minimum streamflow.

GENE GRAY, Chairman
IDAHO WATER RESOURCE BOARD
372354 - G11-04-2tc

Illustration #6

Water Right Information



MICROFILMED
MAY 17 1989



		SESW		36-2374	L 01-29-1959 GROUNDWATER	ALLRED	
		SESE	01,04	36-2945	L 08-20-1962 GROUNDWATER	NELSON	C
		SESE	01,04,10,43	36-7939	P 10-23-1980 GROUNDWATER	LEDERER LEDERER	C C
	25	SENE	01	36-2312	L 11-26-1956 GROUNDWATER	DURFEE	C
		SENE	01	36-7387	L 10-27-1973 GROUNDWATER	DURFEE DURFEE	0 C
		NWSW	01	36-4117	S 03-15-1955 GROUNDWATER	BOX CANYON LIVESTOCK, INC.	C
		NESE	01	36-7691	P 09-19-1983 GROUNDWATER	DURFEE DURFEE	0 C
		SWSE	01	36-4151	S 03-15-1950 GROUNDWATER	LAWTON	C
		SESE	01,04	36-7070	L 07-07-1969 GROUNDWATER	JONES	C
	26	NWNE	01,10	36-7871	P 09-24-1979 GROUNDWATER	THOMPSON	C
		NESW	01	36-7203	L 01-05-1973 GROUNDWATER	STACEY	C

[redacted] 010 [redacted]

WRR150 — IDAHO DEPARTMENT OF WATER RESOURCES
WATER RIGHTS BY POINT OF DIVERSION

TWN	RNG	SEC	TRACT	LOT	USES	WATER RIGHT NUMBER	STAGE PRIORITY RPLG SOURCE OF WATER	LAST NAME	OWNER CODE
08S	14E	26	SESW		04,43	36-4038	S 06-01-1938 GROUNDWATER	STACEY	C
			SWSE	01		36-4037	S 08-01-1961 GROUNDWATER	STACEY	C
			SWSE	01		36-7209	L 01-22-1973 GROUNDWATER	STACEY	C
			SESE	01		36-2698	L 02-25-1960 GROUNDWATER	MARTIN	C
		27	SWNE	01		36-7510	L 11-07-1974 GROUNDWATER	STACEY	C
			NENW	01		36-2705	P 03-15-1963 BOX SPRINGS	MOUNTAIN VIEW IRRIGATION CO.	C
			NENW	19		36-7175	P 05-18-1971 BOX CANYON SPRING	KASTER BOX CANYON TROUT CO. INC. HARDY HARDY BOX CANYON TROUT CO. INC.	0 0 C B C
			NENW	46,52		36-7198	A 07-12-1971 BOX CANYON CREEK	STATE OF IDAHO	C
			NWNW	19		36-7175	P 05-18-1971 BOX CANYON SPRING	KASTER BOX CANYON TROUT CO. INC. HARDY HARDY BOX CANYON TROUT CO. INC.	0 0 C B
			SWNW	19		36-7175	P 05-18-1971 BOX CANYON SPRING	KASTER BOX CANYON TROUT CO. INC. HARDY HARDY BOX CANYON TROUT CO. INC.	0 0 C B
			SWSE	01		36-7363	L 08-07-1973 GROUNDWATER	STACEY	C
			SESE	01,43		36-2119	L 03-10-1951 GROUNDWATER	ALLEN	C
			SESE	01		36-7363	L 08-07-1973 GROUNDWATER	STACEY	C
		28	NENE	19		36-7175	P 05-18-1971 BOX CANYON SPRING	KASTER BOX CANYON TROUT CO. INC. HARDY HARDY BOX CANYON TROUT CO. INC.	0 0 C B
			NENE	46,52		36-7198	A 07-12-1971 BOX CANYON CREEK	STATE OF IDAHO	C
			NWNE	19		36-7066	P 01-05-1970 BOX CANYON CREEK BLIND CANYON SPRING	LEMMON STANDAL BLIND CANYON AQUA RANCH INC.	0 0 C

[redacted] C10 [redacted]

WRR150 — IDAHO DEPARTMENT OF WATER RESOURCES
WATER RIGHTS BY POINT OF DIVERSION

TWN	RNG	SEC	TRACT	LOT	USES	WATER RIGHT NUMBER	STAGE PRIORITY RPLG SOURCE OF WATER	LAST NAME	OWNER CODE
08S	14E	28	NWNE	19		36-7091	P 10-27-1969 BOX CANYON SPRING	HARDY KASTER HARDY	0 0 C
			NWNE	19		36-7334	P 04-30-1973 BOX CANYON SPRINGS	BOX CANYON TROUT CO. INC. KOSTER BOX CANYON TROUT CO. INC. HARDY	0 0 C B
			SWNE	01,46,19		36-7040	L 09-04-1968 BOX CANYON CREEK	KASTER CLEAR SPRINGS TROUT CO.	0 C
			SWNE	19		36-7091	P 10-27-1969 BOX CANYON SPRING	HARDY KASTER HARDY	0 0 C
			SWNE	19		36-7334	P 04-30-1973 BOX CANYON SPRINGS	BOX CANYON TROUT CO. INC. KOSTER BOX CANYON TROUT CO. INC. HARDY	0 0 C B
			SWNE	19		36-7797	P 06-23-1978 BOX CANYON CREEK	CLEAR SPRINGS TROUT CO.	C
			SWNE	28		36-7824	P 09-13-1978 BOX CANYON SPRING	KASTER MANTECH INC.	0 C
			SENE	19		36-7091	P 10-27-1969 BOX CANYON SPRING	HARDY KASTER HARDY	0 0 C
			SENE	19		36-7175	P 05-18-1971 BOX CANYON SPRING	KASTER BOX CANYON TROUT CO. INC. HARDY HARDY BOX CANYON TROUT CO. INC.	0 0 C B
			SENE	19		36-7334	P 04-30-1973 BOX CANYON SPRINGS	BOX CANYON TROUT CO. INC. KOSTER BOX CANYON TROUT CO. INC. HARDY	0 0 C B
			SENE	19		36-7797	P 06-23-1978 BOX CANYON CREEK	CLEAR SPRINGS TROUT CO.	C
			SENE	28		36-7824	P 09-13-1978 BOX CANYON SPRING	KASTER MANTECH INC.	0 C
			SENE	28		36-8080	P 09-20-1982 BOX CANYON CREEK	CLEAR SPRINGS TROUT CO.	C
			NWSW	01 46,92		36-7199	L 07-12-1971 BIG SPRINGS	STATE OF IDAHO	C

[redacted] D10 [redacted]

	SWNE	19	36-7797	P	06-23-1978	BOX CANYON CREEK	CLEAR SPRINGS TROUT CO.	C
	SWNE	28	36-7824	P	09-13-1978	BOX CANYON SPRING	KASTER MANTECH INC.	C C
	SENE	19	36-7091	P	10-27-1969	BOX CANYON SPRING	HARDY KASTER HARDY	C C C
	SENE	19	36-7175	P	09-18-1971	BOX CANYON SPRING	KASTER BOX CANYON TROUT CO. INC. HARDY HARDY BOX CANYON TROUT CO. INC.	C C C C B
	SENE	19	36-7334	P	04-30-1973	BOX CANYON SPRINGS	BOX CANYON TROUT CO. INC. KOSTER BOX CANYON TROUT CO. INC. HARDY	C C B B
	SENE	19	36-7797	P	06-23-1978	BOX CANYON CREEK	CLEAR SPRINGS TROUT CO.	C
	SENE	28	36-7824	P	09-13-1978	BOX CANYON SPRING	KASTER MANTECH INC.	C C
	SENE	28	36-8080	P	04-20-1982	BOX CANYON CREEK	CLEAR SPRINGS TROUT CO.	C
	NWNW	01 46.52	36-7199	L	07-12-1971	BIG SPRINGS	STATE OF IDAHO	C

WRR190 — IDAHO DEPARTMENT OF WATER RESOURCES — WATER RIGHTS BY POINT OF DIVERSION

TWN	RNG	SEC	TRACT	LOT	USES	WATER RIGHT NUMBER	STAGE	PRIORITY	RFLG	SOURCE OF WATER	LAST NAME	OWNER CODE
08S	14E	28	SENW		34	36-7820	A	09-13-1978		BLIND CANYON SPRINGS	STATE OF IDAHO	C
			SENW	02	19	36-7334	P	04-30-1973		BOX CANYON SPRINGS	BOX CANYON TROUT CO. INC. KOSTER BOX CANYON TROUT CO. INC. HARDY	C C B B
			NWSE		19	36-7066	P	01-05-1970		BOX CANYON CREEK BLIND CANYON SPRING	LEMMON STANDAL BLIND CANYON AQUA RANCH INC.	C C C
			NWSE		19	36-7162	L	03-04-1971		BLIND CANYON CREEK	LEMMON	C
		29	NENW	02	01.43	02-2058	L	01-03-1934		SNAKE RIVER	EUSTIS	C
			NWNE		43.22.19.01	47-7546	P	05-24-1979		GROUNDWATER	REVAL TRUST NO. 4, PTR.	C
		30	NENE		01	47-2159G	L	07-18-1923		SALMON FALLS CREEK	HANSEN ERICKSEN LAURSEN RASMUSSEN RASMUSSEN RING LARSEN RING	C C C C C C C C
			NENE		01	47-2400	L	02-17-1905		SALMON FALLS CREEK	RING	C
			NWNE		01.04	47-7025	L	03-19-1968		SPRINGS	LEMMON RING	C C
			NWNE		46,43,19,22	47-7425	P	08-15-1977		GROUNDWATER	RING RING	C C
			NWNE		46,10,19,28 22	47-7435	P	10-20-1977		GROUNDWATER	RING RING	C C
			SWNE		01	47-2159B	L	07-18-1923		SALMON FAL,S CREEK	HANSEN ERICKSEN LAURSEN RASMUSSEN RASMUSSEN RING LARSEN LARSEN	C C C C C C C C
			SWNE		18.22.46	47-4072	S	01-31-1963		GROUNDWATER	NORTHWEST CRANE, RIGGING & TRANSPORT THOUSAND SPRINGS RESORT	C B

WRR190 — IDAHO DEPARTMENT OF WATER RESOURCES — WATER RIGHTS BY POINT OF DIVERSION

TWN	RNG	SEC	TRACT	LOT	USES	WATER RIGHT NUMBER	STAGE	PRIORITY	RFLG	SOURCE OF WATER	LAST NAME	OWNER CODE
08S	14E	30	SWNE		07,18,22,28 46	47-7815	A	04-15-1982		GROUNDWATER	SLIGARS THOUSAND SPRINGS RESORT	C
			SWNE		22,43,46	47-7882	A	04-22-1983		GROUNDWATER	PUGMIRE PUGMIRE	C C
			NESE		01	47-2159H	L	07-18-1923		SALMON FALLS CREEK	HANSEN ERICKSEN LAURSEN RASMUSSEN RASMUSSEN RING CONNOLLY	C C C C C C C
			NESE		22,43,46	47-7451A	P	01-05-1978		GROUNDWATER	NELSON	C
			NESE		43.22	47-7451B	P	01-05-1978		GROUNDWATER	NELSON PARDE PARDE	C C C
			NWSE		22	47-7520	P	04-25-1979		GROUNDWATER	SEMEN SEMEN	C C
			NWSE		22,43,10	47-7525	P	05-04-1979		GROUNDWATER	WILSON EASTMAN	C B
			SWSE		01,10,19,22 28,43	47-7721	P	03-24-1981		GROUNDWATER	MARSHALL	C
			SESE		01	47-2159F	L	07-18-1923		SALMON FALLS CREEK	HANSEN ERICKSEN LAURSEN RASMUSSEN RASMUSSEN RING BURGESS HAZEN	C C C C C C B B
			SESE		46,43,19,22	47-7426	P	08-15-1977		GROUNDWATER	RING RING	C C
			SESE		22	47-7959	R	08-19-1983		GROUNDWATER	BURGESS	C
		31	NWNE		01	47-4296	S	09-01-1949		WASTE WATER SPRINGS	OLSEN	C
			NWNE		01,46,52	47-7828	A	08-24-1982		WASTE WATER SPRINGS	OLSEN	C
			NWNE		01,10,19,22 43,46,52	47-7829	P	08-24-1982		GROUNDWATER	OLSEN	C

Illustration #1
Box Canyon Location Map

BUHL QUADRANGLE
IDAHO
15 MINUTE SERIES (TOPOGRAPHIC)

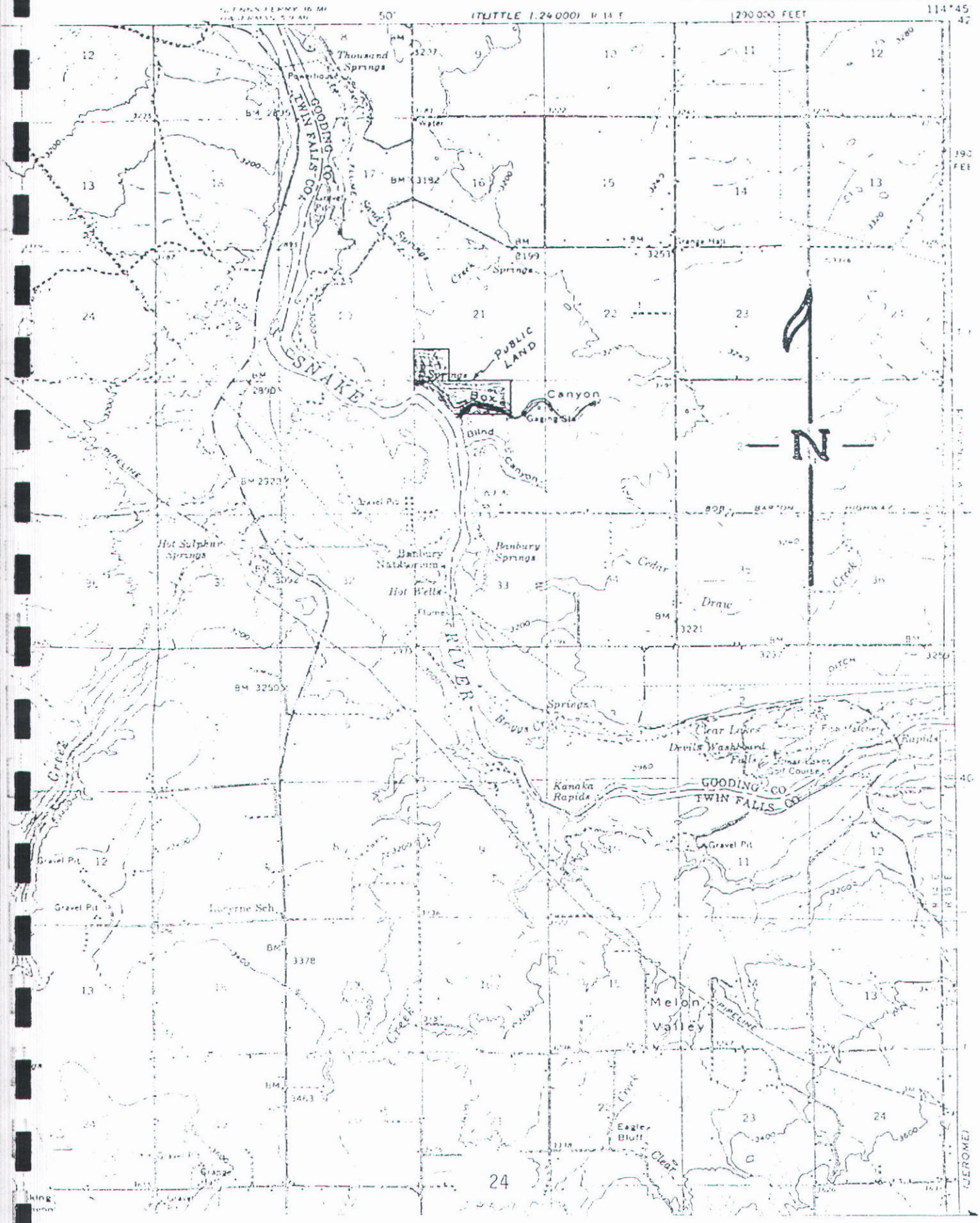
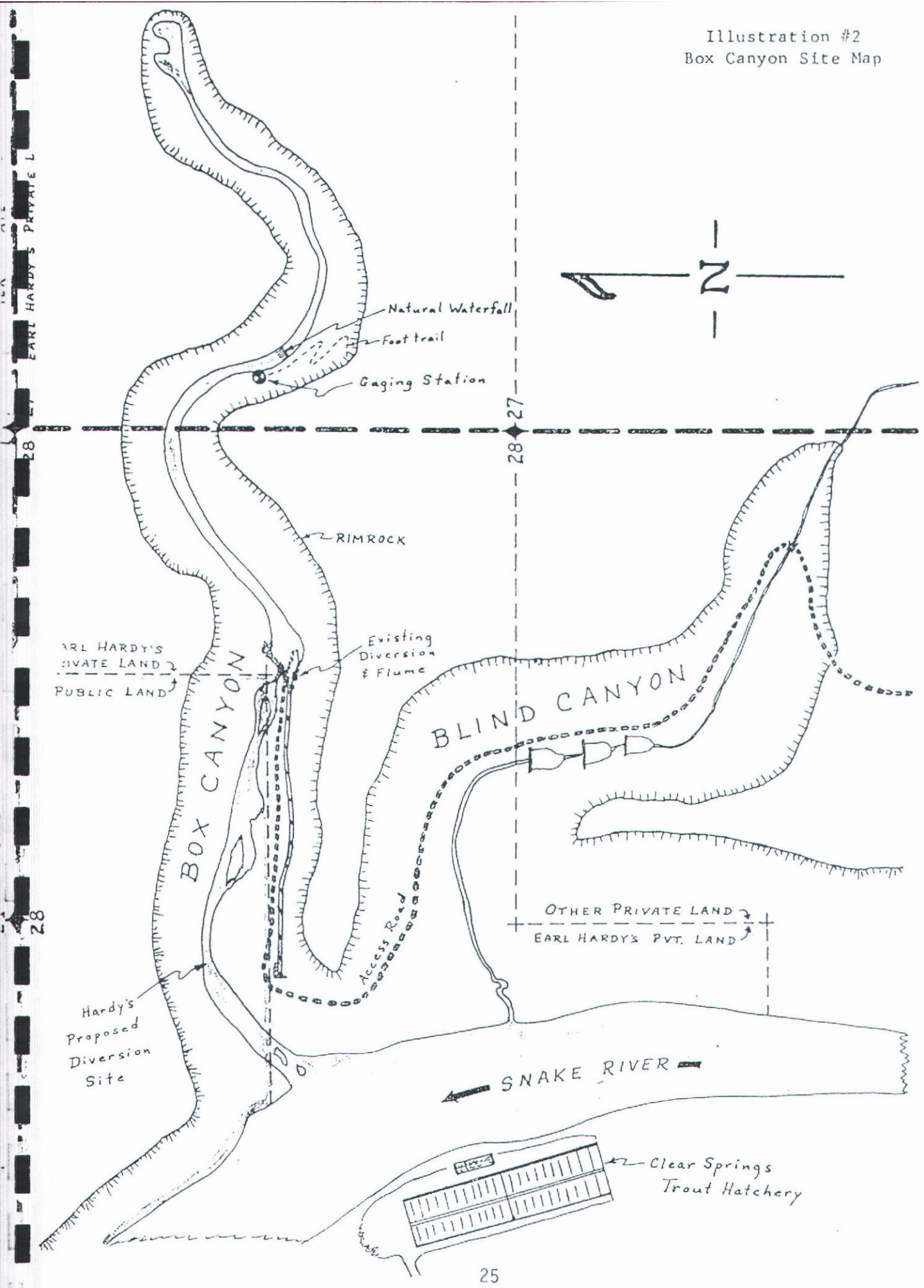
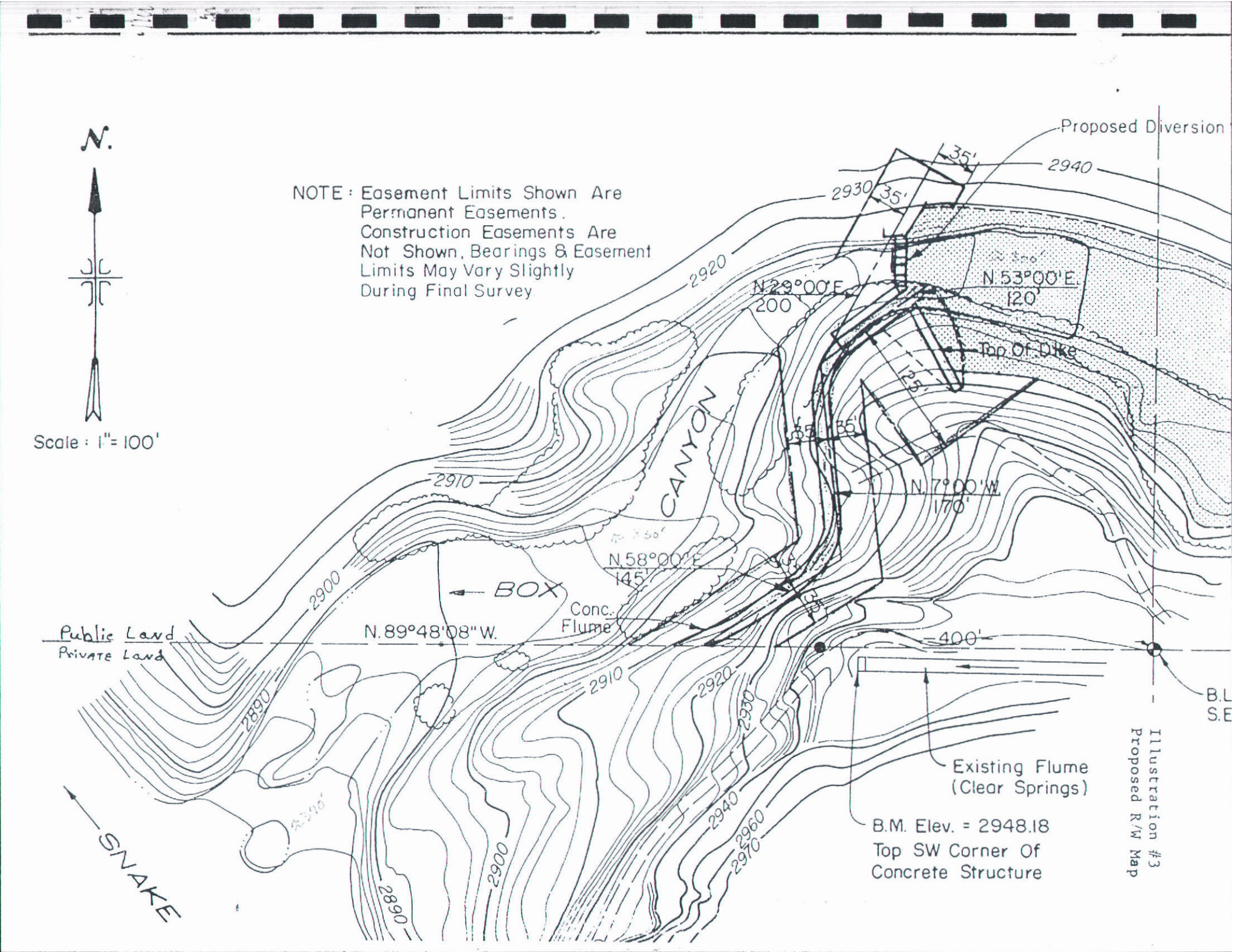
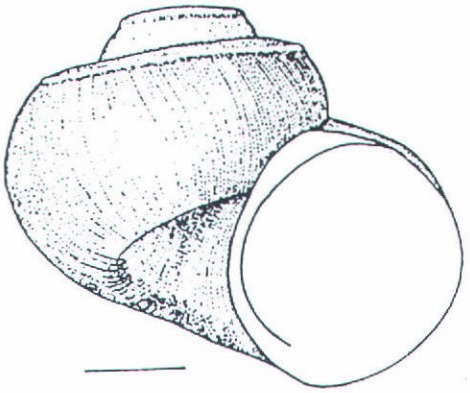


Illustration #2
Box Canyon Site Map




N.
Scale : 1"= 100'
NOTE : Easement Limits Shown Are Permanent Easements. Construction Easements Are Not Shown, Bearings & Easement Limits May Vary Slightly During Final Survey
Proposed Diversion
35'
2940
2930
35'
2920
N.29°00'E.
200
N.53°00'E.
120'
Top Of Dike
35'
35'
35'
2910
CANYON
N.7°00'W.
170'
N.58°00'E.
145'
BOX
2900
Conc. Flume
Public Land
Private Land
N.89°48'08"W.
400'
2890
2910
2920
2930
2940
2960
2970
2900
2890
SNAKE
Existing Flume
(Clear Springs)
B.M. Elev. = 2948.18
Top SW Corner Of
Concrete Structure
B.L
S.E
Illustration #3
Proposed R/W Map



Scale 1 mm

Drawing of Valvata utahensis by D.W. Taylor. From:
Taylor, D.W. August 13, 1982. Status Report on the Utah Valvata Snail in South-Western Idaho. Unpublished status review for the U.S. Fish and Wildlife Servic

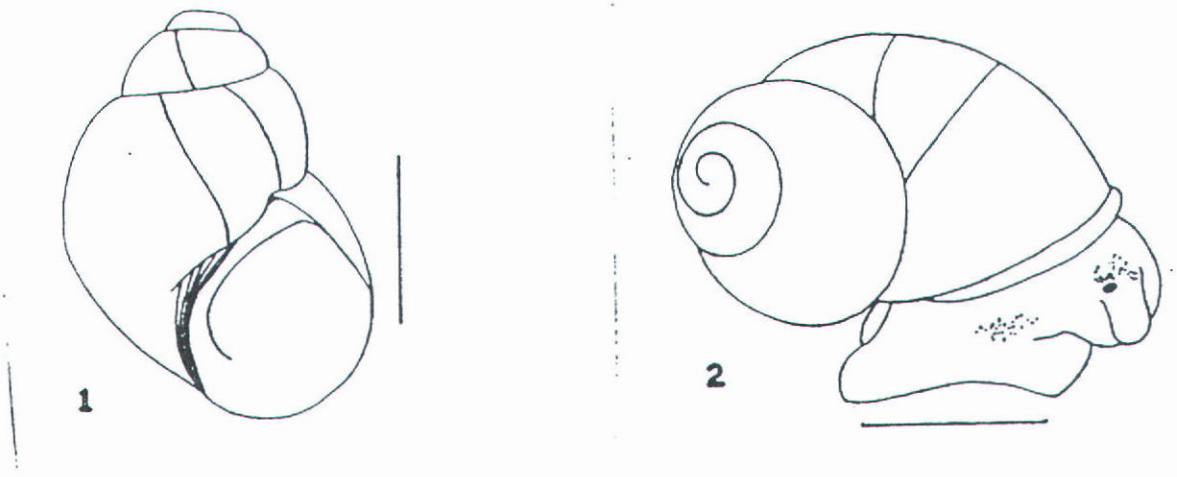


Figure 1. Shell of Bliss Rapids Snail. Scale 1 mm.

Drawing of the Bliss Rapids Snail by D.W. Taylor. From:
Taylor, D.W. August 13, 1982. Status Report on Bliss Rapids Snail. Unpublished status review for the U.S. Fish and Wildlife Service.

Illustration #4 Four Federal Candidate Threatened Species

, D.W. 1985. Evolution
f Freshwater Drainages and
lluscs in Western North
erica. Pages 265-321 in
Smiley, C.J. (Ed.) Late Cenozoic
istory of the Pacific Northwest.
cific Division AAAS and California
Academy of Sciences, San Francisco,
alifornia.



Figure 16. Distribution of freshwater snail *Valvata utahensis* Call (family Valvatidae). Solid dots, modern; triangles, fossil. Inset: original illustrations of the species, from Call (1884).

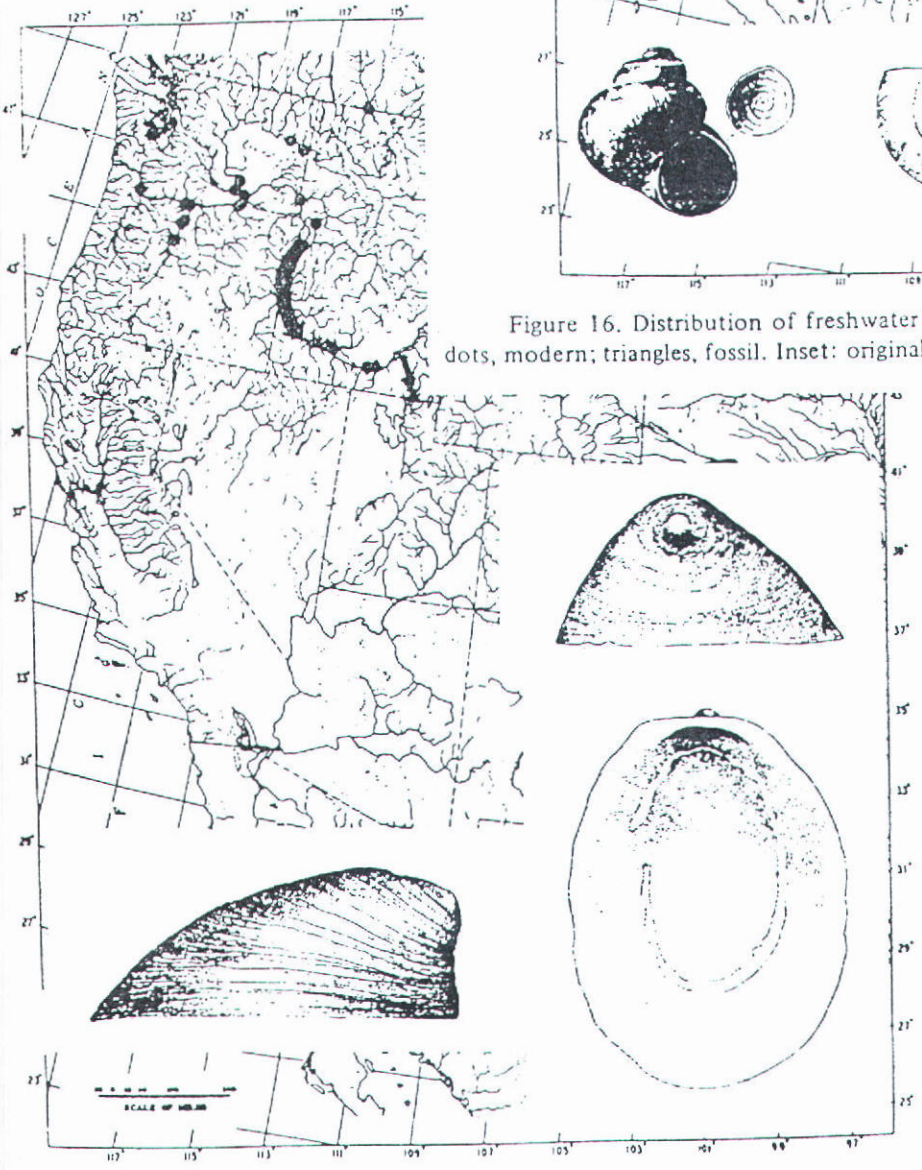


Figure 36. Distribution of freshwater snail *Fisherola nuttalli* (Haldeman) (family Lancidae). dots, modern; triangles, fossil. Arrows show inferred upstream spread after cutting of Hells

Illustration #4 Four Federal
Candidate Threatened Species

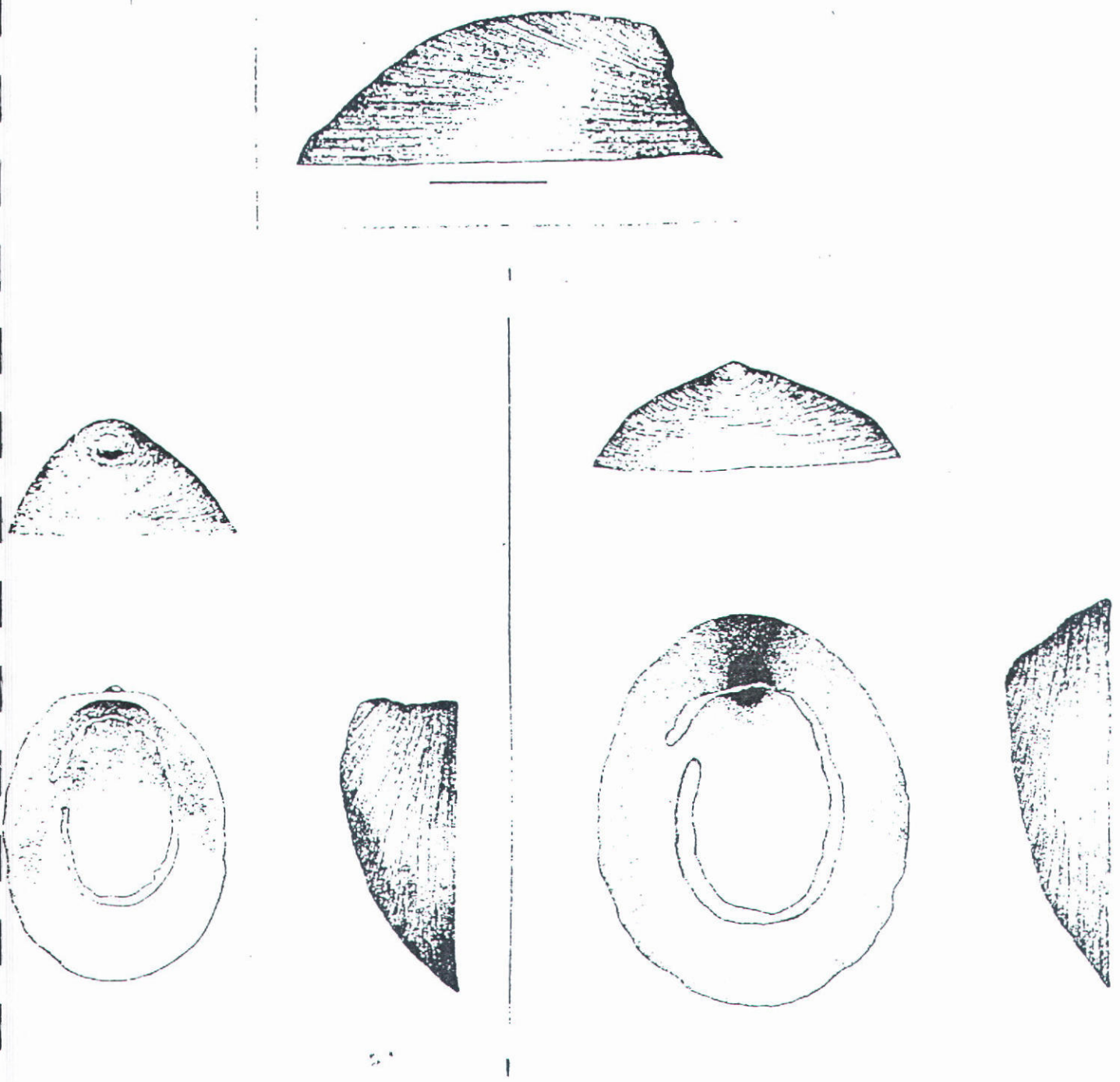
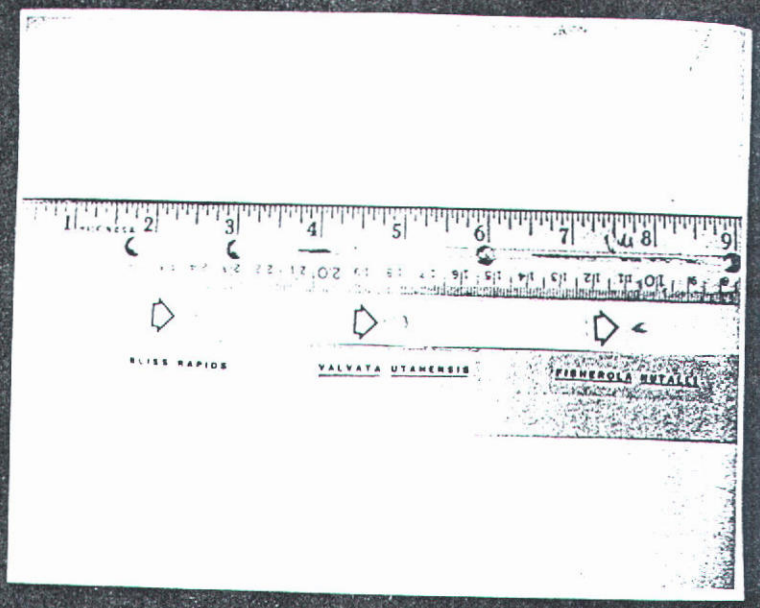
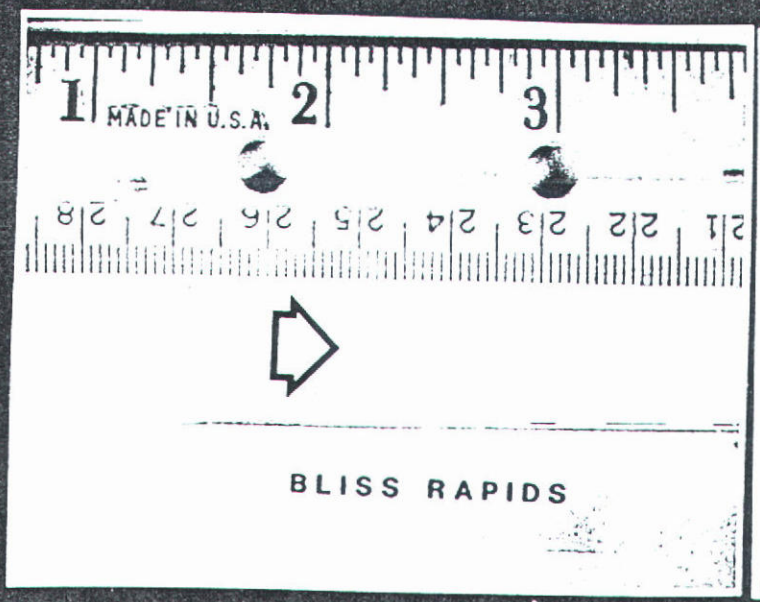


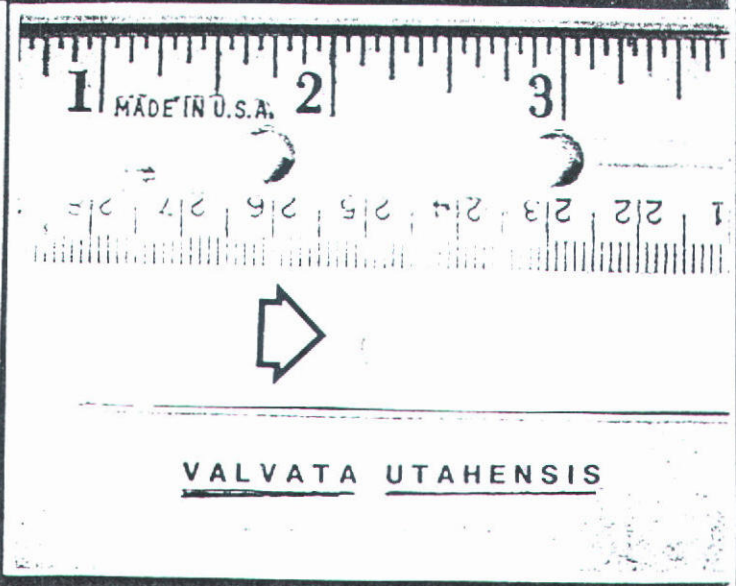
Figure 1. Shells of Fisherola nuttalli (Haldeman); Scale 3 mm. Three specimens, all from Snake River opposite Bancroft Springs, Elmore County, Idaho.

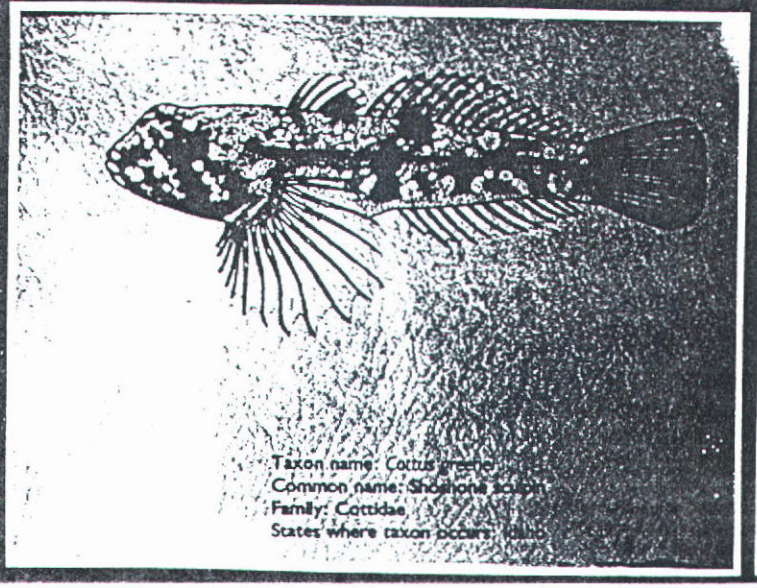
Drawing of Fisherola nuttalli by D.W. Taylor. From:
Taylor, D.W. Status Report on Giant Columbia River Limpet in Southwestern Idaho.

Illustration #4
Photos of Four Federal Candidate Threatened Species









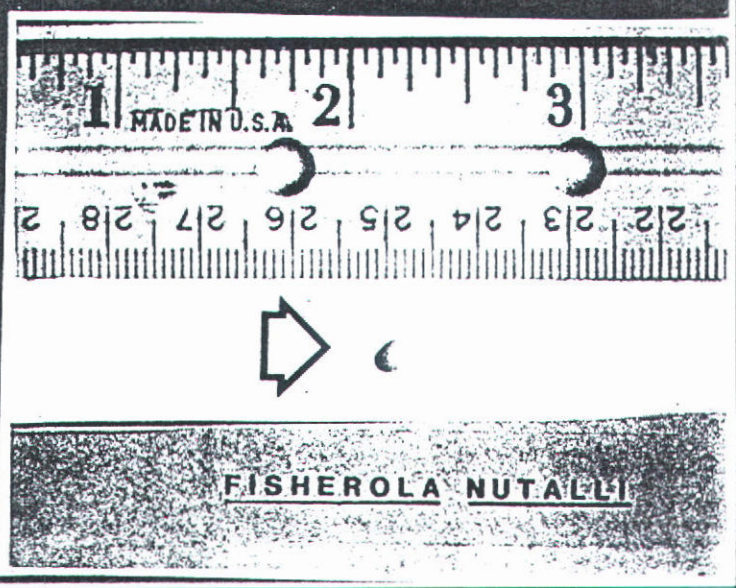
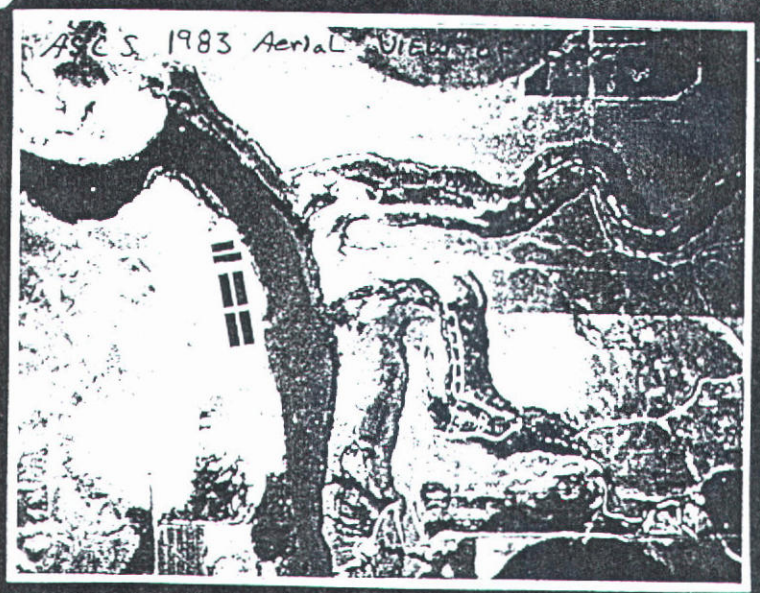
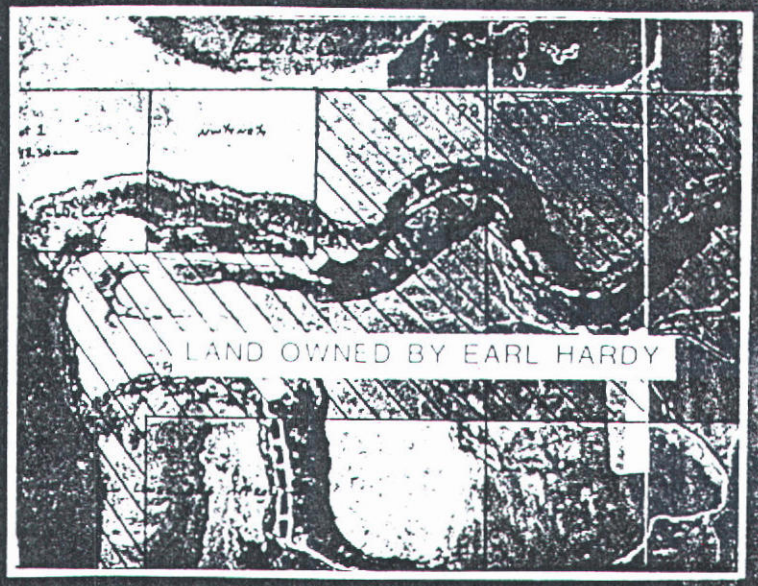
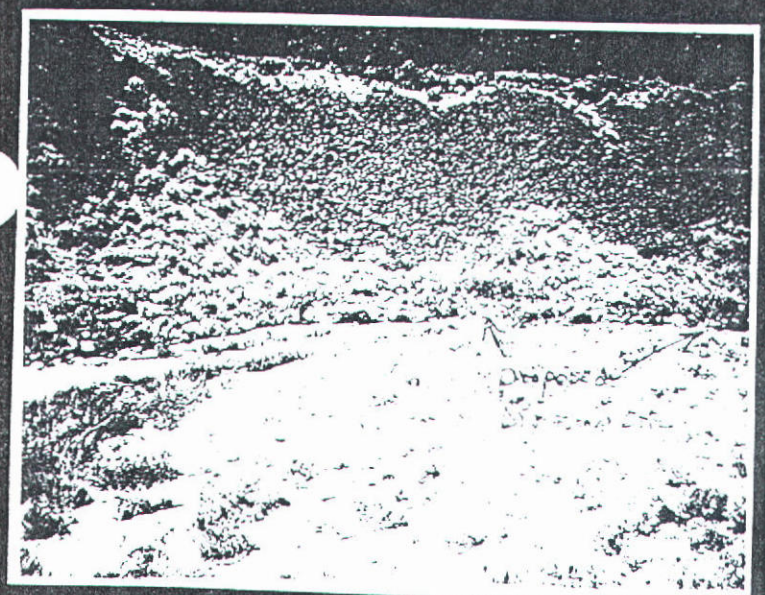


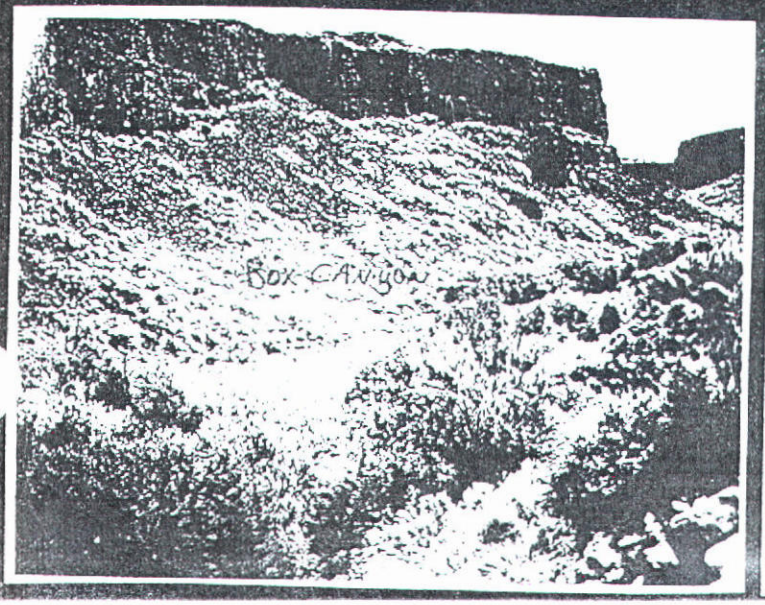
Illustration #5
Photos of Box Canyon

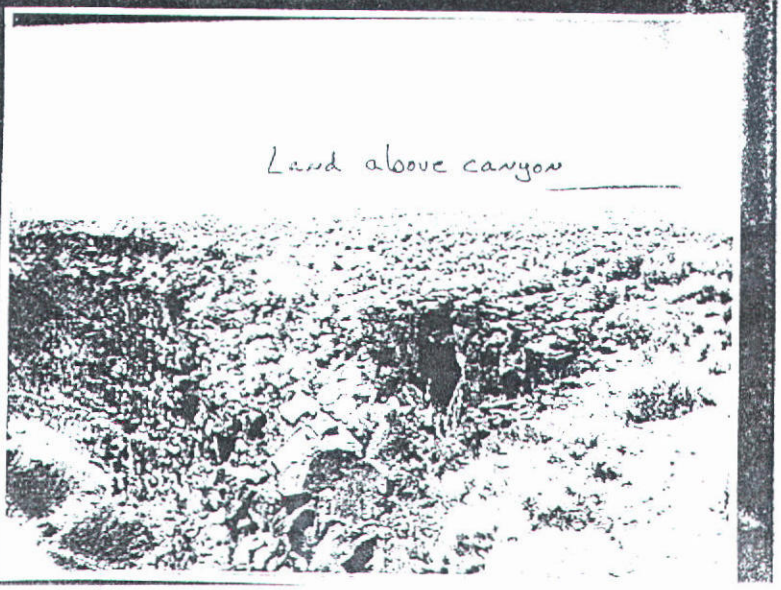


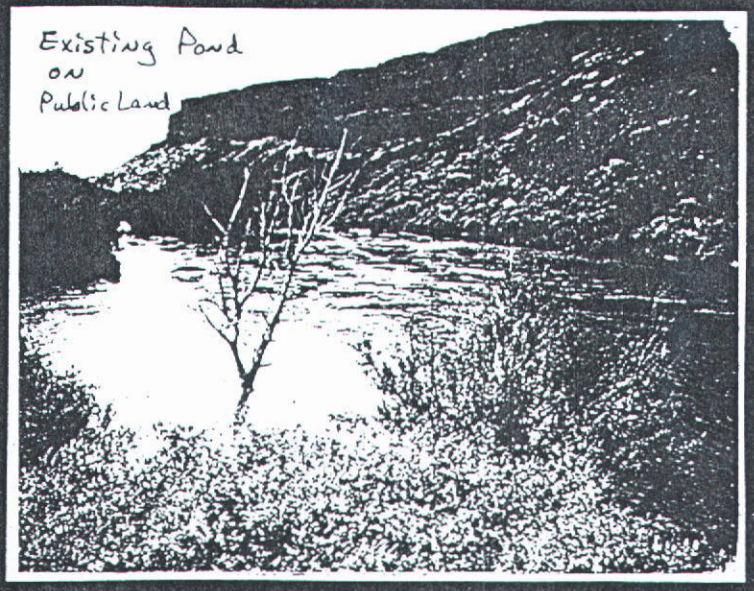


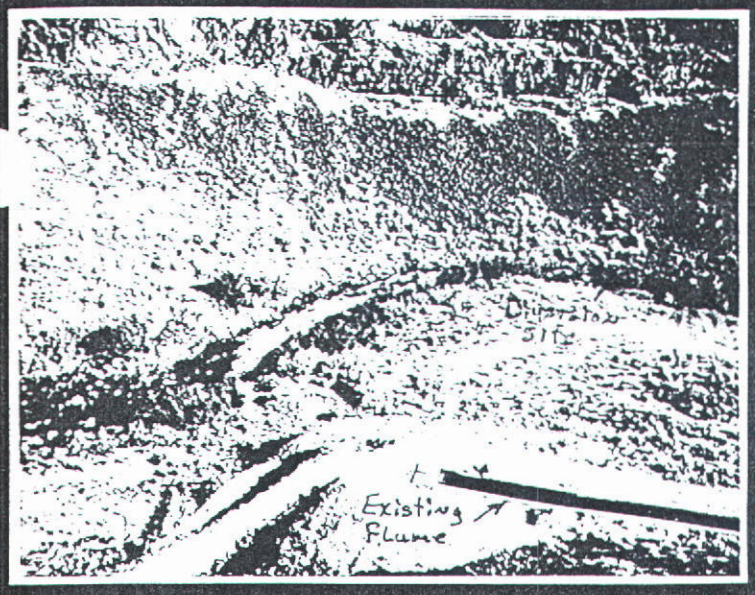




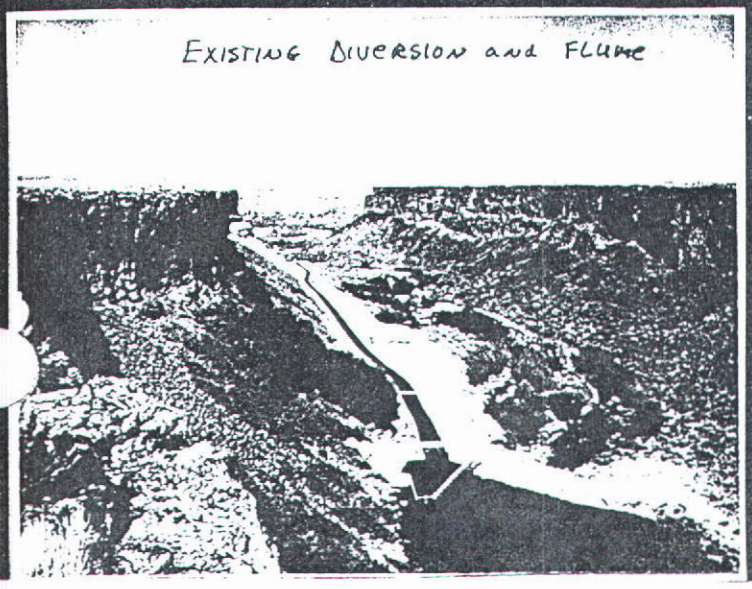





Existing Pond
on
Public Land


Diversion
Site
Existing
Flume


Existing
Road


EXISTING DIVERSION and FLUME

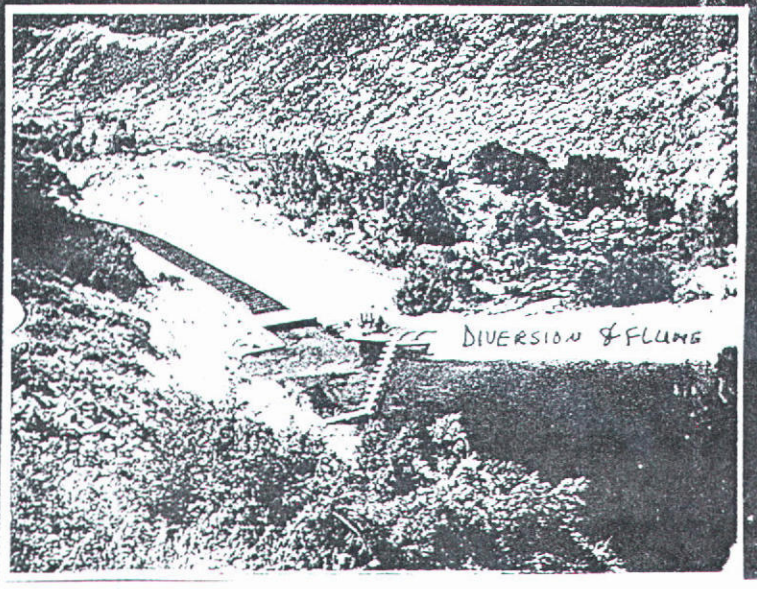
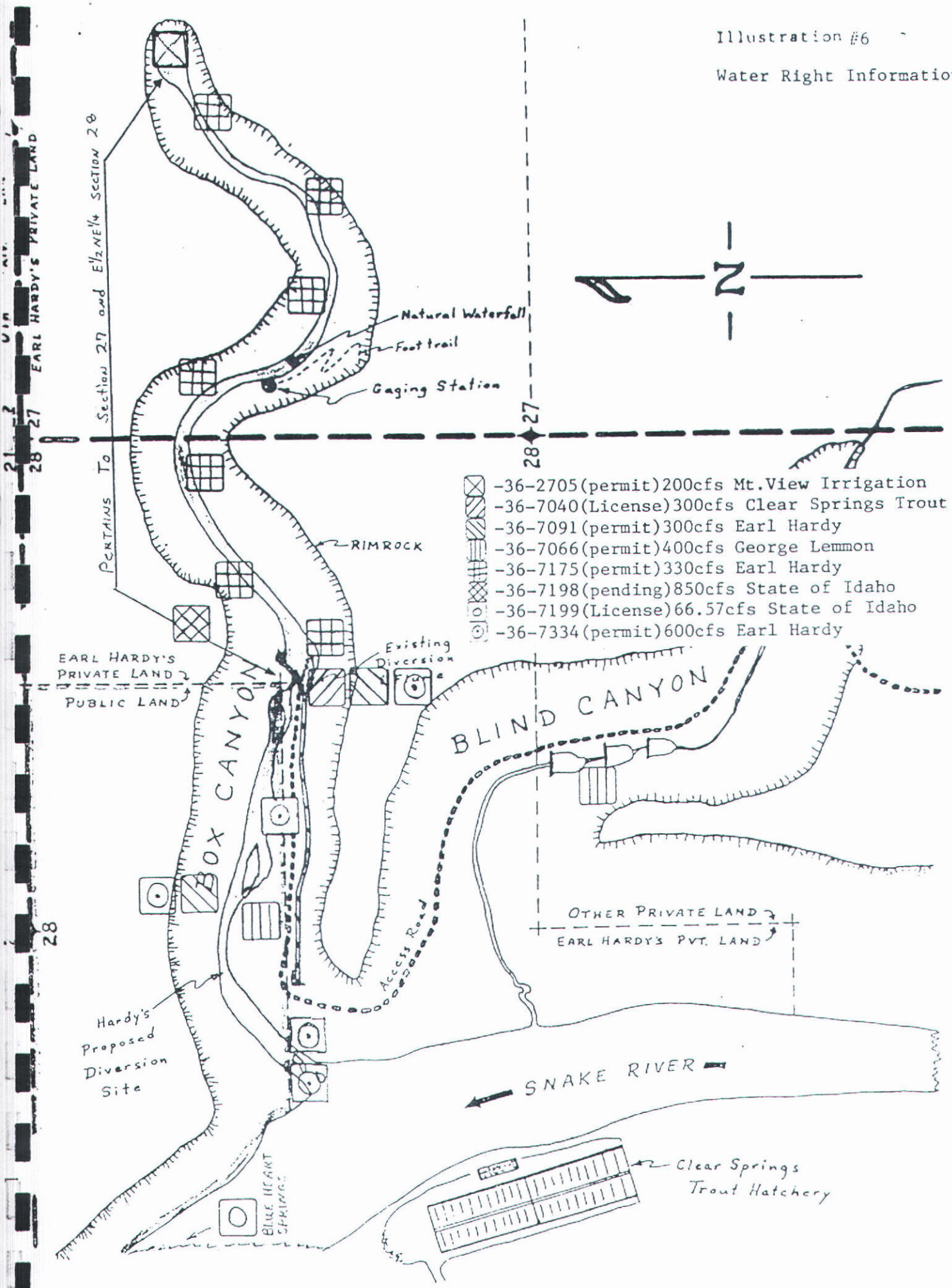
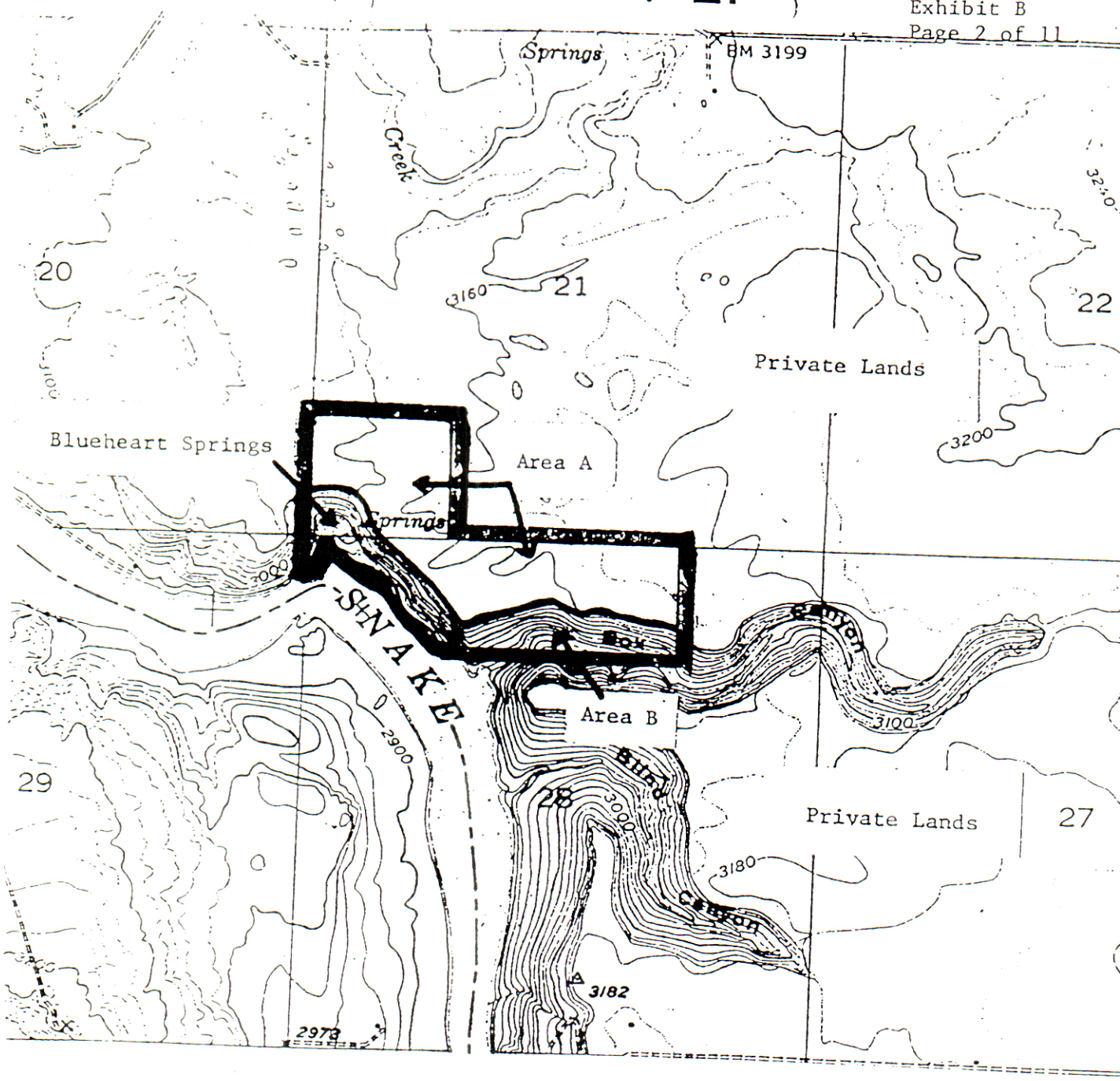
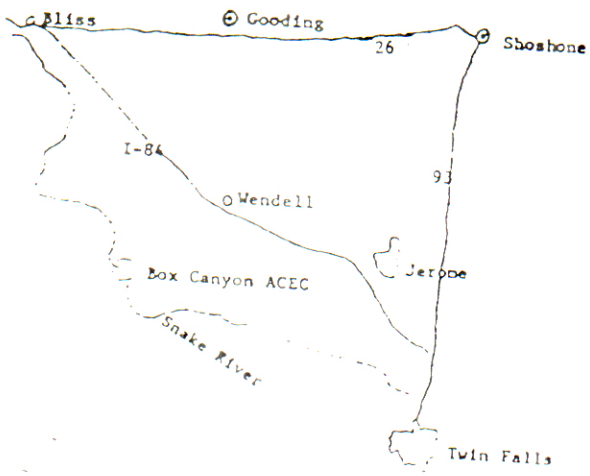

DIVERSION & FLUME

Illustration #6

Water Right Information







N

BOX CANYON ACEC LOCATION MAP

BLM-Administered Lands

Boundary Between
Area A and Area B

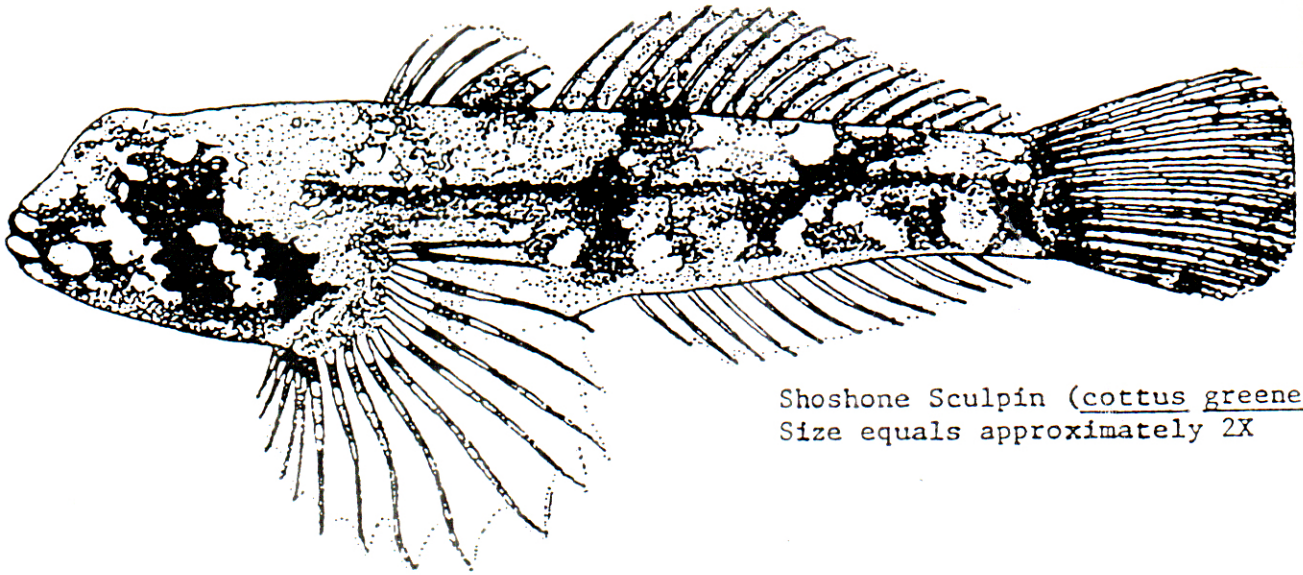
ACEC PLAN

F.

BOX CANYON

AREA OF CRITICAL ENVIRONMENTAL CONCERN

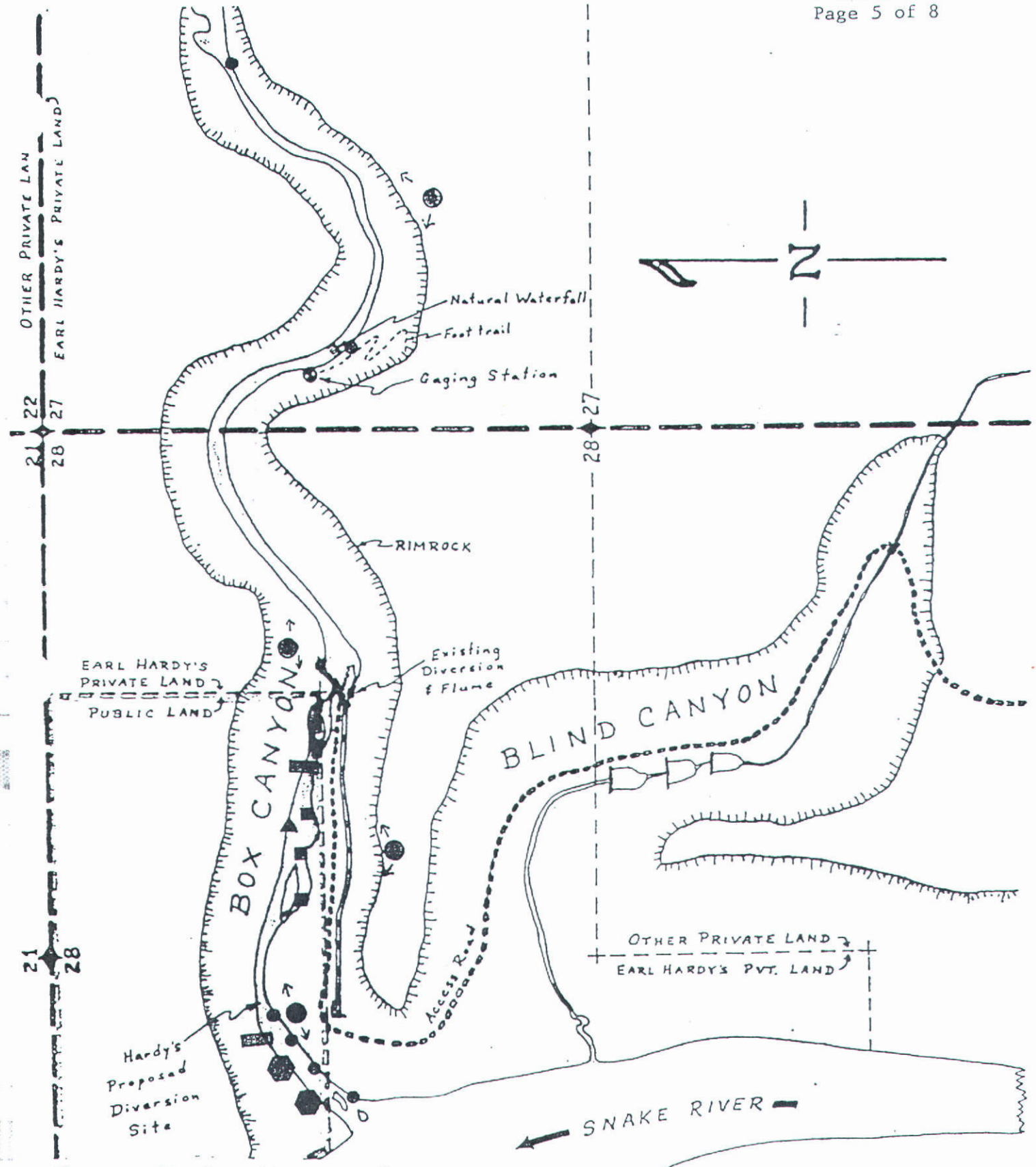
MANAGEMENT PLAN



Shoshone Sculpin (cottus greenei)
Size equals approximately 2X

BUREAU OF LAND MANAGEMENT
SHOSHONE DISTRICT OFFICE
SHOSHONE, IDAHO

1985



These monitoring sites are only APPROXIMATE. Locations are subject to change after construction

Illustration #1
Box Canyon Location Map

BUHL QUADRANGLE
IDAHO
15 MINUTE SERIES (TOPOGRAPHIC)

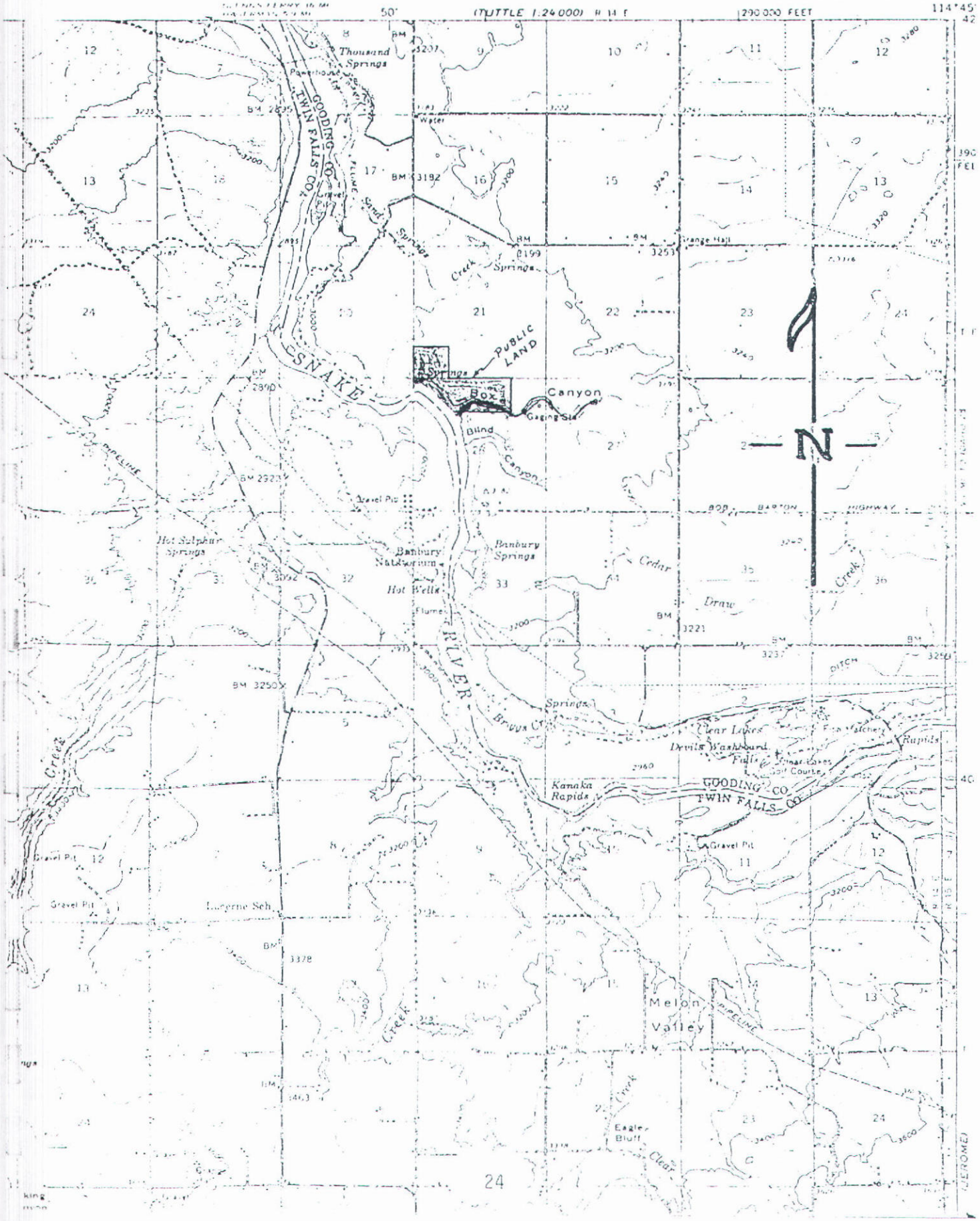
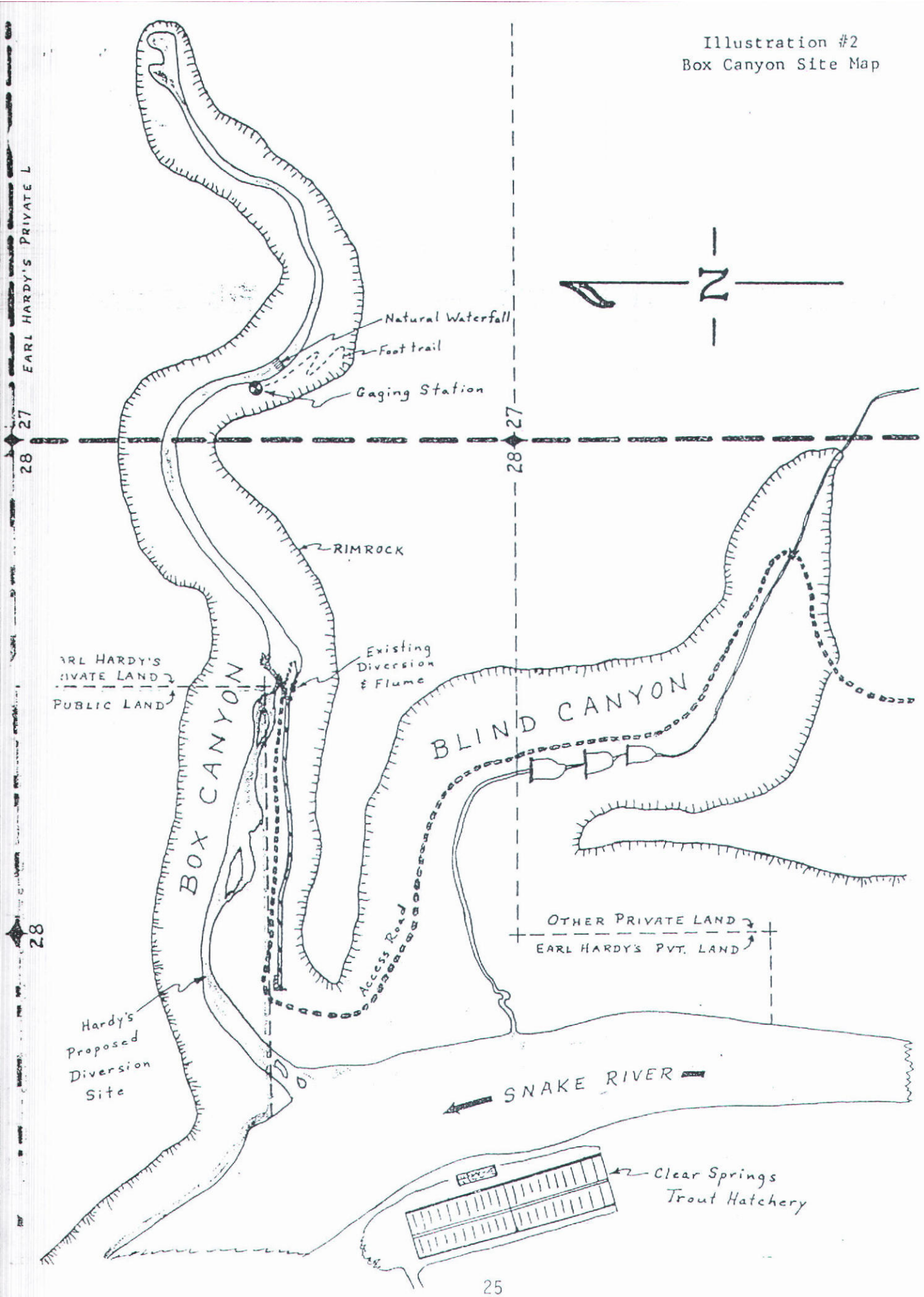
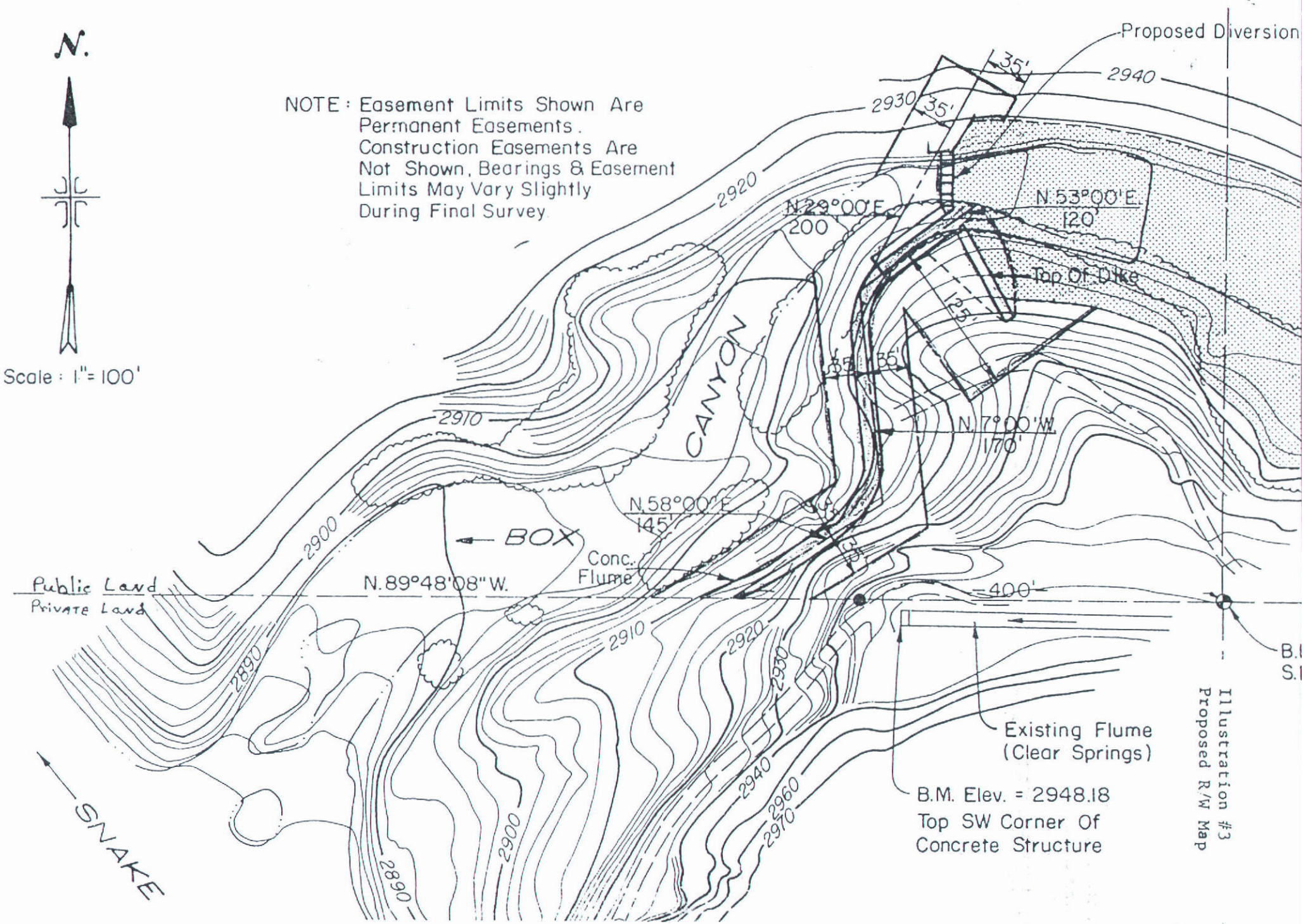
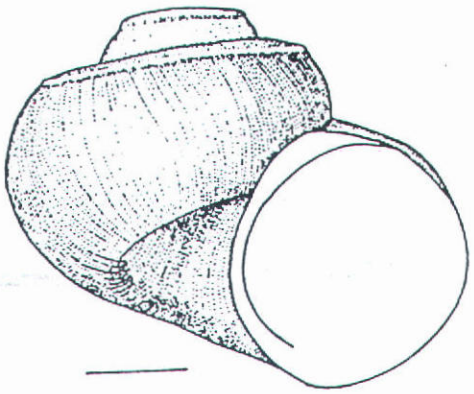


Illustration #2
Box Canyon Site Map




N.
Scale : 1"= 100'
NOTE : Easement Limits Shown Are Permanent Easements. Construction Easements Are Not Shown, Bearings & Easement Limits May Vary Slightly During Final Survey
Proposed Diversion
35'
2940
2930
35'
2920
N.29°00'E.
200
N.53°00'E.
120
Top Of Dike
35'
35'
35'
CANYON
2910
N.7°00'W.
170'
N.58°00'E.
145'
BOX
2900
Conc. Flume
Public Land
Private Land
N.89°48'08"W.
400'
2890
2910
2920
2930
2940
2960
2970
2900
2890
SNAKE
Existing Flume
(Clear Springs)
B.M. Elev. = 2948.18
Top SW Corner Of
Concrete Structure
Illustration #3
Proposed R/W Map



Scale 1 mm

Drawing of Valvata utahensis by D.W. Taylor. From:
Taylor, D.W. August 13, 1982. Status Report on the Utah Valvata Snail in South-Western Idaho. Unpublished status review for the U.S. Fish and Wildlife Service

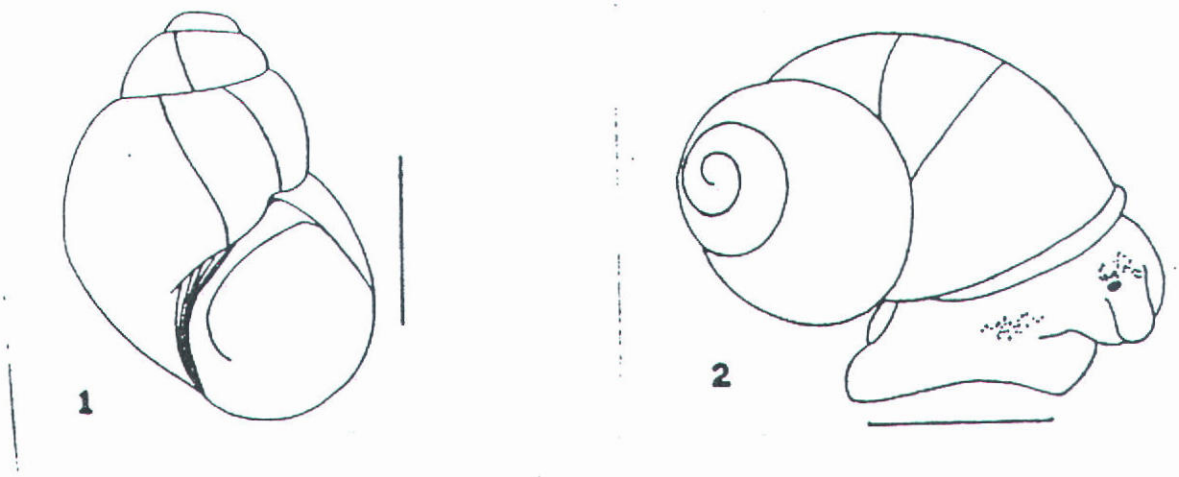


Figure 1. Shell of Bliss Rapids Snail. Scale 1 mm.

Drawing of the Bliss Rapids Snail by D.W. Taylor. From:
Taylor, D.W. August 13, 1982. Status Report on Bliss Rapids Snail. Unpublished status review for the U.S. Fish and Wildlife Service.

Illustration #4 Four Federal Candidate Threatened Species

3y . , D.W. 1985. Evolution
-f Freshwater Drainages and
olluscs in Western North
America. Pages 265-321 in
Smiley, C.J. (Ed.) Late Cenozoic
istory of the Pacific Northwest.
.acific Division AAAS and California
Academy of Sciences, San Francisco,
alifornia.

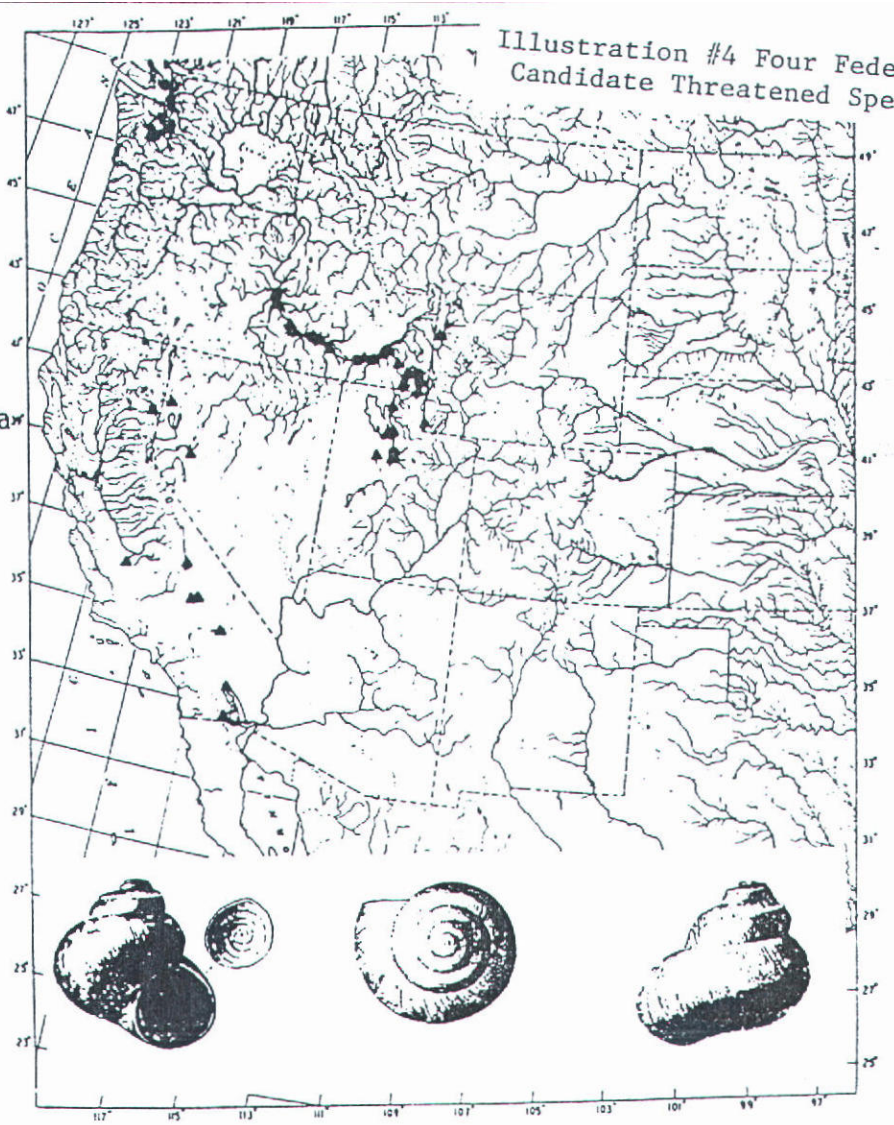


Figure 16. Distribution of freshwater snail *Valvata utahensis* Call (family Valvatidae). Soli dots, modern; triangles, fossil. Inset: original illustrations of the species, from Call (1884).

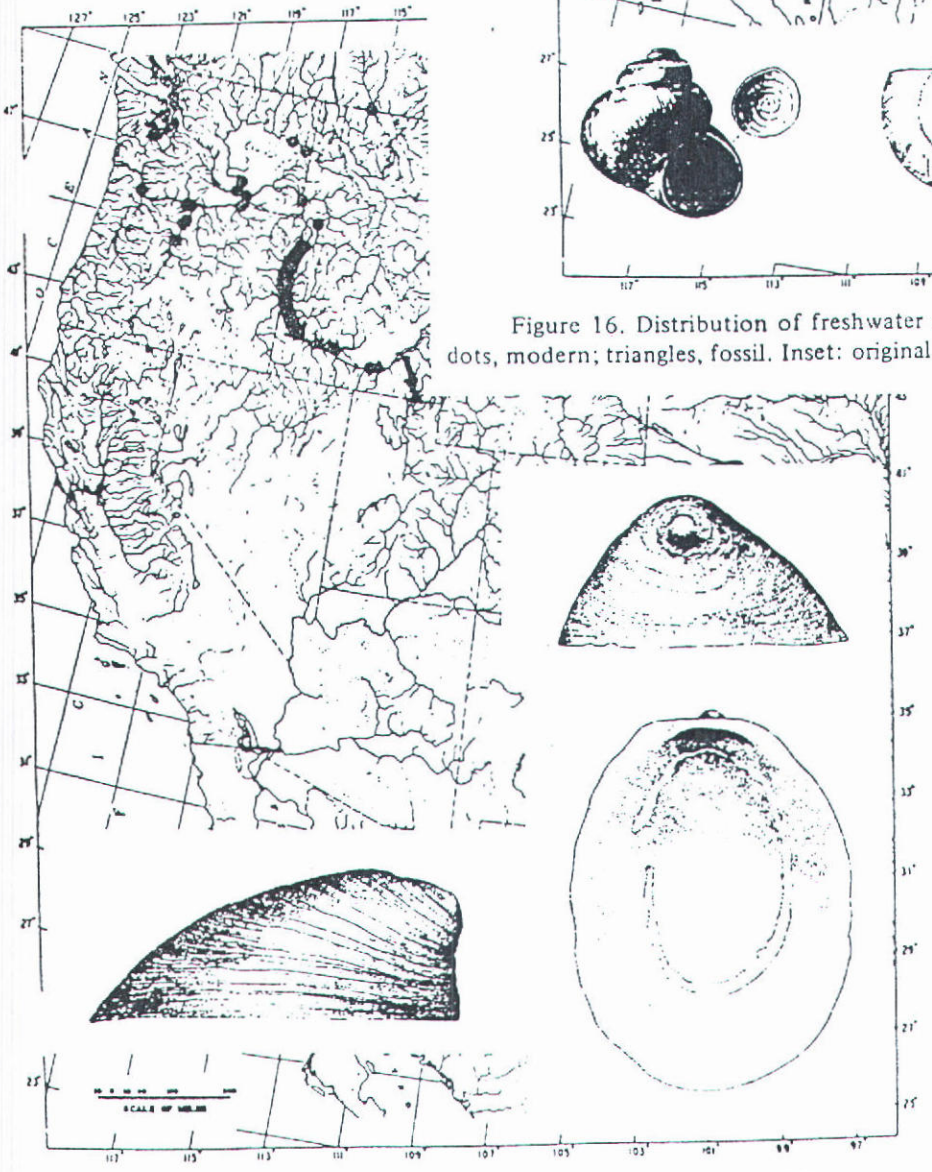


Figure 36. Distribution of freshwater snail *Fisherola nuttalli* (Haldeman) (family Lancidae). nd, dots, modern; triangles, fossil. Arrows show inferred upstream spread after cutting of Hells

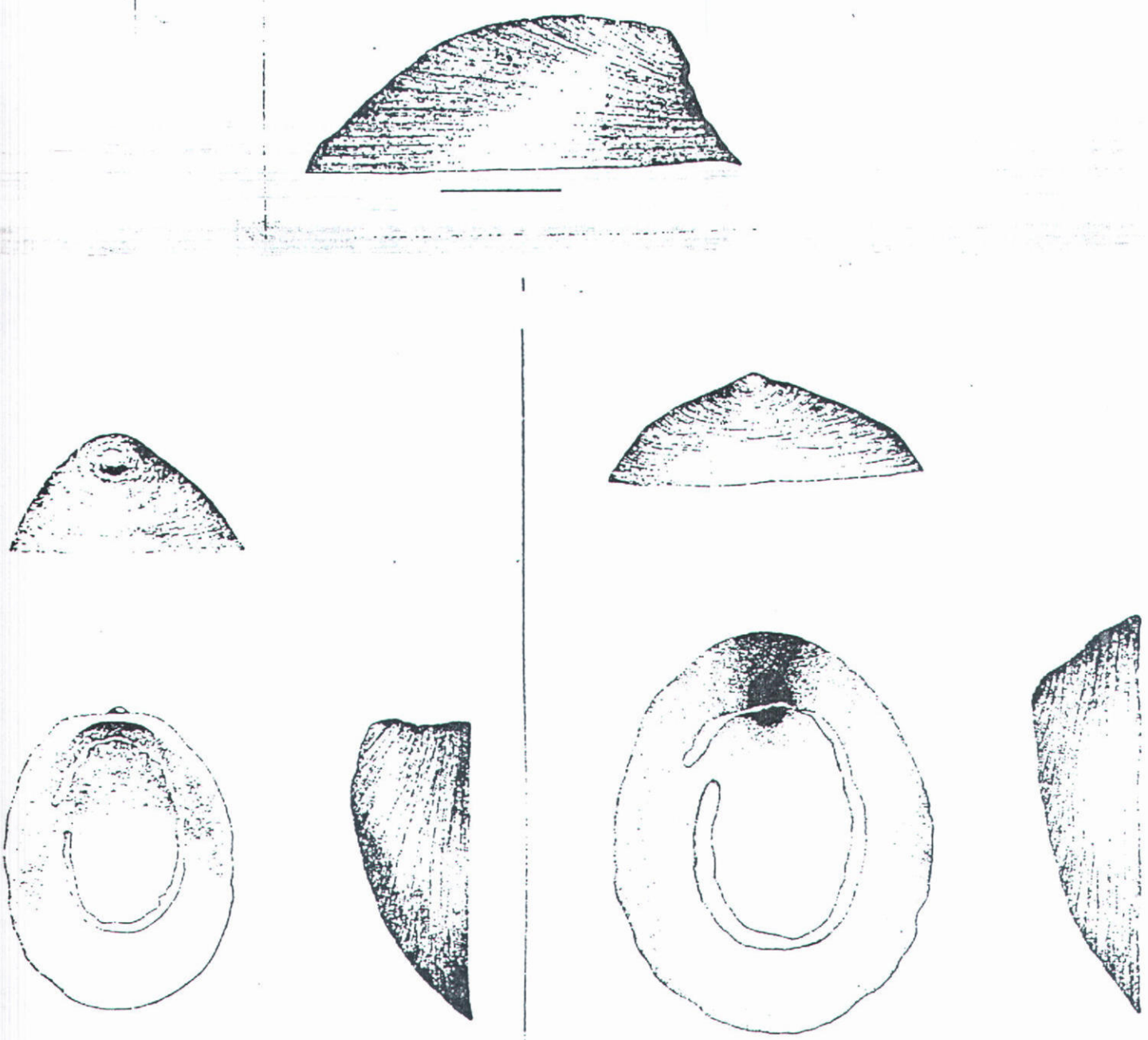
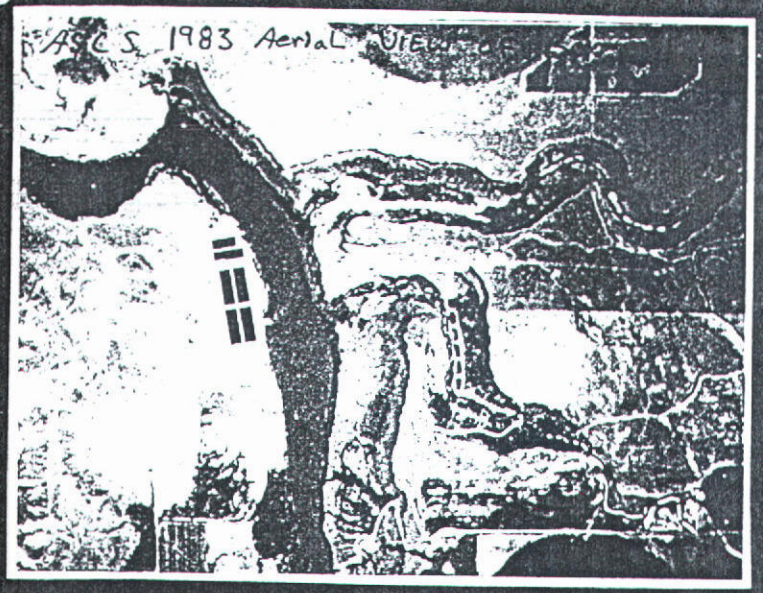
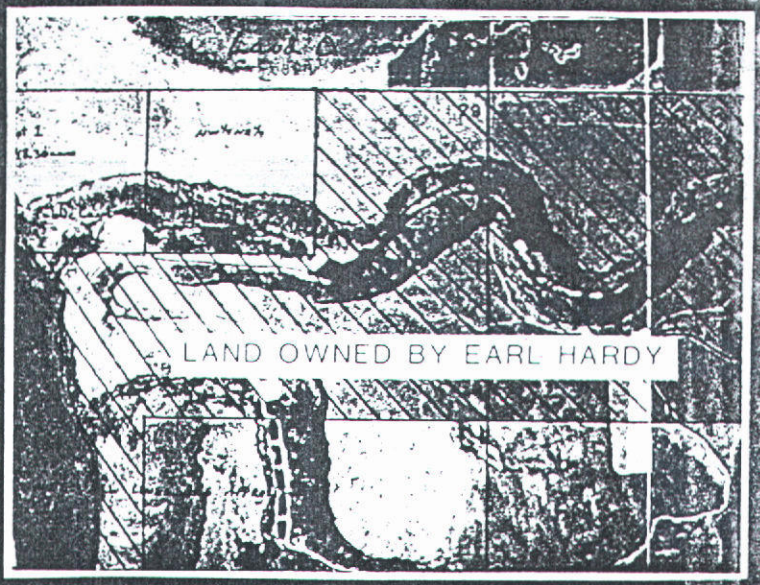


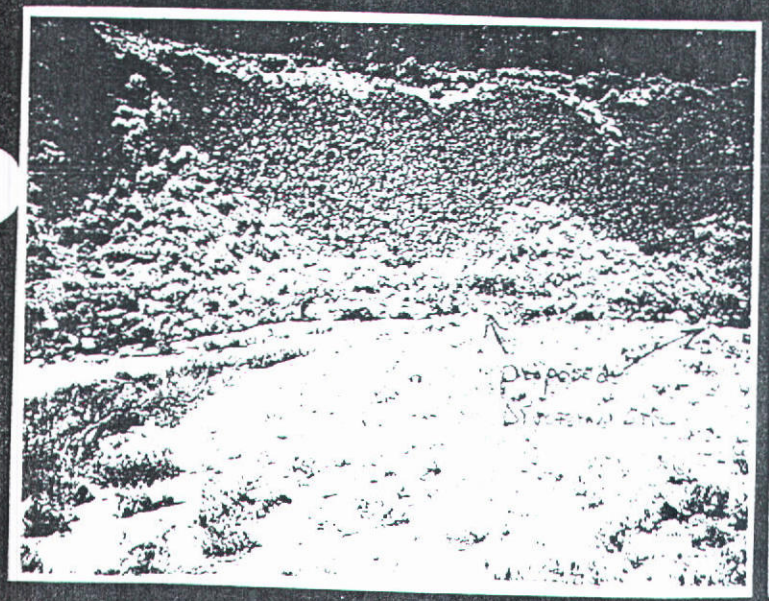
Figure 1. Shells of Fisherola nuttalli (Haldeman); Scale 3 mm. Three specimens, all from Snake River opposite Bancroft Springs, Elmore County, Idaho.

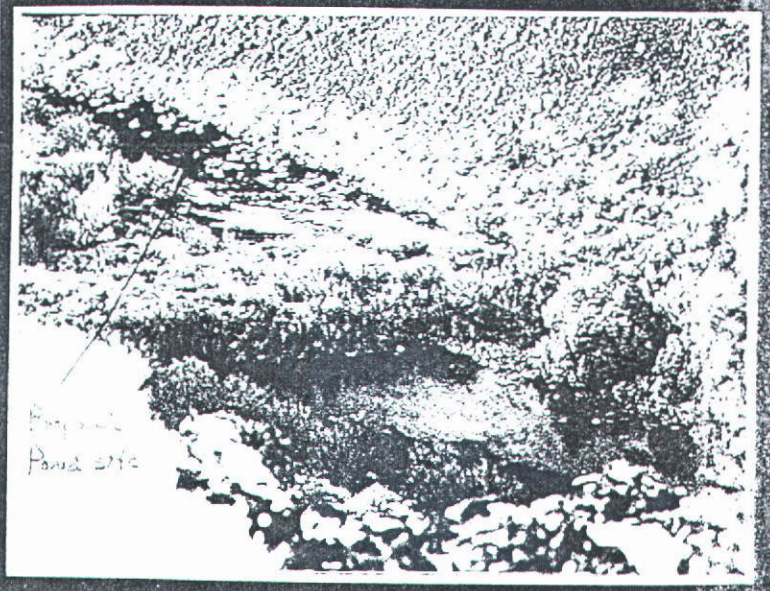
Drawing of Fisherola nuttalli by D.W. Taylor. From:
Taylor, D.W. Status Report on Giant Columbia River Limpet in Southwestern Idaho

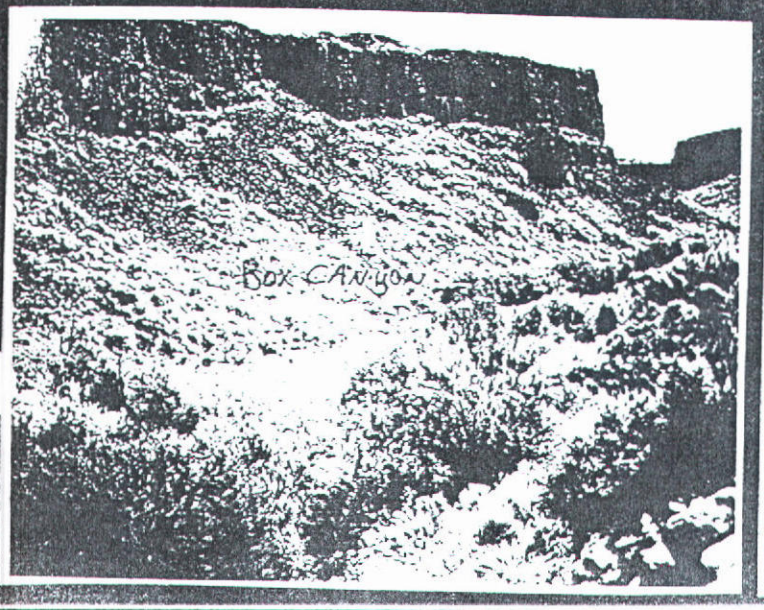
Illustration #5
Photos of Box Canyon











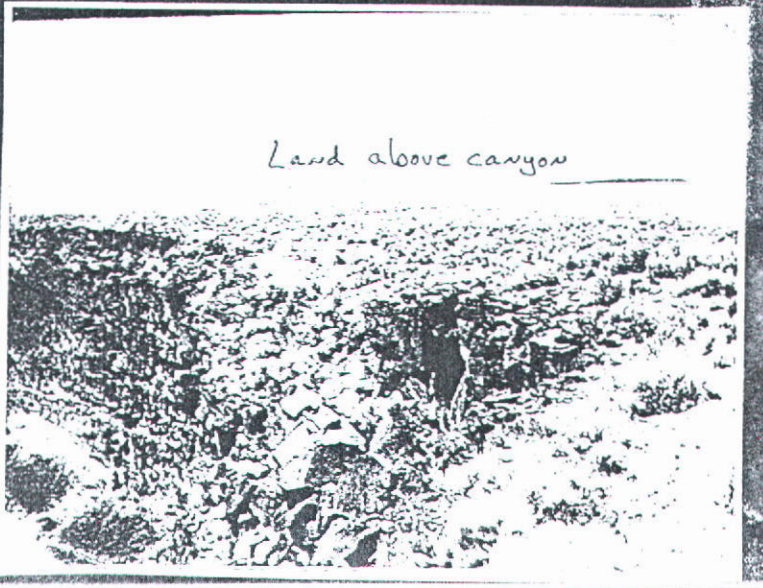
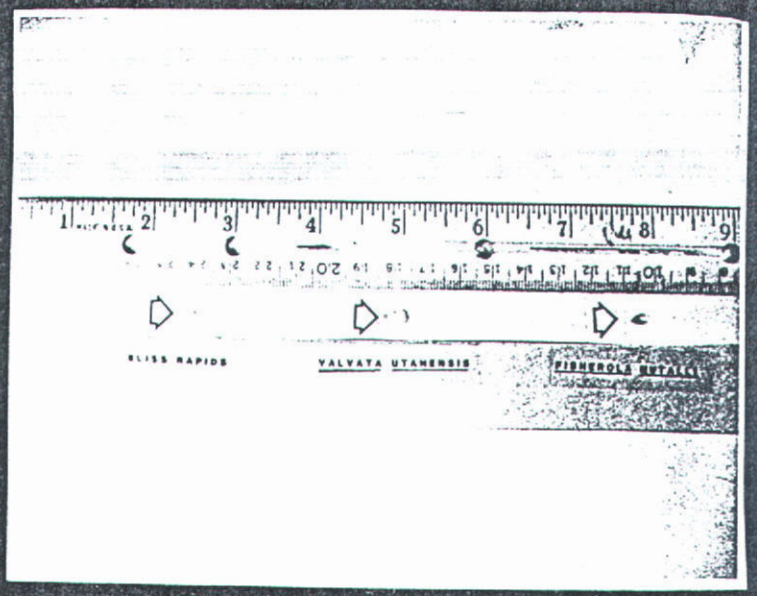
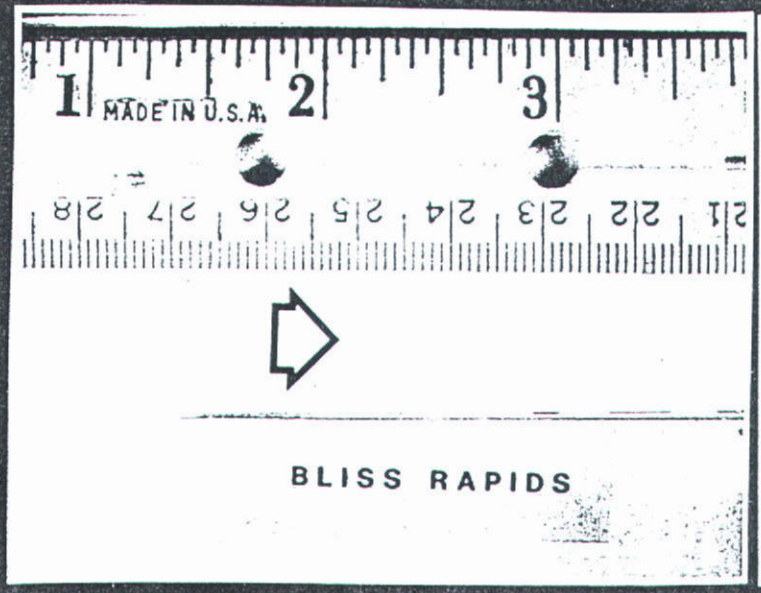
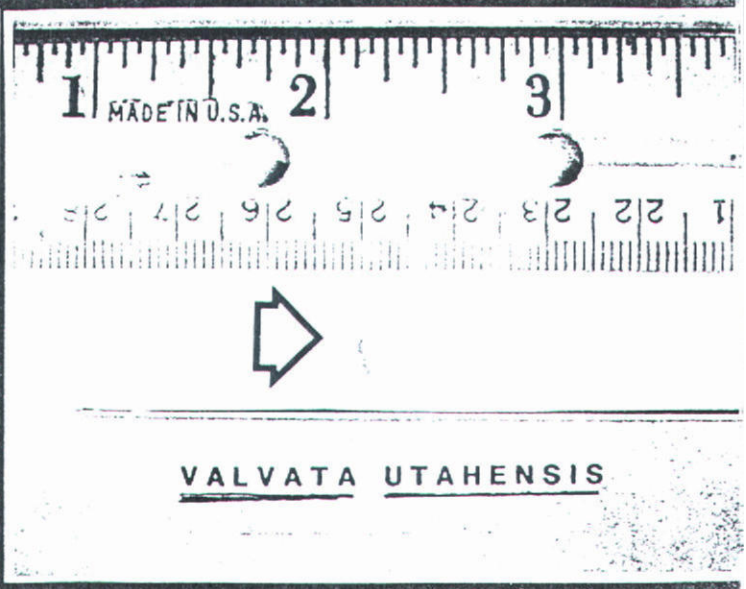
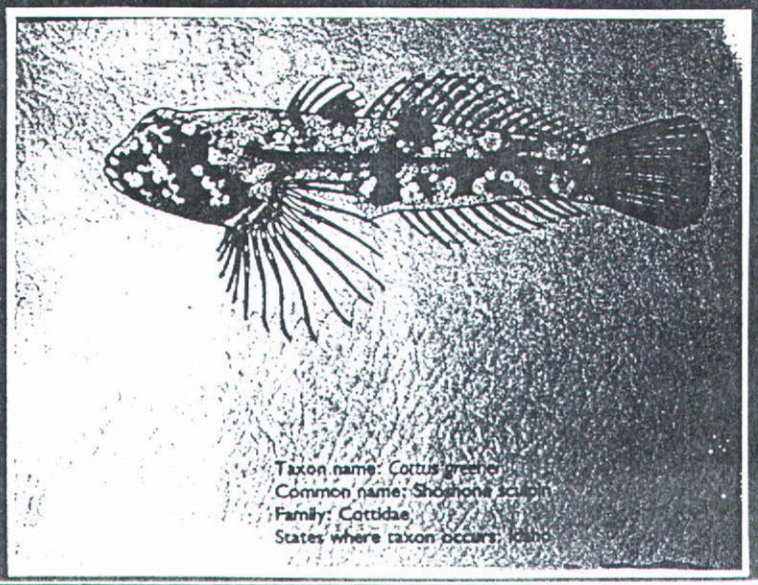


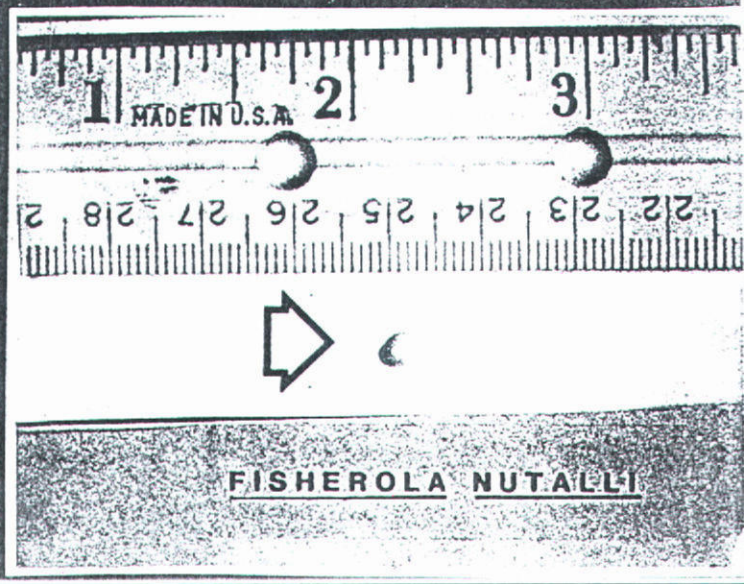
Illustration #4
Photos of Four Federal Candidate Threatened Species

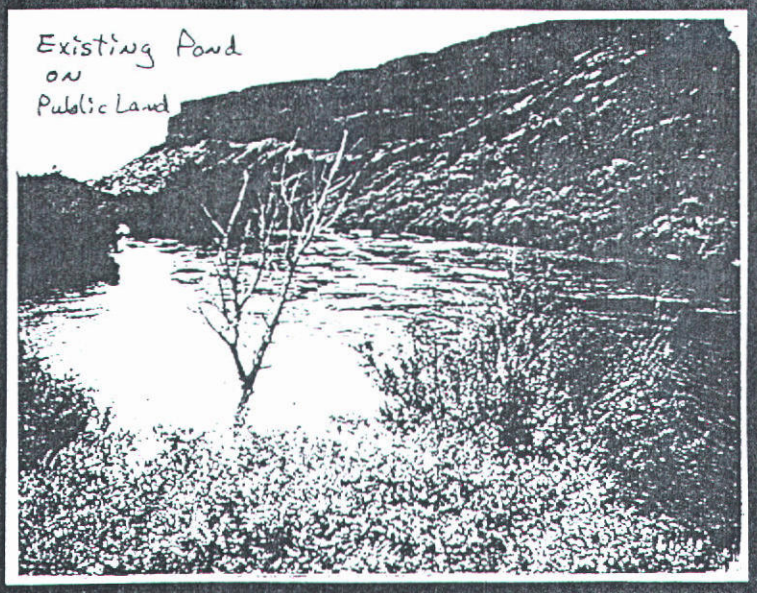


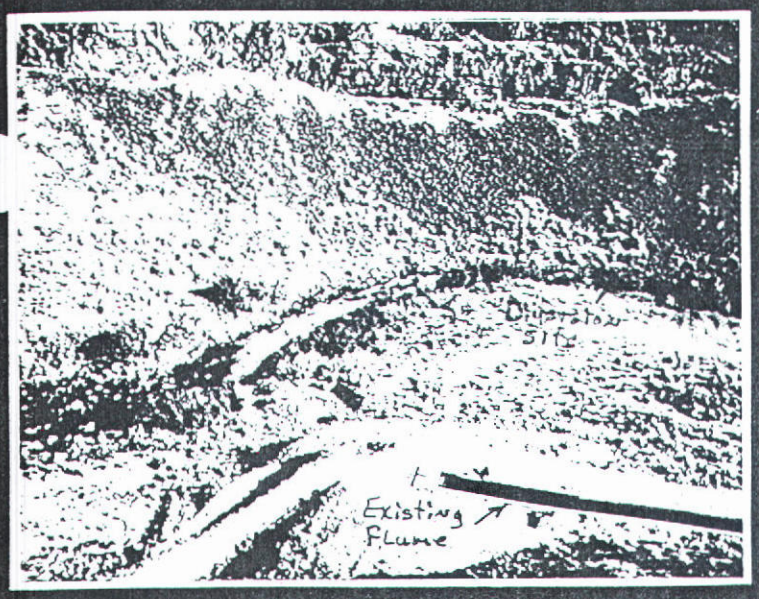


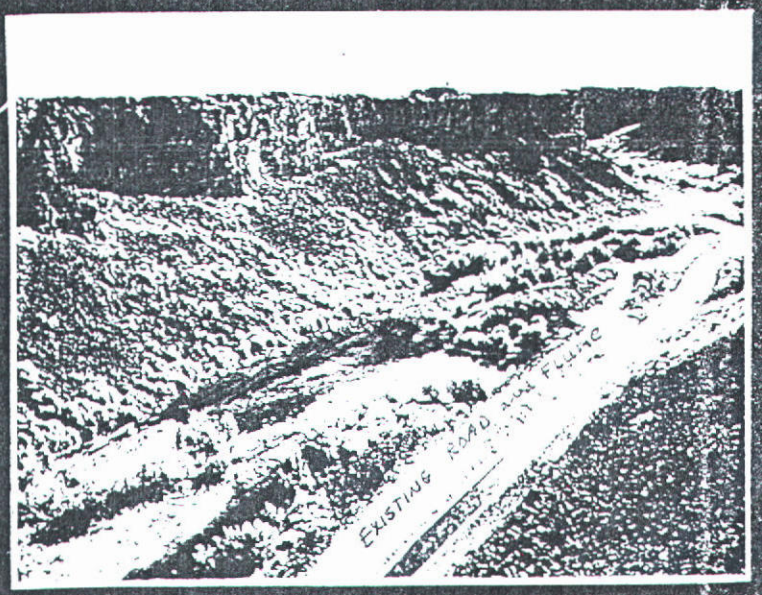




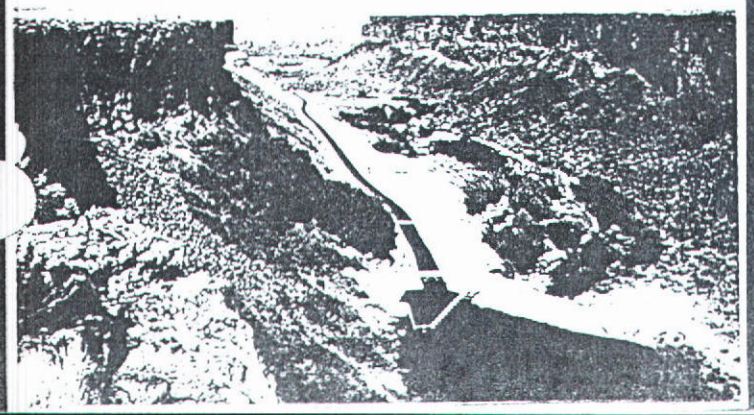








EXISTING DIVERSION and FLUME



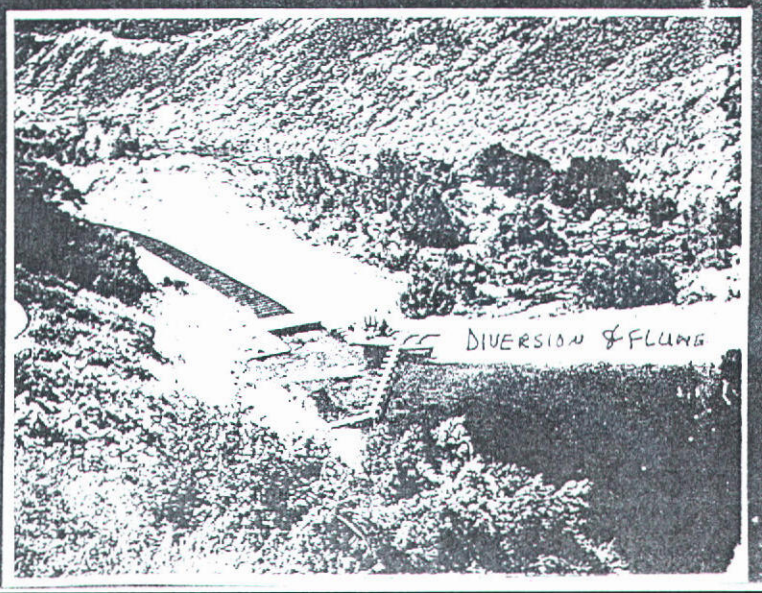
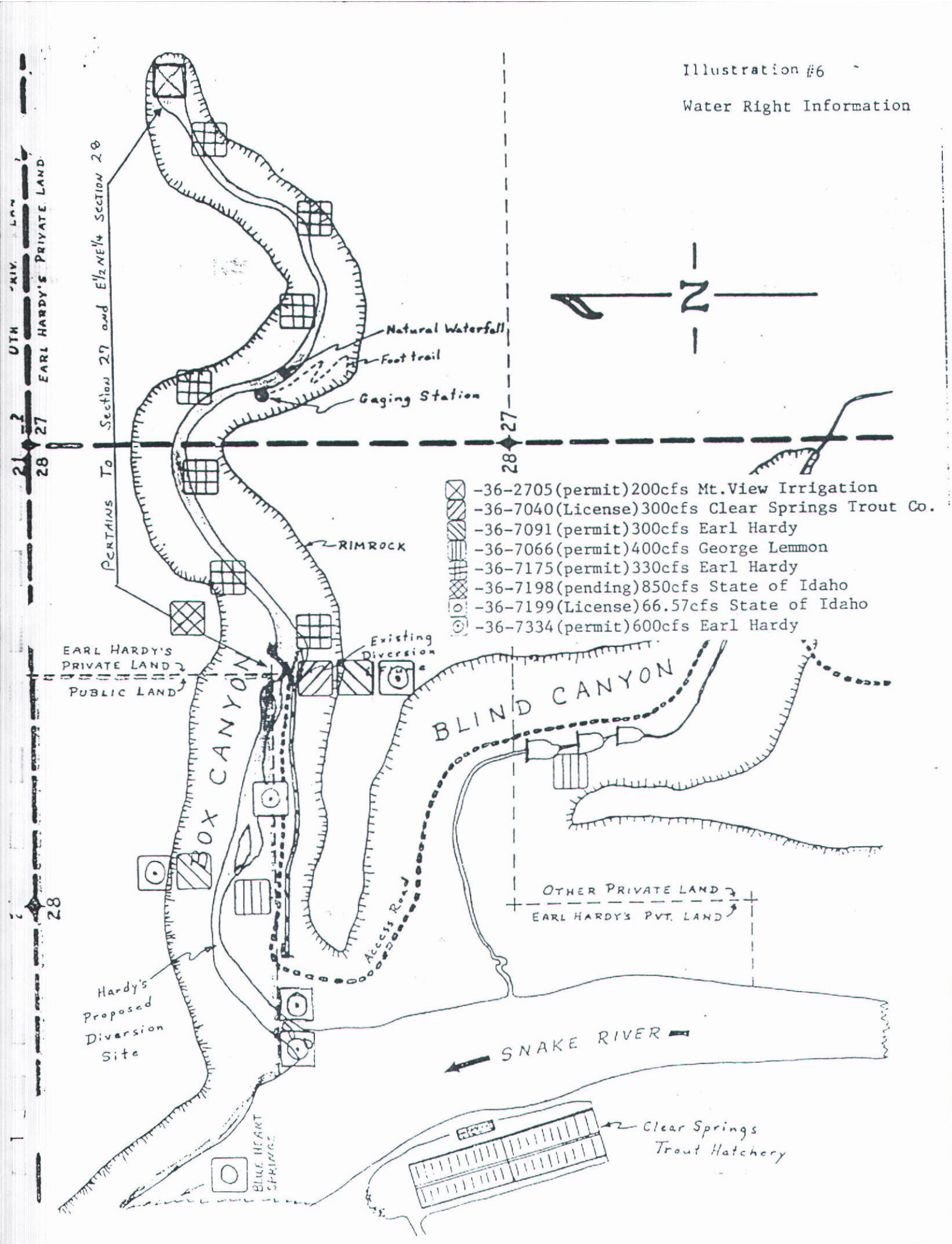
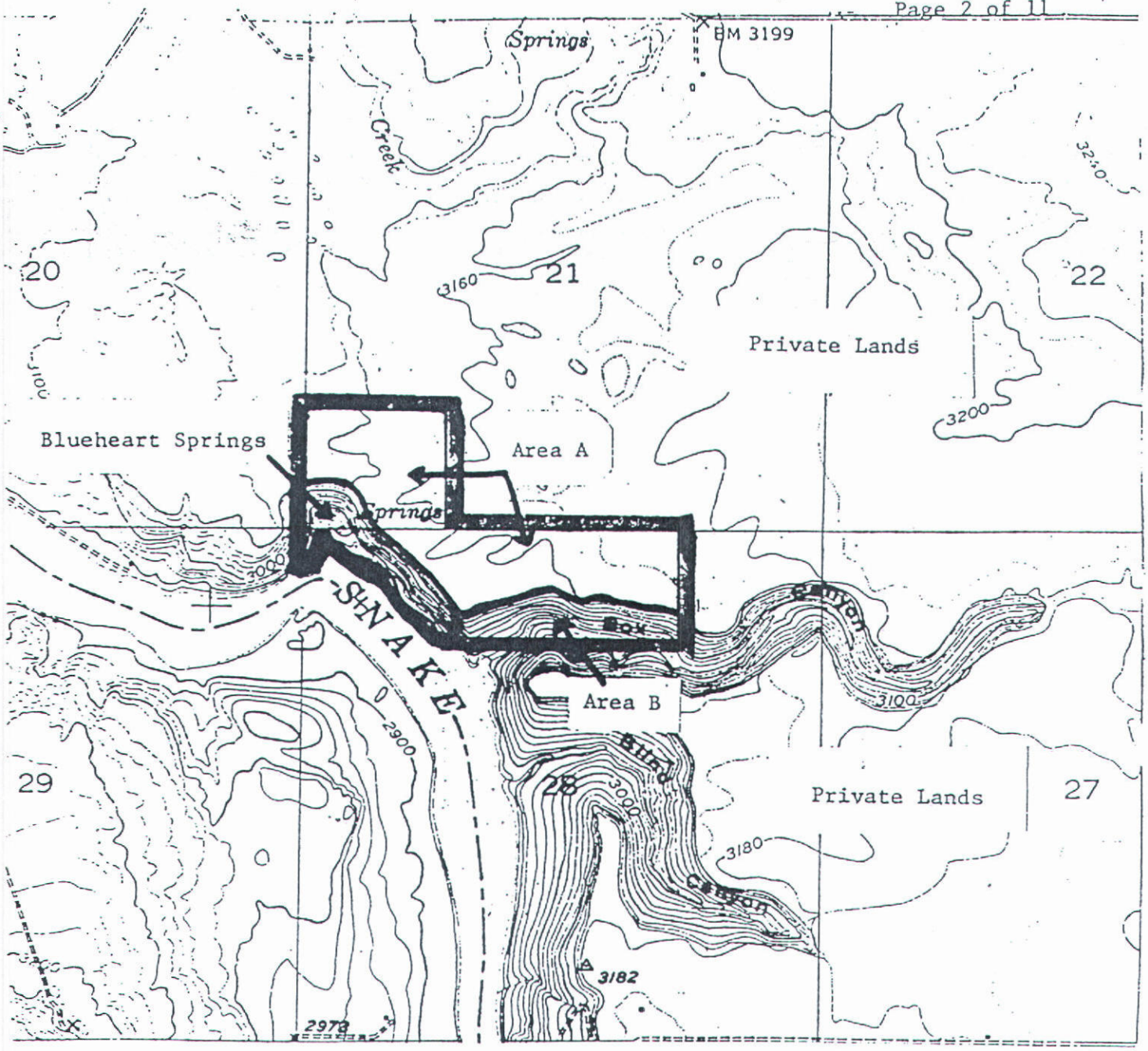
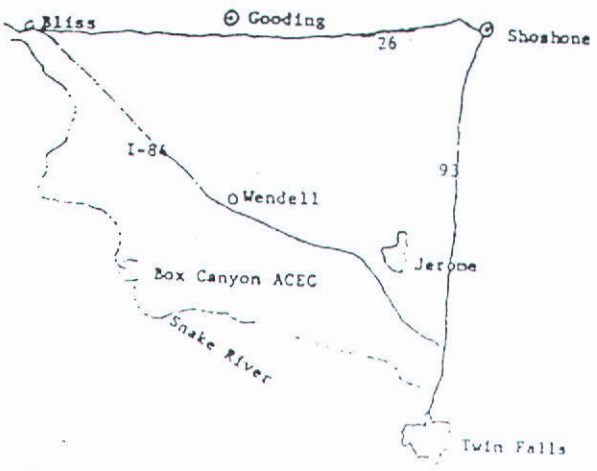


Illustration #6

Water Right Information





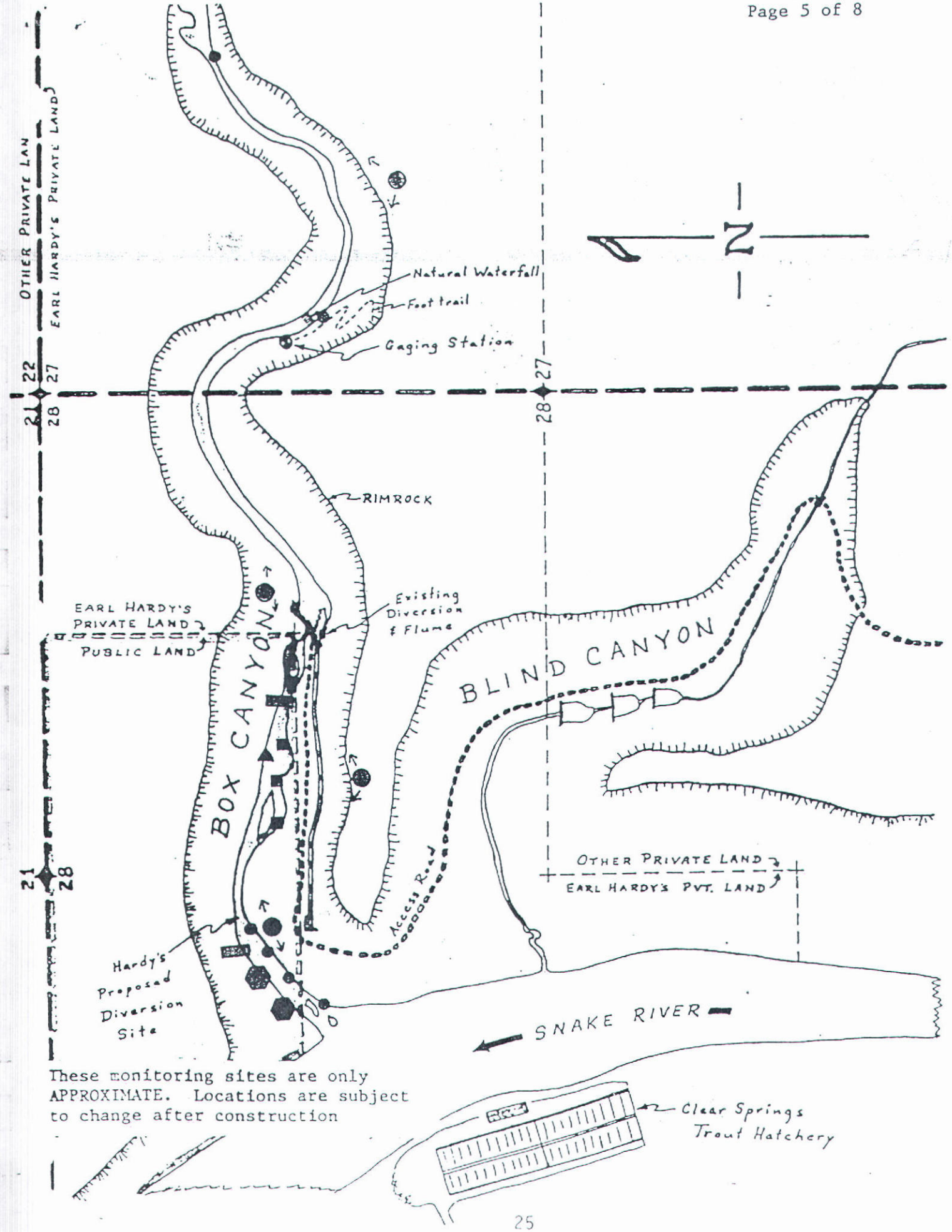


N

BOX CANYON ACEC LOCATION MAP

BLM-Administered Lands

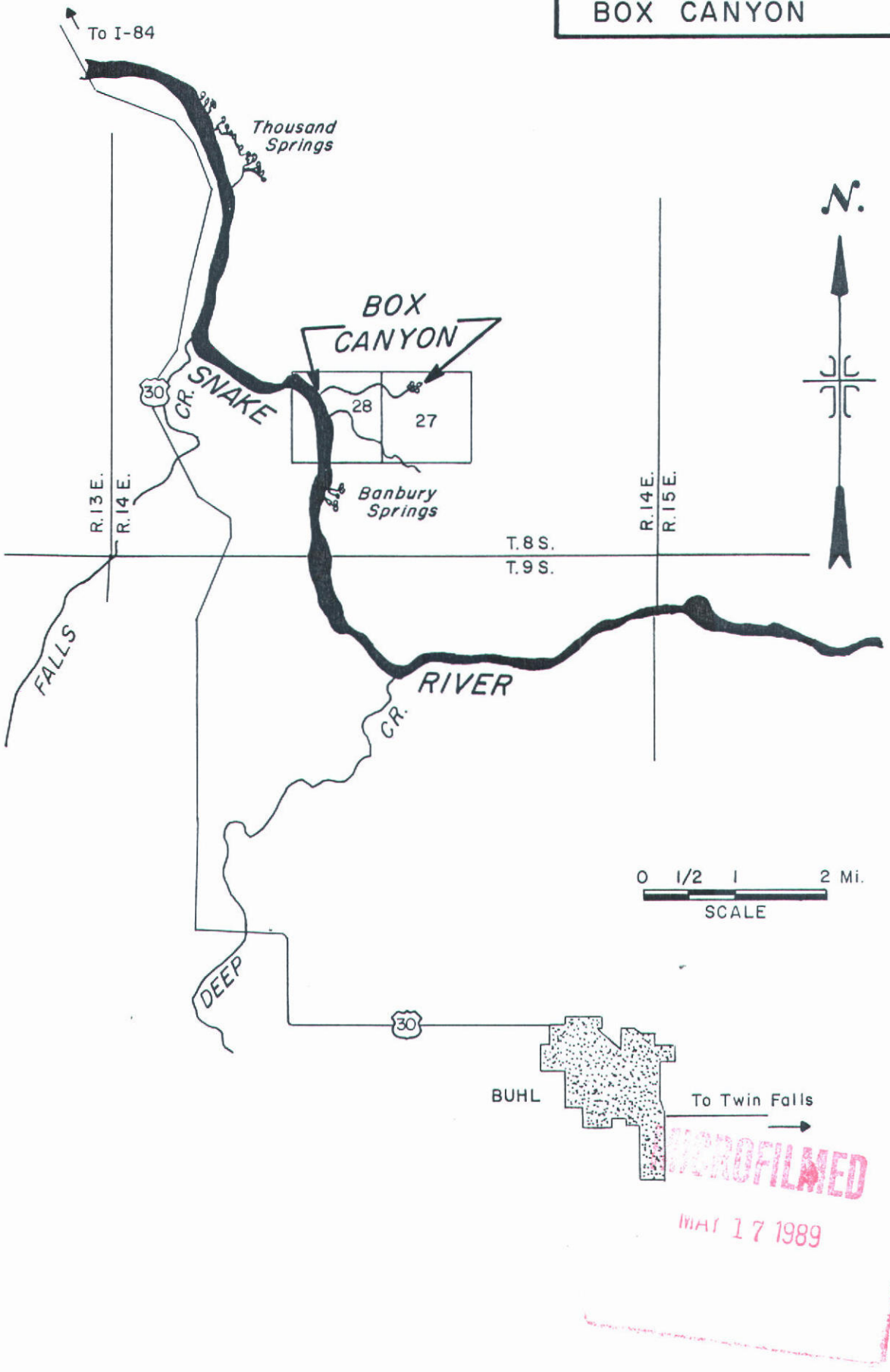
Boundary Between
Area A and Area B



These monitoring sites are only APPROXIMATE. Locations are subject to change after construction

IDWR EXHIBIT NO. 2

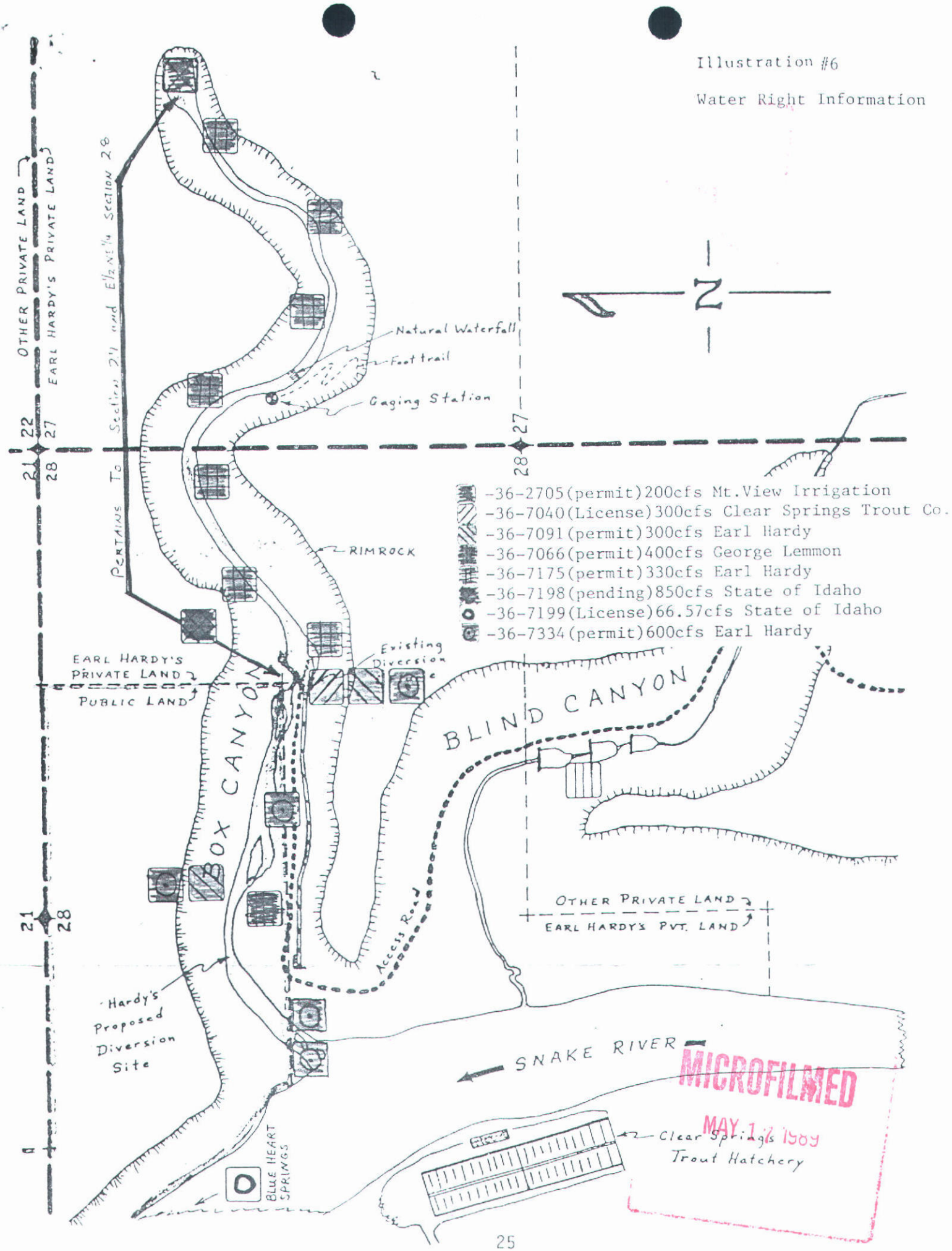
MSF NO. 36-8337
BOX CANYON



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MAY 17 1989

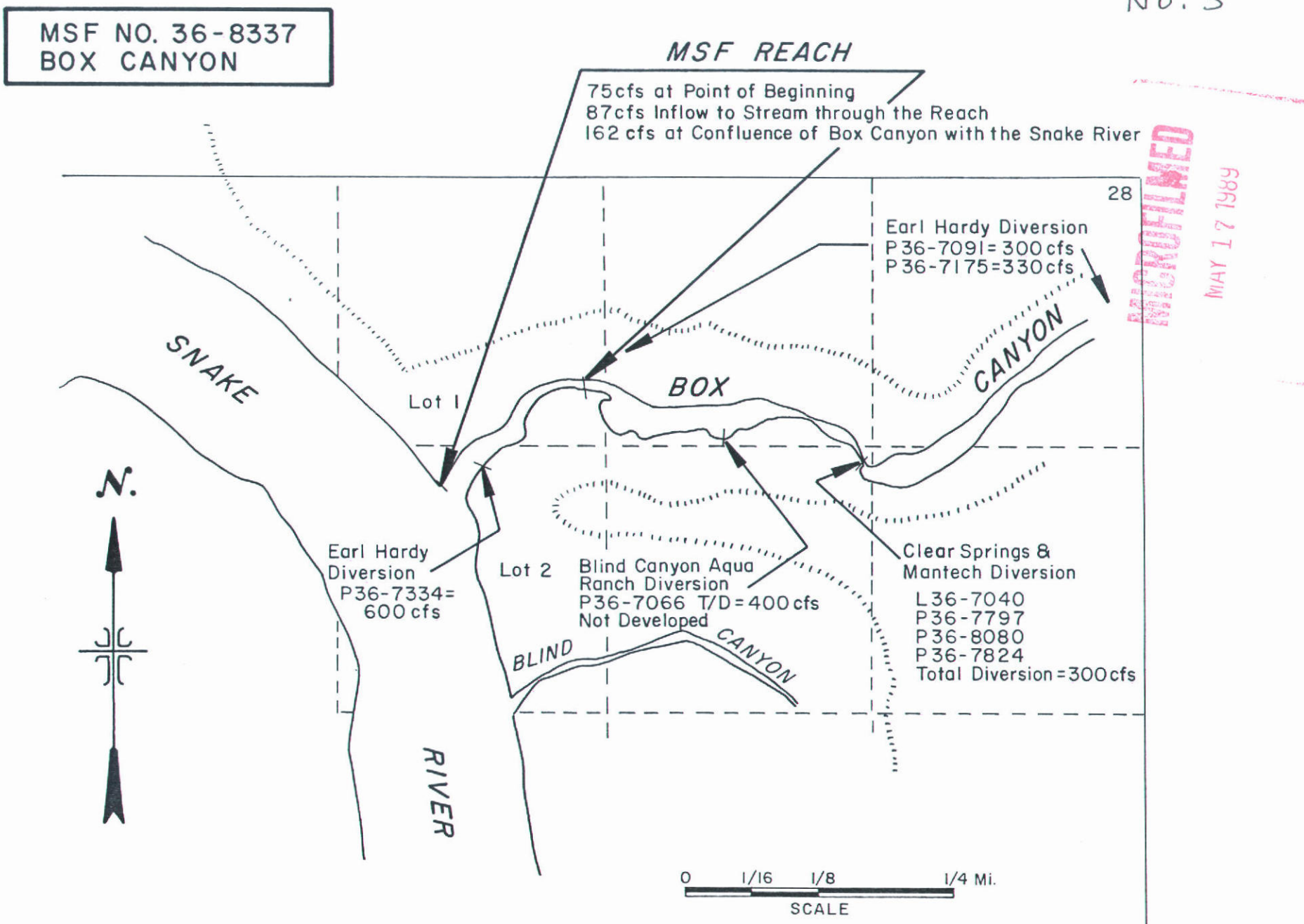
Illustration #6

Water Right Information

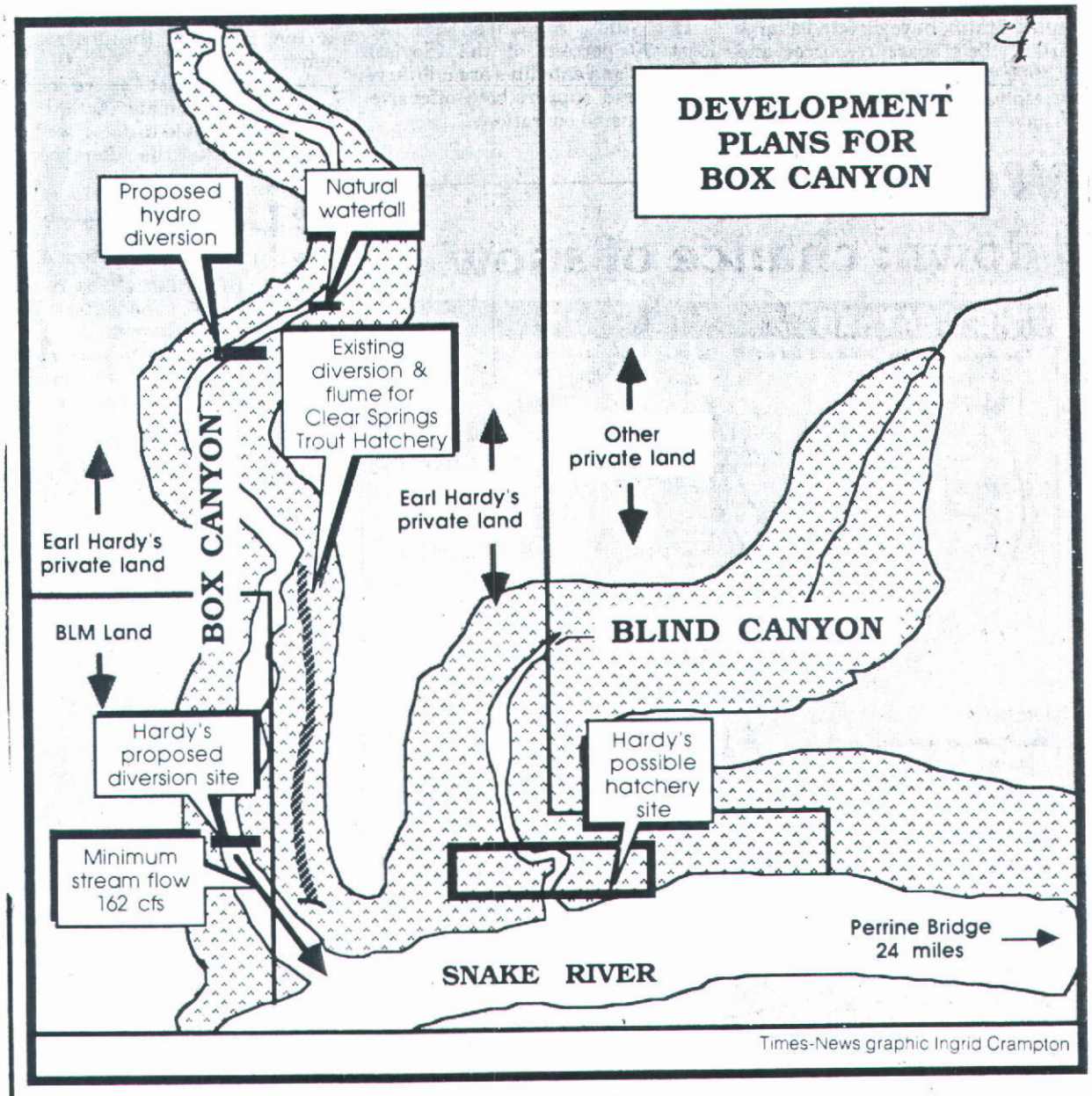


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IDWR EXHIBIT
No. 3



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Box Canyon flow request catches the BLM spotlight

By JANE ROBISON
Times-News writer

TWIN FALLS — Bureau of Land Management officials are hoping to hear the sweet sounds of applause Tuesday night over a minimum stream flow request in Box Canyon, a site rife with underlying currents of controversy.

"Everyone should support and applaud this minimum stream flow request," said BLM area manager Bob Cordell. "We've worked hard on it."

For almost 20 years, bureaucrats, environmentalists and area residents have been circling the wagons in Box Canyon, trying to fend off development by Boise businessman and trout farmer Earl Hardy, who owns nearly all the land surrounding the stream.

Hardy plans to build a hydro-generation project just below the base of the Box Canyon falls and a trout hatchery on his neighboring land in Blind Canyon, just south of Box Canyon Creek. The canyon is located in Gooding County, about 24 miles downstream from the Perrine Bridge along the Snake River.

Plans for a hydro project are in the final stages and moving along, Hardy told *The Times-News* Wednesday.

But Hardy's goal of building a trout hatchery is closer. He said construction will begin next year.

After 19 years of wrangling, Hardy and the BLM

• See CANYON on Page A3

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MSF NO. 36-8337
BOX CANYON
MSF REACH
75cfs at Point of Beginning
872cfs Inflow to Stream through the Reach
162 cfs at Confluence of Box Canyon with the Snake River
28
Earl Hardy Diversion
P36-7091= 300 cfs
P36-7175=330 cfs
CANYON
BOX
Lot 1
SNAKE
Clear Springs &
Mantech Diversion
L36-7040
P36-7797
P36-8080
P36-7824
Total Diversion = 300cfs
Lot 2
Blind Canyon Aqua
Ranch Diversion
P36-7066 T/D = 400 cfs
Not Developed
CANYON
BLIND
Earl Hardy
Diversion
P36-7334=
600 cfs
RIVER
N.
0
1/16
1/8
1/4 Mi.
SCALE

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

In Re SRBA)
)
Case No. 39576)
)

PARTIAL DECREE PURSUANT TO I.R.C.P. 54(b) FOR

Water Right 36-08337

1998 NOV 16 PM 2:26
DISTRICT COURT-SRBA
TWIN FALLS CO., IDAHO
FILED

RECEIVED
NOV 17 1998
Department of Water Resources
Adjudication Bureau

NAME AND ADDRESS: STATE OF IDAHO
IDAHO WATER RESOURCE BOARD
STATEHOUSE
BOISE, ID 83720

SOURCE: BOX CANYON CREEK TRIBUTARY: SNAKE RIVER

QUANTITY: 162.00 CFS

PRIORITY DATE: 10/16/1987

THIS MINIMUM STREAM FLOW RIGHT SHALL BE JUNIOR AND SUBORDINATE TO ALL CONSUMPTIVE USE RIGHTS DIVERTED FROM GROUNDWATER WITHIN THE SNAKE RIVER PLAIN AQUIFER TRIBUTARY TO BOX CANYON CREEK, HELD IN TRUST BY THE STATE OF IDAHO, WHICH MAY BE APPROVED OR DIVERTED LATER IN TIME THAN THE PRIORITY OF THIS RIGHT. ISSUANCE OF THIS DECREE SHALL NOT GIVE RISE TO ANY RIGHT OR CLAIM AGAINST ANY FUTURE RIGHTS TO THE CONSUMPTIVE USE OF GROUNDWATER HELD IN TRUST BY THE STATE OF IDAHO INITIATED LATER IN TIME THAN THE PRIORITY OF THIS RIGHT TO THE EXTENT SUCH USES ARE WITHIN THE LIMITS ESTABLISHED PURSUANT TO THE SWAN FALLS AGREEMENT, THE IDAHO STATE WATER PLAN, AND CHAPTER 2, TITLE 42, IDAHO CODE.

POINT OF DIVERSION: T08S R14E S28 LOT 01 (NENW) (Instream Beginning Point) Within Gooding County
LOT 02 (SENW) (Instream Ending Point)

THE REACH OF THIS MINIMUM STREAM FLOW BEGINS APPROXIMATELY 300 FEET DOWNSTREAM OF A POINT WHERE BOX CANYON CREEK ENTERS T08S, R14E, S28 GOVT LOT 1 (NENW), AND EXTENDS APPROXIMATELY ONE QUATER (1/4) MILE DOWNSTREAM TO THE CONFLUENCE OF BOX CANYON CREEK AND THE SNAKE RIVER, LOCATED IN T08S, R14E, S28, GOVT LOT 2 (SENE).

PURPOSE AND PERIOD OF USE:

PURPOSE OF USE	PERIOD OF USE	QUANTITY
Minimum Stream Flow	01-01 TO 12-31	162.00 CFS

THIS MINIMUM STREAM FLOW IS A VARIABLE FLOW BEGINNING WITH 75.0 CFS AT THE UPSTREAM END OF THE REACH AND INCREASING IN FLOW TO 162.0 CFS AT THE DOWNSTREAM END OF THE REACH. DIFFUSE GROUNDWATER DISCHARGE INTO BOX CANYON CREEK CONTRIBUTES 87.0 CFS TO THE 75.0 CFS THAT ENTERS THE MINIMUM STREAM FLOW REACH, FOR A TOTAL OF 162.0 CFS AT THE CONFLUENCE OF BOX CANYON CREEK AND THE SNAKE RIVER.

PLACE OF USE:

Minimum Stream Flow	Same as Other Use

SAME AS OTHER USE

OTHER PROVISIONS NECESSARY FOR DEFINITION OR ADMINISTRATION OF THIS WATER RIGHT:

THE IDWR DIRECTOR HAS AUTHORITY TO REVEIW AND AMEND ANY AND ALL PARAMETERS OF THIS RIGHT. THE BOARD, UPON RECEIVING A REQUEST, OR UPON ITS OWN INITIATIVE, MAY PETITION THE DIRECTOR FOR AN AMENDMENT TO THE RIGHT. THE PETITION MUST SET FORTH ANY SIGNIFICANT CHANGE IN CIRCUMSTANCES AND EVIDENCE OF PUBLIC INTEREST SUPPORTING THE PROPOSED AMENDMENT. THE DIRECTOR WILL

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JUN 07 2004

OTHER PROVISIONS (continued)

NOTIFY THE GENERAL PUBLIC AND SPECIFIC PERSONS OR KNOWN INTERESTED PARTIES OF THE PROPOSED CHANGE, AND CONDUCT A HEARING FOR THE PURPOSE OF DETERMINING WHETHER THE RIGHT SHOULD BE AMENDED IN THE PUBLIC INTEREST. THE BURDEN OF PROOF AT THE HEARING SHALL BE UPON THE PERSON OR PARTIES SEEKING THE AMENDMENT TO ESTABLISH THE AMENDMENT OF THE RIGHT WOULD BE IN THE PUBLIC INTEREST.

RULE 54(b) CERTIFICATE

With respect to the issues determined by the above judgment or order, it is hereby CERTIFIED, in accordance with Rule 54(b), I.R.C.P., that the court has determined that there is no just reason for delay of the entry of a final judgment and that the court has and does hereby direct that the above judgment or order shall be a final judgment upon which execution may issue and an appeal may be taken as provided by the Idaho Appellate Rules.

Daniel C. Hurlbutt, JR.
Presiding Judge
Snake River Basin Adjudication

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JUN 0 2 2006

This
Right has been
Decreed in the
SRBA.

State of Idaho
Department of Water Resources

WATER RIGHT LICENSE

WATER RIGHT NO. 36-08337

Priority: October 16, 1987 Minimum Instream Flow: 162.00 CFS

This is to certify, that STATE OF IDAHO
IDAHO WATER RESOURCE BOARD
STATEHOUSE
BOISE ID 83720 has complied with the terms and conditions of the permit, issued pursuant to Application for Permit dated October 16, 1987; and has submitted Proof of Beneficial Use on February 22, 1994. A minimum stream flow in

BOX CANYON CREEK tributary to **SNAKE RIVER**

has been established as follows:

BENEFICIAL USE	PERIOD OF USE	RATE
MINIMUM INSTREAM FLOW	01/01 to 12/31	162.00 CFS

LOCATION OF MINIMUM FLOW REACH:

Beginning of Stream Flow Reach Lot 1, Sec. 28, Township 08S, Range 14E
End of Stream Flow Reach Lot 2, Sec. 28, Township 08S, Range 14E
GOODING County

CONDITIONS/REMARKS:

1. This right is subject to all prior water rights.
2. Use of water under this right shall be non-consumptive.
3. Use of water under this right shall recognize and allow the continued beneficial diversion of water under any prior existing water right established by diversion and application to beneficial use or by an application, permit, or license on file issued by the Director under provisions of Chapter 2, Title 42, Idaho Code, with the priority of the water right dated earlier than 10/16/87, the priority date of this right.
4. This minimum stream flow right shall be junior and subordinate to all consumptive use rights diverted from groundwater within the Snake River Plain Aquifer tributary to Box Canyon Creek, held in trust by the State of Idaho, which may be approved or diverted later in time than the priority of this right. Issuance of this license shall not give rise to any right or claim against any future rights to the consumptive use of groundwater held in trust by the State of Idaho initiated later in time than the priority of this right to the extent that such uses are within the limits established pursuant to the Swan Falls Agreement, the Idaho State Water Plan, and Chapter 2, Title 42, Idaho Code.
5. Upon the future finding and order of the Director that gauging stations are required to maintain the approved minimum flow on Box Canyon Creek, such measuring devices shall be permanently installed and maintained as specified by the Department.

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State of Idaho
Department of Water Resources

WATER RIGHT LICENSE

WATER RIGHT NO. 36-08337

CONDITIONS/REMARKS:

6. This minimum stream flow sought is a variable flow beginning with 75.0 cfs at the upstream end of the reach and increasing in flow to 162.0 cfs at the downstream end of the reach. Diffuse groundwater discharge into Box Canyon Creek contributes 87.0 cfs to the 75.0 cfs that enters the minimum stream flow reach, for a total of 162.0 cfs at the confluence of Box Canyon Creek and the Snake River.
7. The Director retains jurisdiction to review and amend any and all parameters of this right. The Board, upon receiving a request, or upon its own initiative, may petition the Director for an amendment to the right. The petition must set forth any significant change in circumstances and evidence of public interest supporting the proposed amendment. The Director will notify the general public and specific persons or known interested parties of the proposed change, and conduct a hearing for the purpose of determining whether the right should be amended in the public interest. The burden of proof at the hearing shall be upon the person or parties seeking the amendment to establish that the amendment of the right would be in the public interest.
8. The reach of this minimum stream flow begins approximately 300 feet downstream of a point where Box Canyon Creek enters Lot 1 (NENW), S28, T8S, R14E, and extends approximately 1/4 mile downstream to the confluence of Box Canyon Creek and the Snake River, located in Lot 2 (SENE), S28, T8S, R14E.

This license is issued pursuant to the provisions of Section 42-219, Idaho Code. Witness the seal and signature of the Director, affixed at Boise, this 11TH day of OCTOBER, 1994.

Acting for R. Keith Higginson, Director

OCT 20 1994

Form 217
11/91

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FEB 22 1994
Department of Water Resources

OFFICE USE ONLY
Amt. of Fee $_____
Date _____
Receipt No. _____
Receipt by _____

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

PROOF OF BENEFICIAL USE

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

1. Permit No. 36-08337 Telephone No. 208-327-7910

2. Name(s) of Permit Holder(s): Idaho Water Resource Board

3. Mailing Address: Statehouse, Boise, Idaho 83720

4. Source of Water: Box Canyon Creek

   If **GROUNDWATER**, Well Driller's Name: _____ Date Drilled: _____

   OPTIONAL:
   Pump horsepower: _____ Pressure (psi): _____ Dynamic pumping level (ft.): _____

5. Extent of Use (as authorized by the permit):

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

   Irrigation _____ (No. of acres) Other Minimum Instream Flow

6. Total rate and/or volume for which proof is submitted 75-162 cfs **OR** _____ acre/feet

7. Refer to the approval conditions on your permit and respond accordingly: See Attachment

   Measuring device: Required? ___ Yes X No Installed? ___ Yes ___ No
   OR
   Flow Measurement Port: Required? ___ Yes X No Installed? ___ Yes ___ No

8. Fee Enclosed: $ NA (See License Fee Schedule on back of Instruction Sheet)

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

   NA
   Name Telephone No. [redacted]

   Address

   OCT 20 1994

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

2/10/94 F. Dow Gydesen Chair I.W.R.B.
Date Signature (and title, if on behalf of a company or organization)

BEFORE THE DIRECTOR OF THE DEPARTMENT

OF WATER RESOURCES OF THE

STATE OF IDAHO

IN THE MATTER OF APPLICATION FOR PERMIT NO. 36-8337 IN THE NAME OF THE IDAHO WATER RESOURCE BOARD TO ESTABLISH A MINIMUM STREAMFLOW IN BOX CANYON	ORDER ISSUING PROPOSED MEMORANDUM DECISION

R. Keith Higginson, Director of the Department of Water Resources, having reviewed the attached proposed decision prepared by his appointee, Norman C. Young, who conducted the hearing or who has read the record in the this case, hereby approves the same as a proposed decision pursuant to Idaho Code, Sec. 67-5211.

Each party to these proceedings who appeared at the hearing is given the opportunity, pursuant to Idaho Code, Sec. 421701A and 67-5211, to file exceptions to the proposed decision and to present briefs and oral arguments. If no timely and proper exceptions are received, an order by the Director will be entered adopting the proposed decision as his final decision.

I.
EXCEPTIONS

A. To be considered by the Director, exceptions must:

1. be received by the Director on or before the 15th day following the day of service of this Order and the proposed decision,

2. specifically identify the portions of the proposed decision to which exceptions are made and specifically state the grounds for those exceptions, and

3. be sent to each of the parties who appeared or their attorneys.

II.
BRIEFS

A. Any briefs in support of exceptions to the proposed decision shall be filed with the Director at the same time that party's exceptions are filed with the Director.

B. All response briefs to the exceptions must be filed with the Director within 15 days after the exceptions were served upon the responding party.

III.

A. No oral arguments before the Director on the proposed decision will be held unless specifically requested by a party filing exceptions to the proposed decision and unless that request is filed with the Director concurrently with the filing of that party's exception.

B. If oral arguments have been properly requested by a party filing exceptions, any other party, upon reasonable notice to the Director, shall have the right to present oral argument in response to the exceptions filed.

C. Oral arguments before the Director on exceptions to the proposed decision shall be heard at the discretion of the Director, pursuant to Idaho Code, Sec. 42-1701A. If oral arguments are to be heard, the Director will, within a reasonable time, notify each party of the place, date and hour the oral arguments will take place and of the period of time allocated for the arguments of this case. Unless the Director orders otherwise, all oral arguments shall be heard in Boise, Idaho.

IV.

CERTIFICATE OF SERVICE

All exceptions, briefs, requests oral arguments and other matters filed with the Director in connection with the proposed decision shall be served on all other parties to these proceedings in accordance with Rule 7.2.

V.

FINAL DECISION

Following the submission of all exceptions, briefs and oral arguments, if they are heard, the Director shall issue a final decision adopting, modifying or rejecting and replacing the proposed decision. Copies of the decision and order shall be served on all parties.

Dated this 3rd day of January, 1989.

R. KEITH HIGGINSON
Director

MICROFILMED
MAY 1989

CERTIFICATE OF MAILING

I hereby certify that on the 6th day of January, 1989, I mailed a true and correct copy, postage prepaid, of the Proposed Memorandum Decision and Order to:

U.S. Dept. of Interior
Idaho State Office
3380 American Terrace
Boise, ID 83706

Bureau of Land Management
Idaho State Office
3380 American Terrace
Boise, ID 83706

Marne Mercer
919 Justice Grade
Hagerman, ID 83322

Edward Shokal
Rt. 1 Box 410
Hagerman, ID 83322

Bob Burks
Box 298
Wendell, ID 83355

Diana Schuett
DIANA SCHUETT, Clerical Assistant

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MAY 17 1989

BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE

STATE OF IDAHO

IN THE MATTER OF APPLICATION FOR PERMIT NO. 36-8337 (BOX CANYON CREEK) TO ESTABLISH A MINIMUM STREAMFLOW IN THE NAME OF THE IDAHO WATER RESOURCE BOARD	ORDER ADOPTING PROPOSED MEMORANDUM DECISION AND ORDER

WHEREAS, a Proposed Memorandum Decision and Order in the above-captioned matter has been issued and a copy served on the parties; and,

WHEREAS, more than fifteen days have passed since the service of the Proposed Memorandum Decision and Order; and,

WHEREAS, no exception to that Proposed Memorandum Decision and Order has been received;

IT IS, THEREFORE, HEREBY ORDERED that said Proposed Memorandum Decision and Order be adopted and issued as the Final Decision and Order and proof of construction of works and application of water to beneficial use shall be submitted on or before April 1, 1994.

Dated this 23rd day of December, 1988.

R. KEITH HIGGINSON
Director

MICROFILMED
MAY 17 1989

CERTIFICATE OF MAILING

I certify that on the 23rd day of December, 1988, I mailed a true and correct copy, postage prepaid, of the Order Adopting Proposed Memorandum Decision and Order to:

U.S. Dept. of Interior
Idaho State Office
3380 American Terrace
Boise, ID 83706

Bureau of Land Management
Idaho State Office
3380 American Terrace
Boise, ID 83706

Marne Mercer
919 Justice Grade
Hagerman, ID 83322

Edward Shokal
Rt. 1 Box 410
Hagerman, ID 83322

Bob Burks
Box 298
Wendell, ID 83355

Diana Schuett
DIANA SCHUETT, Clerical Assistant

MICROFILMED
MAY 17 1989

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

IN THE MATTER OF APPLICATION FOR PERMIT NO. 36-8337 IN THE NAME OF THE IDAHO WATER RESOURCE BOARD TO ESTABLISH A MINIMUM STREAMFLOW IN BOX CANYON CREEK	PROPOSED MEMORANDUM DECISION AND ORDER

On October 16, 1987, the Idaho Water Resource Board (Board) filed with the Idaho Department of Water Resources (Department) an application for permit to establish a minimum streamflow on a portion of Box Canyon Creek, located in Gooding County. The application was filed in accordance with provisions of chapter 15, title 42, Idaho Code.

A public meeting was held by the Board on November 17, 1987, for the purpose of determining local public interest in the application. The Board requested that the Director of the Department proceed with administrative action on the application.

Notice describing the proposed application and setting the time and place for the required hearing was published on March 3 and March 10, 1988, in the Post Register, Idaho Statesman, Lewiston Morning Tribune, and the Times News. Notice was also published in the Gooding County Leader on March 2 and March 9, 1988. The public hearing was held at Gooding, Idaho on March 23, 1988.

Parties appearing in a formal capacity included the Board; the U. S. Department of Interior, Bureau of Land Management (BLM); Hagerman Valley Citizen's Alert, represented by Marvin

UNCORRECTED
MAY 17 1989

Mercer; Bob Burks and Edward Shokal. William F. Ringert filed a notice of appearance on behalf of Rim View Trout Company, but did not attend the hearing.

Based upon sworn testimony, documentation, and statements included in the record, and upon his understanding of the law, the hearing officer, as a representative of the Director, finds, concludes, and orders as follows:

FINDINGS OF FACT

1. Application for Permit No. 36-8337 proposes to appropriate a minimum flow in a reach of Box Canyon Creek. The reach begins approximately 300 feet downstream of a point where Box Canyon Creek enters Lot 1 (NE1/4NW1/4), Section 28, T8S, R14E, and extends approximately one-fourth mile downstream to the confluence of Box Canyon Creek and the Snake River, located in Lot 2, (SE1/4NE1/4) Section 28, T8S, R14E. A map attached to the application incorrectly shifts the section one-quarter mile to the west. Attachment A, which describes the minimum flow reach, was written by referring to the map, and incorrectly locates the beginning of the minimum streamflow reach just downstream from the east 1/16th line in the section. The minimum streamflow reach correctly begins approximately 300 ft. downstream from the north-south quarter line of the section. Despite the error in locating the beginning point, the application and the legal advertisements clearly describe the minimum flow as falling within Lots 1 and 2 of Section 28, and the description within

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Lots 1 and 2 is recognized as the legal description for purposes of describing the minimum streamflow reach.

2. The application proposes a variable flow rate of 75 cfs at the beginning of the reach, and a graduated increase in flow throughout the reach to 162 cfs at the mouth where Box Canyon Creek discharges into the Snake River.

3. The purpose of the minimum streamflow appropriation is to maintain fish and wildlife habitat.

4. Box Canyon Creek begins in some deep, spring-fed pools at the head of Box Canyon. A USGS gauging station is located just below Box Canyon Creek Falls, approximately one-half mile downstream from the headwater springs. Stable flows of 400 to 450 cubic feet per second (cfs) are recorded at the gaging station.

5. Water right filings on Box Canyon Creek or Box Canyon Springs are set forth in IDWR Exhibit No. 4, a copy of which is attached to this decision. The numbers in parentheses are filings for uses that are either non-consumptive and the water is returned to Box Canyon Creek, or are filings proposing use of water already diverted under a previous license or permit, and no additional water is sought for development. The flow authorized under Permit No. 36-2705 in the name of Mountain View Irrigation, was reduced to 16.0 cfs by order of the Department dated August 29, 1988.

6. The Clear Springs Trout Co. diversion is located approximately one-half mile downstream from the USGS gauging

MAY 17 1989

station. Clear Springs Trout Co. is authorized to divert 300 cfs through its inverted siphon to the south side of the river.

7. The minimum streamflow reach is located below the Clear Springs Trout Co. diversion and can only be maintained by the bypass flow and spring water discharging into Box Canyon Creek below the diversion. Diffuse spring waters flow through the rubble and discharge into Box Canyon Creek below the Clear Springs diversion. A flow of 417 cfs was measured at the mouth of Box Canyon Creek on January 1, 1986. A flow of 322 cfs was measured just above the beginning of the minimum stream flow reach on March 5, 1986. A portion of the 322 cfs is comprised of spring flow into Box Canyon below the Clear Springs diversion.

8. Several filings primarily in the name of Earl Hardy, and Box Canyon Trout Co., which is owned by Hardy, propose diversion of water which, if the diversions and uses are developed, could affect flows in the minimum streamflow reach.

9. Earl Hardy owns two undeveloped permits, numbered 36-7091 and 36-7334, issued for fish propagation which propose a total diversion of 900 cfs. The Hardy filings have an earlier priority than this filing for minimum streamflow. The proposed diversions, when combined with the water Clear Springs Trout Co. diverts across the Snake River, would totally dry up the stream just below the Clear Springs diversion.

10. Box Canyon Creek flows fluctuate depending on groundwater withdrawals in the Snake River Plain Aquifer and surface irrigation of lands overlying the Snake River Plain

MAY 7 1989

Aquifer. Increased groundwater withdrawal from the Snake River Plain Aquifer will reduce the flows of Box Canyon Creek.

11. BLM has determined by comparing measurements near the beginning of the minimum flow reach and at the end of the proposed minimum flow reach, that approximately 87 cubic feet per second of additional flow emits from the canyon rubble within the minimum flow reach.

12. BLM has granted Earl Hardy federal right of way No. I-2880 allowing Mr. Hardy to construct a conduit across BLM property in Lot 1 of Section 28. The conduit will deliver water from Box Canyon to a fish hatchery. In return, Mr. Hardy has agreed to bypass 75 cfs from his diversion works at the point where the proposed minimum flow will begin. Despite the possibility of additional development upstream, the agreement assures that 75 cfs will be released at the beginning of the minimum flow reach.

13. Box Canyon Creek supports a population of four federal candidate species: (a) the Shoshone Sculpin, (b) the Bliss Rapid Snail, (c) the Giant Columbia River Limpet, (d) the Utah Valvata Snail.

14. Expert testimony by BLM personnel established that the minimum streamflow sought was necessary for maintaining habitat for the above federal candidate species.

15. Preservation of the federal candidate species, which are candidates for classification as endangered species, is in the public interest.

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16. Witnesses testified that additional water would better enable the federal candidate species to live and reproduce, but that the flows sought were minimal for the continued existence of the species.

CONCLUSIONS OF LAW

1. Idaho Code § 42-1501 provides that streamflow preservation for the protection of fish and wildlife habitat is in the public interest and is declared to be a beneficial use of such water.

2. Idaho Code § 42-1503 sets forth the criteria to be considered by the Department in reviewing an application for minimum streamflow:

> Upon the conclusion of the hearings and completion of any investigation conducted by the director, he shall enter his findings in writing approving the application in whole, or in part, or upon conditions or rejecting said application. Approval of any such application must be based upon a finding that such appropriation of minimum streamflow:
>
> (a) will not interfere with any vested water right, permit, or water right application with priority of right date earlier than the date of receipt in the office of the director of a complete application for appropriation of minimum streamflow filed under the provisions of this act;
>
> (b) is in the public, as opposed to the private, interest;
>
> (c) is necessary for the preservation of fish and wildlife habitat, aquatic life, recreation, aesthetic beauty, navigation, transportation, or water quality of the stream;
>
> (d) is the minimum flow or lake level and not the ideal or most desirable flow or lake level; and,
>
> (e) is capable of being maintained as evidenced by records of streamflows and water levels and the existing or future establishment of necessary gauging stations and bench marks.

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3. Any right to be acquired under this application is for instream non-consumptive use and is subject to all vested water rights, permits, or water right applications having dates of priority earlier than October 16, 1987.

4. The proposed minimum streamflow appropriation is necessary to preserve fish and wildlife habitat.

5. The establishment of a minimum streamflow for Box Canyon Creek is in the public, as opposed to private, interest. The establishment of a vested water right to the flows requested in the application, however, may not be in the public interest, if development in the Snake River Plain Aquifer would have to be curtailed or stopped in order to perpetuate the present rate of spring flows.

6. In response to litigation initiated by Idaho Power Company to protect its surface water flows in the Snake River that depend on groundwater discharge from the Snake River Plain Aquifer, the Idaho Legislature declared in Idaho Code § 42-203B that it is in the public interest to regulate the use of Snake River water for power purposes in order to assure an adequate supply of water in the Snake River Plain Aquifer for all future beneficial uses.

7. The Idaho Legislature specifically ratified an agreement between the State of Idaho and Idaho Power Company in Idaho Code § 42-203B(5). The agreement expresses the public interest of allocating water from the Snake River Plain Aquifer for future beneficial use.

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8. The analysis portion of Policy 5G of the State Water Plan, which has been ratified by the legislature, states:

> Aquaculture can expand when and where water supplies are available and where such uses do not conflict with other beneficial uses. It is recognized, however, that future management and development of the Snake River Plain Aquifer may reduce the present flow of springs tributary to the Snake River. . . ..

9. Policy 5G of the State Water Plan contemplates a reduction in groundwater discharge to the Snake River as a result of development in the Snake River Plain Aquifer. Policy 5G implies a determination by the Water Board and the ratifying legislature that a reduction of discharge to the Snake River in exchange for development in the Snake River Plain Aquifer is in the public interest.

10. The spring flows from Box Canyon Springs are a portion of the groundwater discharge flows which the legislature has declared may be partially reduced in favor of the public interest in development of the Snake River Plain Aquifer.

11. The proposed minimum streamflow may not be capable of being maintained because of uncertainty about future water use which may also impact the Snake River Plain Aquifer. Additional flow data must be developed during the duration of the permit. Flow data gathered during the permit period will be used to determine the amount of water that can be licensed.

12. In order to implement the public interest defined by the legislature, this right will be granted subject to development in the Snake River Plain Aquifer which may affect flows in Box Canyon Creek.

FILED
MAY 17 1989

13. A variable flow rate of 75 to 162 cfs is a true minimum flow rate, and is not the optimum flow rate for full preservation of the fish and wildlife habitat.

14. The Director of the Department of Water Resources has considerable flexibility and authority to grant appropriations subject to future appropriations for uses which the public interest may show to be of greater importance. Shokal v. Dunn, 109 Idaho 330, 337, 707 P.2d 441 (1985).

15. A perpetual commitment of a significant amount of water from Box Canyon Creek without a workable method of changing the terms of that use could at some future date adversely affect the public interest.

ORDER

IT IS HEREBY ORDERED that Application for Permit No. 36-8337 is APPROVED subject to the following conditions:

1. Use of water under this permit shall recognize and allow the continued beneficial diversion of water under any prior existing water right established by diversion and application to beneficial use or by an application, permit, or license on file issued by the Director under provisions of chapter 2, title 42, Idaho Code, with the priority of the water right dated earlier than October 16, 1987, the priority date of this permit.

2. This permit for minimum streamflow shall be junior and subordinate to all consumptive use rights diverted from groundwater within the Snake River Plain Aquifer tributary to Box Canyon Creek, held in trust by the State of Idaho, which may be

FILED
MAY 17 1989

approved or diverted later in time than the priority of this permit. Approval of this permit shall not give rise to any right or claim against any future rights to the consumptive use of groundwater held in trust by the State of Idaho initiated later in time than the proposed priority of this permit and any subsequent license to the extent that such uses are within the limits established pursuant to the Swan Falls Agreement, the Idaho State Water Plan, and Chapter 2, Title 42, Idaho Code.

3. The use of water under this permit shall be non-consumptive.

4. Upon the future finding and order of the Director that gauging stations are required to maintain the approved minimum flow on Box Canyon Creek, such measuring devices shall be permanently installed to maintain as specified by the Department.

5. Proof of instream beneficial use of the minimum streamflow appropriation shall be submitted to the Department on April 1, 1994, or within five (5) years after the permit approval is finally effective, whichever is later. Proof shall be limited to submittal of flow data showing that the permitted flows are capable of being maintained.

6. The Director retains jurisdiction to review and amend any and all parameters of this permit and subsequent license. Any person seeking review and amendment of the permit or license shall file a request with the Board, which request shall describe the amendment sought, the reasons for the proposed amendment, and a statement of the change in circumstances since the permit or license was issued or last reviewed that merit a review of the

permit or license. A copy of the petition shall be served upon the Director of the Department of Water Resources. The Board, upon receiving a request, or upon its own initiative, may petition the Director for an amendment to the permit or license. The petition must set forth any significant change in circumstances and evidence of public interest supporting the proposed amendment. The Director will notify the general public and specific persons or known interested parties of the proposed change, and conduct a hearing for the purpose of determining whether the permit or subsequent license should be amended in the public interest. The burden of proof at the hearing shall be upon the person or party seeking the amendment to establish that amendment of the permit or license would be in the public interest.

Dated this 28TH day of NOVEMBER, 1988.

NORMAN C. YOUNG, Hearing Officer
Department of Water Resources

RECEIVED
MAY 17 1989

CERTIFICATE OF MAILING

I hereby certify that on the 29th day of November, 1988, I mailed a true and correct copy, postage prepaid, of the Proposed Memorandum Decision and Order to:

U.S. Dept. of Interior
Idaho State Office
3380 American Terrace
Boise, ID 83706

Bureau of Land Management
Idaho State Office
3380 American Terrace
Boise, ID 83706

Marne Mercer
919 Justice Grade
Hagerman, ID 83322

Edward Shokal
Rt. 1 Box 410
Hagerman, ID 83322

Diana Schuett
DIANA SCHUETT, Clerical Assistant

FILED

MAY 17 1989

SUPPLEMENTAL CERTIFICIATE OF MAILING

I hereby certify that on the 6th day of December, 1988, I mailed a true and correct copy, postage prepaid, of the Proposed Memorandum Decision and Order and the Order Issuing Memorandum Decision and Order to:

Bob Burks
Box 298
Wendell, ID 83355

Diana Schuett
DIANA SCHUETT, Clerical Assistant

FILED
MAY 17 1989

RECEIVED
OCT 16 1987
RECEIVED
OCT 22 1987
RECEIVED
SEP 22 1987

Form 202
6/85

Ident. No. 36-8337

STATE OF IDAHO

DEPARTMENT OF WATER RESOURCES

APPLICATION FOR PERMIT

To appropriate the public waters of the State of Idaho

Department of Water Resources

1. Name of applicant Idaho Water Resource Board Phone 334-4437

   Post office address Statehouse, Boise, Idaho 83720

2. Source of water supply Box Canyon Creek which is a tributary of Snake River

3. Location of ~~point of diversion~~ reach is ____ ¼ of ____ ¼ of ____ ¼, Govt. Lot s 1 and 2

   Sec. 28 Township 8 south Range 14 east B.M. Gooding County; additional

   points of diversion if any: ____

4. Water will be used for the following purposes:

   Amount 75.0 (cfs ~~or acre-feet per annum~~) for four Federal Candidate species habitat purposes from 1 January to 31 December (both dates inclusive)

   Amount 87.0 (cfs ~~or acre-feet per annum~~) for Four Federal Candidate species habitat purposes from 1 January to 31 December (both dates inclusive)

   Amount 162.0 (cfs ~~or acre-feet per annum~~) for Four Federal Candidate species habitat and Recreational Fishing purposes from 1 January to 31 December (both dates inclusive)

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

5. Total quantity to be appropriated is (a) 162.0 (cubic feet per second) and/or (b) ____ (acre feet per annum)

6. Proposed diverting works:

   a. Description of ditches, flumes, pumps, headgates, etc. None- Instream Flow

   b. Height of storage dam N/A feet; active reservoir capacity ____ acre-feet; total reservoir capacity ____ acre-feet; period of year when water will be diverted to storage: ____ to ____ inclusive.

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

   d. Is ground water with a temperature of greater than 90°F being sought? ____

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*).

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MAY 17 1989

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

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

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

   c. Municipal; show name of municipality. _____

   d. Domestic; show number of households. _____

   e. Other; describe fully. To maintain habitat for four Federal Candidate species. The four species are: 1.) Shoshone Sculpin 2.) Bliss Rapid Snail 3.) Giant Columba River Limpet 4.) Utah Valvata Snail

9. Description of place of use:

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

   b. If water is used for other purposes, place a symbol of the use (*example: D for Domestic*) in the corresponding place of use below. See instructions for standard symbols.

TWP	RANGE	SEC.	NE¼				NW¼				SW¼				SE¼				TOTALS
			NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	

Total number of acres to be irrigated _____

10. Describe any other water rights used for the same purposes as described above. N/A

11. a. Who owns the property at the point of diversion? Land is Public land.(BLM)

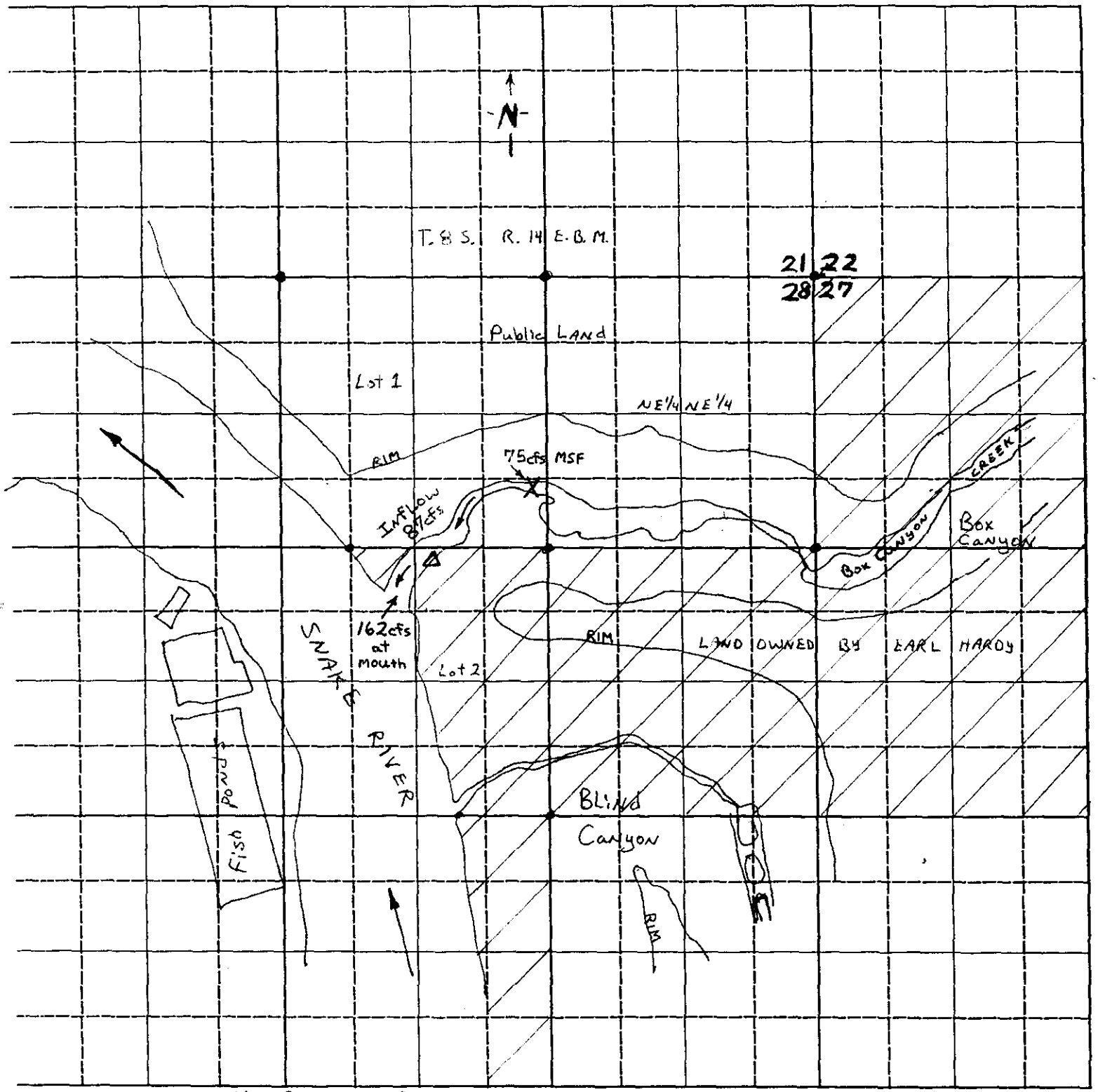
    b. Who owns the land to be irrigated or place of use? Reach is Public and Private.(Earl Hardy)

    c. If the property is owned by a person other than the applicant, describe the arrangement enabling the applicant to make this filing. Lot 2 is owned by Earl Hardy. Mr. Hardy has agreed to 75.0 cfs as a minimum streamflow through his private land under Right-of-way I-2880.

12. Remarks: The proposed minimum streamflow would begin at the proposed point of diversion for waterpermit 36-7091 (Lot 1) and would extend downstream to the mouth of Box Canyon Creek (Lot 2). Mr. Hardy has agreed that no development of the 75.0 cfs and 87.0 inflow, for a total of 162.0, would occur. This is stipulated in Right-of-way I-2880. A copy is attached for reference.

MAY 17 1985

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



Scale: 8 inches equal 1 mile.

X = Proposed Point of Diversion for WATER PERMIT 36-7094

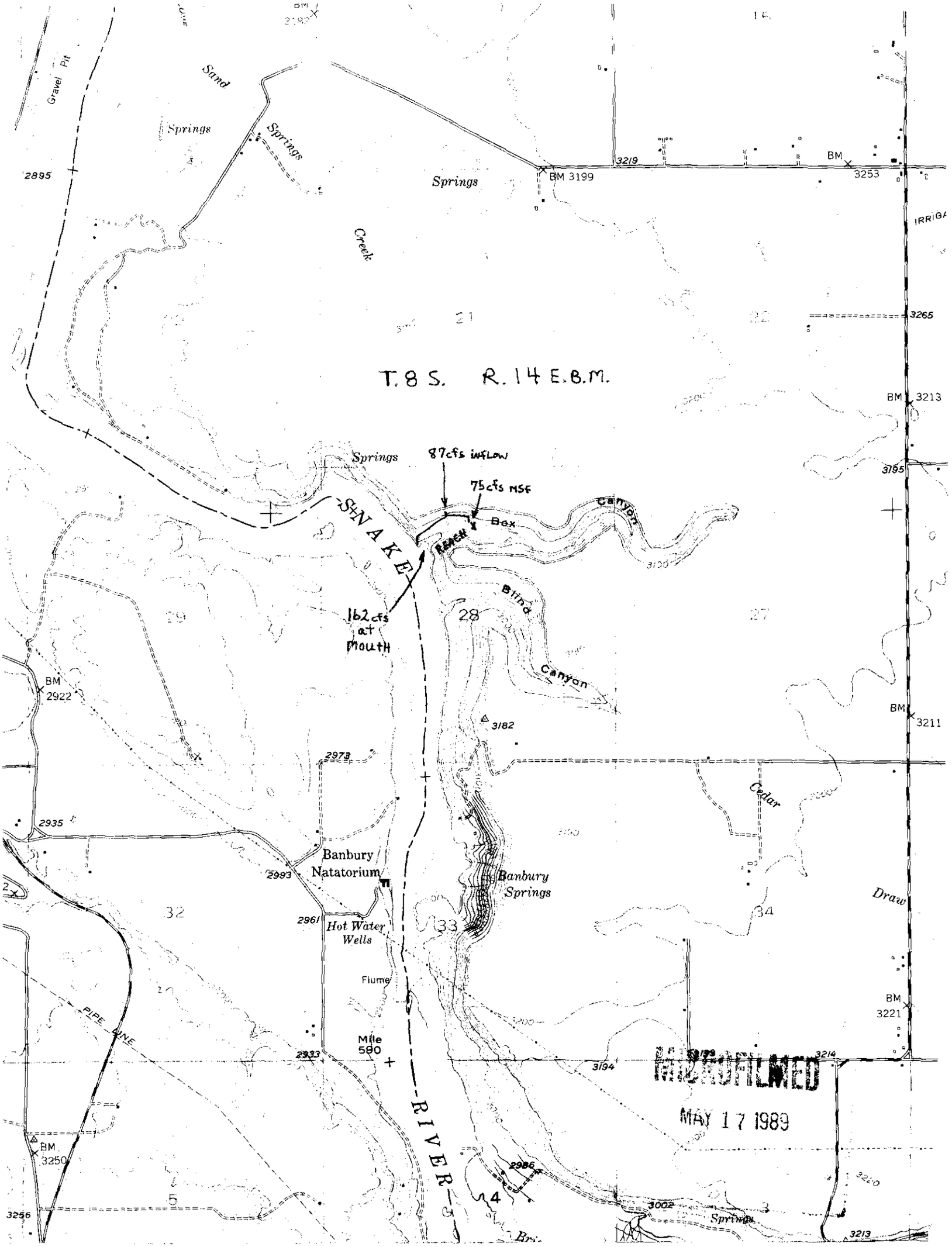
Δ = Proposed Point of Diversion for WATER PERMIT 36-7334

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.

MAY 17 1989

(Applicant)

Idaho Water Resource Board
Gene Gray, Chairman



MICROFILMED
MAY 17 1989

MB 10/22/87 4:00 pm
G.S. 10-16-87 10:00 A.

Received by ALW Date 0-15-87 Time 11:40 A Prelin ry check by _____

Fee $ No fee Regd Receipted by _____ # _____ Date _____

Publication prepared by Gary Spackman S.O Date 10/29/87 Published in Gooding Co. Leader Times News, Bubl Herald

Publication approved A. Baldwin Date 11/20/87, 3/11/88, 3/24/88

ACTION OF THE DIRECTOR, DEPARTMENT OF WATER RESOURCES

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

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

   a. SUBJECT TO ALL PRIOR WATER RIGHTS.

   b. Proof of construction of works and application of water to beneficial use shall be submitted on or before _____, 19____.

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

   d. The water right acquired under this permit if for hydropower purposes shall be junior and subordinate to all rights to the use of water, other than hydropower, within the State of Idaho that are initiated later in time than the priority of this permit and shall not give rise to any right or claim against any future rights to the use of water, other than hydropower, within the State of Idaho initiated later in time than the priority of this permit.

   e. Other: Pursuant to PROPOSED MEMORANDUM DECISION AND ORDER and ORDER ADOPTING PROPOSED MEMORANDUM DECISION AND ORDER

Witness my hand this 23rd day of December, 1988

R. Keith Higginson
Director

MICROFILMED
MAY 17 1989

Form 202
Supplemental

ATTACHMENT TO APPLICATION FOR PERMIT TO APPROPRIATE A MINIMUM STREAM FLOW

11. Provide evidence that the appropriation will not interfere with any vested water right, permit, or water right application of earlier date of priority.

The requested flow is for instream, non-consumptive use and will be subject to all vested water rights, permits, or water applications of earlier dates of priority. Research has shown that the requested flows are available in excess of the allowable diversion flow under Right-of-Way I-2880 as stipulated and agreed to by holder of permits 36-7091 and 36-7334.

12. Provide evidence to show that the appropriation would be in the public interest as opposed to private interest.

Box Canyon Creek contains four Federal Candidate species. The 75.0 cfs minimum streamflow plus the inflow of 87.0 cfs to equal 162.0 cfs is required to maintain the habitat of the four species. Recreational fishing occurs on Box Canyon Creek and at the mouth where the creek flows into the Snake River.

13. Provide evidence or justification that the appropriation is necessary for the purposes shown in Item 4.

The four Federal Candidate species and recreational fishing require adequate in-stream flows. The current flow of Box Canyon Creek is ~~409~~ 417 cfs at the mouth. The requested minimum streamflow of 162 cfs is only 40 percent. This amount is considered the absolute minimum to protect the present public resources.

14. Provide evidence that the minimum flow or lake level is minimum and not the ideal or most desirable flow or lake level.

For the four Federal Candidate species and recreational fishing the most desirable flows are those at the high end of the range of acceptable flows at which all historic users are accommodated. The minimum flows, for which this application is made, are those at the lower end of the range of acceptable flows which accommodates the four Federal

RECEIVED
JUN 14 1989

Candidate species and the recreational fishing. Ranges of acceptable flows have been determined through research projects, user surveys, interviews, and professional experience and judgements. The ideal would be the total flow: the requested flow is less.

15. Provide evidence that the flow or lake level requested is capable of being maintained as evidenced by records of stream flows and water levels.

The requested flows are based after thorough study of flow records of Box Canyon Creek. The requested flows can be met under both current and proposed development operations.

16. Describe the location of existing gauging stations that can be used in the administration of this appropriation.

None exist.

17. Do you intend to install additional gauging stations? Describe the location.

The Holder of Right-of-Way I-2880 is required to provide structures to verify the minimum streamflows.

18. List any additional remarks related to this minimum stream flow application.

The Holder of water permits 36-7091 and 36-7334, Mr. Earl Hardy, has agreed to the minimum streamflows of 75.0 cfs at the proposed point of diversion for (BLM) Right-of-Way I-2880 and not to divert the 87.0 cfs inflow from the point of diversion to the mouth of Box Canyon Creek for a total of 162.0 cfs. Mr. Hardy has agreed that these flows are to be left in the stream for the four Federal Candidate species and recreational fishing.

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MAY 17 1989

ATTACHMENT A

The minimum flow reach is defined as follows:

Beginning at a point 300 feet downstream from where Box Canyon Creek crosses the East 1/16 line into Lot 1 of Section 28, Township 8S, Range 14E, B.M., and proceeding downstream to the confluence of Box Canyon Creek and the Snake River, located in Lot 2, Section 28, Township 8S, Range 14E, B.M.

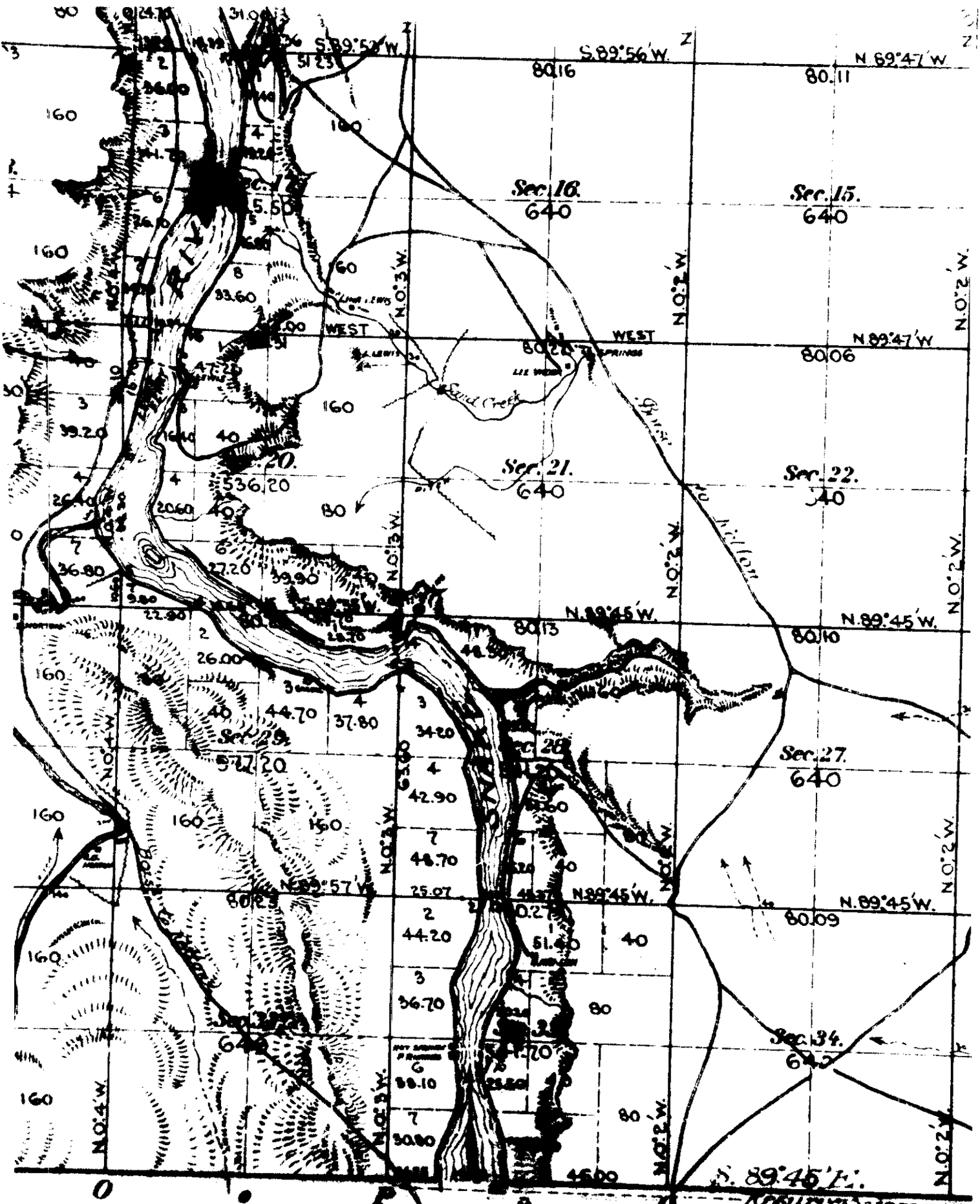
MICROFILMED

MAY 17 1989

ATTACHMENT B

The minimum flow sought by this application is a variable flow beginning with 75 cfs at the upstream end of the reach and increasing in flow to 162 cfs at the downstream end of the reach. Diffuse groundwater discharge into Box Canyon Creek contributes 87 cfs to the 75 cfs that enters the minimum streamflow reach, for a total of 162 cfs at the confluence of Box Canyon Creek and the Snake River.

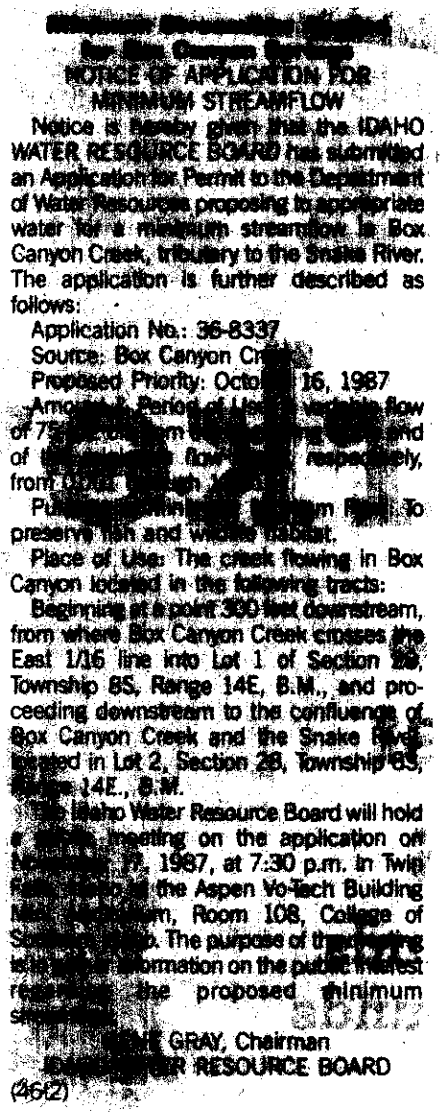
FILMED
MAY 17 1989



Acres of Public Land 22140.77 Acres Total number of Acres 22829.43

Surveyed	Date of Contract		Plat Surveyed	Final Declination
Excepting [illegible]	May 6. 1893	11 76	[illegible]	

Affidavit of Publication



NOTICE OF APPLICATION FOR MINIMUM STREAMFLOW

Notice is hereby given that the IDAHO WATER RESOURCE BOARD has submitted an Application for Permit to the Department of Water Resources proposing to appropriate water for a minimum streamflow in Box Canyon Creek, tributary to the Snake River. The application is further described as follows:

Application No.: 36-8337

Source: Box Canyon Cr[illegible]

Proposed Priority: Octo[illegible] 16, 1987

Amo[illegible] Period of Use: [illegible] flow of 7[illegible] and of [illegible] for [illegible] respectively, from [illegible]

Pu[illegible] To preserve fish and wildlife habitat.

Place of Use: The creek flowing in Box Canyon located in the following tracts:

Beginning at a point 330 feet downstream, from where Box Canyon Creek crosses the East 1/16 line into Lot 1 of Section 28, Township 6S, Range 14E, B.M., and proceeding downstream to the confluence of Box Canyon Creek and the Snake River, located in Lot 2, Section 28, Township 6S, Range 14E., B.M.

The Idaho Water Resource Board will hold a public hearing on the application on [illegible], 1987, at 7:30 p.m. in Twin [illegible] the Aspen Vo-Tech Building [illegible]m, Room 108, College of [illegible]. The purpose of the hearing will be to receive information on the public interest [illegible] the proposed minimum [illegible]

[illegible] GRAY, Chairman
[illegible] RESOURCE BOARD

(46t2)

State of Idaho }
County of Twin Falls } ss.

I, **Robert M. Bailey,** do solemnly swear that I am the publisher of **The Buhl Herald,** a weekly newspaper of general circulation, published once each week at Buhl, Idaho; that the notice attached hereto was published in said newspaper

November 4 and 11, 1987

; that said notice was published in the regular and entire issue of every number of the paper during the period and time of publication, and that the said notice was published in the newspaper proper, and not in the supplement thereof.

That said newspaper has been printed and published continuously in **Buhl, Twin Falls County, Idaho,** for a period of more than 78 weeks prior to the first publication of the attached notice.

Robert M. Bailey, Publisher

Subscribed and sworn to before me this

11th day of Nov., 1987

Tamra Burton

Tamra Burton, Notary Public.
Residing at Buhl, Idaho
My Commission Expires
October 1, 1992

MICROFILMED
MAR 17 1989

NOTICE OF HEARING FOR APPLICATION FOR MINIMUM STREAMFLOW

Notice is hereby given that the Idaho Water Resource Board submitted an application for permit to appropriate water to the Department of Water Resources on October 16, 1987, proposing to appropriate water for a minimum streamflow in Box Canyon Creek, tributary to the Snake River. The application is further described as follows:

Application No.:	36-8337
Source:	Box Canyon Creek
Proposed Priority:	October 16, 1987
Amount & Period of Use:	A variable flow of 75-162 cfs from the beginning to the end of the minimum flow reach, respectively, from 01/01 through 12/31.
Purpose of Minimum Flow:	To preserve fish and wildlife habitat.
Place of Use:	The creek in Box Canyon flowing in the following tracts:

Beginning at a point 300 feet downstream from where Box Canyon Creek crosses the East 1/16 line into Lot 1 of Section 28, T8S, R14E, B.M. Gooding County, and proceeding downstream to the confluence of Box Canyon Creek and the Snake River, located in Lot 2, Section 28, T8S, R14E, B.M., Gooding County.

The Director of the Department of Water Resources will hold a public hearing at the Gooding City Hall, 308 5th Avenue West, Gooding, Idaho, beginning at 9:30 a.m. on Wednesday, March 23, 1988, for the purpose of hearing evidence in regard to the application. The hearing will be held pursuant to the provisions of Section 42-1503, Idaho Code.

Any party who wishes to formally appear in this proceeding for the purpose of presenting evidence or cross examining witnesses should file a notice of appearance with the director of the Department of Water Resources, Statehouse Mail, 1301 North Orchard Street, Boise, ID 83720, five (5) days prior to the hearing. Other parties will be given an opportunity to informally present their views and comments without the necessity of filing a notice of appearance. Written informal views and comments may also be submitted to the Department of Water Resources prior to the hearing.

If issued, this permit will be subject to all prior water rights.

PUBLISHED
MAY 17 1988

R. KEITH HIGGINSON, Director
Idaho Department Water Resources

NOTICE OF HEARING FOR APPLICATION FOR MINIMUM STREAMFLOW

MB
3/3/88
Times News

Notice is hereby given that the Idaho Water Resource Board submitted an application for permit to appropriate water to the Department of Water Resources on October 16, 1987, proposing to appropriate water for a minimum streamflow in Box Canyon Creek, tributary of the Snake River. The application is further described as follows:

Application No.: 36-8337

Source: Box Canyon Creek

Proposed Priorty: October 16, 1987

Amount & Period of Use: A variable flow of 75-162 cfs from the beginning to the end of the minimum flow reach, respectively, from 01/01 through 12/31.

Purpose of Minimum Flow: to preserve fish and wildlife habitat.

Place of Use: The creek in Box Canyon flowing in the following tracts:

Beginning at a point 300 feet downstream from where Box Canyon Creek crosses the East 1/16 line into Lot 1 of Section 28, T8S, R14E, B.M. Gooding County, and proceeding downstream to the confluence of Box Canyon Creek and the Snake River, located in Lot 2, Section 28, T8S, R14E, B.M., Gooding County.

The Director of the Department of Water Resources will hold public hearing at the Gooding City Hall, 308 5th Avenue West, Gooding, Idaho, beginning at 9:30 a.m. on Wednesday, March 23, 1988, for the purpose of hearing evidence in regard to the application. The hearing will be held pursuant to the provisions of Section 42-1503, Idaho Code.

Any party who wishes to formally appear in this proceeding for the purpose of presenting evidence or cross examining witnesses should file a notice of appearance with the director of the Department of Water Resources, Statehouse Mail, 1301 North Orchard Street, Boise, ID 82720, five (5) days prior to the hearing. Other parties will be given an opportunity to informally present their views and comments without the necessity of filing a notice of appearance. Written informal views and comments may also be submitted to the Department of Water Resources prior to the hearing.

If issued, this permit will be subject to all prior water rights.

R. Keith Higginson, Director
Idaho Department Water Resources.

PUBLISH: Thursday, March 3 and 10, 1988.

MICROFILMED
MAY 17 1989

NOTICE OF APPLICATION FOR MINIMUM STREAMFLOW

Notice is hereby given that the IDAHO WATER RESOURCE BOARD has submitted an Application for Permit to the Department of Water Resources proposing to appropriate water for a minimum streamflow in Box Canyon Creek, tributary to the Snake River. The application is further described as follows:

Application No.: 36-8337

Source: Box Canyon Creek

Proposed Priorty: October 16, 1987

Amount of Minimum Instream Flow: to preserve fish and wildlife habitat.

Place of Use: The creek flowing in Box Canyon located in the following tracts:

Beginning at a point 300 feet downstream from where Box Canyon Creek crosses the East 1/16 line into Lot 1 of Section 28, Township 8S, Range 14E, B.M., and proceeding downstream to the confluence of Box Canyon Creek and the Snake River located in Lot 2, Section 28, Township 8S, Range 14E, B.M.

The Idaho Water Resource Board will hold a public meeting on the application on November 17, 1987, at 7:30 p.m. in Twin Falls, Idaho at the Aspen Vo-Tech Building Mini Auditorium, Room 108, College of Southern Idaho. The purpose of the meeting is to gather information on the public interest regarding the proposed minimum streamflow.

Gene Gray, Chairman
IDAHO WATER RESOURCE BOARD

PUBLISH: Thursday, November 5, and 12, 1987.

Affidavit of Publication

STATE OF IDAHO, }
COUNTY OF TWIN FALLS } ss.

No 17985

I, Linda Copps McClure being first duly sworn upon oath, depose and say that I am Clerk of the TIMES-NEWS, published daily, at Twin Falls, Idaho, and do solemnly swear that a copy of the notice of advertisement, as per clipping attached, was published in the regular and entire issue of said newspaper, and not in any supplement thereof, for Two consecutive Weeks, commencing with the issue dated November 5, 1987, and ending with the issue dated November 12, 1987.

And I do further certify that said newspaper is a consolidation, effective February 16, 1942, of the Idaho Evening Times, published theretofore daily except Sunday, and the Twin Falls News, published theretofore daily except Monday, both of which newspapers prior to consolidation had been published under said names in said city and county continuously and uninterruptedly during a period of more than twelve consecutive months, and said TIMES-NEWS, since such consolidation, has been published as a daily newspaper except Saturday, until July 31, 1978, at which time said newspaper began daily publication under said name in said city and county continuously and uninterruptedly.

And I further certify that pursuant to Section 60-108 Idaho Code, Thursday of each week has been designated as the day on which legal notice by law or by order of any court of competent jurisdiction within the state of Idaho, to be published weekly, will be published; and that at the head of the editorial column of said combined newspapers, and in each issue thereof, Thursday is announced as the day on which said legal notices will be published.

Linda Copps McClure

Subscribed and sworn to before me on this 13 day of November, 1987.

Deanna Bruce

Notary Public in and for the County of Twin Falls, State of Idaho, residing at Twin Falls, Idaho

NOTICE OF HEARING FOR APPLICATION FOR MINIMUM STREAMFLOW

Notice is hereby given that the Idaho Water Resource Board submitted an application for permit to appropriate water to the Department of Water Resources on October 16, 1987, proposing to appropriate water for a minimum streamflow in Box Canyon Creek, tributary of the Snake River. The application is further described as follows:

Application No.: 36-8337

Source: Box Canyon Creek

Proposed Priorty: October 16, 1987

Amount & Period of Use: A variable flow of 75-162 cfs from the beginning to the end of the minimum flow reach, respectively, from 01/01 through 12/31.

Purpose of Minimum Flow: to preserve fish and wildlife habitat.

Place of Use: The creek in Box Canyon flowing in the following tracts:

Beginning at a point 300 feet downstream from where Box Canyon Creek crosses the East 1/16 line into Lot 1 of Sectin 28, T8S, R14E, B.M. Gooding County, and proceeding downstream to the confluence of Box Canyon Creek and the Snake River, located in Lot 2, Section 28, T8S, R14E, B.M., Goocing County.

The Director of the Department of Water Resources will hold public hearing at the Gooding City Hall, 308 5th Avenue West, Gooding, Idaho, beginning at 9:30 a.m. on Wednesday, March 23, 1988, for the purpose of hearing evidence in regard to the application. The hearing will be held pursuant to the provisions of Section 42-1503, Idaho Code.

Any party who wishes to formally appear in this proceeding for the purpose of presenting evidence or cross examining witnesses should file a notice of appearance with the director of the Department of Water Resources, Statehouse Mail, 1301 North Orchard Street, Boise, ID 82720, five (5) days prior to the hearing. Other parties will be given an opportunity to informally present their views and comments without the necessity of filing a notice of appearance. Written informal views and comments may also be submitted to the Department of Water Resources prior to the hearing.

If issued, this permit will be subject to all prior water rights.

R. Keith Higginson, Director
Idaho Department Water Resources.

PUBLISH: **Thursday, March 3 and 10, 1988.**

OK MB 3/24/88

Affidavit of Publication

RECEIVED MAR 24 1988

No 18354

STATE OF IDAHO, }
COUNTY OF TWIN FALLS } ss.

I, Linda Copps McLain, being first duly sworn upon oath, depose and say that I am Legal Clerk of the TIMES-NEWS, published daily, at Twin Falls, Idaho, and do solemnly swear that a copy of the notice of advertisement, as per clipping attached, was published in the regular and entire issue of said newspaper, and not in any supplement thereof, for Two consecutive weeks, commencing with the issue dated March 3, 1988, and ending with the issue dated March 10, 1988.

And I do further certify that said newspaper is a consolidation, effective February 16, 1942, of the Idaho Evening Times, published theretofore daily except Sunday, and the Twin Falls News, published theretofore daily except Monday, both of which newspapers prior to consolidation had been published under said names in said city and county continuously and uninterruptedly during a period of more than twelve consecutive months, and said TIMES-NEWS, since such consolidation, has been published as a daily newspaper except Saturday, until July 31, 1978, at which time said newspaper began daily publication under said name in said city and county continuously and uninterruptedly.

And I further certify that pursuant to Section 60-108 Idaho Code, Thursday of each week has been designated as the day on which legal notice by law or by order of any court of competent jurisdiction within the state of Idaho, to be published weekly, will be published; and that at the head of the editorial column of said combined newspapers, and in each issue thereof, Thursday is announced as the day on which said legal notices will be published.

Linda Copps McLain

Subscribed and sworn to before me on this 10 day of March, 1988.

Brenda Parker

Notary Public in and for the County of Twin Falls, State of Idaho, residing at Twin Falls, Idaho

The Times-News
P.O. Box 548 • Twin Falls, Id. 83303-0548

March 11, 1988

Idaho Water Resources
2148 4th Ave East
Twin Falls ID 83301

RECEIVED
MAR 16 1988
Department of Water Resources
Southern Region Office

NOTICE OF HEARING 36-8337

Two Times

OK MB 3/24/88

March 3, 1988, 96 lines @ .320 - -$30.72
March 10, 1988, 96 lines @ .24- - -$23.04

TOTAL DUE $53.76

INVOICE

AGE PTG. 18354

CLASSIFIED ADVERTISING INVOICE
TWIN FALLS TIMES NEWS
132 3RD ST W.
P. O. BOX 548
TWIN FALLS ID 83303

RECEIVED
MAR 16 1988
Department of Water Resources
Southern Region Office

RETURN POSTAGE GUARANTEED

INVOICE NO.	CLASS	BILLING DATE
18354	343	03/11/88

INDEXING TERM
36-8337

START DATE	TELEPHONE NO.	ORDER NO.
3/03/88	734-3578	

LINES/WORDS	TIMES	RATE	NET AMOUNT	GROSS AMOUNT
96	2		53.76	53.76
PAY THIS AMOUNT ▶			53.76	53.76

OK MB 3/24/88

GROSS AMT DUE AFTER 03/26

RETURN THIS PORTION WITH YOUR REMITTANCE

18354 5376

THIS SPACE FOR ADDRESS ONLY

IDAHO WATER RESOURCES

2148 4TH AVE EAST
TWIN FALLS ID
83301

Proof of Publication

The Post-Register

State of Idaho,
County of Bonneville } ss

I, Richard Hardy, first being duly sworn, depose and say: That I am the Asst. Foreman of The Post Company, a corporation of Idaho Falls, Bonneville County, Idaho, publishers of The Post-Register, a newspaper of general circulation, published daily, except Saturday, at Idaho Falls, Idaho; said Post-Register being a consolidation of the Idaho Falls Times, established in the year 1890, The Idaho Register, established in the year 1880 and the Idaho Falls Post, established in 1903, such consolidation being made on the 1st day of November, 1931, and each of said newspapers have been published continuously and uninterruptedly, prior to consolidation, for more than seventy-eight (78) weeks and said Post-Register having been published continuously and uninterruptedly from the date of such consolidation, up to and including the last publication of notice hereinafter referred to.

That the notice, of which a copy is hereto attached and made a part of this affidavit, was published in said Post-Register for two consecutive weeks, first publication having been made on the 3rd day of March, 19 88, last publication having been made on the 10th day of March, 19 88, and that the said notice was published in the regular and entire issue of said paper on the respective dates of publication, and that such notice was published in the newspaper and not in a supplement.

Richard Hardy

Subscribed and sworn to before me, this 14th day of March, 19 88

Notary Public

My commission expires September 30, 19 88

B10

NOTICE OF HEARING FOR APPLICATION FOR MINIMUM STREAMFLOW

Notice is hereby given that the Idaho Water Resource Board submitted an application for permit to appropriate water to the Department of Water Resources on October 16, 1987, proposing to appropriate water for a minimum streamflow in Box Canyon Creek, tributary to the Snake River. The application is further described as follows:

Application No.: 36-8337
Source: Box Canyon Creek
Proposed Priority: October 16, 1987
Amount & Period of Use: A variable flow of 75-162 cfs from the beginning to the end of the minimum flow reach, respectively, from 01/01 through 12/31.
Purpose of Minimum Flow: To preserve fish and wildlife habitat.
Place of Use: The creek in Box Canyon flowing in the following tracts:

Beginning at a point 300 feet downstream from where Box Canyon Creek crosses the East 1/16 line into Lot 1 of Section 28, T8S, R14E, B.M. Gooding County, and proceeding downstream to the confluence of Box Canyon Creek and the Snake River, located in Lot 2, Section 28, T8S, R14E, B.M., Gooding County.

The Director of the Department of Water Resources will hold a public hearing at the Gooding City Hall, 308 5th Avenue West, Gooding, Idaho beginning at 9:30 a.m. on Wednesday, March 23, 1988, for the purpose of hearing evidence in regard to the application. The hearing will be held pursuant to the provisions of Section 42-1505, Idaho Code.

Any party who wishes to formally appear in this proceeding for the purpose of presenting evidence or cross examining witnesses should file a notice of appearance with the director of the Department of Water Resources, Statehouse Mail, 1301 North Orchard Street, Boise, ID 83720, five (5) days prior to the hearing. Other parties will be given an opportunity to informally present their views and comments without the necessity of filing a notice of appearance. Written informal views and comments may also be submitted to the Department of Water Resources prior to the hearing.

If issued, this permit will be subject to all prior water rights.

R. KEITH HIGGINSON, Director
Idaho Department Water Resources

Published: March 3, 10, 1988

OK MB 3/24/88

RECEIVED
MAR 17 1988
Department of Water Resources
Southern Region Office

RECEIVED
MAY 17 1988

TRIBUNE PUBLISHING COMPANY, INC.
The Lewiston Morning Tribune
505 C St., P.O. Box 957
Lewiston, Idaho 83501
(208) 743-9411

Date 03/08/88 INVOICE No 28732

Account No. 44662

Description 28732NOH 10

Times 2 Lines 13

Tab Lines

LEGAL ADVERTISING
INVOICE

SOLD TO: STATE OF IDAHO
DEPT. OF WATER RESOURCES
2ND AVE. E.
TWIN FALLS
ID 83301

RECEIVED $ 41.25

MAR 16 1988

Department of Water Resources
Southern Region Office

NOTICE: This is an invoice of Purchase made by you. Statement will be rendered the first of the month.
Please Retain This Invoice as Your Statement Will Refer To Invoice by No. Only.

28732

NOTICE OF HEARING FOR APPLICATION FOR MINIMUM STREAMFLOW

Notice is hereby given that the Idaho Water Resource Board submitted an application for permit to appropriate water to the Department of Water Resources on October 16, 1987, proposing to appropriate water for a minimum streamflow in Box Canyon Creek, tributary to the Snake River. The application is further described as follows:

Application No.: 36-8337
Source: Box Canyon Creek
Proposed Priority: October 16, 1987
Amount & Period of Use: A variable flow of 75-162 cfs from the beginning to the end of the minimum flow reach, respectively, from 01/01 through 12/31.
Purpose of Minimum Flow: To preserve fish and wildlife habitat.
Place of Use: The creek in Box Canyon flowing in the following tracts:
Beginning at a point 300 feet downstream from where Box Canyon Creek crosses the East 1/16 line into Lot 1 of Section 28, T8S, R14E, B.M. Gooding County, and proceeding downstream to the confluence of Box Canyon Creek and the Snake River, located in Lot 2, Section 28, T8S, R14E, B.M., Gooding County.

The Director of the Department of Water Resources will hold a public hearing at the Gooding City Hall, 308 5th Avenue West, Gooding, Idaho, beginning at 9:30 a.m. on Wednesday, March 23, 1988, for the purpose of hearing evidence in regard to the application. The hearing will be held pursuant to the provisions of Section 42-1503, Idaho Code.

Any party who wishes to formally appear in this proceeding for the purpose of presenting evidence or cross examining witnesses should file a notice of appearance with the director of the Department of Water Resources, Statehouse Mail, 1301 North Orchard Street, Boise, ID 83720, five (5) days prior to the hearing. Other parties will be given an opportunity to informally present their views and comments without the necessity of filing a notice of appearance. Written informal views and comments may also be submitted to the Department of Water Resources prior to the hearing.

If issued, this permit will be subject to all prior water rights.

R. KEITH HIGGINSON, Director
Idaho Department Water Resources

OK
MB
3/24/88

AFFIDAVIT OF PUBLICATION

STATE OF IDAHO, ss.
County of Nez Perce

C. M. Viers, being duly sworn, deposes and says, I am the Legal Clerk of the Tribune Publishing Company, a corporation organized and existing under and by virtue of the laws of the State of Idaho, publishers of the LEWISTON MORNING TRIBUNE, a newspaper of general circulation published at Lewiston, Nez Perce County, Idaho; That the said Lewiston Morning Tribune is an established paper and has been published regularly and issued regularly at least once a day for more than 21 consecutive years next immediately preceding the first publication of this notice, and has been so published uninterrupted for said period; that the

NOTICE OF HEARING

attached hereto and which is made a part of this affidavit was published in the said Lewiston Morning Tribune, 2 time(s). Publication being on 030388, or once a WEEK for 2 consecutive WEEKS, the first publication thereof being on the 030388, and the last publication thereof being on the 031088, and said NOTICE OF HEARING was so published in the regular and entire issue of said newspaper and not in a supplement thereof and was so published in every issue and number of the said paper, during the period and times of publication as set forth above.

C. M. Viers

SUBSCRIBED AND SWORN BEFORE ME THIS THE 10 day of March 1988

Sheral M Lentz

Notary Public in and for the State of Idaho, residing at Lewiston, therein.

The Idaho Statesman

P.O. BOX 40, BOISE, IDAHO 83707

LEGAL ADVERTISING INVOICE

Amount Due
58.38

Account Name	Account Number
Idaho Department of Water Resources (Southern)	#100632

Address	City/State	Zip
2148 4th Avenue	Twin Falls, ID	83301

Ordered By	P.O. Number	Rate	Run Dates
Rita I. Fleck		NT	1988 Mar. 3, 10

Identification	Estimated Inches	Real Inches
Application for Minimum Streamflow: No. 36-8337 Box Canyon Creek		

Number of Affidavits Requested	Legal Number
1	#7844

OK mb 3/11/88

STATE OF IDAHO)
) ss.
COUNTY OF ADA)

NOTICE OF HEARING ... APPLICATION ... MINIMUM STREAMFLOW

Notice is hereby given that the Idaho Water Resource Board submitted an application for permit to appropriate water to the Department of Water Resources on October 16, 1987, proposing to appropriate water for a minimum streamflow in Box Canyon Creek, tributary to the Snake River. The application is further described as follows:

Application No. 36-8337

Source: Box Canyon Creek

Proposed Priority: October 16, 1987

Amount & Period of Use: A variable flow of ... cfs, from the beginning to the ... each year, from ... to ...

Purpose of Minimum Stream: To preserve fish and wildlife habitat.

Place of Use: The creek in Box Canyon flowing in the following tracts: ... Section ... T. ... R. ... E.B.M., Gooding County, and ... Section ... T. ... R. ... E.B.M., Gooding County.

The Director of the Department of Water ... will hold a public hearing ... Gooding City Hall, 308 5th Avenue West, Gooding, Idaho, beginning at ... a.m. on Wednesday, April 27, 1988, for the purpose of hearing testimony in regard to the application. The hearing will be held pursuant to the provisions of Section 42-1503, Idaho Code.

Any party who wishes to formally appear in this proceeding for the purpose of presenting evidence or cross-examining witnesses should file a notice of appearance with the Director of ... days prior to the hearing. Other parties will be given an opportunity to informally present their views and comments ... notice of this notice ... prior to the hearing.

Pub. Mar. 3, 10, 1988 7844

Deborah Gregory, being duly sworn, deposes and says: That she is the Principal Clerk of The Idaho Statesman, a daily newspaper printed and published at Boise, Ada County, State of Idaho, and having a general circulation therein and which said newspaper has been continuously and uninterruptedly published in said County during a period of twelve consecutive months prior to the first publication of the notice, a copy of which is attached hereto; that said notice was published in The Idaho Statesman in conformity with Section 60-108, Idaho Code as amended, for Two (2)
☒ consecutive weekly ☐ consecutive daily ☐ single ☐ odd skip

insertion(s) beginning with the issue of March 3, 1988

and ending with the issue of March 10, 1988

Deborah Gregory

Subscribed and sworn to before me this 10th

day of March, 1988

Linda Gooding 12/93

Notary Public for Idaho, Residing at Boise, Idaho

AFFIDAVIT of PUBLICATION

RECEIVED

MAR 10 1988

State of Idaho,)
) SS.
County of Gooding)

J. L. Fuller, being first duly sworn, deposes and says that he is the printer (publisher) of the Gooding County Leader, a newspaper published every week in Gooding, County of Gooding, State of Idaho, that said newspaper has been continuously and uninterruptedly published for a period of seventy-eight consecutive weeks prior to the first publication of the annexed notice, and is a newspaper qualified to publish legal notices as provided by act of the 1919 session of the legislature of the State of Idaho, known as House Bill 145; that the annexed advertisement was published once each week for 2 consecutive issues in said newspaper proper and not in a supplement; that the date of the first publication of said advertisement was on the 2 day of March 19 88, and the date of the last publication was on the 9 day of March, 19 88.

J. L. Fuller

Subscribed and sworn to before me this 9th day of March, 19 88.
(SEAL)

Linda Schwendiman
NOTARY PUBLIC

GOODING COUNTY LEADER
Gooding, Idaho

COST OF PUBLICATION

OK MB 3/11/88

Number of Lines in Notice 59

Number of Insertions 2

RECEIVED
MAY 17 1989

	Lines tabular at		5¢/Pica
59	Lines straight at	30.68	4¢/Pica
59	Subsequent lines at	23.01	3¢/Pica
	TOTAL COST	53.69	

COPY OF NOTICE
(Paste Here)

Box Canyon Creek
TITLE OF NOTICE

PLAINTIFF ATTORNEY

DEFENDANT

PLAINTIFF

Dept of Water Resources
2148 4th Ave E.
Twin Falls, ID
83301
BILL TO

[redacted]

Notice [redacted] Water Resources [redacted] cation for permit to [redacted] the [redacted] labor [redacted] Canyon Creek [redacted] River. The application was examined as follows:

Application No. [redacted]

Source: Box Canyon Creek

Amount and Purpose of Use: [redacted] flow of 70 [redacted] the east of the [redacted] respectively, [redacted] Idaho.

Purpose of Use: From [redacted] to improve fish [redacted] habitat.

Place of Use: From Box Canyon flowing in the following manner:

Beginning at a point [redacted] stream from which [redacted] crossing the East 1/16 [redacted] Lot 1 of Section [redacted] and [redacted] Section [redacted] Box Canyon Creek, and the [redacted] Section 28, [redacted]

[redacted] Any person who wishes to formally protest [redacted] the protest [redacted] protestant should file a [redacted] with the director [redacted] pursuant to [redacted] Idaho Code, Rules [redacted] Other persons [redacted] to informally present their views and comments without the necessity of filing a [redacted] protest to the [redacted] sources prior to the [redacted] If issued, this permit [redacted] all prior water rights.

KEITH HIGGINSON
Director
Idaho Department of Water Resources

RECEIVED
NOV 3 1987
Department of Water Resources
Eastern Region Office

NOTICE OF APPLICATION FOR MINIMUM STREAMFLOW

Notice is hereby given that the IDAHO WATER RESOURCE BOARD has submitted an Application for Permit to the Department of Water Resources proposing to appropriate water for a minimum streamflow in Box Canyon Creek, tributary to the Snake River. The application is further described as follows:

Application No.: 36-8337

Source: Box Canyon Creek

Proposed Priority: October 16, 1987

Amount & Period of Use: A variable flow of 75-162 cfs from the beginning to the end of the minimum flow reach, respectively, from 01/01 through 12/31

Purpose of Minimum Instream Flow: To preserve fish and wildlife habitat.

Place of Use: The creek flowing in Box Canyon located in the following tracts:

Beginning at a point 300 feet downstream from where Box Canyon Creek crosses the East 1/16 line into Lot 1 of Section 28, Township 8S, Range 14E, B.M., and proceeding downstream to the confluence of Box Canyon Creek and the Snake River, located in Lot 2, Section 28, Township 8S, Range 14E, B.M.

The Idaho Water Resource Board will hold a public meeting on the application on November 17, 1987, at 7:30 p.m. in Twin Falls, Idaho at the Aspen Vo-Tech Building Mini Auditorium, Room 108, College of Southern Idaho. The purpose of the meeting is to gather information on the public interest regarding the proposed minimum streamflow.

GENE GRAY, Chairman
IDAHO WATER RESOURCE BOARD

RECEIVED
MAY 17 1989

NOTICE OF APPLICATION FOR MINIMUM STREAMFLOW

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Proposed Priority: October 16, 1987

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GENE GRAY, Chairman
IDAHO WATER RESOURCE BOARD
372354 - G11-04-2tc

OK
11/5/87
MB

1987

Department of Water Resources
Southern Region Office
Gooding Co. Leader

MAY

AFFIDAVIT of PUBLICATION

RECEIVED

NOV 13 1987

Department of Water Resources
Southern Region Office

State of Idaho,)
) SS.
County of Gooding)

J. L. Fuller

J. L. Fuller, being first duly sworn, deposes and says that he is the printer (publisher) of the Gooding County Leader, a newspaper published every week in Gooding, County of Gooding, State of Idaho, that said newspaper has been continuously and uninterruptedly published for a period of seventy-eight consecutive weeks prior to the first publication of the annexed notice, and is a newspaper qualified to publish legal notices as provided by act of the 1919 session of the legislature of the State of Idaho, known as House Bill 145; that the annexed advertisement was published once each week for 2 consecutive issues in said newspaper proper and not in a supplement; that the date of the first publication of said advertisement was on the 4 day of Jan 19 87, and the date of the last publication was on the 11 day of Jan, 19 87.

J. L. Fuller

Subscribed and sworn to before me this 11 day of Jan, 19 87.
(SEAL)

Notary Public

NOTARY PUBLIC

GOODING COUNTY LEADER
Gooding, Idaho

COST OF PUBLICATION

OK MB 11/24/87

Number of Lines in Notice 41
Number of Insertions 2

	Lines tabular at		5¢/Pica
41	Lines straight at	21.32	4¢/Pica
41	Subsequent lines at	15.99	3¢/Pica
	TOTAL COST	37.31	

COPY OF NOTICE
(Paste Here)

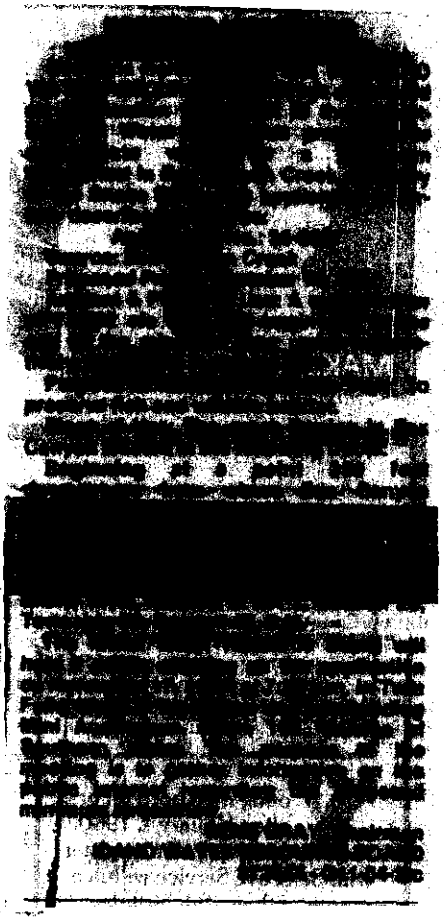
Applications Nos. 36-8337
TITLE OF NOTICE

PLAINTIFF ATTORNEY

DEFENDANT

PLAINTIFF

Dept of Water Resources
450 W State Street
BILL TO
Boise, ID 83720



This Right has been Decreed in the SRBA.

MICROFILMED
JUN 0 2 2004

Earl Melville Hardy

Earl Melville Hardy died Saturday afternoon, Feb. 13, 1999, with family.



Born at Midway, Utah, on Sept. 5, 1918, son of Earl Melville Hardy and Myrtle Watkins, Earl is survived by his wife, LaVane Matheson Hardy; daughters, Barbara Jane and Anita Kay Hardy; and grandsons, Daniel Earl and Eric James Harker. One daughter, Judith Anne, preceded him in death.

Earl Melville lived as he died — quietly with great dignity and characteristic humor. As father, husband, businessman and friend, Earl was steadfastly rooted to the land of his dreams, his family and acquaintances. He loved the land and heritage of his birth and his time in Idaho. As a boy, he hiked and fished in the valleys and hills of his home. Upon the death of his father at age 14, Earl started a lumber milling company in the Wasatch Hills of Utah. He was an auditor with the Public Service Commission, Salt Lake City, Utah, from 1938-1941. Earl served with the U.S Naval Reserve from 1941-1946 and lived in Boise after his service. He had a successful building and development company, and in earlier years enjoyed homebuilding in Boise. Earl was a respected pioneer of the Idaho rainbow trout industry, having been in business for over 50 years. Earl saved and restored the Egyptian Theatre in Boise and was actively involved with preservation projects in Utah and Idaho. He loved to garden, draw and design, discuss and explore his many interests. Earl loved the land, the West, the harmony of nature and the cultivation and productivity of the earth. He marked his time on earth with principle, courage and compassion.

Funeral services in Boise, arranged by Relyea Funeral Chapel, will be held at 11 a.m. Thursday, Feb. 18, in the Boise 10th Ward Chapel of The Church of Jesus Christ of Latter-day Saints, 3200 Cassia St. A memorial gathering will be held Wednesday evening, Feb. 17, from 6 to 8 p.m. at the Relyea Funeral Chapel and on Thursday at the church one hour prior to services.

Additional funeral services will be held at 11 a.m. Saturday, Feb. 20, in the Heber 4th Ward LDS Chapel, located at 176 West 500 South. Interment will be in the Heber City Cemetery, Heber, Utah. A memorial gathering will be held Friday evening, Feb. 19, from 6 to 8 p.m. at the Olpin Mortuary, Heber, Utah.

State of Idaho
DEPARTMENT OF WATER RESOURCES

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

CECIL D. ANDRUS
GOVERNOR

R. KEITH HIGGINSON
DIRECTOR

October 12, 1994

STATE OF IDAHO
IDAHO WATER RESOURCE BOARD
STATEHOUSE MAIL
BOISE ID 83720

RE: WATER RIGHT NOS. 36-08337/37-08258/37-08307/43-07295/
95-08560 and 97-07308

Dear Water Right Holder(s):

Enclosed herewith are copies of the Water Right Licenses issued on the above referenced permits. If you have any questions, please contact me within 10 days of receipt of these licenses.

Sincerely,

JIM JOHNSON, Manager
Water Right Permits Section

SK:dc

Enclosure

RECEIVED

OCT 2 0 1994

LICENSING REVIEW
MINIMUM STREAM FLOW

RIGHT NO. 36-8337 Box Canyon Creek

Proof of beneficial use rec'd 2/22/94

Was flow data submittal a requirement with proof submittal? Yes ✓ No ____

If yes, has data been reviewed and a determination made that minimum flow is capable of being maintained? Yes ✓ No ____

Data submitted fully complies with permit condition (i.e. # of years of flow data sufficient) not specified 8 yrs. supplied

Data Entry for License:

Name Standardized	✓
Total cfs & div. capacity listed as highest flow	✓
P/D(s) beginning and ending descriptions listed	✓
Use flows defined for entire year	✓
P/U left blank (description in remarks)	✓
Remarks/non-standard conditions	
Non-consumptive	✓
Watermaster control	✓ n/a
Jurisdiction retained to amend	✓
Description of reach(es)	✓
All other applicable permit conditions carried forward	✓

Comments/adjustments Reach (p/d) shown only w/ Bdy. Lot descriptors - unable to determine 1/4'1/4's from plats
Total of 162.0 cfs listed in uses field - remark explains different components making up the 162.0 cfs total

Printed license hand-edited ____

OWNER CODE	NAME & ADDRESS	PRIORITY DATE	WATER USE	USE PERIOD FROM	USE PERIOD TO	DIVERSION RATE	DIVERSION VOLUME
C	STATE OF IDAHO IDAHO WATER RESOURCE BOARD STATEHOUSE BOISE ID 83720	10/16/1987	MINIMUM INSTREAM FLOW	01-01	12-31	162.00 CFS	
				TOTAL DIVERSION:		162.00 CFS	

Water Source: BOX CANYON CREEK Tributary to: SNAKE RIVER Stage: LICENSE

Point(s) of Diversion Capacity: 162.00 CFS

Point(s) of Beginning Stream Reach: T08S R14E S28 Lot 01( ) GOODING County
Point(s) of Ending Stream Reach: T08S R14E S28 Lot 02( ) GOODING County

Pou County:

Conditions of Approval:
027 - Use of water under this right shall be non-consumptive.

Remarks: Use of water under this right shall recognize and allow the continued beneficial diversion of water under any prior existing water right established by diversion and application to beneficial use or by an application, permit, or license on file issued by the Director under provisions of Chapter 2, Title 42, Idaho Code, with the priority of the water right dated earlier than 10/16/87, the priority date of this right.
This minimum stream flow right shall be junior and subordinate to all consumptive use rights diverted from groundwater within the Snake River Plain Aquifer tributary to Box Canyon Creek, held in trust by the State of Idaho, which may be approved or diverted later in time than the priority of this right. Issuance of this license shall not give rise to any right or claim against any future rights to the consumptive use of groundwater held in trust by the State of Idaho initiated later in time than the priority of this right to the extent that such uses are within the limits established pursuant to the Swan Falls Agreement, the Idaho State Water Plan, and Chapter 2, Title 42, Idaho Code.
Upon the future finding and order of the Director that gauging stations are required to maintain the approved minimum flow on Box Canyon Creek, such measuring devices shall be permanently installed and maintained as specified by the Department.
This minimum stream flow sought is a variable flow beginning with 75.0 fs at the upstream end of the reach and increasing in flow to 162.0 cfs at the downstream end of the reach. Diffuse groundwater discharge into Box Canyon Creek contributes 87.0 cfs to the 75.0 cfs that enters the minimum stream flow reach, for a total of 162.0 cfs at the confluence of Box Canyon Creek and the Snake River.
The reach of this minimum stream flow is defined as beginning at a point 300 feet downstream where Box Canyon Creek crosses the 1/16 line into Lot 1, S28, T8S, R14E and proceeding downstream to the confluence of Box Canyon Creek and the Snake River, located in Lot 2, S28, T8S, R14E.

Remarks: The Director retains jurisdiction to reivew and amend any and all parameters of this right. The Board, upon receiving a request, or upon its own initiative, may petition the Director for an amendment to the right. The petition must set forth any significant change in circumstances and evidence of public interest supporting the proposed amendment. The Director will notify the general public and specific persons or known interested parties of the proposed change, and conduct a hearing for the purpose of determining whether the right should be amended in the public interest. The burden of proof at the hearing shall be upon the persons or parties seeking the amendment to establish that the amendment of the right would be in the public interest.

Dates:				
	App. Received:	10/16/1987	Priority Date:	10/16/1987
	Proof Due Date:	04/01/1994	Proof Made Date:	02/22/1994
	Exam Made Date:		Exam Sent to S.O.:	
	Licensed Date:			

Misc: Water District Number: Field Exam Fee: N (Not Required)

Audit: 07/28/94 SCURTIS 07/28/94 SCURTIS 08/01/94 SCURTIS

ANALYSIS SHEET
FOR
PROOF OF BENEFICIAL USE

Permit No. 36 08337 Reviewed by [illegible] Date _____

GENERAL CONSIDERATIONS

YES Name same as permit?
YES Address same as permit?
YES Proof timely received?
If not, complete calculation below.

TYPES OF USE

minimum instream flow
Correct Uses? YES

SOURCE OF WATER

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

LICENSE EXAMINATION FEE

NO Required?
_____ Amount Submitted
_____ Correct?

MEASURING DEVICE

NO Required?
_____ Installed?
_____ Waiver requested?

PRIORITY CALCULATION

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

DEFICIENCIES OR ACTION ITEMS

Proof acceptable

DATA ENTRY
New Address _____ Proof Made 2-22-94

March 1, 1994

STATE OF IDAHO
IDAHO WATER RESOURCE BOARD
STATEHOUSE
BOISE ID 837200000

PROOF ACKNOWLEDGMENT LETTER

RE: PERMIT NO. 36-08337

Dear Permit Holder:

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

If you have questions concerning this matter, please feel free to contact the SOUTHERN Regional Office in Twin Falls at (208)736-3033.

Sincerely,

JULIE L. YARBROUGH
Senior Secretary

c: IDWR - Region

Attachment to
Proof of Beneficial Use :
36-08337
Box Canyon Creek, Minimum Instream Flow

The Decision for this water right permit states that additional flow data must be developed during the permit period. These data will be used to determine the amount of water to be licensed.

This minimum instream flow was filed because of an agreement reached by the Bureau of Land Management and Mr. Earl Hardy with regard to two undeveloped water permits (36-07091 and 36-07334) held by Mr. Hardy. In exchange for a federal right of way across BLM property Mr. Hardy agreed to bypass at least 75 CFS at the beginning of the minimum instream flow reach. **Mr. Hardy's project has not been constructed.**

In the absence of the Hardy development, conditions continue as they existed in 1986 when measurements were made to determine inflow to the creek. On March 5, 1986 flow at the USGS gage was 369 CFS. Inflow to the creek was such that at the beginning of the minimum instream flow reach (below the Clear Springs diversion) the flow was 322 CFS and flow at the mouth of the creek was 417 CFS.

The accompanying data sheets indicate that mean monthly flows at the USGS gage have declined from water year 1986 to 1993 between 12 to 18 percent, with an average decline of 15 percent for the period. Applying this average decline to the measured flow at the beginning of the instream flow reach suggests a flow of approximately 273 CFS. Since the permitted flow at the beginning of the reach is 75 CFS, it is clear that significant additional development could occur up-gradient of the spring and creek without impacting on the 75 CFS. Mr. Hardy's project has the only outstanding permits that could dewater the stream. Mr. Hardy's agreement with the BLM requires him to bypass 75 CFS if he develops the project. The specified instream flow will therefore exist under most conceivable conditions.

APR 1 1 1994

UNITED STATES DEPARTMENT OF THE INTERIOR - GEOLOGICAL SURVEY - BOISE 02/14/94

STATION NUMBER 13095500 BOX CANYON SPRING NR WENDELL ID STREAM SOURCE AGENCY USGS
LATITUDE 424225 LONGITUDE 1144845 DRAINAGE AREA 0.00 DATUM STATE 16 COUNTY 047

DISCHARGE, CUBIC FEET PER SECOND, WATER YEAR OCTOBER 1985 TO SEPTEMBER 1986
DAILY MEAN VALUES

DAY	OCT	NOV	DEC	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP
1	411	411	397	387	375	371	367	363	361	365	381	400
2	411	411	397	384	375	371	367	363	361	367	381	401
3	411	409	397	383	375	371	367	363	361	369	382	401
4	411	407	396	383	375	369	367	361	361	370	383	401
5	411	407	395	383	375	369	367	361	361	371	383	401
6	411	407	395	383	374	369	367	361	361	371	383	401
7	412	407	395	383	373	369	367	361	362	371	384	401
8	415	405	395	381	373	369	367	361	365	371	385	401
9	415	405	394	379	373	369	364	361	365	371	385	402
10	412	405	393	379	371	369	363	361	365	371	385	405
11	411	405	393	379	371	369	363	361	365	371	385	405
12	414	405	393	379	371	369	363	361	365	372	385	405
13	413	405	393	379	371	369	363	361	365	373	385	405
[illegible]	413	403	393	379	371	369	363	361	365	373	385	405
[illegible]	413	401	393	379	371	369	363	361	365	373	385	405
16	413	401	393	379	371	369	363	361	365	373	385	405
17	413	401	393	379	371	369	363	361	365	375	385	406
18	413	401	393	379	371	369	363	361	365	375	385	409
19	413	401	393	379	371	369	363	361	365	375	385	409
20	413	401	393	379	371	369	363	361	365	375	385	409
21	413	401	393	377	371	369	363	361	365	375	385	409
22	413	401	393	377	371	369	363	361	365	379	388	409
23	413	401	393	377	371	369	363	361	365	379	389	409
24	412	401	393	377	371	369	363	361	365	379	391	411
25	411	401	393	375	371	369	363	361	365	379	393	413
26	411	401	393	375	371	369	363	361	365	379	393	413
27	411	401	393	375	371	368	363	361	365	380	393	413
28	411	401	393	375	371	367	363	361	365	381	393	413
29	411	401	393	375	---	367	363	361	365	381	393	413
30	411	399	393	375	---	367	363	361	365	381	396	413
31	411	---	393	375	---	367	---	361	---	381	398	---
TOTAL	12777	12106	12207	11748	10417	11436	10923	11197	10923	11606	11994	12193
MEAN	412	404	394	379	372	369	364	361	364	374	387	406
MAX	415	411	397	387	375	371	367	363	365	381	398	413
MIN	411	399	393	375	371	367	363	361	361	365	381	400
AC-FT	25340	24010	24210	23300	20660	22680	21670	22210	21670	23020	23790	24180

APR 11 1994

UNITED STATES DEPARTMENT OF THE INTERIOR - GEOLOGICAL SURVEY - BOISE 02/14/94

STATION NUMBER 13095500 BOX CANYON SPRING NR WENDELL ID STREAM SOURCE AGENCY USGS
LATITUDE 424225 LONGITUDE 1144845 DRAINAGE AREA 0.00 DATUM STATE 16 COUNTY 047

DISCHARGE, CUBIC FEET PER SECOND, WATER YEAR OCTOBER 1986 TO SEPTEMBER 1987
DAILY MEAN VALUES

DAY	OCT	NOV	DEC	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP
1	414	414	403	389	379	375	367	351	360	365	383	395
2	415	413	403	389	379	375	367	351	361	365	383	395
3	415	413	403	389	379	375	367	351	361	365	383	395
4	415	412	403	389	379	371	367	351	361	365	383	395
5	415	411	403	389	376	371	367	351	360	365	385	397
6	415	411	403	389	375	371	367	351	359	365	385	399
7	415	411	402	389	375	371	367	351	359	367	385	399
8	415	411	401	388	375	371	367	351	359	369	385	399
9	415	411	401	387	375	371	367	351	359	369	385	399
10	415	411	400	e386	375	371	367	351	360	369	385	399
11	415	411	399	e385	375	371	367	351	361	369	385	402
12	415	411	399	e385	375	370	365	351	365	369	385	403
13	415	411	399	e385	375	369	365	351	365	369	385	403
14	415	411	398	e385	375	369	365	351	365	369	385	403
15	415	411	397	e384	375	369	365	351	365	371	385	403
16	415	411	397	e384	375	369	365	351	365	371	385	403
17	415	411	394	e384	375	369	363	351	365	371	385	403
18	415	411	393	e383	375	369	363	351	365	374	385	403
19	415	411	393	e383	375	369	363	353	365	375	385	404
20	415	411	393	e383	375	369	363	355	365	375	387	405
21	415	411	393	e383	375	369	359	355	365	375	389	406
22	415	407	393	e383	375	369	357	355	365	379	389	407
23	415	407	393	383	375	369	357	355	365	379	388	407
24	415	407	393	383	375	369	357	355	365	379	387	407
25	415	407	393	383	375	369	355	358	365	379	387	407
26	415	407	393	379	375	369	354	359	365	379	387	409
27	415	407	392	379	375	369	351	359	365	379	391	409
28	415	407	390	379	375	369	351	359	365	380	391	409
29	415	407	389	379	---	369	351	359	365	383	391	409
30	415	404	389	379	---	369	351	359	365	383	391	409
31	415	---	389	379	---	368	---	359	---	383	393	---
TOTAL	12864	12299	12291	11914	10517	11473	10857	10958	10895	11555	11978	12083
MEAN	415	410	396	384	376	370	362	353	363	373	386	403
MAX	415	414	403	389	379	375	367	359	365	383	393	409
MIN	414	404	389	379	375	368	351	351	359	365	383	395
AC-FT	25520	24400	24380	23630	20860	22760	21530	21740	21610	22920	23760	23970

APR 1 1994

UNITED STATES DEPARTMENT OF THE INTERIOR - GEOLOGICAL SURVEY - BOISE 02/10/94

STATION NUMBER 13095500 BOX CANYON SPRING NR WENDELL ID STREAM SOURCE AGENCY USGS
LATITUDE 424225 LONGITUDE 1144845 DRAINAGE AREA 0.00 DATUM STATE 16 COUNTY 047

DISCHARGE, CUBIC FEET PER SECOND, WATER YEAR OCTOBER 1987 TO SEPTEMBER 1988
DAILY MEAN VALUES

DAY	OCT	NOV	DEC	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP
1	409	407	391	379	370	361	355	345	347	e353	e357	374
2	409	407	391	379	369	361	355	345	347	e353	e357	375
3	409	406	391	379	369	361	355	345	348	e353	358	375
4	409	405	391	379	369	360	353	345	351	e353	359	375
5	409	405	391	378	368	360	353	345	351	e354	359	377
6	409	405	391	377	367	360	353	345	352	e354	360	379
7	409	405	391	377	367	359	354	345	353	e354	361	381
8	409	404	391	377	367	359	353	345	353	e354	361	380
9	409	403	390	377	367	359	353	346	353	e354	363	381
10	409	403	389	377	366	359	351	347	351	e354	363	382
11	409	401	389	377	365	359	351	347	350	e354	363	384
12	409	399	388	377	365	359	351	347	350	e355	363	385
13	409	399	387	377	365	359	351	345	351	e355	363	385
14	409	400	387	373	365	359	350	345	e351	e355	363	385
15	409	401	387	373	365	359	349	343	e351	e355	365	386
16	409	401	387	373	365	359	349	343	e351	e355	365	388
17	410	400	387	373	365	358	349	344	e351	e355	366	390
18	411	397	387	373	364	357	348	347	e351	e355	365	391
19	411	397	385	373	363	357	347	347	e351	e356	366	392
20	409	397	385	373	363	357	347	345	e352	e356	367	393
21	409	397	384	373	363	357	347	343	e352	e356	367	393
22	409	397	383	373	363	357	347	343	e352	e356	367	393
23	409	397	383	373	361	357	347	343	e352	e356	368	393
24	409	397	383	372	361	357	347	343	e352	e356	368	394
25	408	397	383	372	361	357	347	343	e352	e356	368	395
26	407	395	383	371	361	356	347	343	e352	e356	369	395
27	407	395	383	371	361	357	347	342	e352	e357	371	395
28	407	395	383	371	361	356	347	342	e353	e357	372	395
29	407	395	381	371	361	356	345	346	e353	e357	373	394
30	407	393	381	371	---	355	345	347	e353	e357	375	395
31	407	---	380	371	---	355	---	345	---	e357	374	---
TOTAL	12671	12000	11983	11610	10577	11102	10493	10686	10538	11008	11316	11600
MEAN	409	400	387	375	365	358	350	345	351	355	365	387
MAX	411	407	391	379	370	361	355	347	353	357	375	395
MIN	407	393	380	371	361	355	345	342	347	353	357	374
AC-FT	25130	23800	23770	23030	20980	22020	20810	21200	20900	21830	22450	23010

CAL YR 1987 TOTAL 138884 MEAN 381 MAX 411 MIN 351 AC-FT 275500
WTR YR 1988 TOTAL 135584 MEAN 370 MAX 411 MIN 342 AC-FT 268900

e Estimated

UNITED STATES DEPARTMENT OF THE INTERIOR - GEOLOGICAL SURVEY - BOISE 02/10/94

STATION NUMBER 13095500 BOX CANYON SPRING NR WENDELL ID STREAM SOURCE AGENCY USGS
LATITUDE 424225 LONGITUDE 1144845 DRAINAGE AREA 0.00 DATUM STATE 16 COUNTY 047

DISCHARGE, CUBIC FEET PER SECOND, WATER YEAR OCTOBER 1988 TO SEPTEMBER 1989
DAILY MEAN VALUES

DAY	OCT	NOV	DEC	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP
1	395	389	375	363	355	348	343	336	339	343	353	372
2	395	389	375	363	354	349	343	335	339	343	355	373
3	395	388	375	362	353	349	343	334	339	343	355	373
4	395	387	373	362	353	347	343	334	339	343	355	373
5	395	387	373	363	353	347	343	333	339	343	355	373
6	395	387	373	365	353	347	343	333	341	343	355	373
7	393	387	372	365	353	347	343	333	341	343	355	376
8	393	386	371	363	353	347	343	333	341	343	357	377
9	393	385	371	361	352	347	343	333	341	343	358	377
10	393	385	371	362	351	347	342	336	341	343	359	377
11	393	385	371	361	351	347	342	337	341	343	360	377
12	394	384	370	359	353	347	341	337	340	343	361	377
13	395	385	370	359	351	347	341	333	339	343	361	377
14	395	384	370	359	351	347	341	332	339	343	363	377
15	395	383	369	359	351	346	342	333	339	343	365	380
16	395	383	369	359	350	346	341	335	339	343	364	381
17	395	384	368	358	349	345	341	335	337	343	363	381
18	395	383	368	357	349	345	339	336	337	343	363	381
19	395	381	368	357	350	345	339	336	338	343	363	381
20	395	381	367	357	349	345	339	337	339	343	363	382
21	395	380	368	357	349	345	339	337	337	343	365	383
22	395	380	367	357	349	344	339	337	338	343	365	383
23	393	381	367	357	349	343	339	337	339	343	365	383
24	393	380	367	357	349	343	338	336	340	345	367	384
25	392	379	367	357	348	343	337	335	341	345	367	385
26	392	379	366	356	348	343	338	335	343	345	368	385
27	391	377	365	355	349	343	338	337	344	345	371	385
28	391	378	365	355	349	343	337	337	343	347	371	385
29	389	377	365	355	---	343	336	337	343	347	371	387
30	389	375	365	354	---	343	336	337	343	349	372	387
31	388	---	364	355	---	343	---	338	---	351	371	---
TOTAL	12197	11489	11445	11129	9824	10711	10212	10394	10199	10663	11236	11385
MEAN	393	383	369	359	351	346	340	335	340	344	362	379
MAX	395	389	375	365	355	349	343	338	344	351	372	387
MIN	388	375	364	354	348	343	336	332	337	343	353	372
AC-FT	24190	22790	22700	22070	19490	21250	20260	20620	20230	21150	22290	22580

CAL YR 1988 TOTAL 134061 MEAN 366 MAX 395 MIN 342 AC-FT 265900
WTR YR 1989 TOTAL 130884 MEAN 359 MAX 395 MIN 332 AC-FT 259600

UNITED STATES DEPARTMENT OF THE INTERIOR - GEOLOGICAL SURVEY - BOISE 02/10/94

STATION NUMBER 13095500 BOX CANYON SPRING NR WENDELL ID STREAM SOURCE AGENCY USGS
LATITUDE 424225 LONGITUDE 1144645 DRAINAGE AREA 0.00 DATUM STATE 16 COUNTY 047

DISCHARGE, CUBIC FEET PER SECOND, WATER YEAR OCTOBER 1989 TO SEPTEMBER 1990
DAILY MEAN VALUES

DAY	OCT	NOV	DEC	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP
1	390	390	378	367	362	357	351	344	344	348	355	372
2	390	390	378	369	362	355	351	344	344	348	358	373
3	390	391	378	367	362	353	349	344	348	348	358	373
4	390	392	378	367	362	353	349	344	349	348	358	373
5	391	391	377	366	361	353	349	344	351	348	358	374
6	391	391	377	366	360	353	349	344	351	348	358	374
7	391	392	376	366	360	353	349	343	351	348	358	374
8	391	390	376	366	360	353	349	342	351	348	358	375
9	391	390	376	366	360	353	349	342	351	349	358	376
10	392	389	376	365	360	354	349	342	350	349	358	376
11	393	389	375	364	360	354	348	342	350	348	358	376
12	393	389	375	364	360	353	348	342	351	348	358	376
13	393	388	374	364	360	353	348	342	351	348	358	376
14	393	388	375	364	360	353	348	340	351	348	361	376
15	393	387	374	364	360	353	348	340	351	348	362	377
16	393	386	374	364	360	352	347	340	353	349	362	377
17	392	386	374	364	359	352	346	340	353	349	363	378
18	391	385	374	364	358	352	346	340	354	348	364	378
19	391	384	373	364	358	351	345	340	353	349	364	378
20	391	384	373	364	358	351	344	340	353	349	366	378
21	391	384	372	364	358	352	344	340	351	349	366	378
22	391	383	371	362	357	352	344	340	351	349	367	379
23	391	383	371	362	357	352	344	340	350	349	368	380
24	391	383	371	362	357	351	344	340	349	349	369	381
25	393	383	371	362	357	351	344	340	349	351	371	381
26	392	383	369	362	357	351	344	340	349	353	371	382
27	392	382	369	362	357	351	344	340	350	353	372	382
28	393	380	369	362	357	351	344	340	351	353	372	383
29	391	380	369	362	---	351	344	340	350	354	372	383
30	391	379	369	362	---	351	344	343	349	355	372	383
31	391	---	368	362	---	351	---	344	---	355	372	---
TOTAL	12137	11592	11580	11289	10059	10925	10402	10586	10509	10836	11265	11322
MEAN	392	386	374	364	359	352	347	341	350	350	363	377
MAX	393	392	378	369	362	357	351	344	354	355	372	383
MIN	390	379	368	362	357	351	344	340	344	348	355	372
AC-FT	24070	22990	22970	22390	19950	21670	20630	21000	20840	21490	22340	22460

CAL YR 1989 TOTAL 131062 MEAN 359 MAX 393 MIN 332 AC-FT 260000
WTR YR 1990 TOTAL 132502 MEAN 363 MAX 393 MIN 340 AC-FT 262800

APR 11 1994

UNITED STATES DEPARTMENT OF THE INTERIOR - GEOLOGICAL SURVEY - BOISE 02/10/94

STATION NUMBER 13095500 BOX CANYON SPRING NR WENDELL ID STREAM SOURCE AGENCY USGS
LATITUDE 424225 LONGITUDE 1144845 DRAINAGE AREA 0.00 DATUM STATE 16 COUNTY 047

DISCHARGE, CUBIC FEET PER SECOND, WATER YEAR OCTOBER 1990 TO SEPTEMBER 1991
DAILY MEAN VALUES

DAY	OCT	NOV	DEC	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP
1	385	388	378	371	359	353	349	342	340	339	339	357
2	386	387	377	371	358	353	349	341	340	340	339	357
3	386	386	376	371	358	353	349	340	340	340	341	357
4	386	386	376	371	358	353	349	340	340	340	342	358
5	387	387	376	371	358	353	349	340	340	340	342	358
6	387	385	375	369	358	353	348	340	340	340	342	360
7	387	385	375	366	357	353	348	340	340	340	342	360
8	387	384	374	366	357	353	348	340	340	340	343	360
9	387	385	374	366	357	353	348	340	340	340	344	362
10	387	385	374	365	357	353	348	340	340	339	344	363
11	387	384	374	364	357	353	348	340	340	339	344	364
12	387	384	373	364	357	353	347	340	340	339	344	365
13	388	384	373	364	357	353	346	340	339	339	344	366
14	388	384	373	364	357	353	346	340	337	338	345	368
15	387	383	372	364	357	353	346	340	337	337	346	367
16	388	383	372	363	357	353	346	340	337	336	346	368
17	387	383	371	362	357	353	344	340	337	334	346	368
18	388	382	373	362	357	353	344	340	337	333	346	369
19	389	383	373	363	356	353	344	340	337	333	346	369
20	388	383	372	362	355	353	344	340	337	333	347	369
21	388	381	371	361	355	353	344	340	335	334	348	371
22	388	381	371	361	355	352	344	340	335	335	348	370
23	388	379	371	361	355	351	344	340	335	335	350	371
24	388	379	371	361	355	349	344	340	335	335	351	370
25	388	380	371	360	355	350	342	340	335	335	351	371
26	388	382	370	360	353	349	342	340	336	335	353	371
27	388	380	369	360	353	349	342	340	337	335	353	371
28	388	379	371	e360	353	349	342	340	337	335	353	371
29	388	378	371	e360	---	349	342	340	337	335	355	371
30	388	378	371	e360	---	349	342	340	337	335	355	371
31	388	---	371	359	---	349	---	340	---	336	357	---
TOTAL	12010	11488	11559	11282	9978	10909	10368	10543	10137	10444	10746	10973
MEAN	387	383	373	364	356	352	346	340	338	337	347	366
MAX	389	388	378	371	359	353	349	342	340	340	357	371
MIN	385	378	369	359	353	349	342	340	335	333	339	357
AC-FT	23820	22790	22930	22380	19790	21640	20560	20910	20110	20720	21310	21760

CAL YR 1990 TOTAL 132250 MEAN 362 MAX 389 MIN 340 AC-FT 262300
WTR YR 1991 TOTAL 130437 MEAN 357 MAX 389 MIN 333 AC-FT 258700

e Estimated

UNITED STATES DEPARTMENT OF THE INTERIOR - GEOLOGICAL SURVEY - BOISE 02/10/94

STATION NUMBER 13095500 BOX CANYON SPRING NR WENDELL ID STREAM SOURCE AGENCY USGS
LATITUDE 424225 LONGITUDE 1144845 DRAINAGE AREA 0.00 DATUM STATE 16 COUNTY 047

DISCHARGE, CUBIC FEET PER SECOND, WATER YEAR OCTOBER 1991 TO SEPTEMBER 1992
DAILY MEAN VALUES

DAY	OCT	NOV	DEC	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP
1	371	371	362	349	340	337	324	319	314	326	320	332
2	373	371	362	349	340	336	323	318	314	325	319	332
3	373	371	362	349	340	335	323	318	313	326	320	333
4	373	370	362	349	340	335	322	317	313	326	322	333
5	373	370	362	349	340	335	322	316	313	325	322	333
6	373	369	362	349	339	335	321	315	313	325	322	333
7	374	368	362	349	339	335	320	314	312	321	323	334
8	373	369	362	348	339	335	320	314	312	321	323	334
9	373	368	360	348	339	335	320	315	313	319	322	334
10	372	367	360	346	339	333	319	315	313	319	323	334
11	372	366	360	345	339	333	318	316	313	319	324	334
12	372	366	360	346	339	333	318	314	314	320	323	335
13	371	367	360	345	339	332	318	315	315	321	324	335
14	371	368	358	344	339	332	318	315	318	321	325	336
15	371	367	358	344	339	332	317	316	320	322	325	337
16	373	366	355	344	340	332	318	316	322	323	325	336
17	373	367	351	344	340	332	318	316	322	323	327	337
18	371	366	351	344	340	332	319	315	323	323	327	337
19	371	365	351	344	340	332	318	316	323	323	327	337
20	370	364	351	344	340	332	319	316	323	323	328	337
21	371	365	351	344	338	331	320	316	321	323	328	337
22	371	366	351	344	337	330	320	315	321	322	328	337
23	371	364	351	343	337	330	319	315	320	319	328	337
24	371	364	349	342	337	329	319	314	320	318	328	337
25	372	364	349	342	337	328	319	313	319	318	328	337
26	373	364	349	342	337	328	319	314	320	317	328	337
27	375	364	349	342	337	327	319	314	320	318	330	337
28	374	364	349	342	337	326	319	313	321	320	331	336
29	373	364	351	342	337	326	318	313	323	320	331	336
30	372	362	351	341	---	326	318	313	325	320	332	335
31	372	---	350	340	---	325	---	313	---	320	332	---
TOTAL	11538	10997	11021	10693	9824	10279	9585	9769	9533	9966	10095	10059
MEAN	372	367	356	345	339	332	319	315	318	321	326	335
MAX	375	371	362	349	340	337	324	319	325	326	332	337
MIN	370	362	349	340	337	325	317	313	312	317	319	332
AC-FT	22890	21810	21860	21210	19490	20390	19010	19380	18910	19770	20020	19950

CAL YR 1991 TOTAL 128936 MEAN 353 MAX 375 MIN 333 AC-FT 255700
WTR YR 1992 TOTAL 123359 MEAN 337 MAX 375 MIN 312 AC-FT 244700

UNITED STATES DEPARTMENT OF THE INTERIOR - GEOLOGICAL SURVEY - BOISE 02/10/94

STATION NUMBER 13095500 BOX CANYON SPRING NR WENDELL ID STREAM SOURCE AGENCY USGS
LATITUDE 424225 LONGITUDE 1144845 DRAINAGE AREA 0.00 DATUM STATE 16 COUNTY 047

DISCHARGE, CUBIC FEET PER SECOND, WATER YEAR OCTOBER 1992 TO SEPTEMBER 1993
DAILY MEAN VALUES

DAY	OCT	NOV	DEC	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP
1	336	337	332	328	326	322	320	318	e311	313	320	332
2	337	337	332	328	325	322	320	317	e311	313	320	331
3	338	337	332	328	325	322	320	318	311	314	320	331
4	338	337	331	328	325	322	320	317	311	314	320	332
5	338	337	332	327	325	321	320	317	313	316	320	331
6	338	337	331	327	324	321	320	316	313	315	320	331
7	338	337	331	327	324	321	320	313	315	315	320	332
8	339	337	331	328	324	321	320	312	316	314	321	333
9	339	337	331	327	324	321	320	e312	317	314	321	333
10	339	337	330	327	324	321	320	e312	319	313	321	333
11	339	336	330	327	323	321	320	e312	320	313	321	333
12	339	335	330	326	323	321	320	e312	320	314	321	335
13	339	335	330	328	324	321	320	e312	321	316	321	335
14	339	335	329	328	323	321	320	e312	320	316	322	335
15	339	335	331	328	323	321	319	e312	320	316	323	335
16	339	335	331	328	323	321	319	e312	320	316	324	336
17	339	334	331	327	323	321	320	e312	318	316	325	335
18	339	334	331	327	323	321	320	e312	317	315	326	336
19	339	334	330	327	324	321	320	e312	316	316	327	336
20	339	334	330	327	324	321	320	e312	316	316	328	337
21	338	333	330	327	323	321	320	e311	316	316	328	337
22	337	334	330	328	323	321	320	e311	315	316	328	337
23	337	333	330	326	323	321	320	e311	316	319	329	337
24	338	333	329	326	324	321	320	e311	316	321	329	338
25	337	333	329	326	323	320	319	e311	315	326	330	338
26	337	332	329	326	322	320	318	e311	315	328	330	337
27	337	332	329	325	323	320	319	e311	315	323	330	337
28	338	332	329	325	323	320	318	e311	315	322	331	338
29	338	332	329	326	---	320	318	e311	315	322	331	338
30	338	332	328	326	---	320	318	e311	315	321	331	339
31	338	---	328	326	---	320	---	e311	---	321	332	---
TOTAL	10483	10043	10236	10135	9063	9948	9588	9693	9478	9830	10070	10048
MEAN	338	335	330	327	324	321	320	313	316	317	325	335
MAX	339	337	332	328	326	322	320	318	321	328	332	339
MIN	336	332	328	325	322	320	318	311	311	313	320	331
AC-FT	20790	19920	20300	20100	17980	19730	19020	19230	18800	19500	19970	19930

CAL YR 1992 TOTAL 120565 MEAN 329 MAX 349 MIN 312 AC-FT 239100
WTR YR 1993 TOTAL 118615 MEAN 325 MAX 339 MIN 311 AC-FT 235300

e Estimated

THE STATE OF IDAHO

CENTENNIAL LEGISLATURE — FIRST REGULAR SESSION — 1989

IN THE SENATE

SENATE CONCURRENT RESOLUTION NO. 103

BY RESOURCES AND CONSERVATION COMMITTEE

A CONCURRENT RESOLUTION

APPROVING AN APPLICATION TO APPROPRIATE WATER FOR MINIMUM STREAMFLOW.

Be It Resolved by the Legislature of the State of Idaho:

WHEREAS, the Idaho Water Resource Board may apply for a permit to appropriate unappropriated waters of any stream to establish a minimum streamflow; and

WHEREAS, under the provisions of Section 42-1503, Idaho Code, an approved application shall not become finally effective until acted upon by the legislature, except that if the legislature fails to act prior to the end of the regular session to which the application was submitted, the application shall be considered approved; and

WHEREAS, the Director of the Department of Water Resources approved Application for Permit No. 36-8337 on December 23, 1988, by adopting a Proposed Memorandum Decision and Order authorizing the appropriation of a variable minimum streamflow in Box Canyon Creek of 75 to 162 cfs from the beginning to the end of the reach, during the period beginning January 1 through December 31. The minimum streamflow begins at a point 300 feet downstream from where Box Canyon Creek enters Lot 1 (NE1/4NW1/4), Section 28, T8S, R14E, B.M., and extends downstream to the confluence of Box Canyon Creek and the Snake River, located in Lot 2 (SE1/4NE1/4), Section 28, T8S, R14E, B.M., Gooding County;

NOW, THEREFORE, BE IT RESOLVED by the members of the First Regular Session of the Centennial Idaho Legislature, the Senate and the House of Representatives concurring therein, that the same is hereby approved subject to the conditions and limitations contained in the Proposed Memorandum Decision and Order, dated November 28, 1988, adopted by the Director of the Department of Water Resources.

A CONCURRENT RESOLUTION

APPROVING AN APPLICATION TO APPROPRIATE WATER

FOR MINIMUM STREAMFLOW

36-8337

Be It Resolved by the Legislature of the State of Idaho:

WHEREAS, the Idaho Water Resource Board may apply for a permit to appropriate unappropriated waters of any stream to establish a minimum streamflow; and

WHEREAS, under the provisions of Section 42-1503, Idaho Code, an approved application shall not become finally effective until acted upon by the legislature, except that if the legislature fails to act prior to the end of the regular session to which the application was submitted, the application shall be considered approved; and

WHEREAS, the Director of the Department of Water Resources approved Application for Permit No. 36-8337 on December 23, 1988, by adopting a Proposed Memorandum Decision and Order authorizing the appropriation of a variable minimum streamflow in Box Canyon Creek of 75 to 162 cfs from the beginning to the end of the reach, during the period beginning January 1 through December 31. The minimum streamflow begins at a point 300 feet downstream from where Box Canyon Creek enters Lot 1 (NE1/4NW1/4), Section 28, T8S, R14E, B.M., and extends downstream to the confluence of Box Canyon Creek and the Snake River, located in Lot 2 (SE1/4NE1/4), Section 28, T8S, R14E, B.M., Gooding County;

NOW, THEREFORE, BE IT RESOLVED by the members of the Second Regular Session of the Forty Ninth Idaho Legislature, the Senate and the House of Representatives concurring therein, that the same is hereby approved subject to the conditions and limitations contained in the Proposed Memorandum Decision and Order, dated November 28, 1988, adopted by the Director of the Department of Water Resources.

A CONCURRENT RESOLUTION

APPROVING AN APPLICATION TO APPROPRIATE WATER

FOR MINIMUM STREAMFLOW

36-8337

Be It Resolved by the Legislature of the State of Idaho:

WHEREAS, the Idaho Water Resource Board may apply for a permit to appropriate unappropriated waters of any stream to establish a minimum streamflow; and

WHEREAS, under the provisions of Section 42-1503, Idaho Code, an approved application shall not become finally effective until acted upon by the legislature, except that if the legislature fails to act prior to the end of the regular session to which the application was submitted, the application shall be considered approved; and

WHEREAS, the Director of the Department of Water Resources approved Application for Permit No. 36-8337 on December 23, 1988, by adopting a Proposed Memorandum Decision and Order authorizing the appropriation of a variable minimum streamflow in Box Canyon Creek of 75 to 162 cfs from the beginning to the end of the reach, during the period beginning January 1 through December 31. The minimum streamflow begins at a point 300 feet downstream from where Box Canyon Creek enters Lot 1 (NE1/4NW1/4), Section 28, T8S, R14E, B.M., and extends downstream to the confluence of Box Canyon Creek and the Snake River, located in Lot 2 (SE1/4NE1/4), Section 28, T8S, R14E, B.M., Gooding County;

NOW, THEREFORE, BE IT RESOLVED by the members of the Second Regular Session of the Forty Ninth Idaho Legislature, the Senate and the House of Representatives concurring therein, that the same is hereby approved subject to the conditions and limitations contained in the Proposed Memorandum Decision and Order, dated November 28, 1988, adopted by the Director of the Department of Water Resources.

January 31, 1994

STATE OF IDAHO
IDAHO WATER RESOURCE BOARD
STATEHOUSE
BOISE ID 837200000

PROOF DUE NOTICE

RE: PERMIT NO. 36-08337

Dear Permit Holder:

One of the conditions of approval of the above referenced water permit was that proof of the extent of your beneficial use must be submitted to this office on or before April 1, 1994. (See last page of your approved permit or your last approved extension request.) Enclosed is a form which when accompanied by the license examination fee or a complete field examination report prepared by a certified water right examiner may be used to submit the required proof.

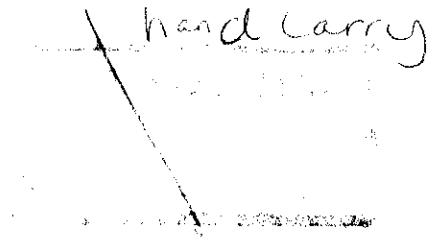
If you have not fully completed your project, and you or a previous owner of this permit have not received a prior extension of time, you may request an extension of time if the delay is for reasonable cause as provided in Section 42-204, Idaho Code. If you have been prevented from proceeding by a governmental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

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

SINCERELY,

JULIE L. YARBROUGH
Senior Secretary

Enclosures



BOX CANYON CREEK
MINIMUM STREAMFLOW
FACT SHEET

Water Right No.: 36-8337

Source: Box Canyon Creek

Applicant: Idaho Water Resource Board

Requesting Agency: US Department of the Interior
Bureau of Land Management

Date Application Filed: October 16, 1987

Rate of Flow: A variable flow of 75-162 cfs from the beginning to the end of the minimum flow reach, respectively, from 01/01 through 12/31

Location of Springs: Beginning at a point 300 feet downstream from where Box Canyon Creek enters Lot 1 of Section 28, Township 8S, Range 14E, B.M., and proceeding downstream to the confluence of Box Canyon Creek and the Snake River, located in Lot 2, Section 28, Township 8S, Range 14E, B.M.

Purpose: To preserve fish and wildlife habitat (Federal Candidate Species). The candidate species are: Shoshone Sculpin, Bliss Rapid Snail, Giant Columbia River Limpet, Utah Valvata Snail.

Hearing: March 23, 1988 at Gooding, Idaho

Attended by 14 people

All comments were favorable

Permit: Order Adopting Proposed Decision dated December 23, 1988

Special Conditions: Subordinate to future groundwater withdrawals in the Snake River Aquifer.

Flow data must be submitted with the proof of beneficial use showing that the permitted flows are capable of being maintained.

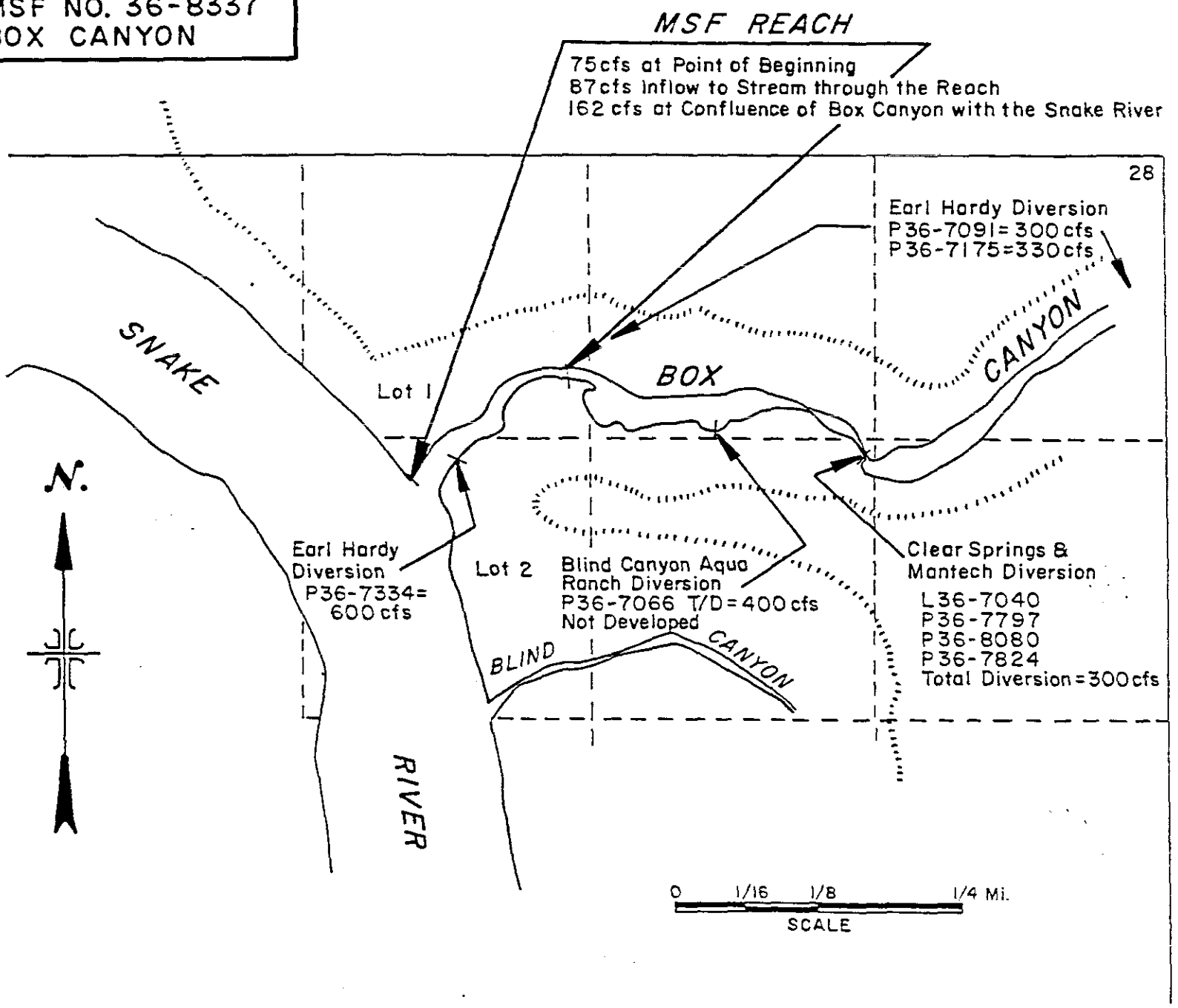
Retained jurisdiction for change. Proposed amendment must be submitted initially to the Board.

General Information: Flow of water guaranteed by Earl Hardy in exchange for BLM right of way.

Most people wanted the flow increased and the reach extended throughout the entire canyon.

IDWR EXHIB
No. 3

MSF NO. 36-8337
BOX CANYON



State of Idaho
DEPARTMENT OF WATER RESOURCES
1301 North Orchard Street, Statehouse Mail, Boise, Idaho 83720 - (208) 334-7900

CECIL D. ANDRUS
GOVERNOR
R. KEITH HIGGINSON
DIRECTOR

January 9, 1989

Representative Tom Boyd, Speaker
House of Representatives
Statehouse
Boise, ID 83720

RE: Water Right Applications for Permit for Minimum Streamflow

RE: Water Right Applications for Permit for Minimum Streamflow Nos.: 36-8374 and 36-8330, Crystal Springs; 22-7370, Bitch Creek; 37-7920, Malad River; 36-8337, Box Canyon Creek; 21-7283 and 21-7355, Warm River; 47-8073, Shoshone Creek; 97-7275, Lion Creek; and 97-7274, Indian Creek; 36-7820, Blind Canyon Springs.

Dear Representative Boyd:

Enclosed please find copies of the above referenced Applications for Permit. Enclosed with the applications are the decisions and orders which conclude the administrative processing of the applications.

As you are aware, Section 42-1503, Idaho Code, requires that the applications be reviewed by the legislature. As defined by statute, each application "(i) shall not become finally effective until affirmatively acted upon by concurrent resolution of the Idaho Legislature; or (ii) except that if the legislature fails to act prior to the end of the regular session to which the application was submitted, the application shall be considered approved."

This letter constitutes submittal of the applications to the legislature for approval. Please advise me if you desire further information or presentation on the nature of the applications. Department personnel are also willing to assist with preparation of draft concurrent resolutions if requested.

Sincerely,

R. KEITH HIGGINSON
Director

GS:ds
Enclosures

CC: Legislative Council

State of Idaho
DEPARTMENT OF WATER RESOURCES
1301 North Orchard Street, Statehouse Mail, Boise, Idaho 83720 - (208) 334-7900

CECIL D. ANDRUS
GOVERNOR
R. KEITH HIGGINSON
DIRECTOR

January 9, 1989

Senator Michael Crapo, President
Senate pro Tem
Statehouse
Boise, ID 83720

RE: Water Right Applications for Permit for Minimum Streamflow Nos.: 36-8374 and 36-8330, Crystal Springs; 22-7370, Bitch Creek; 37-7920, Malad River; 36-8337, Box Canyon Creek; 21-7283 and 21-7355, Warm River; 47-8073, Shoshone Creek; 97-7275, Lion Creek; and 97-7274, Indian Creek; 36-7820, Blind Canyon Springs.

Dear Senator Crapo:

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Sincerely,

R. KEITH HIGGINSON
Director

GS:ds
Enclosures

CC: Legislative Council

State of Idaho
DEPARTMENT OF WATER RESOURCES
1301 North Orchard Street, Statehouse Mail, Boise, Idaho 83720 - (208) 334-7900

CECIL D. ANDRUS
GOVERNOR
R. KEITH HIGGINSON
DIRECTOR

January 5, 1989

U.S. Dept. of Interior
Idaho State Office
3380 American Terrace

Dear Interested Party:

RE: Application for minimum streamflow no. 36-8337

In reviewing the file on Box Canyon, we discovered an error in our files. Apparently the Order Issuing the Proposed Memorandum Decision and Order referred to Bitch Creek rather than Box Canyon. All of the matters set forth in the original issuing order apply.

We intend to submit the decision to the 1989 legislature. If there is some objection to the procedural flaw we have found, please advise within the next fifteen (15) days.

Sincerely,

Gary Spackman

GARY SPACKMAN, Manager
Water Rights Permits Section

State of Idaho
DEPARTMENT OF WATER RESOURCES
1301 North Orchard Street, Statehouse Mail, Boise, Idaho 83720 - (208) 334-7900

CECIL D. ANDRUS
GOVERNOR
R. KEITH HIGGINSON
DIRECTOR

January 5, 1989

Marne Mercer
919 Justice Grade
Hagerman, ID 83322

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Water Rights Permits Section

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1301 North Orchard Street, Statehouse Mail, Boise, Idaho 83720 - (208) 334-7900

CECIL D. ANDRUS
GOVERNOR
R. KEITH HIGGINSON
DIRECTOR

January 5, 1989

Bob Burks
Box 298
Wendell, ID 83355

Dear Mr. Burks:

RE: Application for minimum streamflow no. 36-8337

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DEPARTMENT OF WATER RESOURCES
1301 North Orchard Street, Statehouse Mail, Boise, Idaho 83720 - (208) 334-7900

CECIL D. ANDRUS
GOVERNOR
R. KEITH HIGGINSON
DIRECTOR

January 5, 1989

Bureau of Land Management
Idaho State Office
3380 American Terrace
Boise, ID 83706

Dear Interested Party:

RE: Application for minimum streamflow no. 36-8337

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1301 North Orchard Street, Statehouse Mail, Boise, Idaho 83720 - (208) 334-7900

CECIL D. ANDRUS
GOVERNOR
R. KEITH HIGGINSON
DIRECTOR

January 5, 1989

Edward Shokal
Rt. 1 Box 410
Hagerman, ID 83322

Dear Mr. Shokal:

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Water Rights Permits Section

State of I ho
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1301 North Orchard Street, Statehouse Mail, Boise, Idaho 83720 - (208) 334-7900

CECIL D. ANDRUS
GOVENOR
R. KEITH HIGGINSON
DIRECTOR

December 23, 1988

U.S. Dept. of Interior
Idaho State Office
3380 American Terrace
Boise, ID 83706

Re: Application for Permit No. 36-8337

Dear Gentlemen:

Please find a copy of the Order Adopting Proposed Memorandum Decision and Order for Application No. 36-8337 (Box Canyon Creek) to establish a minimum stream flow in the name of the Idaho Water Resource Board.

Any party who disagrees with the decision of the Director may request a rehearing before the Director within 20 days or may appeal to the district court within 30 days from the date this decision is mailed.

Sincerely,

GARY SPACKMAN, Manager
Water Rights Permits Section

GS:ds

Enclosure

State of Idaho
DEPARTMENT OF WATER RESOURCES
1301 North Orchard Street, Statehouse Mail, Boise, Idaho 83720 - (208) 334-7900

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Water Rights Permits Section

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1301 North Orchard Street, Statehouse Mail, Boise, Idaho 83720 - (208) 334-7900

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Water Rights Permits Section

GS:ds

Enclosure

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1301 North Orchard Street, Statehouse Mail, Boise, Idaho 83720 - (208) 334-7900

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Sincerely,

Gary Spackman

GARY SPACKMAN, Manager
Water Rights Permits Section

GS:ds

Enclosure

Region 4
868 E. Main St.
P.O. Box 428
Jerome, Idaho 83338

Bob Burks
387 W. Main
Wendell
Idaho 83355



10-9-87 TB
lower end of Blind
Canyon cr. note area
cleared of brush
adjacent to channel



10-9-87 TB
Mouth of Box Canyon

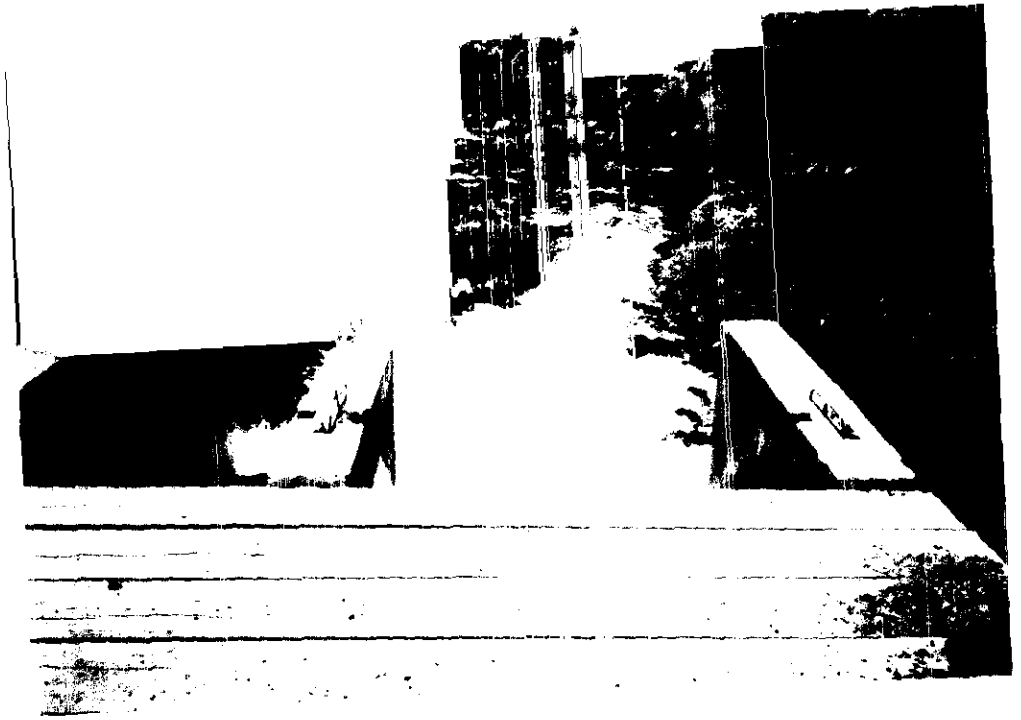


10-9-87

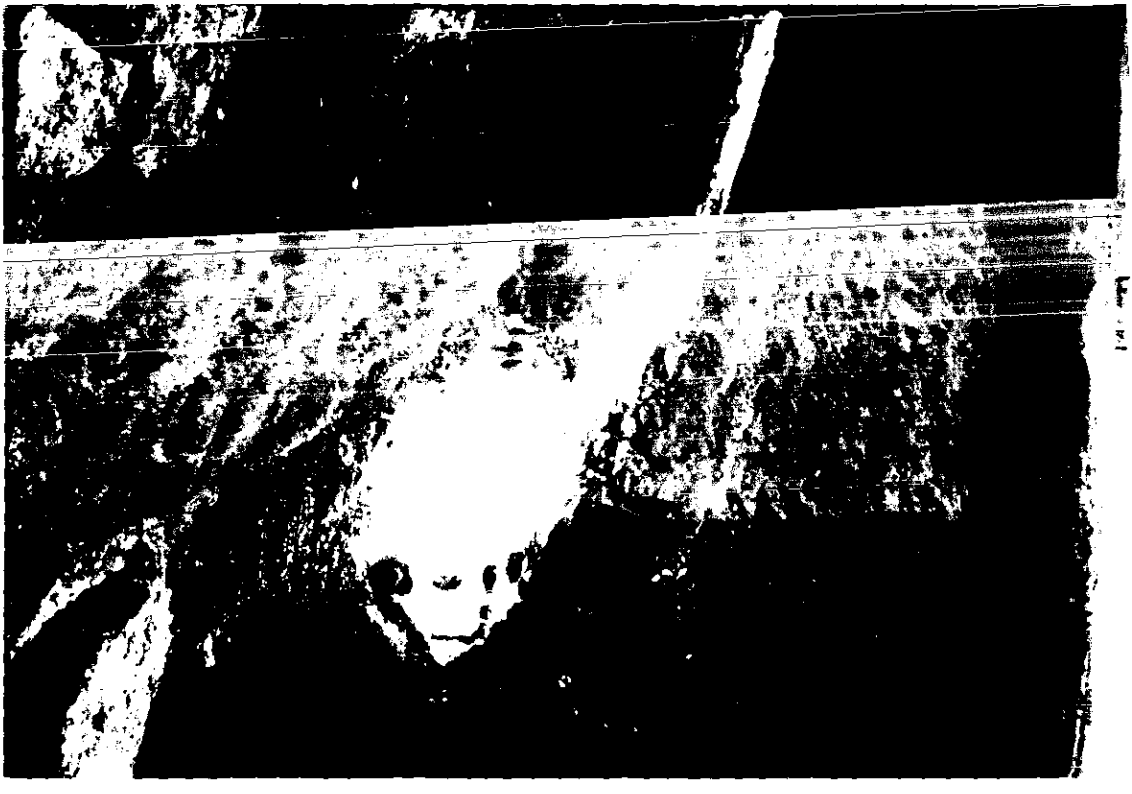
Intake of inverted Siphon taking water from Box canyon to Fish farm + hydro plant



10-9-87
Road under construction
alongside Box Canyon
Creek immediately above
diversion.



10-9-87 -TB
Spillway at Box Canyon
diversion



Box Canyon Falls area -
5/12/78

Shumway



Bob Gregson - Forest Supervisor
at Falls Area

11/8/88

Stu Arnold



Box Canyon – Looking downstream from spring origin. 5/12/78

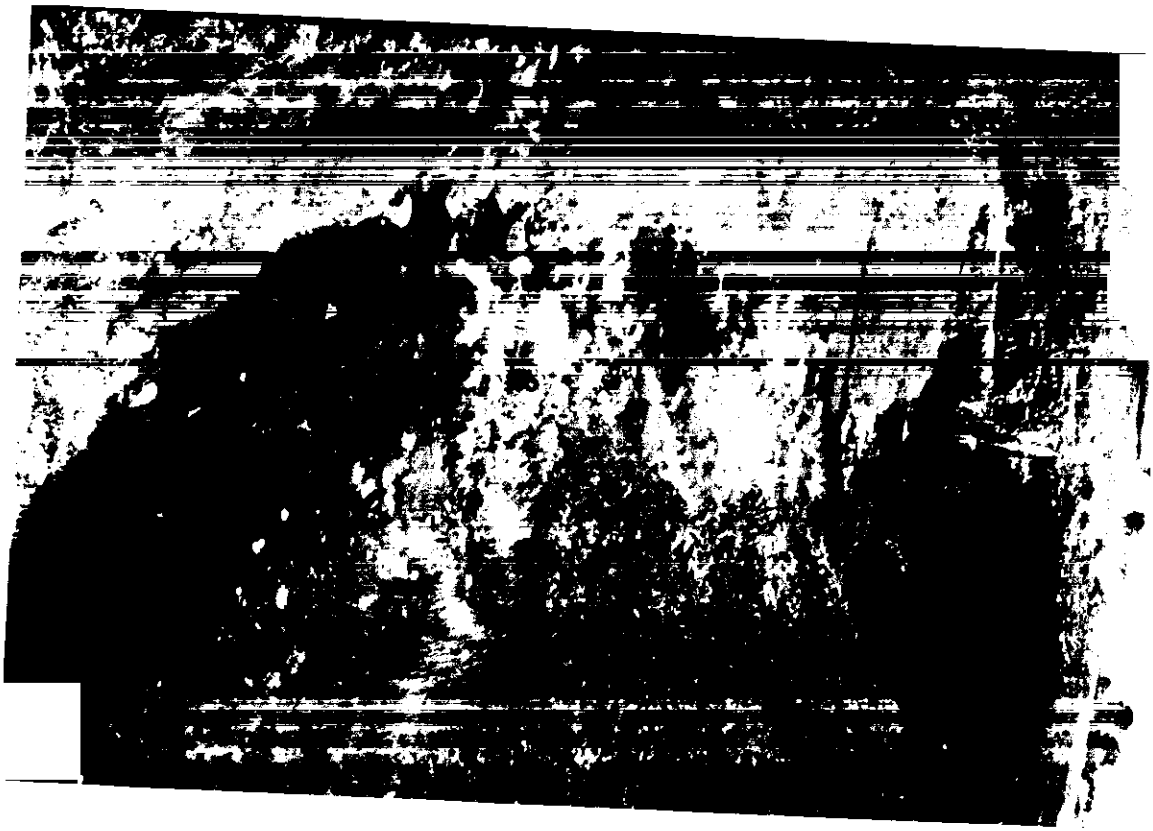
Stan Murphy



Big Canyon — Looking downstream
Indian Falls 6/82
Steve Russell



Box Canyon - looking upstream
from Falls 11/8/88
Stu Murdoch



Box Canyon - looking upstream at origin of Spring

5/12/78

Steve Murrell



Lower Box Canyon before development

3/72

Stu Murrell



Box Canyon – Spring on a
just above Clear Spring Dugway

5/14/78

Stan Murrell

State of Idaho
DEPARTMENT OF WATER RESOURCES
1301 North Orchard Street, Statehouse Mail, Boise, Idaho 83720 - (208) 334-7900

CECIL D. ANDRUS
GOVENOR
R. KEITH HIGGINSON
DIRECTOR

November 29, 1988

Marne Mercer
919 Justice Grade
Hagerman, ID 83322

Re: Application for Permit No. 36-8337

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Any party who disagrees with the proposed decision may file exceptions to the decision within fifteen (15) days of service of the proposed decision.

Sincerely,

Gary Spackman

GARY SPACKMAN, Supervisor
Water Allocation Section

GS:ds

FILED
1989

State of Idaho
DEPARTMENT OF WATER RESOURCES
1301 North Orchard Street, Statehouse Mail, Boise, Idaho 83720 - (208) 334-7900

CECIL D. ANDRUS
GOVENOR
R. KEITH HIGGINSON
DIRECTOR

November 29, 1988

U.S. Dept. of Interior
Idaho State Office
3380 American Terrace
Boise, ID 83706

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GARY SPACKMAN, Supervisor
Water Allocation Section

GS:ds

MAY - 1 1989

State of Idaho
DEPARTMENT OF WATER RESOURCES
1301 North Orchard Street, Statehouse Mail, Boise, Idaho 83720 - (208) 334-7900

CECIL D. ANDRUS
GOVERNOR
R. KEITH HIGGINSON
DIRECTOR

November 29, 1988

Bureau of Land Managment
Idaho State Office
3380 American Terrace
Boise, ID 83706

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Water Allocation Section

GS:ds

MICROFILMED
MAY 17 1989

State of Idaho
DEPARTMENT OF WATER RESOURCES
1301 North Orchard Street, Statehouse Mail, Boise, Idaho 83720 - (208) 334-7900

CECIL D. ANDRUS
GOVENOR
R. KEITH HIGGINSON
DIRECTOR

November 29, 1988

Edward Shokal
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Hagerman, ID 83322

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GARY SPACKMAN, Supervisor
Water Allocation Section

GS:ds

MICROFILMED
MAY 17 1989

State of Idaho
DEPARTMENT OF WATER RESOURCES
1301 North Orchard Street, Statehouse Mail, Boise, Idaho 83720 - (208) 334-7900

CECIL D. ANDRUS
GOVENOR
R. KEITH HIGGINSON
DIRECTOR

November 29, 1988

Idaho Water Resource Board
c/o Gene Gray
Statehouse
Boise, ID 83720

Re: Application for Permit No. 36-8337

Dear Mr. Gray:

Please find enclosed a copy of the Proposed Memorandum Decision and Order and Order Issuing Proposed Memorandum Decision and Order for Application No. 36-8337. The application, filed by the Idaho Water Resource Board, proposes a minimum streamflow on Box Canyon Creek.

Any party who disagrees with the proposed decision may file exceptions to the decision within fifteen (15) days of service of the proposed decision.

Sincerely,

Gary Spackman

GARY SPACKMAN, Supervisor
Water Allocation Section

GS:ds

MICROFILMED
MAY 17 1989

Ringert, Clark, Harrington, Reid, Christenson & Kaufman
CHARTERED
LAWYERS

WILLIAM F. RINGERT
D. BLAIR CLARK
ANDREW M. HARRINGTON
JAMES G. REID
JEFFREY R. CHRISTENSON
JAMES P. KAUFMAN
MICHAEL J. GAFFNEY
LAURA E. BURRI
LEA C. ADAMS

SAMUEL KAUFMAN (1921-1988)

599 WEST BANNOCK STREET
P.O. BOX 2773
BOISE, IDAHO 83701

TELEPHONE (208) 342-4591

March 31, 1988

Mr. Norm Young
Hearing Officer
Department of Water Resources
1301 N. Orchard
Boise, Idaho 83706

Re: Application No. 36-8337

Dear Mr. Young:

I write as attorney for Earl M. Hardy, and with respect to the application by the Idaho Water Resource Board for an instream water permit in Box Canyon Creek. This is the application that was made by the Board pursuant to a petition by the Bureau of Land Management of the United States Department of the Interior.

It is our understanding that the BLM and other parties have indicated that Mr. Hardy concurs in the BLM's position on the matters in item 12 of the Application and item 18 of the Supplement. We wish the record to reflect that Mr. Hardy's concurrence and agreement are qualified to some degree.

First, Mr. Hardy is the holder of Water Permits Nos. 36-7091 and 36-7334. We recognize that the procedure for issuing water permits requires that any permit be issued subject to existing rights, including previously issued permits of earlier priority dates. However, we want the record to be clear that Mr. Hardy is in no way waiving any rights under the existing permits by his failure to oppose the BLM and the Idaho Water Resource Board in their efforts to acquire a permit for instream flow.

Mr. Hardy's concurrence and agreement depend, also, upon whether he uses the right of way, No. I-2880, issued to him by the BLM. If Mr. Hardy decides not to use the right of way, he will develop his trout production facilities by using diversions on his privately owned land, as necessary, and he will use the existing permits for that purpose. The points of diversion for Permit No. 36-7334 include two points of diversion within the appropriation area identified in the application for the permit for instream use. Thus, Mr. Hardy's qualified concurrence and agreement should not be construed as waiving his right to diminish the stream flow on his private property within, or upstream from, the area identified as the place of use in the application by the Idaho Water Resource Board.

MICROFILMED

MAY 17 1989

Mr. Hardy's qualified concurrence and agreement is not to be taken as an expression of permission by him to the use of his private property lying on either side of Box Canyon Creek, except as that permission might be included in the stipulations which are a part of the BLM right of way decision. If Mr. Hardy decides not to use the BLM right of way, those stipulations become null and void, and any consent contained in those stipulations would be automatically withdrawn.

We also note from information furnished to us following the hearing on March 23, that a large amount of irrelevant information and argument was supplied by various participants. If the Department intends to consider information or argument that was not relevant to the issues specifically raised by the application, we would appreciate having an opportunity to review the transcript of the hearing and supplement the record with respect to those additional points.

Yours very truly,

W. F. Ringert

WFR:am
cc: Earl M. Hardy

March 25, 1988

MEMORANDUM

TO: Clive J. Strong

FROM: Phillip J. Rassier PJR

RE: Memorandum Concerning I.C. § 67-4310 and Water Rights on Box Canyon Creek

The enclosed twelve page memorandum concerns I.C. § 67-4310 and water right permit no. 36-7175 in the name of Earl Hardy for the appropriation of water from Box Canyon Creek.

Bob Burks made a copy of the document available to the hearing officer at the March 23, 1988 hearing on the Water Resource Board's application no. 36-8337 for an instream flow water right permit on Box Canyon Creek. Mr. Burks represented the document to be an attorney general's opinion. The source, date or intended purpose of the memorandum is not evident from the document.

The contents of the memorandum do not appear relevant to the Board's instream flow application. The memorandum does, however, raise an issue regarding the appropriateness of a recent extension of time granted by the Department of Water Resources for permit no. 36-7175.

The director has asked me to determine the source and status of the document. Your assistance in identifying the memorandum would be appreciated.

Encl.
cc: David J. Barber

RECEIVED
MAY 17 1988

RECEIVED
MAR 29 1988
Department of Water Resources

STATE OF IDAHO
OFFICE OF THE ATTORNEY GENERAL
BOISE 83720

JIM JONES
ATTORNEY GENERAL

TELEPHONE
(208) 334-2400

March 22, 1988

The Honorable Laird Noh
Idaho State Senator
STATEHOUSE MAIL

Re: Idaho Code § 67-4310
Box Canyon

Dear Senator Noh:

You have asked our advice regarding the degree to which state agencies are bound by the "cooperation" language of the above-referenced statute. Specifically you wonder whether the language limits the agencies in fulfilling the other statutory requirements. For reasons stated below, it is my opinion that to the extent the agreement would prevent state agencies from fulfilling their statutory requirements, the agreement would be void. Idaho Code § 67-4310 was passed by the House on March 12, 1982. At the time of passage, a letter from Representative Chatburn was made a part of the record. The letter stated:

> On March 9, 1982, your Committee on Resources and Conservation sent House Bill 786 to the Floor of the House with a do pass recommendation.
>
> The language of H. 786 instructs certain state agencies, including the Department of Water Resources, to provide their cooperation as necessary to assist the process of negotiation between the land owner of the private lands within the confines of the walls of Box Canyon. The cooperation called for by this bill is not to interfere with, alter, supersede, or change any of the existing statutory duties or normal decision-making processes of any state agencies named in the bill.

MICROFILMED
MAY 17 1989

The House passed the bill in question which was subsequently codified in the above-referenced statute. That statute states:

> In order to facilitate these negotiations, all concerned state agencies, namely the department of water resources, the department of fish and game, and the department of parks and recreation are hereby instructed to cooperate with the state board of land commissioners and with the property owner as necessary to assist the orderly, factual, and amicable process of negotiation between the state board of land commissioners and the property owner.

The statute, in effect, provided that the Land Board could reduce the portion of the flow of Box Canyon Creek sought to be appropriated by the Department of Parks and Recreation in the event of successful negotiations with a private landowner (Mr. Earl Hardy) for restrictive covenants insuring the availability for public use of portions of the upper canyon.

The negotiations resulted in an agreement between the Land Board and Mr. Hardy which contained various restrictive covenants. A portion of the agreement directed the Department of Parks and Recreation to amend its pending application for a water appropriation to carry out the intent of the agreement. The agreement purports to bind the "state" and Hardy and declares the parties' mutual intent that neither the state nor Hardy's water appropriation can proceed until the agreement becomes fully effective.

Your question raises the following two issues. First, does the signature of the governor bind the "state" to fully carry out the terms of the agreement and, second, may other state agencies, such as the Departments of Fish and Game and Water Resources, take action inconsistent with the agreement.

In this case the agreement was signed by Governor Evans as President of the State Board of Land Commissioners and as Governor. While the Governor is the chief executive of the state responsibilities of state agencies are expressly delegated by the legislature to specific agencies. The Governor while charged with the responsibility of selecting administrators and insuring that those selected execute the law, is not expressly authorized to make decisions committed by the legislature to those agencies. In short, his power is the power to supervise and to insure that the

MAY 17 1989

agencies faithfully execute their statutory responsibilities. The Governor may not direct those agencies to violate their statutory responsibilities. I believe, therefore, that the signature of the Governor was merely a recognition of the agreement between the Land Board and Mr. Hardy.

In regards to your second concern, I do not believe the agreement could be read as binding upon the Department of Water Resources. The director of the Department is statutorily charged to consider the local public interest. If the permit conflicts with that statutory criterion, the director may reject the application. Similarly, the agreement could not obligate other instrumentalities of the state to forbear from protesting applications which, if granted, would be in violation of the public trust doctrine. See Shokal v. Dunn, 109 Idaho 330, 337, 707 P.2d 441, 448 (1985) and Kootenai Environmental Alliance v. Panhandle Yacht Club, 105 Idaho 622-23, 671 P.2d 1085, 95 (1983).

In summary, it is my conclusion that the agreement in question would require the various instrumentalities of the state that participated in the negotiations to honor the commitments that they made and to urge the other state agencies responsible for effectuating the agreement do likewise. But, as indicated above, those other agencies would still have to abide by their statutory duties. I hope that this answers your question. If I may be of further assistance, please advise.

Very truly yours,

PATRICK J. KOLE
Chief, Legislative and
Public Affairs Division

PJK/tg

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MAY 1 7 1989

This memorandum addresses legislation pertaining to Box Canyon, and the agreement between Earl Hardy and the State Board of Land Commissioners (Land Board). In 1971 the legislature passed I.C. § 67-4310 which directed the Park and Recreation board to appropriate in trust for the people of Idaho the unappropriated water of Box Canyon Creek. The Board responded by filing an application for appropriation. Then in 1982 the legislature amended I.C. § 67-4310 by authorizing the Land Board to adjust the boundary to exclude a portion of the creek from the statute. The amendment divides Box Canyon into an upper and lower portion. The dividing line, base point, lies 100 feet below a natural waterfall. Hardy owns all of the land above the base point and much of it below the base point. Roughly the lower one half of the stream below the base point is located on land owned by the federal government and managed by the BLM. Hardy proposes to build a diversion dam on lower Box Canyon Creek on public land. Water would be transported through a flume to Blind Canyon where it would be used to raise fish. The dam would also be used to generate hydroelectric power.

1. DOES I.C. § 67-4310 (SUPP. 1987) AS AMENDED IN 1982 VIOLATE ART. 3 SECTION 19 OF THE IDAHO CONSTITUTION ?

Article 3, Section 19 prohibits the legislature from passing local and special laws in thirty-two enumerated cases. Special legislation on these subjects is prohibited, but special legislation on other subjects is not. State ex. rel. Idaho State Park Board v. City of Boise, 95 Idaho 380, 590 P.2d 1301 (1973), Butler v. City of Lewiston, 11 Idaho 393, 83 P. 234 (1905).

The only enumeration potentially violated is the seventh. It lists activities, the verb list, that the legislature cannot approve upon particular lands, the noun list. The verb list states that the legislature cannot authorize the (a) "laying out," (b) "opening," (c) "altering," (d) "maintaining," (e) "working on, or" (f) "vacating . . .." The nouns that the legislature cannot do the above with are; (a) "roads," (b) "highways," (c) "streets," (d) "alleys", (e) "town plats," (f) "parks," (g) "cemeteries, or" (h) "any public grounds not owned by the state." The modifier "not owned by the state" modifies all of the nouns on the list. State v. City of Boise, supra.

The Supreme Court has stated that "Art. 3, § 19, par. 7 of our Constitution is premised on the policy that the legislature should not be allowed to carry out special projects on lands '* * * not owned by the state.'" State v. City of Boise, 95 Idaho at 382-83, 509 P.2d at 1303-04.

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The threshold question is whether I.C. § 67-4310 (Supp. 1987) as amended in 1982 is special legislation.

> "A special law applies only to an individual or number of individuals out of a single class similarly situated and effected, or to a special locality. A law is not special simply because it may have only a local application or apply only to a special class, if in fact it does apply to all such classes and all similar localities and to, all belonging to the specified class to which the law is made applicable."

Ada County v. Wright, 60 Idaho 394, 403, 92 P.2d 134, 138 (1939) (emphasis in original); see e.g., School District No. 25 v. State Tax Commission, 101 Idaho 283, 612 P.2d 126 (1980).

The Box Canyon statute applies to specific land which is owned by a single individual. The only arguable classification involved is the class of those owning land within Box Canyon. The list is composed of the BLM and Earl Hardy. The Act sets Hardy's land apart from the BLM land and operates exclusively on the private land. The Act is special in form. The major question is whether it contravenes Art. 3, § 19.

The statute sets out desirable public uses for the Canyon:

> It is a legislative finding of fact that the waters arising upon the above described tract within the natural channel of Box Canyon Creek and the private lands within the confines of the canyon walls are desirable for public use in connection with the preservation of the area in its present condition as a place for natural scientific studies and limited recreation for the citizens of the state of Idaho.

This language is styled as a legislative finding of fact. The operative language of the amendment follows in the next paragraph of the statute:

> The state board of land commissioners is hereby authorized to adjust the boundary established by the provisions of this section by excluding from the operation of this section [the lower canyon] provided they are successful in negotiating with the present landowner, or his successors, those restrictive covenants deemed necessary by the board to promote the public interest for the canyon lands as well as for the waters arising within that canyon, all as declared

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> by this section, and the state board of land commissioners is authorized to expedite the negotiations with the landowner so far as is **consistent with the public interest.**

The result of the statute is that upon successful negotiations the state acquires public use rights on specific private ground. At first blush this appears to fall squarely within the prohibition against special legislation. A "park" or other "public ground" is "laid out" or "opened" on "land not owned by the state." Also, the landowner, Earl Hardy, pressed for passage of the amendment. In his request for an extension of time to submit proof of beneficial use of water for Permit No. 36-7175 Hardy states that before its amendment I.C. § 67-4310 created a cloud on the title to the water under the permit. Mr. Hardy stated that in order to avoid litigation he worked with the legislature in seeking a solution. An inference can be drawn that the amendment was primarily for the benefit of Mr. Hardy -- **rather than "the citizens of the State of Idaho."**

The language of the amendment does not support, however, such an argument. The legislature did not authorize the laying out of a park or public ground, but merely authorized the board to enter a contract with a specific person regarding a specific subject. This power is not prohibited. See Idaho Water Resource Board v. Kramer, 97 Idaho 535, 548 P.2d 35 (1976). Further, the amendment as written allows, but does not require the board to negotiate a contract with the land owner. The terms of any agreement between the board and the land owner are left to the discretion of the board.

The minutes of a public hearing before the House Resource and Conservation Committee held on March 5, 1982, indicate Vern Ravenscroft's belief that the issue was the negotiation procedure for discussions between Mr. Hardy and the Land Board. Minutes of the Senate Resources and Environment Committee, March 19, 1982, disclose that Bill Ringert, Hardy's attorney, told the committee that Hardy was asking for the right to negotiate with the Land Board for the use of the stream channel and water in the lower canyon. The language of the statute authorizes these negotiations, and indicates that their successful completion is in the public interest. That is a policy choice for the legislature which courts are hesitant to interfere with. See Idaho Water Resources Board v. Kramer, supra.

Another argument that could be made is that the statute improperly delegates the legislative authority to the land board in contravention of the constitution art.3 § 1. The legislature cannot delegate its power to make or complete a law, but can "empower an agency or an official to ascertain the existence of the facts or conditions mentioned in the act upon which the law becomes operative." Boise Redevelopment Agency v. Yick Kong Corp., 94 Idaho 876, 885, 499 P.2d 575, 884 (1972).

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Traditionally, the focus of a delegation question is whether the statute contains sufficient standards to guide agency action. Kerner v. Johnson, 99 Idaho 423, 583 P.2d 360 (1978). Recently, the focus has shifted to requiring meaningful safeguards against arbitrary decision making. Sun Valley Co. v. City of Sun Valley, 109 Idaho 424, 708 P.2d 147 (1985) (dicta describing transition from standards to safeguards in state courts), Greater Boise Auditorium District v. Royal Inn, 106 Idaho 884, 684 P.2d 286 (1984).

It could be argued that the amendment left I.C. § 67-4310 incomplete, and gave the power to finish it to the land board. Until the board acts, the boundary is not determined. The board is not required to act at all, but is told it may change the boundary if negotiations are successful. Thus, the amendment is contingent on the board, and operates prospectively. See State v. Kellogg, 98 Idaho 541, 568 P.2d 514 (1977) (Bakes, J. dissenting). Even if the board determines that the public's interest is served by the negotiation, it can make the broader policy choice of whether or not to "amend" the statute.

On the other hand, it could also be argued that the board's role in negotiating is to determine the existence of facts upon which the statute becomes operative. If the public interest is served, then the statutory boundary change becomes operative. The law does not leave it to the board to determine where the boundary will lie, but only whether the public interest would be served if the boundary is changed as established by the statute.

This statute is unique for the delegation analysis. "In deciding whether a delegation is proper the court must bear in mind the practical context of the problem to be remedied and the policy to be served." Turner v. Johnson, 99 Idaho 423, 451, 583 P.2d 360, 378 (1978). Part of the rationale of the non-delegation doctrine is to prevent non-elected officials from making legislative choices. In this case the board, unlike an agency, is made up of elected officials. Arguably, the statutory safeguards could be less stringent since the decision-makers are accountable to the public.

Also is the narrow scope of the amendment. It affects only specific terrain and one owner. This could cause the court to look closer to the "policy to be served." It could be argued that the legislature merely accomplished indirectly what it could not do directly.

A hurdle to either the special legislation or delegation challenge is the standard of review applied by the Supreme Court to constitutional challenges to statutes. The challenger bears the burden to overcome a strong presumption of constitutionality, and must clearly show the statute unconstitutional. Leliefeld v. Johnson, 104 Idaho 357, 659 P.2d 111 (1983).

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2. IS THE AGREEMENT BETWEEN EARL HARDY AND THE BOARD OF LAND COMMISSIONERS BINDING UPON OTHER AGENCIES?

This question involves the powers and duties of state agencies, particularly the Land Board, the Department of Water Resources, the Department of Fish and Game and the Department of Parks and Recreation. Implicated in this inquiry is the validity of the agreement between Hardy and the Land Board.

The amended I.C. § 67-4310 (Supp. 1987) includes a cooperation provision as follows:

> In order to facilitate these negotiations, all concerned state agencies, namely the department of water resources, the department of fish and game, and the department of parks and recreation are hereby instructed to cooperate with the state board of land commissioners and with the property owner as necessary to assist the orderly, factual, and amicable process of negotiation between the state board of land commissioners and the property owner.

On March 12, 1982, the day I.C. § 67-4310 was passed by the House as H. 786, Representative Chatburn asked for unanimous consent that a letter be printed in the House journal as a formal legislative intent. It was so ordered and the following letter was included.

> On March 9, 1982, your Committee on Resources and Conservation sent House Bill 786 to the Floor of the House with a do pass recommendation.
>
> The language of H. 786 instructs certain state agencies, including the Department of Water Resources, to provide their cooperation as necessary to assist the process of negotiation between the land owner of the private lands within the confines of the walls of Box Canyon. The cooperation called for by this bill is not to interfere with, alter, supersede, or change any of the existing statutory duties or normal decision-making processes of any state agencies named in the bill.

The effect of the statute is that the Land Board may reduce the portion of Box Canyon Creek that the Department of Parks and Recreation may seek to appropriate if negotiations with Hardy [illegible] restrictive covenants ensuring the availability for public use of

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the upper canyon are successful. Other agencies are directed to cooperate in negotiations, but their authority was not expanded or restricted to facilitate the negotiations.

The negotiations resulted in an agreement whereby the Land Board adjusted the boundary and Hardy gave the necessary restrictive covenants. Section 3 of the agreement places reciprocal restrictions on the uses of the land and water in the canyon. Above the base point the canyon will be kept in its present condition. Below the base point the agreement directs that the land shall be used for diversion works, hydroelectric generation facilities and recreational use. Section 4 contains a dedication of the upper canyon to limited public use. Section 6, entitled "Changes in Water Permit and in Application for Permit" first adjusts the boundary contained in I.C.§ 4310 to exclude waters below the base point from appropriation by the Department of Parks and Recreation. It then directs the Department to amend its pending application for appropriation to reflect the change. Section 6 then goes on to bind the "State" and the owner regarding water permit filings, and declares the parties' mutual intention that neither Hardy's hydropower nor the "State's" statutory appropriations can proceed until the agreement becomes fully effective.

The first question is what constitutes the "State." The agreement was signed by John V. Evans, President of the Land Board and Governor. The Land Board cannot act beyond its legislative authority. Echo Ranch, Inc. v. State, ex rel. Evans, 107 Idaho 808, 693 P.2d 454 (1984). Pursuant to I.C. § 58-104(9) the Land Board has the authority to "regulate and control the use or disposition of lands in the beds of navigable lakes, rivers and streams, to the natural or ordinary high water mark thereof. . . ." In this case the board was given the additional authority to adjust the boundary on the Box Canyon Creek and to negotiate with the land owner. Other agencies are directed to cooperate but only within their normal powers and duties. To the extent the agreement mandates agencies to act, or forebear, compliance stems from the agencies participation in the sense negotiations and any agreement by the agencies to be so bound. The statute does not give the Land Board the power to bind the agencies, nor does it bind the agencies to any agreement that would later be reached.

A related question is whether the governor can bind the executive agencies to the agreement by signing as Governor. "The supreme executive power of the state is vested in the governor, who shall see that the laws are faithfully executed." Idaho Const. Art.4 § 5. Idaho Code § 67-802 repeats the constitutional directive and goes on to enumerate a non-exclusive list of gubernatorial powers. The first is the power to "supervise the official conduct of all executive and ministerial officers." From this power an argument can be made that the governor's signature both as "President of the Land Board" and as "Governor"

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combined with the use of the term "State" in the agreement binds the Land Board and all executive agencies. A high degree of participation by the agencies in the negotiations leading to the agreement would arguably show agency consent. This would support the argument that they are bound by the Governor's signature even though the agencies are not signatories of or named parties to the agreement. Also, after having so participated they may not feel inclined to act against the terms of the agreement. Breach by the "State" of the agreement could cause the loss of public rights to the upper canyon. Active participation by the agencies may have produced a consensus that overall the public is best served by the agreement.

On the other hand, functions of the agencies are expressly delegated by the legislature to those agencies. The governor is charged with the responsibility of selecting administrators and ensuring that those selected execute the law. The governor is not expressly authorized to make decisions committed by the legislature to the agencies. If he has that power it is implied from his supreme executive power, and his statutory supervisory power. It could also be argued that the governor was acting solely on behalf of the Land Board. After all it is the Land Board that was authorized to negotiate. The governor is a member of that board and is therefore authorized to negotiate as a member. Action in his separate status of governor was not authorized by the statute.

In Section 6. B. of the agreement the "State" agrees not to protest any application for a change in point of diversion, place of use, or nature of use that Hardy might file to amend his permit from fish propagation above the base point to hydropower below the base point. Hardy agrees to withdraw his protest to the Department of Parks and Recreation's permit application pursuant to I.C. § 67-4310. The "State" further agrees not to protest an application by Hardy for a new permit in lieu of amending his present permit, except on minimum stream flow grounds. This provision ignores the state's responsibility to protect the public trust resources of the state and the Department of Water Resource's duty to assess and protect the local public interest.

The legislature determined that it is in the public interest to preserve the upper canyon. The legislature did not determine that hydropower on the lower canyon was in the public interest, or that the public interest would be best served by preservation of the upper canyon at the expense of hydropower in the lower canyon. The legislature did say that the Land Board could expedite negotiations with Hardy "so far as is consistent with the public interest." The statute does not indicate what the public interest is in the waters of the lower canyon but leaves it to the normal functions of the agency charged to make such an assessment.

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The provision prohibiting the state from protesting Hardy's application cannot apply to the Department of Water Resources. I.C. § 42-203A requires the director of the department to consider a list of factors when determining whether to issue a permit. One is the local public interest. If the permit conflicts with the local public interest, the director may reject the application. In Shokal v. Dunn, 109 Idaho 330, 337, 707 P.2d 441, 448 (1985) the Idaho Supreme Court stated that "I.C. § 42-203A places upon the director the affirmative duty to assess and protect the public interest." (Emphasis in original.) Thus, the no protest provision, if read to force the Department of Water Resources to approve any change in Hardy's application or any new application, violates the statutory duty of the department and to that extent is void.

The Land Board is bound by the public trust doctrine and to the extent an agency is bound to blindly accept whatever Hardy may do in the future, the agreement exceeds the authority of the state. The state cannot contract away its responsibilities under the public trust doctrine.

The agreement cannot obligate instrumentalities of the state to forebear from protesting applications that, if granted, are believed to violate the trust. Such a provision lies beyond the "outer boundaries of permissible governmental action with respect to the public trust." Kootenai Environmental Alliance v. Panhandle Yacht Club, 105 Idaho 622-23, 671 P.2d 1085-95 (1983). There is an argument that the agreement is void on these grounds. However, the issue may not be ripe for review until action is taken by Hardy or by an agency.

Section 6. D. commits both sides to inaction on appropriation until the agreement is fully effective. Arguably this provision goes beyond the terms of the statute. The Park and Recreation Board is directed by I.C. § 67-4310 to appropriate the unappropriated water of Box Canyon Creek. The Land Board is authorized to exclude part of the creek from this appropriation, if negotiations succeed. The Park and Recreation Board is thus directed to appropriate the unappropriated water from either the whole creek or the upper creek. The agreement purports to condition the act of appropriation on an event not provided by the statute. It is not the fact of appropriation that is statutorily conditioned upon successful negotiations, it is the extent of appropriation. It can be argued that the agreement contravenes the statute by providing that "the state shall not be entitled to proceed with its appropriation for the purposes stated in Idaho Code § 67-4310 until this agreement has become fully effective."

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3. THE PROPRIETY OF EXTENSIONS GRANTED FOR WATER RIGHT APPLICATIONS ON BOX CANYON CREEK

Various permits to the water of Box Canyon Creek have been extended over the years. Idaho Code § 42-204 allows the beneficial use:

> "[i]n cases where the applicant is prevented from proceeding with his work by his failure to obtain necessary consent or final approval or rejection from the federal government because of the pendency of an application for right of way or other matter within the jurisdiction of the United States, or by litigation of any nature which might bring his title to said water in question . . . ."

There is no prohibition of multiple extensions for these reasons. The permits involved in Hardy's fish propagation project have been delayed by the acquisition of BLM right-of-way permits. Extensions for this reason appear to be proper.

Hardy's Permit No. 36-7091 has been extended four times. The first involved both a litigation delay and federal permits. The other three involved the permit process for BLM right of way. Application for Permit No. 36-7091 was made in 1969. Proof of construction of works and application of water to beneficial use was to be submitted by April 15, 1973. This date lapsed. A request for extension of time or for reinstatement was filed on April 25, 1973. The director of the department entered an order dated June 4, 1973 which reinstated the permit advanced the priority ten days and extended the time to submit proof of construction and beneficial use to April 15, 1975. This order stated that the permit holders were proceeding with reasonable diligence and had given good cause for the delay. Idaho Code § 42-218a allows reinstatement of a lapsed permit.

Permit No. 36-7175 warrants some comment. Application was made on May 18, 1971. Protests from several parties were filed. Some of these were based on concerns over potential environmental impacts caused by the appropriation for fish propagation. These concerns were not considered by the Department because they were not contained in I.C. § 42-203. Since that decision, I.C. § 42-203 has been amended. The Department must now consider the local public interest when reviewing an application. This is true even for applications originally filed before the statute was amended to include the local public interest provision. Matter of Hidden Trout Ranch, Inc., 102 Idaho 623, 636 P.2d 1 (1981). Any action to change the place of use from fish propagation in Box Canyon to fish propagation in Blind Canyon or

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change the nature of use to hydropower can be protested on local public interest grounds, as well as the other grounds. I.C. § 42-211 (Supp. 1987) (provides for amendment to permits, notice, hearing and appeal). Also, when Hardy files for an amendment, or new permit, for hydropower, the Director will consider the public interest pursuant to I.C. § 42-203C.

On May 8, 1987, Hardy filed for a five year extension of time for Permit No. 7175. The reason for the request is federal regulatory delay. Part of this delay was created by FERC applications for the hydropower facility. However, Permit No. 7175 is for fish propagation not power production. The application was initially denied because the only delay was Hardy's lack of diligence in seeking a section 404 permit from the Corps of Engineers. Since proof of beneficial use or application for extension is not due until March 1, 1988, Hardy had time to supplement his request for an extension.

The extension application was supplemented by two documents. One was a letter from Bill Ringert outlining Hardy's plan for filing an application for a section 404 permit, and for filing a permit to appropriate Box Canyon water for hydropower. This appears to tie into Hardy's original request for a five year extension based on the federal permit process. The unanswered question is whether the applicant can wait until the deadline approaches before applying for a federal permit and then seek an extension because of its pendency. The common law due diligence requirement is quantified in I.C. § 42-204 which provides five years to put water to a beneficial use, and allows extensions for federal delay. Where the federal delay is caused by the applicant, it could be argued that the applicant is not entitled to the extension. At any rate, the extension was granted, conditioned upon Hardy's pursuit of the permits as outlined in the letter.

It is interesting to note that the full five year extension was not granted, rather the time was only extended to January 16, 1990. This tends to indicate that the granting of the extension was based on "litigation delay" as presented in the second document supplementing the request for extension. This document states that I.C. § 67-4310 as originally enacted in 1971 created a cloud on the title to the water under Permit No. 7175. It goes on to say that Mr. Hardy worked with the legislature to amend the statute, furnished information to convince the governor to sign the bill and then negotiated with the Land Board, all to avoid the litigation that otherwise would have been necessary to clear his title. He contends that these activities should be considered the "functional equivalent" of litigation and thus justify an extension. It appears that the Department agreed. Hardy notes in the supplemental information that these activities took twenty-two and one half months, and states that an "extension to January 16, 1990 is warranted because of the 'litigation delay.'" This is the exact date of the extension

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that was granted. Idaho Code § 42-204 provides that for extensions granted due to regulatory or litigation delay the Department "shall extend the time so that the amount of time lost by such delays shall be added to the time given in the original permit. . . ." Unlike the "litigation delay" request, Hardy's regulatory delay request was unspecific as to the exact length of delay and asked for five years. The fact that the extension was granted to the exact day mentioned in Hardy's "litigation delay" request leads to the conclusion that the extension was in fact granted for the litigation delay and not regulatory delay.

The premise is questionable and ties into the special legislation issue. As stated in Hardy's supplement, "the joint effort of Mr. Hardy and the legislature resulted in the passage of the 1982 amendment. . . ." The argument could be logically made that the legislature, fearing the passage of unconstitutional special legislation, stopped short and delegated the final steps to the Land Board to do what the legislature could not do. If a court went beyond the language of the statute and viewed the effect and policy of the amendment, Hardy's supplement to his extension application could well illustrate the fact that the legislature did indeed exceed its own authority.

Also, the extension may have been improper. That litigation is fundamentally different from legislation hardly needs said. Two distinct branches of government, exercising distinct functions are involved. Indeed, if Hardy is correct, the settling of his dispute in the legislature rather than the court room is particularly offensive to the separation of powers doctrine.

The other possible justification for the extension is the one-time, good cause extension provided by I.C. § 42-204(5). The extension was not requested on this ground, and it appears that it was not granted on this ground.

The extension statute does not provide for, nor prohibit, a protest and hearing over the granting of an extension, except that an aggrieved applicant may request a hearing.

4. THE COMMITTEE OF TWO

In two places the agreement calls for action by a committee comprised of the owner or his representative and a person designated by the Land Board. The first is in Section 4, Dedication to Limited Public Use. This section limits recreational use to "viewing and sightseeing, by not more than an average of twenty persons per day during any 365-day period." Natural scientific studies by the Department of Parks, Fish and Game, the University of Idaho, Idaho State University, and the College of Idaho are authorized. Studies by "such other individuals or public or private entities" are allowed if specifically authorized by the two person committee.

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committee is to adopt guidelines for the studies. In section 5, Management, guidelines for the use of the land and water in the canyon above the base point shall be prepared by the committee and submitted to the Land Board.

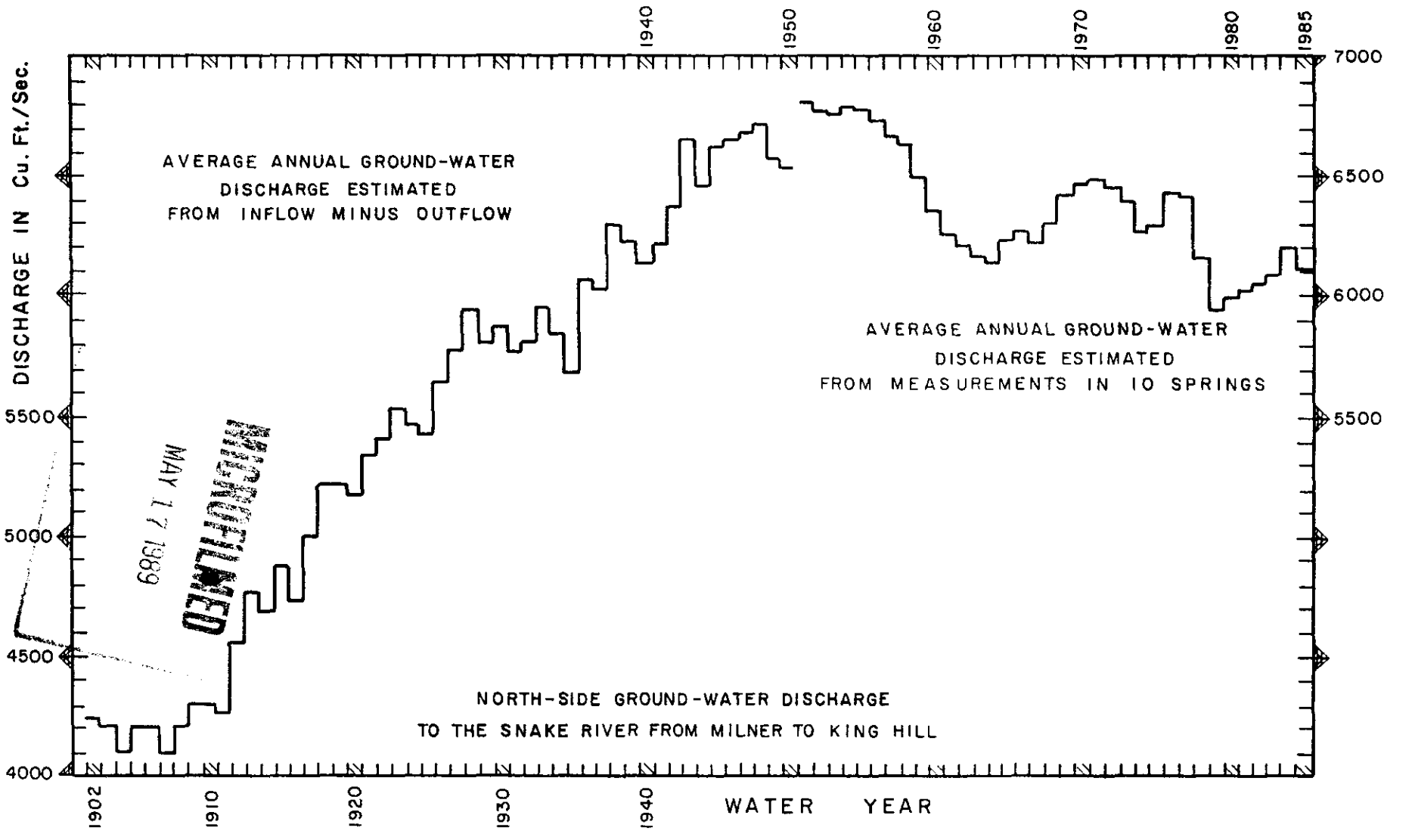
The committee of two lends meaning to the term "limited" in the dedication to limited public use. With only two members the committee cannot authorize studies or promulgate guidelines without a unanimous decision. A split decision means no action. Since the owner is half of the committee, he retains authority to prevent any use not specifically granted in the dedication. The dedication is thus partially illusory. Add to this subsection C. of section 4, which states that lands below the base point shall not be used by anyone without the express written consent of the owner -- something all landowners can require -- and it become difficult to ascertain how the interest of all the citizens of Idaho is served by this agreement.

In conclusion, I.C. § 67-4310 (Supp.1987) is special legislation, but not unconstitutional on its face. It is doubtful whether the agreement binds the state agencies, but if it does then the validity of the agreement is questionable. The majority of extensions have been based on federal regulatory delay and appear proper. The granting of an extension for legislative activity, however, supports an argument that the legislature exceeded its bounds in enacting the amendment, and leaves the extension itself in doubt.

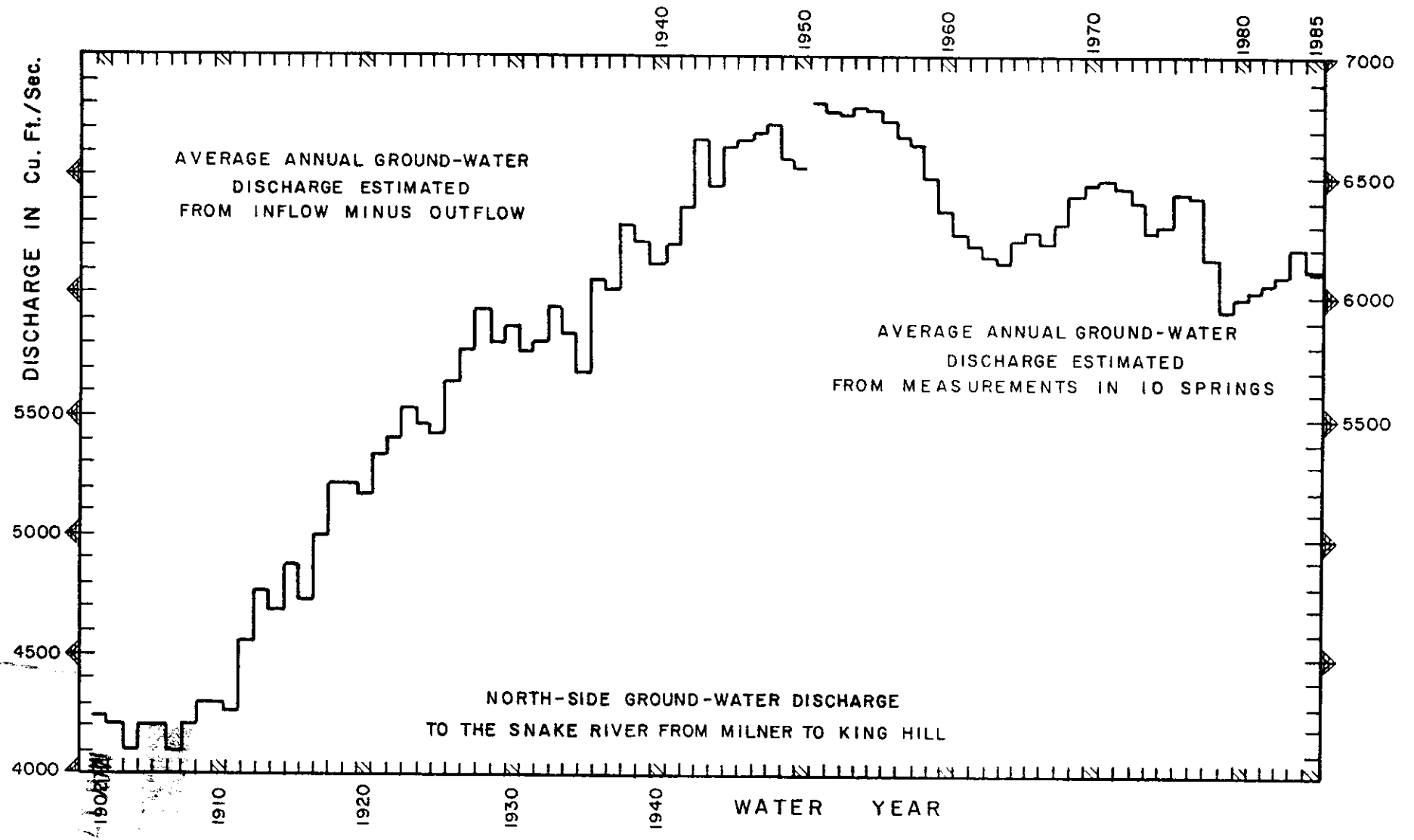
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MAY 19 [illegible]

IDWR EXHIBIT No. 6

Copies sent to: Edward Shokal, Bob Burks, Joe Aitken, Marne Mercer, & Dave Rydalch



IDWR EXHIBIT
NO. 6



INTE :PARTMENT MEMO — 1

DATE

FROM

TO 36-8337

SUBJECT

- HEARING TAPES #1 + #2 FOR BOX CANYON CREEK CAN BE FOUND IN TAPE FILE DRAWER LOCATED IN THE VAULT.

- BOX CANYON WATER DATA INFO CAN BE FOUND ON THE STREAM + DLE BOOK CABINET IN VAULT.

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MAY 11 1989

SIGNATURE

Kathy Sincerely

Will Mr Hardy lose his water rights if he agrees not to develope as planned in his application for those rights? Specifically at the mouth.

Will Water Resources revoke these permits?

Will there be water left in the creek where the hydro diversion is? If so how much? Is this amount adequate to sustain continuous life?

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Bill Cashion Pkt. # 3 Box 721 - Bulk

Are the proposed water diversions for fish propagation in the upper streteles feasible from a land base? ~~How~~ ~~do the~~ What effect would they (if developed) have on water quality? Would this cause a problem for the Threatened species?

Is ~~Earl~~ Earl Hardy trading off and ammending a water filing that is unfeasible as it now stands. in order to get his water filing for electrical production in better stead priority wise? ~~Is~~ ~~that~~ Does this not violate the speculative filing clause?

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Rt. 3, Box 240
Buhl, Idaho 83316
March 23, 1988

State of Idaho
Department of Water Resources
1301 North Orchard Street
Boise, Idaho 83706-2237

RE: Minimum Streamflow Application on
Box Canyon Creek No. 36-8337

Gentlemen:

I strongly support approval of Application No. 36-8337 for a minimum stream flow in Box Canyon Creek.

The remaining scenic, scientific, fish, wildlife, and recreational values of Box Canyon are of sufficient importance to Idaho that strenuous efforts should be made to preserve them for the benefit and enjoyment of future generations.

A minimum stream flow in Box Canyon Creek is essential to the maintenance of the Canyon ecology.

There are few, if any, Box Canyon type areas left in Idaho, or for that matter in the United States. To further degrade this area is unthinkable. Please approve this mimimum stream application to further assure Idahoans that we do care for our natural resources.

Sincerely yours,
Robert S. Luntey
Robert S. Luntey

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March 21, 1988

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MAR 23 1988
Department of Water Resources
Southern Region Office

Loren Holmes
Department of Water Resources
2148 4th Ave. E.
Twin Falls, ID 83301

Re: #36-8337, Box Canyon

Dear Mr. Holmes:

I support the minimum streamflow application for Box Canyon although it is too little, too late in some ways. This application certainly is not the ideal or the most desirable for either aesthetic or recreation values. It is indeed a minimum necessary for the purposes cited in the application.

Please include my letter in the hearing record.

Sincerely,

Jill Joseph
RR #1 Box 254
Hagerman, ID 83332

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Full Parties

Board – Dave Rydstedt –
B Con – Joe Aiken, Bob Crockett
Rim View – Bill Ringert Longenstein, Thomas
Hegemon Valley Citizens Band Maria Marcus
Shortac –

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MAY 17 1983

STATEMENT BY
BOARD MEMBER

On September 22, 1987, the Bureau of Land Management, United States Dept. of Interior requested that the Idaho Water Resource Board file an application to appropriate a minimum stream flow in the lower end of Box Canyon Creek.

The Board reviewed the request at a Board meeting held on October 15, 1987. Based on information presented to the Board, the Board made a preliminary finding that the request for a minimum flow was meritorious. On October 16, 1987, the Board filed an application for establishment of a minimum flow in Box Canyon Creek.

A public information meeting ~~was conducted~~ was conducted by the Board in Twin Falls on November 17, 1987. The purpose of the meeting was to gather public sentiment regarding establishment of a minimum flow in the lower portion of Box Canyon Creek. Public comment supported the minimum flow, and the Board resolved that the Department should proceed with the administrative processing of the application.

NCY
-1,23/88

1

Gooding, IDAHO 9:30 am
Application for minimum flow / Box Canyon CK
36-~~8237~~7

Dept - NCY, GARY SPACKMAN, LOREN ~~Hoomer~~

Board - Dave RYDALCH SE Anthony, Chairman Min. Flow

Prior to going on the record we have ~~required~~

(1) Identified full parties + their opportunities
(2) Explained ~~opportunities~~ take opportunities for public witnesses
(3) Reviewed the criteria for decision listed in Sec. 42-1503

Call Dave Rydalch - Sworn in

(1) ALLOWED ~~Hagerman~~ Valley Citizens Alert ~~to~~ intervene Late

(2) Dave Rydalch - read public statement

(3) GARY SPACKMAN -
History of filing -
Reviewed legal notice 3/~~3~~10/88
Summary of application
Approx ~~1/4~~ mile length of canyon

X-EXAM - RYDALCH - PRIORITY
MERCER - which haven't been put to use
as. 36-7824
36-7040
36-7797
36-8080
Have been developed -

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Mercer – why limit those permits expired ?–
intro View – O.L.E. – Red tape extensions

Bunkes – why does dept issue permits & accept applications when water is not available

States of Parks & Rec filing

Spackman presented hydrographic information
350 to 450 min observed flows @ mid point in Canyon – Exh. 6.7 #4

Clear Springs is below this gauging station

Bunkes – frequency of measurement

Spackman presented stills of hydrograph of Snake River aquifer.

do → Provide copies to all parties Exhibits admitted

Robert S. Bunker – Read statement

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Joseph Aiken — BLM

Submission A — boxcar

Submission B — drawing

Robert Dean Corbett — BLM

— 1) Interfere with prior rights — subject to all prior rights — water is in excess of I (2580) for right of-way

Hardy to get I 2580 agreed to bypass 75 cfs @ diversion and not divert 87 cfs of gain in reach from the diversion to the stream mouth — other rights are upstream and would not be affected

2) Public involvement — process has been lengthy to insure public involvement — protests & candidate species —

3) Min needed? —

current flow = 417 cfs @ the mouth

40% of flow is being reserved

a lesser flow would not protect the & candidate species & public recreation use of the area —

4) Min, not ideal? —

— Most desirable would be higher end of acceptable species — these are @ the lower end of range of acceptable flow

BLM feels the flow will maintain the

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4 candidate species & public.

5th Can be maintained — records & agreements demonstrate flow can be maintained.

Measurements have been made by BOR
447 cfs @ mouth 11/1/86
382 cfs @ 95° upstream from Hardy's diversion — 3/5/86 —

Burrell —

Why not higher? Would it be more desirable @ a higher level? — answered in terms of minimum vs - more desirable

Will candidate species be adequately maintained by the flows? yes

Will they have to migrate - defined to Longnecker —

Reach fast flowing now? — very

Comfortable with measurements on the gaining reach — yes - inflow arises over the lower reach fairly evenly from Rd to the mouth. (22 cfs per 200 ft) —

Will 75 cfs allow fish migration — yes fish ladders will be provided @ the diversion

No control over clear spacings - No control?

Clear spacings guaranteed ladders & screens didn't supply yet (Are some fish people more honorable?) — No answer.

lower the flow @ mouth? No answer
Mitigation measures? — yes
What are they? Hardy will not
pursue the permit
Anything required outside of BLM land
in the agreement can it be enforced?
Yes by right of way agreement - BLM
is here today to establish min flow
to firm up agreement -

Hardy needs BLM location for the fall
to his facility. Below that point
difficult to use —

At Glen Springs diversion site, can Hardy
exercise a filing @ this point — No,
BLM will not allow shoshone Sculpin
pool to be reduced in flow — located just
below diversion -

Are you aware that Glen Springs
has been above the 300 cfs — yes

Do threatened Candidate species exist above the
diversion? yes —

Road to upper area? No I agree
they can?

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Below the protected area ⇩ can house & power plant be

Shoreal — Measuring devices — any assurances that devices will be accurate and monitored — yes

Water Quality ⇩ No return flows above the reach —

Aitken Isaak — Realty specialist
Review "Submission 8"
Explained Handy agreement —

X-EXAM — Burkes

Agreement signed that ~~said~~ says no diversions will be built in the min flow reach? Stipulation signed accepting the right of way —

Does CANO Board have authority to enter into agreements that bind IDWR? Don't know, but BLM is not a party

Are you aware that Handy can build a road into upper area? State agreement allows — & CA presumption agreement doesn't provide for that —

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Burres — agreement gives Hanby the right to build the access road into the canyon? (No, it does not)

Limited use —

— BLM comfortable with the public access where permission is required from land Board of Hanby? Yes BLM is comfortable —

Public access to lower end — either from the river or across the Public land —

Access across the creek @ the diversion —
— access across the flume + dam?
— flume only — dam wasn't requested because the existing access is by wading —
— Is that possible — not, now but can when the diversion is made

— Access — are you satisfied with the access arrangement — (BLM: YES)

Shokal —

Any process available so that Hanby can't change his mind & develop first @ the 36-717 authorized points — Not in the presentation

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- Zone 9. But outside of zone (in middle reach this could happen.) -

Recall Cordell -

Asked question & request for IDWR coordinate with DOE & Hatch & EPA -

Merrick Con Hardy proud on the development of the outstanding permits without BLM involvement - As BLM would be involved thru other permits such as C.U., land use etc; Zoning.

Burdett Adequate available? Leave that to IDWR

Longenstein as witness -

BLM - Shoshone -

Candidate species - not officially listed as threated or endangered - now being studied for such designation -

Shoshone sculpins - small mottled - found in any pooled area upstream to the falls & in Box Canyon - inventory in 1981

Bliss Rapids snail = identified below falls -

Utah Valvata snail - identified in sculpin pool

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Columbia River Limpett — No live samples found yet — only shells —

Habitats don't overlap —

Productive trout fishery — fish from the river migrate in & out as well as resident —

— Mollusk species don't migrate except perhaps downstream. Shoshone sculpin may move up & down —

Species do exist in other localities —

— 75 cfs should preserve the species —

— W.Q should be adequate

Thiel

What would be required to allow you to use the word will. —

Cordell →

Available expertise has concurred that the 75 cfs will not impact (Fish & Wildlife Service concurs under section 7 informal consultation)

Burbee ←

Can't you except pressure on clean CC to allow migration of fish above the diversion — No regulatory authority —

Reproductive population of trout above the clean CC diversion

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Mr Bill Harris —

— Measured flow —

— Reviewed exhibit d.

— Some concerns expressed that measuring equipment is not ideal for the purpose —

Cordell — submission "a" —

Global testimony

- Represents self + wife Faith —
- Request additional flow be added —
- "Absolute minimum" —
- Error in judgment to only have min - no contingency —
- Commercial filings are for max. needed not minimum —
- Small amounts of water committed to parks, recreation + natural uses compared to commercial uses in Basin 36 —
- Read from Frank Thomas letter —

Fish prop.	6 x 4 9 cfs
" "	3 5 1 cfs
Parks + rec.	66.5 cfs
misc state & fed	70 cfs

- Request Ecology to study ways to protect public trust

Bob Burkes —

— 1982 bill to protect Box Canyon
— lobbied on the basis that Hardy could tear up canyon @ anytime —
— Bill written by Rinjert + Ravenscroft —
— Lobbied by Rinjert & "
— Agreement passed by people in Lodo + parks were not water experts — agreement requires state agencies to cooperate — not allowed to do normal functions including IOWR
— Agreement did not reflect true facts
— Ward Chatfield read into House Journal that no dept would be denied their authority to act.
— Senate passed unanimously.
— Because of extreme length of time since permits were issued should be reheard —

→ Requests IOWR when the permits —

— Supports minimum flow — but should be increased —

— Any change of diversion point or use be advertised & reheard —

Requests for reconsideration
— Burkes exhibits admitted —

Blm objection to relevancy is noted doesn't go to relevancy but will a

Kathy Jurseley —

Recommends approval
Chastizes IDWR for extensions
& 20 yr delay

Chisholm, Wm K.

Spiritual Effects are important
Do all possible to preserve —
Greed unacceptable —
Blackmail
Speculative nature of Hardy filings
Minimum stream flow should be 417 cfs.
Supports min stream flow, but too low —
Wants time limitation, grounds, etc
straightened out —

Requests Board & A.G look into legality of all the questions —

Hoback —

Concerned about illegal diversions —
Can IDWR look into —

MINIMUM INSTREAM FLOW HEARING

36-8337 - Box Canyon Creek

ROSTER OF ATTENDANCE

Please Print Name	Address	Representing	Check ( ) if formal testimony or statement will be given
Robert D. Cordell	P.O. Box 2b, Shoshone, Id 83352	Bureau of Land Mgmt	✓
Wm T. Harris	"	"	
Kathy Sursely	Rt 3 Box 431 Buhl	Life	✓
William K Chisholm	RT 3 Box 431 Buhl	Self	✓
Steve Laugenstein	PO Box 2-B Shoshone ID.	BLM	
Kenneth Keck	2186 Bob Barker Rd Wendell Id		
Betty + Stan Aebee	Rt 4 Box 106-A Bliss, Idaho 83316		
Frank + Helen Orth	3510 S 1950 E	Wendell Ida. ~~83355~~	
Dennis Coyle	Malad Gorge St. Park HAGERMAN 83352	IDPR	
Joseph Aitken	P.O. Box 2B	Shoshone BLM	✓

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MINIMUM INSTREAM FLOW HEARING

36-8337 - Box Canyon Creek

ROSTER OF ATTENDANCE

Please Print Name	Address	Representing	Check ( ) if formal testimony or statement will be given
R.W. Franzen	820 9th Ave. N.	Self	
R.S. Luntey	Rt 3, Box 240 Buhl, Id	Self	✓
MARNE MERCER	919 Justice Grade, Hagerman 83332	Citizens ASsoc	
Edward C. Shekell	3rd #1 Box 410 Hagerman Idaho	Representing myself & my Wife Ruth	✓

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MAY 17 1989

p1

Re: 36-8337, Idaho Water Resource Board (MSF, Box Canyon)

Place: Gooding City Hall; Gooding, ID

Date: Wednesday, March 23, 1988; 9:30 a.m.

Hearing Officer _____

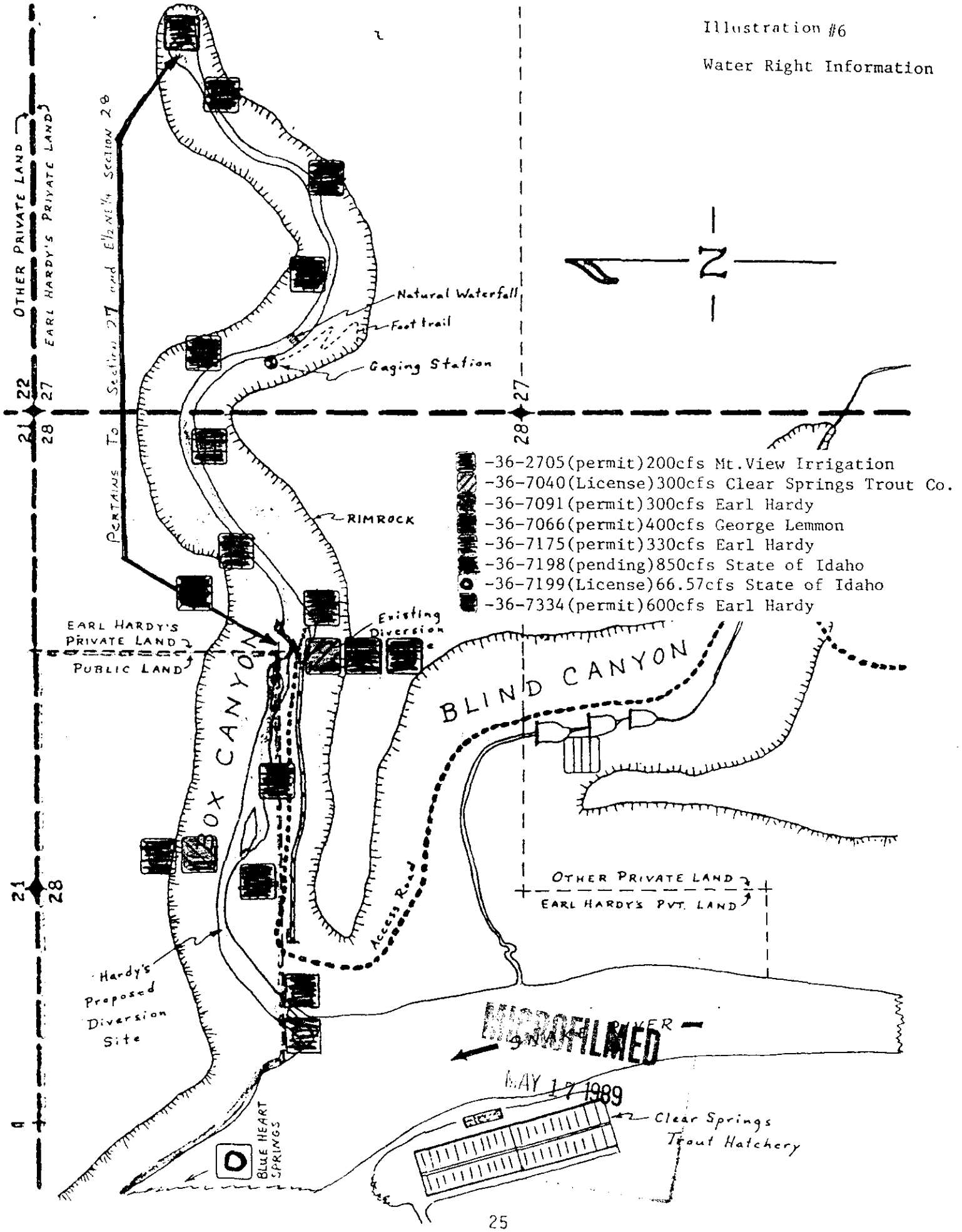
Assisted by _____

ROSTER OF ATTENDANCE

Name	Address	Representing

Illustration #6

Water Right Information



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INTER-DEPARTMENT MEMO — 1

FROM CHERYL

DATE 3-17-8

TO FILE 36-8337

SUBJECT

LETTERS DATED 3/9/88 TO: LARRY ANDERSON & BETTY WAGNER ~~WERE~~ REGARDING THE HEARING ON 3/23/88 WERE RETURNED WITH NO FORWARDING ADDRESS. THE LETTERS WERE NOT RETAINED WITH THE FILE.

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MAY 3 / 1988

SIGNATURE

BOX CANYON CREEK
MINIMUM STREAMFLOW
FACT SHEET

Water Right No.: 36-8337

Source: Box Canyon Creek

Applicant: Idaho Water Resource Board

Requesting Agency: US Department of the Interior
Bureau of Land Management

Date Application Filed: October 16, 1987

Rate of Flow: A variable flow of 75-162 cfs from the beginning to the end of the minimum flow reach, respectively, from 01/01 through 12/31

Location of Springs: Beginning at a point 300 feet downstream from where Box Canyon Creek crosses the East 1/16 line into Lot 1 of Section 28, Township 8S, Range 14E, B.M., and proceeding downstream to the confluence of Box Canyon Creek and the Snake River, located in Lot 2, Section 28, Township 8S, Range 14E, B.M.

Purpose: To preserve fish and wildlife habitat

Hearing: Gooding City Hall, 308 5th Avenue West, Gooding, Idaho, beginning at 9:30 a.m. on Wednesday, March 23, 1988

MAY 17 1988

IN THE MATTER OF APPLICATION FOR PERMIT NO. 36-8337 IN THE NAME OF THE IDAHO WATER RESOURCE BOARD

NOTICE OF APPEARANCE

Comes now, Robert Burks, Box 298, Wendell,ID 83355, and gives notice of appearance as a party in the above captioned matter.

I wish to reserve approximately 10 minutes of time for entering testimony during the hearing and wish to reserve the right to cross-examine witnesses.

Signed this 17th day of March, 1988

Robert Burks

Robert Burks

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Department of Water Resources
Southern Region Office

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MAY 17 1989

Ringert, Clark, Harrington, Reid, Christenson & Kaufman
CHARTERED
LAWYERS

WILLIAM F. RINGERT
D. BLAIR CLARK
ANDREW M. HARRINGTON
JAMES G. REID
JEFFREY R. CHRISTENSON
JAMES P. KAUFMAN
MICHAEL J. GAFFNEY
LAURA E. BURRI
LEA C. ADAMS

SAMUEL KAUFMAN (1921-1988)

599 WEST BANNOCK STREET
P.O. BOX 2773
BOISE, IDAHO 83701

TELEPHONE (208) 342-4591

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MAR 16 1988
Department of Water Resources

March 15, 1988

Mr. Gary Spackman, Supervisor
Water Allocation Section
Department of Water Resources
1301 North Orchard Street
Boise, Idaho 83706-2237

Re: Minimum Streamflow Application on Box Canyon Creek, No. 36-8337

Dear Mr. Spackman:

I have your letter of March 9, 1988, regarding the hearing at Gooding for the above mentioned application. I intend to appear at the hearing on behalf of Rim View Trout Company and Earl Hardy, unless legislative activites and duties make it impossible for me to attend, in which case someone else may appear for me.

Yours very truly,

W. F. Ringert

WFR:am
cc: Earl Hardy

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MAY 17 1989

Ringert, Clark, Harrington,
Reid, Christenson & Kaufman
CHARTERED
LAWYERS
P.O. BOX 2773
BOISE, IDAHO 83701

Mr. Gary Spackman, Supervisor
Water Allocation Section
Department of Water Resources
1301 North Orchard Street
Boise, Idaho 83706-2237

Dear Sir 36-8337

I am for minimum flow of Box Canyon Stream Flow 2

R. D. Becker
Bubl Idaho
R # 2 537.6610
83316
Bubl Idaho

Gentlemen,

I wish to make known my support for the Minimum Streamflow application on Box Canyon Creek # 36-8337.

This should have been done years ago to protect this.

Thank you for your consideration of my wishes in this matter.

Sincerely,
Virginia Becker
RR # 2 Box 108
Bubl, Idaho
83316

Phone # 537-6610

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Department of Water Resources
Southern Region Office

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MAY 17 1989

36-8337

To Dept of Water Resources

RE Box Canyon Minimum Flo

Dear Sir:

I would like approx (10 minutes) to make a statement at the hearing.

Bob Brooks
Box 298
Wendell, Idaho
83355

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MAR 8 1988
Department of Water Resources
Southern Region Office

MAR - 9 1988
Department of Water Resources

RECEIVED
MAR 11 1988
Department of Water Resources
Southern Region Office

March 11, 1988

R. Keith Higginson, Director
Idaho Dept. of Water Resources
1301 North Orchard Street
Boise, ID 83720

Re: Application for Minimum Streamflow No. 36-8337

Dear Mr. Higginson:

In reference to 36-8337, we wish to appear at the proceeding for the purpose of testifying in favor of said application for reasons to support the public interest.

We also would like to the opportunity to cross-examine witnesses should the occasion arise.

Yours truly,

Edward C. Shokal
Ruth C. Shokal

mb

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MAY 17 1989

March 9, 1988

<name>

Re: Minimum Streamflow Application on <stream/no>

Dear <sal>

The Idaho Department of Water Resources will conduct a hearing on <day> to determine whether a minimum streamflow in <stream> should be approved. The hearing will commence at <time/place>.

Information describing the application and the time and place of the hearing is shown on the enclosed fact sheet. Also, enclosed is a brochure which describes the minimum streamflow procedure.

A notice of appearance must be filed with the Department at least five (5) days prior to the hearing if you want to become a full party to the action. A full party may call and cross examine witnesses. You may also testify informally without filing a notice of appearance. Written comments may also be filed with the Department prior to the hearing.

Sincerely,

GARY SPACKMAN, Supervisor
Water Allocation Section

GS:jf

Enclosures

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MAY 17 1989

BOX CANYON CREEK
MINIMUM STREAMFLOW
FACT SHEET

Water Right No.: 36-8337

Source: Box Canyon Creek

Applicant: Idaho Water Resource Board

Requesting Agency: US Department of the Interior
Bureau of Land Management

Date Application Filed: October 16, 1987

Rate of Flow: A variable flow of 75-162 cfs from the beginning to the end of the minimum flow reach, respectively, from 01/01 through 12/31

Location of Springs: Beginning at a point 300 feet downstream from where Box Canyon Creek crosses the East 1/16 line into Lot 1 of Section 28, Township 8S, Range 14E, B.M., and proceeding downstream to the confluence of Box Canyon Creek and the Snake River, located in Lot 2, Section 28, Township 8S, Range 14E, B.M.

Purpose: To preserve fish and wildlife habitat

Hearing: Gooding City Hall, 308 5th Avenue West, Gooding, Idaho, beginning at 9:30 a.m. on Wednesday, March 23, 1988

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<name>Earl Hardy
1301 Vista Avenue
Boise, ID 83705
<stream/no>Box Canyon Creek, No. 36-8337
<sal>Mr. Hardy:
<day>Wednesday, March 23, 1988
<stream>Box Canyon Creek
<time/place>9:30 a.m. at the Gooding City Hall, 308 5th Avenue West, Gooding, Idaho
<>

<name>Bureau of Land Managment
Statehouse Mail
Boise, ID 83720
<stream/no>Box Canyon Creek, No. 36-8337
<sal>Bureau of Land Management:
<day>Wednesday, March 23, 1988

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MAY 17 1989

<stream>Box Canyon Creek
<time/place>9:30 a.m. at the Gooding City Hall, 308 5th Avenue West, Gooding, Idaho
<>

<name>Mantech, Inc.
c/o Kent W. Foster
Idaho First National Bank Building
<stream/no>Box Canyon Creek, No. 36-8337
<sal>Water Right Holder:
<day>Wednesday, March 23, 1988
<stream>Box Canyon Creek
<time/place>9:30 a.m. at the Gooding City Hall, 308 5th Avenue West, Gooding, Idaho
<>

<name>Box Canyon Trout Co., Inc.
Earl M. Hardy
1301 Vista Avenue
Boise, ID 83705
<stream/no>Box Canyon Creek, No. 36-8337
<sal>Water Right Holder:
<day>Wednesday, March 23 1988
<stream>Box Canyon Creek
<time/place>9:30 a.m. at the Gooding City Hall, 308 5th Avenue West, Gooding, Idaho
<>

<name>Blind Canyon Aqua Ranch, Inc.
P.O. Box 219
Hagerman, ID 83332
<stream/no>Box Canyon Creek, No. 36-8337
<sal>Water Right Holder:
<day>Wednesday, March 23, 1988
<stream>Box Canyon Creek
<time/place>9:30 a.m. at the Gooding City Hall, 308 5th Avenue West, Gooding, Idaho
<>

<name>Clear Springs Trout Co.
1020 Main
Buhl, ID 83316
<stream/no>Box Canyon Creek, No. 36-8337
<sal>Water Right Holder:
<day>Wednesday, March 23, 1988
<stream>Box Canyon Creek
<time/place>9:30 a.m. at the Gooding City Hall, 308 5th Avenue West, Gooding, Idaho
<>

<name>Earl Hardy
1301 Vista Avenue
Boise, ID 83705
<stream/no>Box Canyon Creek, No. 36-8337

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<sal>Water Right Holder:
<day>Wednesday, March 23, 1988
<stream>Box Canyon Creek
<time/place>9:30 a.m. at the Gooding City Hall, 308 5th Avenue West, Gooding, Idaho
<>

<name>Waldo Martens
Rt. 3, Box 3498
Jerome, ID 83338
<stream/no>Box Canyon Creek, No. 36-8337
<sal>Mr. Martens:
<day>Wednesday, March 23, 1988
<stream>Box Canyon Creek
<time/place>9:30 a.m. at the Gooding City Hall, 308 5th Avenue West, Gooding, Idaho
<>

<name>Steve Antone
1141 Link Street
Rupert, ID 83350
<stream/no>Box Canyon Creek, No. 36-8337
<sal>Mr. Antone:
<day>Wednesday, March 23, 1988
<stream>Box Canyon Creek
<time/place>9:30 a.m. at the Gooding City Hall, 308 5th Avenue West, Gooding, Idaho
<>

<name>Bruce Newcomb
1626 Monroe
Burley, ID 83318
<stream/no>Box Canyon Creek, No. 36-8337
<sal>Mr. Newcomb:
<day>Wednesday, March 23, 1988
<stream>Box Canyon Creek
<time/place>9:30 a.m. at the Gooding City Hall, 308 5th Avenue West, Gooding, Idaho
<>

<name>Darrel McRoberts
342 Monroe Place
Twin Falls, ID 83301
<stream/no>Box Canyon Creek, No. 36-8337
<sal>Mr. McRoberts:
<day>Wednesday, March 23, 1988
<stream>Box Canyon Creek
<time/place>9:30 a.m. at the Gooding City Hall, 308 5th Avenue West, Gooding, Idaho
<>

<name>Laird Noh
Rt. 1, Box 65
Kimberly, ID 83341

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<stream/no>Box Canyon Creek, No. 36-8337
<sal>Mr. Noh:
<day>Wednesday, March 23, 1988
<stream>Box Canyon Creek
<time/place>9:30 a.m. at the Gooding City Hall, 308 5th Avenue West, Gooding, Idaho
<>

<name>Ronald Black
240 Locust North
Twin Falls, ID 83301
<stream/no>Box Canyon Creek, No. 36-8337
<sal>Mr. Black:
<day>Wednesday, March 23, 1988
<stream>Box Canyon Creek
<time/place>9:30 a.m. at the Gooding City Hall, 308 5th Avenue West, Gooding, Idaho
<>

<name>Celia Gould Folkinga
Rt. 4, Box 113
Buhl, ID 83316
<stream/no>Box Canyon Creek, No. 36-8337
<sal>Ms. Gould-Folkinga:
<day>Wednesday, March 23, 1988
<stream>Box Canyon Creek
<time/place>9:30 a.m. at the Gooding City Hall, 308 5th Avenue West, Gooding, Idaho
<>

<name>Douglas Jones
Rt. 2
Filer, ID 83328
<stream/no>Box Canyon Creek, No. 36-8337
<sal>Mr. Jones:
<day>Wednesday, March 23, 1988
<stream>Box Canyon Creek
<time/place>9:30 a.m. at the Gooding City Hall, 308 5th Avenue West, Gooding, Idaho
<>

<name>Russell Newcomb
RFD #3, Highland Drive
Twin Falls, ID 83301
<stream/no>Box Canyon Creek, No. 36-8337
<sal>Mr. Newcomb:
<day>Wednesday, March 23, 1988
<stream>Box Canyon Creek
<time/place>9:30 a.m. at the Gooding City Hall, 308 5th Avenue West, Gooding, Idaho
<>

<name>Denton Farrington
Rt. 1

Declo, ID 83323
<stream/no>Box Canyon Creek, No. 36-8337
<sal>Mr. Farrington:
<day>Wednesday, March 23, 1988
<stream>Box Canyon Creek
<time/place>9:30 a.m. at the Gooding City Hall, 308 5th Avenue West, Gooding, Idaho
<>

<name>Lynn Tominaga
Rt. 5, Box 184
Rupert, ID 83350
18 <stream/no>Box Canyon Creek, No. 36-8337
<sal>Ms. Tominaga:
<day>Wednesday, March 23, 1988
<stream>Box Canyon Creek
<time/place>9:30 a.m. at the Gooding City Hall, 308 5th Avenue West, Gooding, Idaho
<>

<name>Ernest Hale
725 E. 16th
Burley, ID 83318
<stream/no>Box Canyon Creek, No. 36-8337
19 <sal>Mr. Hale:
<day>Wednesday, March 23, 1988
<stream>Box Canyon Creek
<time/place>9:30 a.m. at the Gooding City Hall, 308 5th Avenue West, Gooding, Idaho
<>

<name>Larry Anderson
2639 Eastgate Drive
Twin Falls, ID 83301
<stream/no>Box Canyon Creek, No. 36-8337
20 <sal>Mr. Anderson:
<day>Wednesday, March 23, 1988
<stream>Box Canyon Creek
<time/place>9:30 a.m. at the Gooding City Hall, 308 5th Avenue West, Gooding, Idaho
<>

<name>Jerry Callen
427-A West 500 South
Jerome, ID 83338
21 <stream/no>Box Canyon Creek, No. 36-8337
<sal>Mr. Callen:
<day>Wednesday, March 23, 1988
<stream>Box Canyon Creek
<time/place>9:30 a.m. at the Gooding City Hall, 308 5th Avenue West, Gooding, Idaho
<>

22 <name>Ralph Peters

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601 E. Avenue A
Jerome, ID 83338
<stream/no>Box Canyon Creek, No. 36-8337
<sal>Mr. Peters:
<day>Wednesday, March 23, 1988
<stream>Box Canyon Creek
<time/place>9:30 a.m. at the Gooding City Hall, 308 5th Avenue West, Gooding, Idaho
<>

<name>Department of Fish and Game
Statehouse Mail
Boise, ID 83720
23 <stream/no>Box Canyon Creek, No. 36-8337
<sal>Department of Fish and Game:
<day>Wednesday, March 23, 1988
<stream>Box Canyon Creek
<time/place>9:30 a.m. at the Gooding City Hall, 308 5th Avenue West, Gooding, Idaho
<>

<name>Department of Lands
Statehouse Mail
Boise, ID 83720
24 <stream/no>Box Canyon Creek, No. 36-8337
<sal>Department of Lands:
<day>Wednesday, March 23, 1988
<stream>Box Canyon Creek
<time/place>9:30 a.m. at the Gooding City Hall, 308 5th Avenue West, Gooding, Idaho
<>

<name>Department of Health & Welfare
Statehouse Mail
Boise, ID 83720
25 <stream/no>Box Canyon Creek, No. 36-8337
<sal>Department of Health & Welfare:
<day>Wednesday, March 23, 1988
<stream>Box Canyon Creek
<time/place>9:30 a.m. at the Gooding City Hall, 308 5th Avenue West, Gooding, Idaho
<>

<name>Department of Parks & Recreation
Statehouse Mail
Boise, ID 83720
26 <stream/no>Box Canyon Creek, No. 36-8337
<sal>Department of Parks & Recreation
<day>Wednesday, March 23, 1988
<stream>Box Canyon Creek
<time/place>9:30 a.m. at the Gooding City Hall, 308 5th Avenue West, Gooding, Idaho
<>

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MAY 17 1989

<name>Gene Gray
Rt. 1, Box 46-A
Payette, ID 83661
<stream/no>Box Canyon Creek, No. 36-8337
<sal>Mr. Gray:
<day>Wednesday, March 23, 1988
27 <stream>Box Canyon Creek
<time/place>9:30 a.m. at the Gooding City Hall, 308 5th Avenue West, Gooding, Idaho
<>

<name>Dave Rydalch
Rt. 2, Box 198
St. Anthony, ID 83445
<stream/no>Box Canyon Creek, No. 36-8337
<sal>Mr. Rydalch:
28 <day>Wednesday, March 23, 1988
<stream>Box Canyon Creek
<time/place>9:30 a.m. at the Gooding City Hall, 308 5th Avenue West, Gooding, Idaho
<>

<name>John Peavey
P.O. Box 88
Carey, ID 83320
<stream/no>Box Canyon Creek, No. 36-8337
29 <sal>Mr. Peavey:
<day>Wednesday, March 23, 1988
<stream>Box Canyon Creek
<time/place>9:30 a.m. at the Gooding City Hall, 308 5th Avenue West, Gooding, Idaho
<>

<name>Gary Robbins
Rt. 2, Box 2265
Dietrich, ID 83324
<stream/no>Box Canyon Creek, No. 36-8337
30 <sal>Mr. Robbins:
<day>Wednesday, March 23, 1988
<stream>Box Canyon Creek
<time/place>9:30 a.m. at the Gooding City Hall, 308 5th Avenue West, Gooding, Idaho
<>

<name>Mack Neibaur
Rt. 1, Box 1478
Paul, ID 83347
31 <stream/no>Box Canyon Creek, No. 36-8337
<sal>Mr. Neibaur:
<day>Wednesday, March 23, 1988
<stream>Box Canyon Creek
<time/place>9:30 a.m. at the Gooding City Hall, 308 5th Avenue West, Gooding, Idaho
<>

RECEIVED
MAY 17 1989

<name>Jeff Jarvis
P.O. Box 476
Shoshone, ID 83352
<stream/no>Box Canyon Creek, No. 36-8337
<sal>Mr. Jarvis:
<day>Wednesday, March 23, 1988
<stream>Box Canyon Creek
<time/place>9:30 a.m. at the Gooding City Hall, 308 5th Avenue West, Gooding, ID
<>

<name>Dennis Coyle
Malad Gorge State Park
Hagerman, ID 83332
<stream/no>Box Canyon Creek, No. 36-8337
<sal>Mr. Coyle:
<day>Wednesday, March 23, 1988
<stream>Box Canyon Creek
<time/place>9:30 a.m. at the Gooding City Hall, 308 5th Avenue West, Gooding, ID
<>

<name>Roy Hancock
Box 432
Hansen, ID 83334
<stream/no>Box Canyon Creek, No. 36-8337
<sal>Mr. Hancock:
<day>Wednesday, March 23, 1988
<stream>Box Canyon Creek
<time/place>9:30 a.m. at the Gooding City Hall, 308 5th Avenue West, Gooding, ID
<>

<name>Robert Pettygrove
Rt. 1, Box 261
Hansen, ID 83334
<stream/no>Box Canyon, No. 36-8337
<sal>Mr. Pettygrove:
<day>Wednesday, March 23, 1988
<stream>Box Canyon Creek
<time/place>9:30 a.m. at the Gooding City Hall, 308 5th Avenue West, Gooding, ID
<>

<name>R. J. Becker
Rt. 2
Buhl, ID 83316
<stream/no>Box Canyon Creek, No. 36-8337
<sal>Mr. Becker:
<day>Wednesday, March 23, 1988
<stream>Box Canyon Creek
<time/place>9:30 a.m. at the Gooding City Hall, 308 5th Avenue West, Gooding, ID

RECEIVED
MAY 17 1989

<>

<name>Virginia Becker
Rt. 2, Box 108
Buhl, ID 83316
<stream/no>Box Canyon Creek, No. 36-8337
37 <sal>Ms. Becker:
<day>Wednesday, March 23, 1988
<stream>Box Canyon Creek
<time/place>9:30 a.m. at the Gooding City Hall, 308 5th Avenue West, Gooding, ID
<>

<name>Richard Hahn
P.O. Box 70
Boise, ID 83707
<stream/no>Box Canyon Creek, No. 36-8337
36 <sal>Mr. Hahn:
<day>Wednesday, March 23, 1988
<stream>Box Canyon Creek
<time/place>9:30 a.m. at the Gooding City Hall, 308 5th Avenue West, Gooding, ID
<>

<name>Jacquelyn Floyd
328 E. C Avenue
Jerome, ID 83338
<stream/no>Box Canyon Creek, No. 36-8337
35 <sal>Ms. Floyd:
<day>Wednesday, March 23, 1988
<stream>Box Canyon Creek
<time/place>9:30 a.m. at the Gooding City Hall, 308 5th Avenue West, Gooding, ID
<>

<name>Louise & R.W. Franzen
820 9th Avenue N.
Buhl, ID 83316
40 <stream/no>Box Canyon Creek, No. 36-8337
<sal>Interested Party:
<day>Wednesday, March 23, 1988
<stream>Box Canyon Creek
<time/place>9:30 a.m. at the Gooding City Hall, 308 5th Avenue West, Gooding, ID
<>

<name>Robert Luntey
Rt. 3, Box 240
41 Buhl, ID 83316
<stream/no>Box Canyon Creek, No. 36-8337
<sal>Mr. Luntey:
<day>Wednesday, March 23, 1988
<stream>Box Canyon Creek
<time/place>9:30 a.m. at the Gooding City Hall, 308 5th Avenue

MICROFILMED
MAY 17 1989

West, Gooding, ID
<>

<name>Jeff Deakins
3520 BS 1600 E
Wendell, ID 83355
<stream/no>Box Canyon Creek, No. 36-8337
<sal>Mr. Deakins:
42 <day>Wednesday, March 23, 1988
<stream>Box Canyon Creek
<time/place>9:30 a.m. at the Gooding City Hall, 308 5th Avenue West, Gooding, Id
<>

<name>Randall Morgan
Rt. 3, Box 4031
Buhl, ID 83316
43 <stream/no>Box Canyon Creek, No. 36-8337
<sal>Mr. Morgan:
<day>Wednesday, March 23, 1988
<stream>Box Canyon Creek
<time/place>9:30 a.m. at the Gooding City Hall, 308 5th Avenue West, Gooding, Id
<>

<name>Bob Hoag
44 2006 Sherry Lane
Twin Falls, ID 83301
<stream/no>Box Canyon Creek, No. 336-8337
<sal>Mr. Hoag:
<day>Wednesday, March 23, 1988
<stream>Box Canyon Creek
<time/place>9:30 a.m. at the Gooding City Hall, 308 5th Avenue West, Gooding, ID
<>

<name>Geneva Fuller
45 1423 Lawndale Drive
Twin Falls, ID 83301
<stream/no>Box Canyon Creek, No. 36-8337
<sal>Ms. Fuller:
<day>Wednesday, March 23, 1988
<stream>Box Canyon Creek
<time/place>9:30 a.m. at the Gooding City Hall, 308 5th Avenue West, Gooding, ID
<>

<name>Betty Wagner
46 300 Morrison #624
Twin Falls, ID 83301
<stream/no>Box Canyon Creek, No. 36-8337
<sal>Ms. Wagner:
<day>Wednesday, March 23, 1988
<stream>Box Canyon Creek

RECEIVED
MAY 17 1989

<time/place>9:30 a.m. at the Gooding City Hall, 308 5th Avenue West, Gooding, ID
<>

<name>Larry and Gary Buggell
Rt. 4
Buhl, ID 83316
<stream/no>Box Canyon Creek, No. 36-8337
47 <sal>Interested Party:
<day>Wednesday, March 23, 1988
<stream>Box Canyon Creek
<time/place>9:30 a.m. at the Gooding City Hall, 308 5th Avenue West, Gooding, ID
<>

<name>E.J. Whitaker
590 Ridgeway Drive
48 Twin Falls, ID 83301
<stream/no>Box Canyon Creek, No. 36-8337
<sal>Mr. Whitaker:
<day>Wednesday, March 23, 1988
<stream>Box Canyon Creek
<time/place>9:30 a.m. at the Gooding City Hall, 308 5th Avenue West, Gooding, ID
<>

<name>Kathleen Sursely
Rt. 3, Box 431
Buhl, ID 83316
49 <stream/no>Box Canyon Creek, No. 36-8337
<sal>Ms. Sursely:
<day>Wedensday, March 23, 1988
<stream>Box Canyon Creek
<time/place>9:30 a.m. at the Gooding City Hall, 308 5th Avenue West, Gooding, ID
<>

<name>William K. Chisholm
Rt. 3, Box 431
Buhl, ID 83316
<stream/no>Box Canyon Creek, No. 36-8337
50 <sal>Mr. Chisholm:
<day>Wednesday, March 23, 1988
<stream>Box Canyon Creek
<time/place>9:30 a.m. at the Gooding City Hall, 308 5th Avenue West, Gooding, ID
<>

<name>Jeff Joseph
Rt. 1, Box 254
Hagerman, ID 83332
51 <stream/no>Box Canyon Creek, No. 36-8337
<sal>Mr. Joseph:
<day>Wednesday, March 23, 1988

RECEIVED
MAY 17 1989

<stream>Box Canyon Creek
<time/place>9:30 a.m. at the Gooding City Hall, 308 5th Avenue West, Gooding, ID
<>

<name>Cole Reed
P.O. Box 416
Hagerman, ID 83332
52 <stream/no>Box Canyon Creek, No. 36-8337
<sal>Mr. Reed:
<day>Wednesday, March 23, 1988
<stream>Box Canyon Creek
<time/place>9:30 a.m. at the Gooding City Hall, 308 5th Avenue West, Gooding, ID
<>

<name>Marne Mercer
Rt. 1, Box 396
Hagerman, ID 83332
53 <stream/no>Box Canyon Creek, No. 36-8337
<sal>Ms. Mercer:
<day>Wednesday, March 23, 1988
<stream>Box Canyon Creek
<time/place>9:30 a.m. at the Gooding City Hall, 308 5th Avenue West, Gooding, ID
<>

<name>Swen Johnson
1624 Harmon
Twin Falls, ID 83301
54 <stream/no>Box Canyon Creek, No. 36-8337
<sal>Mr. Johnson:
<day>Wednesday, March 23, 1988
<stream>Box Canyon Creek
<time/place>9:30 a.m. at the Gooding City Hall, 308 5th Avenue West, Gooding, ID
<>

<name>James & Marylynn Studer
867 Locust Street N.
Twin Falls, ID 83301
55 <stream/no>Box Canyon Creek, No, 36-8337
<sal>Interested Party:
<day>Wednesday, March 23, 1988
<stream>Box Canyon Creek
<time/place>9:30 a.m. at the Gooding City Hall, 308 5th Avenue West, Gooding, ID
<>

<name>James O'Crowley
P.O. Box 705
56 Picabo, ID 83348
<stream/no>Box Canyon Creek, No. 36-8337
<sal>Mr. O'Crowley:

FILMED
MAY 17 1989

<day>Wednesday, March 23, 1988
<stream>Box Canyon Creek
<time/place>9:30 a.m. at the Gooding City Hall, 308 5th Avenue West, Gooding, ID
<>

<name>Ned Bowler
HC 60, Box 1155
Bliss, ID 83314
<stream/no>Box Canyon Creek, No. 36-8337
<sal>Mr. Bowler:
<day>Wednesday, March 23, 1988
<stream>Box Canyon Creek
<time/place>9:30 a.m. at the Gooding City Hall, 308 5th Avenue West, Gooding, ID
<>

<name>Terry Petterson
661 Cypruss
Twin Falls, ID 83301
<stream/no>Box Canyon Creek, No. 36-8337
<sal>Interested Party:
<day>Wednesday, March 23, 1988
<stream>Box Canyon Creek
<time/place>9:30 a.m. at the Gooding City Hall, 308 5th Avenue West, Gooding, ID
<>

MICROFILMED
MAY 17 1989

NOTICE OF HEARING FOR APPLICATION FOR MINIMUM STREAMFLOW

Notice is hereby given that the Idaho Water Resource Board submitted an application for permit to appropriate water to the Department of Water Resources on October 16, 1987, proposing to appropriate water for a minimum streamflow in Box Canyon Creek, tributary to the Snake River. The application is further described as follows:

Application No.:	36-8337
Source:	Box Canyon Creek
Proposed Priority:	October 16, 1987
Amount & Period of Use:	A variable flow of 75-162 cfs from the beginning to the end of the minimum flow reach, respectively, from 01/01 through 12/31.
Purpose of Minimum Flow:	To preserve fish and wildlife habitat.
Place of Use:	The creek in Box Canyon flowing in the following tracts:

Beginning at a point 300 feet downstream from where Box Canyon Creek crosses the East 1/16 line into Lot 1 of Section 28, T8S, R14E, B.M. Gooding County, and proceeding downstream to the confluence of Box Canyon Creek and the Snake River, located in Lot 2, Section 28, T8S, R14E, B.M., Gooding County.

The Director of the Department of Water Resources will hold a public hearing at the Gooding City Hall, 308 5th Avenue West, Gooding, Idaho, beginning at 9:30 a.m. on Wednesday, March 23, 1988, for the purpose of hearing evidence in regard to the application. The hearing will be held pursuant to the provisions of Section 42-1503, Idaho Code.

Any party who wishes to formally appear in this proceeding for the purpose of presenting evidence or cross examining witnesses should file a notice of appearance with the director of the Department of Water Resources, Statehouse Mail, 1301 North Orchard Street, Boise, ID 83720, five (5) days prior to the hearing. Other parties will be given an opportunity to informally present their views and comments without the necessity of filing a notice of appearance. Written informal views and comments may also be submitted to the Department of Water Resources prior to the hearing.

If issued, this permit will be subject to all prior water rights.

[illegible] 1988

R. KEITH HIGGINSON, Director
Idaho Department Water Resources

Hagerman Valley Citizens Alert Inc.

Box 32

Hagerman, Idaho 83332

RECEIVED

MAR 14 1988

Dep... Resources
... Office

March 10, 1988

Loren Holmes
Department of Water Resources
2148 4th Ave. E.
Twin Falls, ID 83301

Re: #36-8337, Box Canyon

Dear Mr. Holmes:

This letter is an expression of our support for the above-referenced minimum streamflow application for Box Canyon. We believe this minimum streamflow for the eleventh largest natural spring in the United States is essential if we are to preserve any of the historically significant recreation and aesthetic values of the canyon where it joins the Snake River. Moreover, this application is essential for preservation of habitat for three candidate endangered mollusc species and the Shoshone sculpin.

We urge the Department to act responsibly in the best interests of the public by granting this application.

Please include this letter in the hearing record.

Sincerely,

Marne Mercer

Marne Mercer
President
Hagerman Valley Citizens' Alert, Inc.
P.O. Box 32
Hagerman, ID 83332

MICROFILMED

MAY 17 1989

United States Department of the Interior

BUREAU OF LAND MANAGEMENT
Shoshone District
P.O. Box 2B
Shoshone, Idaho 83352

IN REPLY
REFER TO: I-2880

March 2, 1988

RECEIVED
MAR - 3 1988
Department of Water Resources

State of Idaho
Department of Water Resources
ATTN: Gary Spackman
Statehouse
Boise, Idaho 83720

Dear Mr. Spackman:

The Bureau of Land Management, Shoshone District Office, plans to appear to present testimony at the water hearing scheduled for 9:30 a.m. at Gooding City Hall on March 23, 1988.

I would appreciate a few minutes on the schedule to address the Idaho Code 42-1503 criteria for minimum streamflows.

If there are any questions, please call Joe Aitken or me at 886-2206.

Sincerely,

Robert D. Cordell

Robert D. Cordell
Area Manager
Bennett Hills Resource Area

MICROFILMED
MAY 1 (1989

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT
SHOSHONE DISTRICT
P.O. BOX 2B
SHOSHONE, IDAHO 83352

OFFICIAL BUSINESS
PENALTY FOR PRIVATE USE, $300



POSTAGE AND FEES PAID
U.S. DEPARTMENT OF THE INTERIOR
INT-415

State of Idaho
Department of Water Resources
ATTN: Gary Spackman
Statehouse
Boise, ID 83720

RECEIVED
MAR 17 1988
Department of Water Resources

March 11. 1988

Dear Sir

I do not have time to come to the meeting Wed. March 23, 1988 at the Gooding City Hall. If my work + income was from this source, or I usually benefited from it like others had or will I would be there. But my income is from farming - When I did have a day or so off I used to like to admire the beauty + good fishing - look at Box Canyon! Blind canyon! + Niagra Springs

It is terrible how the lust for money has about taken all the beauty + good fishing from these areas.

The admire what the Dep. of Water Resources has done to preserve what little they have done to preserve the beauty of these areas.

Robert J. Becker
Buhl Idaho
RT 2 Box 108
833.16

You should have these meetings in the Winter so we can feel free to attend. I do not have to work R.J.B.

MICROFILMED
MAR 17 1988

P.J. Beck – Buhl Idaho
Rt 2 8 2 3 16
Re Jol

First Interstate Bank

First Interstate Bank of Idaho, N.A.
Twin Falls Office
P.O. Box 248
Twin Falls, ID 83301

BURL. ID 83316
MAR 16
PM
1988

USA 22

State of Idaho
Dept. of Water Resources
State Office . 1301 North Orchard Street
Boise Idaho

83706-2237 (208) 334-4440

EN-135

To Dept of Water Resources

PE Box Canyon Minimum Fls

Dear Sir:

I would like approx 10 minutes to make a statement at the hearing.

Bob Burke
Box 298
Wendell, Idaho
83355

RECEIVED
MAR 8 1988
Department of Water Resources
Southern Region Office

MICROFILMED
MAY 17 1989

36-833

Box Canyon - NOSR

TAPE Counter	
0010	Record Start.
0110	Dave Rydalch
0143	Gary Spackman
1704	Public witnesses
1718	Lunty
1795	BLM
	Cordell
3466	Aitken
5676	Tape 1 END
0016	TAPE 2 START
	Questions to BLM
0222	BLM - Continued
	Langenstein
0785	Harris
1030	Shokal
1225	Burke S
2130	Public statements
2580	End of Tape

MICROFILMED
MAY 17 1989

.te of Idaho
DEPARTMENT OF WATER RESOURCES
Southern Region

CECIL D. ANDRUS
Governor

R. KEITH HIGGINSON
Director

Mailing Address:
Southern Region
2148 4th Ave. East
Twin Falls, Idaho 83301
(208) 734-3578

February 25, 1988

Gooding County Leader
Box 56
Gooding, ID 83330

Re: Notice of Hearing, 36-8337

Gentlemen:

Enclosed you will find a legal notice which we wish to have published on 3/2 & 3/9/88.

If you cannot publish the notice on the proposed dates, please contact us immediately.

In order to receive payment, an affidavit of publication must be submitted to the Department along with the publication bill.

Very truly yours,

Mary Baldwin
Secretary/Office Coordinator

Enclosure

MICROFILMED
MAY 17 1989

State of Idaho
DEPARTMENT OF WATER RESOURCES
Southern Region

CECIL D. ANDRUS
Governor

R. KEITH HIGGINSON
Director

Mailing Address:
Southern Region
2148 4th Ave. East
Twin Falls, Idaho 83301
(208) 734-3578

February 25, 1988

Times News
P.O. Box 548
Twin Falls, ID 83301

Re: Notice of Hearing, 36-8337

Gentlemen:

Enclosed you will find a legal notice which we wish to have published on 3/3 & 3/10/88.

If you cannot publish the notice on the proposed dates, please contact us immediately.

In order to receive payment, an affidavit of publication must be submitted to the Department along with the publication bill.

Very truly yours,

Mary Baldwin
Secretary/Office Coordinator

Enclosure

MICROFILMED
MAY 1 7 1989

.te of Idaho
DEPARTMENT OF WATER RESOURCES
Southern Region

CECIL D. ANDRUS
Governor

R. KEITH HIGGINSON
Director

Mailing Address:
Southern Region
2148 4th Ave. East
Twin Falls, Idaho 83301
(208) 734-3578

February 25, 1988

Post Register
P.O. Box 1800
Idaho Falls, ID 83402

Re: Notice of Hearing, 36-8337

Gentlemen:

Enclosed you will find a legal notice which we wish to have published on 3/3 & 3/10/88.

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Very truly yours,

Mary Baldwin
Secretary/Office Coordinator

Enclosure

RECEIVED
MAY 17 1988

State of Idaho
DEPARTMENT OF WATER RESOURCES
Southern Region

CECIL D. ANDRUS
Governor

R. KEITH HIGGINSON
Director

Mailing Address:
Southern Region
2148 4th Ave. East
Twin Falls, Idaho 83301
(208) 734-3578

February 25, 1988

Lewiston Morning Tribune
505 C Street
Lewiston, ID 83501

Re: Notice of Hearing, 36-8337

Gentlemen:

Enclosed you will find a legal notice which we wish to have published on 3/3 & 3/10/88.

If you cannot publish the notice on the proposed dates, please contact us immediately.

In order to receive payment, an affidavit of publication must be submitted to the Department along with the publication bill.

Very truly yours,

Mary Baldwin
Secretary/Office Coordinator

Enclosure

MICROFILMED
MAY 17 1988

State of Idaho
DEPARTMENT OF WATER RESOURCES
STATE OFFICE, 1301 North Orchard Street Boise, Idaho 83706-2237 • (208) 334-4440

CECIL D. ANDRUS
Governor

R. KEITH HIGGINSON
Director

February 22, 1988

Loren Holmes
Southern Region
Twin Falls, ID

Re: Minimum Flow Application Nos. 36-8337 & 47-8073

Dear Loren:

Attached are legal notices of hearings for Shoshone Creek, Application No. 47-8073 and Box Canyon Creek, Application No. 36-8337. **Please review the notices carefully for accuracy.**

The Box Canyon Creek notice should be published statewide. The Shoshone Creek notice only needs to be published in the local paper.

Thank you,

Gary Spackman

GARY SPACKMAN, Supervisor
Water Allocation Section

GS:jf

Enclosure

RECEIVED
MAY 17 1988

NOTICE OF HEARING FOR APPLICATION FOR MINIMUM STREAMFLOW

Notice is hereby given that the Idaho Water Resource Board submitted an application for permit to appropriate water to the Department of Water Resources on October 16, 1987, proposing to appropriate water for a minimum streamflow in Box Canyon Creek, tributary to the Snake River. The application is further described as follows:

Application No.:	36-8337
Source:	Box Canyon Creek
Proposed Priority:	October 16, 1987
Amount & Period of Use:	A variable flow of 75-162 cfs from the beginning to the end of the minimum flow reach, respectively, from 01/01 through 12/31.
Purpose of Minimum Flow:	To preserve fish and wildlife habitat.
Place of Use:	The creek in Box Canyon flowing in the following tracts:

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If issued, this permit will be subject to all prior water rights.

FILED

1989

R. KEITH HIGGINSON, Director
Idaho Department Water Resources

Southern

RECEIVED
MAR 4 1988

February 13, 1988

The Idaho Statesman
Box 70
Boise, ID 83705

Attn: Sharon - Legal Notices

Please advertise the attached notice for two consecutive week starting March 3, 1988.

The affidavit of publication and the billing should be sent to the department's Southern Regional Office at 2148 4th Avenue, Twin Falls, ID 83301.

If you have any questions concerning this matter, please feel free to contact me at 334-7953.

Sincerely,

RITA I. FLECK
Secretary/Records Manager

Attachment

c: Southern Region

MICROFILMED
MAY 17 1989

NOTICE OF HEARING FOR APPLICATION FOR MINIMUM STREAMFLOW

Notice is hereby given that the Idaho Water Resource Board submitted an application for permit to appropriate water to the Department of Water Resources on October 16, 1987, proposing to appropriate water for a minimum streamflow in Box Canyon Creek, tributary to the Snake River. The application is further described as follows:

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MAY 17 19

ıte of Idaho
DEPARTMENT OF WATER RESOURCES
Southern Region

CECIL D. ANDRUS
Governor

R. KEITH HIGGINSON
Director

Mailing Address:
Southern Region
2148 4th Ave. East
Twin Falls, Idaho 83301
(208) 734-3578

February 10, 1988

Sue Wolfe
Gooding City Hall
308 Fifth Avenue West
Gooding, ID 83330

Dear Ms. Wolfe:

This is to confirm the use of the City Hall Council Chambers for a conference and/or hearing to be held by this office on Wednesday, March 23, 1988 from 9:00 a.m. to 5:00 p.m.

Thank you very much for your cooperation.

Very truly yours,

Mary Baldwin
Secretary/Office Coordinator

MICROFILMED
MAY 17 1989

MEMORANDUM

TO: Files Nos. 36-8337, Box Canyon Creek; 47-8073, Shoshone Creek; 96-8503, Round Lake; 95-8560, Hayden Creek

FROM: Gary Spackman Gary

DATE: November 23, 1987

RE: Date of Filing Minimum Flow Applications with IDWR

At a meeting conducted on October 15, 1987, the Idaho Water Resource Board decided to file applications for minimum streamflow on Box Canyon Creek, Shoshone Creek, Round Lake, and Hayden Creek. Gene Gray, Chairman of the board, signed the applications, and they were given to the Director and Anita Warntjes.

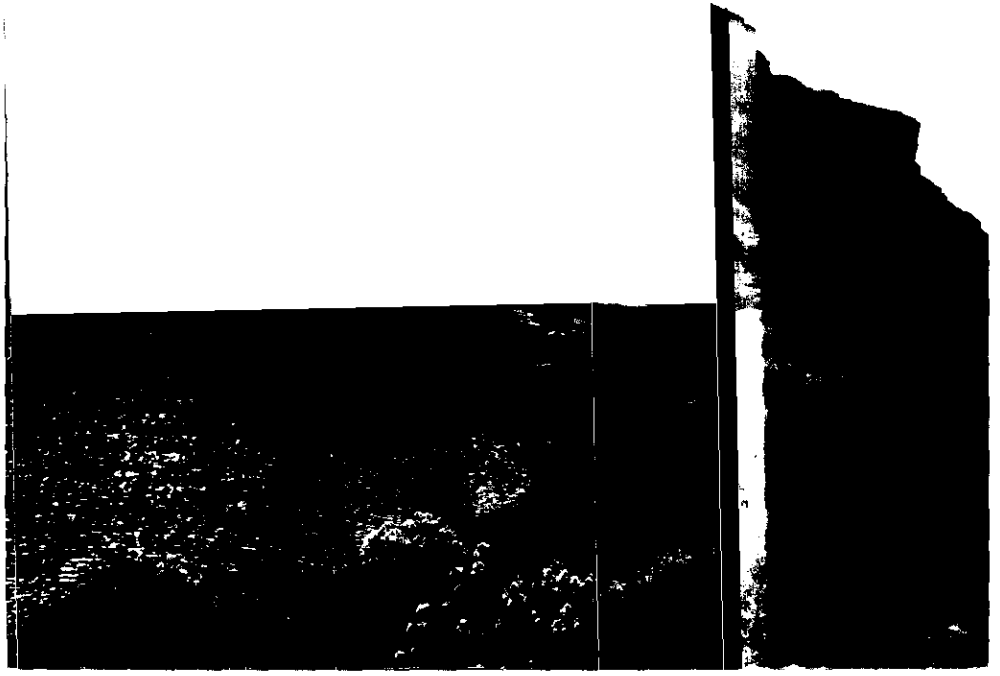
Anita dated the applications on the back page at the time they were received. The statutes governing the filing of the applications state, however, that an application for minimum streamflow must be filed in the office of the Director. The applications were received in the state office on October 16, 1987. Therefore, the proposed date of priority should be October 16, 1987.

RECEIVED
MAY

To: GARY SPACKMAN

From TERRY BLAU

RECEIVED
NOV 03 1987
Department of Water Resources



10-9-87 TB

Box Canyon diversion

REQUESTS FOR MINIMUM STREAMFLOWS

Source	County	Amount	Period	Agency
Shoshone Creek	Twin Falls	5 cfs 7 cfs 5 cfs	1/1 to 3/31 4/1 to 7/31 8/1 to 12/31	Fish & Game
Hayden Creek	Kootenai	4 cfs 20 cfs 4 cfs	1/1 to 2/29 3/1 to 6/30 7/1 to 12/31	Fish & Game
✓Box Canyon Creek	Gooding	*75-162 cfs	1/1 to 12/31	BLM
Round Lake	Bonner	**	**	Parks & Rec.

* Graduated flows to be maintained through several reaches of the creek.

** Todd Graeff requested time for a presentation to the Board. Application has not yet been filed.

RESOLUTION TO CONTINUE OR WITHDRAW

Source	County	Amount	Period	Agency
Crystal Springs	Gooding	50 cfs	1/1 to 12/31	Parks & Rec.

RECEIVED
MAY 17 1989

MINIMUM INSTREAM FLOW HEARING

36-8337 - Box Canyon Creek

ROSTER OF ATTENDANCE

Please Print Name	Address	Representing	Check (✓) if formal testimony or statement will be given
JEFF JARVIS	PO Box 476	SHOSHONE	
Dennis Cayla	Malad Gorge State Park,	Hagerman, ID	
Roy Hancock	Hansen	Box 432	
Robert Hargrave	611 1 Box 61	Hansen, Id 83334	
R.J. Becker	Rt 2	Buhl. Idaho	Self
Virginia Becker	Rt #2 Box 108	Buhl, Idaho	Self
Richard L Hahn	PO Box 70,	Boise, ID 83707	
GENE M. GRAY	2393 GATES LANE,	PAYETTE, Id 83661	
JACQUELYN FLOYD	328 EAST C AVE.	Jerome Id.	
Louise Franzen	820 9th Ave N	Buhl Id.	
R.W. Franzen	" " " "	" "	
Robert S. Luntey	Rt 3, Box 240,	Buhl, Id. 83316	Self
Jeff Deakins	3520 B 5 1600 E	Wendell Id, 83355	
Randall Morgan	Rt 3 Box 403	Buhl, Id 83316	
Bob Hoag	2006 s Herrey	Lane Id 83301	
Geneva S Fuller	1423 Lawndale Dr,	Twin Falls, ID	Self
Betty W. Wagner	300 Morrison #624,	T, F	Self
Larry Baggett	Rt 4	Buhl	
Larry Baggett	Rt #4	Buhl	
S J Whitaker	590 Ridgeway	Drive, Twin Falls Idaho	
Kathleen Sursely	Rt 3 Box 431,	Buhl	self
William K. Chisholm	Rt #3 Box 431,	Buhl, Id.	Self X
JERRY MARCANTONIO	-KLIX RADIO		
Jane Robison	-Times-News		

FILMED

MAY 17 1983

MINIMUM INSTREAM FLOW HEARING

36-8337 - Box Canyon Creek

ROSTER OF ATTENDANCE

Please Print Name	Address	Representing	Check ( ) if formal testimony or statement will be given
Gill Joseph	RR#1 Box 254 Hagerman	Self	
Cole Reed	P.O. 416 Hagerman	Self	
Marne Mercer	Rt 1 Box 396 Hagerman	Citizens Alert.	
Susan Johnson	1624 Harmon	Writer.	
Russ Newcomb	RFD#3 Highlawn Pl T.F.	State Representative	
James A. Studer	867 Locust St N T.F.	Self	
Marylynn Studer	867 Locust St N T.F.	Self	
Geneva S. Fuller	1423 Lawndale Dr. TF	Self	
Betty G. Wagner	300 Morrison #624, T.F	Self	
James C Crowley	POB 705 PICABO, ID	Committee For Idaho's High Desert	
Ned Bowler	HC 60 Box 1155 Bliss	Hager Valley Citizens Alert	
[illegible]	[illegible]	[illegible]	
Terry Patterson	661 Cypress T.F.	Self	

LAND OWNERS FOR BOX CANYON CREEK

EARL HARDY
1301 VISTA AVENUE
BOISE, ID 83705

STATE OF IDAHO
BUREAU OF LAND MANAGEMENT
STATEHOUSE MAIL
BOISE, ID 83720

MICROFILMED
MAY 1 7 1989

November 9, 1987

Re: Minimum Streamflow Application on Box Canyon Creek No. 36-8337

Dear Land Owner:

The Idaho Water Resource Board will be holding a public meeting to solicit public input regarding a proposed minimum streamflow water right on Box Canyon Creek. According to the records at the county courthouse, you are one of the owners of property adjacent to the reach where the minimum streamflow is proposed.

Information describing the application and the time and place of the meeting is shown on the enclosed fact sheet. Also enclosed is a brochure which describes the minimum streamflow procedure.

At the meeting you will have an opportunity to learn more about the application and to express your views.

Sincerely,

Gary Spackman

GARY SPACKMAN, Supervisor
Water Allocation Section

GS:jf

Enclosures

MICROFILMED
MAY 17 1989

WATER RIGHT HOLDERS FOR BOX CANYON CREEK

MANTECH INC
C/O KENT W. FOSTER
HOLDEN, KIDWELL, HAHN, & CRAPO
IDAHO FIRST NATIONAL BANK BUILDING
IDAHO FALLS, ID 83402

BOX CANYON TROUT CO., INC.
EARL M. HARDY
1301 VISTA AVENUE
BOISE, ID 83705

BLIND CANYON AQUA RANCH, INC.
P.O. BOX 219
HAGERMAN, ID 83332

CLEAR SPRINGS TROUT CO.
1020 MAIN
BUHL, ID 83316

EARL HARDY
1301 VISTA AVENUE
BOISE, ID 83705

MICROFILMED
MAY 17 1989

November 9, 1987

Re: Minimum Streamflow Application No. 36-8337 on Box Canyon Creek

Dear Water Right Holder:

The Idaho Water Resource Board will be holding a public meeting to solicit public input regarding a proposed minimum streamflow water right on Box Canyon Creek. According to the records of this Department, you have a water right for which the point of diversion is located in or near the proposed minimum streamflow reaches.

Information describing the application and the time and place of the public meeting is shown on the enclosed fact sheet. Also enclosed is a brochure which describes the minimum streamflow procedure.

At this meeting, you will have an opportunity to learn more about the application and to express your views.

Sincerely,

Gary Spackman

GARY SPACKMAN, Supervisor
Water Allocation Section

GS:jf

Enclosures

FILMED
MAY 17 1989

SOURCE: BOX CANYON CREEK TRIBUTARY: SNAKE RIVER

STATE OF IDAHO DEPARTMENT OF WATER RESOURCES
WATER RIGHTS ABSTRACT

WR-NUMBER: 36-7040

~~CURRENT~~ OWNER:
CLEAR SPRINGS TROUT CO.
1020 MAIN
BUHL, ID 83316

PRIORITY DATE: 4-Sep-1968

STAGE: LICENSE

COUNTY: GOODING
SOURCE: BOX CANYON CREEK TRIBUTARY: SNAKE RIVER

WATER USE:	DIVERSION-RATE:		DIVERSION-VOLUME:	
IRRIGATION	0.200	CFS	40.00	AF
RECREATION	300.000	CFS	0.00	AF
FISH PROPAGATION	300.000	CFS	0.00	AF
TOTAL RATE:	300.000	CFS	TOTAL VOLUME: 0.00	AF

POINT OF DIVERSION:	T08S	R14E	S28	SWNE	
PLACE OF USE:	T08S	R14E	S28	SWNW	
	T08S	R14E	S28	NWSW	
	T08S	R14E	S28	SWNW	AC 10
				TOTAL ACRES:	10

WR-NUMBER: 36-7066

CURRENT OWNER:
BLIND CANYON AQUA RANCH INC.
P.O. BOX 219
HAGERMAN, ID 833320000

PRIORITY DATE: 5-Jan-1970

STAGE: PERMIT

COUNTY: GOODING
SOURCE: BOX CANYON CREEK TRIBUTARY: SNAKE RIVER
BLIND CANYON SPRING SNAKE RIVER

WATER USE:	DIVERSION-RATE:		DIVERSION-VOLUME:	
FISH PROPAGATION	400.000	CFS	0.00	AF
TOTAL RATE:	400.000	CFS	TOTAL VOLUME: 0.00	AF

REMARKS: REINSTATED 12-07-1983.

POINT OF DIVERSION:	T08S	R14E	S28	NWNE
	T08S	R14E	S28	NWSE
PLACE OF USE:	T08S	R14E	S28	NWSE
	T08S	R14E	S20	SWSW
	T08S	R14E	S29	NENW
	T08S	R14E	S29	NWNW

SOURCE: BOX CANYON SPRING TRIBUTARY: SNAKE RIVER

STATE OF IDAHO DEPARTMENT OF WATER RESOURCES
WATER RIGHTS ABSTRACT

WR-NUMBER: 36-7091

CURRENT OWNER:
EARL M. HARDY
1301 VISTA AVE.
BOISE, ID 83705

PRIORITY DATE: 27-Oct-1969

STAGE: PERMIT

COUNTY: GOODING
SOURCE: BOX CANYON SPRING TRIBUTARY: SNAKE RIVER

WATER USE:	DIVERSION-RATE:		DIVERSION-VOLUME:	
FISH PROPAGATION	300.000	CFS	0.00	AF
TOTAL RATE:	300.000	CFS	TOTAL VOLUME: 0.00	AF

POINT OF DIVERSION:	T08S	R14E	S28	NWNE
	T08S	R14E	S28	SENE
	T08S	R14E	S28	SWNE
PLACE OF USE:	T08S	R14E	S28	SWNE
	T08S	R14E	S28	NWSE LT05
	T08S	R14E	S28	NESW LT02

WR-NUMBER: 36-7175

CURRENT OWNER:
EARL M. HARDY
1301 VISTA AVE.
BOISE, ID 837050000

PRIORITY DATE: 18-May-1971

STAGE: PERMIT

COUNTY: GOODING
SOURCE: BOX CANYON SPRING TRIBUTARY: SNAKE RIVER

WATER USE:	DIVERSION-RATE:		DIVERSION-VOLUME:	
FISH PROPAGATION	330.000	CFS	0.00	AF
TOTAL RATE:	330.000	CFS	TOTAL VOLUME: 0.00	AF

REMARKS: 2 P/D IN SWNW, S27 & NENE, S28, T8S, R14E.
THE APPLICANTS USE OF WATER UNDER THIS PERMIT SHALL NOT INTERFERE WITH USES PRESENTLY AUTHORIZED UNDER VALID PRIOR EXISTING PERMITS INCLUDING THE QUALITY AND CONSISTENT FLOW OF WATER FOR FISH PROPAGATION.

POINT OF DIVERSION:	T08S	R14E	S27	NENW
	T08S	R14E	S28	SENE
	T08S	R14E	S28	NENE
	T08S	R14E	S27	NWNW
	T08S	R14E	S27	SWNW
PLACE OF USE:	T08S	R14E	S28	NENE
	T08S	R14E	S28	SWNE
	T08S	R14E	S28	SENE
	T08S	R14E	S27	NENW
	T08S	R14E	S27	NWNW
	T08S	R14E	S27	SWNW

WR-NUMBER: 36-7[illegible]

CURRENT OWNER:
MANTECH INC.
C/O KENT W. FOSTER
HOLDEN, KIDWELL, HAHN & CRAPO
IDAHO FIRST NATIONAL BANK BLDG
IDAHO FALLS, ID 83402

PRIORITY DATE: 13-Sep-1978

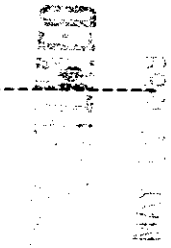
STAGE: PERMIT

COUNTY: GOODING
SOURCE: BOX CANYON SPRING TRIBUTARY: SNAKE RIVER
WATER USE: DIVERSION-RATE: DIVERSION-VOLUME:

POWER		300.000	CFS		0.00 AF
	TOTAL RATE:	300.000	CFS	TOTAL VOLUME:	0.00 AF

REMARKS: NOT TO EXCEED 300. CFS.
P/D IN LOTS 3 & 4 S28, T8S, R14E.

POINT OF DIVERSION:	T08S	R14E	S28	SWNE	
	T08S	R14E	S28	SENE	
PLACE OF USE:	T08S	R14E	S28		LT03
	T08S	R14E	S28		LT04
	T08S	R14E	S28		LT07



30-Sep-1987

SOURCE: BOX CANYON SPRINGS TRIBUTARY: SNAKE RIVER

STATE OF IDAHO DEPARTMENT OF WATER RESOURCES
WATER RIGHTS ABSTRACT

WR-NUMBER: 36-7334

CURRENT OWNER:
BOX CANYON TROUT CO. INC.
EARL M. HARDY
1301 VISTA AVE.
BOISE, ID 83705

PRIORITY DATE: 30-Apr-1973

STAGE: PERMIT

COUNTY: GOODING
SOURCE: BOX CANYON SPRINGS TRIBUTARY: SNAKE RIVER

WATER USE:	DIVERSION-RATE:		DIVERSION-VOLUME:	
FISH PROPAGATION	600.000	CFS	0.00	AF
TOTAL RATE:	600.000	CFS	TOTAL VOLUME: 0.00	AF

REMARKS: 2 P/D IN SENW, LOT 2, S28, T8S, R14E.

POINT OF DIVERSION:	T08S	R14E	S28	SENE
	T08S	R14E	S28	NWNE
	T08S	R14E	S28	SWNE
	T08S	R14E	S28	SENW LT02
PLACE OF USE:	T08S	R14E	S28	SWNE LT02

INTERESTED PARTIES, IDWR BOARD, REPRESENTATIVES, SENATORS
BOX CANYON CREEK

WALDO MARTENS
ROUTE 3, BOX 3498
JEROME, ID 83338

STEVE ANTONE
1141 LINK STREET
RUPERT, ID 83350

BRUCE NEWCOMB
1626 MONROE
BURLEY, ID 83318

DARREL MCROBERTS
342 MONROE PLACE
TWIN FALLS, ID 83301

LAIRD NOH
ROUTE 1, BOX 65
KIMBERLY, id 83341

RONALD BLACK
240 LOCUST NORTH
TWIN FALLS, ID 83301

CELIA GOULD FOLKINGA
ROUTE 4, BOX 113
BUHL, ID 83316

DOUGLAS JONES
ROUTE 2
FILER, ID 83328

RUSSELL NEWCOMB
RFD #3, HIGHLAND DRIVE
TWIN FALLS, ID 83301

DENTON FARRINGTON
ROUTE 1
DECLO, ID 83323

LYNN TOMINAGA
ROUTE 5, BOX 184
RUPERT, ID 83350

ERNEST HALE
725 E. 16TH
BURLEY, ID 83318

LARRY ANDERSON
2639 EASTGATE DRIVE
TWIN FALLS, ID 83301

JERRY CALLEN
427-A WEST 500 SOUTH
JEROME, ID 83338

RALPH PETERS
601 E AVENUE "A"
JEROME, ID 83338

STATE OF IDAHO
DEPARTMENT OF FISH AND GAME

STATE OF IDAHO
DEPARTMENT OF LANDS

STATE OF IDAHO
DEPARTMENT OF HEALTH AND WELFARE

STATE OF IDAHO
DEPARTMENT OF PARKS AND RECREATION

BOARD MEMBERS

JOHN PEAVEY
P.O BOX 88
CAREY, ID 83320

GARY ROBBINS
ROUTE 2, BOX 2265
DIETRICH, ID 83324

MACK NEIBAUR
ROUTE 1, BOX 1478
PAUL, ID 83347

RECEIVED
MAY 17 1989

November 9, 1987

Re: Minimum Streamflow Application No. 36-8337 on Box Canyon Creek

The Idaho Department of Water Resources is planning to hold a hearing for a minimum streamflow Application No. 36-8337.

Information describing the application and the time and place of the public meeting is shown on the enclosed fact sheet. Also enclosed is a brochure which describes the minimum streamflow procedure.

At the meeting, you will have an opportunity to learn more about the application and to express your views.

Sincerely,

GARY SPACKMAN, Supervisor
Water Allocation Section

GS:jf

Enclosures

ta of Idaho
DEPARTMENT OF WATER RESOURCES
STATE OFFICE, 450 W. State Street, Boise, Idaho

CECIL D. ANDRUS
Governor
R. KEITH HIGGINSON
Director

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

October 29, 1987

Gooding County Leader
P.O. Box 56
Gooding , ID 83330

Re: Applications Nos. 36-8337

Gentlemen:

Enclosed you will find one legal notice which we wish to have published in your newspaper on November 4 and November 11, 1987.

In order to receive payment, an affidavit of publication must be submitted to the Department along with the publication bill.

Sincerely,

Gary Spackman

GARY SPACKMAN, Supervisor
Water Allocation Section

GS:jf

Enclosure

MICROFILMED
MAY 1 2 1989

State of Idaho
DEPARTMENT OF WATER RESOURCES
STATE OFFICE, 450 W. State Street, Boise, Idaho

CECIL D. ANDRUS
Governor
R. KEITH HIGGINSON
Director

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

October 29, 1987

Buhl Herald
P.O. Box 312
Buhl, ID 83316

Re: Applications Nos. 36-8337 and 47-8073

Gentlemen:

Enclosed you will find two legal notices which we wish to have published in your newspaper on November 4 and November 11, 1987.

In order to receive payment, an affidavit of publication must be submitted to the Department along with the publication bill.

Sincerely,

Gary Spackman

GARY SPACKMAN, Supervisor
Water Allocation Section

GS:jf

Enclosure

RECEIVED
MAY

a of Idaho
DEPARTMENT OF WATER RESOURCES
STATE OFFICE, 450 W. State Street, Boise, Idaho

CECIL D. ANDRUS
Governor
R. KEITH HIGGINSON
Director

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

October 29, 1987

Times News
P.O. Box 548
Twin Falls, ID 83301

Re: Applications Nos. 36-8337 and 47-8073

Gentlemen:

Enclosed you will find two legal notices which we wish to have published in your newspaper on November 5 and November 12, 1987.

In order to receive payment, an affidavit of publication must be submitted to the Department along with the publication bill.

Sincerely,

Gary Spackman

GARY SPACKMAN, Supervisor
Water Allocation Section

GS:jf

Enclosure

NOTICE OF APPLICATION FOR MINIMUM STREAMFLOW

Notice is hereby given that the IDAHO WATER RESOURCE BOARD has submitted an Application for Permit to the Department of Water Resources proposing to appropriate water for a minimum streamflow in Box Canyon Creek, tributary to the Snake River. The application is further described as follows:

Application No.: 36-8337

Source: Box Canyon Creek

Proposed Priority: October 16, 1987

Amount & Period of Use: A variable flow of 75-162 cfs from the beginning to the end of the minimum flow reach, respectively, from 01/01 through 12/31

Purpose of Minimum Instream Flow: To preserve fish and wildlife habitat.

Place of Use: The creek flowing in Box Canyon located in the following tracts:

Beginning at a point 300 feet downstream from where Box Canyon Creek crosses the East 1/16 line into Lot 1 of Section 28, Township 8S, Range 14E, B.M., and proceeding downstream to the confluence of Box Canyon Creek and the Snake River, located in Lot 2, Section 28, Township 8S, Range 14E, B.M.

The Idaho Water Resource Board will hold a public meeting on the application on November 17, 1987, at 7:30 p.m. in Twin Falls, Idaho at the Aspen Vo-Tech Building Mini Auditorium, Room 108, College of Southern Idaho. The purpose of the meeting is to gather information on the public interest regarding the proposed minimum streamflow.

GENE GRAY, Chairman
IDAHO WATER RESOURCE BOARD

RECEIVED
MAY 17 1989

State of Idaho
DEPARTMENT OF WATER RESOURCES
Southern Region

CECIL D. ANDRUS
Governor

R. KEITH HIGGINSON
Director

Mailing Address:
Southern Region
2148 4th Ave. East
Twin Falls, Idaho 83301
(208) 734-3578

October 29, 1987

College of Southern Idaho
Area Vocational-Technical School
P.O. Box 1238
Twin Falls, ID 83303-1238

Attention: Lorraine

This is to confirm the use of the Aspen Vo-Tech Building, Mini Auditorium, Room 108 for a public information meeting to be held by the Idaho Water Resource Board on November 17, 1987 from 7:00 p.m. - 10:00 p.m.

Thank you very much for your cooperation.

Very truly yours,

Loren O. Holmes, P.E.
Southern Region Manager

LH:mb

COLLEGE OF SOUTHERN IDAHO
P. O. Box 1238
Twin Falls, Idaho 83301

APPLICATION AND AGREEMENT FOR USE OF ACADEMIC AND VOCATIONAL SCHOOL FACILITIES

TITLE OF EVENT Idaho Water Resource Board Public Meeting

SPONSORED BY Idaho Water Resource Board

IF THE ORGANIZATION CONDUCTING THE EVENT IS DIFFERENT THAN THE SPONSOR LISTED ABOVE, INDICATE WHO WILL MANAGE THE MEETING _____

WILL ADMISSION BE CHARGED? No IF SO, WHAT PRICES _____

HAVE FUNDS BEEN SET ASIDE FROM ANY SOURCE TO DEFRAY THE COST OF PROCURING FACILITIES FOR THIS EVENT? No

BUILDING REQUESTED Aspen Vo-Tech ROOM(S) 108 (Mini Aud.)

DATE OF EVENT November 17 TIME 7:00 pm (AM or PM) TO 10:00 pm (AM or PM)

ANTICIPATED NUMBER OF PEOPLE IN ATTENDANCE Approximately 100

PERSON TO CONTACT IF APPLICANT IS UNAVAILABLE Loren Holmes, Southern Region Mgr.

PHONE NUMBER 734-3578

NARRATIVE DESCRIPTION OF EVENT _____

10/29/87
DATE OF APPLICATION

Idaho Water Resource Board
APPLICANT'S NAME

Loren O Holmes
By: Loren O. Holmes
Southern Region Manager - Dept.Water Resources

APPLICANT'S PHONE NO.

APPLICANT'S ADDRESS

CONDITIONS

1. **Due to inflationary costs in building maintenance and energy, it has become necessary to make a charge for facilities under certain conditions. Generally if a classroom usage is commercial in nature, funded by a grant, or if a registration fee is charged to defray expenses, the following rates apply:**
   - **Fewer than 50 people ..... $35.00 per classroom**
   - **50 people or more ..... 60.00 per classroom**
2. **Food or coffee is not allowed in classrooms. Applications for food or coffee may be made through the cafeteria.**
3. **Applicants must be responsible for arrangements for Audio Visual Equipment.**
4. **A facilities meeting is held each Monday to approve applications and determine charges.**

DATE OF APPROVAL

APPROVAL

THE CHARGE FOR THIS FACILITY USE IS: _____

United States Department of the Interior

BUREAU OF LAND MANAGEMENT
Shoshone District Office
400 West F Street
Shoshone, Idaho 83352

RECEIVED
SEP 22 1987
Department of Water Resources

IN REPLY
REFER TO: I-2880

September 17, 1987

Idaho Water Resource Board
ATTN: Gene Gray
Statehouse
Boise, Idaho 83720

Dear Mr. Gray:

In accordance with your procedures for establishing minimum streamflows, we are requesting that you file for minimum streamflows on Box Canyon Creek. The requested flows are considered critical to maintain the habitat requirements of four Federal Candidate species that are known to exist within the identified reach of Box Canyon Creek and the recreational fishing that occurs at the mouth of the canyon.

There are two water permits on this reach of Box Canyon Creek. Both are held by Mr. Earl Hardy. The permit numbers are 36-7091 and 36-7334. Mr. Hardy has agreed to provide a minimum streamflow (msf) of 75 cfs at his proposed point of diversion under (BLM) Right-of-Way I-2880. Mr. Hardy has also agreed not to develop and divert any streamflow from the proposed point of diversion to the mouth of Box Canyon Creek. The flow from the proposed point of diversion to the mouth increases by 87.0 cfs. The 75.0 cfs msf plus 87 cfs inflow would total 162 cfs at the confluence with the Snake River.

Enclosed is a prepared application for your review and signature.

If you have any questions, please call Bill Harris or Joe Aitken at 886-2206.

Sincerely,

K Lynn Bennett

K Lynn Bennett
District Manager

Enclosures

cc:
State Office - 940

36-8337

COLLEGE OF SOUTHERN IDAHO
P. O. Box 1238
Twin Falls, Idaho 83301

APPLICATION AND AGREEMENT FOR USE OF ACADEMIC AND VOCATIONAL SCHOOL FACILITIES

TITLE OF EVENT Idaho Water Resource Board Public Meeting

SPONSORED BY Idaho Water Resource Board

IF THE ORGANIZATION CONDUCTING THE EVENT IS DIFFERENT THAN THE SPONSOR LISTED ABOVE, INDICATE WHO WILL MANAGE THE MEETING _____

WILL ADMISSION BE CHARGED? No IF SO, WHAT PRICES _____

HAVE FUNDS BEEN SET ASIDE FROM ANY SOURCE TO DEFRAY THE COST OF PROCURING FACILITIES FOR THIS EVENT? No

BUILDING REQUESTED Aspen Vo-Tech ROOM(S) 108 (Mini Aud.)

DATE OF EVENT November 17 TIME 7:00 pm (AM or PM) TO 10:00 pm (AM or PM)

ANTICIPATED NUMBER OF PEOPLE IN ATTENDANCE Approximately 100

PERSON TO CONTACT IF APPLICANT IS UNAVAILABLE Loren Holmes, Southern Region Mgr.

PHONE NUMBER 734-3578

NARRATIVE DESCRIPTION OF EVENT _____

10/29/87
DATE OF APPLICATION

Idaho Water Resource Board
APPLICANT'S NAME

Loren O Holmes
By: Loren O. Holmes
Southern Region Manager - Dept.Water Resources

APPLICANT'S PHONE NO.

APPLICANT'S ADDRESS

CONDITIONS

1. **Due to inflationary costs in building maintenance and energy, it has become necessary to make a charge for facilities under certain conditions. Generally if a classroom usage is commercial in nature, funded by a grant, or if a registration fee is charged to defray expenses, the following rates apply:**
   Fewer than 50 people ..... $35.00 per classroom
   50 people or more ..... 60.00 per classroom
2. **Food or coffee is not allowed in classrooms. Applications for food or coffee may be made through the cafeteria.**
3. **Applicants must be responsible for arrangements for Audio Visual Equipment.**
4. **A facilities meeting is held each Monday to approve applications and determine charges.**

DATE OF APPROVAL

APPROVAL

THE CHARGE FOR THIS FACILITY USE IS: _____

State of Idaho
DEPARTMENT OF WATER RESOURCES
Southern Region

CECIL D. ANDRUS
Governor

R. KEITH HIGGINSON
Director

Mailing Address:
Southern Region
2148 4th Ave. East
Twin Falls, Idaho 83301
(208) 734-3578

October 29, 1987

U.S. Dept. of Interior
Bureau of Land Management
Rt. 3, Box 1
Burley, ID 83318

RE: Application for Water Permit Nos. 36-8337, 47-8073

Gentlemen:

Enclosed for your information are copies of applications for water permit which has been filed with this office.

If you have any questions or need additional information regarding these applications, please feel free to contact this office.

Very truly yours,

Loren O. Holmes, P.E.
Southern Region Manager

LH:MB

Enclosures

RECEIVED
MAY [illegible] 1989

State of Idaho
DEPARTMENT OF WATER RESOURCES
Southern Region

CECIL D. ANDRUS
Governor

R. KEITH HIGGINSON
Director

Mailing Address:
Southern Region
2148 4th Ave. East
Twin Falls, Idaho 83301
(208) 734-3578

October 29, 1987

Donald E. Hobbs, Chief
Department of Lands
Bureau of Land Management
Statehouse
Boise, ID 83720

RE: Application for Water Permit Nos. 36-8337, 47-8073

Dear Mr. Hobbs:

Enclosed for your information are copies of applications for water permit which has been filed with this office.

If you have any questions or need additional information regarding these applications, please feel free to contact this office.

Very truly yours,

Loren O. Holmes, P.E.
Southern Region Manager

LH:MB

Enclosures

RECEIVED
MAY 17 1989

State of Idaho
DEPARTMENT OF WATER RESOURCES
Southern Region

CECIL D. ANDRUS
Governor

R. KEITH HIGGINSON
Director

Mailing Address:
Southern Region
2148 4th Ave. East
Twin Falls, Idaho 83301
(208) 734-3578

October 29, 1987

Idaho Dept. of Fish & Game
P.O. Box 428
Jerome, ID 83338

RE: Application for Water Permit Nos. 36-8337, 47-8073

Gentlemen:

Enclosed for your information are copies of applications for water permit which has been filed with this office.

If you have any questions or need additional information regarding these applications, please feel free to contact this office.

Very truly yours,

Loren O. Holmes, P.E.
Southern Region Manager

LH:MB

Enclosures

RECEIVED
MAY 1 7 1988

State of Idaho
DEPARTMENT OF WATER RESOURCES
Southern Region

CECIL D. ANDRUS
Governor

R. KEITH HIGGINSON
Director

Mailing Address:
Southern Region
2148 4th Ave. East
Twin Falls, Idaho 83301
(208) 734-3578

October 29, 1987

Idaho Dept. of Health & Welfare
P.O. Box 1626
Twin Falls, ID 83303-1626

RE: Application for Water Permit Nos. 36-8337, 47-8073

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2148 4th Ave. East
Twin Falls, Idaho 83301
(208) 734-3578

October 29, 1987

Idaho Dept. of Parks & Recreation
Statehouse
Boise, ID 83711

RE: Application for Water Permit Nos. 36-8337, 47-8073

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Enclosed for your information are copies of applications for water permit which has been filed with this office.

If you have any questions or need additional information regarding these applications, please feel free to contact this office.

Very truly yours,

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Southern Region Manager

LH:MB

Enclosures

MICROFILMED
MAY 17 1989

State of Idaho
DEPARTMENT OF WATER RESOURCES
STATE OFFICE, 450 W. State Street, Boise, Idaho

CECIL D. ANDRUS
Governor

R. KEITH HIGGINSON
Director

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

M E M O

TO: Gary Spackman DATE: October 1, 1987

FROM: Alan Robertson

SUBJECT: Box Canyon Creek Instream Flow Request

Box Canyon Spring flow has been measured at a site one-half mile upstream from Snake River since 1950. Average annual flows generally exceeded 400 cfs until 1975 when they began a slow decline to about 380 cfs in 1985. Seasonal variations in 1985 were from 353 cfs (May) to 409 cfs (Oct, Nov).

An aquaculture diversion downstream from the gage has been measured on three occasions and Box Canyon Creek was also measured at the mouth. These data compare to the spring data as follows:

Date	Box Canyon Spring (cfs)	Diversion (cfs	Box Canyon Creek nr Mouth (cfs)	Combined Creek & Div (cfs)
5 Sep 74	450	296	-	-
15 May 75	360	-	-	714
31 Mar 78	353	360	369	729
30 Mar 79	351	335	440	779

From the above, it appears that the requested flow of 162 cfs at the mouth is always exceeded.

MICROFILMED
MAY 17 1989

RECEIVED
SEP 22 1987
Department of Water Resources

United States Department of the Interior

BUREAU OF LAND MANAGEMENT
Shoshone District Office
400 West F Street
Shoshone, Idaho 83352

IN REPLY
REFER TO: I-2880

September 17, 1987

Idaho Water Resource Board
ATTN: Gene Gray
Statehouse
Boise, Idaho 83720

Dear Mr. Gray:

In accordance with your procedures for establishing minimum streamflows, we are requesting that you file for minimum streamflows on Box Canyon Creek. The requested flows are considered critical to maintain the habitat requirements of four Federal Candidate species that are known to exist within the identified reach of Box Canyon Creek and the recreational fishing that occurs at the mouth of the canyon.

There are two water permits on this reach of Box Canyon Creek. Both are held by Mr. Earl Hardy. The permit numbers are 36-7091 and 36-7334. Mr. Hardy has agreed to provide a minimum streamflow (msf) of 75 cfs at his proposed point of diversion under (BLM) Right-of-Way I-2880. Mr. Hardy has also agreed not to develop and divert any streamflow from the proposed point of diversion to the mouth of Box Canyon Creek. The flow from the proposed point of diversion to the mouth increases by 87.0 cfs. The 75.0 cfs msf plus 87 cfs inflow would total 162 cfs at the confluence with the Snake River.

Enclosed is a prepared application for your review and signature.

If you have any questions, please call Bill Harris or Joe Aitken at 886-2206.

Sincerely,

K Lynn Bennett

K Lynn Bennett
District Manager

Enclosures

cc:
State Office - 940

RECEIVED
MAR 14 1989

36-8337

STAFF ANALYSIS SUPPLEMENT

1) Water District None Basin # 36-8337

2) Local Description: (of one P/D)

☐ At the above street address

☒ 5 miles N/S South and 5½ miles E/W West of Wendell (City or landmark).

☐ Other (describe) _____

BOX CANYON CREEK 36-8337
Introduction by
Board Member
at Public Information Meeting

On approximately September 22, 1987, the Bureau of Land Management requested that the Idaho Water Resource Board file an application for minimum streamflow on Box Canyon Creek, located in Gooding County. At an Idaho Water Resource Board meeting on October 15, 1987, BLM presented information regarding the minimum flow, and the Board made a preliminary finding that there was sufficient merit in the request to justify the filing of the application.

The Idaho Water Resource Board filed an application for minimum streamflow with the Department of Water Resources on October 16, 1987.

The purpose of this meeting is to present information to the public about the minimum flow filing, and to gather public sentiment and comment. Following an evaluation of the comments received, the Board will determine whether to withdraw the application, or ask the Department to proceed with administrative action.

The requesting agency, BLM, will present information regarding the filing. A representative from the Idaho Department of Water Resources will then present details about the filing, and data about other water rights and hydrology. All persons wishing to ask questions or comment will be granted an opportunity.

SUMMARY ANALYSIS OF MINIMUM STREAMFLOW REQUESTS

Shoshone Creek

The request for minimum streamflow on Shoshone Creek was submitted by the Idaho Department of Fish and Game. The original application which was submitted was incomplete in that it did not adequately describe the minimum streamflow reach, and it did not contain a map depicting the proposed reach. The application was retyped in the state office of the Department of Water Resources, and a copy was forwarded to Fish and Game.

The hydrologic summary prepared by Alan Robertson indicates that the minimum flow of 5 cfs from January 1 to March 31 and the increased flow from April 1 to June 1 of 7 cfs can be maintained most of the time. After June 1, a proposed flow of 7 cfs through July 31, and a proposed flow of 5 cfs from August 1 through December 31 may be more difficult to maintain.

One hydropower license, No. 47-2455, authorizing a diversion rate of 17.37 cfs, may conflict with the minimum flow filing. The license has a priority of March 28, 1963. I don't have information as to whether the project is still operational.

Hayden Creek

The Hayden Creek application was not in proper form, in that it improperly described the reach and did not contain a map showing the reach. The application was amended in the state office of the Department of Water Resources, and a copy was mailed to Fish and Game.

Hydrology indicates that the stream flow requested will be exceeded most of the time, except in June when the requested 20 cfs will only be available approximately half of the time.

No substantial conflicts with water rights are apparent.

Box Canyon Creek

This application by BLM is unique because it seeks a continuously increasing streamflow from the upstream end of the reach to the downstream end. The minimum streamflow is to be assured by agreement with Earl Hardy that calls for non development of 75 cfs of water on the upstream end. Throughout the entire proposed streamflow reach, diffuse groundwater

discharge increases the flows by 87 cfs, totaling 162 cfs at the mouth of the Snake River. I have prepared two attachments for the application which describes the reach, and also describes the minimum flow sought. If the Board wishes to do so, the attachments can be incorporated as part of the application.

There are numerous water right filings from Box Canyon Springs or Box Canyon Creek. The following is a summary of the rights. I have attempted to total the diversions, but at this point in time, I am uncertain how much development has taken place, how much is anticipated, and how much water is discharged back into Box Canyon Creek prior to reaching the proposed minimum streamflow reach. The estimate I have attached is rough, but a more careful field examination must be conducted prior to determining how much water may be available for appropriation. Suspected non-accumulating flows are contained in parenthesis.

Water Right	Name	Amount (cfs)	Stage
36-2705	Mountain View Irrigation	200	P
36-7091	Earl Hardy	300	P
36-7175	Earl Hardy	330	P
36-7824	Manteck, Inc.	(300)	P
36-7334	Box Canyon Trout Co. Earl Hardy	600	P
36-7040	Clear Springs Trout Co.	300	L
36-7797	Clear Springs Trout Co.	(300)	P
36-8080	Clear Springs Trout Co.	(300)	P
36-7066	Blind Canyon Aqua Ranch	400	P
36-7198	Idaho Parks & Recreation	(850)	A
	Earl Hardy	(425)	A
ESTIMATED FLOWS OF EXISTING FILINGS		2,130	

Southern Region represents that Mountain View Irrigation intends to relinquish their permit, and that Blind Canyon Aqua Ranch did not develop any water from Box Canyon Springs. The elimination of Mountain View and Blind Canyon reduces the diversion demands to 300 cfs diverted from the Clear Springs Trout Co. and Manteck, Inc. operation, and flows under permits now held by Earl Hardy. If the contract with Hardy and BLM doesn't contain loopholes regarding quality or amount of the

water, Hardy should be contractually bound to deliver 75 cfs at the upper end.

The most recent application by Earl Hardy seeking 425 cfs for hydropower purposes does not interfere with a minimum streamflow reach as proposed.

The hydrology report shows sufficient water to fill the minimum streamflow. The measurements do not take into account possible future development under existing permits, however.

Round Lake

The application probably should state that Round Lake is the source of the water supply.

Two water rights on Round Lake are listed in the database. The lake is fed by Cocolalla Creek and Cocolalla Lake, however, and there are numerous upstream consumptive rights. Although the filing should not affect prior rights, some declination in water levels could occur from upstream permits not yet developed. Parks and Recreation also stated that they are concerned about ground water withdrawals that might affect the lake. Again, there may be undeveloped permitted uses that might cause further declines.

MAY

67-4310. Bo anyon — Appropriation of waters i ust for people — Lands d. oted to natural scientific study and ited recreational use — Legislative finding of fact concerning desirability of public use of water and private land within upper Box Canyon — Legislative direction for cooperation by state agencies to facilitate negotiations. — The park and recreation board is hereby authorized and directed to appropriate in trust for the people of the state of Idaho the unappropriated natural spring flow arising upon the area described as follows, to-wit:

Only that portion of the stream which is known as Box Canyon Creek, situated in the northwest quarter (NW 1/4) of section 27, township 8 south, range 14 east of the Boise Meridian; and

The east half (E 1/2) of the northeast quarter (NE 1/4), in section 28, township 8 south, range 14 east of the Boise Meridian.

The preservation of water in the area described for its scenic beauty, natural scientific study value, and limited recreational purposes necessary and desirable for all citizens of the state of Idaho is hereby declared to be a beneficial use of such water.

No fee shall be required in connection with said appropriation by the park and recreation board or the permit issued in connection therewith, but license shall issue at any time upon proof of beneficial use to which said waters are now dedicated.

The park and recreation board, or its successor, shall be deemed to be the holder of such permit, in trust for the people of the state, and the public use of the waters in the specific area herein described is declared to be of greater priority than any other use except that of domestic consumption.

It is a legislative finding of fact that the waters arising upon the above described tract within the natural channel of Box Canyon Creek and the private lands within the confines of the canyon walls are desirable for public use in connection with the preservation of the area in its present condition as a place for natural scientific studies and limited recreation for the citizens of the state of Idaho.

The state board of land commissioners is hereby authorized to adjust the boundary established by the provisions of this section by excluding from the operation of this section those lands and waters lying downstream from a point one hundred (100) feet downstream from the crest of the falls in the west half (W 1/2) of the northwest quarter (NW 1/4) of section 27, township 8 south, range 14 east, Boise Meridian, provided they are successful in negotiating with the present landowner, or his successors, those restrictive covenants deemed necessary by the board to promote the public interest for the canyon lands as well as for the waters arising within that canyon, all as declared by this section, and the state board of land commissioners is authorized to expedite the negotiations with the landowner so far as is consistent with the public interest. In order to facilitate these negotiations, all concerned state agencies, namely the department of water resources, the department of fish and game, and the department of parks and recreation are hereby instructed to cooperate with the state board of land commissioners and with the property owner as necessary to assist the orderly, factual, and amicable process of negotiation between the state board of land commissioners and the property owner. [I.C., § 67-4310, as added by 1971, ch. 207, § 4, p. 912; am. 1974, ch. 8, § 15, p. 35; am. 1982, ch. 369, § 1, p. 927.]

Compiler's notes. Section 2 of S.L. 1982, ch. 369 declared an emergency. Approved April 2, 1982.

ED

SOURCE: BOX CANYON CREEK TRIBUTARY: SNAKE RIVER

STATE OF IDAHO DEPARTMENT OF WATER RESOURCES
WATER RIGHTS ABSTRACT

WR-NUMBER: 36-7040

CURRENT OWNER:
CLEAR SPRINGS TROUT CO.
1020 MAIN
BUHL, ID 83316

PRIORITY DATE: 4-Sep-1968

STAGE: LICENSE

COUNTY: GOODING
SOURCE: BOX CANYON CREEK TRIBUTARY: SNAKE RIVER

WATER USE:	DIVERSION-RATE:		DIVERSION-VOLUME:	
IRRIGATION	0.200	CFS	40.00	AF
RECREATION	300.000	CFS	0.00	AF
FISH PROPAGATION	300.000	CFS	0.00	AF
TOTAL RATE:	300.000	CFS	TOTAL VOLUME: 0.00	AF

POINT OF DIVERSION:	T08S	R14E	S28	SWNE	
PLACE OF USE:	T08S	R14E	S28	SWNW	
	T08S	R14E	S28	NWSW	
	T08S	R14E	S28	SWNW	AC 10
				TOTAL ACRES:	10

WR-NUMBER: 36-7066

CURRENT OWNER:
BLIND CANYON AQUA RANCH INC.
P.O. BOX 219
HAGERMAN, ID 833320000

PRIORITY DATE: 5-Jan-1970

STAGE: PERMIT

COUNTY: GOODING
SOURCE: BOX CANYON CREEK TRIBUTARY: SNAKE RIVER
BLIND CANYON SPRING SNAKE RIVER

WATER USE:	DIVERSION-RATE:		DIVERSION-VOLUME:	
FISH PROPAGATION	400.000	CFS	0.00	AF
TOTAL RATE:	400.000	CFS	TOTAL VOLUME: 0.00	AF

REMARKS: REINSTATED 12-07-1983.

POINT OF DIVERSION:	T08S	R14E	S28	NWNE
	T08S	R14E	S28	NWSE
PLACE OF USE:	T08S	R14E	S28	NWSE
	T08S	R14E	S20	SWSW
	T08S	R14E	S29	NENW
	T08S	R14E	S29	NWNW

SOURCE: BOX CANYON CREEK TRIBUTARY: SNAKE RIVER

STATE OF IDAHO DEPARTMENT OF WATER RESOURCES
WATER RIGHTS ABSTRACT

WR-NUMBER: 36-7198

CURRENT OWNER:
STATE OF IDAHO
DEPT. OF PARKS
STATEHOUSE
BOISE, ID 83720

PRIORITY DATE: 12-Jul-1971

STAGE: APPLICATION

COUNTY: GOODING
SOURCE: BOX CANYON CREEK TRIBUTARY: SNAKE RIVER

WATER USE:	DIVERSION-RATE:		DIVERSION-VOLUME:	
RECREATION	850.000	CFS	0.00	AF
AESTHETIC	850.000	CFS	0.00	AF
TOTAL RATE:	850.000	CFS	TOTAL VOLUME: 0.00	AF

REMARKS: THIS RT. FOR PRESERVING NATURAL STATE W/O DIVERSION.
PROTESTANTS: RIM VIEW TROUT CO., AL DAISS, MTN.VIEW IRR. CO
;EDNA WERTH, EARL M. HARDY, RICHARD KASTER, DEL KOHTZ

POINT OF DIVERSION:	T08S	R14E	S27	NENW
	T08S	R14E	S28	NENE
PLACE OF USE:	T08S	R14E	S28	NENE
	T08S	R14E	S28	SENE
	T08S	R14E	S27	NENW
	T08S	R14E	S27	NWNW
	T08S	R14E	S27	SWNW
	T08S	R14E	S27	SENW

WR-NUMBER: 36-7797

CURRENT OWNER:
CLEAR SPRINGS TROUT CO.
P.O. BOX 712
BUHL, ID 83316

PRIORITY DATE: 23-Jun-1978

STAGE: PERMIT

COUNTY: GOODING
SOURCE: BOX CANYON CREEK TRIBUTARY: SNAKE RIVER

WATER USE:	DIVERSION-RATE:		DIVERSION-VOLUME:	
FISH PROPAGATION	300.000	CFS	0.00	AF
TOTAL RATE:	300.000	CFS	TOTAL VOLUME: 0.00	AF

REMARKS: PTS. OF REDIVERSION IN LOTS 3 & 4, S28, T8S, R14E, T.F. CNTY.S CN
DIVERSION RATE NOT TO EXCEED 300 CFS. FOR H.

POINT OF DIVERSION:	T08S	R14E	S28	SWNE
	T08S	R14E	S28	SENE
PLACE OF USE:	T08S	R14E	S28	LT03
	T08S	R14E	S28	LT04

WR-NUMBER 36-8029

CURRENT OWNER:
CLEAR SPRINGS TROUT CO.
P.O. BOX 548
BUHL, ID 83316

PRIORITY DATE: 20-Apr-1982

STAGE: PERMIT

COUNTY: GOODING
SOURCE: BOX CANYON CREEK TRIBUTARY: SNAKE RIVER

WATER USE:	DIVERSION-RATE:		DIVERSION-VOLUME:	
POWER	300.000	CFS	0.00	AF
TOTAL RATE:	300.000	CFS	TOTAL VOLUME: 0.00	AF

REMARKS: FEET OF HEAD = 26 HORSEPOWER = 690

POINT OF DIVERSION:	T08S	R14E	S28	SENE	
PLACE OF USE:	T08S	R14E	S28		LT03

SOURCE: BOX CANYON SPRING TRIBUTARY: SNAKE RIVER

STATE OF IDAHO DEPARTMENT OF WATER RESOURCES
WATER RIGHTS ABSTRACT

WR-NUMBER: 36-7091
CURRENT OWNER: EARL M. HARDY, 1301 VISTA AVE., BOISE, ID 83705
PRIORITY DATE: 27-Oct-1969
STAGE: PERMIT

COUNTY: GOODING
SOURCE: BOX CANYON SPRING TRIBUTARY: SNAKE RIVER

WATER USE:	DIVERSION-RATE:		DIVERSION-VOLUME:	
FISH PROPAGATION	300.000	CFS	0.00	AF
TOTAL RATE:	300.000	CFS	TOTAL VOLUME: 0.00	AF

POINT OF DIVERSION:	T08S	R14E	S28	NWNE	
	T08S	R14E	S28	SENE	
	T08S	R14E	S28	SWNE	
PLACE OF USE:	T08S	R14E	S28	SWNE	
	T08S	R14E	S28	NWSE	LT05
	T08S	R14E	S28	NESW	LT02

WR-NUMBER: 36-7175
CURRENT OWNER: EARL M. HARDY, 1301 VISTA AVE., BOISE, ID 837050000
PRIORITY DATE: 18-May-1971
STAGE: PERMIT

COUNTY: GOODING
SOURCE: BOX CANYON SPRING TRIBUTARY: SNAKE RIVER

WATER USE:	DIVERSION-RATE:		DIVERSION-VOLUME:	
FISH PROPAGATION	330.000	CFS	0.00	AF
TOTAL RATE:	330.000	CFS	TOTAL VOLUME: 0.00	AF

REMARKS: 2 P/D IN SWNW, S27 & NENE, S28, T8S, R14E.
THE APPLICANTS USE OF WATER UNDER THIS PERMIT SHALL NOT INTERFERE WITH USES PRESENTLY AUTHORIZED UNDER VALID PRIOR EXISTING PERMITS INCLUDING THE QUALITY AND CONSISTENT FLOW OF WATER FOR FISH PROPAGATION.

POINT OF DIVERSION:	T08S	R14E	S27	NENW
	T08S	R14E	S28	SENE
	T08S	R14E	S28	NENE
	T08S	R14E	S27	NWNW
	T08S	R14E	S27	SWNW
PLACE OF USE:	T08S	R14E	S28	NENE
	T08S	R14E	S28	SWNE
	T08S	R14E	S28	SENE
	T08S	R14E	S27	NENW
	T08S	R14E	S27	NWNW
	T08S	R14E	S27	SWNW

WR-NUMBER: 36-78[illegible]
CURRENT OWNER: MANTECH INC., C/O KENT W. FOSTER, HOLDEN, KIDWELL, HAHN & CRAPO, IDAHO FIRST NATIONAL BANK BLDG, IDAHO FALLS, ID 83402
PRIORITY DATE: 13-Sep-1978
STAGE: PERMIT

COUNTY: GOODING
SOURCE: BOX CANYON SPRING TRIBUTARY: SNAKE RIVER
WATER USE: DIVERSION-RATE: DIVERSION-VOLUME:

POWER

		300.000	CFS		0.00 AF
	TOTAL RATE:	300.000	CFS	TOTAL VOLUME:	0.00 AF

REMARKS: NOT TO EXCEED 300. CFS.
P/D IN LOTS 3 & 4 S28, T8S, R14E.

POINT OF DIVERSION:	T08S	R14E	S28	SWNE	
	T08S	R14E	S28	SENE	
PLACE OF USE:	T08S	R14E	S28		LT03
	T08S	R14E	S28		LT04
	T08S	R14E	S28		LT07

30-Sep-1987

SOURCE: BOX CANYON SPRINGS TRIBUTARY: SNAKE RIVER

STATE OF IDAHO DEPARTMENT OF WATER RESOURCES
WATER RIGHTS ABSTRACT

WR-NUMBER: 36-7334

CURRENT OWNER:
BOX CANYON TROUT CO. INC.
EARL M. HARDY
1301 VISTA AVE.
BOISE, ID 83705

PRIORITY DATE: 30-Apr-1973

STAGE: PERMIT

COUNTY: GOODING
SOURCE: BOX CANYON SPRINGS TRIBUTARY: SNAKE RIVER

WATER USE:	DIVERSION-RATE:		DIVERSION-VOLUME:	
FISH PROPAGATION	600.000	CFS		
TOTAL RATE:	600.000	CFS	0.00	AF
			TOTAL VOLUME: 0.00	AF

REMARKS: 2 P/D IN SENW, LOT 2, S28, T8S, R14E.

POINT OF DIVERSION:	T08S	R14E	S28	SENE
	T08S	R14E	S28	NWNE
	T08S	R14E	S28	SWNE
	T08S	R14E	S28	SENW LT02
PLACE OF USE:	T08S	R14E	S28	SWNE LT02

RIGHT NUMBER	NAME AND ADDRESS	PRIORITY DATE	WATER USE	USE PERIOD FROM	USE PERIOD TO	MAXIMUM DIVERSION	STAGE
36-2705	MOUNTAIN VIEW IRRIGATION CO. P.O. BOX 527 GOODING, ID 83330	03-15-1963	IRRIGATION	-	-	200.00 CFS	PERMIT

SOURCE: BOX SPRINGS TRIBUTARY: SNAKE RIVER

REMARKS: P/U WITH BOUNDARIES OF MTN. VIEW IRR. CO.
THE P/U UNDER THIS RIGHT INCLUDES MOSTLY LANDS OWNED BY B.L.M.

POINT OF DIVERSION:
T08S R14E S27 NENW

STREAM INDEX:
NO INDEX CODE

		SESW		36-2314	L	01-29-1959	GROUNDWATER		HELFED				
		SESE	87.09	36-2995	L	08-20-1962	GROUNDWATER		NELSON				
		SESE	81,84,10,43	36-7939	P	10-23-1980	GROUNDWATER		[illegible]				
	25	SENE	81	36-2312	L	11-20-1956	GROUNDWATER		[illegible]				
		SENE	81	36-7307	L	10-27-1973	GROUNDWATER		[illegible]				
		NWSW	81	36-4117	S	03-15-1999	GROUNDWATER		BOX CANYON LIVESTOCK, INC.				
		NESE	87	36-7097	P	05-19-1983	GROUNDWATER		[illegible]				
		SWSE	87	36-4151	S	03-15-1950	GROUNDWATER		LANTON				
		SESE	81,84	36-7070	L	07-27-1969	GROUNDWATER		JONES				
	26	NWNE	81,10	36-7071	P	09-29-1979	GROUNDWATER		THOMPSON				
		NESW	87	36-7203	L	01-05-1973	GROUNDWATER		STACEY				

[illegible] 810 [illegible]

PAGE 3215
06/20/1987

WR0150 — IDAHO DEPARTMENT OF WATER RESOURCES — WATER RIGHTS BY POINT OF DIVERSION — PAGE 3216 06/20/1987

T	R	S	TRACT	LOT	USES	WATER RIGHT NUMBER	STAGE / PRIORITY	RPLG	SOURCE OF WATER	LAST NAME	OWNER CODE
005	19E	26	SESW		84,93	36-4038	S		06-01-1938 GROUNDWATER	STACEY	C
			SWSE		81	36-4037	S		08-01-1961 GROUNDWATER	STACEY	C
			SWSE		81	36-7209	L		01-22-1973 GROUNDWATER	STACEY	C
			SESE		81	36-2698	L		02-25-1960 GROUNDWATER	MARTIN	C
		27	SWNE		81	36-7510	L		11-27-1974 GROUNDWATER	STACEY	C
			NESW		81	36-4705	P		03-15-1963 BOX SPRINGS	MOUNTAIN VIEW IRRIGATION CO.	C
			NESW		19	36-7175	P		05-18-1971 BOX CANYON SPRING	KARSTER BOX CANYON TROUT CO. INC. HARDY HARDY BOX CANYON TROUT CO. INC.	O O C C B
			NESW		96,52	36-7190	P		07-12-1971 BOX CANYON CREEK	STATE OF IDAHO	C
			NWSW		19	36-7175	P		05-18-1971 BOX CANYON SPRING	KARSTER BOX CANYON TROUT CO. INC. HARDY HARDY BOX CANYON TROUT CO. INC.	O O C C B
			SWSW		19	36-7175	P		05-18-1971 BOX CANYON SPRING	KARSTER BOX CANYON TROUT CO. INC. HARDY HARDY BOX CANYON TROUT CO. INC.	O O C C B
			SWSE		81	36-7363	L		08-07-1973 GROUNDWATER	STACEY	C
			SESE		81,93	36-2114	L		03-18-1951 GROUNDWATER	ALLEN	C
			SESE		87	36-7363	L		08-07-1973 GROUNDWATER	STACEY	C
		28	NENE		19	36-7175	P		05-18-1971 BOX CANYON SPRING	KARSTER BOX CANYON TROUT CO. INC. HARDY HARDY BOX CANYON TROUT CO. INC.	O O C C B
			NENE		96,52	36-7190	P		07-12-1971 BOX CANYON CREEK	STATE OF IDAHO	C
			NWNE		19	36-7066	P		01-05-1970 BOX CANYON CREEK BLIND CANYON SPRING	LEMMON STINSON BLIND CANYON AQUA RANCH INC.	O O C

[illegible] C10 [illegible]

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06/20/1987

WR0150 — IDAHO DEPARTMENT OF WATER RESOURCES — WATER RIGHTS BY POINT OF DIVERSION — PAGE 3217 06/20/1987

T	R	S	TRACT	LOT	USES	WATER RIGHT NUMBER	STAGE / PRIORITY	RPLG	SOURCE OF WATER	LAST NAME	OWNER CODE
005	19E	28	NWNE		19	36-7091	P		10-27-1969 BOX CANYON SPRING	HARDY KARSTER HARDY	O O C
			NWNE		19	36-7334	P		09-30-1973 BOX CANYON SPRINGS	BOX CANYON TROUT CO. INC. KARSTER BOX CANYON TROUT CO. INC. HARDY	O O C B
			SWNE		81,96,19	36-7048	L		09-04-1968 BOX CANYON CREEK	KARSTER CLEAR SPRINGS TROUT CO.	O C
			SWNE		19	36-7091	P		10-27-1969 BOX CANYON SPRING	HARDY KARSTER HARDY	O O C
			SWNE		19	36-7334	P		09-30-1973 BOX CANYON SPRINGS	BOX CANYON TROUT CO. INC. KARSTER BOX CANYON TROUT CO. INC. HARDY	O O C B
			SENE		19	36-7797	P		06-23-1978 BOX CANYON CREEK	CLEAR SPRINGS TROUT CO.	C
			SWNE		20	36-7824	P		09-13-1978 BOX CANYON SPRING	KARSTER HANTECH INC.	O C
			SENE		19	36-7091	P		10-27-1969 BOX CANYON SPRING	HARDY KARSTER HARDY	O O C
			SENE		19	36-7175	P		05-18-1971 BOX CANYON SPRING	KARSTER BOX CANYON TROUT CO. INC. HARDY HARDY BOX CANYON TROUT CO. INC.	O O C C B
			SENE		19	36-7334	P		09-30-1973 BOX CANYON SPRINGS	BOX CANYON TROUT CO. INC. KARSTER BOX CANYON TROUT CO. INC. HARDY	O O C B
			SENE		19	36-7797	P		06-23-1978 BOX CANYON CREEK	CLEAR SPRINGS TROUT CO.	C
			SENE		20	36-7824	P		09-13-1978 BOX CANYON SPRING	KARSTER HANTECH INC.	O C
			SWNE		19	36-6888	P		09-30-1968 BOX CANYON CREEK	CLEAR SPRINGS TROUT CO.	C
			NWNW	07	96,98	36-7197	P		07-12-1971 BIG SPRINGS	STATE OF IDAHO	C

[illegible] 810 [illegible]

		SWNE	19							
		SWNE	28		36-7824	P	09-13-1978	BOX CANYON SPRING	KASTER MANTECH INC.	
		SENE	19		36-7891	P	10-27-1980	BOX CANYON SPRING	HARDY KASTER HARDY	
		SENE	19		36-7179	P	05-10-1971	BOX CANYON SPRING	KASTER BOX CANYON TROUT CO. INC. HARDY HARDY BOX CANYON TROUT CO. INC.	
		SENE	19		36-7334	P	04-30-1973	BOX CANYON SPRINGS	BOX CANYON TROUT CO. INC. KASTER BOX CANYON TROUT CO. INC. HARDY	
		SENE	19		36-7797	P	08-23-1978	BOX CANYON CREEK	CLEAR SPRINGS TROUT CO.	
		SENE	28		36-7824	P	09-13-1978	BOX CANYON SPRING	KASTER MANTECH INC.	
		SENE	28		36-8080	P	04-28-1982	BOX CANYON CREEK	CLEAR SPRINGS TROUT CO.	
		NWNW	01	46.92	36-7199	L	07-12-1971	BIG SPRINGS	STATE OF IDAHO	

LAST NAME	OWNER CODE

TWN	RNG	SEC	TRACT	LOT	USES	WATER RIGHT NUMBER	STAGE PRIORITY	RFLG	SOURCE OF WATER	LAST NAME	OWNER CODE
005	14E	28	SENW		IN	36-7824	A 09-13-1978		BLIND CANYON SPRINGS	STATE OF IDAHO	C
			SENW	02	19	36-7334	P 04-30-1973		BOX CANYON SPRINGS	BOX CANYON TROUT CO. INC. KASTER BOX CANYON TROUT CO. INC. HARDY	C C C C
			NWSE		19	36-7966	P 01-05-1979		BOX CANYON CREEK BLIND CANYON SPRING	LEMON STANDAL BLIND CANYON AQUA RANCH INC.	C C C
			NWSE		19	36-7162	L 03-04-1971		BLIND CANYON CREEK	LEMON	C
		29	NENW	02	01.43	02-2050	L 01-13-1931		SNAKE RIVER	EUST'S	C
			NWNE		43.22,T9.01	47-7906	P 05-24-1979		GROUNDWATER	REVAL TRUST NO. 4, PTR.	C
		30	NENE		01	47-21995	L 07-10-1923		SALMON FALLS CREEK	HANSEN ERICKSEN LAURSEN RASMUSSEN RASMUSSEN RING LARSEN RING	C C C C C C C C
			NENE		01	47-2900	L 02-17-1905		SALMON FALLS CREEK	RING	C
			NWNE		01.84	47-7825	L 03-19-1968		SPRINGS	LEMON RING	C C
			NWNE		46.43,19.22	47-7925	P 08-15-1977		GROUNDWATER	RING RING	C C
			NWNE		46,18,19,28 22	47-7935	P 10-20-1977		GROUNDWATER	RING RING	C C
			SWNE		01	47-21998	L 07-10-1923		SALMON FALLS CREEK	HANSEN ERICKSEN LAURSEN RASMUSSEN RASMUSSEN RING LARSEN LARSEN	C C C C C C C C
			SWNE		18,22,46	47-4872	S 01-31-1963		GROUNDWATER	NORTHWEST CRANE, RIGGING & TRANSPORT THOUSAND SPRINGS RESORT	C C

LAST NAME	OWNER CODE

TWN	RNG	SEC	TRACT	LOT	USES	WATER RIGHT NUMBER	STAGE PRIORITY	RFLG	SOURCE OF WATER	LAST NAME	OWNER CODE
005	14E	30	SWNE		07,18,22,28 46	47-7819	A 04-15-1982		GROUNDWATER	SLIGARS THOUSAND SPRINGS RESORT	C
			SWNE		22,43,46	47-7882	A 04-22-1983		GROUNDWATER	PUSHIRE PUSHIRE	C C
			NESE		01	47-21991	L 07-10-1923		SALMON FALLS CREEK	HANSEN ERICKSEN LAURSEN RASMUSSEN RASMUSSEN RING CONNELLY	C C C C C C C
			NESE		22,43,46	47-7951A	P 01-05-1979		GROUNDWATER	NELSON	C
			NESE		43,22	47-7951B	L 01-05-1979		GROUNDWATER	NELSON [illegible]	C C
			NWSE		22	47-7520	P 09-25-1979		GROUNDWATER	[illegible] [illegible]	C C
			NWSE		22,43,10	47-7525	P 05-04-1979		GROUNDWATER	[illegible] [illegible]	C C
			SWSE		01,18,19,22	47-7721	P 03-29-1981		GROUNDWATER	HARDWELL	C
			SESE		22,43 01	47-21999	L 07-10-1923		SALMON FALLS CREEK	HANSEN [illegible] [illegible] [illegible] [illegible] BARNES HANSEN	C C C C C C C
			SESE		46,43,19,22	47-7980	P 08-19-1977		GROUNDWATER	RING RING	C C
			SESE		22	47-7999	P 08-19-1983		GROUNDWATER	BARNES	C
		31	NWNE		01	47-4296	S 07-01-1940		WHITE WATER SPRINGS	OLSON	C
			NWNE		01,46,58	47-7800	S 08-04-1982		WHITE WATER SPRINGS	OLSON	C
			NWNE		01,18,19,22 46,58	47-7807	P 08-04-1982		GROUNDWATER	OLSON	C

BOX CANYON CREEK
MINIMUM STREAMFLOW
FACT SHEET

Water Right No.: 36-8337

Source: Box Canyon Creek

Applicant: Idaho Water Resource Board

Requesting Agency:

Date Application Filed: October 16, 1987

Rate of Flow: A variable flow of 75-162 cfs from the beginning to the end of the minimum flow reach, respectively, from 01/01 through 12/31

Location of Springs: Beginning at a point 300 feet downstream from where Box Canyon Creek crosses the East 1/16 line into Lot 1 of Section 28, Township 8S, Range 14E, B.M., and proceeding downstream to the confluence of Box Canyon Creek and the Snake River, located in Lot 2, Section 28, Township 8S, Range 14E, B.M.

Purpose: To preserve fish and wildlife habitat

Public Meeting: The purpose of the meeting is to gather information on the public interest regarding the proposed minimum streamflow. The Meeting is to be held November 17, 1987, 7:30 p.m. in the Aspen Vo-Tech Building Mini Auditorium, Room 108, College of Southern Idaho, Twin Falls, Idaho.

MICROFILMED
MAY 17 1989

16-Nov-1987

SOURCE: BOX CANYON CREEK TRIBUTARY: SNAKE RIVER

STATE OF IDAHO DEPARTMENT OF WATER RESOURCES
WATER RIGHTS ABSTRACT

WR-NUMBER: 36-7040

CURRENT OWNER:
CLEAR SPRINGS TROUT CO.
1020 MAIN
BUHL, ID 83316

PRIORITY DATE: 4-Sep-1968

STAGE: LICENSE

COUNTY: GOODING
SOURCE: BOX CANYON CREEK TRIBUTARY: SNAKE RIVER

WATER USE:	DIVERSION-RATE:		DIVERSION-VOLUME:	
IRRIGATION	0.200	CFS	40.00	AF
RECREATION	300.000	CFS	0.00	AF
FISH PROPAGATION	300.000	CFS	0.00	AF
TOTAL RATE:	300.000	CFS	TOTAL VOLUME: 0.00	AF

POINT OF DIVERSION:	T08S	R14E	S28	SWNE
PLACE OF USE:	T08S	R14E	S28	SWNW
	T08S	R14E	S28	NWSW
	T08S	R14E	S28	SWNW AC 10

TOTAL ACRES: 10

WR-NUMBER: 36-7066

CURRENT OWNER:
BLIND CANYON AQUA RANCH INC.
P.O. BOX 219
HAGERMAN, ID 833320000

PRIORITY DATE: 5-Jan-1970

STAGE: PERMIT

COUNTY: GOODING
SOURCE: BOX CANYON CREEK TRIBUTARY: SNAKE RIVER
BLIND CANYON SPRING SNAKE RIVER

WATER USE:	DIVERSION-RATE:		DIVERSION-VOLUME:	
FISH PROPAGATION	400.000	CFS	0.00	AF
TOTAL RATE:	400.000	CFS	TOTAL VOLUME: 0.00	AF

REMARKS: REINSTATED 12-07-1983.

POINT OF DIVERSION:	T08S	R14E	S28	NWNE
	T08S	R14E	S28	NWSE
PLACE OF USE:	T08S	R14E	S28	NWSE
	T08S	R14E	S20	SWSW
	T08S	R14E	S29	NENW
	T08S	R14E	S29	NWNW

WR-NUMBER: 36-7198

CURRENT OWNER:
STATE OF IDAHO
DEPT. OF PARKS
STATEHOUSE
BOISE, ID 83720

PRIORITY DATE: 12-Jul-1971

STAGE: APPLICATION

COUNTY: GOODING
SOURCE: BOX CANYON CREEK TRIBUTARY: SNAKE RIVER

WATER USE:	DIVERSION-RATE:		DIVERSION-VOLUME:	
RECREATION	850.000	CFS	0.00	AF
AESTHETIC	850.000	CFS	0.00	AF
TOTAL RATE:	850.000	CFS	TOTAL VOLUME: 0.00	AF

REMARKS: THIS RT. FOR PRESERVING NATURAL STATE W/O DIVERSION.
PROTESTANTS: RIM VIEW TROUT CO., AL DAISS, MTN.VIEW IRR. CO
;EDNA WERTH, EARL M. HARDY, RICHARD KASTER, DEL KOHTZ

POINT OF DIVERSION: T08S R14E S27 NENW
T08S R14E S28 NENE

PLACE OF USE: T08S R14E S28 NENE
T08S R14E S28 SENE
T08S R14E S27 NENW
T08S R14E S27 NWNW
T08S R14E S27 SWNW
T08S R14E S27 SENW

WR-NUMBER: 36-7797

CURRENT OWNER:
CLEAR SPRINGS TROUT CO.
P.O. BOX 712
BUHL, ID 83316

PRIORITY DATE: 23-Jun-1978

STAGE: PERMIT

COUNTY: GOODING
SOURCE: BOX CANYON CREEK TRIBUTARY: SNAKE RIVER

WATER USE:	DIVERSION-RATE:		DIVERSION-VOLUME:	
FISH PROPAGATION	300.000	CFS	0.00	AF
TOTAL RATE:	300.000	CFS	TOTAL VOLUME: 0.00	AF

REMARKS: PTS. OF REDIVERSION IN LOTS 3 & 4, S28, T8S, R14E, T.F. CNTY.S CN
DIVERSION RATE NOT TO EXCEED 300 CFS. FOR H.

POINT OF DIVERSION: T08S R14E S28 SWNE
T08S R14E S28 SENE

PLACE OF USE: T08S R14E S28 LT03
T08S R14E S28 LT04

WR-NUMBER: 36-8080

CURRENT OWNER:
CLEAR SPRINGS TROUT CO.
P.O. BOX 548
BUHL, ID 83316

PRIORITY DATE: 20-Apr-1982

STAGE: PERMIT

COUNTY: GOODING
SOURCE: BOX CANYON CREEK TRIBUTARY: SNAKE RIVER

WATER USE:	DIVERSION-RATE:		DIVERSION-VOLUME:	
POWER	300.000	CFS	0.00	AF
TOTAL RATE:	300.000	CFS	TOTAL VOLUME: 0.00	AF

REMARKS: FEET OF HEAD = 26 HORSEPOWER = 690

POINT OF DIVERSION: T08S R14E S28 SENE

PLACE OF USE: T08S R14E S28 LT03

WR-NUMBER: 36-8336

CURRENT OWNER:
EARL M. HARDY
ANITA KAY HARDY
BARBARA J. HARKER
1301 VISTA AVENUE
BOISE, ID 837050000

PRIORITY DATE: 5-Oct-1987

STAGE: APPLICATION

COUNTY: GOODING
SOURCE: BOX CANYON CREEK TRIBUTARY: SNAKE RIVER

WATER USE:	DIVERSION-RATE:		DIVERSION-VOLUME:	
POWER	425.000	CFS	0.00	AF
TOTAL RATE:	425.000	CFS	TOTAL VOLUME: 0.00	AF

POINT OF DIVERSION: T08S R14E S27 NWNW
T08S R14E S27 SWSW

PLACE OF USE: T08S R14E S28 SWNE
T08S R14E S28 SENE

WR-NUMBER: 36-8337

CURRENT OWNER:
STATE OF IDAHO
IDAHO WATER RESOURCE BOARD
STATEHOUSE
BOISE, ID 837200000

PRIORITY DATE: 16-Oct-1987

STAGE: APPLICATION

COUNTY: GOODING
SOURCE: BOX CANYON CREEK TRIBUTARY: SNAKE RIVER

WATER USE:	DIVERSION-RATE:		DIVERSION-VOLUME:	
MINIMUM INSTREAM FLOW	75.000	CFS	0.00	AF
MINIMUM INSTREAM FLOW	87.000	CFS	0.00	AF
MINIMUM INSTREAM FLOW	162.000	CFS	0.00	AF
TOTAL RATE:	162.000	CFS	TOTAL VOLUME: 0.00	AF

REMARKS: MSF REACH = BOX CANYON CREEK WITHIN LOTS 1 & 2, EXCEPTING
300 FT AT UPSTREAM END OF LOT 1
75 CFS AT REACH BEGINNING
162 CFS AT REACH END
87 CFS INFLOW TO REACH

POINT OF DIVERSION:				
T08S	R14E	S28	LT01	
T08S	R14E	S28	LT02	
			TOTAL ACRES:	

SOURCE: BOX CANYON SPRING TRIBUTARY: SNAKE RIVER

STATE OF IDAHO DEPARTMENT OF WATER RESOURCES
WATER RIGHTS ABSTRACT

WR-NUMBER: 36-7091

CURRENT OWNER:
EARL M. HARDY
1301 VISTA AVE.
BOISE, ID 83705

PRIORITY DATE: 27-Oct-1969
STAGE: PERMIT

COUNTY: GOODING
SOURCE: BOX CANYON SPRING TRIBUTARY: SNAKE RIVER
WATER USE: DIVERSION-RATE: DIVERSION-VOLUME:
FISH PROPAGATION 300.000 CFS 0.00 AF
TOTAL RATE: 300.000 CFS TOTAL VOLUME: 0.00 AF

POINT OF DIVERSION: T08S R14E S28 NWNE
T08S R14E S28 SENE
T08S R14E S28 SWNE

PLACE OF USE: T08S R14E S28 SWNE
T08S R14E S28 NWSE LT05
T08S R14E S28 NESW LT02

WR-NUMBER: 36-7175

CURRENT OWNER:
EARL M. HARDY
1301 VISTA AVE.
BOISE, ID 837050000

PRIORITY DATE: 18-May-1971
STAGE: PERMIT

COUNTY: GOODING
SOURCE: BOX CANYON SPRING TRIBUTARY: SNAKE RIVER
WATER USE: DIVERSION-RATE: DIVERSION-VOLUME:
FISH PROPAGATION 330.000 CFS 0.00 AF
TOTAL RATE: 330.000 CFS TOTAL VOLUME: 0.00 AF

REMARKS: 2 P/D IN SWNW, S27 & NENE, S28, T8S, R14E.
THE APPLICANTS USE OF WATER UNDER THIS PERMIT SHALL NOT INTERFERE WITH USES PRESENTLY AUTHORIZED UNDER VALID PRIOR EXISTING PERMITS INCLUDING THE QUALITY AND CONSISTENT FLOW OF WATER FOR FISH PROPAGATION.

POINT OF DIVERSION: T08S R14E S27 NENW
T08S R14E S28 SENE
T08S R14E S28 NENE
T08S R14E S27 NWNW
T08S R14E S27 SWNW

PLACE OF USE: T08S R14E S28 NENE
T08S R14E S28 SWNE
T08S R14E S28 SENE
T08S R14E S27 NENW
T08S R14E S27 NWNW
T08S R14E S27 SWNW

WR-NUMBER: 36-7824

CURRENT OWNER:
MANTECH INC.
C/O KENT W. FOSTER
HOLDEN, KIDWELL, HAHN & CRAPO
IDAHO FIRST NATIONAL BANK BLDG
IDAHO FALLS, ID 83402

PRIORITY DATE: 13-Sep-1978
STAGE: PERMIT

COUNTY: GOODING
SOURCE: BOX CANYON SPRING TRIBUTARY: SNAKE RIVER
WATER USE: DIVERSION-RATE: DIVERSION-VOLUME:

POWER

		300.000	CFS		0.00 AF
	TOTAL RATE:	300.000	CFS	TOTAL VOLUME:	0.00 AF

REMARKS: NOT TO EXCEED 300. CFS.
P/D IN LOTS 3 & 4 S28, T8S, R14E.

POINT OF DIVERSION:	T08S	R14E	S28	SWNE	
	T08S	R14E	S28	SENE	
PLACE OF USE:	T08S	R14E	S28		LT03
	T08S	R14E	S28		LT04
	T08S	R14E	S28		LT07

SOURCE: BOX CANYON SPRINGS TRIBUTARY: SNAKE RIVER

STATE OF IDAHO DEPARTMENT OF WATER RESOURCES
WATER RIGHTS ABSTRACT

WR-NUMBER: 36-7334

CURRENT OWNER:
BOX CANYON TROUT CO. INC.
EARL M. HARDY
1301 VISTA AVE.
BOISE, ID 83705

PRIORITY DATE: 30-Apr-1973

STAGE: PERMIT

COUNTY: GOODING
SOURCE: BOX CANYON SPRINGS TRIBUTARY: SNAKE RIVER

WATER USE:	DIVERSION-RATE:		DIVERSION-VOLUME:	
FISH PROPAGATION	600.000	CFS	0.00	AF
TOTAL RATE:	600.000	CFS	TOTAL VOLUME: 0.00	AF

REMARKS: 2 P/D IN SENW, LOT 2, S28, T8S, R14E.

POINT OF DIVERSION:	T08S	R14E	S28	SENE
	T08S	R14E	S28	NWNE
	T08S	R14E	S28	SWNE
	T08S	R14E	S28	SENW LT02
PLACE OF USE:	T08S	R14E	S28	SWNE LT02

SOURCE: BOX SPRINGS TRIBUTARY: SNAKE RIVER

STATE OF IDAHO DEPARTMENT OF WATER RESOURCES
WATER RIGHTS ABSTRACT

WR-NUMBER:	CURRENT OWNER:	PRIORITY DATE:	STAGE:
✓ 36-2705	MOUNTAIN VIEW IRRIGATION CO. P.O. BOX 527 GOODING, ID 83330	15-Mar-1963	PERMIT

COUNTY: GOODING
SOURCE: BOX SPRINGS TRIBUTARY: SNAKE RIVER

WATER USE:	DIVERSION-RATE:		DIVERSION-VOLUME:	
IRRIGATION	200.000	CFS	0.00	AF
TOTAL RATE:	200.000	CFS	TOTAL VOLUME: 0.00	AF

REMARKS: P/U WITH BOUNDARIES OF MTN. VIEW IRR. CO.
THE P/U UNDER THIS RIGHT INCLUDES MOSTLY LANDS OWNED BY B.L.M.

POINT OF DIVERSION: T08S R14E S27 NENW
TOTAL ACRES:

MINI STREAMFLOW REQUEST/APPLICATIO

PROCESSING CHECKLIST

Box Canyon Creek

		Assigned to	Initials/Date
1.	Request received and checklist attached.	Records Chief	10/13/87 ag
2.	Request indexed.	Records Chief	ag 10/13/87
3.	Preliminary review. Application prepared for signature.	Section Supv.	10/13/87 G.S.
4.	Streamflow information requested from hydrology.	Section Supv.	10/1/87 G.S.
5.	Region advised of request	Section Supv.	10/9/87 G.S.
6.	Acknowledgement letter sent.	Section Supv.	10/7/87 G.S.
7.	Copy of request routed to: Reg. Off. Bur. Chief; Oper. Bur. Chief; Admin.; Director.	Section Supv.	10/7/87 G.S.
8.	Copy of request routed to Administrator, Resources Analysis Division for placement on Board Agenda.	Section Supv.	10/1/87 G.S.
9.	Water Rights researched and abstracted.	Records Chief	9-20-87 ag
10.	Request and related data presented to Board.	Requestor	_____
11.	Filed or Rejected by Board.	IWRB, Section Supv.	_____
12.	Board action indexed.	Records Chief	_____
13.	Original application sent to region	Section Supv.	_____
14.	Copy of application sent to F&G, H&W, Parks & Recreation (mandatory)	Region	_____
15.	Application advertised w/o hearing date.	Region	_____
16.	Notice sent to each water right holder or applicant on MSF reach.	Section Supv.	_____
17.	Personal contact made with riparian land owners.	Requestor	_____
18.	Visual aid request prepared. (location, water rights, hydrology)	Section Supv.	_____
19.	Visual aids reviewed.	Section Supv.	_____
20.	Need for informal public meeting determined. If yes, proceed with step 21. If no, skip to step 24.	Both Administrators & IWRB	_____
21.	Informal public meeting advertised in legal notices.	Region	_____

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	Assigned to	Initials/Date
22. Notification of informal public meeting sent to:		
a. IWRB members	Section Supv.	
b. Local Legislators	Section Supv.	
c. Watermaster	Section Supv.	
d. Department Personnel	Section Supv.	
e. Local TV and Radio Stations	Section Supv.	
f. Water Right Holders	Requestor	
g. Riparian Owners	Requestor	
23. Informal public meeting held.	IWRB and Section Supv.	
24. Notice of formal hearing advertised in legal notices.	Region	
25. Notification of formal hearing sent to:		
a. IWRB members	Section Supv.	
b. Local Legislators	Section Supv.	
c. Watermaster	Section Supv.	
d. Department Personnel	Section Supv.	
e. Local TV and Radio Stations	Section Supv.	
f. Water right holders	Section Supv.	
g. Attendees of informal public meetings	Section Supv.	
h. Riparian Owners (with data generated by Requestor)	Section Supv.	
26. Hearings held (mandatory).	Hearing Officer and Regional Rep.	
27. Standard approval procedure for memorandum decision.	Hearing Officer	
28. If application is approved, Legislative approval procedure attached.	Records Chief	

AGREEMENT IMPLEMENTING IDAHO CODE SECTION 67-4310,

AS AMENDED BY SESSION LAWS OF 1982, CHAPTER 369

THIS AGREEMENT, Made and entered into this 8th day of November, 1983, between EARL M. HARDY of Boise, Idaho, hereinafter referred to as the "Owner", and the STATE OF IDAHO, acting by and through its Board of Land Commissioners, hereinafter referred to as the "State":

W I T N E S S E T H:

1. PURPOSE OF THE AGREEMENT

The purpose of this agreement is to implement the provisions of Chapter 369 of the Idaho Session Laws of 1982, by adjusting the boundary established by the provisions of Idaho Code § 67-4310, and by establishing restrictive covenants deemed necessary to promote the public interest for certain canyon lands and waters arising within Box Canyon, as described in Idaho Code § 67-4310, and other related purposes as hereinafter stated.

2. IDENTIFICATION OF LANDS INVOLVED

There is identified in Idaho Code § 67-4310, as amended by S.L. 1982, Chap. 369, a point (the base point) located 100 feet downstream from the crest of the falls in the west half of the northwest quarter of Section 27, Township 8 South, Range 14 East, Boise Meridian. For purposes of this agreement a line is hereby established through that point, extending northeasterly from the middle of Box Canyon Creek to a point on the canyon rim and thence north 0°12' east to a point on the north boundary line of Section 27, Township 8 South, Range 14 East, Boise Meridian, and extending southwesterly from the middle of Box Canyon Creek to a point on the canyon rim and thence south 0°12' west to a point on the south boundary line of the southwest quarter of the northwest quarter of

MAY 17 1984

said Section 27. Those lands described in Idaho Code § 67-4310 which lie easterly and southerly of said line are sometimes hereinafter referred to as the lands above the base point, and the portions of said described lands lying westerly and northerly of said line are sometimes hereinafter referred to as the lands lying below the base point. Unless otherwise indicated, "land" or "lands", as used in this agreement, refers to land owned by the Owner.

3. RESTRICTION ON OWNER'S USE OF LAND

A. The Owner reserves the right for himself, his family, and their guests, to use of the land above the base point, subject to the following limitations:

(i) The land will be kept in its present condition except as it may be altered by forces of nature; no artificial or mechanical alteration (except the access road) will be made by the Owner or others;

Specifically, without limiting the foregoing provision, no construction of any kind (except the access road) shall be done by the Owner or others, and no material disturbance or removal of plants, soil or rocks, and no diversion of water or alteration of the stream channel, shall be made by the Owner or others.

(ii) These conditions apply to lands above the base point within the canyon and to the lands above the base point and above the canyon rim lying within 250 feet of the rim.

B. The Owner's use of the land lying below the base point shall be limited as follows:

(i) The land above the canyon rim will be used

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only for residential purposes, consisting of nor more than three homes, and for agricultural purposes, including fences, farm buildings, access and service roads, and other improvements related to residential or agricultural use, and for power transmission lines and related service road and support structures;

(ii) Use of land below the rim shall be as follows:

(a) Water diversion works in the stream channel and bank, and a hydroelectric generation facility, with penstock, service roads, appurtenant buildings, transmission lines and other support service structures will be constructed and used in this area. Plants, soil and rock will be disturbed or removed as necessary during construction and in the operation of the facility;

(b) Residential use, limited to one home, with an access road, fences and outbuildings. The least practicable disturbance of plants, soil and rocks will be caused during construction of the home, fences and outbuildings;

(c) Recreational use will be made of the land, including construction of foot or horse trails, with the least practicable disturbance of plants, soil or rocks, during construction and use of the trails;

(d) Rock will be removed for use in construction of roads on the property below the base point, or for use in the construction of

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hydroelectric generating facilities and related improvements and structures, or in the construction of the homes above the rim.

4. DEDICATION TO LIMITED PUBLIC USES

A. Land in the canyon above the base point, including the stream channel, shall be dedicated to limited public uses in the following categories, and no other uses shall be permitted or authorized, unless expressly stated in some other part of this agreement:

(i) Recreational use in the form of viewing and sightseeing, by not more than an average of 20 persons per day during any 365-day period;

(ii) Natural scientific studies by the Idaho Department of Parks and Recreation, the Idaho Department of Fish and Game, the University of Idaho, Idaho State University, Boise State University, and the College of Idaho, and by such other individuals or public or private entities as are specifically authorized by a committee composed of the Owner or his representative designated in writing, and a person designated by the Idaho State Board of Land Commissioners. The committee also shall adopt guidelines to be followed in conducting the studies, as hereinafter specified;

(iii) All recreational use and natural scientific studies shall be conducted in such manner as not to disturb or remove plants, soil or rocks, or divert water from Box Canyon Creek or alter the stream channel, except that samples of plants, soil, rocks or water may be taken and removed, if authorized by the guidelines;

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(iv) Reasonable access for the purposes stated in subparagraph (i) through (iii), above. No additional roads or trails shall be constructed on the land above the base point without the consent of the Owner as to location, size and type of construction, and the Owner agrees that such consent shall not be withheld unreasonably.

B. Land above the canyon rim and above the base point may be used for access as hereinafter provided, and for the construction, use and maintenance of one combination residence and administration building and not more than two outbuildings for storage of such equipment and supplies as are reasonably necessary for the uses contemplated by this Agreement and for related laboratory and study purposes. Construction of any such buildings shall not be commenced until the Owner has approved the location and design, which approval shall not be withheld unreasonably by the Owner.

C. Lands below the base point shall not be used by any persons or entities without the express written consent of the Owner or his representative designated in writing.

5. MANAGEMENT

A. Management guidelines for the use of the land and water in the canyon above the base point shall be prepared, and from time to time may be revised, by a committee composed of the Owner (or his representative designated in writing) and a person appointed by the Idaho Board of Land Commissioners. The guidelines, and any revisions thereof, made by the committee shall be submitted to the Board of Land Commissioners for approval, and shall become effective upon approval by the Board. Use of the

land and water in the canyon above the base point shall be managed by the Idaho Department of Parks and Recreation or by such other agency or entity as may be designated by the Board of Land Commissioners and approved by the Owner under the guidelines and revisions made and approved as specified in this paragraph. Such management shall be subject to the provisions of Section 3A of this Agreement. The Department of Parks and Recreation, or any other agency or entity designated for management as hereinbefore provided, may, in connection with such management, contract with any public, non-profit or private organization for the performance of services required in connection with such management, but any such contract shall not be effective until approved by the Board of Land Commissioners and by the Owner.

B. The land and water below the base point, and the land above the canyon rim above the base point, shall be managed by the Owner, subject to the restrictions imposed on his use by the terms and conditions of this agreement.

6. CHANGES IN WATER PERMIT AND IN APPLICATION FOR PERMIT

A. As authorized by Session Laws of 1982, Chapter 369, the boundary established by the provisions of Idaho Code § 67-4310 is hereby adjusted by excluding from the operation of § 67-4310 those lands and waters lying downstream from the base point hereinbefore identified.

The Idaho Department of Parks and Recreation shall file with the Director of the Department of Water Resources of the State of Idaho an application to amend its pending application (No. 36-7198) for an appropriation under § 67-4310, to change the area covered by the application and by the appropriation to conform to the adjustment in boundary made in the preceding paragraph.

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B. The State agrees that it will not file protests against any application for a change in point of diversion, place of use or nature of use that the Owner might file with the Director of the Department of Water Resources of the State of Idaho in order to amend Water Permit No. 36-7175 to change from fish propagation above the base point to hydropower generation below the base point. The Owner agrees that he will withdraw his protest against the pending application (No. 36-7198) of the Idaho Department of Parks and Recreation for a water permit as authorized by Idaho Code § 67-4310, and that he will not file any further protests against that application. The State further agrees that, if the Owner elects to file an application for a new water permit in lieu of amending Permit No. 36-7175, the State will not file a protest against any such application for a new permit for the appropriation of waters of Box Canyon Creek for hydropower generation, on any grounds other than minimum stream flow.

C. The Owner agrees that approval by the Idaho Department of Water Resources of changes in point of diversion, place of use, and nature of use under Water Permit No. 36-7175, or issuance of any new water permit to the Owner for the use of waters of Box Canyon Creek for hydropower generation, may be conditioned upon the other provisions of this Agreement becoming effective, and the Owner further agrees that he shall not construct any diversion works or divert any water from Box Canyon Creek for hydropower generation under Water Permit No. 36-7175 or under any such new permit, until this Agreement has become fully effective.

D. The State agrees that approval by the Idaho Department of Water Resources of Application No. 36-7198, and the issuance of a water permit under that application, may be conditioned upon the

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The State's use of the land and water in the canyon above the base point, and its use of land above the rim and above the base point for the purposes specified in Section 4B, shall not commence until the Idaho Department of Parks and Recreation, or some other agency or entity designated and approved as provided in Section 5A, has assumed, and has begun discharging, the management responsibilities specified in Section 5A.

B. The Owner shall have the right to enforce by injunction the conditions imposed by this agreement for use of the lands above the base point. No cause of action for damages shall accrue to the Owner by reason of the State's violation of any condition imposed by this agreement on the use of the land above the base point, but this waiver shall not apply to any officer, agent or employee of the State acting beyond the course and scope of his employment.

If the State shall violate any condition of this agreement with respect to use of the lands above the base point, and such violation shall continue for a period of 365 consecutive days following delivery of written notice from the Owner requiring compliance with the condition then being violated by the State, the Owner shall have the absolute right to declare the dedication to the State and the restrictive covenants made by the Owner in this agreement to be terminated, and upon such declaration being made in writing and delivered to the State, the dedication and the restrictive covenants shall terminate and shall be of no further force and effect whatsoever.

C. The limitations and restrictions upon his use of his property in the northwest quarter of Section 27 and in the east half of the northeast quarter of Section 28, Township 8 South,

other provisions of this Agreement becoming effective, and the parties acknowledge that it is their mutual intention that the Owner shall not be entitled to proceed with an appropriation for hydropower generation purposes until this Agreement has become fully effective, and that the State shall not be entitled to proceed with its appropriation for the purposes stated in Idaho Code § 67-4310 until this Agreement has become fully effective.

7. AD VALOREM TAXES AND ROAD MAINTENANCE

A. So long as this agreement continues in force and effect, the State agrees that it will cooperate with the Owner, to the fullest extent permitted by the laws of this state, in urging that the Owner's land affected by this Agreement shall be assessed for ad valorem tax purposes in a manner that reflects the public benefits to be derived from the operation of this Agreement and that reflects the limitations on the Owner's use of the land resulting from the operation of this Agreement.

B. Subject to the availability of state funds, the State and the Owner shall share equally in the costs and expense of maintaining that portion of the main access road that is located upon the lands above the base point and upon lands owned by a third party, adjacent to the lands above the base point. The State shall not use the main access road when it does not have funds available to pay its share of the maintenance.

8. DURATION, ENFORCEMENT AND TERMINATION

A. The Owner's dedication of the land above the base point to the State for the purposes and upon the conditions specified in this agreement shall continue in force and effect for so long as the State shall use that land for the purposes herein specified and shall comply with the conditions imposed by this agreement.

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Range 14 East, B.M., to which the Owner has herein agreed, shall continue in full force and effect until this Agreement is terminated as provided in subsection B of this section 8, immediately above.

D. The State shall have the right to enforce by injunction compliance with any limitation, restriction or restrictive covenant to which the Owner has herein agreed. No cause of action for damages shall accrue to the State or to any third party beneficiary by reason of the Owner's violation of any provision of this agreement.

E. If this agreement shall be terminated as hereinbefore provided, the Owner, immediately upon such termination, shall have the right to resume full and complete use and control of his property in the northwest quarter of Section 27 and in the east half of the northeast quarter of Section 28, Township 8 South, Range 14 East, B.M.

9. INDEMNIFICATION

Because this agreement contemplates that the Owner shall not have complete control over the use of the lands above the base point, the State agrees to indemnify and hold harmless the Owner from all claims of every kind and nature whatsoever made by any person on account of injury or other damage arising out of the negligent or otherwise wrongful acts or omissions of the State and those of its employees acting within the course and scope of their employment or duties whether arising out of a governmental or proprietary function, where the State, or any governmental entity involved in the wrongful acts or omissions, if a private person or entity would be liable for money damages under the laws of the State of Idaho. To the extent allowed by law, the State agrees to

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defend the Owner in any action brought for any such claim, and agrees to pay all reasonable attorney fees and costs, whether incurred in court or out of court, necessary for the defense of any such claim.

10. CONDITIONS PRECEDENT

The parties acknowledge that the Owner intends to construct and operate a hydrogeneration facility on the lands below the base point, and intends to divert water from Box Canyon Creek for use in trout propagation facilities to be located in Blind Canyon, to the south of Box Canyon Creek, and that various permits, licenses, easements and other forms of authorization are necessary for the construction and operation of those facilities. Therefore, the parties agree that this agreement shall not become effective until the Owner shall have obtained all licenses, permits, easements, rights of way, and other forms of authorization for activities or rights to the use of the water and land, or renewals or extensions thereof, required for the construction and operation of the hydrogeneration facility on the lands below the base point and required for the construction and operation of (a) diversion works on Box Canyon Creek, (b) a water transmission facility from Box Canyon Creek to Blind Canyon, (c) trout propagation facilities in Blind Canyon, and (d) water discharge facilities from the Blind Canyon trout propagation facilities into the Snake River.

11. GENERAL PROVISIONS

A. The section headings in this agreement are intended for convenience of reference, only, and are not intended to be used in the interpretation or construction of this agreement.

B. The parties to this agreement contemplate that they, and any third party beneficiaries of this agreement, shall be guided

by rules of reasonableness and the spirit of cooperation in both the performance of this agreement and the use of the property covered by this agreement.

C. The parties acknowledge that it is their desire to coordinate both the Owner's use and the State's use of lands under this Agreement with other activities contemplated by the Owner on other nearby lands, as indicated in Section 10, above. In that regard, the Idaho Department of Fish and Game has advised the Owner that the Department will request that the Bureau of Land Management of the United States Department of the Interior impose a condition on any right of way granted pursuant to the Owner's application (Serial No. I-2880, for a right of way from Box Canyon Creek to Blind Canyon) requiring that this Agreement become fully effective before the Owner can make use of the right of way. The parties further acknowledge that the Idaho Department of Fish and Game deems itself obligated to request that certain conditions be imposed by the Federal Energy Regulatory Commission in the granting of any exemption or license for hydropower generation by the Owner in Box Canyon, and the parties agree that they will attempt to agree upon terms to be submitted to the Federal Energy Regulatory Commission with respect to any such exemption or license.

D. The covenants herein contained shall bind, and the benefits and advantages hereof shall inure to, the parties hereto and their respective heirs, personal representatives, successors and assigns.

ENDORSED
[illegible]

IN WITNESS WHEREOF, the Owner has hereunto subscribed his name, and the State has caused its name to be hereunto subscribed by its officials hereunto duly authorized, all as of the day and year herein first above written.

Earl M. Hardy (Owner)

STATE OF IDAHO

By _____
Title: President of the State Board of Land Commissioners, and Governor of the State of Idaho

COUNTERSIGNED:

Secretary of the State of Idaho

Director, Department of Lands

FILED

MAY 17 1989

13-am

STATE OF IDAHO)
)ss.
COUNTY OF ADA)

On this 8th day of November, 1983, before me, the undersigned, a notary public in and for said state, personally appeared EARL M. HARDY, known to me to be the person whose name is subscribed to the within and foregoing instrument, and acknowledged to me that he executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal, the day and year in this certificate first above written.

Anita C. McCormick
Notary Public for the State of Idaho
Residing at Boise, Idaho

STATE OF IDAHO)
)ss.
COUNTY OF ADA)

On this 16 day of November, 1983, before me, the undersigned, a notary public in and for said state, personally appeared John V. Evans, known to me to be the Governor for the State of Idaho, and acknowledged to me that he executed the foregoing instrument for and on behalf of the said State of Idaho and said Board of Land Commissioners.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal, the day and year in this certificate first above written.

John B. Bryan
Notary Public for the State of Idaho
Residing at Idaho City, Id.

DEC 17 1983

14-am

3/83

IDENT. NO. 36-8337

IDAHO DEPARTMENT OF WATER RESOURCES

WATER RIGHT DATA ENTRY LOG

Initials	Date	Item
MB	10/29/87	Original form entered
		Edit Report Correct
		Date Protested
		Date of Hearing
		Date Approved/Denied (Proof due date, stage and/or status, conditions of approval, water district)
		Record Verified
		Amendment Approved
		Extension Approved
		Partial Proof
		Proof Complete
		Field Exam Received
		Field Exam Accepted and changes entered
		License Updated
		Transfer Updated
		Keypunched by State Office

IDAHO WATER RESOURCE BOARD-Box Canyon
SR.

Form No. 202a
3/79

State of Idaho

Department of Water Resources

APPLICATION FOR PERMIT ANALYSIS SHEET

INITIAL REVIEW BY: _____ APPLICATION NUMBER: 36- 8337

CHECK:

- ☑ Source.
- ☑ Point of diversion.
- ☑ County.
- ☑ Quantity of water and period of use.
- ☑ Description of diverting works. NA
- ☑ Time required for beneficial use of water.
- ☑ Place of use or acres irrigated. NA
- ☑ Map.
- ☑ Signature.
- ☑ Fee. NA

Field check by: _____
Date: _____
Comments: _____

- ☐ Yes ☑ No Field check required.
- ☐ Yes ☑ No Critical groundwater area.
- ☐ Yes ☑ No Request dam safety information. Sent by: _____ Date: _____
- ☑ Yes ☐ No* In form to receipt.

*REQUEST THE FOLLOWING ADDITIONAL INFORMATION FROM THE APPLICANT: _____

SEND COPIES TO:

- ☑ Idaho State Health Department. Copies sent by: _____ Date: 10/29/87
- ☑ Idaho Fish and Game Department. ~ Jerome _____ 10/29/87
- ☑ Idaho Department of Lands. _____ 10/29/87
- ☑ U.S. Bureau of Land Management. Shoshone _____ 10/29/87
- ☐ U.S. Forest Service. _____
- ☑ Other Parks & Rec. _____ 10/29/87

PROCESSING:

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

FINAL REGIONAL PROCESSING REVIEW:

- ☐ Affidavit of publication received. Date: _____
- ☐ Application published correctly. If not, record action taken: _____
- ☐ Fee amount, receipt date & number, recorded on application.
- ☐ Publication dates and paper, recorded on application.
- ☐ Protests, dates, withdrawal, etc., recorded on application.
- ☐ Recommendation & initial, recorded on application.
- ☐ Yes ☐ No Measuring device required.
- ☐ Yes ☐ No Access port required.
- ☐ Yes ☐ No Will water be delivered by watermaster? If yes, what district? _____
  _____ Date of priority recommended.

Special conditions of approval or cover letter. _____

By: _____ Date: _____

STATE OFFICE REVIEW:

☐ See attached sheet for more information.

By: _____ Date: _____

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MAR 28 1988
Department of Water Resources

POINT OF DIVERSION AND STREAM INDEX INFORMATION

TRACT	SEC	TWP	RGE	gov't lot	rediv. (R)	REACH

IDAHO STREAM CODE INDEX

TRACT	SEC	TWP	RGE	gov't lot	rediv. (R)	REACH

IDAHO STREAM CODE INDEX

TRACT	SEC	TWP	RGE	gov't lot	rediv. (R)	REACH

IDAHO STREAM CODE INDEX

TRACT	SEC	TWP	RGE	gov't lot	rediv. (R)	REACH

IDAHO STREAM CODE INDEX

United States Department of the Interior

BUREAU OF LAND MANAGEMENT
Shoshone District Office
400 West F Street
Shoshone, Idaho 83352

IN REPLY
REFER TO: I-2880

March 23, 1988

State of Idaho
Department of Water Resources
Statehouse
Boise, Idaho 83720

Director Higginson:

I respectfully submit the enclosed testimony with submissions A and B for your consideration regarding the Bureau of Land Management Application For Permit 36-8337, Minimum Streamflow for Box Canyon Creek.

Our submissions are identified as follows:

1. Submission "A" is a consolidated booklet which contains the following documents that supply pertinent information concerning the decision to issue Bureau of Land Management Right-of-Way I-2880.

   a. Signed Right-of-Way document.
   b. Land report for Right-of-Way I-2880.
   c. Final Environmental Assessment for Right-of-Way I-2880.
   d. Water measurement data for Box Canyon Right-of-Way I-2880.
   e. Description of Preservation Zone in Upper Box Canyon.
   f. ACEC Management Plan.
   g. Right-of-Way monitoring schedule.
   h. Terms and Conditions, stipulations of the right-of-way.

2. Submission "B" is a large scale drawing of the existing diversion locations for the water licenses, permits, and applications on Box Canyon Creek.

Sincerely,

Robert D. Cordell

Robert D. Cordell
Area Manager
Bennett Hills Resource Area

Enclosures

MAY 17 1988

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CRITERIA

1. MINIMUM STREAMFLOW (MSF) WILL NOT INTERFERE WITH ANY EARLIER IN TIME VESTED WATER RIGHT, PERMIT, OR WATER RIGHT APPLICATION.

The requested flow is for instream, non-consumptive use, and will be subject to all vested water rights, permits, or water applications of earlier dates of priority. Information shows that the requested flows are available in excess of the allowable diversion flow under Right-of-Way I-2880 as stipulated and agreed to by holder of permits 36-7091 and 36-7334.

The holder of water permits 36-7091 and 36-7334, Mr. Earl Hardy, has agreed to the minimum streamflow of 75.0 cfs at the proposed point of diversion for (BLM) Right-of-Way I-2880 and also to not divert the 87.0 cfs inflow from the point of diversion to the mouth of Box Canyon Creek for a total of 162.0 cfs. Mr. Hardy has agreed that these flows are to be left in the stream to maintain habitat for the four federal candidate species and to maintain any recreational fishing that occurs on this reach of Box Canyon Creek. Please refer to the signed copy of the Right-of-Way Grant.

Other existing water permits on Box Canyon Creek are upstream of the MSF reach and would not be effected by this request. Please refer to the drawing, labeled submission "B", Water Diversion Sites on Box Canyon Creek.

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2. MINIMUM STREAMFLOW (MSF) IS IN THE PUBLIC INTEREST AS OPPOSED TO PRIVATE INTEREST.

The public land that exists within Box Canyon was designated as an Area of Critical Environmental Concern (ACEC) through the Bureau of Land Management's land use planning process, which stressed public involvement. Public support designating the public land as an ACEC was favorable. Studies confirmed that Box Canyon Creek contained four federal candidate species. The 75 cfs minimum streamflow plus the inflow of 87 cfs to equal 162 cfs is required to maintain the habitat of the four species plus insure the continued quality of recreational fishing that occurs on Box Canyon Creek and its confluence with the Snake River. Establishment of these MSF levels are considered to be in the public's interest. Please refer to submission "A", which includes the following documents:

a. Signed Right-of-Way document.

b. Land report for Right-of-Way I-2880.

c. Final Environmental Assessment for Right-of-Way I-2880.

d. Water measurement data for Box Canyon Right-of-Way I-2880.

e. Description of Preservation Zone in upper Box Canyon.

f. ACEC Management Plan.

g. Right-of-Way monitoring schedule.

h. Terms and Conditions, stipulations of right-of-way.

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3. MINIMUM STREAMFLOW (MSF) IS NECESSARY FOR PRESERVATION OF FISH AND WILDLIFE HABITAT, AQUATIC LIFE, RECREATION, AESTHETIC BEAUTY, NAVIGATION, TRANSPORTATION, AND WATER QUALITY OF THE STREAM.

The four federal candidate species and recreational fishing require adequate in-stream flows. The current flow of Box Canyon Creek is 417 cfs at the mouth. The requested minimum streamflow of 162 cfs is 40 percent of this flow. This amount is considered to be the absolute minimum to protect the present public resources. Any lesser flows may cause degradation to fish and wildlife habitats, deplete existing aquatic life, reduce recreation opportunities, negatively alter the present aesthetic beauty and seriously degrade the present water quality of the stream entering the Snake River. Please refer to submission "A" for the methodology used to establish minimum streamflow and additional data.

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4. MINIMUM STREAMFLOW (MSF) IS THE MINIMUM FLOW NOT THE MOST DESIRABLE FLOW.

For the four federal candidate species and recreational fishing the most desirable flows are those at the high end of the range of acceptable flows at which all historic uses are accommodated. The minimum flows, for which this application is made, are those at the lower end of the range of acceptable flows that would sustain the four federal candidate species, the continued maintenance of existing fish and wildlife habitat, present aquatic life, present and future recreational opportunities, existing aesthetic qualities, and water quality of the stream entering the Snake River. Ranges of acceptable flows have been determined through research projects, user surveys, interviews, and professional experience and judgments. The most desirable flow would be the total flow; the requested flow is the minimum flow which would maintain the public values identified for protection and management in the ACEC Management Plan and simultaneously allow for private development.

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MAY 17 1989

5. MINIMUM STREAMFLOW (MSF) IS CAPABLE OF BEING MAINTAINED.

The requested flows are based upon thorough study of available water flow data of Box Canyon Creek. The requested flows can be met under both current and proposed development operations. Mr. Hardy, the holder of Right-of-Way I-2880, is required to provide structures to verify and supply the minimum bypass streamflow at the point of diversion. He has agreed to allow a bypass of 75 cfs at the point of diversion and also not divert the 87 cfs that flows in from the point of diversion to the mouth of Box Canyon Creek for a total of 162 cfs minimum streamflow.

The BLM has measured water flow at various points on this reach of Box Canyon Creek and have determined available water volumes of 417 cfs at the mouth of Box Canyon Creek and 322 cfs at a point 95 feet upstream from the proposed point of diversion for Right-of-Way I-2880. This data confirms that the MSF requested can be maintained. Please refer to submission "A" for further information.

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MAY 17 1989

S U B M I S S I O N A

APPLICATION FOR PERMIT
MARCH 23, 1988

MICROFILMED
MAY 17 1989

MINIMUM STREAMFLOW APPLICATION NO. 36-8337

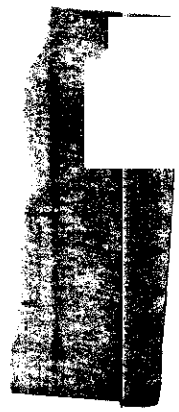
n 2800-14
ust 1985)

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT

RIGHT-OF-WAY GRANT/TEMPORARY USE PERMIT

Issuing Office
SHOSHONE, IDAHO

Serial Number
I-2880



right-of-way) xxxxxxx is hereby granted pursuant to:

a. [X] Title V of the Federal Land Policy and Management Act of October 21, 1976 (90 Stat. 2776; 43 U.S.C. 1761);

b. [ ] Section 28 of the Mineral Leasing Act of 1920, as amended (30 U.S.C. 185);

c. [ ] Other (describe) _____

Nature of Interest:

a. By this instrument, the holder Earl N. Hardy/Box Canyon Trout Company, Inc. receives a right to construct, operate, maintain, and terminate a water diversion, flume, and access road for fish propagation facility on public lands (or Federal land for MLA Rights-of-Way) described as follows:

..... 6 South, Range 14 East, Boise Meridian
Section 28: portions of Lot 1 and NW¼NE¼

b. The right-of-way xxxxxxx area granted herein is _____ feet wide, _____ feet long and contains _____ acres, more or less. If a site type facility, the facility contains ±3.0 acres.

c. This instrument shall xxxxxxx exist for the useful life of the facility from its effective date unless, prior thereto, it is relinquished, abandoned, terminated, or modified pursuant to the terms and conditions of this instrument or of any applicable Federal law or regulation.

d. This instrument [X] may [ ] may not be renewed. If renewed, the right-of-way xxxxxxx shall be subject to the regulations existing at the time of renewal and any other terms and conditions that the authorized officer deems necessary to protect the public interest.

e. Notwithstanding the expiration of this instrument or any renewal thereof, early relinquishment, abandonment, or termination, the provisions of this instrument, to the extent applicable, shall continue in effect and shall be binding on the holder, its successors, or assigns, until they have fully satisfied the obligations and/or liabilities accruing herein before or on account of the expiration, or prior termination, of the grant.

3. Rental

For and in consideration of the rights granted, the holder agrees to pay the Bureau of Land Management fair market value rental as determined by the authorized officer unless specifically exempted from such payment by regulation. Provided, however, that the rental may be adjusted by the authorized officer, whenever necessary, to reflect changes in the fair market rental value as determined by the application of sound business management principles, and so far as practicable and feasible, in accordance with comparable commercial practices.

4. Terms and Conditions:

a. This grant ~~or permit~~ is issued subject to the holder's compliance with all applicable regulations contained in Title 43 Code of Federal Regulations parts 2800 and 2880.

b. Upon grant termination by the authorized officer, all improvements shall be removed from the public lands within 90 days, or otherwise disposed of as provided in paragraph (4)(d) or as directed by the authorized officer.

c. Each grant issued pursuant to paragraph (1)(a) for a term of 20 years or more shall, at a minimum, be reviewed by the authorized officer at the end of the 20th year and at [illegible] intervals thereafter not to exceed 10 years. Provided, however, that a right-of-way ~~or permit~~ granted herein may be reviewed at any time deemed necessary by the authorized officer.

d. The stipulations, plans, maps, or designs set forth in Exhibit(s) A, B, C, and D, dated effective date of Grant, attached hereto, are incorporated into and made a part of this grant instrument as fully and effectively as if they were set forth herein in their entirety.

e. Failure of the holder to comply with applicable law or any provision of this right-of-way grant ~~or permit~~ shall constitute grounds for suspension or termination thereof.

f. The holder shall perform all operations in a good and workmanlike manner so as to ensure protection of the environment and the health and safety of the public.

g. The Holder will comply with the stipulations identified on Exhibit D attached to and made a part hereof.

IN WITNESS WHEREOF, The undersigned agrees to the terms and conditions of this right-of-way grant ~~or permit~~.

Edwin Lyman

Exxon Pipeline Co., Inc. — Robert O. Cordell

(Signature of Holder) — (Signature of Authorized Officer)

By Edwin Lyman

President — Area Manager, Bennett Hills Resource Area

(Title) — (Title)

Dec. 12, 1986 — December 15, 1986

(Date) — (Effective Date of Grant)

GPO : 1985 O - 483-259

I-2880

November 7, 1986

CERTIFIED MAIL P 241 195 210

Earl M. Hardy
Box Canyon Trout Co., Inc.
1301 Vista Avenue
Boise, Idaho 83705

MODIFIED DECISION

Earl M. Hardy/
Box Canyon Trout Co., Inc.

Right-of-Way I-2880

RIGHT-OF-WAY PROPOSAL REJECTED
ALTERNATIVE RIGHT-OF-WAY OFFERED
INTERIM RENTAL FEE REQUIRED

On April 14, 1982, Right-of-Way Application I-2880 was rejected by decision of the Idaho State Director. This decision was suspended to allow you time to modify your proposal, correct deficiencies, and offer appropriate mitigation for anticipated environmental impacts.

Your present proposal fails to meet the objectives of the Box Canyon Area of Critical Environmental Concern (ACEC) Management Plan; is considered environmentally unacceptable, and is hereby rejected. Refer to enclosed Final Environmental Assessment and Land Report. An alternative considered in the assessment of your proposal is compatible with the objectives of the Box Canyon ACEC plan and is offered to you. Find enclosed the alternative right-of-way documents and stipulations. This offer is contingent upon your full acceptance of the Terms and Conditions of Regulation 43 CFR 2800 and Stipulations, Exhibit D. Failure to accept the alternative offer in its entirety will result in rejection of the right-of-way application.

An interim rental fee of $250.00 is required upon return of the signed right-of-way grant documents and stipulations. Please make the check payable to: Department of the Interior - BLM. A billing is enclosed. This interim fee is subject to adjustment upon completion of an official appraisal.

You are given 30 days from receipt of this decision to submit the signed grant document and stipulation copies along wih payment of $250.00 as an interim rental fee to the Shoshone District Office.

Failure to do so will result in your application being rejected, and the file closed without further notice.

You have the right of appeal to the Board of Land Appeals, Office of the Secretary, in accordance with the regulations in 43 CFR Part 4 (see enclosed information sheet). However, if an appeal is taken, the Notice of Appeal must be filed in this office (not the Board) within 30 days of receipt of this decision so that the case file can be transmitted to the Board. To avoid summary dismissal of the appeal, there must be strict compliance with the regulations. If an appeal is filed, a copy of the Notice of Appeal and of any statement of reasons, written arguments, or briefs must be served on the Field Solicitor, U.S. Department of the Interior, Box 020, Federal Building and Courthouse, 550 W. Fort Street, Boise, Idaho 83724 in the manner prescribed in 43 CFR 4.401(c), not later than 15 days after filing of the Notice of Appeal.

Questions should be addressed to Joe Aitken or myself at (208)886-2206.

Sincerely,

Robert D Cordell

Robert D. Cordell
Area Manager
Bennett Hills Resource Area

Enclosures

STIPULATIONS

TERMS AND CONDITIONS

1. This authorization is issued for the useful life of the approved facility(ies) unless sooner relinquished, terminated, abandoned, or cancelled by the holder. The useful life of the facility(ias) will be jointly determined by the holder and BLM Authorized Officer considering economic value, structural integrity, and functional merit. The right-of-way grant will be reviewed at the end of twenty (20) years and at regular intervals thereafter at least once every ten (10) years [43 CFR 2801-1(h)(3)(i)]. The Authorized Officer may require corrective action; with no preconceived intent to modify or change any of the stated stipulations, i.e., 75 c.f.s. bypass, at any time after the 20th year as may be required to meet the stated goals and objectives of the Area of Critical Environmental Concern (ACEC) Plan dated December 19, 1985.

2. Notwithstanding the expiration of this instrument, early relinquishment, abandonment, cancellation, or termination, the provisions of this instrument, to the extent applicable, shall continue in effect and shall be binding on the holder, its successors, or assigns until they have fully satisfied the obligations and/or liabilities accruing herein before or on account of the expiration, or prior termination, of the grant.

3. For and in consideration of the rights granted, the holder agrees to pay the Bureau of Land Management fair market value rental as determined by the authorized officer. Provided, however, that the rental may be adjusted by the authorized officer, whenever necessary, to reflect changes in the fair market rental value as determined by the application of sound business management principles, and so far as practicable and feasible, in accordance with comparable commercial practices.

4. This grant is issued subject to the holder's compliance with all applicable regulations contained in Title 43 Code of Federal Regulations part 2800.

5. Failure of the holder to comply with applicable law or any provision of this right-of-way grant shall constitute grounds for suspension, termination, or cancellation thereof, with right of hearing as per 43 CFR 2803.4(a).

6. The holder shall perform all operations in a good and workmanlike manner so as to ensure protection of the environment and the health and safety of the public.

7. If any equipment transported across the public land area contains Polychlorinated Biphenyls (PCBs) such transport shall be in a totally enclosed manner in accordance with provisions of the Toxic Substance Control Act of 1976 as amended (see 40 CFR part 761. Additionally, any release of PCBs (leaks, spills, etc.) in excess of the reportable quantity established by 40 CFR 117 shall be reported as required by the Comprehensive Environmental

Response, Compensation, and Liability Act, section 102b. A copy of any report required or requested by any Federal agency or State Government as a result of a reportable release or spill of any hazardous material shall be furnished to the authorized officer within 5 working days of the occurrance of the spill or release.

8. The Holder shall comply with the applicable Federal and State laws and regulations concerning the use of pesticides (i.e., insecticides, herbicides, fungicides, rodenticides, and other similar substances) in all activities/operations under this grant. The Holder shall obtain from the authorized officer approval of a written plan prior to the use of such substances. The plan must provide the type and quantity of material to be used; the pest, insect, fungus, etc., to be controlled.; the method of application; the location for storage and disposal of containers; and other information that the authorized officer may require. The plan should be submitted no later than December 1 of any calendar year that covers the proposed activities for the next year. Emergency use of pesticides may occur. The use of substances on or near the area shall be in accordance with the approved plan. A pesticide shall not be used if the Secretary of the Interior has prohibited its use. A pesticide shall be used only in accordance with its registered uses and within other limitations if the Secretary has limited its use. A pesticide shall be used only in accordance with its registered uses and within other limitations if the Secretary has imposed limitations. Pesticides shall not be permanently stored on public lands authorized for use under this grant.

9. In the event the lands affected by Powersite Reserve 77 are required for powersite purposes as contemplated in Executive Order dated July 20, 1910, any structures or improvements placed thereon found to interfere with such developments shall be removed or relocated as necessary to eliminate such interferences at no cost to the United States or its permittees or licensees.

10. Prior to commencing any ground disturbing activities, holder shall submit a detailed blueprint/drawing of all structural facilities with a proposed Plan of Development and Rehabilitation for approval by the BLM Authorized Officer. The following items shall be addressed as a minimum:

BLUEPRINT/DRAWING

Structure design and specifications

PLAN OF DEVELOPMENT

Construction procedure and technique.

Emergency contingency plan in advent of diversion or flume structure failure.

Right-of-way maintenance procedure and schedule.

REHABILITATION

Method of seedbed preparation, proposed species and quantity of trees/shrubs planned for vegetative screening, quantity, and type of mulching and fertilizer.

Initial Notice to Proceed will be issued following approval of structure blueprints/drawings and Proposed Plan(s) of Development and Rehabilitation.

11. A preconstruction meeting, on-site, with the Holder, contractors, and operators shall be held prior to any ground disturbance. A notice to proceed shall be issued for each segment of construction. Construction shall not proceed beyond the last completed stage without another Notice to Proceed for that specific stage. The stages are: a. Prepwork, b. Construction, c. Operation, d. Rehabilitation. Exceptions to accommodate efficiency of scheduled work must be approved in advance by the BLM Authorized Officer.

12. No heavy equipment operation or use of explosives shall be authorized from January 1 to June 1 of each year, except for emergency repairs or as otherwise approved by the BLM Authorized Officer.

13. The coffer dam shall be constructed in stages with water to be diverted in increments not to exceed 100 cfs per day. The Authorized Officer reserves right to delay coffer dam construction up to a maximum of five working days to conduct salvage operations.

14. Fish screens and a fish bypass structure are required. These structures, diversion and flume, must comply with Idaho Department of Fish and Game standards of design, construction, and operation.

15. A minimum of 75 cfs of instream water volume shall be bypassed through, over, and/or around the diversion/facility on a continuous, permanent, and verifiable basis. The holder shall provide structures to verify the minimum bypass flow.

16. Holder shall be informed in advance of scientific studies scheduled (or authorized) by BLM on public lands within the right-of-way area.

17. Holder shall construct and maintain a fenced foot bridge across flume or dam structure to accommodate safe public access. The bridge shall be no less than 4 feet wide, with side rails and fencing no less than 3 feet high, weight capacity of no less than 1/2 ton, and approach slopes of no greater than 2:1 (run:rise). Protective provisions of Idaho Code 36-1604 shall apply.

18. An as-built survey shall be required upon construction completion.

19. Riprap on the toe of berm, pond side, must approximate six-inches in size or larger to provide aquatic habitat needs. Intent is to minimize rock less than six inches in size. Riprap on downstream side of diversion and spillway must be of adequate size to prevent erosion of streambank sides and bottom.

20. Holder shall provide up to six hours of equipment operation time with personnel to accomplish streambed habitat manipulation as directed by the authorized officer or his representative.

21. Monitoring studies shall be conducted as per Monitoring Schedule - Exhibit C. Holder shall reimburse the Bureau of Land Management for monitoring studies, per Monitoring Schedule - Exhibit C.

22. Water flows associated with scheduled operation and maintenance must be controlled so that Box Canyon Creek flows are not increased by 100 cfs within any one day time period.

23. Holder shall take no actions which will increase or decrease water levels, temperature, quality, and/or flow velocity within the natural sculpin pool upstream of the authorized impoundment pool. This applies only from the Clear Springs Diversion to the mouth of Box Canyon Creek.

24. Holder shall be responsible to comply with the terms described in Exhibit A, excluding Section 2 B, with the following modification:

-- BLM shall be authorized to conduct scientific studies within the preservation zone. No soil or vegetation removal, or destruction of resources shall be allowed.

25. Right-of-way Holder shall allow BLM administrative access for official business to the public land across private land in sections 27 and 28, T. 8 S., R. 14 E., B.M., and terminates if right-of-way I-2880 terminates.

26. Holder agrees to notify the Bureau of Land Management Authorized Officer in advance of initiating any action which might affect existing water permit(s) number(s) 36-7091 and 36-7334 or remaining water flows across private lands owned or controlled by the right-of-way holder or Mr. Earl Hardy, downstream from the approved point of diversion. Right-of-way holder further agrees to notify the Bureau of Land Management Authorized Officer of any action(s) directed to the holder by the State of Idaho, Department of Water Resources which could affect the present water permit status of permit number(s) 36-7091 and 36-7334 across private lands owned or controlled by the right-of-way holder or Mr. Earl Hardy, downstream from the approved point of diversion.

27. Upon termination of the right-of-way, holder shall remove all improvements within 90 days and smooth all disturbed areas to the existing contour and shall be required to establish a perennial vegetative cover composed of species identified in exhibit C. The seed shall be planted in the fall of the year prior to October 15 using planting techniques accepted by the authorized officer.

28. The right-of-way holder is not responsible for injuries suffered by any person on the right-of-way or on the private lands of the right-of-way holder. The provisions of Idaho Code 36-1604 are applicable to the right-of-way and to the private lands of the right-of-way holder.

29. The right-of-way holder shall have the right to relinquish the right-of-way at any time, and upon such relinquishment of the right-of-way holder shall be relieved of all obligations and liabilities under the right of way except those pertaining to rehabilitation required by the terms and conditions of the right-of-way, and upon such relinquishment all restrictions on the right-of-way holder's use of the private land shall terminate and all rights and privileges for the public or the BLM to use the private land for the purposes set forth in Exhibit A and Exhibit D, or for any other purposes, shall terminate, except for the BLM Authorized Officer's right of access to the public lands for inspection and evaluation of rehabilitation efforts and success thereof.

EARL M. HARDY/BOX CANYON TROUT COMPANY, INC.

RIGHT-OF-WAY I-2880

LAND REPORT

BUREAU OF LAND MANAGEMENT

TITLE PAGE
LAND REPORT, DECISION RECORD/RATIONALE, FINDING OF NO SIGNIFICANT IMPACT

Applicant's Name	Proposed Action	Serial No.	EA No.
arl M. Hardy ox Canyon Trout Co., Inc.	Right-of-Way for Water Diversion and Flume	I-2880	86-046

State	County	District	Resource Area	Planning Unit
IDAHO	Gooding	Shoshone	Bennett Hills	Canyon

Prepared By	Title	Dates of Examination	Report Date
oseph Aitken	Bennett Hills Realty Specialist	Various	November 7, 19

LANDS INVOLVED

eridian	Township	Range	Section	Subdivision	Acres
BOISE	8 S.	14 E.	28	Lot 1, NW¼NE¼	Less than

DECISION RECORD/RATIONALE

ECISION:

Reject the proposal. Offer alternative Right-of-Way, based on Alternative 2, subject to Ter nd Conditions of Regulations 43 CFR 2800, Exhibits A, B, and C, and Stipulations Exhibit D ages 1 through 5, of Environmental Assessment, No. ID-050-86-046. Alternative offer to be accepted by applicant in its entirety within 30 days of receipt of modified decision. Non cceptance shall result in the application being rejected and the file closed without further otice.

ATIONALE:

The proposal is environmentally unacceptable. Only Alternative 2 with specific mitigation equirements listed in the Environmental Assessment, number ID-050-86-046, including Exhibit ages 1 through 5 is considered to meet the ACEC Management Plan objectives and guidelines.

NDING OF NO SIGNIFICANT IMPACT

Environmental Assessment No. ID-050-86-046 adequately analyzes the impacts of the above action and indicates there will be no significant effects on the quality of the human nvironment. Consequently, an Environmental Impact Statement will not be prepared.

Robert D. Cordell
Area Manager

11/7/86
Date

ID-2063-2 (June 1

LAND REPORT

I. DESCRIPTION OF PROPOSED ACTION AND ALTERNATIVES

A. Purpose and Need

The purpose of the proposed action is to develop a natural resource by perfecting water right permits on Box Canyon Creek into license and developing a fish propagation facility on adjacent private lands.

B. Proposed Action

The applicant proposes to build a water diversion structure on public lands in the Box Canyon stream channel and divert all but 20 cubic feet per second (cfs) of Box Canyon streamflow through a concrete flume to a fish propagation facility. The construction of a diversion within the stream channel would create a backwater pond approximately one-half acre in size.

The applicant has offered to preserve and allow public access to a portion of his privately owned land in the Box Canyon alcove system as offsite mitigation for environmental impacts caused by the proposal.

For more specific details refer to the Environmental Assessment, number ID-050-86-046.

C. Alternatives

There are four alternatives associated with the proposal and they are discussed in the Environmental Assessment, number ID--050-86-046. Refer to Section I.B. for specific alternatives.

II. NATIONAL ENVIRONMENTAL PROTECTION ACT (NEPA) COMPLIANCE

Environmental Assessment, number ID-050-86-046, analyzes the impacts of the proposed action and alternatives in detail and concludes that the proposed action is environmentally unacceptable.

Only Alternative 2, which requires specific mitigation is considered acceptable. Refer to the Environmental Assessment, number ID-050-86-046, for details.

III. DECISION FACTORS

A. Land Use Plans

The Monument Resource Management Plan approved on April 22, 1985, designated the public land at Box Canyon as an Area of Critical Environmental Concern (ACEC). This designation indicated that the public land would be retained in public ownership and managed for protection and enhancement of the recognized unique and special resources that exist on those public lands.

A site specific management plan for the Box Canyon ACEC was developed and approved on October 17, 1985. This plan provided specific and general guidance to protect, preserve, and maintain the integrity of those resource values which led to the ACEC designation.

This plan would not prohibit development within the ACEC area as long as the management objectives of the ACEC plan are met. Developments or activities which destroy, remove, or decrease the quality and/or quantity of resources, or which would lead to irreparable damage to the aquatic, riparian, visual, wildlife, or fisheries values are considered incompatible uses under the Box Canyon ACEC Management Plan and no BLM action that would lead to those results would be taken. Development or activity proposals are considered on a case-by-case basis. If mitigation to prevent the loss or destruction of the key resources in the ACEC is provided, the proposal may be authorized.

The proposal submitted by the applicant is analyzed in Environmental Assessment number ID-050-86-046 and fails to fully mitigate the potential impacts to the ACEC resources and is considered incompatible with the management objectives of the Box Canyon ACEC Management Plan.

Only Alternative 2, which requires specific mitigation is considered compatible with the Box Canyon ACEC Management Plan.

B. Other Factors

As indicated in the Environmental Assessment, Box Canyon is an area having unique and outstanding features. The limitations placed on the public lands designated as the Box Canyon ACEC restricts the degree of development that may occur.

The proposed action does not mitigate the impacts to the key resources of the ACEC and is not considered environmentally acceptable. Only Alternative 2, with specific mitigation requirements listed in Exhibit D pages 1 through 5 of the Environmental Assessment ID-050-86-046, is considered to meet the ACEC Management Plan requirements.

IV. RECOMMENDATIONS

Reject the proposal. Offer a right-of-way to Earl M. Hardy/Box Canyon Trout Company, Inc. based on Alternative 2, Terms and Conditions of Regulations 43 CFR 2800, Exhibits A, B, and C, and Stipulations listed on Exhibit D, pages 1 through 5. Require alternative offer to be accepted by applicant in its entirety within 30 days of receipt of modified decision or reject the application and close the file without further notice.

V. RATIONALE

Refer to Environmental Assessment, number ID-050-86-046, Section III Analysis of Proposed Action and Alternatives and Section VII Summary Conclusion.

VI. STIPULATIONS

Refer to Exhibit D, pages 1 through 5 of Environmental Assessment, number ID-050-86-046.

Joseph Arthur
Preparer

7 Nov. 86
Date

EARL M. HARDY

BOX CANYON TROUT COMPANY, INC.

RIGHT-OF-WAY I-2880

FINAL

ENVIRONMENTAL

ASSESSMENT

UNITED STATES DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Shoshone District Office

EA Cover Sheet

Environmental Assessment Number: ID-050-86-046

Action: Earl M. Hardy/Box Canyon Trout Company, Inc. Water Diversion - I-2880
(Name, Type, etc.) (Serial or Project No.)

Location: T. 8 South R. 14 East, BM Sec. 28: Lot 1 and NW¼NE¼

Signatures:

This environmental assessment fulfills the requirements of the National Environmental Policy Act of 1969 and related regulations. It was prepared with adequate interdisciplinary involvement.

Preparer/Team Leader	Title	Date
Authorized Official	Title	Date

Comments:

This document is final.

I-05-1700-2 (May 1986)

DRAFT

BOX CANYON
ENVIRONMENTAL ASSESSMENT SYNOPSIS

PROPOSAL: Construction of water diversion and flume to divert all but 20 cfs of existing streamflow from Box Canyon Creek to adjacent private land to develop a fish propagation facility.

The Environmental Assessment considers the proposal as an environmentally adverse action and not in conformance with the ACEC Management Plan.

ALTERNATIVE 1: No Action: Deny the Right-of-Way Proposal.

The Environmental Assessment considers the No Action Alternative as an acceptable action to leave the lands and water in their present state on public lands; however, from a holistic approach, private land use possibilities within the Box Canyon ecosystem may create environmental impacts on public lands that conflict with goals of the ACEC Management Plan.

ALTERNATIVE 2: Grant the right-of-way and include specific mitigation measures to accomplish certain levels of environmental protection and/or enhancement to assure the objectives of the ACEC Management Plan are met.

The Environmental Assessment considers Alternative 2 as an acceptable action on public lands and from a holistic approach, an acceptable action for the resources (plant and animal) and general public (scenic, recreation, and access).

ALTERNATIVE 3: Approve Alternative 2 and negotiate title transfer with Earl M. Hardy for the Bureau of Land Management to obtain legal land title to the entire Box Canyon alcove system including all water and development rights excluding an easement for the concrete flume and access road and appropriate water rights associated with that development.

This alternative was previously discussed with the applicant. The applicant is not in favor of such an action and consumation of this alternative is not considered viable at this time. Therefore, this alternative is not analyzed.

ALTERNATIVE 4: Approve Alternative 2 and assist a privately owned preservation group or agency to obtain legal land title to the entire privately owned portion of the Box Canyon alcove system including all water and development rights excluding an easement for the concrete flume and access road and appropriate water rights associated with that development.

This alternative was previously discussed with the applicant. The applicant is not in favor of such an action and consummation of this alternative is not considered viable at this time. Therefore this alternative is not analyzed.

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BOX CANYON
WATER DIVERSION RIGHT-OF-WAY
ENVIRONMENTAL ASSESSMENT

I. DESCRIPTION OF THE PROPOSED ACTION AND ALTERNATIVES

A. Proposed Action

1. General: Earl Hardy proposes to construct a water diversion structure on public land in the stream channel of Box Canyon Creek and a concrete flume leading from the diversion across public land to a proposed fish propagation facility on his adjacent private land.

The construction of a diversion within the stream channel would create a backwater pool approximately one-half acre in size.

Mr. Hardy proposes to bypass 20 cubic feet per second (cfs) at the diversion, using the rest of the stream flow for his fish propagation facility. Mr. Hardy also offers to preserve his private property located in the upper portion of Box Canyon in its natural state with public access. Refer to Exhibit A for preservation location and description.

The public land within the Box Canyon Area of Critical Environmental Concern (ACEC) affected by the proposed action is:

Township 8 South, Range 14 East, Boise Meridian
Section 28: Lot 1 and NW4NE4

2. Specifications: The proposed diversion dam would be approximately 75 feet from upstream to downstream bank toes, 178 feet wide from banktoe to banktoe, and 16 feet high from stream bedrock elevation.

At the spillway, the inside dimensions of the flume would be 14 feet wide and 16 feet high. The flume would continue at this size for 70 feet where it would be reduced to 14 feet wide and 7 feet high. The total length of the flume on public land would be 413 feet.

The width of the right-of-way requested for the flume and access road is 70 feet. The entire diversion dam, flume and backwater pond would occupy slightly less than three acres of public land (Refer to drawing dated February 1986 number T860212). A measurement of 322 cfs was taken in January and March 1986, 95 feet upstream from the proposed diversion point. Estimated inflow from streamside recharge is approximately 9.5 cfs from the point of measurement to the proposed diversion point for a total of 331.5 cfs estimated water flow volume at the proposed point of diversion. A 20 cfs bypass would allow the applicant approximately 312 cfs for a fish propagation facility. The applicant has not identified a specific volume of water for development purposes, but has stated he would divert all but the 20 cfs bypass.

The private land offered for preservation includes land within Box Canyon that begins at a point approximately 100 feet below the major waterfall in section 27 and includes all the canyon upstream from that point. It also includes

the lands lying outside the canyon proper, but within approximately 250 feet of the canyon rim along the same portion of the canyon. The acreage of the preservation area is approximately 47 acres. Refer to Exhibit A for exact location description.

3. Purpose: The purpose of the proposed action is to allow the applicant to secure water right licenses in the Box Canyon area; construct a diversion, pool, and flume; and develop a fish propagation facility on his adjacent private land. According to the applicant, this proposal is capable of generating 4.5 to 9 million pounds of marketable trout per year worth approximately 4.5 to 9 million dollars.

4. Relation to Planning and Long-Term Programs: The Monument Resource Management Plan (RMP) designated this public land on April 22, 1985, as an Area of Critical Environmental Concern (ACEC) for which a site-specific management plan was approved on October 17, 1985. The plan allows authorized uses of the public lands that maintain or enhance the resource values critical to the ACEC and do not lead to irreparable damage (emphasis added) to the aquatic, riparian, visual, wildlife, and/or fishery values. For more information refer to Exhibit B, Box Canyon ACEC Management Plan.

B. Alternatives to the Proposed Action

1. Alternative 1: No Action: Deny the proposed action. If the right-of-way is not allowed, Mr. Hardy may choose to pursue one of the following possibilities:

a. Diversion at the Mouth of Box Canyon: As shown on Illustration 2, Mr. Hardy's private land extends across the mouth of Box Canyon Creek. Mr. Hardy could legally divert the water across his own land. Mr. Hardy has filed Water Permit Application 36-7334 for use of 600 cfs for fish propagation in that area. The greatest disadvantage of this alternative from Mr. Hardy's standpoint is that it may not provide for the desired fall in elevation from the diversion to the proposed site of the fish propagation facility. This may restrict the development to one tier of raceways directly adjacent to the Snake River, rather than two or more tiers located on higher ground as proposed. Pumping of water to gain elevation may be feasible, but may not be economically competitive with the other facilities that use gravity flow of water.

b. Development in Upper Box Canyon: As shown on Illustration 2, the upper portion of Box Canyon is owned by Earl Hardy; further, Mr. Hardy has filed water permit application 36-7175 for use of 330 cfs for fish propagation in that area. Mr. Hardy contends that he has the right to develop fish hatcheries on his own land within the canyon. He also contends that this would be a viable alternative for him to consider if he is not allowed to divert water from public lands in the lower canyon. If this is a viable alternative, it could also be considered even if the proposed right-of-way on public land were granted, since it would be a non-consumptive use located upstream from the point of diversion proposed by right-of-way application I-2880. This proposal may force Clear Springs Trout Company into litigation due to the possibility of reduced water quality. BLM could follow with

separate legal action because of potential unmitigated impacts on habitat and populations of Federal candidate threatened aquatic species.

c. Divert Water Bypassing Existing Diversion: The existing diversion in Box Canyon, constructed by Clear Springs Trout Company, is located on Earl Hardy's private property. Mr. Hardy could conceivably divert the water which presently bypasses the existing diversion.

However, since a majority of the water in Box Canyon Creek apparently arises below the existing diversion, Mr. Hardy could only divert a relatively small amount by resorting to this alternative. The latest water measurements reported only 54.3 cfs bypassing the Clear Springs diversion. While this amount is small for fish propagation, it may be adequate to use for a small hydro-electric generation facility and supplemental to other fresh water flows for fish propagation.

d. Use Other Means to Recover Investment: If Mr. Hardy is not allowed to develop a water diversion on public lands, it is possible that he may abandon his plan to develop a new fish propagation facility. In this case, he may turn to some other means of recovering his investment in the Box Canyon property. He has mentioned the possibility of high-value residential development either within the canyon or around its rim, utilizing the uniqueness of the canyon to attract wealthy prospective residents to the area.

It is also logical to assume that Mr. Hardy might consider reselling the property, in whole or in part, to the highest bidder, for whatever purpose it might be desired. He might also simply retain the property for his own use or as a future investment.

Similar to the other possibilities, all these options except the one affecting that portion of Box Canyon within the designated preservation zone could be exercised even if the proposed right-of-way, I-2880, is granted.

2. Alternative 2: Grant the right-of-way and include specific mitigation measures to accomplish certain levels of environmental protection and/or enhancement to assure the objectives of the ACEC Management Plan are met. Specific mitigation measures for Alternative 2 are contained in Exhibit D, Terms and Conditions.

3. Alternative 3: Approve Alternative 2 and negotiate title transfer with Earl M. Hardy for the Bureau of Land Management to obtain legal land title to the entire Box Canyon alcove system including all water and development rights excluding an easement for the concrete flume and access road and appropriate water right associated with that development.

This alternative was previously discussed with the applicant. The applicant is not in favor of such an action and consumation of this alternative is not considered viable at this time. Therefore, this alternative is not analyzed.

Alternative 4: Approve Alternative 2 and assist a privately owned preservation group or agency to obtain legal land title to the entire privately owned portion of the Box Canyon alcove system including all water and development rights excluding an easement for the concrete flume and access road and appropriate water rights associated with that development.

This alternative was previously discussed with the applicant. The applicant is not in favor of such an action and consumation of this alternative is not considered viable at this time. Therefore, this alternative is not analyzed.

II. DESCRIPTION OF THE EXISTING ENVIRONMENT

A. Non-Living Components

1. Air: Air quality in the vicinity of Box Canyon is generally excellent. Yearly temperatures range from 100°F in the summer to -10°F in the winter. Temporary pollution is caused by wind-borne dust, range fires, or agricultural burning.

2. Land: Topography of the public land area is characterized by steep canyon walls approximately 200 feet in height and a narrow streambed-canyon bottom ranging from 100 to 300 feet in width. The stream elevation drops about 85 feet in less than one-half mile on the public land.

The lava flow dam, talus slopes, and steep canyon walls are the dominant geologic features of the public lands, and occupy nearly all the area. The remainder of the public land consists of a flood plain basin confined between two talus slopes. The soils are sandy loams that are shallow and rocky intermixed with basalt boulders.

3. Water: Box Canyon Creek consists of numerous springs originating throughout the entire Box Canyon complex. This flow is reportedly the eleventh largest natural spring in the United States with an estimated cumulative volume of 720 cfs as measured in January and March of 1986 at the Clear Springs diversion and bypass, and at the mouth of Box Canyon Creek.

The main spring emerges at the easternmost end of the canyon at the base of a cliff. From this point and all the way to the confluence of the creek and Snake River, other spring waters enter the stream from both the north and south sides.

Clear Springs Trout Company maintains a water diversion structure, flume, and pipeline on private land directly east and south of the public lands. These facilities are licensed to divert 300 cfs from the streamflow of Box Canyon Creek. Water measurements taken in January 1986 indicated a diversion bypass of 54.3 cfs and 303 cfs being diverted through the flume to the west side of the Snake River for fish propagation and hydro-electric purposes.

The January and March water measurements indicated a flow of 417 cfs at the mouth of Box Canyon Creek, 322 cfs at a point 95 feet upstream from the proposed point of diversion, and an estimate of 331.5 cfs at the proposed point of diversion.

The quality of water in Box Canyon Creek is excellent and highly desirable for fish production. The water is crystal clear and remains at a relatively constant temperature of 58°F. Because of the outstanding water quality and constant temperature, Box Canyon Creek is considered a refuguim for freshwater molluscs including three species which are federal candidate threatened species and a large population of Shoshone Sculpin fish which is also a federal candidate threatened species. Flow volume remains nearly constant year around; however, an expected 10 percent fluctuation in flow volume is considered normal. The following is a chemical analysis made by the U.S. Geological Survey in 1953 of the Thousand Springs, which lies two miles

north of Box Canyon. It is assumed the chemical analysis of Box Canyon is similar to Thousand Springs. Silica (SiO2) 33 ppm, Iron (FeO) .06 ppm, Calcium (C_aO) 36 ppm, Magnesium (Mg) 18 ppm, Sodium (Na) 25 ppm, Potassium (k) 3.5 ppm, Bicarbonate (HCO3) 182 ppm, Sulfate (SO4) 37 ppm, Chloride (cl) 20 ppm, Fluoride (F) .7 ppm, Nitrate (NO3) 217 ppm, Boron (B) .08 ppm, Dissolved Solids 266 ppm, Hardness (Total) 164 ppm, Percent Sodium 24, pH 7.8, Specific Conductance (micro-mhos at 25°C.) 402, Temperature (°F) 58.

Clear Springs Trout Company, Inc. licensed 300 cfs of water from Box Canyon Creek for use in their fish propagation facility. Several other water permits have been issued and other applications are pending. An approved water permit becomes a licensed "right" only after the permit holder applies the water to a recognized "beneficial use." Information regarding water permits and applications in Box Canyon is summarized in Table I.

TABLE I
WATER PERMITS AND APPLICATIONS FOR WATER IN BOX CANYON

Number	Amount cfs	Priority of Application	Applicant(s)	Purpose
36-2705 1/	200	03/15/63	Mountain View Irrigation Co.	Irrigation
36-7040 2/	300	09/04/68	Richard Kaster	Fish Propagation
36-7797 3/	300	06/23/78	Clear Springs Trout Co.	Fish Propagation
36-7824 4/	300	09/23/78	Richard Kaster	Hydro-electric Project
36-8080 5/	300	04/20/82	Clear Springs Trout Co.	Fish Propagation Hydro-electric
36-7091 6/	300	10/27/69	Earl Hardy	Fish Propagation
36-7066 7/	380	01/05/70	George Lemmon & Norman Standal	Fish Propagation
36-7175 8/	330	05/18/71	Box Canyon Trout Co., Inc. and Earl Hardy	Fish Propagation
36-7198 9/	850	07/12/71	State Of Idaho Parks and Recreation Department	Recreation
36-7334 10/	600	04/30/73	Box Canyon Trout Co., Inc.	Fish Propagation

1/ Related to a desert land entry (DLE) project in the Boise BLM District.
2/ In 1973 this permit was assigned to Clear Springs Trout Company, Inc., and is licensed for the existing diversion in Box Canyon, which provides water to the large fish propagation facility on the west bank of the Snake River.
3/ The 300 cfs used for fish propagation is the same 300 cfs diverted through the present Clear Springs flume in Box Canyon.
4/ The 300 cfs used for a hydro-electric project is the same 300 cfs diverted through the present Clear Springs flume in Box Canyon.
5/ The 300 cfs used for fish propagation/hydro-electric project is the same 300 cfs diverted through the present Clear Springs flume in Box Canyon.
6/ Intended to be used to obtain water for Mr. Earl Hardy's proposed fish propagation facility related to right-of-way application I-2880.
7/ Related to another R/W application, I-3389 similar to I-2880, but rejected by BLM in 1985.
8/ Proposed for hatcheries in Box Canyon upstream of the Clear Springs diversion. FERC project also proposed for hydro-electric project in middle portion of canyon. This water permit may be amended.
9/ Filed 07/12/71, pursuant to House Bill (HB) 69, by Idaho Parks and Recreation Department, for all streamwater upstream of present diversion. No diversion, construction, or disturbances contemplated.

10/ Intended to provide supplemental water for proposal related to I-2880. Three separate points of diversion are given in the permit application.

B. Living Components

1. Plants (Aquatic): The high mineral content of the spring water in Box Canyon provides a productive environment for aquatic vegetation. The most abundant plant near the springs is watercress. Yellow monkey flower and several mosses are also common. The pools contain green algae and a diverse diatom community. Submergent vegetation is common only in the large pools above the proposed diversion and near the mouth of Box Canyon Creek.

2. Plants (Terrestrial): According to Robert Steele's report "Vegetation of Box Canyon" (enclosed in case file I-2880), the canyon contains examples of aquatic, riparian, saline-alkaline, upland, and talus plant communities. Some of the more abundant species found within these communities include river birch, juniper, big sagebrush, squawbush sumac, greasewood, poison ivy, rock clematis, stinging nettle, alkali saltgrass, giant wildrye, Sandberg's bluegrass, and cheatgrass. A 1986 Field Survey verified no threatened and/or endangered plant species within the Box Canyon ecosystem.

3. Animals (Aquatic): Several species of fish are found in Box Canyon Creek. According to information from the Idaho Department of Fish and Game, excellent populations of rainbow trout exist in the portion of Box Canyon Creek downstream from the existing diversion and maintaining the integrity of the creek, i.e., preventing construction of barriers to fish passage, is important. In one fish-shocking study of approximately 195 feet of stream within the public land area, 111 trout were counted averaging 8.6 inches in length and ranging up to 16.7 inches. All fish examined were in excellent body condition. Four of the trout were identified as hatchery rainbow (based upon the deformed dorsal fin) and the other 107 were wild rainbow.

Fish and game personnel have identified areas below the existing diversion as suitable for trout spawning. One of these, the private land at the confluence of Box Canyon Creek with the Snake River, is considered an out- standing trout fishing area during certain times of the year. On May 19, 1976, Fish and Game personnel caught and released 60 rainbow trout in a two-hour period for a catch rate of 10 trout per fisherman hour. These fish ranged from 9 to 12 inches in length. This confluence area also attracts waterfowl and provides high quality hunting in the fall.

Rainbow Trout that exist above the present Clear Springs Trout Company diversion and water falls may be a pure native genotypic race, which should be preserved. This race may be descended from steelhead trout, which had access to Box Canyon Creek prior to construction of numerous dams on the Snake and Columbia Rivers.

The public land portion of Box Canyon Creek is habitat for the Shoshone sculpin (*Cottus greenii*), a Federal candidate threatened species. The stable aquatic temperatures and chemistry support the largest known population of Shoshone sculpin on public lands, and the third largest known population in the world. Few Shoshone sculpin are known to exist upstream on private lands below the falls. No Shoshone sculpin occur naturally above the falls. The large pools upstream from the proposed diversion point are the primary habitat areas for the Shoshone sculpin. Smaller populations are found in the small pools of the stream below the proposed diversion. These populations could be impacted by water manipulations.

Shoshone sculpin (*Cottus greenii*) is a small fish which requires cold, clean water and has very specific food and cover requirements. These requirements are listed by Dr. Jack Griffith in his report to the BLM on this species. Presently, this is a Category 1 Federal candidate threatened species. According to the Boise office of the U.S. Fish and Wildlife Service, this species may not be listed as threatened within the foreseeable future.

The BLM-administered portion of Box Canyon Creek also contains populations of three Federal candidate threatened molluscs: the Bliss Rapids snail (no scientific name), giant Columbia River limpet (*Fisherola nuttalli*), and Utah Valvata Snail (*Valvata utahensis*). Each of these species occupies separate and unique habitat sites which are described in a September 1985 report by Dwight W. Taylor.

Bliss Rapids snail (not formally named) is an undescribed, monotypic genus in the Hydrobligae, is a particularly significant endemic, is approximately one millimeter in size and occupies a unique habitat on the underside of instream rocks. Flowing water seems to be required by this species. Much is unknown about the requirements of this snail because of its relatively recent discovery. This snail may be listed as threatened by the U.S. Fish and Wildlife Service in the future. Presently, this is a Category 1 Federal candidate threatened species.

Utah Valvata snail (*Valvata utahensis*) is approximately one centimeter in size and occupies the sandy sediments associated with pools or slack water. Much is unknown about the habitat needs of this species. Due to the lack of information on this species, Utah Valvata is a Category 2 Federal candidate threatened species. The large pools upstream from the proposed diversion are the only known sites within Box Canyon Creek where suitable habitat has been found and where these molluscs have been observed.

Giant Columbia River limpet (*Fisherola nuttalii*) occurs on the lower surfaces of large rocks in steady or strong current. This is a relatively small mollusc which has a streamlined shape and a large (compared to body size) muscular foot, permitting it to live where no other molluscs could live. Generally, this species occurs in large streams such as the Columbia River, however, Dr. Dwight Taylor considers the remaining habitat in Box Canyon Creek to be critical. This species is a Category 2 Federal candidate threatened species. Since live specimens have not yet been collected from Box Canyon Creek, population centers or sizes cannot be identified. It is expected that suitable habitat does occur both on public and private lands within Box Canyon Creek.

The existing Clear Springs Trout Company diversion presently prevents all aquatic migration which previously occurred from that point of diversion up to the natural waterfall (shown on Illustration 2). However, if water remains in Box Canyon Creek below the diversion, a fish ladder will be required by Idaho Department of Fish and Game in the existing structure. Although migration is naturally restricted by the upstream waterfall, a separate population of smaller trout exists above the falls.

Other aquatic invertebrates found in Box Canyon Creek include several species of aquatic insects, freshwater shrimp, several common snail species, and crayfish.

4. Animals (Terrestrial): Various species of birds use the walls of Box Canyon for nesting sites. One pair of golden eagles successfully nested in the canyon, near the existing diversion, during the spring and summer of 1976. A total of four golden eagle nests have been identified within the canyon, but these may be alternate nests used in different years. No active eagle nest sites were identified during the spring of 1977; however, in 1985 and 1986, active nest sites were observed. Other raptors nesting in the canyon include red-tailed hawks, American kestrels, prairie falcons, and owls. Other birds observed within the canyon include ravens, magpies, wrens, blackbirds, feral pigeons, and many other non-game songbird species. Game birds known to inhabit the canyon are valley quail, ring-necked pheasants, and numerous duck species.

Mule deer are the only large mammals which have been reported to utilize Box Canyon. The yellow-bellied marmot is common. Other smaller mammals present are skunks, mink, rabbits, racoon, muskrat, weasel, river otter, mice, etc. The canyon also provides a home for animals such as reptiles (including rattlesnakes and a small variety of lizards) and numerous insects.

Desert Night Snake (*Hypsiglena torquata*) has been collected in the lower portion of Box Canyon in a talus habitat. This seldom seen snake has nocturnal and crepuscular habits, which may be the reason for the low level of information about the species. The collection occurred in May 1986 and marks the first and only record of this snake in Gooding County. Since this species occupies rocky habitats and preys mostly on small lizards, the expected impacts of Right-of-Way I-2880 on the species are insignificant. This snake is an Idaho species of special concern, but because of the small amount of talus disturbance in the design of the diversion structure, the level of expected impact on the snake should be low.

C. Ecological Interrelationships

1. Succession: Except for the area disturbed by the existing water diversion and flume, Box Canyon plant and animal communities are presently at a high seral stage in ecological succession. Due to limited disturbance from fire, grazing, and human activity, the ecosystems remain diverse and complex. Additional disturbance and/or diversion of water from the natural stream channel may cause reversion in the successional process and probably result in development of different communities at the disturbed sites.

2. Community Relationships: Box Canyon contains a rather confined and isolated environment which supports a wide diversity of plants and wildlife. Except for the migration of some fish into the Snake River and the ranging of birds over the adjacent uplands in search of food, Box Canyon is essentially a self-sustaining ecosystem. The majority of life in the canyon completes its life cycle entirely within the confines of the steep cliffs, depending upon the unique environment for survival. Box Canyon contains habitat for species which probably once occurred in the Snake River. Due to the condition of the aquatic habitat in the Snake River, those species may now be confined only to Box Canyon.

The most critical interrelationship in Box Canyon is probably the dependence of most species upon the water in Box Canyon Creek itself. Both animal and

plant life would be less numerous and less diverse without this water source. The dependency of the native fish and four Federal candidate threatened species upon the high quality water is particularly obvious. The stream serves not only as an important area for spawning and rearing of sport fisheries, but also as an unpolluted refuge from the Snake River.

Prior to the construction of the existing diversion and flume in 1973, the entire canyon was preserved in a relatively pristine condition. Subsequent to construction of these structures, the migration of fish from the Snake River has been restricted to the stream below the diversion, and the flow of the lower stream has been reduced by 300 cfs. However, at least 417 cfs of the original volume of water still flows from the mouth of Box Canyon, and the majority of the living biota depending upon this water have been preserved.

D. Human Values

1. Visual Resources: The Monument Resource Management Plan rates the public land as BLM Visual Resource Class II 1/ below the rim and class IV 2/ above the rim. The diversion would be located within the class II area.

Box Canyon is a majestic, deep, true box canyon with sheer basalt canyon walls up to 200 feet high. Steep talus slopes have formed in places at the base of these vertical cliffs and in several spots they reach the water's edge. The clear water of the creek flows from beneath the sheer walls at the canyon's head and along most of the length.

Above the existing diversion, Box Canyon is in a nearly pristine condition. It is a unique area that is removed from the influence of man, except for occasional fishermen and sightseers. With the construction of the lower diversion facilities on private lands, the "primitive" values of the lower portion of the canyon have been affected, and could not easily be restored. However, in spite of the existing development, substantial scenic values still remain.

2. Socio-Cultural Interests

a. Educational - Scientific: Box Canyon contains a unique and relatively undisturbed riparian system and an essentially self-sustaining biological system which has been identified as an important potential Research Natural Area. Other values of this nature, related to the canyon as a whole, include the spring itself and the geological features of the canyon.

1/ Class II - Changes in any of the basic elements (form, line, color, texture) caused by a management activity should not be evident in the characteristic landscape. A contrast may be seen, but should not attract attention.

2/ Class IV - Contrasts may attract attention and be a dominant feature of the landscape in terms of scale; however, the change should repeat the basic elements (form, line, color, texture) inherent in the characteristic landscape.

b. Cultural - Economic/Aesthetic: Present day human values of the subject lands are conflicting. On the one hand are the scenic and recreational values which demand preservation for public enjoyment. On the other hand are the economic values of the spring water which is demanded for fish propagation, hydro- electric generation, or irrigation development through private enterprise.

c. Historical: As a geological record, Box Canyon portrays some of the history pertaining to the Bonneville Flood and initial canyon cutting by the Snake River when it was blocked upstream by a lava dam. More recent history of the canyon is relatively unknown.

d. Archaeological: Although projectile points were found on the long, narrow butte of private land between Box and Blind canyons (see Illustration 2), no archaeological values are known to exist on the lands under application for right-of-way. A survey for archaeological values was conducted for the application and a full clearance issued.

e. Recreational: The entire Box Canyon is a very attractive and interesting area to visiting recreationists. Fishing, sightseeing, and hiking are probably the most popular activities pursued in the area. Fishing is considered good in the lower portion of the stream and at its confluence with the Snake River.

Because of the high recreational values, the Idaho Department of Parks and Recreation applied to acquire the area under the provisions of the Recreation and Public Purposes Act.

f. Local Regulatory Agencies: Gooding County Planning and Zoning ordinances and regulations do not restrict any uses of public land (BLM-administered) through designation of preservation zones. Support for the proposed action in Box Canyon Creek has been expressed by the County Commissioners and area Chambers of Commerce.

3. Wilderness: Box Canyon did not qualify as a Wilderness Study Area.

III. ANALYSIS OF PROPOSED ACTION AND ALTERNATIVES

A. Environmental Impacts

1. Anticipated Impacts

a. Proposed Action: Granting right-of-way I-2880, as proposed, would allow the construction of a water diversion dam, a concrete flume, access road, and backwater pool on public lands within the Box Canyon ACEC.

1) Beneficial Impacts: Granting of right-of-way I-2880 as proposed would be consistent with the applicant's desires. The construction and operation of a new fish propagation facility would provide economic benefits to the applicant, local and state economies. The applicant estimates that his proposed facility would employ up to 100 people and have gross revenues of between 4.5 to 9 million dollars per year. Approximately 4.5 to 9 million pounds of live trout may be produced, which would convert to about 2.25 to 4.5 million pounds of processed trout. The private lands in the upper portion of Box Canyon would be preserved in its natural state and would be available for limited public use. Habitat and potential habitat for at least two of the candidate species (Valvata Utahensis and Shoshone sculpin) would be protected.

There is potential for increased or improved riparian habitat along the fringes of the pond area. This may create waterfowl nesting and resting area, songbird habitat, and support fisheries habitat within the pond.

2) Adverse Impacts: Granting of right-of-way I-2880, as proposed, would result in adverse impacts to public lands of short-term stream sedimentation, soil disturbance, loss of dryland vegetation, disruption of the stream channel, disruption of existing riparian vegetation, severe reduction of the water quantity and quality within the stream, changes in the visual character of the area, reduction in existing quality and/or diversity of riparian habitat, reduction in existing aquatic habitat and corresponding population reductions of federal candidate threatened and endangered species, i.e., Bliss Rapids Snail and Giant Columbian River Limpet, short-term disturbance to the raptors during the construction phase, loss of streamflow integrity, and severe reduction of sport fishery and its associated recreational value on public lands.

An associated adverse impact of the proposed action on adjacent public and private lands would be the significantly reduced flow of the high quality creek water into the Snake River, which would decrease the size of the clean water interface area and quality of aquatic habitat area. This could adversely affect the fisheries and substantially reduce the fishing opportunities at this location. The creek water is proposed to be returned to the Snake River after being utilized for fish propagation and hydro-electric production. Water temperature would likely be higher and it would contain organic waste from the fish propagation facility. Processing of trout, on site, could produce additional waste material.

The quality of fish habitat provided by the existing confluence of Box Canyon Creek and the Snake River would be reduced. There would be a reduction of quantity, quality, and diversity of riparian vegetation along Box Canyon Creek. The title to the private land adjacent to the public lands would be encumbered by restrictions to provide off-site mitigation for the right-of-way.

The confluence area would likely remain as a pool; however, the water quality would be severely altered, because of lowered flows, organic wastes and increased temperatures, and the clean water would be gone. Fish habitat would decrease in quality, which would likely negatively impact fishermen. There may be a change in the types and numbers of waterfowl attracted to this area which may or may not benefit sportsmen.

b. Alternative 1: No Action: Deny the Proposed Right-of-Way Application: If the application is denied, none of the impact resulting actions would occur because of construction on public lands. Certain impacts may still result, however, if the applicant follows similar development scenarios on the adjacent private lands along and within Box Canyon Creek.

1) Beneficial Impacts: No ground disturbance or dewatering of the stream and resultant impacts would occur within the public land boundaries, unless possibility 2) c) below is developed.

2) Adverse Impacts: The applicant could still impact water quality and associated resources on the public lands by developments upstream on adjacent private lands along Box Canyon Creek.

Possibilities to consider in the event the application is denied are:

a) Diversion at the mouth of Box Canyon.

b) Development in upper Box Canyon.

c) Divert water bypassing existing diversion.

d) Use other means to recover investment.

Potential beneficial or adverse impacts of these possibilities are:

a) Diversion at the Mouth of Box Canyon: Earl Hardy has water permit 36-7334 for 600 cfs with two points of diversion identified on Box Canyon Creek at the northern-most point of his private land in Lot 2 of Section 28. Refer to Illustration 6 for details of water rights associated with Box Canyon; private and public lands. These diversion points are downstream and may not directly affect public lands within the ACEC. However, on private lands, it would result in surface disturbance, disruption of the stream channel, and destruction of vegetation on the private land at the mouth of Box Canyon Creek. The relative elevation of this point and the intended location of the fish propagation facility make it unlikely that the entire streamflow would be diverted from the natural channel, thus preserving at least a minority of the existing natural fisheries. If the mouth of the stream was entirely blocked by a diversion, the streamflow and riparian vegetation on the adjacent and upstream public lands may remain intact. With a water right permit of 600 cfs the applicant could divert the entire Box Canyon streamflow. This could eliminate the potential for fish migration and affect the gene pool diversity of the migrating Biota within the stream on both private and public lands thus destroying the integrity of Box Canyon Creek.

If the entire flow of water could be diverted at the mouth of Box Canyon Creek, the elimination of a pure water supplement to the Snake River would result. If the flow were only partially diverted, this impact would be reduced. Either condition would reduce the water quality of the Snake River and may affect the plant and animal diversity of the small spring areas downriver from the mouth of Box Canyon Creek, which is part of the Box Canyon ACEC.

The impacts of construction activities upon raptors nesting in the canyon may be slightly reduced with a diversion at the mouth rather than within the canyon; however, the proximity to existing nest sites is still within some disturbance distances.

Economic investment and benefits to the local economy would be comparable to the proposed action unless the development were restricted due to less water being available. In that case, economic benefits of this possibility would be less.

Impacts to at least two and possibly all four of the federal candidate threatened species could still occur, dependent upon how much water was diverted from Box Canyon Creek, what kind of structure was placed in the creek, if a bypass was engineered into the structure to provide a continuous and stable streamflow, and what elevation was selected for the diversion location.

No minimum streamflow amount is identified and since the alternative is downstream from the public land, the BLM would have little if any input in establishing a minimum flow. Backwater pooling on public land may occur resulting in changes to habitat, which may cause aquatic and terrestrial plant diversity changes, water quality and temperature changes, and restriction of free movement of fish to and from the Snake River. BLM would require appropriate mitigation to offset environmental impacts of any backwater pooling on public land.

b) Development in Upper Box Canyon: The applicant has two water permits, 36-7175 and 36-7334, for 330 cfs and 600 cfs respectively with eight points of diversion identified on Box Canyon Creek within the NW 1/4 of Section 27 and E 1/2 NE 1/4 of Section 28, all on his private land. Refer to Illustration 6 for details of water rights associated with Box Canyon; private and public lands.

The development of facilities under this possibility is considered to create obvious and substantial disruption of the unique natural ecosystems in the canyon. Development of a road, fish propagation ponds, buildings, and other facilities would require introduction of heavy equipment operation, earth-moving, and destruction of vegetation on private land which has been essentially protected from human influence.

Identified impacts upon the existing use of Box Canyon water would include the possibility of water contamination from development activities, and the possibility of disease organisms spreading from the upstream facility to the existing Clear Springs development and public lands. Further, native fish populations, four Federal candidate threatened species, and other aquatic organisms could be adversely affected.

Probable impacts upon public lands are identified to be effects upon water quality, fisheries, four candidate threatened species, increased traffic through the mouth of the canyon, potential for increased use of public land and resultant impacts upon nesting raptors, other wildlife, recreation access across private lands to get to public lands, and visual values.

This possibility is not fully precluded by the issuance of the right-of-way as proposed. Only the upper third of Box Canyon is offered as a preservation zone leaving the middle portion (privately-owned) available for future development. A current proposal for that area is a hydro-electric project which would dewater a significant amount of Box Canyon Creek and alter the environmental condition of that portion of Box Canyon significantly. This Environmental Assessment will not analyze the Hydro-electric proposal.

Economic investment for this possibility would appear to have to be greater than the proposed action because of location and design. Benefits to the local economies would be comparable to the proposed action.

c) Divert Water Bypassing Existing Diversion: As measured in January 1986, 54.3 cfs is flowing over the Clear Springs Trout Company diversion. This flow occurs because the hydro-electric project installed at the Clear Springs Trout Company restricts the capacity of the existing flume to approximately 300 cfs. Before the project was installed, it was estimated that 350 to 360 cfs was being diverted from the natural stream channel into the flume with very little bypass allowed onto the public lands. The water right license, 36-7040, held by Clear Springs Trout Company is for 300 cfs. The applicant holds the water right next in priority, 36-7091, for another 300 cfs and this right would allow the applicant to divert the remaining water for fish propagation purposes.

Diversion of this source of water could eliminate the overflow at the Clear Springs Trout Company diversion and lower the flow through the public land of Box Canyon ACEC. While this possibility may not be a preferred option to the applicant, it cannot be precluded by the issuance of the proposed right-of-way since the existing points of diversion lie outside the area proposed as a preservation zone in the proposed action.

The anticipated environmental impacts to the public lands would be riparian and aquatic habitat resource losses due to the elimination of streamflow for a short stretch of Box Canyon Creek within the Box Canyon ACEC and a reduction of streamflow for the entire stretch of Box Canyon Creek below the existing Clear Springs Trout Company diversion.

The impacts to the private land may be surface disturbance, distruption of the stream channel, lowering of stream flow volumes and levels, continued obstruction to native fish passage and hinderance to the possibility of Clear Springs Trout Company providing an operational fish ladder past the present diversion.

d) Use Other Means to Recover Investment: The basic possibility to recover the applicants investment would be to sell, assign, trade, or dispose of the private land and water rights associated with Box Canyon.

The environmental impacts of this possibility could vary drastically, depending upon any specific program of development or preservation which resulted. If this possibility did result in substantial construction or much heavier use within the canyon, the impacts could be similar to all the possibilities discussed previously or much greater adverse environmental degradation.

c. Alternative 2: Grant the Right-of-Way and Include Specific Mitigation Measures to Accomplish Certain Levels of Environmental Protection and/or Enhancement to Assure that the objectives of the Area of Critical Environmental Concern (ACEC) Management Plan Are Met: The overall management objective for public lands in Box Canyon is to maintain or enhance the resource values critical to the ACEC and to provide direction and guidance for their protection. For specific objectives and management guidelines, refer to Exhibit B, Box Canyon ACEC Management Plan.

Alternative 2 is specificially identified as: BLM to offer applicant a right-of-way to construct a diversion dam within Box Canyon Creek, develop a backwater pool of no more than 1/2 acre and construct a concrete flume to transport creek water to adjacent private lands subject to the specifications and limitations of the following:

-- Minimum diversion bypass flow maintained on Box Canyon Creek of no less than 75 cfs at all times. Bypass flow to have priority over any diversion flows.

- Term of right-of-way to be for the useful life of the facility.

-- Monitoring studies to be conducted on the four candidate threatened species. Refer to Exhibit C Monitoring Schedule.

- Functional fish ladder installed at the diversion, design as accepted by Idaho Department of Fish and Game.

-- Fish screens installed in flume, downflow of spillway, as approved by Idaho Department of Fish and Game.

-- Water flow measurements to be taken by BLM to verify water streamflow requirements. Refer to Exhibit C Monitoring Schedule.

-- Proper visual screening at Holder's expense of the diversion dam and flume to maintain the VRM classification. Refer to Stipulations, Terms and Conditions Exhibit D.

-- Acceptance of applicants proposal to preserve the upper portion of Box Canyon, all private land from 100 feet below water falls in NW 1/4 section 27 upstream to head of canyon in its natural state and be open to public use and also allow public access from the river across private land at the mouth of Box Canyon Creek with restrictions on water use and development potential in that area. Refer to Exhibit D for details of restrictions on the area at the mouth of Box Canyon Creek.

-- Annual payment, in advance, of a fair market right-of-way rental.

-- Applicant to allow BLM administrative access for official business across private lands between the existing County Road to public lands.

-- Maintain habitat conditions adequate to support acceptable population levels of the four candidate threatened species on public lands.

-- All other terms and conditions identified in Exhibit D.

The anticipated environmental impacts for Alternative 2 are:

(1) Beneficial Impacts: The construction and operation of a new fish propagation facility would provide economic benefits to the applicant and local and State economies. The level of benefit may be lower than under the proposed action because of the increased bypass flow volume of 75 cfs instead of 20 cfs as proposed. The minimum streamflow of 75 cfs would allow approximately 257 cfs for fish propagation. This would result in a smaller facility and less live trout produced and lower income generated.

The stream below the proposed diversion will not be lowered or blocked that survival of the existing aquatic species would be in serious question. The integrity of the stream would remain intact. The 75 cfs plus the measured inflow of 87 cfs throughout the area between the diversion and the mouth would total 162 cfs which is about 39 percent of the January 1986 measured flow of 417 cfs.However, some reduction and possible loss of *Fisherola nuttalli* and Bliss Rapids snails on public lands may occur. Minimum water volumes would remain in the stream to maintain riparian areas and habitat for the candidate threatened species, trout, and other aquatic species.

The visual resource would be disturbed with onset of construction, but will be mitigated through rehabilitation. The planting of vegetation species to provide screening may actually improve the overall condition of any previously disturbed areas, and provide shelter and food sources not currently available for the resident and transient wildlife that use the area.

The preservation of the upper canyon area in its natural state with restricted development would be beneficial to the public who would have physical access to travel on the established foot trail from the rim to the water fall within the Canyon and also to view the Canyon from the rim.

(2) Adverse Impacts: At the construction site, there would be temporary soil disturbance and associated loss of terrestrial vegetation, disruption of the stream channel, destruction of riparian vegetation, reduction of the water volume within the stream, a possible change of water quality within the stream because of siltation and volume decrease, and changes in the visual character of the a[illegible] Within the creek downstream of the diversion, there would be reduction in wetted area affecting riparian habitat, reduction or loss of native or natural sport fisheries, a possible reduction in existing aquatic habitat and corresponding populations of Federal candidate threatened species, increase in siltation of the streambed, and possible disturbance to nesting raptors during the construction ph[illegible] The concrete flume may present a physical barrier to some terrestrial wildlife species, which would normally move through the lower portion of Box Canyon.

2. Possible Mitigating or Enhancing Measures

a. Proposed Action

(1) Construction Restrictions: Although the proposed diversion could not be constructed without surface disturbance, the degree of disturbance could be minimized by exercising care when operating heavy equipment and during actual construction of the proposed diversion and flume.

Not allowing construction activity during periods before June 1 of each year when raptors are nesting would minimize the impacts upon nesting eagles, falcons, and/or other birds within the canyon and reduce impacts on spawning trout and Shoshone Sculpin. Prevention of petroleum products or other pollutants from entering the stream would minimize additional impacts upon the fish, aquatic organisms, and four candidate species.

Requiring instream placement of habitat rocks above and below the diversion structure to aid in creating or maintaining aquatic habitat quality and quantity for the sport fisheries and candidate threatened species.

(2) Minimum Streamflow Maintenance: Requiring a minimum streamflow past the proposed diversion would preserve a portion of the existing recreation, fisheries, and candidate species values, and partially maintain the purifying effect of clear water recharge to the Snake River at the mouth of Box Canyon Creek. The impacts of the diversion, environmental conditions, populations of the candidate species within the area, and the economics of the proposed fish propagation facility would relate directly to the quantity of streamflow maintained as bypass.

The applicant has offered 20 cfs as a minimum streamflow. This amount is considered inadequate to maintain the aquatic and riparian resources that exist within Box Canyon. To mitigate the potential loss of resources the minimum streamflow offered would need to be increased significantly. The stream recharge by springs from a point 95 feet upstream from the proposed point of diversion to the mouth of Box Canyon Creek is 95 cfs. The recharge flow between the point of diversion and mouth of the stream is estimated at 87 cfs.

Although methods of measurement used were the most accurate available, no data exists to show beyond a shadow of a doubt that the estimated 87 cfs inflow between the proposed diversion and the mouth of Box Canyon Creek is evenly distributed or lumped in two or three locations. However, all evidence and professional opinion of a hydrologist indicates that it is more uniformly distributed than not. The total flow of the proposed 20 cfs bypass and 87 cfs inflow would be 107 cfs at the mouth of Box Canyon Creek.

Fisheries biologists recognize 30 percent of average streamflow as a rule-of-thumb for minimum wetted area maintenance. The proposed bypass of 20 cfs would be approximately 6 percent of the estimated 332 cfs flow at the point of proposed diversion and only 4.8 percent of the 417 cfs flow of Box Canyon Creek at the mouth. The proposed bypass of 20 cfs would be 2.8 percent of the original Box Canyon streamflow estimated at 720 cfs prior to diversion of the 300 cfs licensed to Clear Springs Trout Company. Twenty cfs would be difficult to maintain and may fluctuate as a result of variation in available

streamflow unless the diversion design gives priority to the bypass flow. The offered minimum bypass of 20 cfs plus the estimated recharge of 87 cfs would total 107 cfs or 25.7 percent of the 417 cfs flow measured at the mouth of Box Canyon Creek. This 107 cfs is 14.8% of the original streamflow. This is less than the recommended flow of 30 percent for minimum streamflow maintenance and would be considered inadequate.

Another factor which relates to any consideration of minimum streamflows is the possibility of additional water diversion by other parties in the future. As shown in Table I of this report, there are many other approved water permits for the water in Box Canyon. Most significantly, the one filed by Mountain View Irrigation Company, 36-2705, precedes both the applicants permits, 36-7091 and 36-7334, and the one presently licensed to Clear Springs Trout Company 36-7040. If Mountain View's permit for 200 cfs were ever licensed, it could drastically affect the applicant's proposed development and Clear Springs Trout Company's fish development.

(3) Native Fish Screening and Migration: In order to prevent native fish from entering the proposed fish propagation facility the proposed flume could be equipped with screens made of mesh sufficiently small to prevent the passage of fish. Fish ladders should be installed to provide for native fish migration through the natural stream channel.

(4) Offsite Mitigation: Probably the most important and complex mitigating measure considered in regard to the proposed diversion, is the possibility of allowing the right-of-way with an arrangement which would preserve the unique natural values on Mr. Hardy's private land in the upper canyon. The Idaho Natural Areas Coordinating Committee is strongly in favor of this approach, since they recommended that the upper canyon be designated as a research natural area. This would involve preservation of the values in the upper canyon, which has been described as a scientific jewel of great present and potential value to Idaho.

The Idaho Department of Fish and Game has indicated that the quality fishery in the lower canyon and the pure water flowing from Box Canyon into the confluence with the Snake River represent public values which are important to the general public as well as the private land in the upper canyon.

The Idaho Department of Parks and Recreation has indicated that the public land does provide an excellent recreation resource for fishing and other water-oriented activities. Furthermore, the agency has stated that the proposed right-of-way for a diversion on the public land is not in direct conflict with their own proposals for recreational development.

b. Alternative 1: No Action: Deny The Proposed Action: The possible mitigating or enhancing measure associated with this alternative would be to initiate a defensive stance of alerting the BLM Idaho State Office and field solicitor to pursue possible legal action against the applicant for any actions which would adversely affect the Federal candidate threatened species that exist within public lands.

Possible mitigating or enhancing measures for the identified possibilities that the applicant may choose to pursue are:

(1) Diversion At The Mouth of Box Canyon: Basically all of the mitigating measures discussed for the proposed action would also be possible if the diversion were constructed on private land at the mouth of Box Canyon. However, since the land at the mouth is owned by Earl Hardy, he would not have to abide by the conditions which might otherwise be stipulated by BLM. The impacts may be inherently mitigated to some degree by the location of the diversion site in relation to the proposed fish propagation site since the entire amount of stream water may not be used without pumping, because of the lower diversion elevation. Consequently, some water may be expected to remain in the natural channel partially preserving the public values it presently provides. If pumping was feasible however, a reasonable assumption could be made that no stream water would be bypassed from a diversion and the streamflow connection with the Snake River and Box Canyon Creek would be permanently severed.

(2) Development in the Upper Canyon: It would be practically impossible to substantially mitigate the major adverse impacts of this alternative. Of course, care could be taken to minimize surface disruption, and development of facilities could be confined to the smallest areas that would be feasible. Development of the upper canyon may not be mitigated to substantially reduce the adverse impacts upon the unique values which make the area a prime candidate to become a Research Natural Area. Since private land is involved, BLM has no means to require mitigating measures under this possibility except by legal action.

(3) Divert Water Bypassing Existing Diversion: The impacts of this possibility and potential mitigating measures are limited. If all the available water is diverted at the existing diversion, there would be no feasible way to provide for passage of native fish past the diversion site. As pointed out earlier, native fish cannot migrate past the existing diversion at the present time. A base for a fish ladder has been provided in the existing structure. The Idaho Fish and Game Department has initiated action to require the Clear Springs Trout Company to provide for native fish passage around the existing diversion.

(4) Use Other Means to Recover Investment: Mitigating measures for this possibility would need to be selected specifically for the program of development or preservation which was chosen. If the recovery of investment involved intensive construction and development within the upper canyon, the mitigating measures could be basically similar to those for Number 2 possibility. That is, surface disturbance could be minimized, structures could be limited in number and located to reduce adverse impacts, and pollution sources could be treated or prevented from contaminating the natural water flow. As mentioned, however, BLM would not have any identified means other than legal action to control what mitigating measures would be employed if this possibility were selected.

c. Alternative 2: Grant the Right-of-Way and Include Specific Mitigation Measures to Accomplish Certain Levls of Environmental Protection and/or Enhancement to Assure the Objectives of the ACEC Management Plan Are Met:

(1) Construction Restrictions: Although the proposed diversion could not be constructed without surface disturbance, the degree of

disturbance could be minimized by exercising care when operating heavy equipment and during actual construction of the proposed diversion and flume. It may be possible to essentially restrict surface disturbance to the areas occupied by the diversion and flume.

Not allowing construction activity during periods before June 1 of each year when raptors are nesting would help minimize the impact upon eagles, falcons, and/or other birds within the canyon as well as preventing disturbance to spawning trout. Prevention of oil, fuels, or other pollutants from entering the stream during construction activity would minimize additional impacts upon the fish, aquatic organisms, and four Federal candidate threatened species.

BLM compliance personnel would be available for on-site inspection during all phases of construction and rehabilitation to ensure proper adherence to the right-of-way terms and conditions.

(2) Minimum Streamflow Maintenance: Requiring an adequate minimum streamflow past the proposed diversion would preserve a major portion of the existing recreation, fisheries, riparian, and candidate threatened species values, and partially maintain the purifying effect of the pool of clear water presently being added to the Snake River at the mouth of Box Canyon. The impacts to the habitat, populations of the candidate species, and the economics of the proposed fish propagation facility are directly proportioned to the minimum bypass streamflow established.

BLM would consider 75 cfs minimum streamflow bypass at the proposed diversion and the 87 cfs inflow from springs upwelling in approximately 800 feet of stream channel between the proposed diversion and mouth of Box Canyon/Snake River confluence as adequate to maintain the habitat and populations of the sport fish and Federal candidate threatened species.

Assuming that the 87 cfs inflow is evenly distributed, the streamflow increases in volume as linear progression occurs. At the diversion the flow would be 75 cfs. At 100 feet downstream of the diversion the flow should be 75 cfs plus 10.8 cfs to equal 85.8 cfs. The flow should continue to increase until reaching 162 cfs at the mouth of Box Canyon Creek.

Fisheries biologists recognize that approximately 30 percent of average streamflow as a rule-of-thumb for minimum wetted area maintenance. The 75 cfs bypass would be approximately 23.3 percent of the estimated 332 cfs flow at the point of proposed diversion and 18 percent of the 417 cfs flow of Box Canyon Creek at the mouth. Seventy-five cfs minimum bypass would be maintainable because of required diversion design changes which would make the bypass flow a priority over diversion flow.

The 75 cfs minimum bypass plus the estimated recharge of 87 cfs would total 162 cfs or 38.8 percent of the 417 cfs flow measured at the mouth of Box Canyon Creek. This is greater than the recommended flow of 30 percent for minimum streamflow maintenance and would be considered adequate. There is a portion of the stream below the proposed diversion that would have less than 30 percent of flow but this would exist only within the first 200 feet downtream of the diversion.

No actions should be taken on the part of the applicant to increase or decrease water levels, temperature, quality, and/or flow velocity within the natural sculpin pool upstream of the authorized impoundment pool. This should apply only from the Clear Springs Trout Company Diversion to the mouth of Box Canyon Creek.

(3) Native Fish Screening: In order to prevent native fish from entering the proposed fish propagation facility the proposed diversion could be equiped with screens made of mesh sufficiently small to prevent the passage of fish.

(4) Offsite Mitigation: Probably the most important and complex mitigating measure considered in regards to the proposed diversion, is the possibility of allowing the right-of-way with an arrangement which would preserve the unique natural resources and values on the applicant's private land in the upper canyon. This action would provide for preservation and limited public access to the headwaters of Box Canyon Creek and to 100 feet below the major water falls in section 27.

Preservation of this area from unrestricted development will prevent serious environmental impacts to the identified four federal candidate threatened species that exist within the public lands and speculated to exist within the private lands.

3. Recommendations for Mitigation or Enhancement

a. Proposed Action: The possible mitigating or enhancing measures identified in Section III.A.2.a. (Pg. 17) should be implemented. These measures are summarized as:

-- All construction activity will be done from June 1 to the end of the year.

-- Establish a minimum streamflow of 75 cfs.

-- Screen flume to restrict native fish access.

-- Prevent diversion of any by-pass flow at the proposed diversion and mouth of Box Canyon Creek.

-- Provide operational fish ladder.

-- Prevent diversion of present by-pass flow at the Clear Springs Trout Company Diversion.

-- Establish a preservation zone on private land in the upper portion of Box Canyon and restrict use and development of private land at the mouth of Box Canyon Creek.

-- Dumping or disposal of pollutants into Box Canyon Creek or on public lands would be prohibited.

-- Allow controlled surface disturbance only on those areas which will be occupied by the diversion, flume, access road, and pool.

b. Alternative 1: No Action: Deny the Proposed Action: If BLM denies the proposed action, the applicant would be expected to pursue one or more of the four possibilities identified in section III.A.2.b. (Pg. 20). Because of the anticipated impacts on the ACEC's resource values and four federal candidate threatened species habitat, the BLM field solicitor and Idaho State Office would need to initiate a defensive legal stance to curtail or stop all construction activity that would appear to adversely affect public lands and the resources within the ACEC.

c. Alternative 2: Grant the Right-of-Way and Include Specific Mitigation Measures to Accomplish Certain Levels of Environmental Protection and/or Enhancement to Assure the Objectives of the ACEC Management Plan Are Met: The possible mitigating or enhancing measures identified in Section III.A.2.c. (Pg. 21) should be implemented. These measures are summarized as:

-- All construction activity will be done from June 1 to the end of the year.

-- Establish a minimum streamflow of 75 cfs with priority flow over the diverted flow.

-- Screen flume from native fish entrance.

-- Prevent diversion of present by-pass flow at the Clear Springs Trout Company Diversion.

-- Provide operational fish ladder.

-- Recognize a preservation zone on private land in the upper portion of Box Canyon as approved by the Bureau of Land Management and restrict use of water and potential development at the area from the proposed diversion to the mouth of Box Canyon Creek.

-- Dumping or disposal of pollutants into Box Canyon Creek or on public lands would be prohibited.

-- Allow surface disturbance only on those areas which will be occupied by the diversion, flume, access road, and pool.

-- Terms and conditions identified on Exhibit D.

4. Residual Impacts

a. Proposed Action: If the mitigating measures identified in Section III.A.3.a. (Pg. 23) are implemented as part of the proposed action, the following accumulative residual impacts are expected to result. The proposal would be considered unacceptable because the ACEC management objectives would not be met.

-- Surface disturbance and vegetative destruction on the area occupied by the water diversion and conveyance facilities, including a small area of the streambed of Box Canyon Creek.

-- Reduction of the streamflow below the diversion to 20 cfs would proportionately reduce the existing fisheries value in the lower stream, reduce the waterfowl and fisheries value of the clear water pool at the confluence with the Snake River, reduce the riparian vegetation which is presently growing on the banks of Box Canyon Creek, reduce the habitat and populations of the four Federal candidate threatened species that exist within the public lands of the ACEC, and reduce recreation values. The applicant has stated that he would not alter the proposal to offer 75 cfs by-pass flow.

-- Economic benefits would be produced by the construction and operation of the fish propagation facility which could be developed with the water from Box Canyon Creek.

-- As much as 9 million pounds of edible processed trout may be produced each year.

-- The ACEC Management Plan objectives and goals would not be met nor would the critical elements of the ACEC area be protected because adverse and irreparable damage would occur to the key resources that resulted in the establishment of the ACEC.

-- Negative impact on the sport fishery migrating from Box Canyon Creek to Snake River and back.

b. Alternative 1: No Action: Deny the Proposed Action: If the mitigating measures identified in Section III.A.3.b. (Pg. 23) are implemented as part of Alternative 1, the following residual impacts would still be expected to result:

-- A legal dispute between the applicant and BLM over property rights of landowners and adjacent landowners. The courts would probably decide the issue after a lengthy process.

-- The applicant would pursue one or more of the four possibilities identified in Section III.A.2.b. (Pg. 19), before, during, or after the legal dispute arose or was settled.

c. Alternative 2: Grant the Right-of-Way and Include Specific Mitigation Measures to Accomplish Certain Levels of Environmental Protection and/or Enhancement to Assure the Objectives of the ACEC Management Plan Are Met: If the mitigating measures identified in Section III.a.3.c. (Pg. 23) are implemented as part of Alternative 2, the following residual impacts would still be expected:

-- Surface disturbance and vegetative destruction on at least the area occupied by the water diversion and conveyance facilities, including a small area of the streambed of Box Canyon Creek.

-- Reduction of the waterflow directly below the diversion to 75 cfs creating a reduction in the existing aquatic habitat. This reduction would be offset downstream of the diversion by the gradual inflow of 87 cfs to upgrade the potential adverse impact to an acceptable level with

no irreversible consequences. Only a 200-foot portion of the streambed on public land would be lowered to below the minimum stream quality maintenance guideline of 30%; however, the combined overall changes would not be considered adverse or significant.

-- A portion of the recreational values on public lands would be lost. Recreational values on private lands may be gained by the general public.

-- Loss of genetic quality of native salmonids.

-- Economic benefits would be produced by the construction and operation of the fish propagation facility which could be developed with water from Box Canyon Creek.

-- Less than 9 million pounds of trout may be produced each year at this facility.

-- The ACEC Management Plan objectives would be met and the critical elements of the ACEC area protected by establishing an adequate minimum streamflow, restricting water and land development at the present Clear Springs Trout company diversion and area from the proposed diversion to the mouth of Box Canyon Creek, and by preserving the upper portion of Box Canyon in its natural state.

-- The key resources that helped establish the ACEC would not be irreparably damaged nor would the action in Alternative 2 be considered adverse.

B. Relationship Between Short-term Use and Long-term Productivity

1. Short-Term: The short-term use of the proposal or Alternative 2, under which BLM may grant the right-of-way with special conditions, etc. would consist of the actual construction and installation of the water diversion, flume, access road and pool, and dewatering of the stream. The short-term use could have an immediate effect on the resources and key elements of the ACEC area. Depending on what is allowed to take place, the short-term use could be adequately and successfully mitigated to reduce the short-term adverse impacts to an acceptable minimum level.

The short-term use of Alternative 1, denying the proposed action, would be no construction or dewatering of the public lands. However, legal action restricting use of adjacent private lands would need to occur. If this procedure failed to control the potential adverse possibilities, serious detrimental short-term impacts to the resources and key elements of the ACEC public lands could occur.

2. Long-Term: The long-term productivity of the proposed action would center around trout production and economic values. The development of the fish propagation facility would increase productivity by as much as 9 million pounds of live fish per year. The long-term economic value effect would be to increase local employment in the general area for as long as the fish propagation facility was in business.

In terms of native fisheries, natural vegetation, public recreation, and Federal candidate threatened species habitat and populations, the proposed action would reduce these values in proportion to the amount of water removed from the natural channel which would be detrimental and adverse to the natural alcove system and also the management objectives and goals of the ACEC plan and therefore be an unacceptable long-term result of the proposed action.

The long-term productivity of Alternative 1 would depend directly on the applicant and his decision to pursue one or more of the identified possibilities or modifications of such to develop his private lands adjacent to the ACEC public lands. Because of the potential legal differences of opinion concerning the exploitation or preservation of resources and key elements identified in the public land ACEC Management Plan, productivity may fluctuate widely dependent upon final legal decisions.

The long-term productivity of Alternative 2 would help conserve the resources and key elements not only on the public lands, but also on the private lands in Box Canyon, thus preserving a portion of a unique fresh water alcove system. This system is one of the last relatively undeveloped natural springs that exist within the Snake River drainage system. Alternative 2 would also allow development of a fish propagation facility on private lands to the south which would boost the local economy through jobs and products.

C. Irreversible and Irretrievable Commitment of Resources

It is conceivable, but not very likely, that after the water is diverted it could someday be returned to the natural stream channel. Since the water would probably be needed indefinitely once a fish propagation operation were started, the commitment of the water would be essentially irreversible. Even if the water could be returned to the natural stream channel, restoration of the existing ecosystem and the appearance of the area, if possible, could take years.

Likewise, the values dependent upon the presence of the water in the natural channel, such as the native fisheries, riparian vegetation, Federal candidate threatened species, and public recreation would be essentially irretrievable to the extent that they would be reduced. However, as long as these values were not eliminated, they could redevelop to original resource values and populations under favorable conditions.

There would be some loss of resources within the public land ACEC area. When the entire ecosystem of Box Canyon is taken into consideration, from a holistic approach, the values of the ACEC would not be irreparably damaged, but instead, enhanced by establishing and monitoring an adequate minimum streamflow of 75 cfs, restricting water and land development at the present Clear Springs Trout Company diversion and area from the proposed diversion to the mouth of Box Canyon Creek, and preserving the upper portion of Box Canyon in its natural state and rehabilitating any disturbed areas to vegetative species that would improve the area.

IV. PERSONS, GROUPS, AND GOVERNMENT AGENCIES CONSULTED

Idaho Department of Health and Welfare - Division of Environment
Idaho Department of Fish and Game
Idaho Department of Lands
Idaho Department of Parks and Recreation
Idaho Department of Water Resources
Mr. George Lemmon
Mr. Earl Hardy
Gooding County Commissioners
U.S. Fish and Wildlife Service
Dr. Peter Bowler
Gooding County Planning and Zoning Commission
Dr. Dwight Taylor
Dr. Jack Griffith
Idaho Natural Heritage Program
National Park Service
Birds of Prey Natural Area Staff
Big Wood Canal Company/American Falls Reservoir Districxt No. 2,

The general public was contacted through public meetings, local news media, and through established mailing lists. Written comments are on file at the Shoshone District Office.

V. INTENSITY OF PUBLIC INTEREST

The intensity of public interest is considered high. The management and use of the entire Box Canyon area has created a long-term response from the public as well as from organized groups representing industry, environmental concerns, and academia.

Following the development of the Clear Springs Trout Company's diversion and flume in Box Canyon, the intensity of widespread interest in the outcome of the proposed right-of-way subsided to a few individuals, groups, and agencies.

Although a segment of the public may oppose whatever action BLM might take, the majority of the public are not expected to have any strong reaction.

VI. PARTICIPATING STAFF

Robert Cordell - Bennett Hills Area Manager
Steve Langenstein - Wildlife Biologist
Joe Aitken - Realty Specialist
Bob Moline - Supervisory Range Technician
Larry Mangan - District Wildlife Biologist
John Lytle - District Archaeologist
John Husband - District Planning and Environmental Coordinator
Jon Idso - District Manager
Harold Brown - District Realty Specialist
Bill Harris - District Watershed Specialist

VII. SUMMARY CONCLUSION

The basic issue is to approve or deny a water diversion right-of-way application on public lands in the Box Canyon Area of Critical Environmental Concern.

An upstream diversion already exists on private land removing 300 cfs legally from the total stream flow leaving approximately 417 cfs at the mouth of Box Canyon Creek and 322 cfs at a point 95 feet upstream from the proposed diversion point with extrapolation of an increase of 10 cfs downstream at the proposed point of diversion for a total of 332 cfs available flow.

There are special concerns regarding federal candidate threatened aquatic species and visual and recreation resources which were identified in the Monument Resource Management Plan and Box Canyon Area of Critical Environmental Concern (ACEC) Management Plan.

The proposed Action would not meet or exceed these special concerns and therefore would be considered an adverse action and not in conformance with BLM planning decisions.

Alternative 1 No Action, denying the proposed action would allow the public lands to remain undisturbed, however, the off-site development possibilities could severely impact the existing resources on public lands to such an extent that radical alterations in the environment may occur destroying the very resources the ACEC Plan was designed to protect. Only, aggressive legal action would stop or postpone such destructive activities.

Alternative 2, granting the right-of-way and including specific mitigation measures to accomplish certain levels of environmental protection and/or enhancement to assure the objectives of the ACEC Management Plan are met would limit the adverse impacts, protect a unique alcove fresh water system, and allow for a reduced level of development with a high level of preservation of the resources identified by the ACEC Management Plan.

VIII. ILLUSTRATIONS

1. Location Map
2. Site Map
3. Proposed Right-of-Way Map
4. Photos of Four Federal Candidate Threatened Species
5. Photos of Box Canyon
6. Water Right Information

Illustration #1
Box Canyon Location Map

BUHL QUADRANGLE
IDAHO
15 MINUTE SERIES (TOPOGRAPHIC)

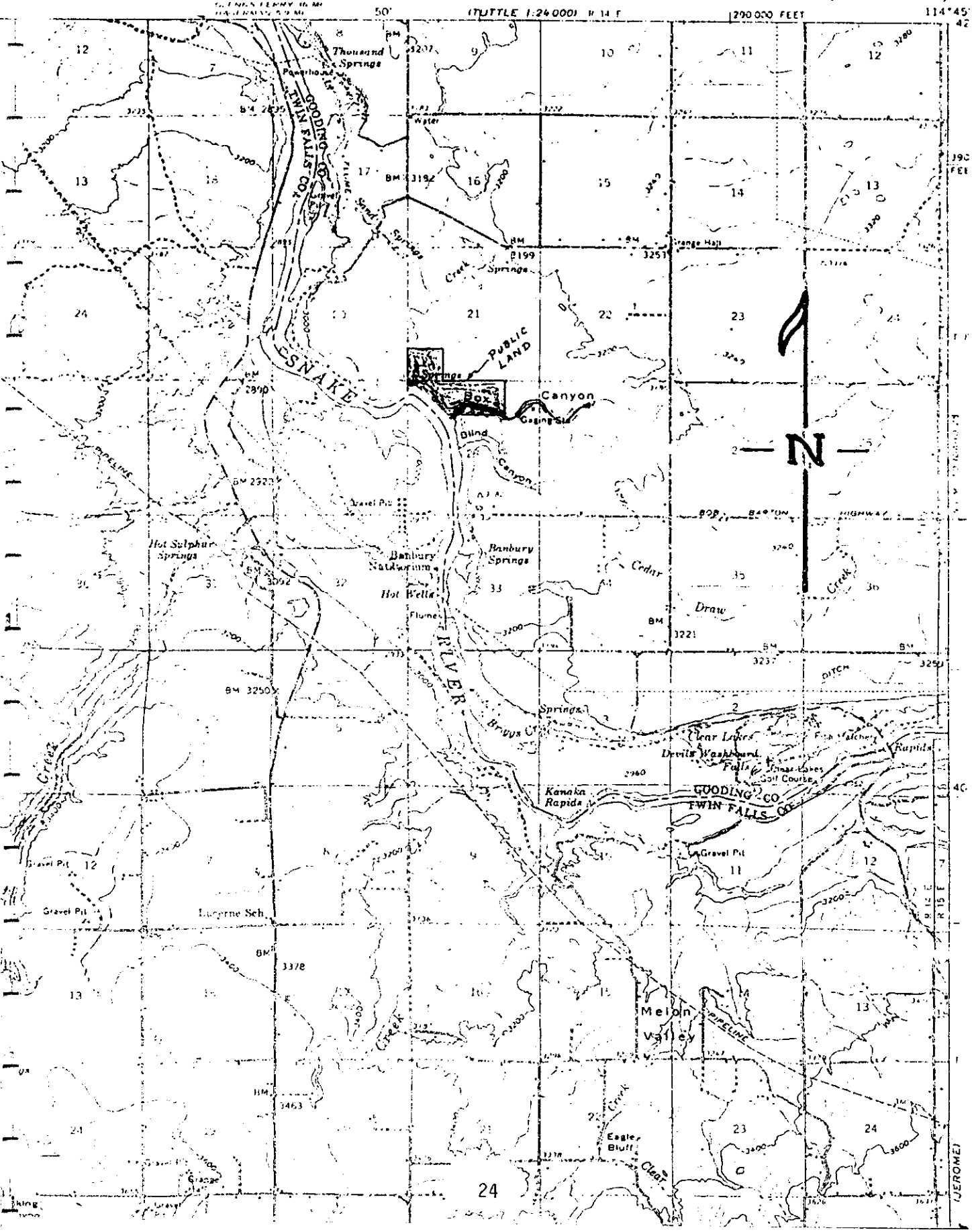
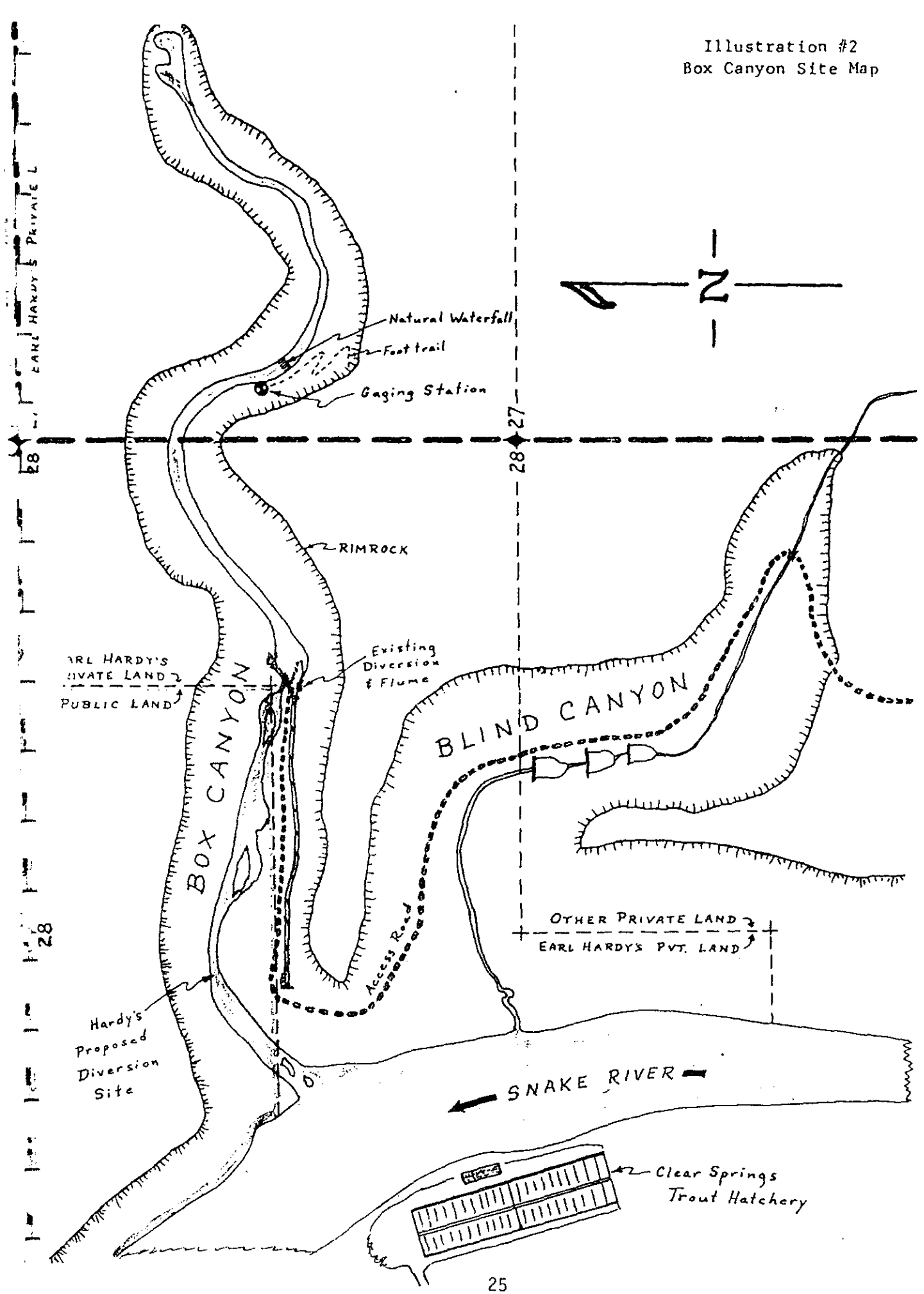
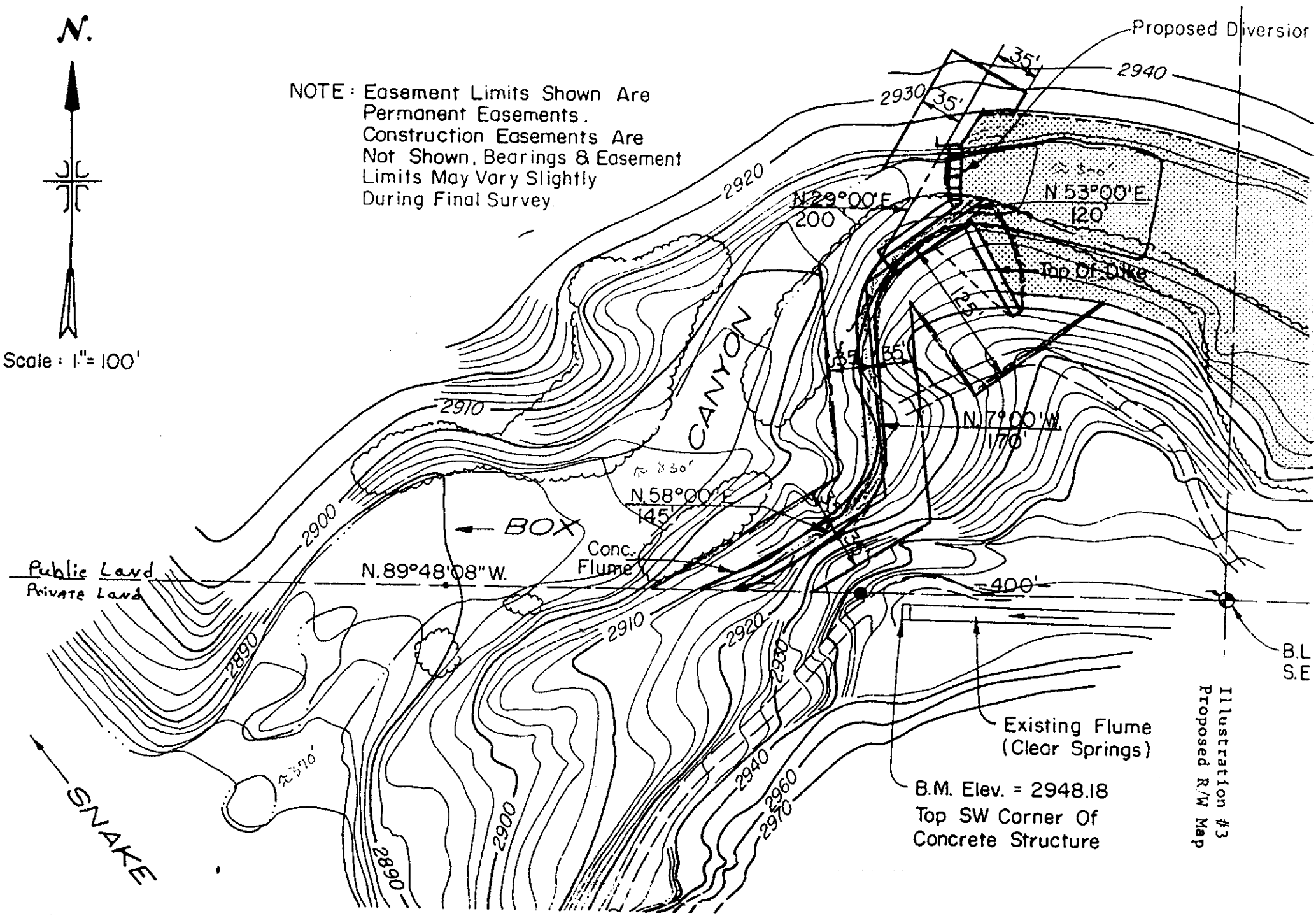
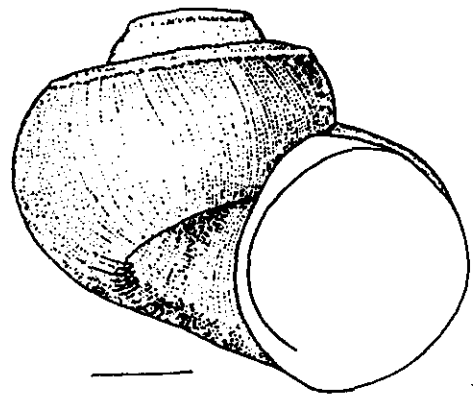


Illustration #2
Box Canyon Site Map




N.
Scale : 1"= 100'
NOTE : Easement Limits Shown Are Permanent Easements. Construction Easements Are Not Shown. Bearings & Easement Limits May Vary Slightly During Final Survey.
Proposed Diversion
35'
2940
2930
2920
N 29°00'E
200
N 53°00'E
120
Top Of Dike
2910
CANYON
N. 7°00'W.
170'
N.58°00'E
145'
BOX
Conc. Flume
Public Land
Private Land
N.89°48'08"W.
400'
2900
2890
2910
2920
2930
2940
2960
2970
2900
2890
SNAKE
B.L
S.E
Existing Flume
(Clear Springs)
B.M. Elev. = 2948.18
Top SW Corner Of
Concrete Structure
Illustration #3
Proposed R/W Map



Scale 1 mm

Drawing of Valvata utahensis by D.W. Taylor. From:
Taylor, D.W. August 13, 1982. Status Report on the Utah Valvata Snail in South-Western Idaho. Unpublished status review for the U.S. Fish and Wildlife Service

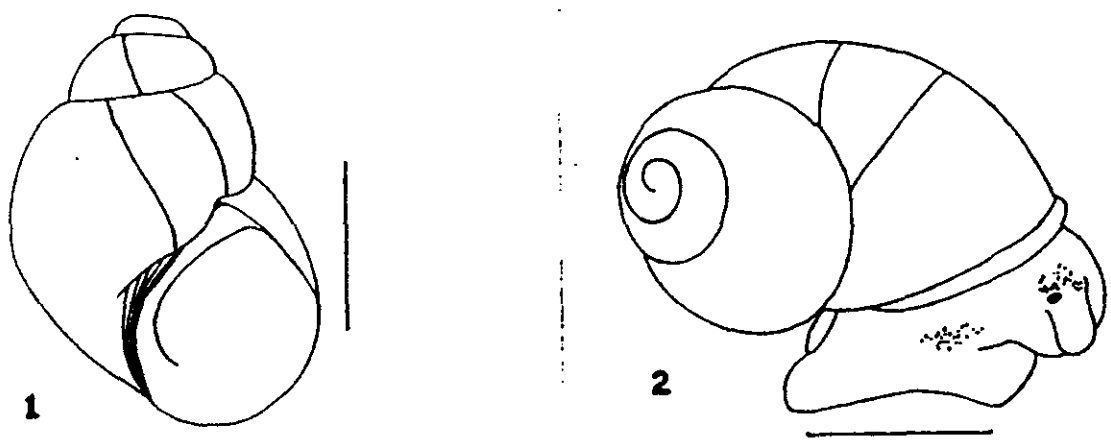


Figure 1. Shell of Bliss Rapids Snail. Scale 1 mm.

Drawing of the Bliss Rapids Snail by D.W. Taylor. From:
Taylor, D.W. August 13, 1982. Status Report on Bliss Rapids Snail. Unpublished status review for the U.S. Fish and Wildlife Service.

Illustration #4 Four Federal Candidate Threatened Species

a) , D.W. 1985. Evolution
f Freshwater Drainages and
lluscs in Western North
erica. Pages 265-321 in
Smiley, C.J. (Ed.) Late Cenozoic
story of the Pacific Northwest.
cific Division AAAS and California
Academy of Sciences, San Francisco,
alifornia.

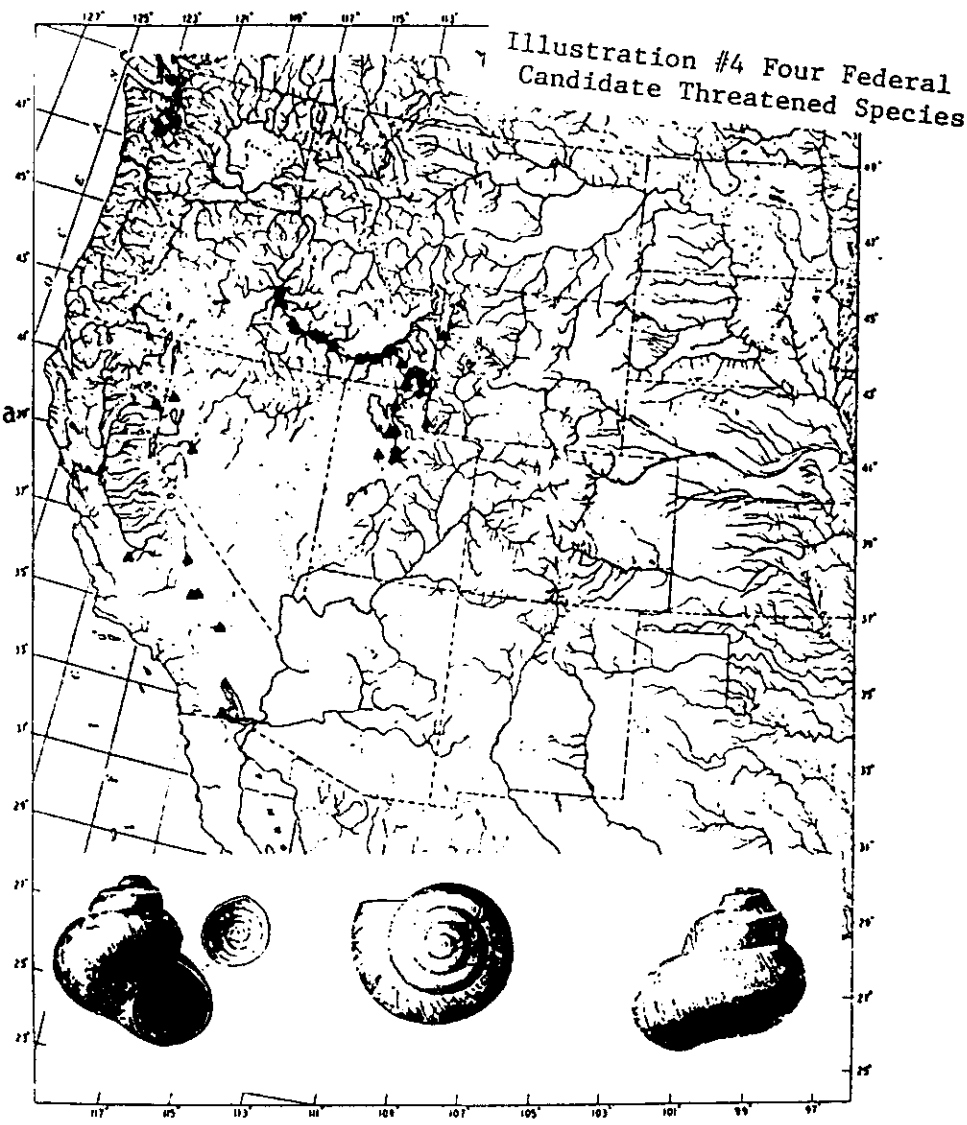


Figure 16. Distribution of freshwater snail *Valvata utahensis* Call (family Valvatidae). Solic dots, modern; triangles, fossil. Inset: original illustrations of the species, from Call (1884).

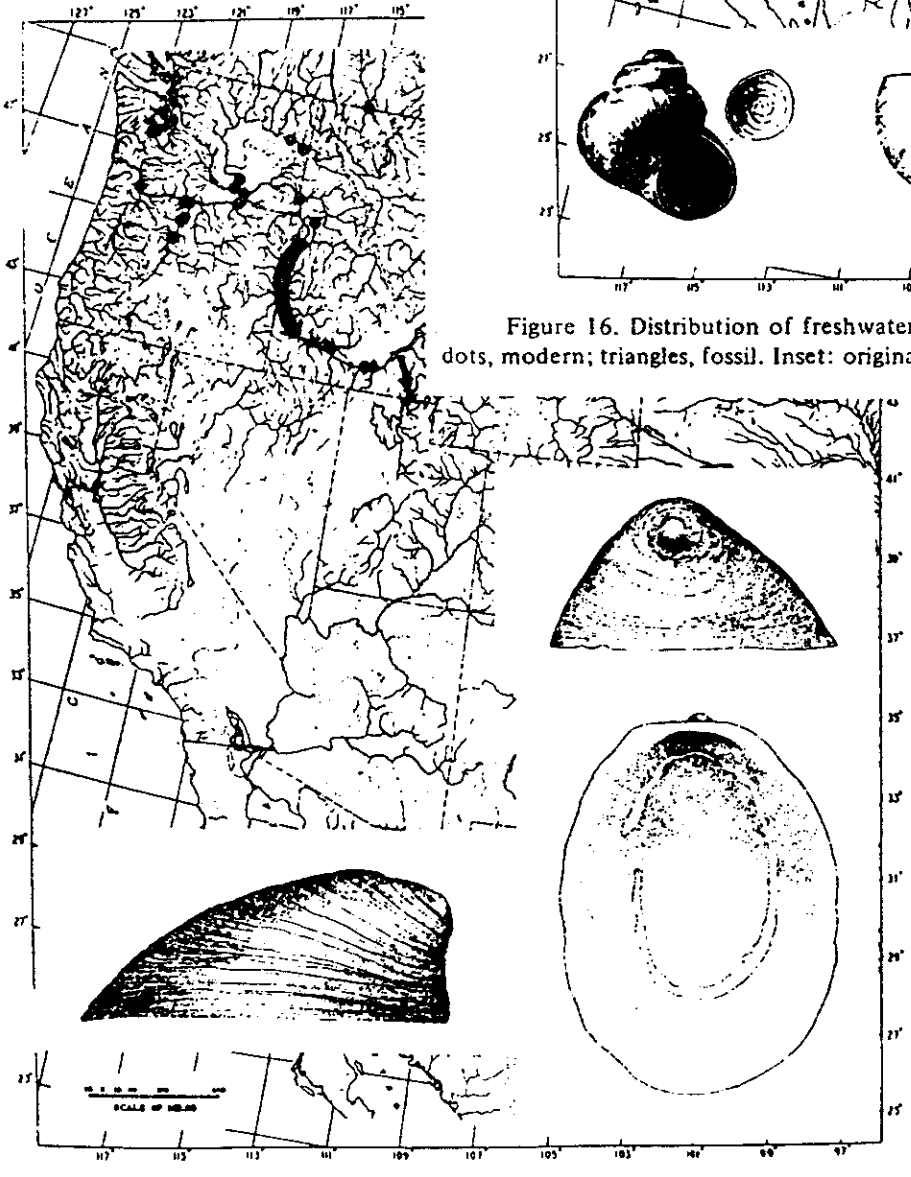


Figure 36. Distribution of freshwater snail *Fisherola nuttalli* (Haldeman) (family Lancidae). dots, modern; triangles, fossil. Arrows show inferred upstream spread after cutting of Hells

Illustration #4 Four Federal
Candidate Threatened Species

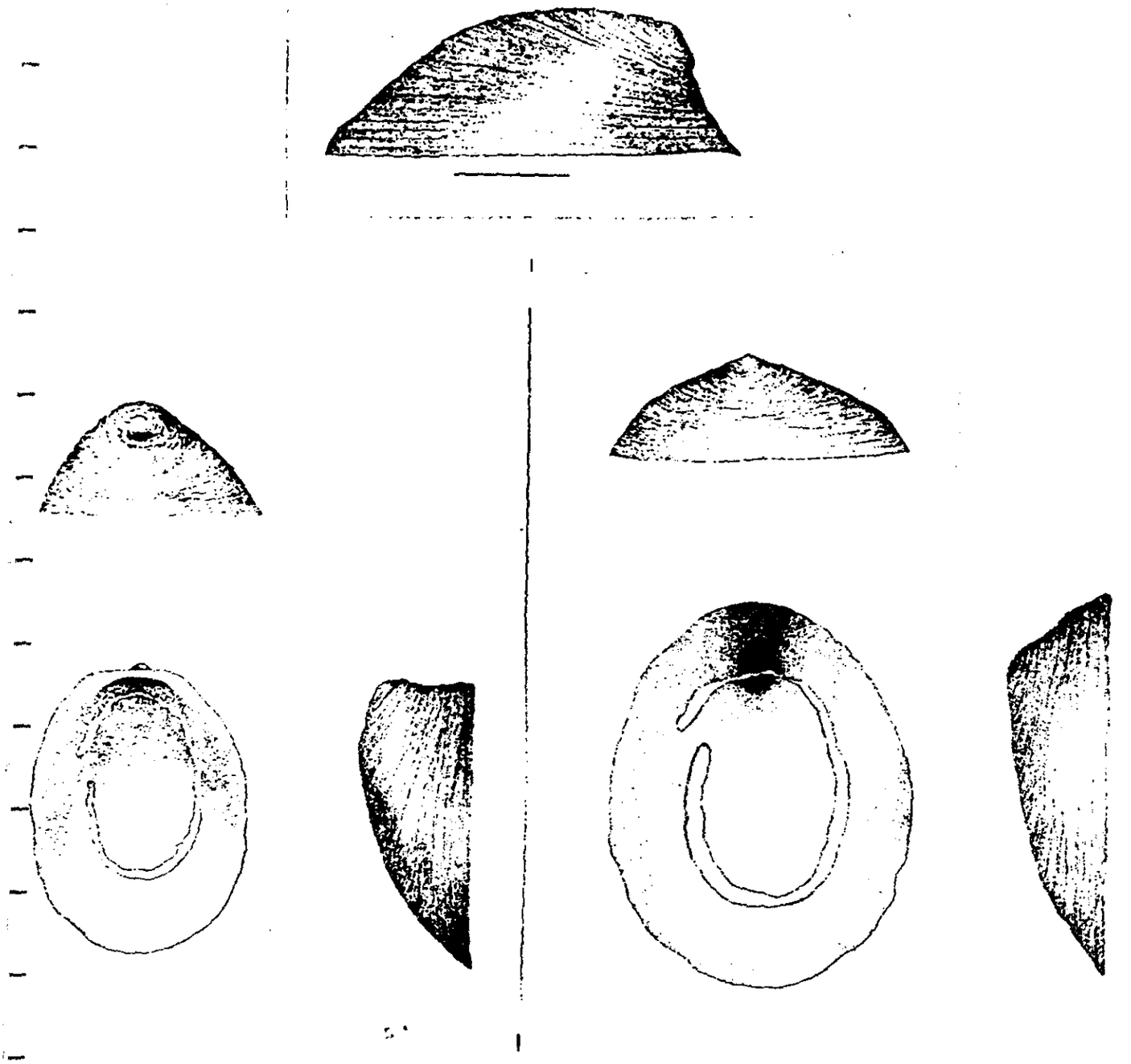
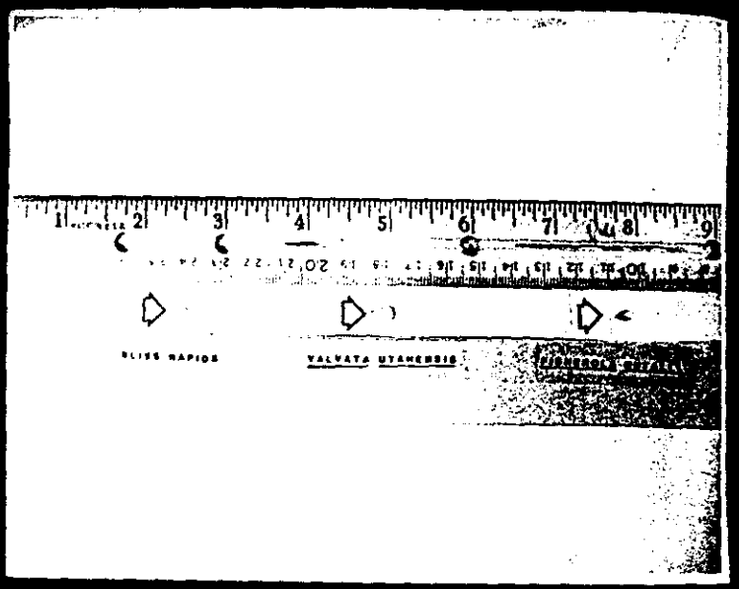
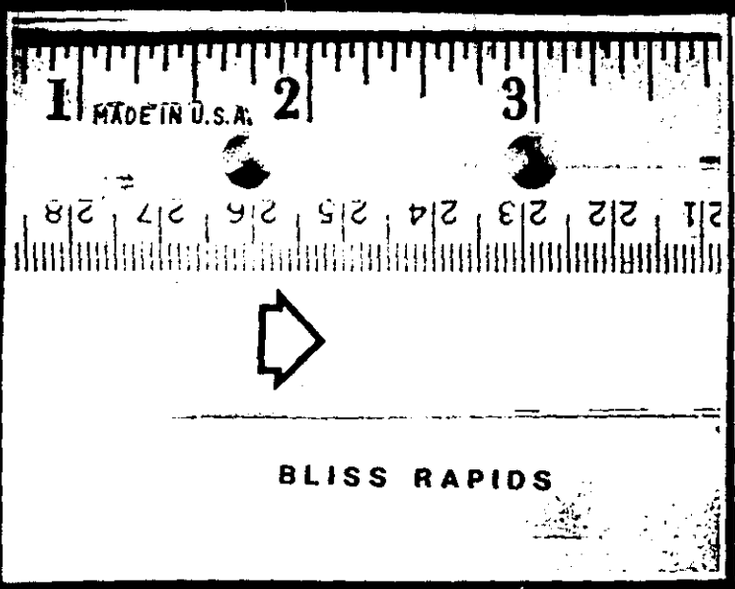


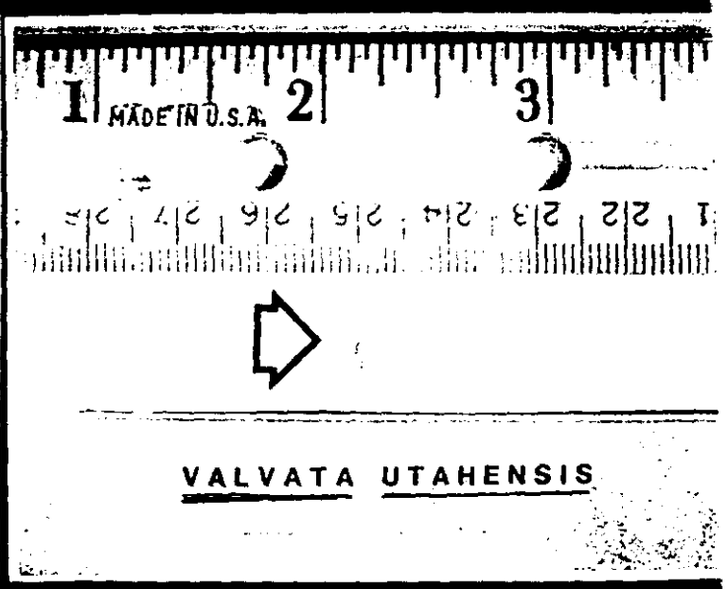
Figure 1. Shells of Fisherola nuttalli (Haldeman); Scale 3 mm. Three specimens, all from Snake River opposite Bancroft Springs, Elmore County, Idaho.

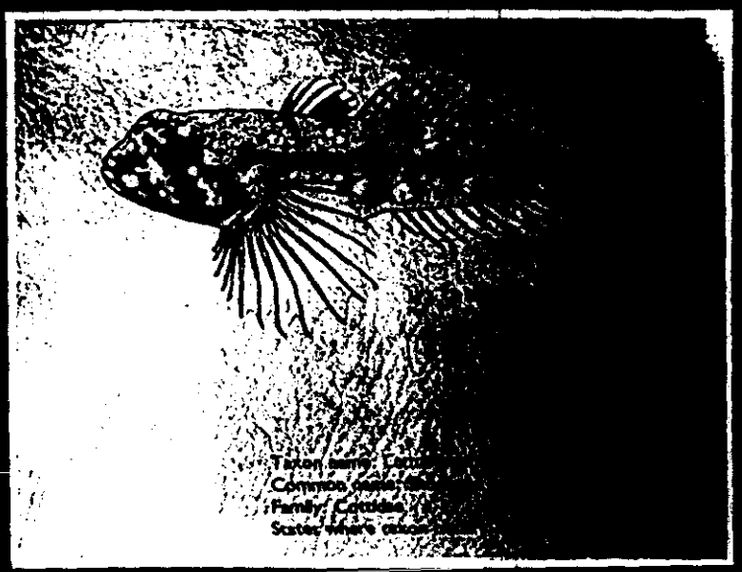
Drawing of Fisherola nuttalli by D.W. Taylor. From:
Taylor, D.W. Status Report on Giant Columbia River Limpet in Southwestern Idaho.

Illustration #4
Photos of Four Federal Candidate Threatened Species









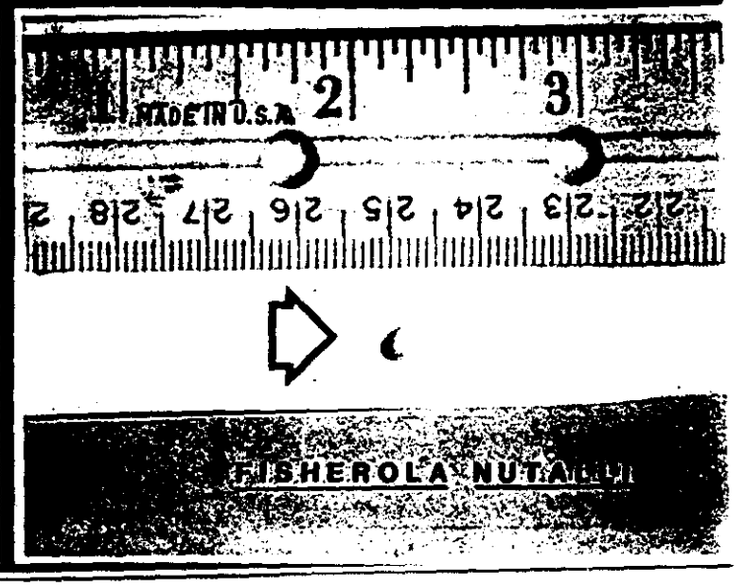
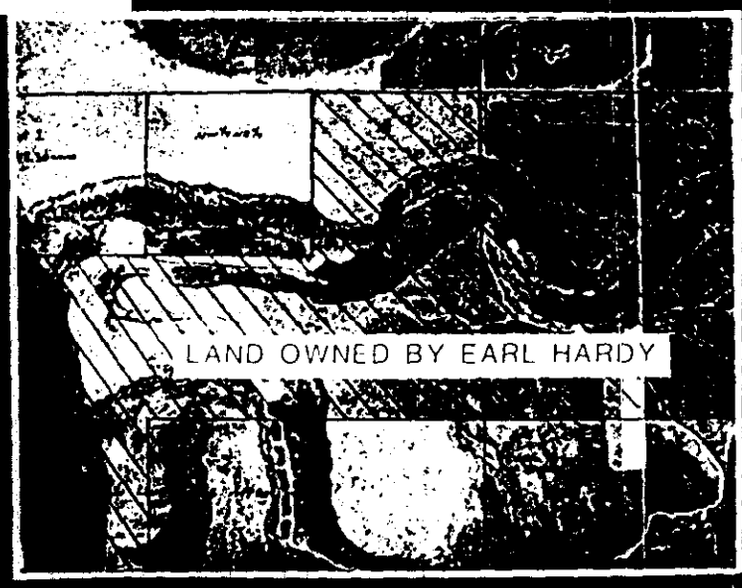


Illustration #5
Photos of Box Canyon

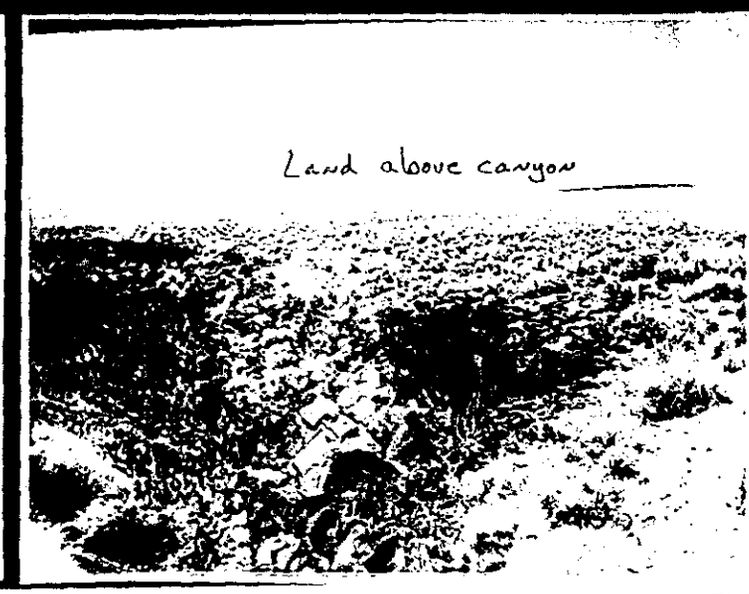


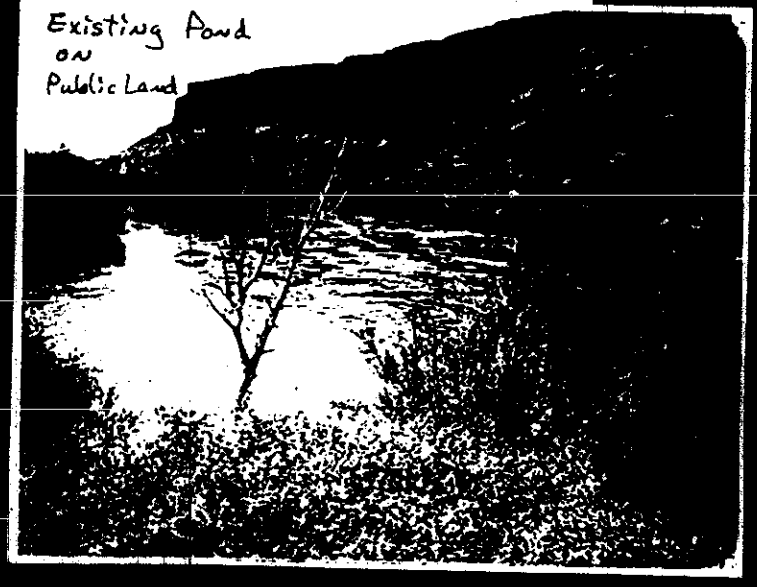






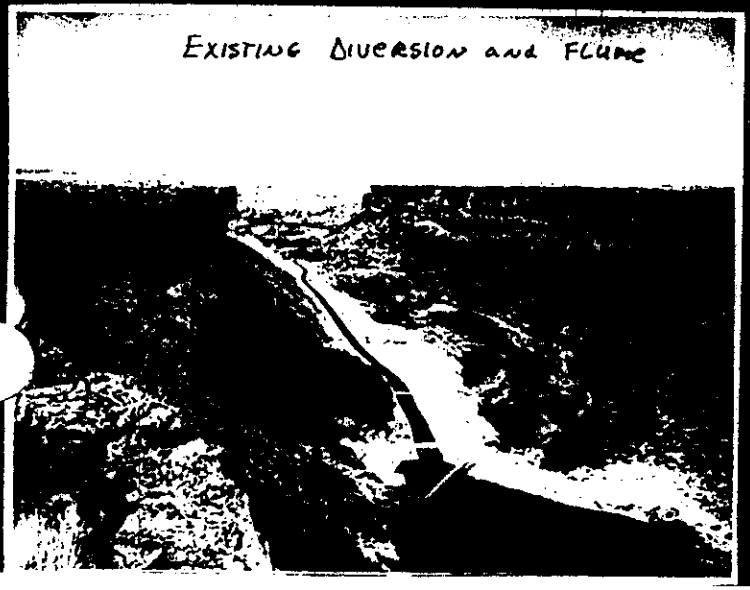





Existing Pond
on
Public Land


Diversion
Silt
Existing
Flume


EXISTING ROAD and FLUME


EXISTING DIVERSION and FLUME

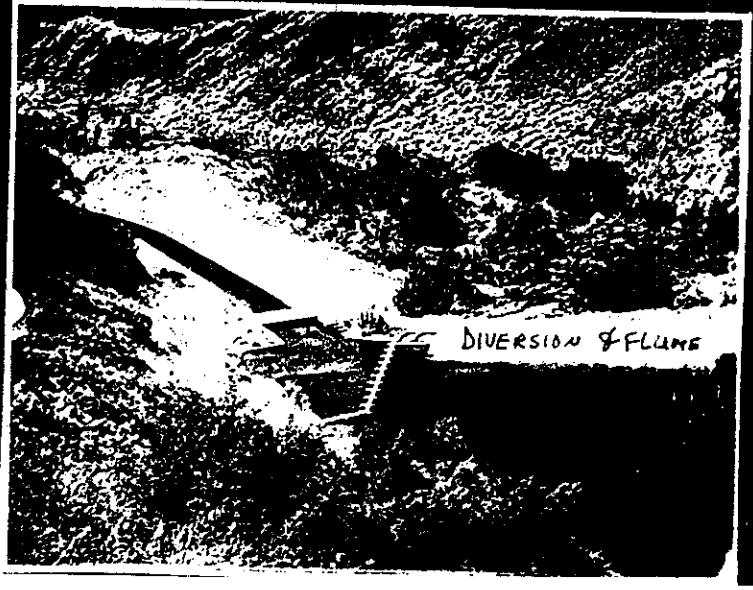
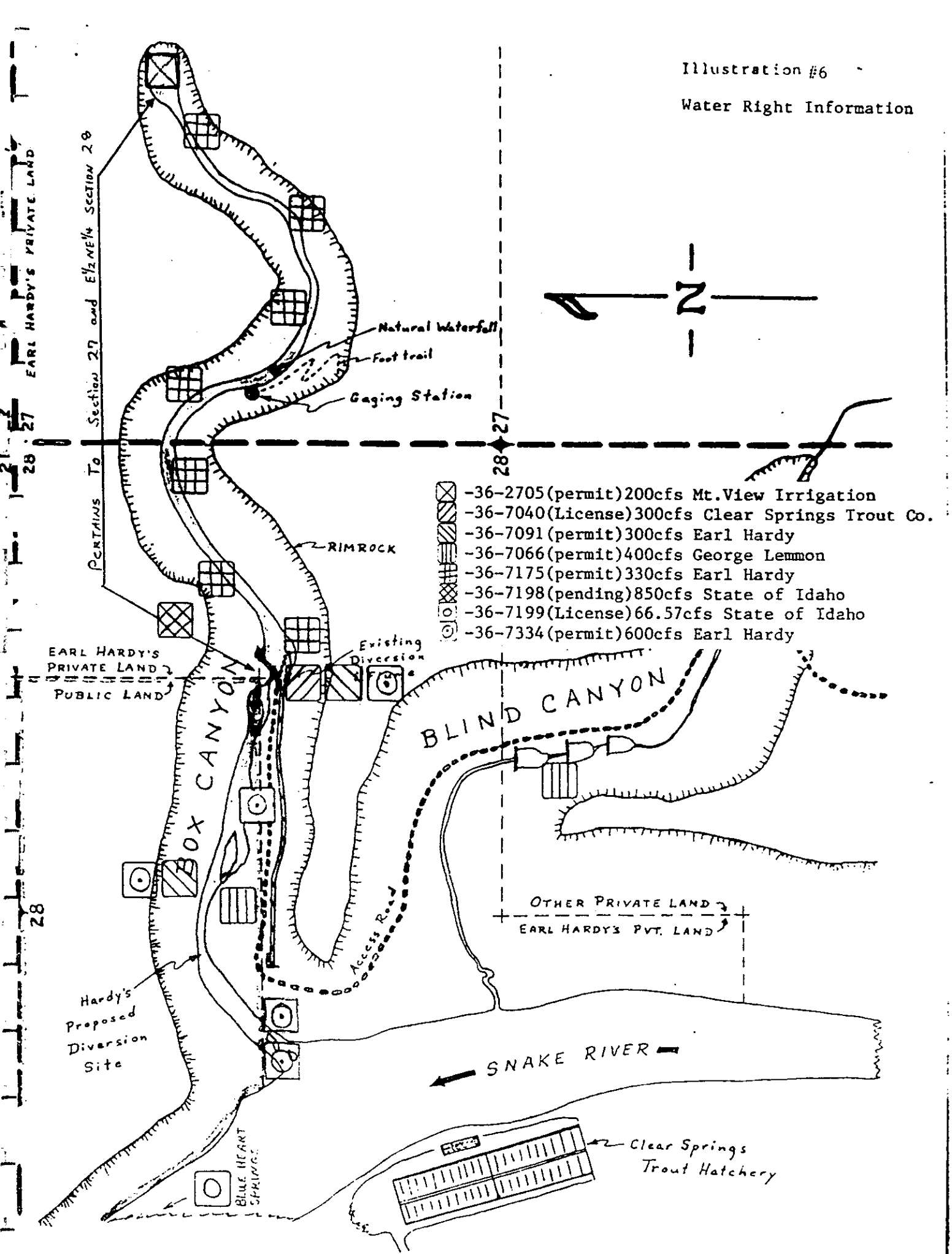

DIVERSION & FLUME

Illustration #6

Water Right Information



-36-2705(permit)200cfs Mt.View Irrigation
-36-7040(License)300cfs Clear Springs Trout Co.
-36-7091(permit)300cfs Earl Hardy
-36-7066(permit)400cfs George Lemmon
-36-7175(permit)330cfs Earl Hardy
-36-7198(pending)850cfs State of Idaho
-36-7199(License)66.57cfs State of Idaho
-36-7334(permit)600cfs Earl Hardy

United States Department of the Interior

BUREAU OF LAND MANAGEMENT
Shoshone District Office
400 West F Street
Shoshone, Idaho 83352

IN REPLY
REFER TO:

April 4, 1986

MEMORANDUM

TO: **Area Manager, Bennett Hills Resource Area** RA

FROM: **District Soil Scientist**

SUBJECT: **Box Canyon Springs Water Quantity Measurements**

At your request, I have made the following water quantity determinations at Box Canyon:

1) Clear Springs overflow - 54.3 cfs on January 30, 1986;

2) Clear Springs flume - 303 cfs on January 31, 1986;

3) Box Canyon Springs at mouth - 417 cfs on January 31, 1986;

4) Box Canyon Springs about 95 feet upstream from Mr. Hardy's proposed diversion site - 322 cfs on March 5, 1986

These measurements were made using standard water current meter techniques. Invaluable assistance in making these determinations was provided by Rich Morrison, Research Analyst for the Division of Environment, Department of Health and Welfare and Reid Newby, Watermaster for the Big Wood Canal Company.

Our measurements are in agreement with and supportive of the measurements made in 1978. Because of the danger involved in obtaining measurements between the proposed diversion site and the mouth, we were unable to ascertain just exactly where and in what amounts the inflow is taking place. For the purposes of analysis and in making any recommendations for the proposed minimum stream flow, we will therefore assume that the inflow throughout this reach is uniform. If there are any objections to this approach, it is recommended that Mr. Hardy or others request that USGS make additional flow measurements.

The distance from the diversion site to the mouth is about 800 feet. From the information Mr. Hardy provided, i.e., 87 cfs gain from the diversion site to the mouth, we would assume that there is a gain of 21.75 cfs for each 200 feet downstream from the diversion; at 400 feet, 43.5 cfs and at 600 feet, 65.25 cfs.

With these figures you should be able to determine an appropriate overflow at the proposed diversion to meet your desired management objectives.

William T. Davis

WATER DATA

IX. EXHIBITS

A Exact Location Description of Preservation Zone

B ACEC Management Plan

C Monitoring Schedule

D Terms and Conditions, Stipulations

1. IDENTIFICATION OF LANDS INVOLVED

There is identified in Idaho Code §67-4310, as amended by S.L. 1982, Chap. 369, a point (the base point) located 100 feet downstream from the crest of the falls in the west half of the northwest quarter of Section 27, Township 8 South, Range 14 East, Boise Meridian. For purposes of this agreement a line is hereby established through that point, extending northeasterly from the middle of Box Canyon Creek to a point on the canyon rim and thence north 0°12' east to a point on the north boundary line of Section 27, Township 8 South, Range 14 East, Boise Meridian, and extending southwesterly from the middle of Box Canyon Creek to a point on the canyon rim ad thence south 0°12' west to a point on the south boundary line of the southwest quarter of the northwest quarter of said Section 27. Those lands described in Idaho Code § 67-4310 which lie easterly and southerly of said line are sometimes hereinafter referred to as the lands above the base point, and the portions of said described lands lying westerly and northerly of said line are sometimes hereinafter referred to as the lands lying below the base point. Unless otherwise indicated, "land" or "lands", as used in this agreement, refers to land owned by the Applicant, Earl M. Hardy (hereinafter the "Owner").

2. RESTRICTION ON OWNER'S USE OF LAND

A. The Owner reserves the right for himself, his family, and their guests, to use of the land above the base point, subject to the following limitations:

(i) The land will be kept in its present condition except as it may be altered by forces of nature; no artificial or mechanical alteration (except the access road) will be made by the Owner or others;

Specifically, without limiting the foregoing provision, no construction of any kind (except the access road) shall be done by the Owner or others, and no material disturbance or removal of plants, soil or rocks, and no diversion of water or alteration of the stream channel, shall be made by the Owner or others.

(ii) These conditions apply to lands above the base point within the canyon and to the lands above the base point and above the canyon rim lying within 250 feet of the rim.

B. The Owner's use of the land lying below the base point shall be limited as follows:

(i) The land above the canyon rim will be used only for residential purposes, consisting of no more than three homes, and for agricultural purposes, including fences, farm buildings, access and service roads, and other improvements related to residential or agricultural use, and for power transmission lines and related service road and support structures;

(ii) Use of land below the rim shall be as follows:

(a) Water diversion works in the stream channel and bank, and a hydroelectric generation facility, with penstock, service roads, appurtenant buildings, transmission lines and other support service structures will be constructed and used in this area. Plants, soil and rock will be disturbed or removed as necessary during construction and in the operation of the facility;

(b) Residential use, limited to one home, with an access road, fences and outbuildings. The least practicable disturbance of plants, soil and rocks will be caused during construction of the home, fences and outbuildings;

(c) Recreational use will be made of the land, including construction of foot or horse trails, with the least practicable disturbance of plants, soil or rocks, during construction and use of the trails;

(d) Rock will be removed for use in construction of roads on the property below the base point, or for use in the construction of hydroelectric generating facilities and related improvements and structures, or in the construction of the homes above the rim.

3. DEDICATION TO LIMITED PUBLIC USES

A. Land in the canyon above the base point, including the stream channel, shall be dedicated to limited public uses in the following categories, and no other uses shall be permitted or authorized, unless expressly stated in some other part of this agreement:

(i) Recreational use in the form of viewing and sightseeing, by not more than an average of 20 persons per day during any 365-day period;

(ii) Natural scientific studies by the Idaho Department of Parks and Recreation, the Idaho Department of Fish and Game, the University of Idaho, Idaho State University, Boise State University, and the College of Idaho, and by such other individuals or public or private entities as are specifically authorized by a committee composed of the Owner or his representative designated in writing, and a person designated by the Idaho State Board of Land Commissioners. The committee also shall adopt guidelines to be follows in conducting the studies, as hereinafter specified;

(iii) All recreational use and natural scientific studies shall be conducted in such manner as not to disturb or remove plants, soil or rocks, or divert water from Box Canyon Creek or alter the stream channel, except that samples of plants, soil, rocks or water may be taken and removed, if authorized by the guidelines;

(iv) Reasonable access for the purposes stated in subparagraph (i) through (iii), above. No additional roads or trails shall be constructed on the land above the base point without the consent of the Owner as to location, size and type of construction, and the Owner agrees that such consent shall not be withheld unreasonably.

B. Land above the canyon rim and above the base point may be used for access as hereinafter provided, and for the construction, use and maintenance of one combination residence and administration building and not more than two outbuildings for storage of such equipment and supplies as are reasonably necessary for the uses contemplated by the Agreement between the Owner and the State of Idaho, dated November 8, 1983, and for related laboratory and study purposes. Construction of any such buildings shall not be commenced until the Owner has approved the location and design, which approval shall not be withheld unreasonably by the Owner.

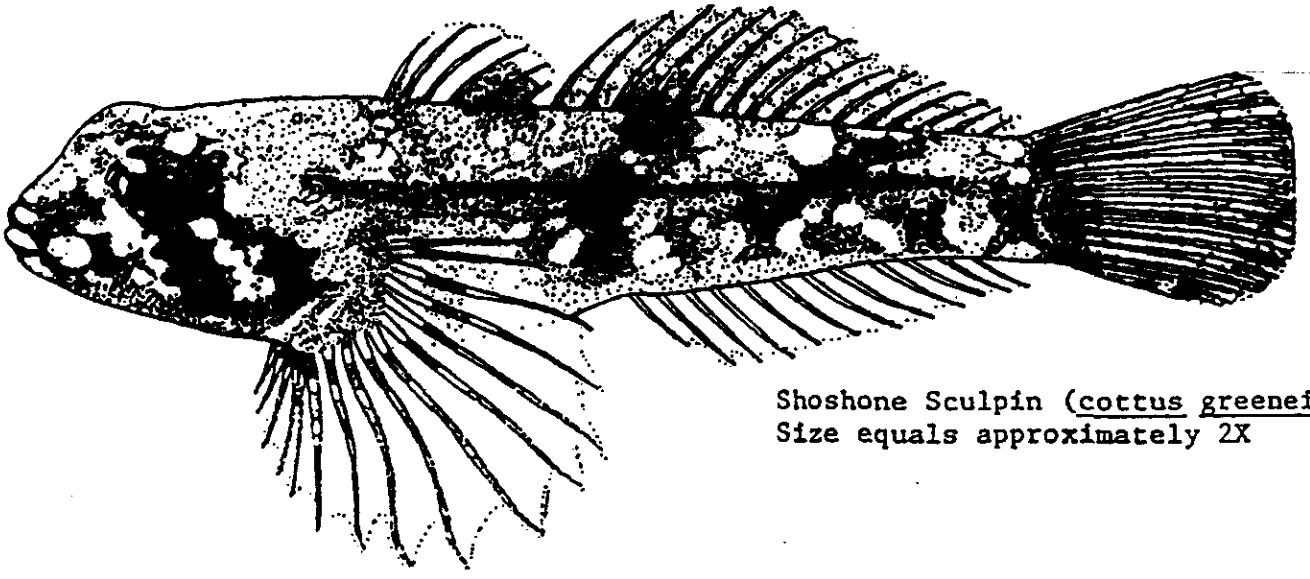
C. Lands below the base point shall not be used by any persons or entities without the express written consent of the Owner or his representative designated in writing.

ACEC PLAN

BOX CANYON

AREA OF CRITICAL ENVIRONMENTAL CONCERN

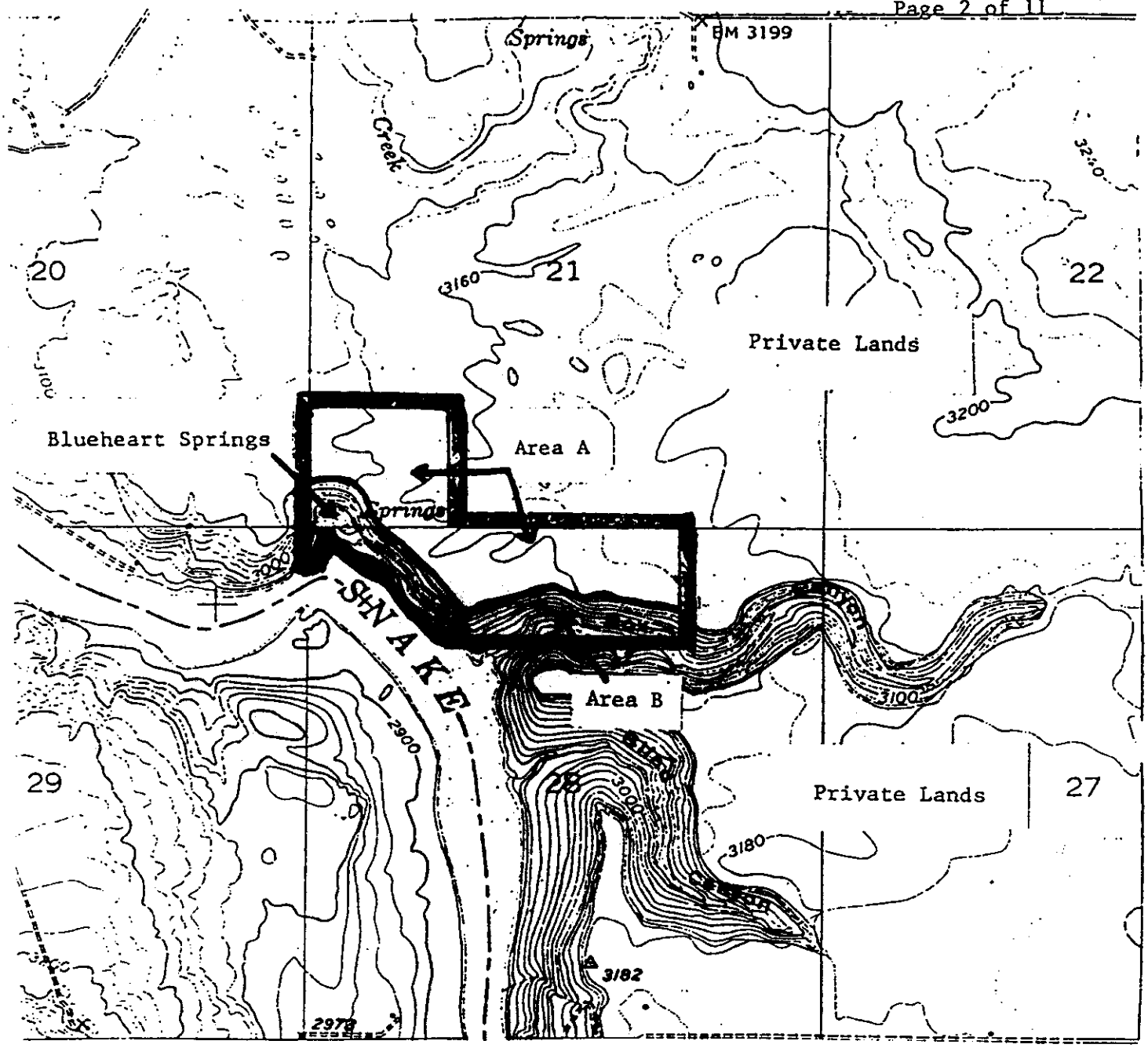
MANAGEMENT PLAN

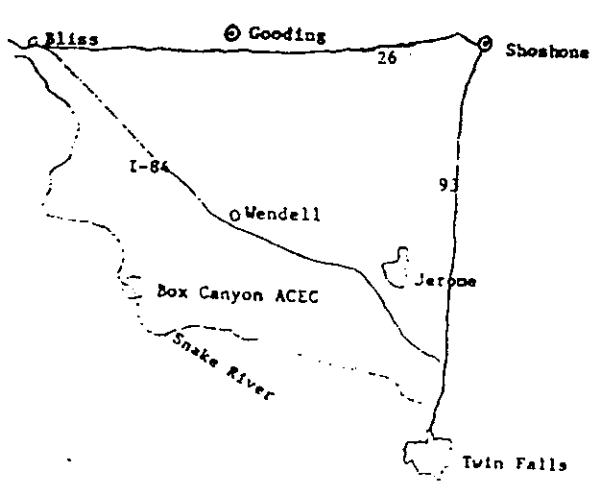


Shoshone Sculpin (cottus greenei)
Size equals approximately 2X

BUREAU OF LAND MANAGEMENT
SHOSHONE DISTRICT OFFICE
SHOSHONE, IDAHO

1985





N

BOX CANYON ACEC LOCATION MAP

BLM-Administered Lands

Boundary Between
Area A and Area B

BOX CANYON
AREA OF CRITICAL ENVIRONMENTAL CONCERN (ACEC)
MANAGEMENT PLAN

I. INTRODUCTION

The establishment of areas of critical environmental concern (ACECs) is provided for in Section 202(c)(3) of the Federal Land Policy and Management Act. Section 103(a) of the Act defines an ACEC as an area

> "...within the public lands where special management attention is required (when such areas are developed or used or where no development is required) to protect and prevent irrepairable damage to important historic, cultural or scenic values, fish and wildlife resources or other natural systems or processes, or to protect life and safety from natural hazards."

The Box Canyon ACEC was identified in the Monument Resource Management Plan (RMP), approved on April 22, 1985. The key resource values which justify the ACEC designation are (1) four candidate threatened and endangered aquatic species, and (2) the scenic and unique natural qualities of the area. This management plan provides specific and general guidance to protect and preserve those resource values which led to the ACEC designation.

II. GENERAL INFORMATION

A. Description

The Box Canyon ACEC is a relatively small, isolated area on the southern boundary of Gooding County along the Snake River. It is located approximately 16 miles west of Jerome, 8 miles southwest of Wendell, and 24 river miles downstream from the Perrine Bridge at Twin Falls (see attached map). The ACEC is legally described as:

T. 8 S., R. 14 E., B.M.

Section 21:	SW4SW4	40.0 acres
Section 28:	Lot 1, NW4NE4	88.3 acres
		128.3 acres

In this document, the 128.3 acres of BLM administered lands will be referred to as the ACEC lands and all other lands referred to as private lands. The combination of the ACEC lands and the private lands will be referred to as the Box Canyon complex. The provisions of this plan apply only to the ACEC lands within the Box Canyon complex, which are approximately 30 percent of all lands contained within the complex.

The Box Canyon complex is recognized as one of the few remaining relatively undisturbed alcove ecosystems in the Snake River system. The area provides recreation, hunting, fishing, and aesthetics for human visitors plus an array of habitats for resident and migrating wildlife species. High, rocky

ledges throughout the canyon provide raptor nest sites. Flat land above the rim provides domestic livestock grazing and habitat for raptor prey base and other upland wildlife species.

The ACEC lands include a portion of Box Canyon Creek, the entire Blueheart Springs and its riparian habitat along the Snake River, and 87.1 acres of land above the canyon rim (see attached map).

The ACEC portion of Box Canyon Creek is habitat for the Shoshone sculpin (*Cottus greenii*), a candidate threatened species. Its stable aquatic temperatures and chemistry support the largest known population of Shoshone sculpin on public lands, and the third largest known population in the world. Few Shoshone sculpin are known to exist upstream on private lands.

Box Canyon Creek also contains populations of three candidate threatened molluscs: the Bliss Rapids snail (no scientific name), giant Columbia River limpet (*Fisherola nuttalli*), and *Valvata utahensis* (no known common name). Each of these species occupies seperate and unique habitat sites which are described in a September 1985 report by D. W. Taylor.

Box Canyon Creek provides feeding areas for furbearers and game fish. The riparian areas are considered important for non-game birds, particularly during the winter months.

Blueheart Springs is a large, aqua blue, cold, clear water spring emerging from the Snake River Canyon which supports the fourth largest known population of Shoshone sculpin. It is surrounded by riparian vegetation and talus rock which makes physical access difficult and protects the area from heavy disturbance.

Visual quality for the Box Canyon complex is considered high due to the unique geologic formations, the high-quality spring waters, and the riparian vegetation throughout the complex.

Recreation values in the general area are high due to the quantity and quality of rainbow trout fishing, waterfowl hunting, and sightseeing. The quality of riparian habitat varies from high to low.

Overland access to the ACEC is not legally provided at this time; however, both physical and legal access does exist from the Snake River.

B. Background Information

Two major disturbances have occurred that altered the scenic and aquatic values within the ACEC. In the early 1980s, a small burn destroyed approximately 200 feet of shoreline riparian vegetation. A water diversion structure and flume were constructed on the adjacent private lands causing a permanent visual impairment and reduction in water volume across the ACEC.

The reduction in water volume from the diversion to the mouth of the creek and the increase of suspended sediment from construction activity has, in all probability, had an impact on the aquatic species, especially the four candidate threatened species. An assumption is made that the increased

suspended sediment and flushing flows at the time of construction had a short-term impact and that the loss of water volume had a long-term impact on pre-construction aquatic populations. Since the present population density estimates were established after the stream had recovered its initial water quality and stabilized to its present water volume, these estimates will be used as the base information for Box Canyon Creek.

The Box Canyon complex has been recognized for its significant biologic, visual, geologic, and hydrologic values. The complex has been nominated and evaluated as a National Natural Landmark. This nomination and evaluation is awaiting a National Park Service staff review in Washington D.C., which determines whether the nomination will be forwarded to the Secretary of Interior with a recommendation for approval. This nomination does not directly affect the management of the ACEC, however, the National Park Service shall be notified prior to any man-caused alterations of the area.

III. MANAGEMENT OBJECTIVES

The overall management objective for public lands in Box Canyon is to maintain or enhance the resource values critical to the ACEC and to provide direction and guidance for their protection. Specific objectives are:

-- Manage Box Canyon Creek to maintain optimum levels of spring clarity, water quality, color, naturalness, scenic quality, riparian vegetation, and habitat to maintain an estimated June population of 15,000-20,000 Shoshone sculpin and any populations of Bliss Rapids snail, giant Columbia River limpets, and *Valvata utahensis*.

-- Manage Blueheart Springs to maintain present levels of spring clarity, water quality, color, naturalness, scenic quality, and habitat to sustain a population of approximately 20,000 Shoshone sculpin.

-- Manage the visual resources to maintain the existing Class II and Class IV Visual Resource Management (VRM) classifications.

-- Protect against and prevent irreparable damage to the natural systems and processes occurring within the ACEC lands.

Developments or activities which destroy, remove, or decrease the quality and/or quantity of resources, or which would lead to irreparable damage to the aquatic, riparian, visual, wildlife, or fisheries values are considered incompatible uses under this plan and no BLM action that would lead to these results would be taken. Development or activity proposals will be considered on a case-by-case basis. If mitigation to prevent the loss or destruction of the key resources in the ACEC is provided, the proposal may be authorized.

It is important to point out that protection of public values is ensured only on the ACEC lands.

IV. MANAGEMENT GUIDELINES

Due to the presence of two distinct ecological community areas which differ for numerous physical reasons, the ACEC lands are designated Area A and Area B with the following descriptions.

Area A - All ACEC lands above the canyon rim (approximately 87.1 acres). These lands are subject to livestock grazing and are included in the Sand Springs Allotment. These lands are a part of the ACEC because they are a raptor prey hunting area and because they are contiguous to the ACEC lands below the rim.

Area B - All ACEC lands below the canyon rim (approximately 41.2 acres) including Blueheart Springs, associated talus slopes, and riparian habitat along the Snake River. This area also includes Box Canyon Creek and its adjacent riparian habitats and talus slopes.

A. Cultural Resources

1. Area A

A 1984 inventory found two rock structures along the rim. This find identified the area as containing potential cultural resource values. Although additional cultural resource clearances may be requested in the future, no further investigations are needed at this time.

2. Area B

Investigations conclude that there are no significant cultural resources on the ACEC lands below the rim. No additional inventories are required in this area.

B. Livestock Grazing

1. Area A

Allow livestock grazing at the present rate of 100 cattle from May 1 through October 31, at 2 percent federal range, for a total of 12 animal unit months (AUMs). Any adjustments, increases or decreases, in livestock numbers will be in accordance with existing Rangeland Program procedures.

2. Area B

No livestock grazing has occurred in this area due to physical limitations, and none will be authorized in the future.

C. Recreation

Since the aquatic values are essential to the threatened fisheries and the visual components of the ACEC, year-round protection and management must be provided. This will not preclude hiking, hunting, fishing, photography, or picnicking activities in either area, however, no recreation facilities or improvements are planned. Monitoring and management shall be done to ensure

that the level of use does not adversely affect those resource values which established the ACEC. Should the monitoring data indicate excessive fisheries harvest, BLM will coordinate with the IDF&G to request management adjustments.

The isolated nature of Blueheart Springs from the main use area of the ACEC has kept the spring and its surrounding riparian habitat in excellent condition. No development of Blueheart Spring or public land within view from Blueheart Spring will be allowed, although low-impact recreation use may occur.

D. Wildlife

1. Area A

The dryland vegetative types above the rim will be managed to provide for stable raptor prey bases and at least moderate upland wildlife cover. Increasing the present 5-10 percent brush cover to 10-20 percent is established as a management objective.

2. Area B

a. In addition to the Shoshone sculpin, the Bliss Rapids snail, the giant Columbia River limpet, and *Valvata utahensis* have been identified within Box Canyon Creek on BLM-administered lands. The results of a 1985 aquatic mollusc inventory are filed at the Shoshone District Office. Any expected impacts on these species will require consultation with the U.S. Fish and Wildlife Service for mitigation analysis and/or development, as identified in Section 7 of the Endangered Species Act of December 28, 1973.

b. The riparian habitats on ACEC lands will be protected against removal, reduction, destruction, and/or unmitigated development. Disturbances in riparian habitat shall be replanted with native or native-like species representing a natural community to maintain both wildlife and visual qualities.

c. Water volume, temperature, velocity, low turbidity, and chemistry in Box Canyon Creek will be maintained and monitored as appropriate on ACEC lands to sustain the terrestrial and aquatic wildlife and fish habitats. Minimum stream flows required to meet the stated objectives for the Shoshone sculpin and other candidate threatened aquatic species must be established in cooperation with BLM, Idaho Department of Fish and Game (IDF&G), and U.S. Fish and Wildlife Service (USFWS).

d. A permanent aquatic transect to monitor population and habitat conditions for the Shoshone sculpin and molluscs will be established. Establishment and reading of the transects will be in coordination with USFWS and IDF&G.

e. The BLM will petition IDF&G to apply for water rights in Box Canyon Creek for protecting and maintaining wildlife and fisheries habitats. This application would be subordinate to the instream flows filed by Idaho Department of Parks and Recreation and other prior water rights applicants. Since the Idaho Department of Parks and Recreation has a current water right for 100 cfs at Blueheart Springs, no additional application for water rights at this spring is needed.

E. Visual Resource Management

1. Area A

The existing VRM Class IV rating 1/ will be maintained or improved. No projects in Area A that would negatively impact the Class II rating 2/ in Area B will be authorized.

2. Area B

Any actions on ACEC lands shall maintain or improve the existing visual quality. Mitigate surface disturbance to blend with the existing topography.

F. Realty and Lands

These planned actions are common to both community areas A and B.

Only those lands actions that will allow the resource objectives to be met will be authorized.

The ACEC lands will be withdrawn from appropriation under the mining and mineral leasing laws.

G. Fire Suppression

Because of the high values related to vegetation, full fire suppression efforts should be implemented. If surface or vegetative disturbance due to fire, fire suppression, or other activities occurs, vegetative and surface rehabilitation shall be done to meet the objectives of the ACEC.

H. Geology

A low-grade jasper has been identified on a portion of the ACEC. No mining claims will be allowed, but hobbiest rockhounding will be allowed provided the objectives of the plan are met. Closures will be enforced if excessive resource damage occurs from this activity.

V. MONITORING

A. Range

Due to the ACEC designation, monitoring to determine vegetative condition and trend will be conducted for Area A on a five-year schedule.

1/ Class IV. Contrasts may attract attention and be a dominant feature of the landscape in terms of scale; however, the change should repeat the basic elements (form, line, color, texture) inherent in the characteristic landscape.

2/ Class II. Changes in any of the basic elements (form, line, color, texture) caused by a management activity should not be evident in the characteristic landscape. A contrast may be seen but should not attract attention.

B. Recreation

At least two visits each year will be conducted to observe recreation activity occuring in the ACEC. Visits may be conducted on any day of the week and will note use of trails, campsites, and indicators of the levels of human use. Permanent photo points may be established and recorded during the same month each year. Because of the level of expected fishing use (including crayfish harvest), close coordination with IDF&G will be maintained to regulate fish harvest levels.

C. Wildlife and Fisheries

Annual random transects will be walked in the spring of each year to estimate upland wildlife use (including game and non-game species). Riparian habitat will be monitored using the Meyer's method as modified for the Shoshone District.

D. Threatened and Endangered Species

Aquatic monitoring will be conducted to evaluate Shoshone sculpin numbers and habitat quality. Monitoring will include techniques for the Bliss Rapid's snail, Shoshone sculpin, *Valvata utahensis*, and the giant Columbia River limpet. Techniques used for all aquatic monitoring will be developed using the advises of Drs. Wallace and Griffith for the Shoshone sculpin and Dr. Taylor for the other candidate species named.

VI. TIME TABLES AND ESTIMATED COSTS

Initially, a five-year schedule is proposed to meet the objectives of this plan by implementing the identified BLM planned actions. Figure 1 shows a time table with estimated cost expenditures by subactivity. This schedule may be altered by the availability of funding, changes in technology, or proposals that may affect the area.

FIGURE 1

Sub-activity	Action	Project	Year 1	2	3	4	5
4322	Monitoring Range Utilization		.125 WM	.125 WM	.125 WM	.125 WM	.125 WM
4331	Inventory Map and Record Sites, Develop Reports and work with SHPO		2.5 WM	2.5 WM			
4333	Monitor Visitor Use Signing Photo Points		.125 WM $500 $100	.125 WM	.125 WM $100	.125 WM	.125 WM $100 $100
4351	Riparian Habitat Monitoring Riparian or Other Vegetation Rehab Monitor Upland habitat for small mammal and game bird habitat	$3,000	.125 WM .125 WM	.125 WM	.125 WM .125 WM	.125 WM	.125 WM .125 WM
4352	Aquatic Habitat Monitoring Contract aquatic analysis and species census Water Tests	$2,000	.125 WM $800 $400	.125 WM $400	.125 WM $400	.125 WM $800 $400	.125 WM $400
4211	Complete Lands Work		3 WM				

VI. PARTICIPATING STAFF

Steve Langenstein, Wildlife Biologist/Team Leader
Robert Cordell, Bennett Hills Area Manager
Joe Aitken, Realty Specialist
Dick Kodeski, Recreation Planner
John Husband, Planning Coordinator
John Lytle, Archaeologist
Robert Moline, Supervisory Range Technician
Derinda Rupp, Editorial Assistant
Scott Andersson, District Range Specialist
Jeff Jarvis, District Recreation Planner
Jon Idso, ABM-Resources
Larry Mangum, District Wildlife Biologist
Harold Brown, District Realty Specialist

VII. SIGNATURES

The Box Canyon ACEC Management Plan is approved as written.

Robert D. Cordell — 10/17/85
Robert D. Cordell
Bennett Hills Resource Area Manager

I Concur:

Charles G. Haszier — 10/17/85
Charles J. Haszier
Shoshone District Manager

MINIMUM MONITORING SCHEDULE

BOX CANYON

More or less intensive monitoring may be required depending on the Analysis and Evaluation of the following procedures:

A. Annual Fisheries Monitoring will consist of the following:

1. Evaluation of presence or absence of Bliss Rapids Snail at a minimum of three permanent sampling sites on public land, one site on private at the mouth of Box Canyon, and two sites within the upper canyon Preservation Zone. At least a total of three other random samples will be taken, one on each of the identified sections of stream, mouth, BLM, and upper Preservation Zone.

○ = Approximate sample site

2. At least three sediment samples will be taken at the sculpin pool where Valvata utahensis was originally found. Live specimens will be counted and released from each sample. A sample will consist of seining sandy sediments one to two feet deep in slow, steady current. For more habitat description see "Candidate Threatened or Endangered Mollusks in Box Canyon ACEC, Gooding County, Idaho" by D. W. Taylor, 1985. Water temperature and dissolved oxygen should be recorded at each site.

□ = Approximate sample site

3. Visual inspection of Shoshone Sculpin habitat sites will be made. Estimates of number of fish per square meter should be made. These counts should take place at mid day (11:00 a.m. to 1:00 p.m.) on June 11, plus or minus four days. For further information see "A Survey of Shoshone Sculpin (Cottus greenei) Populations In Box Canyon and Blue Hearts Springs, Idaho" by J. S. Griffith, D. M. Daley, G. B. Beckham, 1981. More quantitative techniques are available if needed.

△ = Approximate sample site

4. The Giant Columbia River Limpet (Fisherola nuttalii) will be monitored using sediment and vegetative material sampling. If reduced water levels expose limpet habitat and/or populations, those exposed areas will be used to further develop monitoring strategies for this species.

○ = Approximate sample site

B. Annual Riparian Monitoring

1. Establish a standarized photo transect showing riparians above and below the diversion. At least one of the photos will be taken from the rim above Box Canyon Creek. A minimum total of four photo points should be

established and each of these should be taken once in spring (March 1 - May 30) and once in summer (August 1 - September 30). Use 35mm format film, Kodachrome 64 50mm lens.

⊗ = Approximate sampling site

C. Water Quality

1. Dissolved oxygen, temperature, pH, and conductivity shall be taken every four to eight weeks (when reading the instream flow meter) at all permanent monitoring stations. This will occur at least for the first year every four to eight weeks.

○ = At each sampling site
□ = At each sampling site

2. Invertebrate counts for diversity and species composition shall be taken and lab analyzed at a minimum of two locations: (1) upstream from the diversion (as a control) and (2) below the diversion. These will be permanent sample stations. At each station one set of sample should be taken each season of the year. A set of samples is comprised of three to five samples taken with a Hess Net. Analysis should reflect species diversity by establishing the number of taxa and abundance of each taxa. The Biotic Condition Index (BCI) method shall be applied to this data to integrate water quality and invertabrate tolerances as well as other indexes.

Data will be taken before construction, and each year after construction as scheduled above, for at least four years. Changes in the monitoring schedule may occur when data stablilzes for at least four consecutive years. Following the initial four year monitoring period the BLM will incur all subsequent monitoring costs up to and including the 20th year of operation.

□ = Approximate sample site

Costs for Monitoring

1.	Photo costs - annual	$ 75.00
2.	Invertebrate Analysis - 2 stations, 3 samples each 4 times per year, total 24 samples @ $65.00 per sample	$1,600.00
3.	BLM workmonths or 1st year 1/2 wm; includes BLM labor and vehicular costs	$1,250.00
	TOTAL	$2,925.00

REHABILITATION

Method of seedbed preparation, proposed species and quantity of trees/shrubs planned for vegetative screening, quantity, and type of mulching and fertilizer.

Initial Notice to Proceed will be issued following approval of structure blueprints/drawings and Proposed Plan(s) of Development and Rehabilitation.

11. A preconstruction meeting, on-site, with the Holder, contractors, and operators shall be held prior to any ground disturbance. A notice to proceed shall be issued for each segment of construction. Construction shall not proceed beyond the last completed stage without another Notice to Proceed for that specific stage. The stages are: a. Prepwork, b. Construction, c. Operation, d. Rehabilitation. Exceptions to accommodate efficiency of scheduled work must be approved in advance by the BLM Authorized Officer.

12. No heavy equipment operation or use of explosives shall be authorized from January 1 to June 1 of each year, except for emergency repairs or as otherwise approved by the BLM Authorized Officer.

13. The coffer dam shall be constructed in stages with water to be diverted in increments not to exceed 100 cfs per day. The Authorized Officer reserves right to delay coffer dam construction up to a maximum of five working days to conduct salvage operations.

14. Fish screens and a fish bypass structure are required. These structures, diversion and flume, must comply with Idaho Department of Fish and Game standards of design, construction, and operation.

15. A minimum of 75 cfs of instream water volume shall be bypassed through, over, and/or around the diversion/facility on a continuous, permanent, and verifiable basis. The holder shall provide structures to verify the minimum bypass flow.

16. Holder shall be informed in advance of scientific studies scheduled (or authorized) by BLM on public lands within the right-of-way area.

17. Holder shall construct and maintain a fenced foot bridge across flume or dam structure to accommodate safe public access. The bridge shall be no less than 4 feet wide, with side rails and fencing no less than 3 feet high, weight capacity of no less than 1/2 ton, and approach slopes of no greater than 2:1 (run:rise). Protective provisions of Idaho Code 36-1604 shall apply.

18. An as-built survey shall be required upon construction completion.

19. Riprap on the toe of berm, pond side, must approximate six-inches in size or larger to provide aquatic habitat needs. Intent is to minimize rock less than six inches in size. Riprap on downstream side of diversion and spillway must be of adequate size to prevent erosion of streambank sides and bottom.

MSF REQUIREMENT

20. Holder shall provide up to six hours of equipment operation time with personnel to accomplish streambed habitat manipulation as directed by the authorized officer or his representative.

21. Monitoring studies shall be conducted as per Monitoring Schedule - Exhibit C. Holder shall reimburse the Bureau of Land Management for monitoring studies, per Monitoring Schedule - Exhibit C.

22. Water flows associated with scheduled operation and maintenance must be controlled so that Box Canyon Creek flows are not increased by 100 cfs within any one day time period.

23. Holder shall take no actions which will increase or decrease water levels, temperature, quality, and/or flow velocity within the natural sculpin pool upstream of the authorized impoundment pool. This applies only from the Clear Springs Diversion to the mouth of Box Canyon Creek.

24. Holder shall be responsible to comply with the terms described in Exhibit A, excluding Section 2 B, with the following modification:

-- BLM shall be authorized to conduct scientific studies within the preservation zone. No soil or vegetation removal, or destruction of resources shall be allowed.

25. Right-of-way Holder shall allow BLM administrative access for official business to the public land across private land in sections 27 and 28, T. 8 S., R. 14 E., B.M., and terminates if right-of-way I-2880 terminates.

26. Holder agrees to notify the Bureau of Land Management Authorized Officer in advance of initiating any action which might affect existing water permit(s) number(s) 36-7091 and 36-7334 or remaining water flows across private lands owned or controlled by the right-of-way holder or Mr. Earl Hardy, downstream from the approved point of diversion. Right-of-way holder further agrees to notify the Bureau of Land Management Authorized Officer of any action(s) directed to the holder by the State of Idaho, Department of Water Resources which could affect the present water permit status of permit number(s) 36-7091 and 36-7334 across private lands owned or controlled by the right-of-way holder or Mr. Earl Hardy, downstream from the approved point of diversion.

27. Upon termination of the right-of-way, holder shall remove all improvements within 90 days and smooth all disturbed areas to the existing contour and shall be required to establish a perennial vegetative cover composed of species identified in exhibit C. The seed shall be planted in the fall of the year prior to October 15 using planting techniques accepted by the authorized officer.

28. The right-of-way holder is not responsible for injuries suffered by any person on the right-of-way or on the private lands of the right-of-way holder. The provisions of Idaho Code 36-1604 are applicable to the right-of-way and to the private lands of the right-of-way holder.

STIPULATIONS

TERMS AND CONDITIONS

1. This authorization is issued for the useful life of the approved facility(ies) unless sooner relinquished, terminated, abandoned, or cancelled by the holder. The useful life of the facility(ies) will be jointly determined by the holder and BLM Authorized Officer considering economic value, structural integrity, and functional merit. The right-of-way grant will be reviewed at the end of twenty (20) years and at regular intervals thereafter at least once every ten (10) years [43 CFR 2801-1(h)(3)(i)]. The Authorized Officer may require corrective action; with no preconceived intent to modify or change any of the stated stipulations, i.e., 75 c.f.s. bypass, at any time after the 20th year as may be required to meet the stated goals and objectives of the Area of Critical Environmental Concern (ACEC) Plan dated December 19, 1985.

2. Notwithstanding the expiration of this instrument, early relinquishment, abandonment, cancellation, or termination, the provisions of this instrument, to the extent applicable, shall continue in effect and shall be binding on the holder, its successors, or assigns until they have fully satisfied the obligations and/or liabilities accruing herein before or on account of the expiration, or prior termination, of the grant.

3. For and in consideration of the rights granted, the holder agrees to pay the Bureau of Land Management fair market value rental as determined by the authorized officer. Provided, however, that the rental may be adjusted by the authorized officer, whenever necessary, to reflect changes in the fair market rental value as determined by the application of sound business management principles, and so far as practicable and feasible, in accordance with comparable commercial practices.

4. This grant is issued subject to the holder's compliance with all applicable regulations contained in Title 43 Code of Federal Regulations part 2800.

5. Failure of the holder to comply with applicable law or any provision of this right-of-way grant shall constitute grounds for suspension, termination, or cancellation thereof, with right of hearing as per 43 CFR 2803.4(e).

6. The holder shall perform all operations in a good and workmanlike manner so as to ensure protection of the environment and the health and safety of the public.

7. If any equipment transported across the public land area contains Polychlorinated Biphenyls (PCBs) such transport shall be in a totally enclosed manner in accordance with provisions of the Toxic Substance Control Act of 1976 as amended (see 40 CFR part 761. Additionally, any release of PCBs (leaks, spills, etc.) in excess of the reportable quantity established by 40 CFR 117 shall be reported as required by the Comprehensive Environmental

Response, Compensation, and Liability Act, section 102b. A copy of any report required or requested by any Federal agency or State Government as a result of a reportable release or spill of any hazardous material shall be furnished to the authorized officer within 5 working days of the occurrance of the spill or release.

8. The Holder shall comply with the applicable Federal and State laws and regulations concerning the use of pesticides (i.e., insecticides, herbicides, fungicides, rodenticides, and other similar substances) in all activities/operations under this grant. The Holder shall obtain from the authorized officer approval of a written plan prior to the use of such substances. The plan must provide the type and quantity of material to be used; the pest, insect, fungus, etc., to be controlled.; the method of application; the location for storage and disposal of containers; and other information that the authorized officer may require. The plan should be submitted no later than December 1 of any calendar year that covers the proposed activities for the next year. Emergency use of pesticides may occur. The use of substances on or near the area shall be in accordance with the approved plan. A pesticide shall not be used if the Secretary of the Interior has prohibited its use. A pesticide shall be used only in accordance with its registered uses and within other limitations if the Secretary has limited its use. A pesticide shall be used only in accordance with its registered uses and within other limitations if the Secretary has imposed limitations. Pesticides shall not be permanently stored on public lands authorized for use under this grant.

9. In the event the lands affected by Powersite Reserve 77 are required for powersite purposes as contemplated in Executive Order dated July 20, 1910, any structures or improvements placed thereon found to interfere with such developments shall be removed or relocated as necessary to eliminate such interferences at no cost to the United States or its permittees or licensees.

10. Prior to commencing any ground disturbing activities, holder shall submit a detailed blueprint/drawing of all structural facilities with a proposed Plan of Development and Rehabilitation for approval by the BLM Authorized Officer. The following items shall be addressed as a minimum:

BLUEPRINT/DRAWING

Structure design and specifications

PLAN OF DEVELOPMENT

Construction procedure and technique.

Emergency contingency plan in advent of diversion or flume structure failure.

Right-of-way maintenance procedure and schedule.

MAGNAR BASIN WILDRYE

Magnar, an improved variety of basin wildrye, is a cool season, perennial bunchgrass native to much of the Western United States. It was once a very important winter forage plant of the Western rangelands, but overgrazing greatly reduced or eliminated it. The name denotes great or large.

Magnar was released in 1979 by the Soil Conservation Service and the University of Idaho Agricultural Experiment Station.

Adaptability

Magnar is well adapted to southern Idaho, northern Utah, and Nevada. It grows in areas ch an average annual precipitation of 8 to over inches. It is adapted to irrigation throughout ne region. Although Magnar has a broad soil texture adaptation, it does not do well on coarse textured or shallow soils. It has good tolerance to salt and alkali.

Uses

Magnar is a good erosion control plant. It is useful for stabilizing gullies and banks of dry washes. It can be used as a grass windbreak for wind erosion protection or to control blowing snow.

Magnar may also be used as a component in mixtures to reseed rangelands, minespoils, and other disturbed areas. It is well adapted to phosphate minespoil reclamation in southeastern Idaho.

Another good use of Magnar is for wildlife food and cover. It provides excellent nesting, roosting, escape cover, and food for pheasants. Other birds and small rodents also eat the large seeds.

Under irrigation, Magnar can produce as much as 10 tons per acre of dry weight forage. makes excellent standing winter grazing for stock. It also has potential as chopped green d or silage.

Seeding Recommendations

Plant on weed-free, firm seedbed, in early spring or late fall. Seeding after June 1 or before September 1 may cause failure even with irrigation. Magnar establishes slowly and should not be grazed or cut until late summer or fall of the second growing season.

It is recommended all plantings be made on a Pure Live Seed (PLS) basis at the following rates when seeded alone:

Row Spacing (inches)	Pounds PLS (per acre)	Total Seed per Linear Foot Drill Row
6	18	26
12	9	26
24	5	29
36*	3.5	30
48*	3.0	34

*Seed production, wildlife, or windbreak plantings

Seed Production

Seed production fields should be seeded in rows 36 to 48 inches apart to permit access for machine tillage, hand roguing, and weed control. Seed is best harvested as soon as mature by direct combining with the platform set high to get most of the seed and as little green growth as possible. Seed must be dried immediately after combining.

Seed Availability

Breeders and foundation seed are mantained by the Plant Materials Center at Aberdeen, Idaho. Foundation seed may be obtained through soil conservation districts in Idaho, Nevada, and Utah; University of Idaho Research and Extension Center; and Utah Crop Improvement Association.

SAND Dropseed - A Drought Tolerant Grass for Coarse Texture Soils



SAND DROPSEED
Sporobolus cryptandrus
(Torr.) A. Gray

ORIGIN

Sand dropseed is native to all parts of the United States except the eight most southeastern states. Little selection or improvement work has been done with it. Most commercial seed comes either from the Southern Great Plains or as a by-product of the Bermuda grass seed industry at Yuma, Arizona.

DESCRIPTION

Sand dropseed is a warm season perennial grass that usually grows in rather small tufts. The seed stalks may be either erect or spreading and range in height from 20 to 40 inches. There is a conspicuous ring of short stiff hair at the leaf collar. Most of the head remains in the sheath until after the seed is formed.

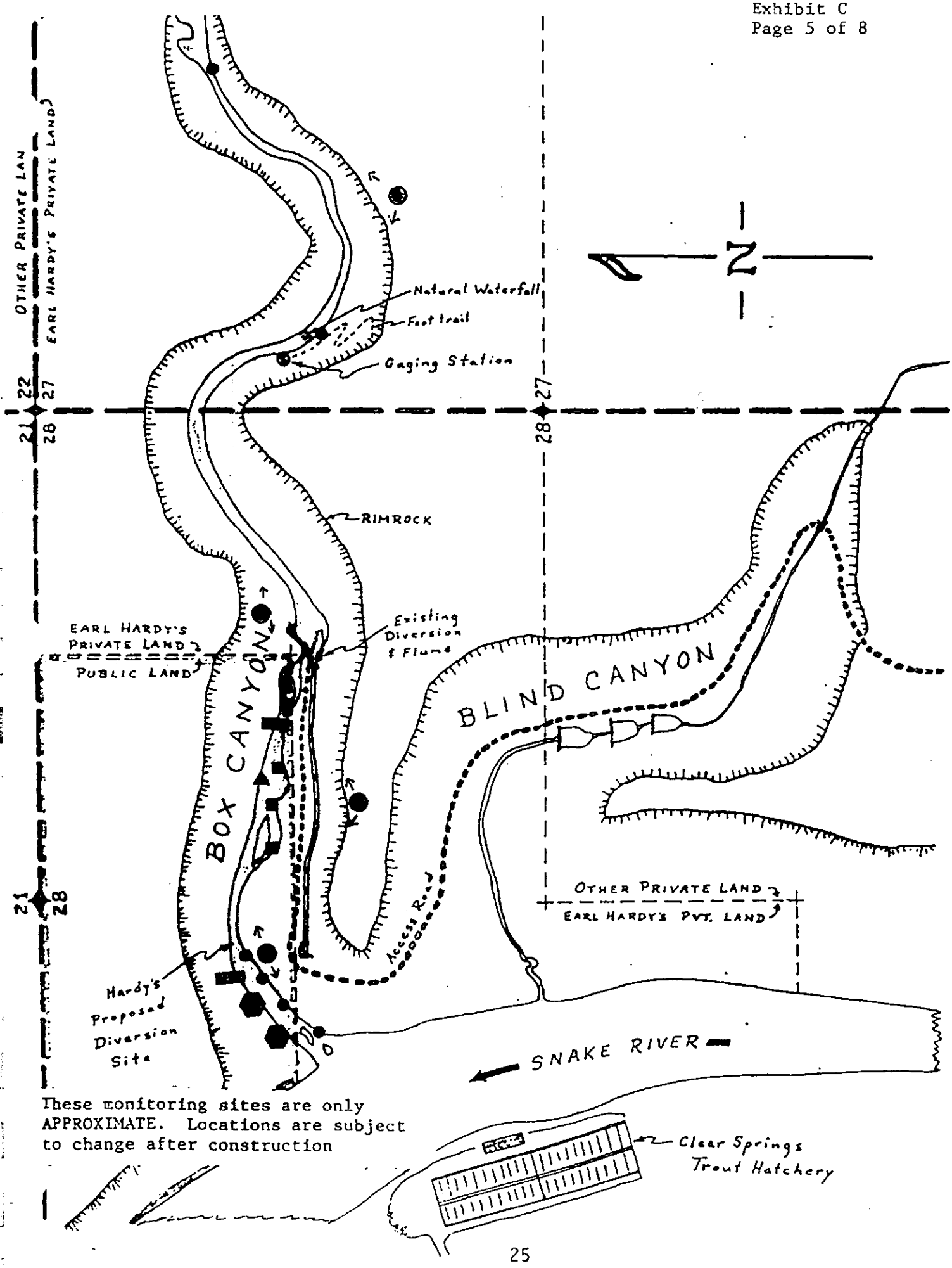
ADAPTATION AND USE

Sand dropseed is commonly found growing on sandy soils, but it grows well on other soils also. In Utah, it is useful only in the southern part of the state where a significant amount of summer precipitation occurs. The grass is readily eaten by all classes of livestock during the early growth stage, but is relatively unpalatable when dry.

SEEDBED

A clean weed-free seedbed is needed. In addition, some type of water conservation measure such as contour furrows or pits is desirable to help hold moisture until the seedlings become established.

USDA SCS PORTLAND, ORE. 1966 M-2430-212



These monitoring sites are only APPROXIMATE. Locations are subject to change after construction

NEZPAR INDIAN RICEGRASS

Nezpar Indian ricegrass is one of the West's most distinct and beautiful perennial bunchgrasses. Nezpar is extremely drought tolerant and provides natural erosion control.

Named in honor of the Nez Perce Indians, Nezpar was collected from native vegetation near Whitebird, Idaho. The nutritious seeds were once one of the food staples of many Western Indians.

Nezpar was released in 1978 by the Soil Conservation Service and the University of Idaho Agricultural Experiment Station.

Adaptability

This erect, cool-season, native bunchgrass is adapted especially for the West and will grow well in Idaho, Utah, and Nevada. It is found on high mountain, dry southerly exposures to desert floors. It prefers sand dunes, sandy plains, canyons, hillsides, and exposed ridge sites.

Nezpar is adapted to coarse soils in areas with at least 9 inches (22.86 cm) annual precipitation. At elevations of 6000 feet (1828.8 m) and above, where average annual temperature is 40°F, (4.5°C) or less, plantings should be restricted to south and west slopes or other "hot" situations.

Uses

Nezpar is particularly adapted for winter forage. The plant does best when grazed in fall and winter and is highly palatable to all wildlife and all classes of livestock. It cures exceptionally well and provides nutritious winter feed. Stands deteriorate under spring grazing.

Nezpar is well adapted for rangeland seedings. It is also in demand for use in the revegetation of lands disturbed by surface mining and for critical area stabilization.

Seeds of Nezpar start to mature in early summer and provide a high energy, sustaining food for upland game birds and rodents.

Seeding Recommendations

In sandy soils at the lower end of the precipitation range, seed should be planted 3 to 4 inches deep. In less droughty situations, shallower seeding depths may be used, depending on conditions such as soil and age of seed. Older seed doesn't have the same capacity to emerge from a deep planting that young seed has.

When included in a seed mixture that will be planted 1 inch deep, seed that is 5 to 10 years old is recommended. Shallow seedings must be made in late fall to reduce bird and rodent depredation.

It is recommended all plantings be made on a Pure Live Seed (PLS) basis.

$$\frac{\text{\% Purity} \times \text{\% Germination}}{100} = \text{PLS\%}$$

Suggested Seeding Rates

Row Spacing (inches)	PLS Linear Foot	Lbs./Acre at 80% PLS
6	24	10*
12	24	5*
36**	24	3*

*Includes viable hard seeds
**Seed production

Seed Production

Optimum soils are loamy sands, sandy loam, and fine sandy loam. Irrigated field conditions are recommended and should produce about 370 pounds per acre cleaned seed. Two years should be allowed for adequate stand establishment.

Seed Availability

Foundation seed is available through the University of Idaho Research and Extension Center, Utah Crop Improvement Association, and soil conservation districts in Idaho and Utah. Breeder seed is maintained by the Plant Materials Center at Aberdeen, Idaho. Registered and certified seed is available from commercial agricultural seed dealers.

Box Canyon Rehab List

Shrubs:

- Basin Big Sagebrush (*Artemesia tridentata tridentata*)
- Spiney Hopsage (*Atriplex spinosa*)
- Gray Rabbitbrush (*Chrysothamnus nauseousus*)
- Greasewood (*Sarcobatus vermiculatus*)
- Four-wing Saltbush (*Atriplex canescens*)

Forbs:

- Milfoil-Western Yarrow (*Achillaea millefolium lanuldsa*)
- Red Columbine (*Aquilegia formosa*)
- Hoary Aster (*aster pansus*)
- Munro's Globe Mallow (*Sphaeralcea munroana*)

Grasses:

- Alkali Saltgrass (*Distichlis stricta*)
- Giant Wildrye (*Elymus cinereus*) May use 'Magnar'
- Indian Ricegrass (*Oryzopsis hymenoides*) May use 'Nezpar'
- Sandberg Bluegrass (*Poa sandbergii*)
- Sand Dropseed (*Sporobolus cryptandrus*)

Seventy-five percent of this species list would meet compliance. Intent is to maintain a close proximity to the pre-disturbance vegetative diversity and composition.

Species list for trees is subject to soil analysis and irrigation design. Trees planted for screening purposes must survive a minimum of three years and replacement would be required. It may be appropriate to contract tree selection and planting to a nursery or landscaping company.

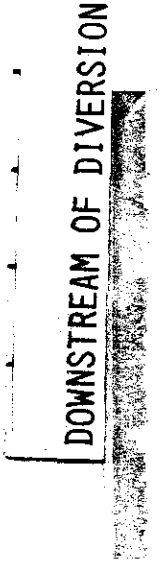
BLM employees will make unannounced readings of water levels. This information will be recorded and maintained at the District Office. This additional monitoring is reflected in the above cost estimate.

A re-evaluation of the monitoring program will be made after four-years to ensure affectiveness. Changes in the program should reflect the objectives of the ACEC Management Plan.

Cost Summary

Year	Not to Exceed Cost
1	$2,925.00
2	2,925.00
3	2,925.00
4	2,925.00
Reevaluate Monitoring Program	
5	BLM shall continue to monitor the right-of-way; however, the costs associated with the Federal candidate threatened species and all other biological monitoring shall be borne by the Bureau, not the Holder.
20	
21	Reevaluate Monitoring Program

29. The right-of-way holder shall have the right to relinquish the right-of-way at any time, and upon such relinquishment of the right-of-way holder shall be relieved of all obligations and liabilities under the right of way except those pertaining to rehabilitation required by the terms and conditions of the right-of-way, and upon such relinquishment all restrictions on the right-of-way holder's use of the private land shall terminate and all rights and privileges for the public or the BLM to use the private land for the purposes set forth in Exhibit A and Exhibit D, or for any other purposes, shall terminate, except for the BLM Authorized Officer's right of access to the public lands for inspection and evaluation of rehabilitation efforts and success thereof.



United States Department of the Interior

BUREAU OF LAND MANAGEMENT
Shoshone District Office
400 West F Street
Shoshone, Idaho 83352

IN REPLY
REFER TO: I-2880

Dear

The comments you submitted were analyzed and considered in the formulation of the enclosed Box Canyon Final Environmental Assessment and Modified Decision.

A right-of-way for a diversion structure and flume is being offered to Mr. Earl Hardy/Box Canyon Trout Company, Inc. Issuance of the right-of-way with specific terms and conditions is consistant with the Bureau's preferred alternative analyzed in the Box Canyon Final Environmental Assessment.

Issuance of the right-of-way with close monitoring and enforcement of the identified terms and conditions will provide: (1) specific habitat management of four candidate threatened and endangered species; (2) public access to the headwaters of the Box Canyon Creek; (3) economic stimulation to the local area; and (4) most important, the long term protection and management of the unique resource values located in Box Canyon.

A right of appeal to the Interior Board of Land Appeals (IBLA) is afforded to dissenting parties. This appeal must be submitted within 30 days of decision issuance date to the Shoshone District Office and also to the Field Solicitor, U.S. Department of the Interior in Boise, Idaho.

Any questions should be addressed to Joe Aitken or me at (208)886-2206.

Sincerely,

Robert D. Cordell

Robert D. Cordell
Area Manager
Bennett Hills Resource Area

Enclosures:

MICROFILMED
JUN 0 2 2004

MICROFILMED
MAY 17 1989

I-2880

November 7, 1986

CERTIFIED MAIL P 241 195 210

Earl M. Hardy
Box Canyon Trout Co., Inc.
1301 Vista Avenue
Boise, Idaho 83705

MODIFIED
DECISION

Earl M. Hardy/
Box Canyon Trout Co., Inc.

Right-of-Way I-2880

RIGHT-OF-WAY PROPOSAL REJECTED
ALTERNATIVE RIGHT-OF-WAY OFFERED
INTERIM RENTAL FEE REQUIRED

On April 14, 1982, Right-of-Way Application I-2880 was rejected by decision of the Idaho State Director. This decision was suspended to allow you time to modify your proposal, correct deficiencies, and offer appropriate mitigation for anticipated environmental impacts.

Your present proposal fails to meet the objectives of the Box Canyon Area of Critical Environmental Concern (ACEC) Management Plan; is considered environmentally unacceptable, and is hereby rejected. Refer to enclosed Final Environmental Assessment and Land Report. An alternative considered in the assessment of your proposal is compatible with the objectives of the Box Canyon ACEC plan and is offered to you. Find enclosed the alternative right-of-way documents and stipulations. This offer is contingent upon your full acceptance of the Terms and Conditions of Regulation 43 CFR 2800 and Stipulations, Exhibit D. Failure to accept the alternative offer in its entirety will result in rejection of the right-of-way application.

An interim rental fee of $250.00 is required upon return of the signed right-of-way grant documents and stipulations. Please make the check payable to: Department of the Interior - BLM. A billing is enclosed. This interim fee is subject to adjustment upon completion of an official appraisal.

You are given 30 days from receipt of this decision to submit the signed grant document and stipulation copies along wih payment of $250.00 as an interim rental fee to the Shoshone District Office.

MICROFILMED
MAY 17 1989

Failure to do so will result in your application being rejected, and the file closed without further notice.

You have the right of appeal to the Board of Land Appeals, Office of the Secretary, in accordance with the regulations in 43 CFR Part 4 (see enclosed information sheet). However, if an appeal is taken, the Notice of Appeal must be filed in this office (not the Board) within 30 days of receipt of this decision so that the case file can be transmitted to the Board. To avoid summary dismissal of the appeal, there must be strict compliance with the regulations. If an appeal is filed, a copy of the Notice of Appeal and of any statement of reasons, written arguments, or briefs must be served on the Field Solicitor, U.S. Department of the Interior, Box 020, Federal Building and Courthouse, 550 W. Fort Street, Boise, Idaho 83724 in the manner prescribed in 43 CFR 4.401(c), not later than 15 days after filing of the Notice of Appeal.

Questions should be addressed to Joe Aitken or myself at (208)886-2206.

Sincerely,

Robert D Cordell

Robert D. Cordell
Area Manager
Bennett Hills Resource Area

Enclosures

MICROFILMED
MAY 17 1989

Form 2800-14
(August 1985)

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT

RIGHT-OF-WAY GRANT/TEMPORARY USE PERMIT

Issuing Office
SHOSHONE, IDAHO

Serial Number
I-2880

1. A (right-of-way) ~~(permit)~~ is hereby granted pursuant to:

   a. [X] Title V of the Federal Land Policy and Management Act of October 21, 1976 (90 Stat. 2776; 43 U.S.C. 1761);

   b. [ ] Section 28 of the Mineral Leasing Act of 1920, as amended (30 U.S.C. 185);

   c. [ ] Other (describe) _____.

2. Nature of Interest:

   a. By this instrument, the holder Earl M. Hardy/Box Canyon Trout Company, Inc. receives a right to construct, operate, maintain, and terminate a water diversion, flume, and access road for fish propagation facility on public lands (or Federal land for MLA Rights-of-Way) described as follows:

   Township 8 South, Range 14 East, Boise Meridian
   Section 28: portions of Lot 1 and NW¼NE¼

MICROFILMED
MAY 17 1989

   b. The right-of-way ~~permit~~ area granted herein is _____ feet wide, _____ feet long and contains _____ acres, more or less. If a site type facility, the facility contains ±3.0 acres.

   c. This instrument shall ~~terminate~~ exist for the useful life of the facility, ~~unless~~ from its effective date unless, prior thereto, it is relinquished, abandoned, terminated, or modified pursuant to the terms and conditions of this instrument or of any applicable Federal law or regulation.

   d. This instrument ☒ may ☐ may not be renewed. If renewed, the right-of-way ~~permit~~ shall be subject to the regulations existing at the time of renewal and any other terms and conditions that the authorized officer deems necessary to protect the public interest.

   e. Notwithstanding the expiration of this instrument or any renewal thereof, early relinquishment, abandonment, or termination, the provisions of this instrument, to the extent applicable, shall continue in effect and shall be binding on the holder, its successors, or assigns, until they have fully satisfied the obligations and/or liabilities accruing herein before or on account of the expiration, or prior termination, of the grant.

3. Rental:

For and in consideration of the rights granted, the holder agrees to pay the Bureau of Land Management fair market value rental as determined by the authorized officer unless specifically exempted from such payment by regulation. Provided, however, that the rental may be adjusted by the authorized officer, whenever necessary, to reflect changes in the fair market rental value as determined by the application of sound business management principles, and so far as practicable and feasible, in accordance with comparable commercial practices.

4. Terms and Conditions:

a. This grant is issued subject to the holder's compliance with all applicable regulations contained in Title 43 Code of Federal Regulations parts 2800 and 2880.

b. Upon grant termination by the authorized officer, all improvements shall be removed from the public lands within 90 days, or otherwise disposed of as provided in paragraph (4)(d) or as directed by the authorized officer.

c. Each grant issued pursuant to the authority of paragraph (1)(a) for a term of 20 years or more shall, at a minimum, be reviewed by the authorized officer at the end of the 20th year and at regular intervals thereafter not to exceed 10 years. Provided, however, that a right-of-way granted herein may be reviewed at any time deemed necessary by the authorized officer.

d. The stipulations, plans, maps, or designs set forth in Exhibit(s) A, B, C, and D ; dated effective date of Grant , attached hereto, are incorporated into and made a part of this grant instrument as fully and effectively as if they were set forth herein in their entirety.

e. Failure of the holder to comply with applicable law or any provision of this right-of-way grant shall constitute grounds for suspension or termination thereof.

f. The holder shall perform all operations in a good and workmanlike manner so as to ensure protection of the environment and the health and safety of the public.

g. The Holder shall comply with the stipulations identified on Exhibit D attached to and made a part hereof.

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IN WITNESS WHEREOF, The undersigned agrees to the terms and conditions of this right-of-way grant

(Signature of Holder)	(Signature of Authorized Officer)
(Title)	Area Manager, Bennett Hills Resource Area (Title)
(Date)	(Effective Date of Grant)

GPO : 1985 O - 483-259

STIPULATIONS

TERMS AND CONDITIONS

1. This authorization is issued for the useful life of the approved facility(ies) unless sooner relinquished, terminated, abandoned, or cancelled by the holder. The useful life of the facility(ies) will be jointly determined by the holder and BLM Authorized Officer considering economic value, structural integrity, and functional merit. The right-of-way grant will be reviewed at the end of twenty (20) years and at regular intervals thereafter at least once every ten (10) years [43 CFR 2801-1(h)(3)(i)]. The Authorized Officer may require corrective action; with no preconceived intent to modify or change any of the stated stipulations, i.e., 75 c.f.s. bypass, at any time after the 20th year as may be required to meet the stated goals and objectives of the Area of Critical Environmental Concern (ACEC) Plan dated December 19, 1985.

2. Notwithstanding the expiration of this instrument, early relinquishment, abandonment, cancellation, or termination, the provisions of this instrument, to the extent applicable, shall continue in effect and shall be binding on the holder, its successors, or assigns until they have fully satisfied the obligations and/or liabilities accruing herein before or on account of the expiration, or prior termination, of the grant.

3. For and in consideration of the rights granted, the holder agrees to pay the Bureau of Land Management fair market value rental as determined by the authorized officer. Provided, however, that the rental may be adjusted by the authorized officer, whenever necessary, to reflect changes in the fair market rental value as determined by the application of sound business management principles, and so far as practicable and feasible, in accordance with comparable commercial practices.

4. This grant is issued subject to the holder's compliance with all applicable regulations contained in Title 43 Code of Federal Regulations part 2800.

5. Failure of the holder to comply with applicable law or any provision of this right-of-way grant shall constitute grounds for suspension, termination, or cancellation thereof, with right of hearing as per 43 CFR 2803.4(e).

6. The holder shall perform all operations in a good and workmanlike manner so as to ensure protection of the environment and the health and safety of the public.

7. If any equipment transported across the public land area contains Polychlorinated Biphenyls (PCBs) such transport shall be in a totally enclosed manner in accordance with provisions of the Toxic Substance Control Act of 1976 as amended (see 40 CFR part 761. Additionally, any release of PCBs (leaks, spills, etc.) in excess of the reportable quantity established by 40 CFR 117 shall be reported as required by the Comprehensive Environmental

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Response, Compensation, and Liability Act, section 102b. A copy of any report required or requested by any Federal agency or State Government as a result of a reportable release or spill of any hazardous material shall be furnished to the authorized officer within 5 working days of the occurrance of the spill or release.

8. The Holder shall comply with the applicable Federal and State laws and all regulations concerning the use of pesticides (i.e., insecticides, herbicides, fungicides, rodenticides, and other similar substances) in all activities/operations under this grant. The Holder shall obtain from the authorized officer approval of a written plan prior to the use of such substances. The plan must provide the type and quantity of material to be used; the pest, insect, fungus, etc., to be controlled.; the method of application; the location for storage and disposal of containers; and other information that the authorized officer may require. The plan should be submitted no later than December 1 of any calendar year that covers the proposed activities for the next year. Emergency use of pesticides may occur. The use of substances on or near the area shall be in accordance with the approved plan. A pesticide shall not be used if the Secretary of the Interior has prohibited its use. A pesticide shall be used only in accordance with its registered uses and within other limitations if the Secretary has limited its use. A pesticide shall be used only in accordance with its registered uses and within other limitations if the Secretary has imposed limitations. Pesticides shall not be permanently stored on public lands authorized for use under this grant.

9. In the event the lands affected by Powersite Reserve 77 are required for powersite purposes as contemplated in Executive Order dated July 20, 1910, any structures or improvements placed thereon found to interfere with such developments shall be removed or relocated as necessary to eliminate such interferences at no cost to the United States or its permittees or licensees.

10. Prior to commencing any ground disturbing activities, holder shall submit a detailed blueprint/drawing of all structural facilities with a proposed Plan of Development and Rehabilitation for approval by the BLM Authorized Officer. The following items shall be addressed as a minimum:

BLUEPRINT/DRAWING

Structure design and specifications

PLAN OF DEVELOPMENT

Construction procedure and technique.

Emergency contingency plan in advent of diversion or flume structure failure.

Right-of-way maintenance procedure and schedule.

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REHABILITATION

Method of seedbed preparation, proposed species and quantity of trees/shrubs planned for vegetative screening, quantity, and type of mulching and fertilizer.

Initial Notice to Proceed will be issued following approval of structure blueprints/drawings and Proposed Plan(s) of Development and Rehabilitation.

11. A preconstruction meeting, on-site, with the Holder, contractors, and operators shall be held prior to any ground disturbance. A notice to proceed shall be issued for each segment of construction. Construction shall not proceed beyond the last completed stage without another Notice to Proceed for that specific stage. The stages are: a. Prepwork, b. Construction, c. Operation, d. Rehabilitation. Exceptions to accommodate efficiency of scheduled work must be approved in advance by the BLM Authorized Officer.

12. No heavy equipment operation or use of explosives shall be authorized from January 1 to June 1 of each year, except for emergency repairs or as otherwise approved by the BLM Authorized Officer.

13. The coffer dam shall be constructed in stages with water to be diverted in increments not to exceed 100 cfs per day. The Authorized Officer reserves right to delay coffer dam construction up to a maximum of five working days to conduct salvage operations.

14. Fish screens and a fish bypass structure are required. These structures, diversion and flume, must comply with Idaho Department of Fish and Game standards of design, construction, and operation.

15. A minimum of 75 cfs of instream water volume shall be bypassed through, over, and/or around the diversion/facility on a continuous, permanent, and verifiable basis. The holder shall provide structures to verify the minimum bypass flow.

16. Holder shall be informed in advance of scientific studies scheduled (or authorized) by BLM on public lands within the right-of-way area.

17. Holder shall construct and maintain a fenced foot bridge across flume or dam structure to accommodate safe public access. The bridge shall be no less than 4 feet wide, with side rails and fencing no less than 3 feet high, weight capacity of no less than 1/2 ton, and approach slopes of no greater than 2:1 (run:rise). Protective provisions of Idaho Code 36-1604 shall apply.

18. An as-built survey shall be required upon construction completion.

19. Riprap on the toe of berm, pond side, must approximate six-inches in size or larger to provide aquatic habitat needs. Intent is to minimize rock less than six inches in size. Riprap on downstream side of diversion and spillway must be of adequate size to prevent erosion of streambank [illegible]

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20. Holder shall provide up to six hours of equipment operation time with personnel to accomplish streambed habitat manipulation as directed by the authorized officer or his representative.

21. Monitoring studies shall be conducted as per Monitoring Schedule - Exhibit C. Holder shall reimburse the Bureau of Land Management for monitoring studies, per Monitoring Schedule - Exhibit C.

22. Water flows associated with scheduled operation and maintenance must be controlled so that Box Canyon Creek flows are not increased by 100 cfs within any one day time period.

23. Holder shall take no actions which will increase or decrease water levels, temperature, quality, and/or flow velocity within the natural sculpin pool upstream of the authorized impoundment pool. This applies only from the Clear Springs Diversion to the mouth of Box Canyon Creek.

24. Holder shall be responsible to comply with the terms described in Exhibit A, excluding Section 2 B, with the following modification:

-- BLM shall be authorized to conduct scientific studies within the preservation zone. No soil or vegetation removal, or destruction of resources shall be allowed.

25. Right-of-way Holder shall allow BLM administrative access for official business to the public land across private land in sections 27 and 28, T. 8 S., R. 14 E., B.M., and terminates if right-of-way I-2880 terminates.

26. Holder agrees to notify the Bureau of Land Management Authorized Officer in advance of initiating any action which might affect existing water permit(s) number(s) 36-7091 and 36-7334 or remaining water flows across private lands owned or controlled by the right-of-way holder or Mr. Earl Hardy, downstream from the approved point of diversion. Right-of-way holder further agrees to notify the Bureau of Land Management Authorized Officer of any action(s) directed to the holder by the State of Idaho, Department of Water Resources which could affect the present water permit status of permit number(s) 36-7091 and 36-7334 across private lands owned or controlled by the right-of-way holder or Mr. Earl Hardy, downstream from the approved point of diversion.

27. Upon termination of the right-of-way, holder shall remove all improvements within 90 days and smooth all disturbed areas to the existing contour and shall be required to establish a perennial vegetative cover composed of species identified in exhibit C. The seed shall be planted in the fall of the year prior to October 15 using planting techniques accepted by the authorized officer.

28. The right-of-way holder is not responsible for injuries suffered by any person on the right-of-way or on the private lands of the right-of-way holder. The provisions of Idaho Code 36-1604 are applicable to the right-of-way and to the private lands of the right-of-way holder.

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29. The right-of-way holder shall have the right to relinquish the right-of-way at any time, and upon such relinquishment of the right-of-way holder shall be relieved of all obligations and liabilities under the right of way except those pertaining to rehabilitation required by the terms and conditions of the right-of-way, and upon such relinquishment all restrictions on the right-of-way holder's use of the private land shall terminate and all rights and privileges for the public or the BLM to use the private land for the purposes set forth in Exhibit A and Exhibit D, or for any other purposes, shall terminate, except for the BLM Authorized Officer's right of access to the public lands for inspection and evaluation of rehabilitation efforts and success thereof.

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BUREAU OF LAND MANAGEMENT

TITLE PAGE

LAND REPORT, DECISION RECORD/RATIONALE, FINDING OF NO SIGNIFICANT IMPACT

Applicant's Name	Proposed Action	Serial No.	EA No.
Earl M. Hardy Fox Canyon Trout Co., Inc.	Right-of-Way for Water Diversion and Flume	I-2880	86-046

State	County	District	Resource Area	Planning Unit
IDAHO	Gooding	Shoshone	Bennett Hills	Canyon

Prepared By	Title	Dates of Examination	Report Date
Joseph Aitken	Bennett Hills Realty Specialist	Various	November 7, 1986

LANDS INVOLVED

Meridian	Township	Range	Section	Subdivision	Acres
BOISE	8 S.	14 E.	28	Lot 1, NW¼NE¼	Less than 3

DECISION RECORD/RATIONALE

DECISION:

Reject the proposal. Offer alternative Right-of-Way, based on Alternative 2, subject to Terms and Conditions of Regulations 43 CFR 2800, Exhibits A, B, and C, and Stipulations Exhibit D pages 1 through 5, of Environmental Assessment, No. ID-050-86-046. Alternative offer to be accepted by applicant in its entirety within 30 days of receipt of modified decision. Non acceptance shall result in the application being rejected and the file closed without further notice.

RATIONALE:

The proposal is environmentally unacceptable. Only Alternative 2 with specific mitigation requirements listed in the Environmental Assessment, number ID-050-86-046, including Exhibit D pages 1 through 5 is considered to meet the ACEC Management Plan objectives and guidelines.

FINDING OF NO SIGNIFICANT IMPACT

Environmental Assessment No. ID-050-86-046 adequately analyzes the impacts of the above action and indicates there will be no significant effects on the quality of the human environment. Consequently, an Environmental Impact Statement will not be prepared.

Robert D. Cordell
Area Manager

MAY 17 1989

11/7/86
Date

ID-2063-2 (June 1986)

LAND REPORT

I. DESCRIPTION OF PROPOSED ACTION AND ALTERNATIVES

A. Purpose and Need

The purpose of the proposed action is to develop a natural resource by perfecting water right permits on Box Canyon Creek into license and developing a fish propagation facility on adjacent private lands.

B. Proposed Action

The applicant proposes to build a water diversion structure on public lands in the Box Canyon stream channel and divert all but 20 cubic feet per second (cfs) of Box Canyon streamflow through a concrete flume to a fish propagation facility. The construction of a diversion within the stream channel would create a backwater pond approximately one-half acre in size.

The applicant has offered to preserve and allow public access to a portion of his privately owned land in the Box Canyon alcove system as offsite mitigation for environmental impacts caused by the proposal.

For more specific details refer to the Environmental Assessment, number ID-050-86-046.

C. Alternatives

There are four alternatives associated with the proposal and they are discussed in the Environmental Assessment, number ID--050-86-046. Refer to Section I.B. for specific alternatives.

II. NATIONAL ENVIRONMENTAL PROTECTION ACT (NEPA) COMPLIANCE

Environmental Assessment, number ID-050-86-046, analyzes the impacts of the proposed action and alternatives in detail and concludes that the proposed action is environmentally unacceptable.

Only Alternative 2, which requires specific mitigation is considered acceptable. Refer to the Environmental Assessment, number ID-050-86-046, for details.

III. DECISION FACTORS

A. Land Use Plans

The Monument Resource Management Plan approved on April 22, 1985, designated the public land at Box Canyon as an Area of Critical Environmental Concern (ACEC). This designation indicated that the public land would be retained in public ownership and managed for protection and enhancement of the recognized unique and special resources that exist on those public lands.

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A site specific management plan for the Box Canyon ACEC was developed and approved on October 17, 1985. This plan provided specific and general guidance to protect, preserve, and maintain the integrity of those resource values which led to the ACEC designation.

This plan would not prohibit development within the ACEC area as long as the management objectives of the ACEC plan are met. Developments or activities which destroy, remove, or decrease the quality and/or quantity of resources, or which would lead to irreparable damage to the aquatic, riparian, visual, wildlife, or fisheries values are considered incompatible uses under the Box Canyon ACEC Management Plan and no BLM action that would lead to those results would be taken. Development or activity proposals are considered on a case-by-case basis. If mitigation to prevent the loss or destruction of the key resources in the ACEC is provided, the proposal may be authorized.

The proposal submitted by the applicant is analyzed in Environmental Assessment number ID-050-86-046 and fails to fully mitigate the potential impacts to the ACEC resources and is considered incompatible with the management objectives of the Box Canyon ACEC Management Plan.

Only Alternative 2, which requires specific mitigation is considered compatible with the Box Canyon ACEC Management Plan.

B. Other Factors

As indicated in the Environmental Assessment, Box Canyon is an area having unique and outstanding features. The limitations placed on the public lands designated as the Box Canyon ACEC restricts the degree of development that may occur.

The proposed action does not mitigate the impacts to the key resources of the ACEC and is not considered environmentally acceptable. Only Alternative 2, with specific mitigation requirements listed in Exhibit D pages 1 through 5 of the Environmental Assessment ID-050-86-046, is considered to meet the ACEC Management Plan requirements.

IV. RECOMMENDATIONS

Reject the proposal. Offer a right-of-way to Earl M. Hardy/Box Canyon Trout Company, Inc. based on Alternative 2, Terms and Conditions of Regulations 43 CFR 2800, Exhibits A, B, and C, and Stipulations listed on Exhibit D, pages 1 through 5. Require alternative offer to be accepted by applicant in its entirety within 30 days of receipt of modified decision or reject the application and close the file without further notice.

V. RATIONALE

Refer to Environmental Assessment, number ID-050-86-046, Section III Analysis of Proposed Action and Alternatives and Section VII Summary Conclusion.

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VI. STIPULATIONS

Refer to Exhibit D, pages 1 through 5 of Environmental Assessment, number ID-050-86-046.

Joseph Cuthen
Preparer

7 Nov. 86
Date

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UNITED STATES DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Shoshone District Office

EA Cover Sheet

Environmental Assessment Number: ID-050-86-046

Action: Earl M. Hardy/Box Canyon Trout Company, Inc. Water Diversion - I-2880
(Name, Type, etc.) (Serial or Project No.)

Location: T. 8 South R. 14 East, BM Sec. 28: Lot 1 and NW¼NE¼

Signatures:

This environmental assessment fulfills the requirements of the National Environmental Policy Act of 1969 and related regulations. It was prepared with adequate interdisciplinary involvement.

Preparer/Team Leader	Title	Date
Authorized Official	Title	Date

Comments:

This document is final.

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DRAFT

BOX CANYON
ENVIRONMENTAL ASSESSMENT SYNOPSIS

PROPOSAL: Construction of water diversion and flume to divert all but 20 cfs of existing streamflow from Box Canyon Creek to adjacent private land to develop a fish propagation facility.

The Environmental Assessment considers the proposal as an environmentally adverse action and not in conformance with the ACEC Management Plan.

ALTERNATIVE 1: No Action: Deny the Right-of-Way Proposal.

The Environmental Assessment considers the No Action Alternative as an acceptable action to leave the lands and water in their present state on public lands; however, from a holistic approach, private land use possibilities within the Box Canyon ecosystem may create environmental impacts on public lands that conflict with goals of the ACEC Management Plan.

ALTERNATIVE 2: Grant the right-of-way and include specific mitigation measures to accomplish certain levels of environmental protection and/or enhancement to assure the objectives of the ACEC Management Plan are met.

The Environmental Assessment considers Alternative 2 as an acceptable action on public lands and from a holistic approach, an acceptable action for the resources (plant and animal) and general public (scenic, recreation, and access).

ALTERNATIVE 3: Approve Alternative 2 and negotiate title transfer with Earl M. Hardy for the Bureau of Land Management to obtain legal land title to the entire Box Canyon alcove system including all water and development rights excluding an easement for the concrete flume and access road and appropriate water rights associated with that development.

This alternative was previously discussed with the applicant. The applicant is not in favor of such an action and consumation of this alternative is not considered viable at this time. Therefore, this alternative is not analyzed.

ALTERNATIVE 4: Approve Alternative 2 and assist a privately owned preservation group or agency to obtain legal land title to the entire privately owned portion of the Box Canyon alcove system including all water and development rights excluding an easement for the concrete flume and access road and appropriate water rights associated with that development.

This alternative was previously discussed with the applicant. The applicant is not in favor of such an action and consummation of this alternative is not considered viable at this time. Therefore this alternative is not analyzed.

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BOX CANYON
WATER DIVERSION RIGHT-OF-WAY
ENVIRONMENTAL ASSESSMENT

I. DESCRIPTION OF THE PROPOSED ACTION AND ALTERNATIVES

A. Proposed Action

1. General: Earl Hardy proposes to construct a water diversion structure on public land in the stream channel of Box Canyon Creek and a concrete flume leading from the diversion across public land to a proposed fish propagation facility on his adjacent private land.

The construction of a diversion within the stream channel would create a backwater pool approximately one-half acre in size.

Mr. Hardy proposes to bypass 20 cubic feet per second (cfs) at the diversion, using the rest of the stream flow for his fish propagation facility. Mr. Hardy also offers to preserve his private property located in the upper portion of Box Canyon in its natural state with public access. Refer to Exhibit A for preservation location and description.

The public land within the Box Canyon Area of Critical Environmental Concern (ACEC) affected by the proposed action is:

Township 8 South, Range 14 East, Boise Meridian
Section 28: Lot 1 and NW4NE4

2. Specifications: The proposed diversion dam would be approximately 75 feet from upstream to downstream bank toes, 178 feet wide from banktoe to banktoe, and 16 feet high from stream bedrock elevation.

At the spillway, the inside dimensions of the flume would be 14 feet wide and 16 feet high. The flume would continue at this size for 70 feet where it would be reduced to 14 feet wide and 7 feet high. The total length of the flume on public land would be 413 feet.

The width of the right-of-way requested for the flume and access road is 70 feet. The entire diversion dam, flume and backwater pond would occupy slightly less than three acres of public land (Refer to drawing dated February 1986 number T860212). A measurement of 322 cfs was taken in January and March 1986, 95 feet upstream from the proposed diversion point. Estimated inflow from streamside recharge is approximately 9.5 cfs from the point of measurement to the proposed diversion point for a total of 331.5 cfs estimated water flow volume at the proposed point of diversion. A 20 cfs bypass would allow the applicant approximately 312 cfs for a fish propagation facility. The applicant has not identified a specific volume of water for development purposes, but has stated he would divert all but the 20 cfs bypass.

The private land offered for preservation includes land within Box Canyon that begins at a point approximately 100 feet below the major waterfall in section 27 and includes all the canyon upstream from that point. It also includes

separate legal action because of potential unmitigated impacts on habitat and populations of Federal candidate threatened aquatic species.

c. Divert Water Bypassing Existing Diversion: The existing diversion in Box Canyon, constructed by Clear Springs Trout Company, is located on Earl Hardy's private property. Mr. Hardy could conceivably divert the water which presently bypasses the existing diversion.

However, since a majority of the water in Box Canyon Creek apparently arises below the existing diversion, Mr. Hardy could only divert a relatively small amount by resorting to this alternative. The latest water measurements reported only 54.3 cfs bypassing the Clear Springs diversion. While this amount is small for fish propagation, it may be adequate to use for a small hydro-electric generation facility and supplemental to other fresh water flows for fish propagation.

d. Use Other Means to Recover Investment: If Mr. Hardy is not allowed to develop a water diversion on public lands, it is possible that he may abandon his plan to develop a new fish propagation facility. In this case, he may turn to some other means of recovering his investment in the Box Canyon property. He has mentioned the possibility of high-value residential development either within the canyon or around its rim, utilizing the uniqueness of the canyon to attract wealthy prospective residents to the area.

It is also logical to assume that Mr. Hardy might consider reselling the property, in whole or in part, to the highest bidder, for whatever purpose it might be desired. He might also simply retain the property for his own use or as a future investment.

Similar to the other possibilities, all these options except the one affecting that portion of Box Canyon within the designated preservation zone could be exercised even if the proposed right-of-way, I-2880, is granted.

2. Alternative 2: Grant the right-of-way and include specific mitigation measures to accomplish certain levels of environmental protection and/or enhancement to assure the objectives of the ACEC Management Plan are met. Specific mitigation measures for Alternative 2 are contained in Exhibit D, Terms and Conditions.

3. Alternative 3: Approve Alternative 2 and negotiate title transfer with Earl M. Hardy for the Bureau of Land Management to obtain legal land title to the entire Box Canyon alcove system including all water and development rights excluding an easement for the concrete flume and access road and appropriate water right associated with that development.

This alternative was previously discussed with the applicant. The applicant is not in favor of such an action and consumation of this alternative is not considered viable at this time. Therefore, this alternative is not analyzed.

II. DESCRIPTION OF THE EXISTING ENVIRONMENT

A. Non-Living Components

1. Air: Air quality in the vicinity of Box Canyon is generally excellent. Yearly temperatures range from 100°F in the summer to -10°F in the winter. Temporary pollution is caused by wind-borne dust, range fires, or agricultural burning.

2. Land: Topography of the public land area is characterized by steep canyon walls approximately 200 feet in height and a narrow streambed-canyon bottom ranging from 100 to 300 feet in width. The stream elevation drops about 85 feet in less than one-half mile on the public land.

The lava flow dam, talus slopes, and steep canyon walls are the dominant geologic features of the public lands, and occupy nearly all the area. The remainder of the public land consists of a flood plain basin confined between two talus slopes. The soils are sandy loams that are shallow and rocky intermixed with basalt boulders.

3. Water: Box Canyon Creek consists of numerous springs originating throughout the entire Box Canyon complex. This flow is reportedly the eleventh largest natural spring in the United States with an estimated cumulative volume of 720 cfs as measured in January and March of 1986 at the Clear Springs diversion and bypass, and at the mouth of Box Canyon Creek.

The main spring emerges at the easternmost end of the canyon at the base of a cliff. From this point and all the way to the confluence of the creek and Snake River, other spring waters enter the stream from both the north and south sides.

Clear Springs Trout Company maintains a water diversion structure, flume, and pipeline on private land directly east and south of the public lands. These facilities are licensed to divert 300 cfs from the streamflow of Box Canyon Creek. Water measurements taken in January 1986 indicated a diversion bypass of 54.3 cfs and 303 cfs being diverted through the flume to the west side of the Snake River for fish propagation and hydro-electric purposes.

The January and March water measurements indicated a flow of 417 cfs at the mouth of Box Canyon Creek, 322 cfs at a point 95 feet upstream from the proposed point of diversion, and an estimate of 331.5 cfs at the proposed point of diversion.

The quality of water in Box Canyon Creek is excellent and highly desirable for fish production. The water is crystal clear and remains at a relatively constant temperature of 58°F. Because of the outstanding water quality and constant temperature, Box Canyon Creek is considered a refuguim for freshwater molluscs including three species which are federal candidate threatened species and a large population of Shoshone Sculpin fish which is also a federal candidate threatened species. Flow volume remains nearly constant year around; however, an expected 10 percent fluctuation in flow volume is considered normal. The following is a chemical analysis made by the U.S. Geological Survey in 1953 of the Thousand Springs, which lies two miles

north of Box Canyon. It is assumed the chemical analysis of Box Canyon is similar to Thousand Springs. Silica (SiO2) 33 ppm, Iron (FeO) .06 ppm, Calcium (C_aO) 36 ppm, Magnesium (Mg) 18 ppm, Sodium (Na) 25 ppm, Potassium (k) 3.5 ppm, Bicarbonate (HCO3) 182 ppm, Sulfate (SO4) 37 ppm, Chloride (cl) 20 ppm, Fluoride (F) .7 ppm, Nitrate (NO3) 217 ppm, Boron (B) .08 ppm, Dissolved Solids 266 ppm, Hardness (Total) 164 ppm, Percent Sodium 24, pH 7.8, Specific Conductance (micro-mhos at 25°C.) 402, Temperature (°F) 58.

Clear Springs Trout Company, Inc. licensed 300 cfs of water from Box Canyon Creek for use in their fish propagation facility. Several other water permits have been issued and other applications are pending. An approved water permit becomes a licensed "right" only after the permit holder applies the water to a recognized "beneficial use." Information regarding water permits and applications in Box Canyon is summarized in Table I.

TABLE I
WATER PERMITS AND APPLICATIONS FOR WATER IN BOX CANYON

Number	Amount cfs	Priority of Application	Applicant(s)	Purpose
36-2705 1/	200	03/15/63	Mountain View Irrigation Co.	Irrigation
36-7040 2/	300	09/04/68	Richard Kaster	Fish Propagation
36-7797 3/	300	06/23/78	Clear Springs Trout Co.	Fish Propagation
36-7824 4/	300	09/23/78	Richard Kaster	Hydro-electric Project
36-8080 5/	300	04/20/82	Clear Springs Trout Co.	Fish Propagation Hydro-electric
36-7091 6/	300	10/27/69	Earl Hardy	Fish Propagation
36-7066 7/	380	01/05/70	George Lemmon & Norman Standal	Fish Propagation
36-7175 8/	330	05/18/71	Box Canyon Trout Co., Inc. and Earl Hardy	Fish Propagation
36-7198 9/	850	07/12/71	State Of Idaho Parks and Recreation Department	Recreation
36-7334 10/	600	04/30/73	Box Canyon Trout Co., Inc.	Fish Propagation

1/ Related to a desert land entry (DLE) project in the Boise BLM District.
2/ In 1973 this permit was assigned to Clear Springs Trout Company, Inc., and is licensed for the existing diversion in Box Canyon, which provides water to the large fish propagation facility on the west bank of the Snake River.
3/ The 300 cfs used for fish propagation is the same 300 cfs diverted through the present Clear Springs flume in Box Canyon.
4/ The 300 cfs used for a hydro-electric project is the same 300 cfs diverted through the present Clear Springs flume in Box Canyon.
5/ The 300 cfs used for fish propagation/hydro-electric project is the same 300 cfs diverted through the present Clear Springs flume in Box Canyon.
6/ Intended to be used to obtain water for Mr. Earl Hardy's proposed fish propagation facility related to right-of-way application I-2880.
7/ Related to another R/W application, I-3389 similar to I-2880, but rejected by BLM in 1985.
8/ Proposed for hatcheries in Box Canyon upstream of the Clear Springs diversion. FERC project also proposed for hydro-electric project in middle portion of canyon. This water permit may be amended.
9/ Filed 07/12/71, pursuant to House Bill (HB) 69, by Idaho Parks and Recreation Department, for all streamwater upstream of present diversion. No diversion, construction, or disturbances contemplated.
10/ Intended to provide supplemental water for proposal related to I-2880. Three separate points of diversion are given in the permit application.

B. Living Components

1. Plants (Aquatic): The high mineral content of the spring water in Box Canyon provides a productive environment for aquatic vegetation. The most abundant plant near the springs is watercress. Yellow monkey flower and several mosses are also common. The pools contain green algae and a diverse diatom community. Submergent vegetation is common only in the large pools above the proposed diversion and near the mouth of Box Canyon Creek.

2. Plants (Terrestrial): According to Robert Steele's report "Vegetation of Box Canyon" (enclosed in case file I-2880), the canyon contains examples of aquatic, riparian, saline-alkaline, upland, and talus plant communities. Some of the more abundant species found within these communities include river birch, juniper, big sagebrush, squawbush sumac, greasewood, poison ivy, rock clematis, stinging nettle, alkali saltgrass, giant wildrye, Sandberg's bluegrass, and cheatgrass. A 1986 Field Survey verified no threatened and/or endangered plant species within the Box Canyon ecosystem.

3. Animals (Aquatic): Several species of fish are found in Box Canyon Creek. According to information from the Idaho Department of Fish and Game, excellent populations of rainbow trout exist in the portion of Box Canyon Creek downstream from the existing diversion and maintaining the integrity of the creek, i.e., preventing construction of barriers to fish passage, is important. In one fish-shocking study of approximately 195 feet of stream within the public land area, 111 trout were counted averaging 8.6 inches in length and ranging up to 16.7 inches. All fish examined were in excellent body condition. Four of the trout were identified as hatchery rainbow (based upon the deformed dorsal fin) and the other 107 were wild rainbow.

Fish and game personnel have identified areas below the existing diversion as suitable for trout spawning. One of these, the private land at the confluence of Box Canyon Creek with the Snake River, is considered an out- standing trout fishing area during certain times of the year. On May 19, 1976, Fish and Game personnel caught and released 60 rainbow trout in a two-hour period for a catch rate of 10 trout per fisherman hour. These fish ranged from 9 to 12 inches in length. This confluence area also attracts waterfowl and provides high quality hunting in the fall.

Rainbow Trout that exist above the present Clear Springs Trout Company diversion and water falls may be a pure native genotypic race, which should be preserved. This race may be descended from steelhead trout, which had access to Box Canyon Creek prior to construction of numerous dams on the Snake and Columbia Rivers.

The public land portion of Box Canyon Creek is habitat for the Shoshone sculpin (*Cottus greenii*), a Federal candidate threatened species. The stable aquatic temperatures and chemistry support the largest known population of Shoshone sculpin on public lands, and the third largest known population in the world. Few Shoshone sculpin are known to exist upstream on private lands below the falls. No Shoshone sculpin occur naturally above the falls. The large pools upstream from the proposed diversion point are the primary habitat areas for the Shoshone sculpin. Smaller populations are found in the small pools of the stream below the proposed diversion. These populations could be impacted by water manipulations.

Shoshone sculpin (*Cottus greenii*) is a small fish which requires cold, clean water and has very specific food and cover requirements. These requirements are listed by Dr. Jack Griffith in his report to the BLM on this species. Presently, this is a Category 1 Federal candidate threatened species. According to the Boise office of the U.S. Fish and Wildlife Service, this species may not be listed as threatened within the foreseeable future.

The BLM-administered portion of Box Canyon Creek also contains populations of three Federal candidate threatened molluscs: the Bliss Rapids snail (no scientific name), giant Columbia River limpet (*Fisherola nuttalli*), and Utah Valvata Snail (*Valvata utahensis*). Each of these species occupies seperate and unique habitat sites which are described in a September 1985 report by Dwight W. Taylor.

Bliss Rapids snail (not formally named) is an undescribed, monotypic genus in the Hydrobligae, is a particularly significant endemic, is approximately one millimeter in size and occupies a unique habitat on the underside of instream rocks. Flowing water seems to be required by this species. Much is unknown about the requirements of this snail because of its relatively recent discovery. This snail may be listed as threatened by the U.S. Fish and Wildlife Service in the future. Presently, this is a Category 1 Federal candidate threatened species.

Utah Valvata snail (*Valvata utahensis*) is approximately one centimeter in size and occupies the sandy sediments associated with pools or slack water. Much is unknown about the habitat needs of this species. Due to the lack of information on this species, Utah Valvata is a Category 2 Federal candidate threatened species. The large pools upstream from the proposed diversion are the only known sites within Box Canyon Creek where suitable habitat has been found and where these molluscs have been observed.

Giant Columbia River limpet (*Fisherola nuttalli*) occurs on the lower surfaces of large rocks in steady or strong current. This is a relatively small mollusc which has a streamlined shape and a large (compared to body size) muscular foot, permitting it to live where no other molluscs could live. Generally, this species occurs in large streams such as the Columbia River, however, Dr. Dwight Taylor considers the remaining habitat in Box Canyon Creek to be critical. This species is a Category 2 Federal candidate threatened species. Since live specimens have not yet been collected from Box Canyon Creek, population centers or sizes cannot be identified. It is expected that suitable habitat does occur both on public and private lands within Box Canyon Creek.

The existing Clear Springs Trout Company diversion presently restricts all aquatic migration which previously occurred from that point of diversion up to the natural waterfall (shown on Illustration 2). However, if water remains in Box Canyon Creek below the diversion, a fish ladder will be required by Idaho Department of Fish and Game in the existing structure. Although migration is naturally restricted by the upstream waterfall, a separate population of smaller trout exists above the falls.

Other aquatic invertebrates found in Box Canyon Creek include several species of aquatic insects, freshwater shrimp, several common snail species, and crayfish.

4. Animals (Terrestrial): Various species of birds use the walls of Box Canyon for nesting sites. One pair of golden eagles successfully nested in the canyon, near the existing diversion, during the spring and summer of 1976. A total of four golden eagle nests have been identified within the canyon, but these may be alternate nests used in different years. No active eagle nest sites were identified during the spring of 1977; however, in 1985 and 1986, active nest sites were observed. Other raptors nesting in the canyon include red-tailed hawks, American kestrels, prairie falcons, and owls. Other birds observed within the canyon include ravens, magpies, wrens, blackbirds, feral pigeons, and many other non-game songbird species. Game birds known to inhabit the canyon are valley quail, ring-necked pheasants, and numerous duck species.

Mule deer are the only large mammals which have been reported to utilize Box Canyon. The yellow-bellied marmot is common. Other smaller mammals present are skunks, mink, rabbits, racoon, muskrat, weasel, river otter, mice, etc. The canyon also provides a home for animals such as reptiles (including rattlesnakes and a small variety of lizards) and numerous insects.

Desert Night Snake (*Hypsiglena torquata*) has been collected in the lower portion of Box Canyon in a talus habitat. This seldom seen snake has nocturnal and crepuscular habits, which may be the reason for the low level of information about the species. The collection occurred in May 1986 and marks the first and only record of this snake in Gooding County. Since this species occupies rocky habitats and preys mostly on small lizards, the expected impacts of Right-of-Way I-2880 on the species are insignificant. This snake is an Idaho species of special concern, but because of the small amount of talus disturbance in the design of the diversion structure, the level of expected impact on the snake should be low.

C. Ecological Interrelationships

1. Succession: Except for the area disturbed by the existing water diversion and flume, Box Canyon plant and animal communities are presently at a high seral stage in ecological succession. Due to limited disturbance from fire, grazing, and human activity, the ecosystems remain diverse and complex. Additional disturbance and/or diversion of water from the natural stream channel may cause reversion in the successional process and probably result in development of different communities at the disturbed sites.

2. Community Relationships: Box Canyon contains a rather confined and isolated environment which supports a wide diversity of plants and wildlife. Except for the migration of some fish into the Snake River and the ranging of birds over the adjacent uplands in search of food, Box Canyon is essentially a self-sustaining ecosystem. The majority of life in the canyon completes its life cycle entirely within the confines of the steep cliffs, depending upon the unique environment for survival. Box Canyon contains habitat for species which probably once occurred in the Snake River. Due to the condition of the aquatic habitat in the Snake River, those species may now be confined only to Box Canyon.

The most critical interrelationship in Box Canyon is probably the dependency of most species upon the water in Box Canyon Creek itself. Both animal and

plant life would be less numerous and less diverse without this water source. The dependency of the native fish and four Federal candidate threatened species upon the high quality water is particularly obvious. The stream serves not only as an important area for spawning and rearing of sport fisheries, but also as an unpolluted refuge from the Snake River.

Prior to the construction of the existing diversion and flume in 1973, the entire canyon was preserved in a relatively pristine condition. Subsequent to construction of these structures, the migration of fish from the Snake River has been restricted to the stream below the diversion, and the flow of the lower stream has been reduced by 300 cfs. However, at least 417 cfs of the original volume of water still flows from the mouth of Box Canyon, and the majority of the living biota depending upon this water have been preserved.

D. Human Values

1. Visual Resources: The Monument Resource Management Plan rates the public land as BLM Visual Resource Class II 1/ below the rim and class IV 2/ above the rim. The diversion would be located within the class II area.

Box Canyon is a majestic, deep, true box canyon with sheer basalt canyon walls up to 200 feet high. Steep talus slopes have formed in places at the base of these vertical cliffs and in several spots they reach the water's edge. The clear water of the creek flows from beneath the sheer walls at the canyon's head and along most of the length.

Above the existing diversion, Box Canyon is in a nearly pristine condition. It is a unique area that is removed from the influence of man, except for occasional fishermen and sightseers. With the construction of the water diversion facilities on private lands, the "primitive" values of the lower portion of the canyon have been affected, and could not easily be restored. However, in spite of the existing development, substantial scenic values still remain.

2. Socio-Cultural Interests

a. Educational - Scientific: Box Canyon contains a unique and relatively undisturbed riparian system and an essentially self-sustaining biological system which has been identified as an important potential Research Natural Area. Other values of this nature, related to the canyon as a whole, include the spring itself and the geological features of the canyon.

1/ Class II - Changes in any of the basic elements (form, line, color, texture) caused by a management activity should not be evident in the characteristic landscape. A contrast may be seen, but should not attract attention.

2/ Class IV - Contrasts may attract attention and be a dominant feature of the landscape in terms of scale; however, the change should repeat the basic elements (form, line, color, texture) inherent in the characteristic landscape.

b. Cultural - Economic/Aesthetic: Present day human values of the subject lands are conflicting. On the one hand are the scenic and recreational values which demand preservation for public enjoyment. On the other hand are the economic values of the spring water which is demanded for fish propagation, hydro- electric generation, or irrigation development through private enterprise.

c. Historical: As a geological record, Box Canyon portrays some of the history pertaining to the Bonneville Flood and initial canyon cutting by the Snake River when it was blocked upstream by a lava dam. More recent history of the canyon is relatively unknown.

d. Archaeological: Although projectile points were found on the long, narrow butte of private land between Box and Blind canyons (see Illustration 2), no archaeological values are known to exist on the lands under application for right-of-way. A survey for archaeological values was conducted for the application and a full clearance issued.

e. Recreational: The entire Box Canyon is a very attractive and interesting area to visiting recreationists. Fishing, sightseeing, and hiking are probably the most popular activities pursued in the area. Fishing is considered good in the lower portion of the stream and at its confluence with the Snake River.

Because of the high recreational values, the Idaho Department of Parks and Recreation applied to acquire the area under the provisions of the Recreation and Public Purposes Act.

f. Local Regulatory Agencies: Gooding County Planning and Zoning ordinances and regulations do not restrict any uses of public land (BLM-administered) through designation of preservation zones. Support for the proposed action in Box Canyon Creek has been expressed by the County Commissioners and area Chambers of Commerce.

3. Wilderness: Box Canyon did not qualify as a Wilderness Study Area.

III. ANALYSIS OF PROPOSED ACTION AND ALTERNATIVES

A. Environmental Impacts

1. Anticipated Impacts

a. Proposed Action: Granting right-of-way I-2880, as proposed, would allow the construction of a water diversion dam, a concrete flume, access road, and backwater pool on public lands within the Box Canyon ACEC.

1) Beneficial Impacts: Granting of right-of-way I-2880 as proposed would be consistent with the applicant's desires. The construction and operation of a new fish propagation facility would provide economic benefits to the applicant, local and state economies. The applicant estimates that his proposed facility would employ up to 100 people and have gross revenues of between 4.5 to 9 million dollars per year. Approximately 4.5 to 9 million pounds of live trout may be produced, which would convert to about 2.25 to 4.5 million pounds of processed trout. The private lands in the upper portion of Box Canyon would be preserved in its natural state and would be available for limited public use. Habitat and potential habitat for at least two of the candidate species (Valvata Utahensis and Shoshone sculpin) would be protected.

There is potential for increased or improved riparian habitat along the fringes of the pond area. This may create waterfowl nesting and resting area, songbird habitat, and support fisheries habitat within the pond.

2) Adverse Impacts: Granting of right-of-way I-2880, as proposed, would result in adverse impacts to public lands of short-term stream sedimentation, soil disturbance, loss of dryland vegetation, disruption of the stream channel, disruption of existing riparian vegetation, severe reduction of the water quantity and quality within the stream, changes in the visual character of the area, reduction in existing quality and/or diversity of riparian habitat, reduction in existing aquatic habitat and corresponding population reductions of federal candidate threatened and endangered species, i.e., Bliss Rapids Snail and Giant Columbian River Limpet, short-term disturbance to the raptors during the construction phase, loss of streamflow integrity, and severe reduction of sport fishery and its associated recreational value on public lands.

An associated adverse impact of the proposed action on adjacent public and private lands would be the significantly reduced flow of the high quality creek water into the Snake River, which would decrease the size of the clean water interface area and quality of aquatic habitat area. This could adversely affect the fisheries and substantially reduce the fishing opportunities at this location. The creek water is proposed to be returned to the Snake River after being utilized for fish propagation and hydro-electric production. Water temperature would likely be higher and it would contain organic waste from the fish propagation facility. Processing of trout, on site, could produce additional waste material.

The quality of fish habitat provided by the existing confluence of Box Canyon Creek and the Snake River would be reduced. There would be a reduction of quantity, quality, and diversity of riparian vegetation along Box Canyon Creek. The title to the private land adjacent to the public lands would be encumbered by restrictions to provide off-site mitigation for the right-of-way.

The confluence area would likely remain as a pool; however, the water quality would be severely altered, because of lowered flows, organic wastes and increased temperatures, and the clean water would be gone. Fish habitat would decrease in quality, which would likely negatively impact fishermen. There may be a change in the types and numbers of waterfowl attracted to this area which may or may not benefit sportsmen.

b. Alternative 1: No Action: Deny the Proposed Right-of-Way Application: If the application is denied, none of the impact resulting actions would occur because of construction on public lands. Certain impacts may still result, however, if the applicant follows similar development scenarios on the adjacent private lands along and within Box Canyon Creek.

1) Beneficial Impacts: No ground disturbance or dewatering of the stream and resultant impacts would occur within the public land boundaries, unless possibility 2) c) below is developed.

2) Adverse Impacts: The applicant could still impact water quality and associated resources on the public lands by developments upstream on adjacent private lands along Box Canyon Creek.

Possibilities to consider in the event the application is denied are:

a) Diversion at the mouth of Box Canyon.

b) Development in upper Box Canyon.

c) Divert water bypassing existing diversion.

d) Use other means to recover investment.

Potential beneficial or adverse impacts of these possibilities are:

a) Diversion at the Mouth of Box Canyon: Earl Hardy has water permit 36-7334 for 600 cfs with two points of diversion identified on Box Canyon Creek at the northern-most point of his private land in Lot 2 of Section 28. Refer to Illustration 6 for details of water rights associated with Box Canyon; private and public lands. These diversion points are downstream and may not directly affect public lands within the ACEC. However, on private lands, it would result in surface disturbance, disruption of the stream channel, and destruction of vegetation on the private land at the mouth of Box Canyon Creek. The relative elevation of this point and the intended location of the fish propagation facility make it unlikely that the entire streamflow would be diverted from the natural channel, thus preserving at least a minority of the existing natural fisheries. If the mouth of the stream was entirely blocked by a diversion, the streamflow and riparian vegetation on the adjacent and upstream public lands may remain intact. With a water right permit of 600 cfs the applicant could divert the entire Box Canyon streamflow. This could eliminate the potential for fish migration and affect the gene pool diversity of the migrating Biota within the stream on both private and public lands thus destroying the integrity of Box Canyon Creek.

If the entire flow of water could be diverted at the mouth of Box Canyon Creek, the elimination of a pure water supplement to the Snake River would result. If the flow were only partially diverted, this impact would be reduced. Either condition would reduce the water quality of the Snake River and may affect the plant and animal diversity of the small spring areas downriver from the mouth of Box Canyon Creek, which is part of the Box Canyon ACEC.

The impacts of construction activities upon raptors nesting in the canyon may be slightly reduced with a diversion at the mouth rather than within the canyon; however, the proximity to existing nest sites is still within some disturbance distances.

Economic investment and benefits to the local economy would be comparable to the proposed action unless the development were restricted due to less water being available. In that case, economic benefits of this possibility would be less.

Impacts to at least two and possibly all four of the federal candidate threatened species could still occur, dependent upon how much water was diverted from Box Canyon Creek, what kind of structure was placed in the creek, if a bypass was engineered into the structure to provide a continuous and stable streamflow, and what elevation was selected for the diversion location.

No minimum streamflow amount is identified and since the alternative is downstream from the public land, the BLM would have little if any input in establishing a minimum flow. Backwater pooling on public land may occur resulting in changes to habitat, which may cause aquatic and terrestrial plant diversity changes, water quality and temperature changes, and restriction of free movement of fish to and from the Snake River. BLM would require appropriate mitigation to offset environmental impacts of any backwater pooling on public land.

b) Development in Upper Box Canyon: The applicant has two water permits, 36-7175 and 36-7334, for 330 cfs and 600 cfs respectively with eight points of diversion identified on Box Canyon Creek within the NW 1/4 of Section 27 and E 1/2 NE 1/4 of Section 28, all on his private land. Refer to Illustration 6 for details of water rights associated with Box Canyon; private and public lands.

The development of facilities under this possibility is considered to create obvious and substantial disruption of the unique natural ecosystems in the canyon. Development of a road, fish propagation ponds, buildings, and other facilities would require introduction of heavy equipment operation, earth-moving, and destruction of vegetation on private land which has been essentially protected from human influence.

Identified impacts upon the existing use of Box Canyon water would include the possibility of water contamination from development activities, and the possibility of disease organisms spreading from the upstream facility to the existing Clear Springs development and public lands. Further, native fish populations, four Federal candidate threatened species, and other aquatic organisms could be adversely affected.

Probable impacts upon public lands are identified to be effects upon water quality, fisheries, four candidate threatened species, increased traffic through the mouth of the canyon, potential for increased use of public land and resultant impacts upon nesting raptors, other wildlife, recreation access across private lands to get to public lands, and visual values.

This possibility is not fully precluded by the issuance of the right-of-way as proposed. Only the upper third of Box Canyon is offered as a preservation zone leaving the middle portion (privately-owned) available for future development. A current proposal for that area is a hydro-electric project which would dewater a significant amount of Box Canyon Creek and alter the environmental condition of that portion of Box Canyon significantly. This Environmental Assessment will not analyze the Hydro-electric proposal.

Economic investment for this possibility would appear to have to be greater than the proposed action because of location and design. Benefits to the local economies would be comparable to the proposed action.

c) Divert Water Bypassing Existing Diversion: As measured in January 1986, 54.3 cfs is flowing over the Clear Springs Trout Company diversion. This flow occurs because the hydro-electric project installed at the Clear Springs Trout Company restricts the capacity of the existing flume to approximately 300 cfs. Before the project was installed, it was estimated that 350 to 360 cfs was being diverted from the natural stream channel into the flume with very little bypass allowed onto the public lands. The water right license, 36-7040, held by Clear Springs Trout Company is for 300 cfs. The applicant holds the water right next in priority, 36-7091, for another 300 cfs and this right would allow the applicant to divert the remaining water for fish propagation purposes.

Diversion of this source of water could eliminate the overflow at the Clear Springs Trout Company diversion and lower the flow through the public land of Box Canyon ACEC. While this possibility may not be a preferred option to the applicant, it cannot be precluded by the issuance of the proposed right-of-way since the existing points of diversion lie outside the area proposed as a preservation zone in the proposed action.

The anticipated environmental impacts to the public lands would be riparian and aquatic habitat resource losses due to the elimination of streamflow for a short stretch of Box Canyon Creek within the Box Canyon ACEC and a reduction of streamflow for the entire stretch of Box Canyon Creek below the existing Clear Springs Trout Company diversion.

The impacts to the private land may be surface disturbance, distruption of the stream channel, lowering of stream flow volumes and levels, continued obstruction to native fish passage and hinderance to the possibility of Clear Springs Trout Company providing an operational fish ladder past the present diversion.

d) Use Other Means to Recover Investment: The basic possibility to recover the applicants investment would be to sell, assign, trade, or dispose of the private land and water rights associated with Box Canyon.

The environmental impacts of this possibility could vary drastically, depending upon any specific program of development or preservation which resulted. If this possibility did result in substantial construction or much heavier use within the canyon, the impacts could be similar to all the possibilities discussed previously or much greater adverse environmental degradation.

c. Alternative 2: Grant the Right-of-Way and Include Specific Mitigation Measures to Accomplish Certain Levels of Environmental Protection and/or Enhancement to Assure that the objectives of the Area of Critical Environmental Concern (ACEC) Management Plan Are Met: The overall management objective for public lands in Box Canyon is to maintain or enhance the resource values critical to the ACEC and to provide direction and guidance for their protection. For specific objectives and management guidelines, refer to Exhibit B, Box Canyon ACEC Management Plan.

Alternative 2 is specificially identified as: BLM to offer applicant a right-of-way to construct a diversion dam within Box Canyon Creek, develop a backwater pool of no more than 1/2 acre and construct a concrete flume to transport creek water to adjacent private lands subject to the specifications and limitations of the following:

-- Minimum diversion bypass flow maintained on Box Canyon Creek of no less than 75 cfs at all times. Bypass flow to have priority over any diversion flows.

- Term of right-of-way to be for the useful life of the facility.

-- Monitoring studies to be conducted on the four candidate threatened species. Refer to Exhibit C Monitoring Schedule.

-- Functional fish ladder installed at the diversion, design as accepted by Idaho Department of Fish and Game.

-- Fish screens installed in flume, downflow of spillway, as approved by Idaho Department of Fish and Game.

-- Water flow measurements to be taken by BLM to verify water streamflow requirements. Refer to Exhibit C Monitoring Schedule.

-- Proper visual screening at Holder's expense of the diversion dam and flume to maintain the VRM classification. Refer to Stipulations, Terms and Conditions Exhibit D.

-- Acceptance of applicants proposal to preserve the upper portion of Box Canyon, all private land from 100 feet below water falls in NW 1/4 section 27 upstream to head of canyon in its natural state and be open to public use and also allow public access from the river across private land at the mouth of Box Canyon Creek with restrictions on water use and development potential in that area. Refer to Exhibit D for details of restrictions on the area at the mouth of Box Canyon Creek.

-- Annual payment, in advance, of a fair market right-of-way rental.

-- Applicant to allow BLM administrative access for official business across private lands between the existing County Road to public lands.

-- Maintain habitat conditions adequate to support acceptable population levels of the four candidate threatened species on public lands.

-- All other terms and conditions identified in Exhibit D.

The anticipated environmental impacts for Alternative 2 are:

(1) Beneficial Impacts: The construction and operation of a new fish propagation facility would provide economic benefits to the applicant and local and State economies. The level of benefit may be lower than under the proposed action because of the increased bypass flow volume of 75 cfs instead of 20 cfs as proposed. The minimum streamflow of 75 cfs would allow approximately 257 cfs for fish propagation. This would result in a smaller facility and less live trout produced and lower income generated.

The stream below the proposed diversion will not be lowered or blocked that survival of the existing aquatic species would be in serious question. The integrity of the stream would remain intact. The 75 cfs plus the measured inflow of 87 cfs throughout the area between the diversion and the mouth would total 162 cfs which is about 39 percent of the January 1986 measured flow of 417 cfs.However, some reduction and possible loss of *Fisherola nuttalii* and Bliss Rapids snails on public lands may occur. Minimum water volumes would remain in the stream to maintain riparian areas and habitat for the candidate threatened species, trout, and other aquatic species.

The visual resource would be disturbed with onset of construction, but will be mitigated through rehabilitation. The planting of vegetation species to provide screening may actually improve the overall condition of any previously disturbed areas, and provide shelter and food sources not currently available for the resident and transient wildlife that use the area.

The preservation of the upper canyon area in its natural state with restricted development would be beneficial to the public who would have physical access to travel on the established foot trail from the rim to the water fall within the Canyon and also to view the Canyon from the rim.

(2) Adverse Impacts: At the construction site, there would be temporary soil disturbance and associated loss of terrestrial vegetation, disruption of the stream channel, destruction of riparian vegetation, reduction of the water volume within the stream, a possible change of water quality within the stream because of siltation and volume decrease, and changes in the visual character of the area. Within the creek downstream of the diversion, there would be reduction in wetted area affecting riparian habitat, reduction or loss of native or natural sport fisheries, a possible reduction in existing aquatic habitat and corresponding populations of Federal candidate threatened species, increase in siltation of the streambed, and possible disturbance to nesting raptors during the construction phase. The concrete flume may present a physical barrier to some terrestrial wildlife species, which would normally move through the lower portion of Box Canyon.

2. Possible Mitigating or Enhancing Measures

a. Proposed Action

(1) Construction Restrictions: Although the proposed diversion could not be constructed without surface disturbance, the degree of disturbance could be minimized by exercising care when operating heavy equipment and during actual construction of the proposed diversion and flume.

Not allowing construction activity during periods before June 1 of each year when raptors are nesting would minimize the impacts upon nesting eagles, falcons, and/or other birds within the canyon and reduce impacts on spawning trout and Shoshone Sculpin. Prevention of petroleum products or other pollutants from entering the stream would minimize additional impacts upon the fish, aquatic organisms, and four candidate species.

Requiring instream placement of habitat rocks above and below the diversion structure to aid in creating or maintaining aquatic habitat quality and quantity for the sport fisheries and candidate threatened species.

(2) Minimum Streamflow Maintenance: Requiring a minimum streamflow past the proposed diversion would preserve a portion of the existing recreation, fisheries, and candidate species values, and partially maintain the purifying effect of clear water recharge to the Snake River at the mouth of Box Canyon Creek. The impacts of the diversion, environmental conditions, populations of the candidate species within the area, and the economics of the proposed fish propagation facility would relate directly to the quantity of streamflow maintained as bypass.

The applicant has offered 20 cfs as a minimum streamflow. This amount is considered inadequate to maintain the aquatic and riparian resources that exist within Box Canyon. To mitigate the potential loss of resources the minimum streamflow offered would need to be increased significantly. The stream recharge by springs from a point 95 feet upstream from the proposed point of diversion to the mouth of Box Canyon Creek is 95 cfs. The recharge flow between the point of diversion and mouth of the stream is estimated at 87 cfs.

Although methods of measurement used were the most accurate available, no data exists to show beyond a shadow of a doubt that the estimated 87 cfs inflow between the proposed diversion and the mouth of Box Canyon Creek is evenly distributed or lumped in two or three locations. However, all evidence and professional opinion of a hydrologist indicates that it is more uniformly distributed than not. The total flow of the proposed 20 cfs bypass and 87 cfs inflow would be 107 cfs at the mouth of Box Canyon Creek.

Fisheries biologists recognize 30 percent of average streamflow as a rule-of-thumb for minimum wetted area maintenance. The proposed bypass of 20 cfs would be approximately 6 percent of the estimated 332 cfs flow at the point of proposed diversion and only 4.8 percent of the 417 cfs flow of Box Canyon Creek at the mouth. The proposed bypass of 20 cfs would be 2.8 percent of the original Box Canyon streamflow estimated at 720 cfs prior to diversion of the 300 cfs licensed to Clear Springs Trout Company. Twenty cfs would be difficult to maintain and may fluctuate as a result of variation in available

streamflow unless the diversion design gives priority to the bypass flow. The offered minimum bypass of 20 cfs plus the estimated recharge of 87 cfs would total 107 cfs or 25.7 percent of the 417 cfs flow measured at the mouth of Box Canyon Creek. This 107 cfs is 14.8% of the original streamflow. This is less than the recommended flow of 30 percent for minimum streamflow maintenance and would be considered inadequate.

Another factor which relates to any consideration of minimum streamflows is the possibility of additional water diversion by other parties in the future. As shown in Table I of this report, there are many other approved water permits for the water in Box Canyon. Most significantly, the one filed by Mountain View Irrigation Company, 36-2705, precedes both the applicants permits, 36-7091 and 36-7334, and the one presently licensed to Clear Springs Trout Company 36-7040. If Mountain View's permit for 200 cfs were ever licensed, it could drastically affect the applicant's proposed development and Clear Springs Trout Company's fish development.

(3) Native Fish Screening and Migration: In order to prevent native fish from entering the proposed fish propagation facility the proposed flume could be equipped with screens made of mesh sufficiently small to prevent the passage of fish. Fish ladders should be installed to provide for native fish migration through the natural stream channel.

(4) Offsite Mitigation: Probably the most important and complex mitigating measure considered in regard to the proposed diversion, is the possibility of allowing the right-of-way with an arrangement which would preserve the unique natural values on Mr. Hardy's private land in the upper canyon. The Idaho Natural Areas Coordinating Committee is strongly in favor of this approach, since they recommended that the upper canyon be designated as a research natural area. This would involve preservation of the values in the upper canyon, which has been described as a scientific jewel of great present and potential value to Idaho.

The Idaho Department of Fish and Game has indicated that the quality fishery in the lower canyon and the pure water flowing from Box Canyon into the confluence with the Snake River represent public values which are important to the general public as well as the private land in the upper canyon.

The Idaho Department of Parks and Recreation has indicated that the public land does provide an excellent recreation resource for fishing and other water-oriented activities. Furthermore, the agency has stated that the proposed right-of-way for a diversion on the public land is not in direct conflict with their own proposals for recreational development.

b. Alternative 1: No Action: Deny The Proposed Action: The possible mitigating or enhancing measure associated with this alternative would be to initiate a defensive stance of alerting the BLM Idaho State Office and field solicitor to pursue possible legal action against the applicant for any actions which would adversely affect the Federal candidate threatened species that exist within public lands.

Possible mitigating or enhancing measures for the identified possibilities that the applicant may choose to pursue are:

(1) Diversion At The Mouth of Box Canyon: Basically all of the mitigating measures discussed for the proposed action would also be possible if the diversion were constructed on private land at the mouth of Box Canyon. However, since the land at the mouth is owned by Earl Hardy, he would not have to abide by the conditions which might otherwise be stipulated by BLM. The impacts may be inherently mitigated to some degree by the location of the diversion site in relation to the proposed fish propagation site since the entire amount of stream water may not be used without pumping, because of the lower diversion elevation. Consequently, some water may be expected to remain in the natural channel partially preserving the public values it presently provides. If pumping was feasible however, a reasonable assumption could be made that no stream water would be bypassed from a diversion and the streamflow connection with the Snake River and Box Canyon Creek would be permanently severed.

(2) Development in the Upper Canyon: It would be practically impossible to substantially mitigate the major adverse impacts of this alternative. Of course, care could be taken to minimize surface disruption, and development of facilities could be confined to the smallest areas that would be feasible. Development of the upper canyon may not be mitigated to substantially reduce the adverse impacts upon the unique values which make the area a prime candidate to become a Research Natural Area. Since private land is involved, BLM has no means to require mitigating measures under this possibility except by legal action.

(3) Divert Water Bypassing Existing Diversion: The impacts of this possibility and potential mitigating measures are limited. If all the available water is diverted at the existing diversion, there would be no feasible way to provide for passage of native fish past the diversion site. As pointed out earlier, native fish cannot migrate past the existing diversion at the present time. A base for a fish ladder has been provided in the existing structure. The Idaho Fish and Game Department has initiated action to require the Clear Springs Trout Company to provide for native fish passage around the existing diversion.

(4) Use Other Means to Recover Investment: Mitigating measures for this possibility would need to be selected specifically for the program of development or preservation which was chosen. If the recovery of investment involved intensive construction and development within the upper canyon, the mitigating measures could be basically similar to those for Number 2 possibility. That is, surface disturbance could be minimized, structures could be limited in number and located to reduce adverse impacts, and pollution sources could be treated or prevented from contaminating the natural water flow. As mentioned, however, BLM would not have any identified means other than legal action to control what mitigating measures would be employed if this possibility were selected.

c. Alternative 2: Grant the Right-of-Way and Include Specific Mitigation Measures to Accomplish Certain Levls of Environmental Protection and/or Enhancement to Assure the Objectives of the ACEC Management Plan Are Met:

(1) Construction Restrictions: Although the proposed diversion could not be constructed without surface disturbance, the degree of

disturbance could be minimized by exercising care when operating heavy equipment and during actual construction of the proposed diversion and flume. It may be possible to essentially restrict surface disturbance to the areas occupied by the diversion and flume.

Not allowing construction activity during periods before June 1 of each year when raptors are nesting would help minimize the impact upon eagles, falcons, and/or other birds within the canyon as well as preventing disturbance to spawning trout. Prevention of oil, fuels, or other pollutants from entering the stream during construction activity would minimize additional impacts upon the fish, aquatic organisms, and four Federal candidate threatened species.

BLM compliance personnel would be available for on-site inspection during all phases of construction and rehabilitation to ensure proper adherence to the right-of-way terms and conditions.

(2) Minimum Streamflow Maintenance: Requiring an adequate minimum streamflow past the proposed diversion would preserve a major portion of the existing recreation, fisheries, riparian, and candidate threatened species values, and partially maintain the purifying effect of the pool of clear water presently being added to the Snake River at the mouth of Box Canyon. The impacts to the habitat, populations of the candidate species, and the economics of the proposed fish propagation facility are directly proportioned to the minimum bypass streamflow established.

BLM would consider 75 cfs minimum streamflow bypass at the proposed diversion and the 87 cfs inflow from springs upwelling in approximately 800 feet of stream channel between the proposed diversion and mouth of Box Canyon/Snake River confluence as adequate to maintain the habitat and populations of the sport fish and Federal candidate threatened species.

Assuming that the 87 cfs inflow is evenly distributed, the streamflow increases in volume as linear progression occurs. At the diversion the flow would be 75 cfs. At 100 feet downstream of the diversion the flow should be 75 cfs plus 10.8 cfs to equal 85.8 cfs. The flow should continue to increase until reaching 162 cfs at the mouth of Box Canyon Creek.

Fisheries biologists recognize that approximately 30 percent of average streamflow as a rule-of-thumb for minimum wetted area maintenance. The 75 cfs bypass would be approximately 23.3 percent of the estimated 332 cfs flow at the point of proposed diversion and 18 percent of the 417 cfs flow of Box Canyon Creek at the mouth. Seventy-five cfs minimum bypass would be maintainable because of required diversion design changes which would make the bypass flow a priority over diversion flow.

The 75 cfs minimum bypass plus the estimated recharge of 87 cfs would total 162 cfs or 38.8 percent of the 417 cfs flow measured at the mouth of Box Canyon Creek. This is greater than the recommended flow of 30 percent for minimum streamflow maintenance and would be considered adequate. There is a portion of the stream below the proposed diversion that would have less than 30 percent of flow but this would exist only within the first 200 feet downtream of the diversion.

No actions should be taken on the part of the applicant to increase or decrease water levels, temperature, quality, and/or flow velocity within the natural sculpin pool upstream of the authorized impoundment pool. This should apply only from the Clear Springs Trout Company Diversion to the mouth of Box Canyon Creek.

(3) Native Fish Screening: In order to prevent native fish from entering the proposed fish propagation facility the proposed diversion could be equiped with screens made of mesh sufficiently small to prevent the passage of fish.

(4) Offsite Mitigation: Probably the most important and complex mitigating measure considered in regards to the proposed diversion, is the possibility of allowing the right-of-way with an arrangement which would preserve the unique natural resources and values on the applicant's private land in the upper canyon. This action would provide for preservation and limited public access to the headwaters of Box Canyon Creek and to 100 feet below the major water falls in section 27.

Preservation of this area from unrestricted development will prevent serious environmental impacts to the identified four federal candidate threatened species that exist within the public lands and speculated to exist within the private lands.

3. Recommendations for Mitigation or Enhancement

a. Proposed Action: The possible mitigating or enhancing measures identified in Section III.A.2.a. (Pg. 17) should be implemented. These measures are summarized as:

-- All construction activity will be done from June 1 to the end of the year.

-- Establish a minimum streamflow of 75 cfs.

-- Screen flume to restrict native fish access.

-- Prevent diversion of any by-pass flow at the proposed diversion and mouth of Box Canyon Creek.

-- Provide operational fish ladder.

-- Prevent diversion of present by-pass flow at the Clear Springs Trout Company Diversion.

-- Establish a preservation zone on private land in the upper portion of Box Canyon and restrict use and development of private land at the mouth of Box Canyon Creek.

-- Dumping or disposal of pollutants into Box Canyon Creek or on public lands would be prohibited.

-- Allow controlled surface disturbance only on those areas which will be occupied by the diversion, flume, access road, and pool.

b. Alternative 1: No Action: Deny the Proposed Action: If BLM denies the proposed action, the applicant would be expected to pursue one or more of the four possibilities identified in section III.A.2.b. (Pg. 20). Because of the anticipated impacts on the ACEC's resource values and four federal candidate threatened species habitat, the BLM field solicitor and Idaho State Office would need to initiate a defensive legal stance to curtail or stop all construction activity that would appear to adversely affect public lands and the resources within the ACEC.

Alternative 2: Grant the Right-of-Way and Include Specific Mitigation Measures to Accomplish Certain Levels of Environmental Protection and/or Enhancement to Assure the Objectives of the ACEC Management Plan Are Met: The possible mitigating or enhancing measures identified in Section III.A.2.c. (Pg. 21) should be implemented. These measures are summarized as:

-- All construction activity will be done from June 1 to the end of the year.

-- Establish a minimum streamflow of 75 cfs with priority flow over the diverted flow.

-- Screen flume from native fish entrance.

-- Prevent diversion of present by-pass flow at the Clear Springs Trout Company Diversion.

-- Provide operational fish ladder.

-- Recognize a preservation zone on private land in the upper portion of Box Canyon as approved by the Bureau of Land Management and restrict use of water and potential development at the area from the proposed diversion to the mouth of Box Canyon Creek.

-- Dumping or disposal of pollutants into Box Canyon Creek or on public lands would be prohibited.

-- Allow surface disturbance only on those areas which will be occupied by the diversion, flume, access road, and pool.

-- Terms and conditions identified on Exhibit D.

4. Residual Impacts

a. Proposed Action: If the mitigating measures identified in Section III.A.3.a. (Pg. 23) are implemented as part of the proposed action, the following accumulative residual impacts are expected to result. The proposal would be considered unacceptable because the ACEC management objectives would not be met.

-- Surface disturbance and vegetative destruction on the area occupied by the water diversion and conveyance facilities, including a small area of the streambed of Box Canyon Creek.

-- Reduction of the streamflow below the diversion to 20 cfs would proportionately reduce the existing fisheries value in the lower stream, reduce the waterfowl and fisheries value of the clear water pool at the confluence with the Snake River, reduce the riparian vegetation which is presently growing on the banks of Box Canyon Creek, reduce the habitat and populations of the four Federal candidate threatened species that exist within the public lands of the ACEC, and reduce recreation values. The applicant has stated that he would not alter the proposal to offer 75 cfs by-pass flow.

-- Economic benefits would be produced by the construction and operation of the fish propagation facility which could be developed with the water from Box Canyon Creek.

-- As much as 9 million pounds of edible processed trout may be produced each year.

-- The ACEC Management Plan objectives and goals would not be met nor would the critical elements of the ACEC area be protected because adverse and irreparable damage would occur to the key resources that resulted in the establishment of the ACEC.

-- Negative impact on the sport fishery migrating from Box Canyon Creek to Snake River and back.

b. Alternative 1: No Action: Deny the Proposed Action: If the mitigating measures identified in Section III.A.3.b. (Pg. 23) are implemented as part of Alternative 1, the following residual impacts would still be expected to result:

-- A legal dispute between the applicant and BLM over property rights of landowners and adjacent landowners. The courts would probably decide the issue after a lengthy process.

-- The applicant would pursue one or more of the four possibilities identified in Section III.A.2.b. (Pg. 19), before, during, or after the legal dispute arose or was settled.

c. Alternative 2: Grant the Right-of-Way and Include Specific Mitigation Measures to Accomplish Certain Levels of Environmental Protection and/or Enhancement to Assure the Objectives of the ACEC Management Plan Are Met: If the mitigating measures identified in Section III.a.3.c. (Pg. 23) are implemented as part of Alternative 2, the following residual impacts would still be expected:

-- Surface disturbance and vegetative destruction on at least the area occupied by the water diversion and conveyance facilities, including a small area of the streambed of Box Canyon Creek.

-- Reduction of the waterflow directly below the diversion to 75 cfs creating a reduction in the existing aquatic habitat. This reduction would be offset downstream of the diversion by the gradual inflow of 87 cfs to upgrade the potential adverse impact to an acceptable level with

no irreversible consequences. Only a 200-foot portion of the streambed on public land would be lowered to below the minimum stream quality maintenance guideline of 30%; however, the combined overall changes would not be considered adverse or significant.

-- A portion of the recreational values on public lands would be lost. Recreational values on private lands may be gained by the general public.

-- Loss of genetic quality of native salmonids.

-- Economic benefits would be produced by the construction and operation of the fish propagation facility which could be developed with water from Box Canyon Creek.

-- Less than 9 million pounds of trout may be produced each year at this facility.

-- The ACEC Management Plan objectives would be met and the critical elements of the ACEC area protected by establishing an adequate minimum streamflow, restricting water and land development at the present Clear Springs Trout company diversion and area from the proposed diversion to the mouth of Box Canyon Creek, and by preserving the upper portion of Box Canyon in its natural state.

-- The key resources that helped establish the ACEC would not be irreparably damaged nor would the action in Alternative 2 be considered adverse.

B. Relationship Between Short-term Use and Long-term Productivity

1. Short-Term: The short-term use of the proposal or Alternative 2, under which BLM may grant the right-of-way with special conditions, etc. would consist of the actual construction and installation of the water diversion, flume, access road and pool, and dewatering of the stream. The short-term use could have an immediate effect on the resources and key elements of the ACEC area. Depending on what is allowed to take place, the short-term use could be adequately and successfully mitigated to reduce the short-term adverse impacts to an acceptable minimum level.

The short-term use of Alternative 1, denying the proposed action, would be no construction or dewatering of the public lands. However, legal action restricting use of adjacent private lands would need to occur. If this procedure failed to control the potential adverse possibilities, serious detrimental short-term impacts to the resources and key elements of the ACEC public lands could occur.

2. Long-Term: The long-term productivity of the proposed action would center around trout production and economic values. The development of the fish propagation facility would increase productivity by as much as 9 million pounds of live fish per year. The long-term economic value effect would be to increase local employment in the general area for as long as the fish propagation facility was in business.

In terms of native fisheries, natural vegetation, public recreation, and Federal candidate threatened species habitat and populations, the proposed action would reduce these values in proportion to the amount of water removed from the natural channel which would be detrimental and adverse to the natural alcove system and also the management objectives and goals of the ACEC plan and therefore be an unacceptable long-term result of the proposed action.

The long-term productivity of Alternative 1 would depend directly on the applicant and his decision to pursue one or more of the identified possibilities or modifications of such to develop his private lands adjacent to the ACEC public lands. Because of the potential legal differences of opinion concerning the exploitation or preservation of resources and key elements identified in the public land ACEC Management Plan, productivity may fluctuate widely dependent upon final legal decisions.

The long-term productivity of Alternative 2 would help conserve the resources and key elements not only on the public lands, but also on the private lands in Box Canyon, thus preserving a portion of a unique fresh water alcove system. This system is one of the last relatively undeveloped natural springs that exist within the Snake River drainage system. Alternative 2 would also allow development of a fish propagation facility on private lands to the south which would boost the local economy through jobs and products.

C. Irreversible and Irretrievable Commitment of Resources

It is conceivable, but not very likely, that after the water is diverted it could someday be returned to the natural stream channel. Since the water would probably be needed indefinitely once a fish propagation operation were started, the commitment of the water would be essentially irreversible. Even if the water could be returned to the natural stream channel, restoration of the existing ecosystem and the appearance of the area, if possible, could take years.

Likewise, the values dependent upon the presence of the water in the natural channel, such as the native fisheries, riparian vegetation, Federal candidate threatened species, and public recreation would be essentially irretrievable to the extent that they would be reduced. However, as long as these values were not eliminated, they could redevelop to original resource values and populations under favorable conditions.

There would be some loss of resources within the public land ACEC area. When the entire ecosystem of Box Canyon is taken into consideration, from a holistic approach, the values of the ACEC would not be irreparably damaged, but instead, enhanced by establishing and monitoring an adequate minimum streamflow of 75 cfs, restricting water and land development at the present Clear Springs Trout Company diversion and area from the proposed diversion to the mouth of Box Canyon Creek, and preserving the upper portion of Box Canyon in its natural state and rehabilitating any disturbed areas to vegetative species that would improve the area.

IV. PERSONS, GROUPS, AND GOVERNMENT AGENCIES CONSULTED

Idaho Department of Health and Welfare - Division of Environment
Idaho Department of Fish and Game
Idaho Department of Lands
Idaho Department of Parks and Recreation
Idaho Department of Water Resources
Mr. George Lemmon
Mr. Earl Hardy
Gooding County Commissioners
U.S. Fish and Wildlife Service
Dr. Peter Bowler
Gooding County Planning and Zoning Commission
Dr. Dwight Taylor
Dr. Jack Griffith
Idaho Natural Heritage Program
National Park Service
Birds of Prey Natural Area Staff
Big Wood Canal Company/American Falls Reservoir Districxt No. 2,

The general public was contacted through public meetings, local news media, and through established mailing lists. Written comments are on file at the Shoshone District Office.

V. INTENSITY OF PUBLIC INTEREST

The intensity of public interest is considered high. The management and use of the entire Box Canyon area has created a long-term response from the public as well as from organized groups representing industry, environmental concerns, and academia.

Following the development of the Clear Springs Trout Company's diversion and flume in Box Canyon, the intensity of widespread interest in the outcome of the proposed right-of-way subsided to a few individuals, groups, and agencies.

Although a segment of the public may oppose whatever action BLM might take, the majority of the public are not expected to have any strong reaction.

VI. PARTICIPATING STAFF

Robert Cordell - Bennett Hills Area Manager
Steve Langenstein - Wildlife Biologist
Joe Aitken - Realty Specialist
Bob Moline - Supervisory Range Technician
Larry Mangan - District Wildlife Biologist
John Lytle - District Archaeologist
John Husband - District Planning and Environmental Coordinator
Jon Idso - District Manager
Harold Brown - District Realty Specialist
Bill Harris - District Watershed Specialist

VII. SUMMARY CONCLUSION

The basic issue is to approve or deny a water diversion right-of-way application on public lands in the Box Canyon Area of Critical Environmental Concern.

An upstream diversion already exists on private land removing 300 cfs legally from the total stream flow leaving approximately 417 cfs at the mouth of Box Canyon Creek and 322 cfs at a point 95 feet upstream from the proposed diversion point with extrapolation of an increase of 10 cfs downstream at the proposed point of diversion for a total of 332 cfs available flow.

There are special concerns regarding federal candidate threatened aquatic species and visual and recreation resources which were identified in the Monument Resource Management Plan and Box Canyon Area of Critical Environmental Concern (ACEC) Management Plan.

The proposed Action would not meet or exceed these special concerns and therefore would be considered an adverse action and not in conformance with BLM planning decisions.

Alternative 1 No Action, denying the proposed action would allow the public lands to remain undisturbed, however, the off-site development possibilities could severely impact the existing resources on public lands to such an extent that radical alterations in the environment may occur destroying the very resources the ACEC Plan was designed to protect. Only, aggressive legal action would stop or postpone such destructive activities.

Alternative 2, granting the right-of-way and including specific mitigation measures to accomplish certain levels of environmental protection and/or enhancement to assure the objectives of the ACEC Management Plan are met would limit the adverse impacts, protect a unique alcove fresh water system, and allow for a reduced level of development with a high level of preservation of the resources identified by the ACEC Management Plan.

VIII. ILLUSTRATIONS

1. Location Map
2. Site Map
3. Proposed Right-of-Way Map
4. Photos of Four Federal Candidate Threatened Species
5. Photos of Box Canyon
6. Water Right Information

Illustration #1
Box Canyon Location Map

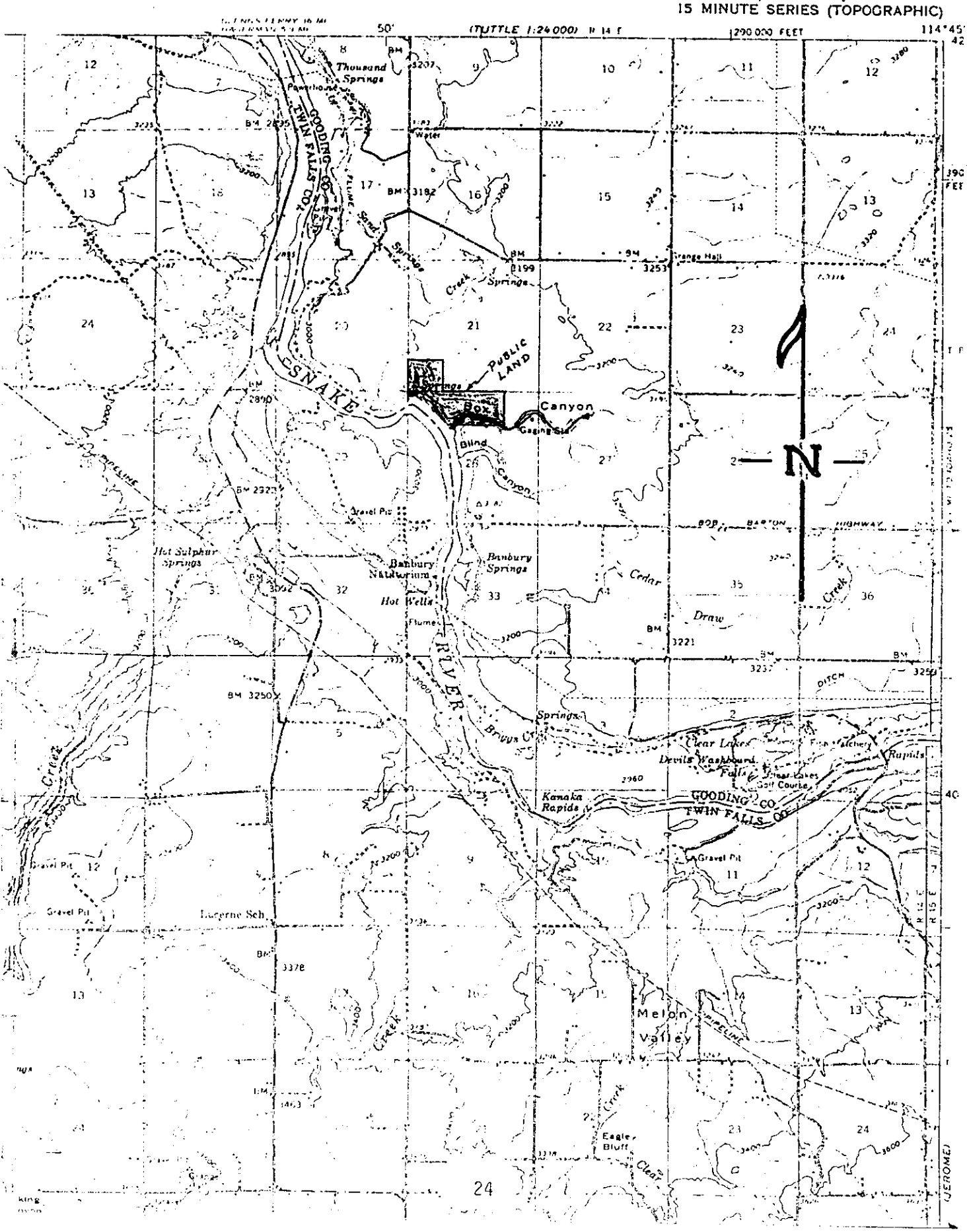
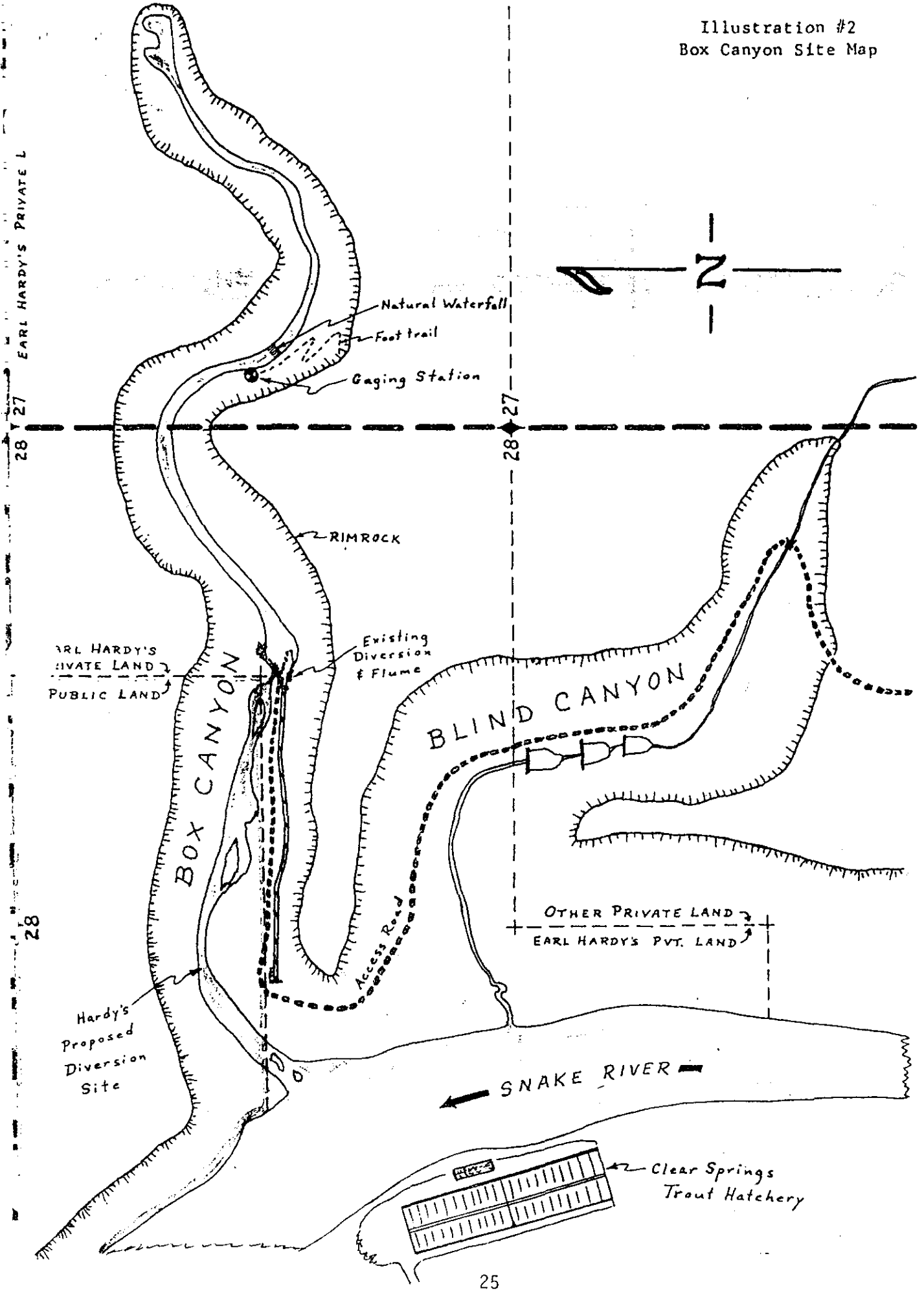
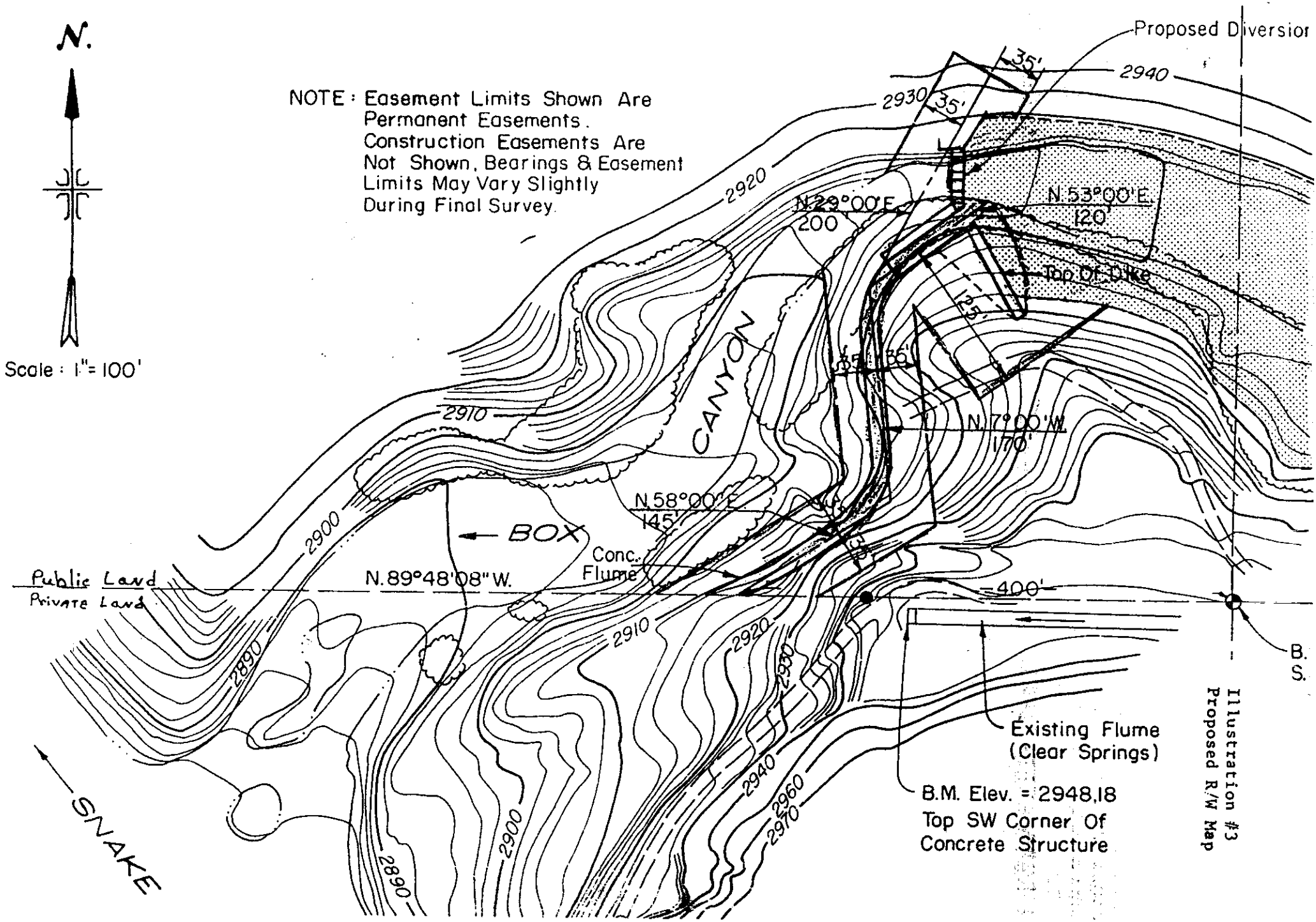
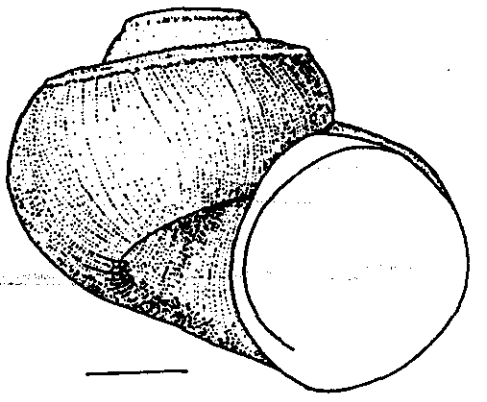


Illustration #2
Box Canyon Site Map




N.
Scale : 1"= 100'
NOTE : Easement Limits Shown Are Permanent Easements. Construction Easements Are Not Shown, Bearings & Easement Limits May Vary Slightly During Final Survey.
Proposed Diversion
35'
2940
2930
2920
N.29°00'E.
200
N.53°00'E.
120
Top Of Dike
125'
35'
35'
CANYON
2910
N.7°00'W.
170'
N.58°00'E.
145'
BOX
2900
Conc. Flume
Public Land
Private Land
N.89°48'08"W.
400'
2890
2910
2920
2930
2940
2960
2970
2900
2890
SNAKE
B.M. Elev. = 2948.18
Top SW Corner Of Concrete Structure
Existing Flume (Clear Springs)
B.
S.
Illustration #3
Proposed R/W Map



Scale 1 mm

Drawing of Valvata utahensis by D.W. Taylor. From:
Taylor, D.W. August 13, 1982. Status Report on the Utah Valvata Snail in South-Western Idaho. Unpublished status review for the U.S. Fish and Wildlife Servic

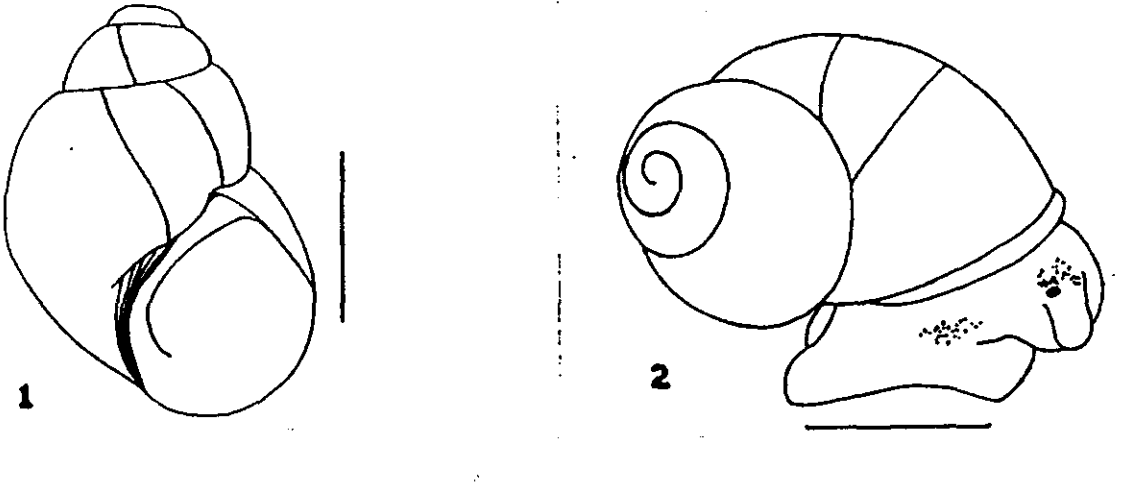


Figure 1. Shell of Bliss Rapids Snail. Scale 1 mm.

Drawing of the Bliss Rapids Snail by D.W. Taylor. From:
Taylor, D.W. August 13, 1982. Status Report on Bliss Rapids Snail. Unpublished status review for the U.S. Fish and Wildlife Service.

Illustration #4 Four Federal Candidate Threatened Species

, D.W. 1985. Evolution
f Freshwater Drainages and
olluscs in Western North
America. Pages 265-321 in
Smiley, C.J. (Ed.) Late Cenozoic
istory of the Pacific Northwest.
acific Division AAAS and California
Academy of Sciences, San Francisco,
alifornia.

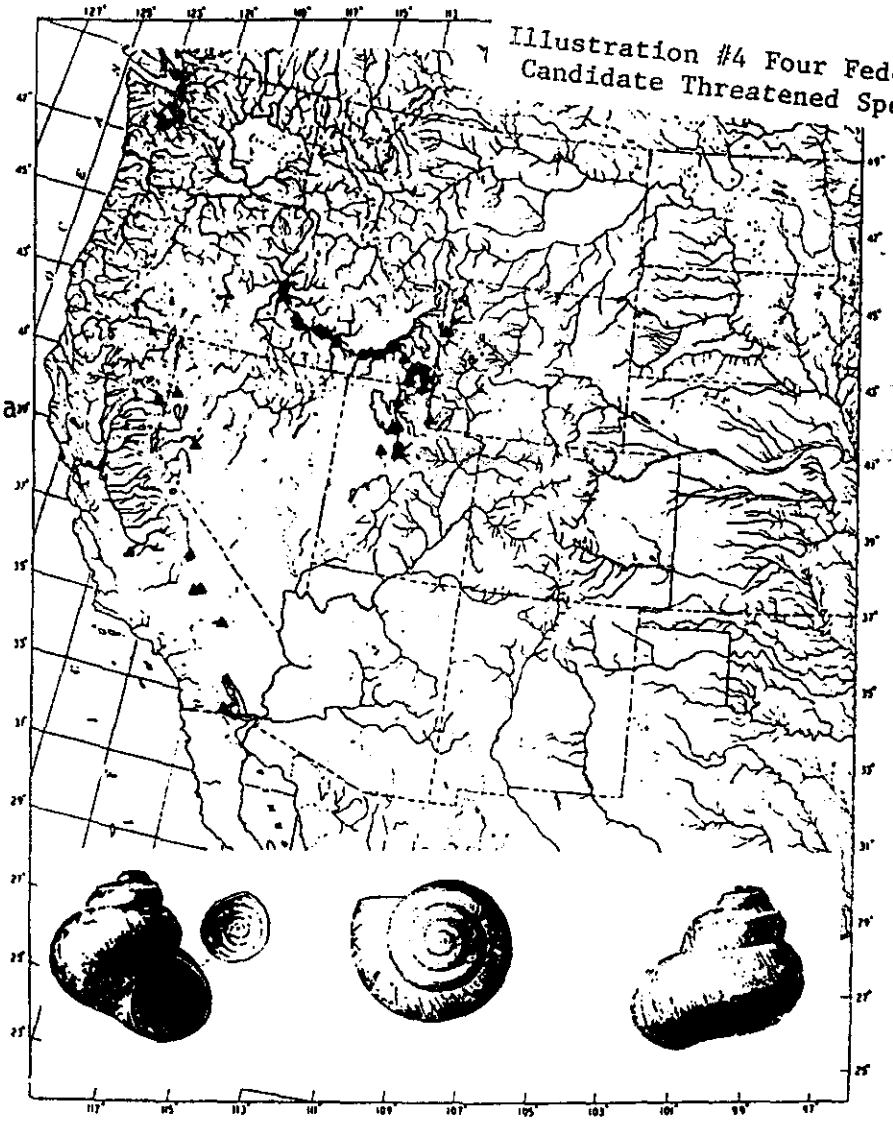


Figure 16. Distribution of freshwater snail *Valvata utahensis* Call (family Valvatidae). Solic dots, modern; triangles, fossil. Inset: original illustrations of the species, from Call (1884).

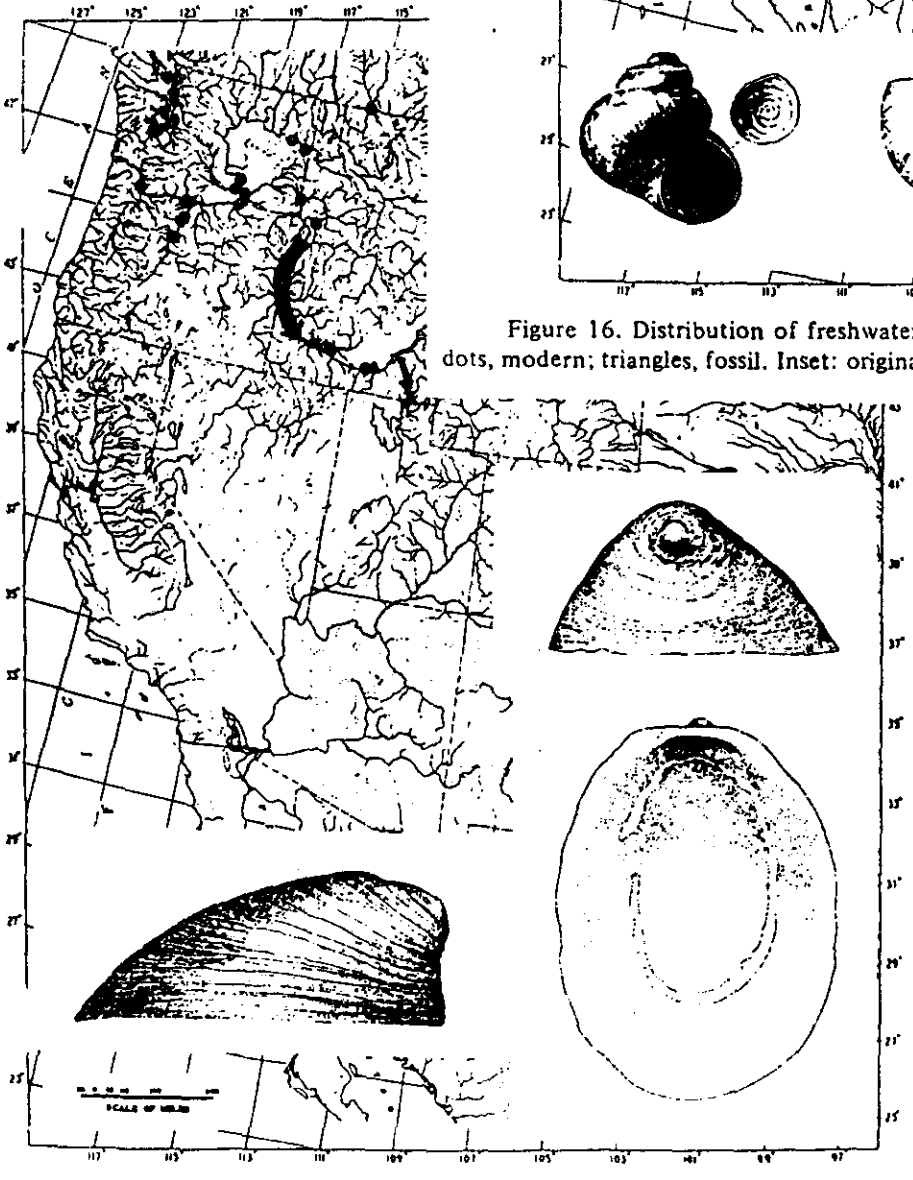


Figure 36. Distribution of freshwater snail *Fisherola nuttalli* (Haldeman) (family Lancidae). lid, dots, modern; triangles, fossil. Arrows show inferred upstream spread after cutting of Hells

Illustration #4 Four Federal
Candidate Threatened Species

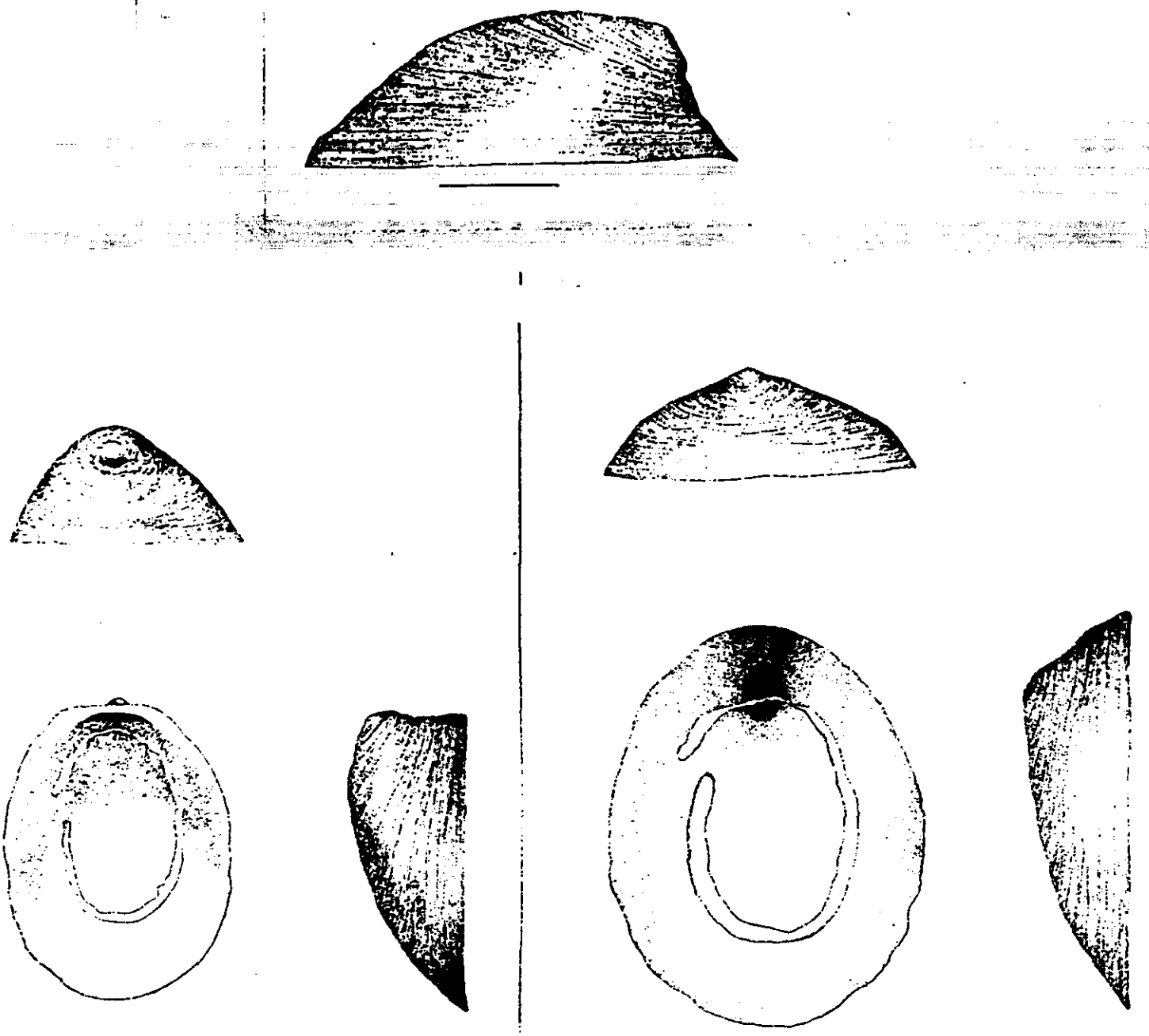
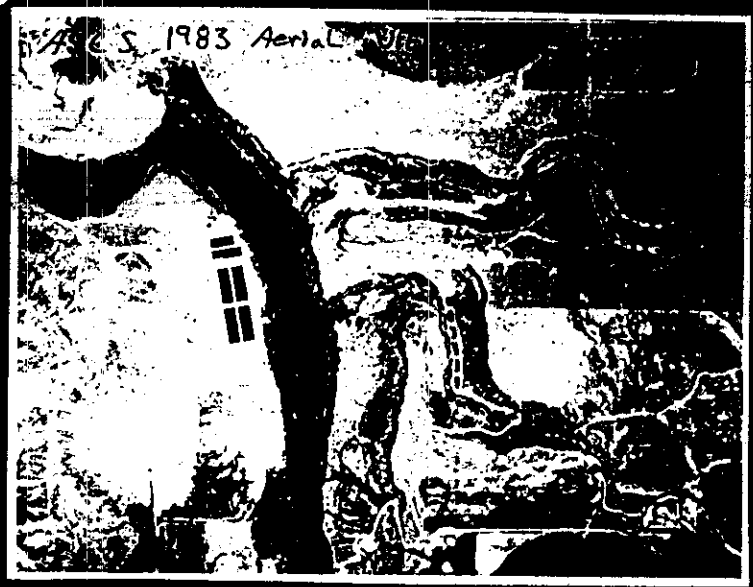


Figure 1. Shells of Fisherola nuttalli (Haldeman); Scale 3 mm. Three specimens, all from Snake River opposite Bancroft Springs, Elmore County, Idaho.

Drawing of Fisherola nuttalli by D.W. Taylor. From:
Taylor, D.W. Status Report on Giant Columbia River Limpet in Southwestern Idaho

Illustration #5
Photos of Box Canyon



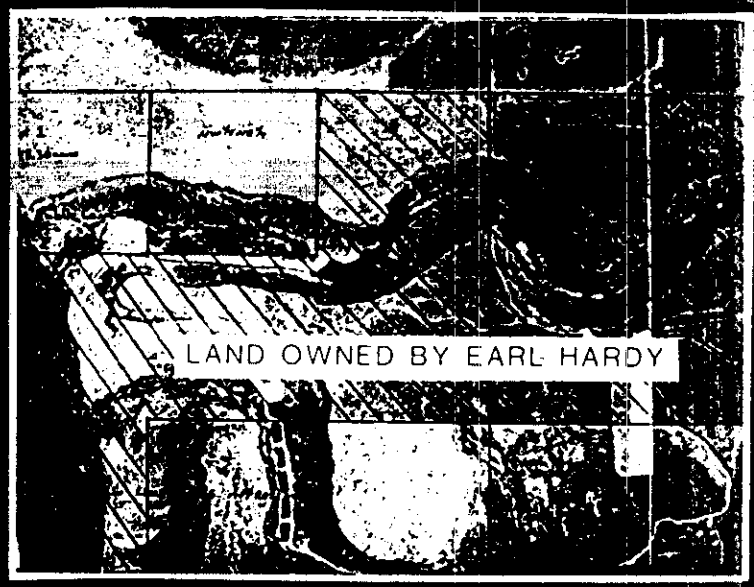


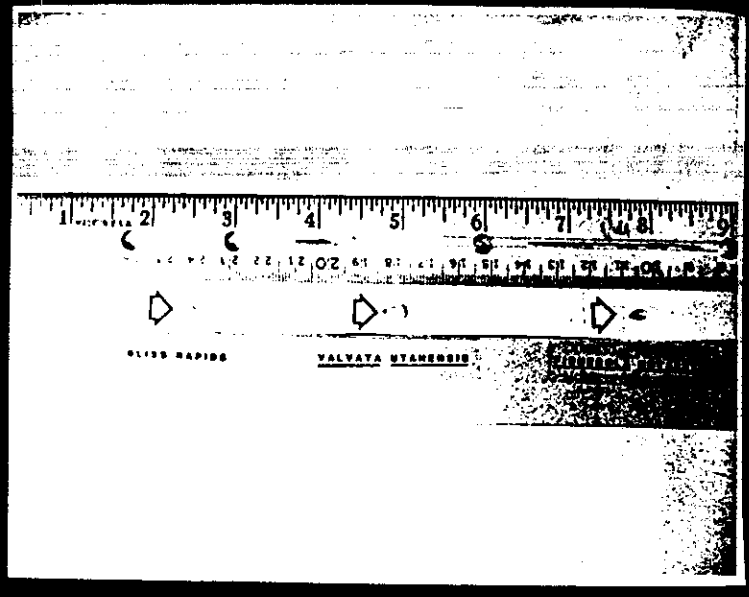


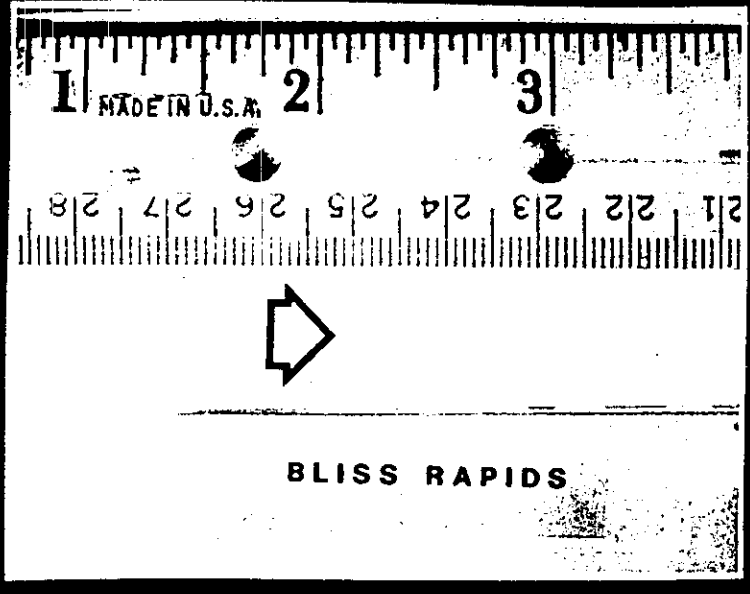


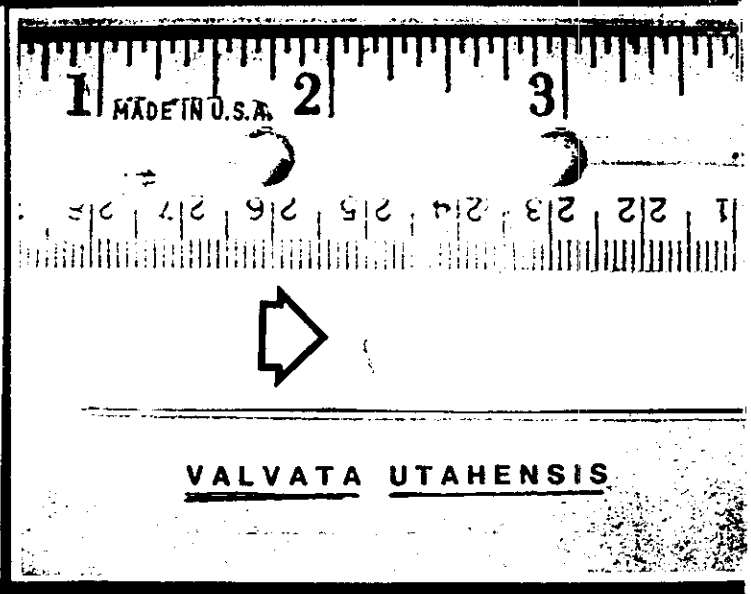


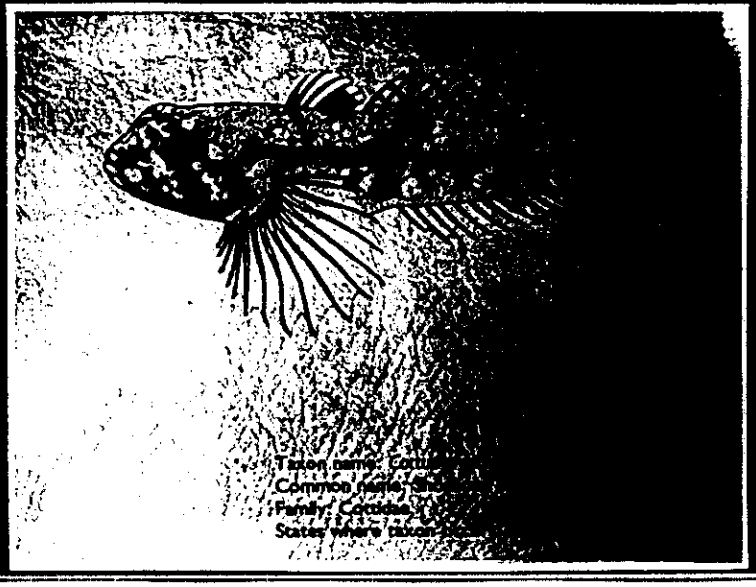


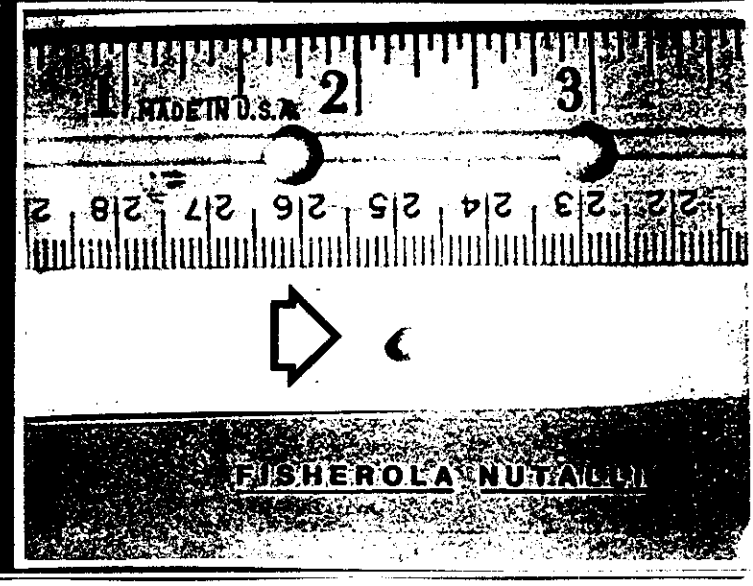
Illustration #4
Photos of Four Federal Candidate Threatened Species

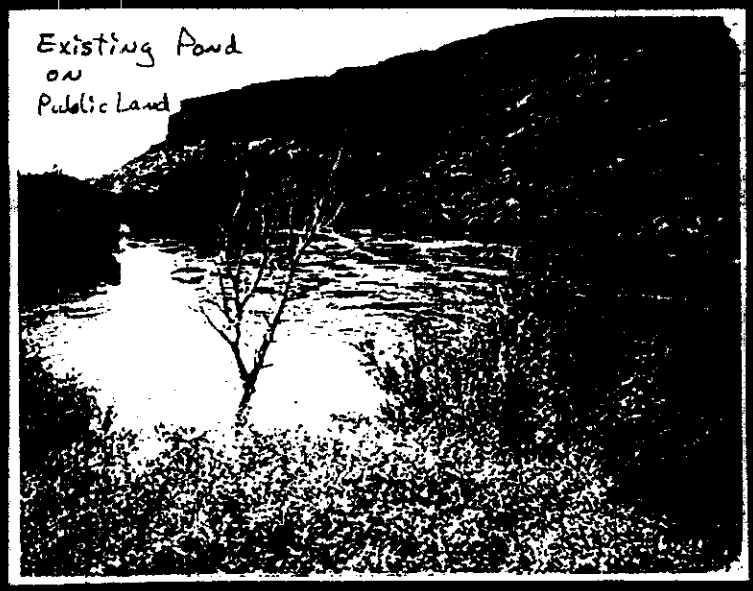


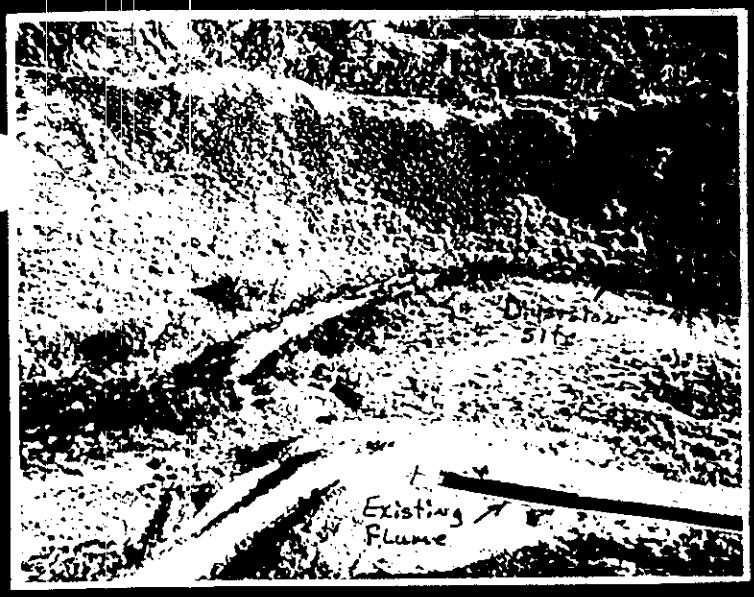




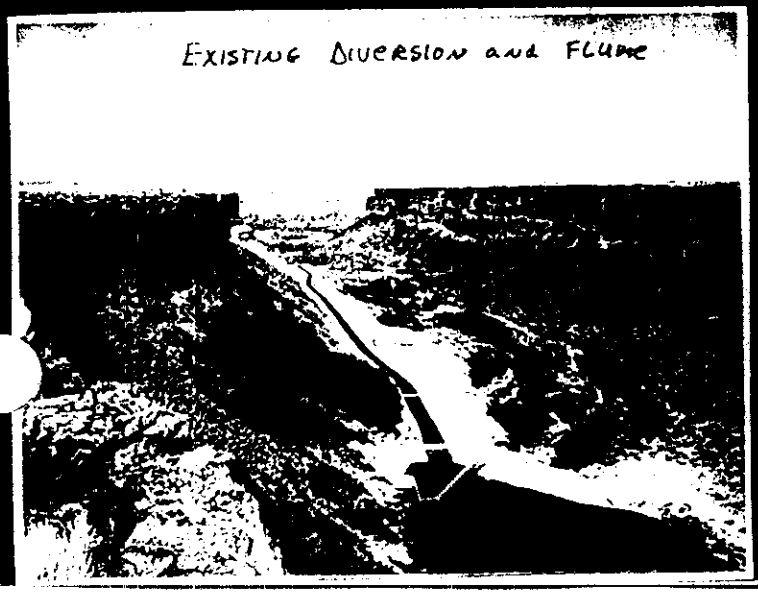





Existing Pond
on
Public Land


Diversion
Site
Existing
Flume


Existing Road
Flume


Existing Diversion and Flume

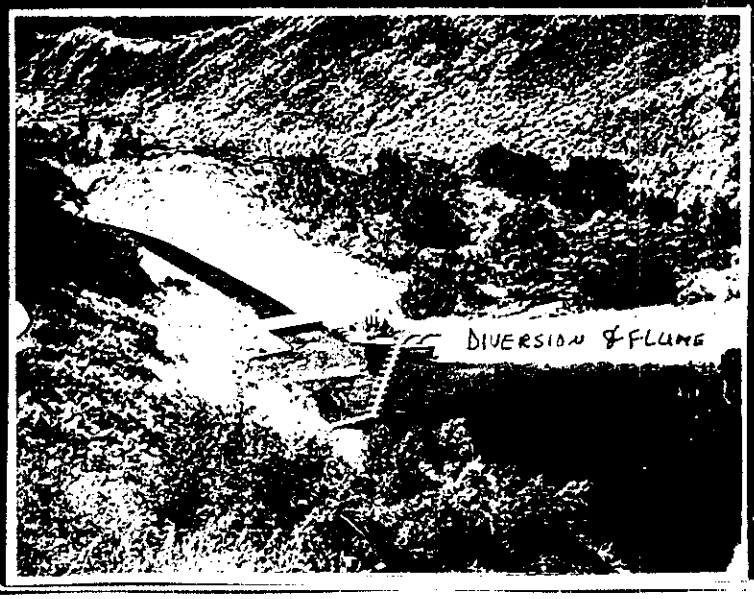
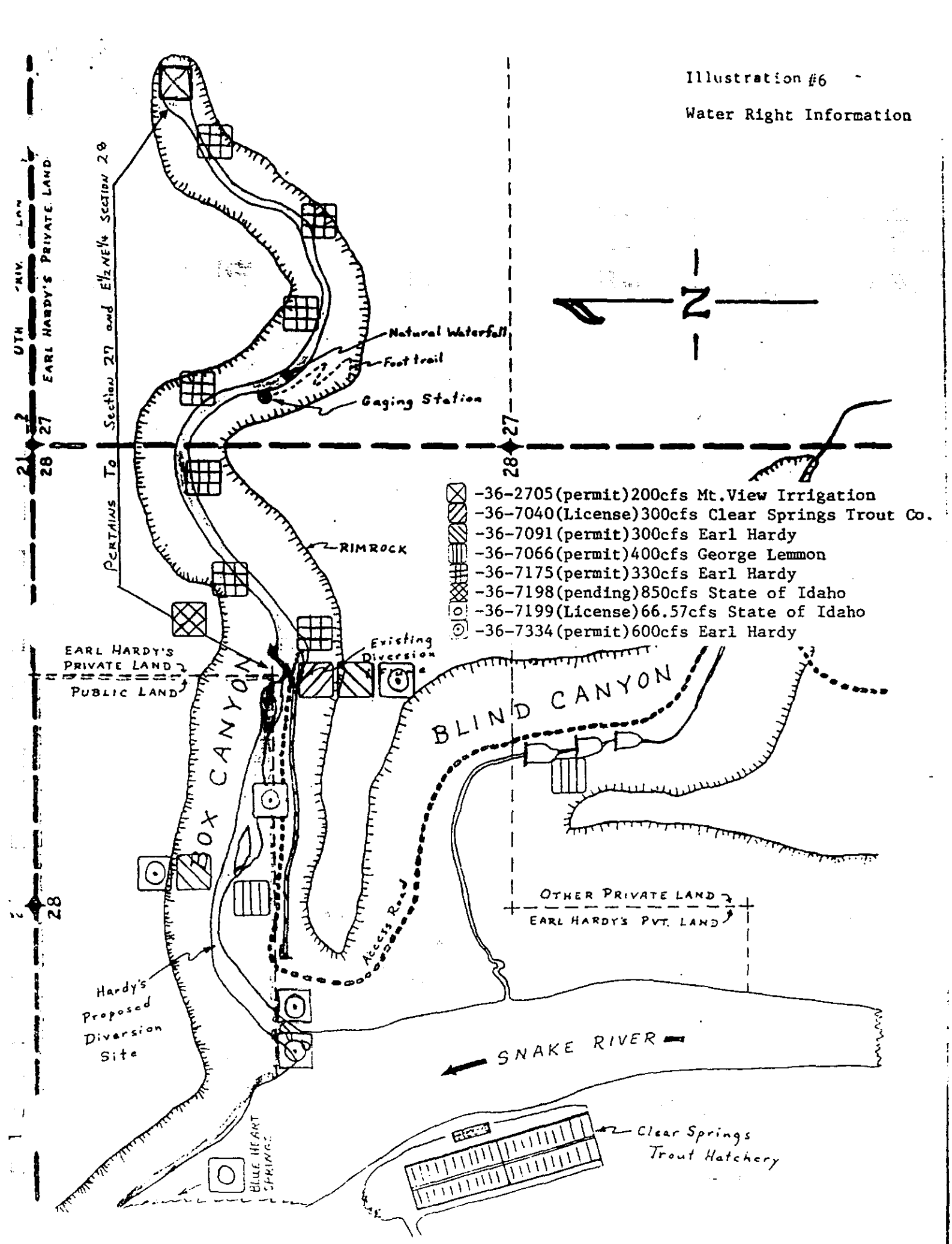

Diversion & Flume

Illustration #6

Water Right Information



United States Department of the Interior

BUREAU OF LAND MANAGEMENT
Shoshone District Office
400 West F Street
Shoshone, Idaho 83352

IN REPLY
REFER TO:

April 4, 1986

MEMORANDUM

TO: **Area Manager, Bennett Hills Resource Area** RA

FROM: **District Soil Scientist**

SUBJECT: **Box Canyon Springs Water Quantity Measurements**

At your request, I have made the following water quantity determinations at Box Canyon:

1) Clear Springs overflow - 54.3 cfs on January 30, 1986;

2) Clear Springs flume - 303 cfs on January 31, 1986;

3) Box Canyon Springs at mouth - 417 cfs on January 31, 1986;

4) Box Canyon Springs about 95 feet upstream from Mr. Hardy's proposed diversion site - 322 cfs on March 5, 1986

These measurements were made using standard water current meter techniques. Invaluable assistance in making these determinations was provided by Rich Morrison, Research Analyst for the Division of Environment, Department of Health and Welfare and Reid Newby, Watermaster for the Big Wood Canal Company.

Our measurements are in agreement with and supportive of the measurements made in 1978. Because of the danger involved in obtaining measurements between the proposed diversion site and the mouth, we were unable to ascertain just exactly where and in what amounts the inflow is taking place. For the purposes of analysis and in making any recommendations for the proposed minimum stream flow, we will therefore assume that the inflow throughout this reach is uniform. If there are any objections to this approach, it is recommended that Mr. Hardy or others request that USGS make additional flow measurements.

The distance from the diversion site to the mouth is about 800 feet. From the information Mr. Hardy provided, i.e., 87 cfs gain from the diversion site to the mouth, we would assume that there is a gain of 21.75 cfs for each 200 feet downstream from the diversion; at 400 feet, 43.5 cfs and at 600 feet, 65.25 cfs.

With these figures you should be able to determine an appropriate overflow at the proposed diversion to meet your desired management objectives.

William T. Davis

IX. EXHIBITS

A Exact Location Description of Preservation Zone

B ACEC Management Plan

C Monitoring Schedule

D Terms and Conditions, Stipulations

1. IDENTIFICATION OF LANDS INVOLVED

There is identified in Idaho Code §67-4310, as amended by S.L. 1982, Chap. 369, a point (the base point) located 100 feet downstream from the crest of the falls in the west half of the northwest quarter of Section 27, Township 8 South, Range 14 East, Boise Meridian. For purposes of this agreement a line is hereby established through that point, extending northeasterly from the middle of Box Canyon Creek to a poit on the canyon rim and thence north 0°12' east to a point on the north boundary line of Section 27, Township 8 South, Range 14 East, Boise Meridian, and extending southwesterly from the middle of Box Canyon Creek to a point on the canyon rim ad thence south 0°12' west to a point on the south boundary line of the southwest quarter of the northwest quarter of said Section 27. Those lands described in Idaho Code § 67-4310 which lie easterly and southerly of said line are sometimes hereinafter referred to as the lands above the base point, and the portions of said described lands lying westerly and northerly of said line are sometimes hereinafter referred to as the lands lying below the base point. Unless otherwise indicated, "land" or "lands", as used in this agreement, refers to land owned by the Applicant, Earl M. Hardy (hereinafter the "Owner").

2. RESTRICTION ON OWNER'S USE OF LAND

A. The Owner reserves the right for himself, his family, and their guests, to use of the land above the base point, subject to the following limitations:

(i) The land will be kept in its present condition except as it may be altered by forces of nature; no artificial or mechanical alteration (except the access road) will be made by the Owner or others;

Specifically, without limiting the foregoing provision, no construction of any kind (except the access road) shall be done by the Owner or others, and no material disturbance or removal of plants, soil or rocks, and no diversion of water or alteration of the stream channel, shall be made by the Owner or others.

(ii) These conditions apply to lands above the base point within the canyon and to the lands above the base point and above the canyon rim lying within 250 feet of the rim.

B. The Owner's use of the land lying below the base point shall be limited as follows:

(i) The land above the canyon rim will be used only for residential purposes, consisting of no more than three homes, and for agricultural purposes, including fences, farm buildings, access and service roads, and other improvements related to residential or agricultural use, and for power transmission lines and related service road and support structures;

(ii) Use of land below the rim shall be as follows:

(a) Water diversion works in the stream channel and bank, and a hydroelectric generation facility, with penstock, service roads, appurtenant buildings, transmission lines and other support service structures will be constructed and used in this area. Plants, soil and rock will be disturbed or removed as necessary during construction and in the operation of the facility;

(b) Residential use, limited to one home, with an access road, fences and outbuildings. The least practicable disturbance of plants, soil and rocks will be caused during construction of the home, fences and outbuildings;

(c) Recreational use will be made of the land, including construction of foot or horse trails, with the least practicable disturbance of plants, soil or rocks, during construction and use of the trails;

(d) Rock will be removed for use in construction of roads on the property below the base point, or for use in the construction of hydroelectric generating facilities and related improvements and structures, or in the construction of the homes above the rim.

3. DEDICATION TO LIMITED PUBLIC USES

A. Land in the canyon above the base point, including the stream channel, shall be dedicated to limited public uses in the following categories, and no other uses shall be permitted or authorized, unless expressly stated in some other part of this agreement:

(i) Recreational use in the form of viewing and sightseeing, by not more than an average of 20 persons per day during any 365-day period;

(ii) Natural scientific studies by the Idaho Department of Parks and Recreation, the Idaho Department of Fish and Game, the University of Idaho, Idaho State University, Boise State University, and the College of Idaho, and by such other individuals or public or private entities as are specifically authorized by a committee composed of the Owner or his representative designated in writing, and a person designated by the Idaho State Board of Land Commissioners. The committee also shall adopt guidelines to be follows in conducting the studies, as hereinafter specified;

(iii) All recreational use and natural scientific studies shall be conducted in such manner as not to disturb or remove plants, soil or rocks, or divert water from Box Canyon Creek or alter the stream channel, except that samples of plants, soil, rocks or water may be taken and removed, if authorized by the guidelines;

(iv) Reasonable access for the purposes stated in subparagraph (i) through (iii), above. No additional roads or trails shall be constructed on the land above the base point without the consent of the Owner as to location, size and type of construction, and the Owner agrees that such consent shall not be withheld unreasonably.

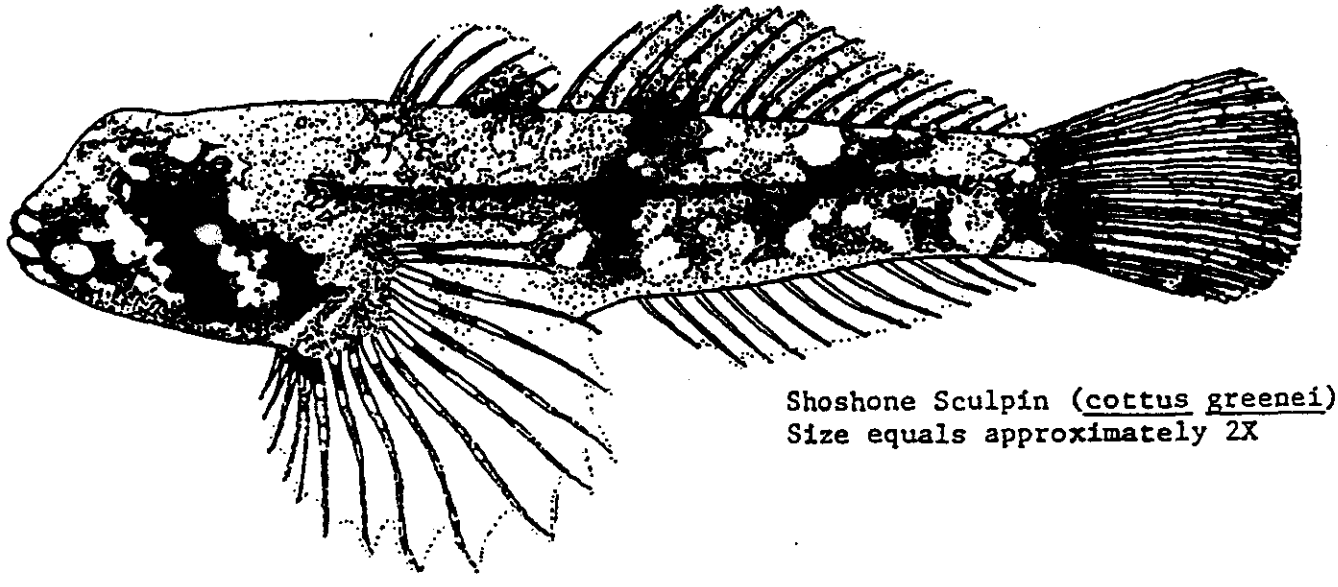
B. Land above the canyon rim and above the base point may be used for access as hereinafter provided, and for the construction, use and maintenance of one combination residence and administration building and not more than two outbuildings for storage of such equipment and supplies as are reasonably necessary for the uses contemplated by the Agreement between the Owner and the State of Idaho, dated November 8, 1983, and for related laboratory and study purposes. Construction of any such buildings shall not be commenced until the Owner has approved the location and design, which approval shall not be withheld unreasonably by the Owner.

C. Lands below the base point shall not be used by any persons or entities without the express written consent of the Owner or his representative designated in writing.

BOX CANYON

AREA OF CRITICAL ENVIRONMENTAL CONCERN

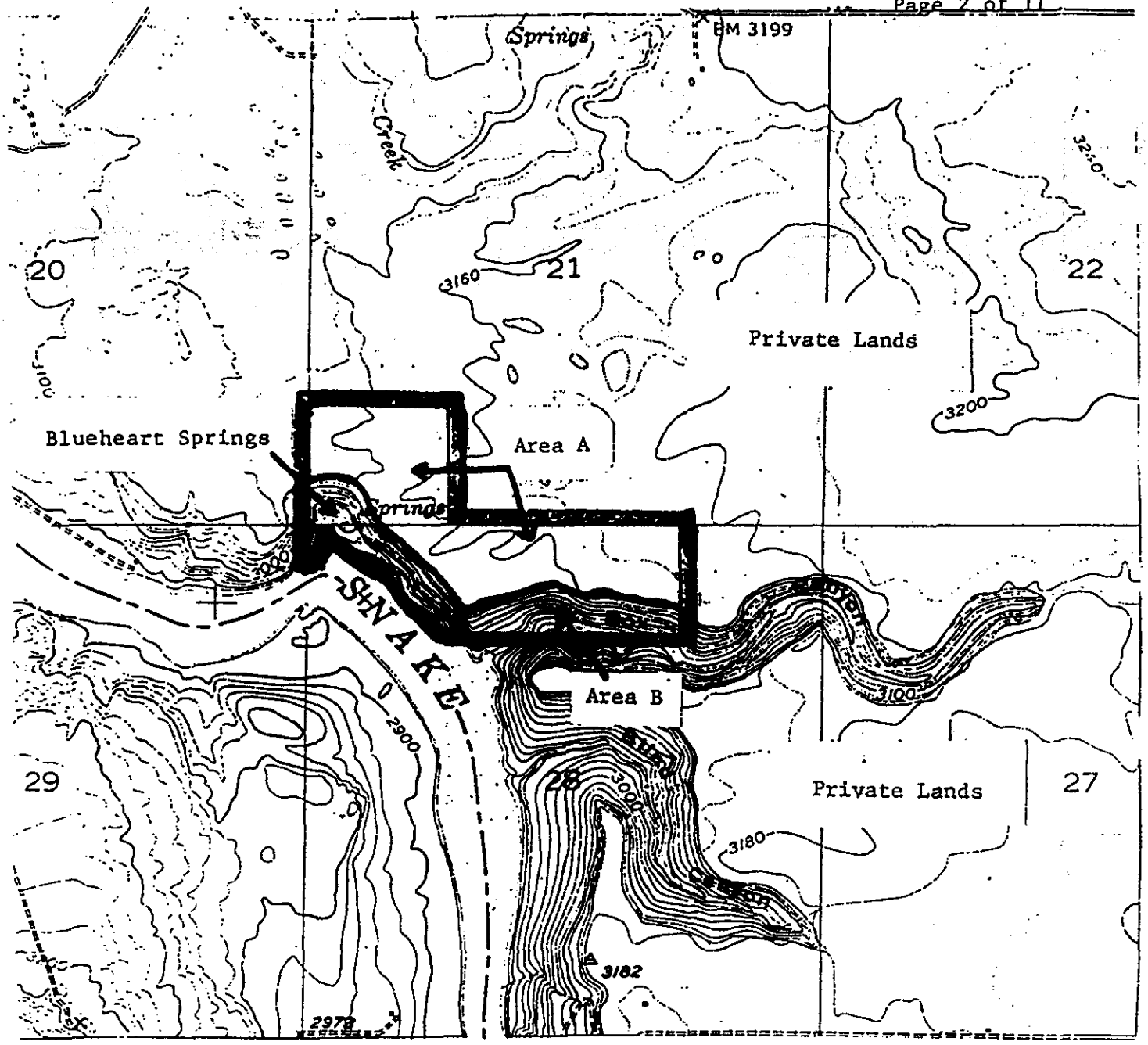
MANAGEMENT PLAN

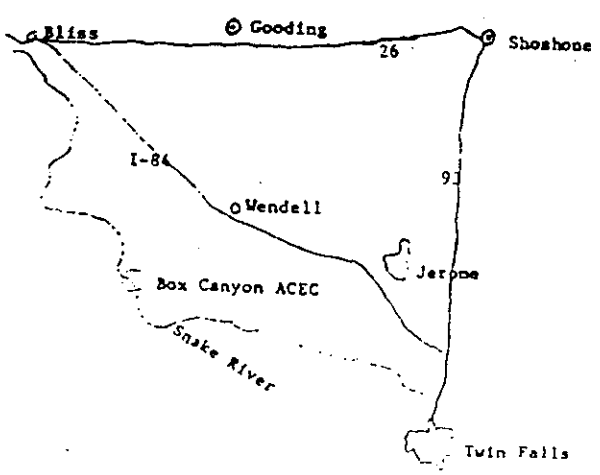


Shoshone Sculpin (cottus greenei)
Size equals approximately 2X

BUREAU OF LAND MANAGEMENT
SHOSHONE DISTRICT OFFICE
SHOSHONE, IDAHO

1985





N

BOX CANYON ACEC LOCATION MAP

BLM-Administered Lands

Boundary Between
Area A and Area B

BOX CANYON
AREA OF CRITICAL ENVIRONMENTAL CONCERN (ACEC)
MANAGEMENT PLAN

I. INTRODUCTION

The establishment of areas of critical environmental concern (ACECs) is provided for in Section 202(c)(3) of the Federal Land Policy and Management Act. Section 103(a) of the Act defines an ACEC as an area

> "...within the public lands where special management attention is required (when such areas are developed or used or where no development is required) to protect and prevent irrepairable damage to important historic, cultural or scenic values, fish and wildlife resources or other natural systems or processes, or to protect life and safety from natural hazards."

The Box Canyon ACEC was identified in the Monument Resource Management Plan (RMP), approved on April 22, 1985. The key resource values which justify the ACEC designation are (1) four candidate threatened and endangered aquatic species, and (2) the scenic and unique natural qualities of the area. This management plan provides specific and general guidance to protect and preserve those resource values which led to the ACEC designation.

II. GENERAL INFORMATION

A. Description

The Box Canyon ACEC is a relatively small, isolated area on the southern boundary of Gooding County along the Snake River. It is located approximately 16 miles west of Jerome, 8 miles southwest of Wendell, and 24 river miles downstream from the Perrine Bridge at Twin Falls (see attached map). The ACEC is legally described as:

T. 8 S., R. 14 E., B.M.

Section 21:	SW4SW4	40.0 acres
Section 28:	Lot 1, NW4NE4	88.3 acres
		128.3 acres

In this document, the 128.3 acres of BLM administered lands will be referred to as the ACEC lands and all other lands referred to as private lands. The combination of the ACEC lands and the private lands will be referred to as the Box Canyon complex. The provisions of this plan apply only to the ACEC lands within the Box Canyon complex, which are approximately 30 percent of all lands contained within the complex.

The Box Canyon complex is recognized as one of the few remaining relatively undisturbed alcove ecosystems in the Snake River system. The area provides recreation, hunting, fishing, and aesthetics for human visitors plus an array of habitats for resident and migrating wildlife species. High, rocky

ledges throughout the canyon provide raptor nest sites. Flat land above the rim provides domestic livestock grazing and habitat for raptor prey base and other upland wildlife species.

The ACEC lands include a portion of Box Canyon Creek, the entire Blueheart Springs and its riparian habitat along the Snake River, and 87.1 acres of land above the canyon rim (see attached map).

The ACEC portion of Box Canyon Creek is habitat for the Shoshone sculpin (*Cottus greenii*), a candidate threatened species. Its stable aquatic temperatures and chemistry support the largest known population of Shoshone sculpin on public lands, and the third largest known population in the world. Few Shoshone sculpin are known to exist upstream on private lands.

Box Canyon Creek also contains populations of three candidate threatened molluscs: the Bliss Rapids snail (no scientific name), giant Columbia River limpet (*Fisherola nuttalli*), and *Valvata utahensis* (no known common name). Each of these species occupies seperate and unique habitat sites which are described in a September 1985 report by D. W. Taylor.

Box Canyon Creek provides feeding areas for furbearers and game fish. The riparian areas are considered important for non-game birds, particularly during the winter months.

Blueheart Springs is a large, aqua blue, cold, clear water spring emerging from the Snake River Canyon which supports the fourth largest known population of Shoshone sculpin. It is surrounded by riparian vegetation and talus rock which makes physical access difficult and protects the area from heavy disturbance.

Visual quality for the Box Canyon complex is considered high due to the unique geologic formations, the high-quality spring waters, and the riparian vegetation throughout the complex.

Recreation values in the general area are high due to the quantity and quality of rainbow trout fishing, waterfowl hunting, and sightseeing. The quality of riparian habitat varies from high to low.

Overland access to the ACEC is not legally provided at this time; however, both physical and legal access does exist from the Snake River.

B. Background Information

Two major disturbances have occurred that altered the scenic and aquatic values within the ACEC. In the early 1980s, a small burn destroyed approximately 200 feet of shoreline riparian vegetation. A water diversion structure and flume were constructed on the adjacent private lands causing a permanent visual impairment and reduction in water volume across the ACEC.

The reduction in water volume from the diversion to the mouth of the creek and the increase of suspended sediment from construction activity has, in all probability, had an impact on the aquatic species, especially the four candidate threatened species. An assumption is made that the increased

suspended sediment and flushing flows at the time of construction had a short-term impact and that the loss of water volume had a long-term impact on pre-construction aquatic populations. Since the present population density estimates were established after the stream had recovered its initial water quality and stabilized to its present water volume, these estimates will be used as the base information for Box Canyon Creek.

The Box Canyon complex has been recognized for its significant biologic, visual, geologic, and hydrologic values. The complex has been nominated and evaluated as a National Natural Landmark. This nomination and evaluation is awaiting a National Park Service staff review in Washington D.C., which determines whether the nomination will be forwarded to the Secretary of Interior with a recommendation for approval. This nomination does not directly affect the management of the ACEC, however, the National Park Service shall be notified prior to any man-caused alterations of the area.

III. MANAGEMENT OBJECTIVES

The overall management objective for public lands in Box Canyon is to maintain or enhance the resource values critical to the ACEC and to provide direction and guidance for their protection. Specific objectives are:

-- Manage Box Canyon Creek to maintain optimum levels of spring clarity, water quality, color, naturalness, scenic quality, riparian vegetation, and habitat to maintain an estimated June population of 15,000-20,000 Shoshone sculpin and any populations of Bliss Rapids snail, giant Columbia River limpets, and *Valvata utahensis*.

-- Manage Blueheart Springs to maintain present levels of spring clarity, water quality, color, naturalness, scenic quality, and habitat to sustain a population of approximately 20,000 Shoshone sculpin.

-- Manage the visual resources to maintain the existing Class II and Class IV Visual Resource Management (VRM) classifications.

-- Protect against and prevent irreparable damage to the natural systems and processes occurring within the ACEC lands.

Developments or activities which destroy, remove, or decrease the quality and/or quantity of resources, or which would lead to irreparable damage to the aquatic, riparian, visual, wildlife, or fisheries values are considered incompatible uses under this plan and no BLM action that would lead to these results would be taken. Development or activity proposals will be considered on a case-by-case basis. If mitigation to prevent the loss or destruction of the key resources in the ACEC is provided, the proposal may be authorized.

It is important to point out that protection of public values is ensured only on the ACEC lands.

IV. MANAGEMENT GUIDELINES

Due to the presence of two distinct ecological community areas which differ for numerous physical reasons, the ACEC lands are designated Area A and Area B with the following descriptions.

Area A - All ACEC lands above the canyon rim (approximately 87.1 acres). These lands are subject to livestock grazing and are included in the Sand Springs Allotment. These lands are a part of the ACEC because they are a raptor prey hunting area and because they are contiguous to the ACEC lands below the rim.

Area B - All ACEC lands below the canyon rim (approximately 41.2 acres) including Blueheart Springs, associated talus slopes, and riparian habitat along the Snake River. This area also includes Box Canyon Creek and its adjacent riparian habitats and talus slopes.

A. Cultural Resources

1. Area A

A 1984 inventory found two rock structures along the rim. This find identified the area as containing potential cultural resource values. Although additional cultural resource clearances may be requested in the future, no further investigations are needed at this time.

2. Area B

Investigations conclude that there are no significant cultural resources on the ACEC lands below the rim. No additional inventories are required in this area.

B. Livestock Grazing

1. Area A

Allow livestock grazing at the present rate of 100 cattle from May 1 through October 31, at 2 percent federal range, for a total of 12 animal unit months (AUMs). Any adjustments, increases or decreases, in livestock numbers will be in accordance with existing Rangeland Program procedures.

2. Area B

No livestock grazing has occurred in this area due to physical limitations, and none will be authorized in the future.

C. Recreation

Since the aquatic values are essential to the threatened fisheries and the visual components of the ACEC, year-round protection and management must be provided. This will not preclude hiking, hunting, fishing, photography, or picnicking activities in either area, however, no recreation facilities or improvements are planned. Monitoring and management shall be done to ensure

E. Visual Resource Management

1. Area A

The existing VRM Class IV rating 1/ will be maintained or improved. No projects in Area A that would negatively impact the Class II rating 2/ in Area B will be authorized.

2. Area B

Any actions on ACEC lands shall maintain or improve the existing visual quality. Mitigate surface disturbance to blend with the existing topography.

F. Realty and Lands

These planned actions are common to both community areas A and B.

Only those lands actions that will allow the resource objectives to be met will be authorized.

The ACEC lands will be withdrawn from appropriation under the mining and mineral leasing laws.

G. Fire Suppression

Because of the high values related to vegetation, full fire suppression efforts should be implemented. If surface or vegetative disturbance due to fire, fire suppression, or other activities occurs, vegetative and surface rehabilitation shall be done to meet the objectives of the ACEC.

H. Geology

A low-grade jasper has been identified on a portion of the ACEC. No mining claims will be allowed, but hobbiest rockhounding will be allowed provided the objectives of the plan are met. Closures will be enforced if excessive resource damage occurs from this activity.

V. MONITORING

A. Range

Due to the ACEC designation, monitoring to determine vegetative condition and trend will be conducted for Area A on a five-year schedule.

1/ Class IV. Contrasts may attract attention and be a dominant feature of the landscape in terms of scale; however, the change should repeat the basic elements (form, line, color, texture) inherent in the characteristic landscape.

2/ Class II. Changes in any of the basic elements (form, line, color, texture) caused by a management activity should not be evident in the characteristic landscape. A contrast may be seen but should not attract attention.

that the level of use does not adversely affect those resource values which established the ACEC. Should the monitoring data indicate excessive fisheries harvest, BLM will coordinate with the IDF&G to request management adjustments.

The isolated nature of Blueheart Springs from the main use area of the ACEC has kept the spring and its surrounding riparian habitat in excellent condition. No development of Blueheart Spring or public land within view from Blueheart Spring will be allowed, although low-impact recreation use may occur.

D. Wildlife

1. Area A

The dryland vegetative types above the rim will be managed to provide for stable raptor prey bases and at least moderate upland wildlife cover. Increasing the present 5-10 percent brush cover to 10-20 percent is established as a management objective.

2. Area B

a. In addition to the Shoshone sculpin, the Bliss Rapids snail, the giant Columbia River limpet, and *Valvata utahensis* have been identified within Box Canyon Creek on BLM-administered lands. The results of a 1985 aquatic mollusc inventory are filed at the Shoshone District Office. Any expected impacts on these species will require consultation with the U.S. Fish and Wildlife Service for mitigation analysis and/or development, as identified in Section 7 of the Endangered Species Act of December 28, 1973.

b. The riparian habitats on ACEC lands will be protected against removal, reduction, destruction, and/or unmitigated development. Disturbances in riparian habitat shall be replanted with native or native-like species representing a natural community to maintain both wildlife and visual qualities.

c. Water volume, temperature, velocity, low turbidity, and chemistry in Box Canyon Creek will be maintained and monitored as appropriate on ACEC lands to sustain the terrestrial and aquatic wildlife and fish habitats. Minimum stream flows required to meet the stated objectives for the Shoshone sculpin and other candidate threatened aquatic species must be established in cooperation with BLM, Idaho Department of Fish and Game (IDF&G), and U.S. Fish and Wildlife Service (USFWS).

d. A permanent aquatic transect to monitor population and habitat conditions for the Shoshone sculpin and molluscs will be established. Establishment and reading of the transects will be in coordination with USFWS and IDF&G.

e. The BLM will petition IDF&G to apply for water rights in Box Canyon Creek for protecting and maintaining wildlife and fisheries habitats. This application would be subordinate to the instream flows filed by Idaho Department of Parks and Recreation and other prior water rights applicants. Since the Idaho Department of Parks and Recreation has a current water right for 100 cfs at Blueheart Springs, no additional application for water rights at this spring is needed.

B. Recreation

At least two visits each year will be conducted to observe recreation activity occuring in the ACEC. Visits may be conducted on any day of the week and will note use of trails, campsites, and indicators of the levels of human use. Permanent photo points may be established and recorded during the same month each year. Because of the level of expected fishing use (including crayfish harvest), close coordination with IDF&G will be maintained to regulate fish harvest levels.

C. Wildlife and Fisheries

Annual random transects will be walked in the spring of each year to estimate upland wildlife use (including game and non-game species). Riparian habitat will be monitored using the Meyer's method as modified for the Shoshone District.

D. Threatened and Endangered Species

Aquatic monitoring will be conducted to evaluate Shoshone sculpin numbers and habitat quality. Monitoring will include techniques for the Bliss Rapid's snail, Shoshone sculpin, *Valvata utahensis*, and the giant Columbia River limpet. Techniques used for all aquatic monitoring will be developed using the advises of Drs. Wallace and Griffith for the Shoshone sculpin and Dr. Taylor for the other candidate species named.

VI. TIME TABLES AND ESTIMATED COSTS

Initially, a five-year schedule is proposed to meet the objectives of this plan by implementing the identified BLM planned actions. Figure 1 shows a time table with estimated cost expenditures by subactivity. This schedule may be altered by the availability of funding, changes in technology, or proposals that may affect the area.

FIGURE 1

Sub-activity	Action	Project	Year 1	2	3	4	5
4322	Monitoring Range Utilization		.125 WM	.125 WM	.125 WM	.125 WM	.125 WM
4331	Inventory		2.5 WM				
	Map and Record Sites, Develop Reports and work with SHPO			2.5 WM			
4333	Monitor Visitor Use		.125 WM	.125 WM	.125 WM	.125 WM	.125 WM
	Signing		$500				$100
	Photo Points		$100		$100		$100
4351	Riparian Habitat Monitoring		.125 WM	.125 WM	.125 WM	.125 WM	.125 WM
	Riparian or Other Vegetation Rehab	$3,000					
	Monitor Upland habitat for small mammal and game bird habitat		.125 WM		.125 WM		.125 WM
4352	Aquatic Habitat Monitoring		.125 WM	.125 WM	.125 WM	.125 WM	.125 WM
	Contract aquatic analysis and species census		$800			$800	
	Water Tests	$2,000	$400	$400	$400	$400	$400
4211	Complete Lands Work		3 WM				

VI. PARTICIPATING STAFF

Steve Langenstein, Wildlife Biologist/Team Leader
Robert Cordell, Bennett Hills Area Manager
Joe Aitken, Realty Specialist
Dick Kodeski, Recreation Planner
John Husband, Planning Coordinator
John Lytle, Archaeologist
Robert Moline, Supervisory Range Technician
Derinda Rapp, Editorial Assistant
Scott Anderson, District Range Specialist
Jeff Jarvis, District Recreation Planner
Jon Idso, ABM-Resources
Larry Mangum, District Wildlife Biologist
Harold Brown, District Realty Specialist

VII. SIGNATURES

The Box Canyon ACEC Management Plan is approved as written.

Robert D. Cordell — 10/17/85
Robert D. Cordell
Bennett Hills Resource Area Manager

I Concur:

Charles G. Haszier — 10/17/85
Charles J. Haszier
Shoshone District Manager

MINIMUM MONITORING SCHEDULE

BOX CANYON

More or less intensive monitoring may be required depending on the Analysis and Evaluation of the following procedures:

A. Annual Fisheries Monitoring will consist of the following:

1. Evaluation of presence or absence of Bliss Rapids Snail at a minimum of three permanent sampling sites on public land, one site on private at the mouth of Box Canyon, and two sites within the upper canyon Preservation Zone. At least a total of three other random samples will be taken, one on each of the identified sections of stream, mouth, BLM, and upper Preservation Zone.

○ = Approximate sample site

2. At least three sediment samples will be taken at the sculpin pool where Valvata utahensis was originally found. Live specimens will be counted and released from each sample. A sample will consist of seining sandy sediments one to two feet deep in slow, steady current. For more habitat description see "Candidate Threatened or Endangered Mollusks in Box Canyon ACEC, Gooding County, Idaho" by D. W. Taylor, 1985. Water temperature and dissolved oxygen should be recorded at each site.

□ = Approximate sample site

3. Visual inspection of Shoshone Sculpin habitat sites will be made. Estimates of number of fish per square meter should be made. These counts should take place at mid day (11:00 a.m. to 1:00 p.m.) on June 11, plus or minus four days. For further information see "A Survey of Shoshone Sculpin (Cottus greenei) Populations In Box Canyon and Blue Hearts Springs, Idaho" by J. S. Griffith, D. M. Daley, G. B. Beckham, 1981. More quantitative techniques are available if needed.

△ = Approximate sample site

4. The Giant Columbia River Limpet (Fisherola nuttalii) will be monitored using sediment and vegetative material sampling. If reduced water levels expose limpet habitat and/or populations, those exposed areas will be used to further develop monitoring strategies for this species.

○ = Approximate sample site

B. Annual Riparian Monitoring

1. Establish a standarized photo transect showing riparians above and below the diversion. At least one of the photos will be taken from the rim above Box Canyon Creek. A minimum total of four photo points should be

established and each of these should be taken once in spring (March 1 - May 30) and once in summer (August 1 - September 30). Use 35mm format film, Kodachrome 64 50mm lens.

⊗ = Approximate sampling site.

C. Water Quality

1. Dissolved oxygen, temperature, pH, and conductivity shall be taken every four to eight weeks (when reading the instream flow meter) at all permanent monitoring stations. This will occur at least for the first year every four to eight weeks.

○ = At each sampling site
□ = At each sampling site

2. Invertebrate counts for diversity and species composition shall be taken and lab alnalyzed at a minimum of two locations: (1) upstream from the diversion (as a control) and (2) below the diversion. These will be permanent sample stations. At each station one set of sample should be taken each season of the year. A set of samples is comprised of three to five samples taken with a Hess Net. Analysis should reflect species diversity by establishing the number of taxa and abundance of each taxa. The Biotic Condition Index (BCI) method shall be applied to this data to integrate water quality and invertabrate tolerances as well as other indexes.

Data will be taken before construction, and each year after construction as scheduled above, for at least four years. Changes in the monitoring schedule may occur when data stablilzes for at least four consecutive years. Following the initial four year monitoring period the BLM will incur all subsequent monitoring costs up to and including the 20th year of operation.

□ = Approximate sample site

Costs for Monitoring

1.	Photo costs - annual	$ 75.00
2.	Invertebrate Analysis - 2 stations, 3 samples each 4 times per year, total 24 samples @ $65.00 per sample	$1,600.00
3.	BLM workmonths or 1st year 1/2 wm; includes BLM labor and vehicular costs	$1,250.00
	TOTAL	$2,925.00

BLM employees will make unannounced readings of water levels. This information will be recorded and maintained at the District Office. This additional monitoring is reflected in the above cost estimate.

A re-evaluation of the monitoring program will be made after four-years to ensure affectiveness. Changes in the program should reflect the objectives of the ACEC Management Plan.

Cost Summary

Year	Not to Exceed Cost
1	$2,925.00
2	2,925.00
3	2,925.00
4	2,925.00
Reevaluate Monitoring Program	
5	BLM shall continue to monitor the right-of-way; however, the costs associated with the Federal candidate threatened species and all other biological monitoring shall be borne by the Bureau, not the Holder.
20	
21	Reevaluate Monitoring Program

Box Canyon Rehab List

Shrubs:

- Basin Big Sagebrush (*Artemesia tridentata tridentata*)
- Spiney Hopsage (*Atriplex spinosa*)
- Gray Rabbitbrush (*Chrysothamnus nauseousus*)
- Greasewood (*Sarcobatus vermiculatus*)
- Four-wing Saltbush (*Atriplex canescens*)

Forbs:

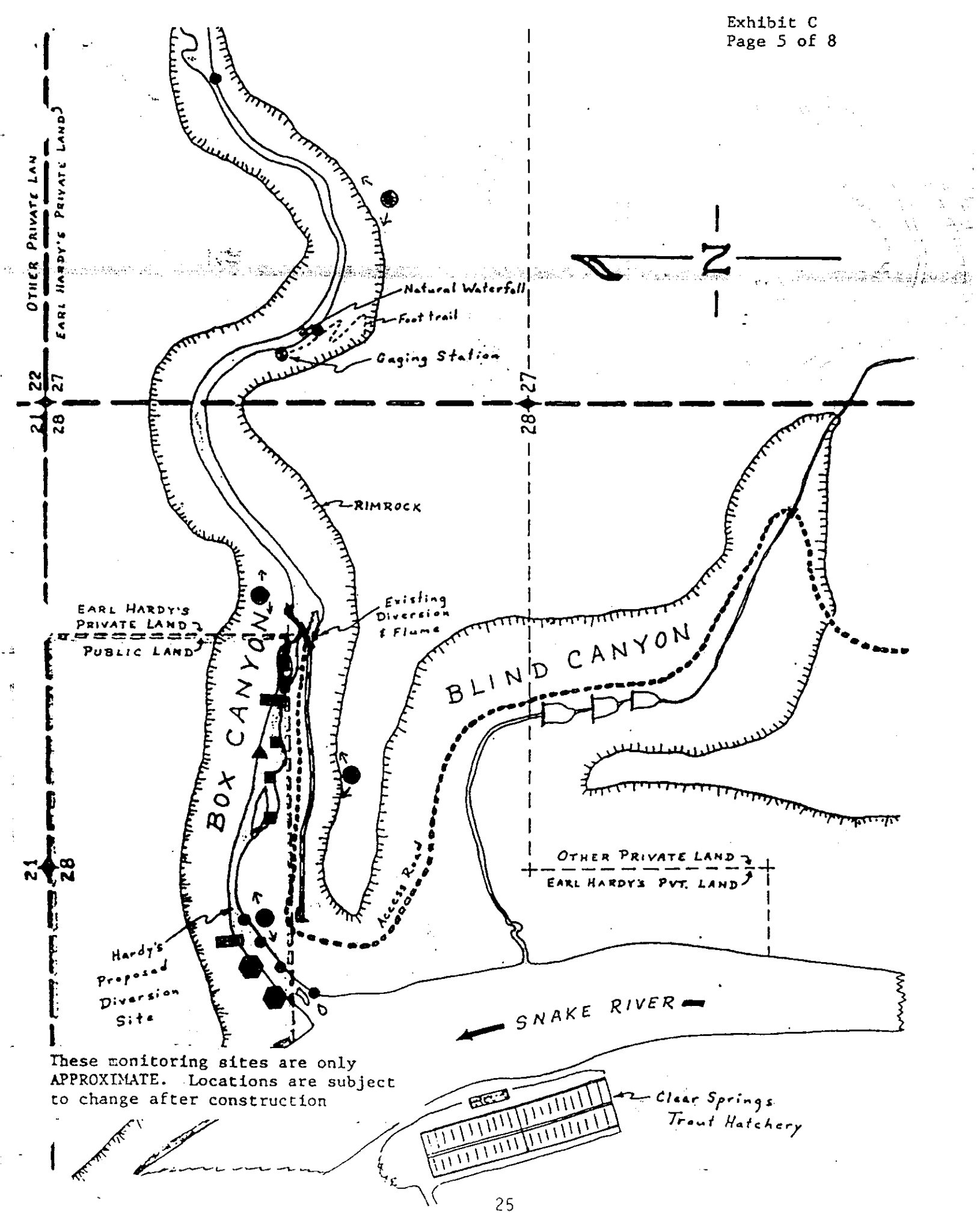
- Milfoil-Western Yarrow (*Achillaea millefolium lanuldsa*)
- Red Columbine (*Aquilegia formosa*)
- Hoary Aster (*aster pansus*)
- Munro's Globe Mallow (*Sphaeralcea munroana*)

Grasses:

- Alkali Saltgrass (*Distichlis stricta*)
- Giant Wildrye (*Elymus cinereus*) May use 'Magnar'
- Indian Ricegrass (*Oryzopsis hymenoides*) May use 'Nezpar'
- Sandberg Bluegrass (*Poa sandbergii*)
- Sand Dropseed (*Sporobolus cryptandrus*)

Seventy-five percent of this species list would meet compliance. Intent is to maintain a close proximity to the pre-disturbance vegetative diversity and composition.

Species list for trees is subject to soil analysis and irrigation design. Trees planted for screening purposes must survive a minimum of three years and replacement would be required. It may be appropriate to contract tree selection and planting to a nursery or landscaping company.



These monitoring sites are only APPROXIMATE. Locations are subject to change after construction

NEZPAR INDIAN RICEGRASS

Nezpar Indian ricegrass is one of the West's most distinct and beautiful perennial bunchgrasses. Nezpar is extremely drought tolerant and provides natural erosion control.

Named in honor of the Nez Perce Indians, Nezpar was collected from native vegetation near Whitebird, Idaho. The nutritious seeds were once one of the food staples of many Western Indians.

Nezpar was released in 1978 by the Soil Conservation Service and the University of Idaho Agricultural Experiment Station.

Adaptability

This erect, cool-season, native bunchgrass is adapted especially for the West and will grow well in Idaho, Utah, and Nevada. It is found on high mountain, dry southerly exposures to desert floors. It prefers sand dunes, sandy plains, canyons, hillsides, and exposed ridge sites.

Nezpar is adapted to coarse soils in areas with at least 9 inches (22.86 cm) annual precipitation. At elevations of 6000 feet (1828.8 m) and above, where average annual temperature is 40°F, (4.5° C) or less, plantings should be restricted to south and west slopes or other "hot" situations.

Uses

Nezpar is particularly adapted for winter forage. The plant does best when grazed in fall and winter and is highly palatable to all wildlife and all classes of livestock. It cures exceptionally well and provides nutritious winter feed. Stands deteriorate under spring grazing.

Nezpar is well adapted for rangeland seedings. It is also in demand for use in the revegetation of lands disturbed by surface mining and for critical area stabilization.

Seeds of Nezpar start to mature in early summer and provide a high energy, sustaining food for upland game birds and rodents.

Seeding Recommendations

In sandy soils at the lower end of the precipitation range, seed should be planted 3 to 4 inches deep. In less droughty situations, shallower seeding depths may be used, depending on conditions such as soil and age of seed. Older seed doesn't have the same capacity to emerge from a deep planting that young seed has.

When included in a seed mixture that will be planted 1 inch deep, seed that is 5 to 10 years old is recommended. Shallow seedings must be made in late fall to reduce bird and rodent depredation.

It is recommended all plantings be made on a Pure Live Seed (PLS) basis.

$$\frac{\%\ \text{Purity} \times \%\ \text{Germination}}{100} = \text{PLS}\%$$

Suggested Seeding Rates

Row Spacing (inches)	PLS Linear Foot	Lbs./Acre at 80% PLS
6	24	10*
12	24	5*
36**	24	3*

*Includes viable hard seeds
**Seed production

Seed Production

Optimum soils are loamy sands, sandy loam, and fine sandy loam. Irrigated field conditions are recommended and should produce about 370 pounds per acre cleaned seed. Two years should be allowed for adequate stand establishment.

Seed Availability

Foundation seed is available through the University of Idaho Research and Extension Center, Utah Crop Improvement Association, and soil conservation districts in Idaho and Utah. Breeder seed is maintained by the Plant Materials Center at Aberdeen, Idaho. Registered and certified seed is available from commercial agricultural seed dealers.

MAGNAR BASIN WILDRYE

Magnar, an improved variety of basin wildrye, is a cool season, perennial bunchgrass native to much of the Western United States. It was once a very important winter forage plant of the Western rangelands, but overgrazing greatly reduced or eliminated it. The name denotes great or large.

Magnar was released in 1979 by the Soil Conservation Service and the University of Idaho Agricultural Experiment Station.

Adaptability

Magnar is well adapted to southern Idaho, northern Utah, and Nevada. It grows in areas :h an average annual precipitation of 8 to over inches. It is adapted to irrigation throughout ne region. Although Magnar has a broad soil texture adaptation, it does not do well on coarse textured or shallow soils. It has good tolerance to salt and alkali.

Uses

Magnar is a good erosion control plant. It is useful for stabilizing gullies and banks of dry washes. It can be used as a grass windbreak for wind erosion protection or to control blowing snow.

Magnar may also be used as a component in mixtures to reseed rangelands, minespoils, and other disturbed areas. It is well adapted to phosphate minespoil reclamation in southeastern Idaho.

Another good use of Magnar is for wildlife food and cover. It provides excellent nesting, roosting, escape cover, and food for pheasants. Other birds and small rodents also eat the large seeds.

Under irrigation, Magnar can produce as much as 10 tons per acre of dry weight forage. ' makes excellent standing winter grazing for stock. It also has potential as chopped green d or silage.

Seeding Recommendations

Plant on weed-free, firm seedbed, in early spring or late fall. Seeding after June 1 or before September 1 may cause failure even with irrigation. Magnar establishes slowly and should not be grazed or cut until late summer or fall of the second growing season.

It is recommended all plantings be made on a Pure Live Seed (PLS) basis at the following rates when seeded alone:

Row Spacing (inches)	Pounds PLS (per acre)	Total Seed per Linear Foot Drill Row
6	18	26
12	9	26
24	5	29
36*	3.5	30
48*	3.0	34

*Seed production, wildlife, or windbreak plantings

Seed Production

Seed production fields should be seeded in rows 36 to 48 inches apart to permit access for machine tillage, hand roguing, and weed control. Seed is best harvested as soon as mature by direct combining with the platform set high to get most of the seed and as little green growth as possible. Seed must be dried immediately after combining.

Seed Availability

Breeders and foundation seed are mantained by the Plant Materials Center at Aberdeen, Idaho. Foundation seed may be obtained through soil conservation districts in Idaho, Nevada, and Utah; University of Idaho Research and Extension Center; and Utah Crop Improvement Association.

SAND Dropseed - A Drought Tolerant Grass for Coarse Texture Soils



SAND DROPSEED
Sporobolus cryptandrus
(Torr.) A. Gray

ORIGIN

Sand dropseed is native to all parts of the United States except the eight most southeastern states. Little selection or improvement work has been done with it. Most commercial seed comes either from the Southern Great Plains or as a by-product of the Bermuda grass seed industry at Yuma, Arizona.

DESCRIPTION

Sand dropseed is a warm season perennial grass that usually grows in rather small tufts. The seed stalks may be either erect or spreading and range in height from 20 to 40 inches. There is a conspicuous ring of short stiff hair at the leaf collar. Most of the head remains in the sheath until after the seed is formed.

ADAPTATION AND USE

Sand dropseed is commonly found growing on sandy soils, but it grows well on other soils also. In Utah, it is useful only in the southern part of the state where a significant amount of summer precipitation occurs. The grass is readily eaten by all classes of livestock during the early growth stage, but is relatively unpalatable when dry.

SEEDBED

A clean weed-free seedbed is needed. In addition, some type of water conservation measure such as contour furrows or pits is desirable to help hold moisture until the seedlings become established.

NEW SIS PORTLAND, OREG. 1968 M-2430-212

STIPULATIONS

TERMS AND CONDITIONS

1. This authorization is issued for the useful life of the approved facility(ies) unless sooner relinquished, terminated, abandoned, or cancelled by the holder. The useful life of the facility(ies) will be jointly determined by the holder and BLM Authorized Officer considering economic value, structural integrity, and functional merit. The right-of-way grant will be reviewed at the end of twenty (20) years and at regular intervals thereafter at least once every ten (10) years [43 CFR 2801-1(h)(3)(i)]. The Authorized Officer may require corrective action; with no preconceived intent to modify or change any of the stated stipulations, i.e., 75 c.f.s. bypass, at any time after the 20th year as may be required to meet the stated goals and objectives of the Area of Critical Environmental Concern (ACEC) Plan dated December 19, 1985.

2. Notwithstanding the expiration of this instrument, early relinquishment, abandonment, cancellation, or termination, the provisions of this instrument, to the extent applicable, shall continue in effect and shall be binding on the holder, its successors, or assigns until they have fully satisfied the obligations and/or liabilities accruing herein before or on account of the expiration, or prior termination, of the grant.

3. For and in consideration of the rights granted, the holder agrees to pay the Bureau of Land Management fair market value rental as determined by the authorized officer. Provided, however, that the rental may be adjusted by the authorized officer, whenever necessary, to reflect changes in the fair market rental value as determined by the application of sound business management principles, and so far as practicable and feasible, in accordance with comparable commercial practices.

4. This grant is issued subject to the holder's compliance with all applicable regulations contained in Title 43 Code of Federal Regulations part 2800.

5. Failure of the holder to comply with applicable law or any provision of this right-of-way grant shall constitute grounds for suspension, termination, or cancellation thereof, with right of hearing as per 43 CFR 2803.4(e).

6. The holder shall perform all operations in a good and workmanlike manner so as to ensure protection of the environment and the health and safety of the public.

7. If any equipment transported across the public land area contains Polychlorinated Biphenyls (PCBs) such transport shall be in a totally enclosed manner in accordance with provisions of the Toxic Substance Control Act of 1976 as amended (see 40 CFR part 761. Additionally, any release of PCBs (leaks, spills, etc.) in excess of the reportable quantity established by 40 CFR 117 shall be reported as required by the Comprehensive Environmental

Response, Compensation, and Liability Act, section 102b. A copy of any report required or requested by any Federal agency or State Government as a result of a reportable release or spill of any hazardous material shall be furnished to the authorized officer within 5 working days of the occurrance of the spill or release.

8. The Holder shall comply with the applicable Federal and State laws and regulations concerning the use of pesticides (i.e., insecticides, herbicides, fungicides, rodenticides, and other similar substances) in all activities/operations under this grant. The Holder shall obtain from the authorized officer approval of a written plan prior to the use of such substances. The plan must provide the type and quantity of material to be used; the pest, insect, fungus, etc., to be controlled.; the method of application; the location for storage and disposal of containers; and other information that the authorized officer may require. The plan should be submitted no later than December 1 of any calendar year that covers the proposed activities for the next year. Emergency use of pesticides may occur. The use of substances on or near the area shall be in accordance with the approved plan. A pesticide shall not be used if the Secretary of the Interior has prohibited its use. A pesticide shall be used only in accordance with its registered uses and within other limitations if the Secretary has limited its use. A pesticide shall be used only in accordance with its registered uses and within other limitations if the Secretary has imposed limitations. Pesticides shall not be permanently stored on public lands authorized for use under this grant.

9. In the event the lands affected by Powersite Reserve 77 are required for powersite purposes as contemplated in Executive Order dated July 20, 1910, any structures or improvements placed thereon found to interfere with such developments shall be removed or relocated as necessary to eliminate such interferences at no cost to the United States or its permittees or licensees.

10. Prior to commencing any ground disturbing activities, holder shall submit a detailed blueprint/drawing of all structural facilities with a proposed Plan of Development and Rehabilitation for approval by the BLM Authorized Officer. The following items shall be addressed as a minimum:

BLUEPRINT/DRAWING

Structure design and specifications

PLAN OF DEVELOPMENT

Construction procedure and technique.

Emergency contingency plan in advent of diversion or flume structure failure.

Right-of-way maintenance procedure and schedule.

REHABILITATION

Method of seedbed preparation, proposed species and quantity of trees/shrubs planned for vegetative screening, quantity, and type of mulching and fertilizer.

Initial Notice to Proceed will be issued following approval of structure blueprints/drawings and Proposed Plan(s) of Development and Rehabilitation.

11. A preconstruction meeting, on-site, with the Holder, contractors, and operators shall be held prior to any ground disturbance. A notice to proceed shall be issued for each segment of construction. Construction shall not proceed beyond the last completed stage without another Notice to Proceed for that specific stage. The stages are: a. Prepwork, b. Construction, c. Operation, d. Rehabilitation. Exceptions to accommodate efficiency of scheduled work must be approved in advance by the BLM Authorized Officer.

12. No heavy equipment operation or use of explosives shall be authorized from January 1 to June 1 of each year, except for emergency repairs or as otherwise approved by the BLM Authorized Officer.

13. The coffer dam shall be constructed in stages with water to be diverted in increments not to exceed 100 cfs per day. The Authorized Officer reserves right to delay coffer dam construction up to a maximum of five working days to conduct salvage operations.

14. Fish screens and a fish bypass structure are required. These structures, diversion and flume, must comply with Idaho Department of Fish and Game standards of design, construction, and operation.

15. A minimum of 75 cfs of instream water volume shall be bypassed through, over, and/or around the diversion/facility on a continuous, permanent, and verifiable basis. The holder shall provide structures to verify the minimum bypass flow.

16. Holder shall be informed in advance of scientific studies scheduled (or authorized) by BLM on public lands within the right-of-way area.

17. Holder shall construct and maintain a fenced foot bridge across flume or dam structure to accommodate safe public access. The bridge shall be no less than 4 feet wide, with side rails and fencing no less than 3 feet high, weight capacity of no less than 1/2 ton, and approach slopes of no greater than 2:1 (run:rise). Protective provisions of Idaho Code 36-1604 shall apply.

18. An as-built survey shall be required upon construction completion.

19. Riprap on the toe of berm, pond side, must approximate six-inches in size or larger to provide aquatic habitat needs. Intent is to minimize rock less than six inches in size. Riprap on downstream side of diversion and spillway must be of adequate size to prevent erosion of streambank sides and bottom.

20. Holder shall provide up to six hours of equipment operation time with personnel to accomplish streambed habitat manipulation as directed by the authorized officer or his representative.

21. Monitoring studies shall be conducted as per Monitoring Schedule - Exhibit C. Holder shall reimburse the Bureau of Land Management for monitoring studies, per Monitoring Schedule - Exhibit C.

22. Water flows associated with scheduled operation and maintenance must be controlled so that Box Canyon Creek flows are not increased by 100 cfs within any one day time period.

23. Holder shall take no actions which will increase or decrease water levels, temperature, quality, and/or flow velocity within the natural sculpin pool upstream of the authorized impoundment pool. This applies only from the Clear Springs Diversion to the mouth of Box Canyon Creek.

24. Holder shall be responsible to comply with the terms described in Exhibit A, excluding Section 2.B, with the following modification:

-- BLM shall be authorized to conduct scientific studies within the preservation zone. No soil or vegetation removal, or destruction of resources shall be allowed.

25. Right-of-way Holder shall allow BLM administrative access for official business to the public land across private land in sections 27 and 28, T. 8 S., R. 14 E., B.M., and terminates if right-of-way I-2880 terminates.

26. Holder agrees to notify the Bureau of Land Management Authorized Officer in advance of initiating any action which might affect existing water permit(s) number(s) 36-7091 and 36-7334 or remaining water flows across private lands owned or controlled by the right-of-way holder or Mr. Earl Hardy, downstream from the approved point of diversion. Right-of-way holder further agrees to notify the Bureau of Land Management Authorized Officer of any action(s) directed to the holder by the State of Idaho, Department of Water Resources which could affect the present water permit status of permit number(s) 36-7091 and 36-7334 across private lands owned or controlled by the right-of-way holder or Mr. Earl Hardy, downstream from the approved point of diversion.

27. Upon termination of the right-of-way, holder shall remove all improvements within 90 days and smooth all disturbed areas to the existing contour and shall be required to establish a perennial vegetative cover composed of species identified in exhibit C. The seed shall be planted in the fall of the year prior to October 15 using planting techniques accepted by the authorized officer.

28. The right-of-way holder is not responsible for injuries suffered by any person on the right-of-way or on the private lands of the right-of-way holder. The provisions of Idaho Code 36-1604 are applicable to the right-of-way and to the private lands of the right-of-way holder.

29. The right-of-way holder shall have the right to relinquish the right-of-way at any time, and upon such relinquishment of the right-of-way holder shall be relieved of all obligations and liabilities under the right of way except those pertaining to rehabilitation required by the terms and conditions of the right-of-way, and upon such relinquishment all restrictions on the right-of-way holder's use of the private land shall terminate and all rights and privileges for the public or the BLM to use the private land for the purposes set forth in Exhibit A and Exhibit D, or for any other purposes, shall terminate, except for the BLM Authorized Officer's right of access to the public lands for inspection and evaluation of rehabilitation efforts and success thereof.

Box CANYON

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EXHIBITS

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IDWR EXHIBIT No. 4

CURRENT FILINGS ON BOX CANYON

Water Right	Name	Amount (cfs)	Stage
36-2705	Mountain View Irrigation	200	P
36-7091	Earl Hardy	300	P
36-7175	Earl Hardy	330	P
36-7824	Manteck, Inc.	(300)	P
36-7334	Box Canyon Trout Co. Earl Hardy	600	P
36-7040	Clear Springs Trout Co.	300	L
36-7797	Clear Springs Trout Co.	(300)	P
36-8080	Clear Springs Trout Co.	(300)	P
36-7066	Blind Canyon Aqua Ranch	(400)	P
36-7198	Idaho Parks and Recreation	(850)	A
36-8336	Earl Hardy	(425)	A
		1,730	

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IDWR EXHIBIT
No. 1

BOX CANYON CREEK
MINIMUM STREAMFLOW APPLICATION

MICROFILMED
MAY 17 1989

Water Right No.: 36-8337

Source: Box Canyon Creek

Rate of Flow: 75-162 cfs from 01/01 through 12/31

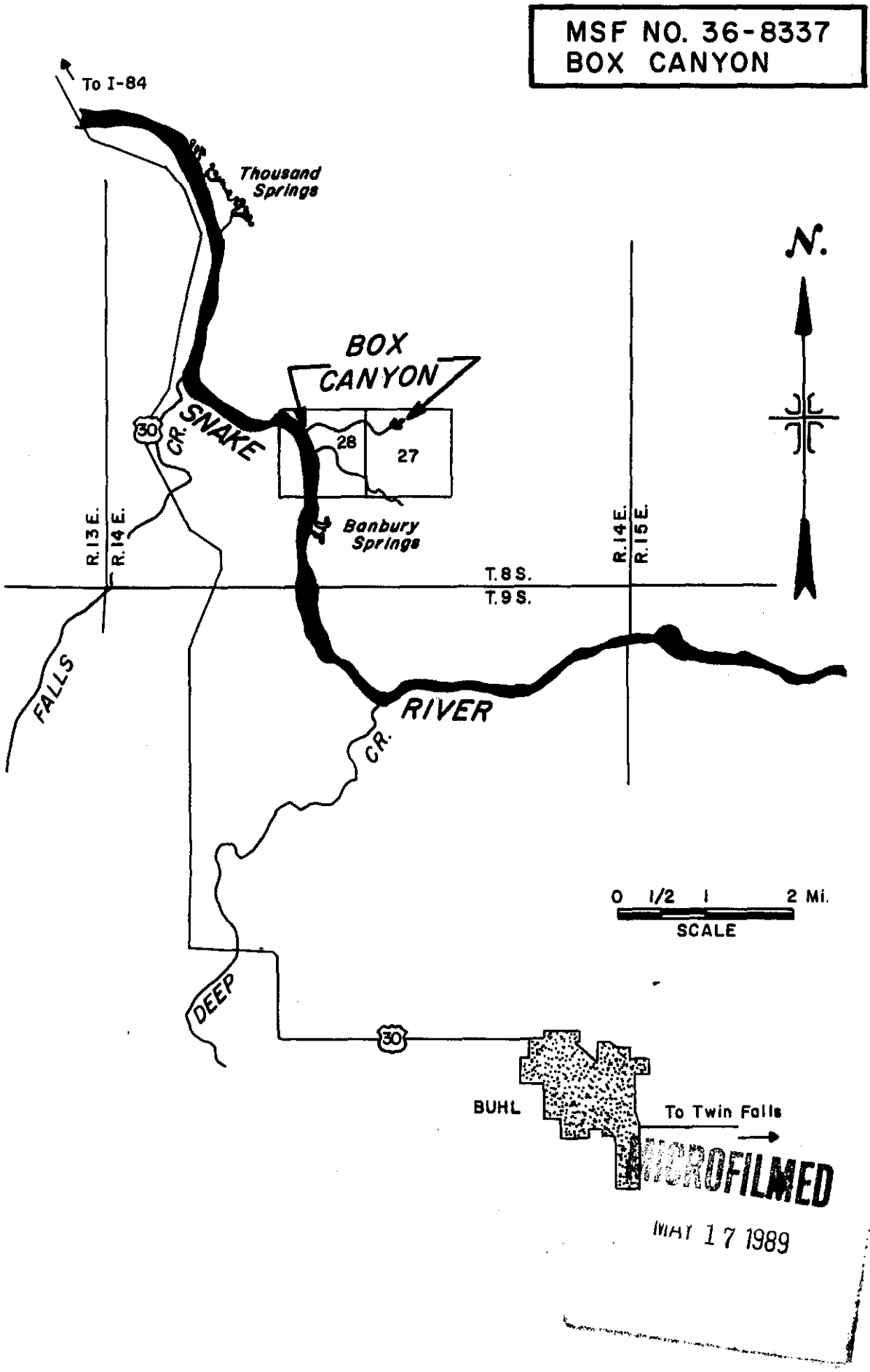
Date Application Filed: October 16, 1987

Applicant: Idaho Water Resource Board

Requesting Agency: Department of Interior, Bureau of Land Management

Purpose: Preserve fish and wildlife habitat

IDWR EXHIBIT NO. 2

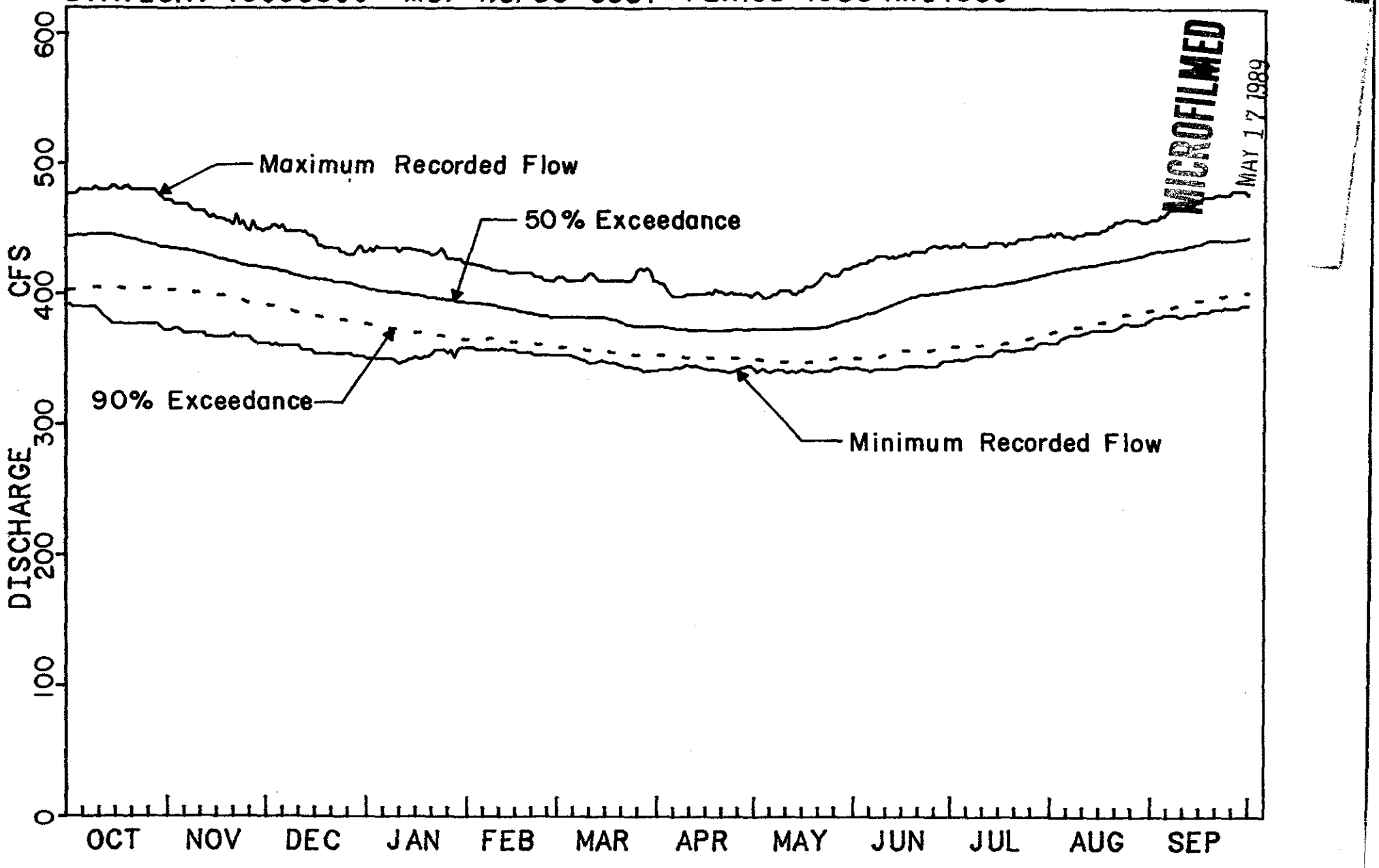


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IDWR EXHIBIT
No. 5

NAME: BOX CANYON SPRINGS NEAR WENDELL

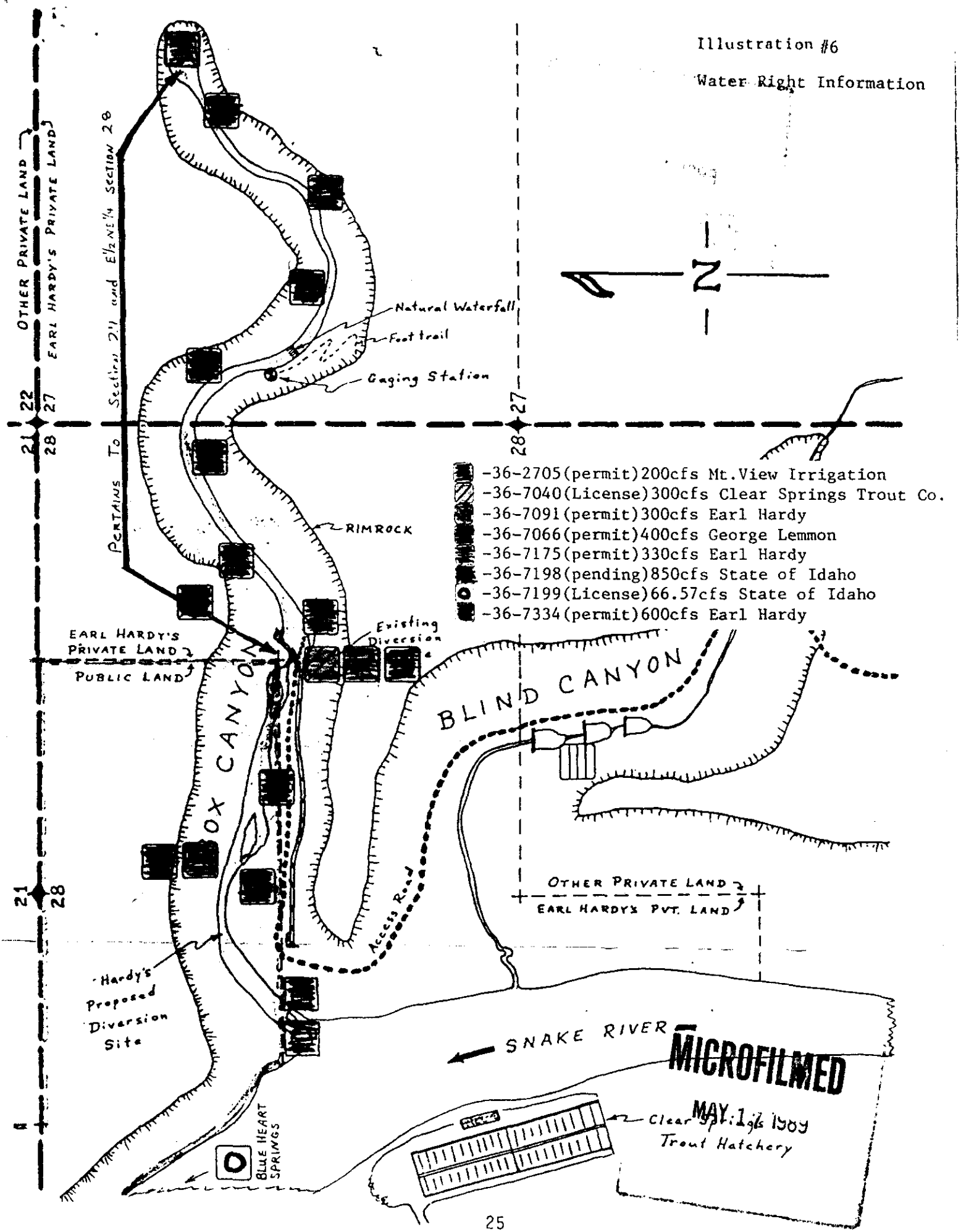
STATION: 13095500 MSF NO. 36-8337 PERIOD: 1950 thru 1985



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Illustration #6

Water Right Information



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MAY 16 1984

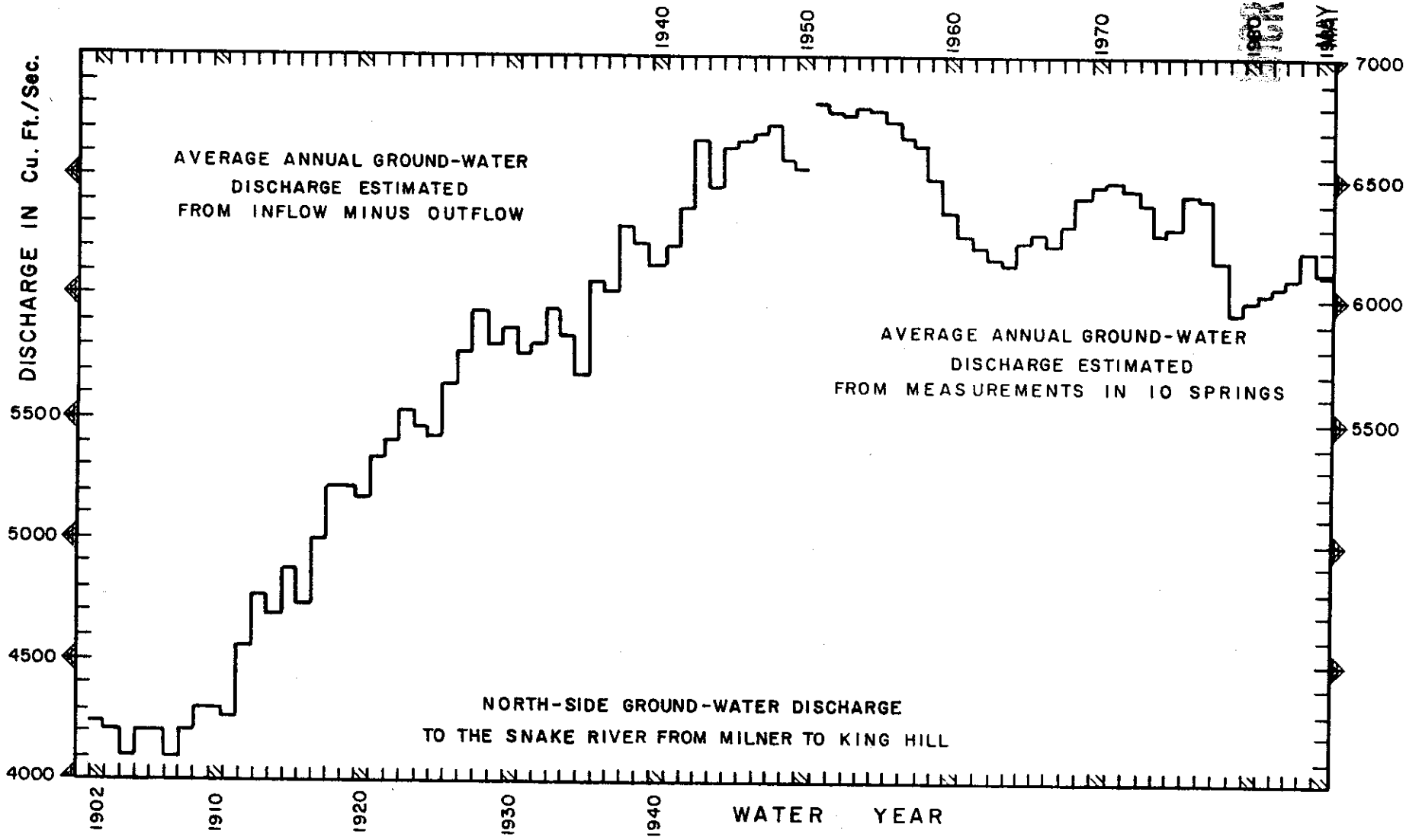
Does the minimum stream flow under consideration include biological oxygen demand specifications to ensure water quality?

Stanley R. Alber
Buhl, ID

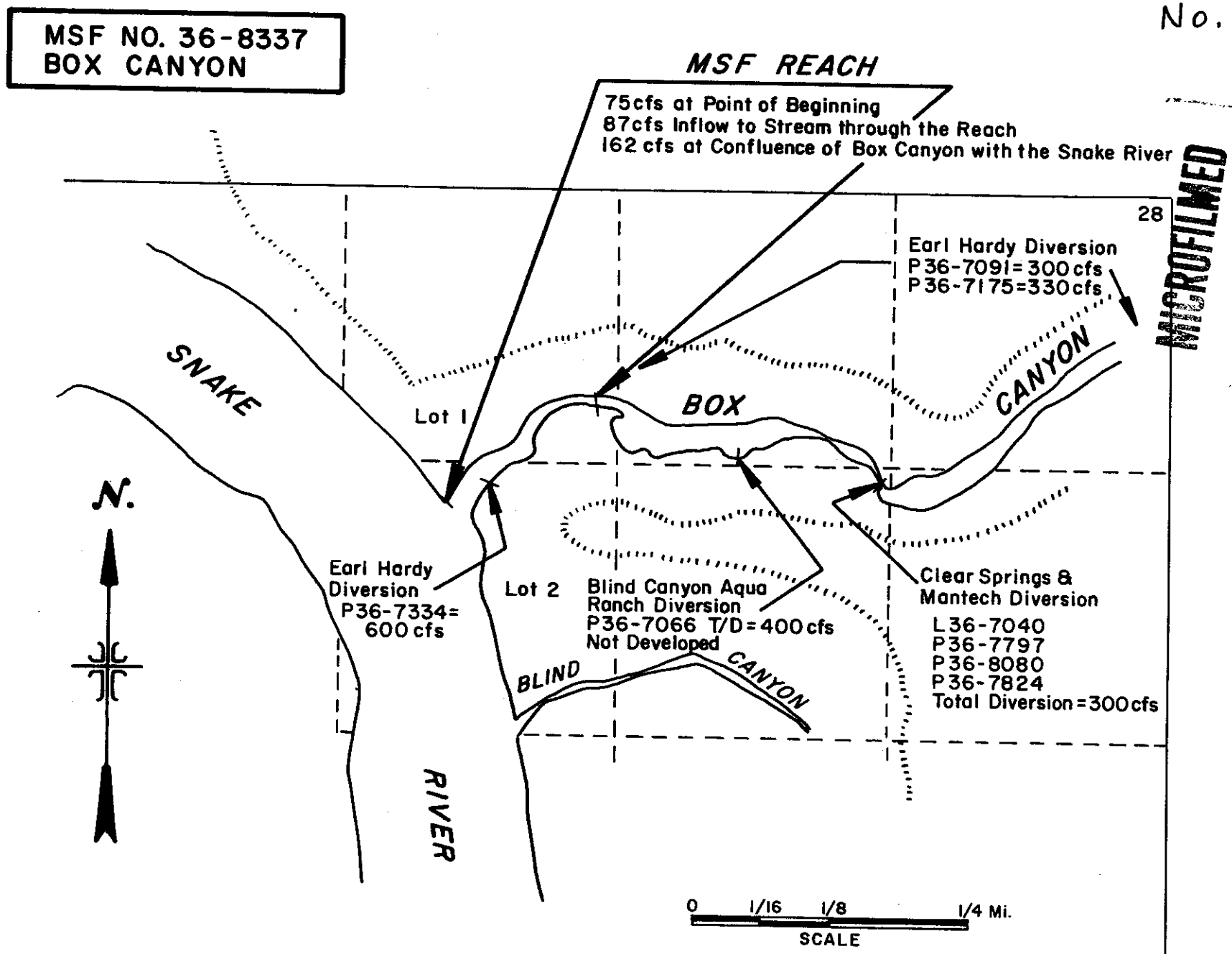
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MAY 1 / 1989

IDWR EXHIBIT
NO. 6

FILMED
MAY 17 1989



IDWR EXHIBIT
No. 3



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MAY 17 1989

Exhibit 1

Mo. Way
for Pine View

Contains copies of House & Senate Journal

Copy of Agreement btwn OSV + State Land Bd

" of Legislative Bill referred to one more Bill

Copy of News article speaking to the
Bill of when it was being
deposited, also quoting Legislators in those hearing

Copy of all filing permits and Licences
on box Canyon

RECEIVED
MAY 17 1989

Little, Lucas, Lytle, McDermott, Montgomery, Munger, Neibaur, Orme, Paxman, Reid, Scates, Sessions, Sharp, Smith, Smyser, Stephenson, Stivers, Stoicheff, Strasser, Thomas, Tibbitts, Trillhaase, Winchester, Mr. Speaker. Total -- 62.

NAYS -- Braun, Fullmer, Horvath, Stucki. Total -- 4.

Absent and excused -- Gwartney, Hammond, McLaughlin, Parks. Total -- 4.

Paired votes:

AYE -- Geddes	NAY -- Stucki
AYE -- Thomas	NAY -- Braun
AYE -- Horsch	NAY -- Horvath

(Pairs enumerated in roll call above.)

Total -- 70.

Whereupon the Speaker declared H 764 passed the House. Title was approved and the bill ordered transmitted to the Senate.

H 785 was read the third time at length, section by section, and placed before the House for final consideration.

The question being, "Shall H 785 pass?"

Roll call resulted as follows:

AYES -- Adams, Antone, Barlow, Bengson, Boyd, Brackett, Brooks, Bunting, Chatburn, Danielson, Dean, Edwards, Emery, Fullmer, Geddes, Gilbert, Golder, Gwartney, Hale, Higgins, Hollifield, Hooper, Horsch, Horvath, Infanger, Isaac, Johnson (6), Johnson (29), Jones, Kearnes, Kelly, Kennevick, Knigge, Lacy, Lewis, Little, Lucas, Lytle, Montgomery, Neibaur, Orme, Paxman, Reid, Sessions, Sharp, Smith, Stephenson, Stivers, Strasser, Thomas, Tibbitts, Winchester, Mr. Speaker. Total -- 53.

NAYS -- Bateman, Braun, Davidson, Gurnsey, Hammond, Harris, Hedlund, Keeton, McDermott, McLaughlin, Munger, Scates, Smyser, Stoicheff, Stucki, Trillhaase. Total -- 16.

Absent and excused -- Parks. Total -- 1.

Paired votes:

AYE -- Thomas	NAY -- Braun
AYE -- Geddes	NAY -- Stucki
AYE -- Horvath	NAY -- Hammond
AYE -- Horsch	NAY -- Davidson

(Pairs enumerated in roll call above.)

Total -- 70.

Whereupon the Speaker declared H 785 passed the House. Title was approved and the bill ordered transmitted to the Senate.

H 786 was read the third time at length, section by section, and placed before the House for final consideration.

The question being, "Shall H 786 pass?"

Roll call resulted as follows:

AYES -- Barlow, Boyd, Brackett, Brooks, Chatburn, Danielson, Dean, Edwards, Emery, Fullmer, Geddes, Golder, Hale, Higgins, Hollifield, Infanger, Johnson (29), Jones, Kennevick, Knigge, Lewis, Lucas, Lytle, Montgomery, Neibaur, Orme, Paxman, Reid, Scates, Sessions, Sharp, Smith, Smyser, Stephenson, Stivers, Strasser, Thomas, Tibbitts, Trillhaase, Winchester, Mr. Speaker. Total -- 41.

NAYS -- Adams, Antone, Bateman, Bengson, Braun, Bunting, Davidson, Gilbert, Gurnsey, Gwartney, Hammond, Harris, Hedlund, Hooper, Horsch, Horvath, Isaac, Johnson (6), Kearnes, Keeton, Kelly, Lacy, McDermott, McLaughlin, Munger, Stoicheff, Stucki. Total -- 27.

Absent and excused -- Little, Parks. Total -- 2.

Paired votes:

AYE -- Geddes	NAY -- Stucki
AYE -- Thomas	NAY -- Braun
AYE -- Stephenson	NAY -- Hammond
AYE -- Scates	NAY -- Horsch

(Pairs enumerated in roll call above.)

Total -- 70.

Whereupon the Speaker declared H 786 passed the House. Title was approved and the bill ordered transmitted to the Senate.

Mr. Chatburn asked unanimous consent that the following letter be printed in the House Journal as a formal legislative intent with respect to H 786. There being no objection, it was so ordered.

House of Representatives
Boise
March 10, 1982

The Honorable Ralph Olmstead
Speaker of the House

Dear Mr. Speaker:

On March 9, 1982, your Committee on Resources and Conservation sent House Bill 786 to the Floor of the House with a do pass recommendation.

The language of H 786 instructs certain state agencies, including the Department of Water Resources, to provide their cooperation as necessary to assist the process of negotiation between the State Board of Land Commissioners and the present land owner of the private lands within the confines of the walls of Box Canyon. The cooperation called for by this bill is not to interfere with, alter, supersede, or change any of the existing statutory duties or normal decision-making processes of any state agencies named in the bill.

It is requested that this letter be printed in the House Journal.

Sincerely
/s/ J. VARD CHATBURN, Chairman
Resources and Conservation Committee

S 1428 was read the third time at length, section by section, and placed before the House for final consideration.

The question being, "Shall S 1428 pass?"

Roll call resulted as follows:

AYES -- Adams, Antone, Barlow, Bateman, Bengson, Boyd, Brackett, Braun, Brooks, Bunting, Chatburn, Danielson, Davidson, Dean, Edwards, Emery, Geddes, Gilbert, Golder, Gurnsey, Gwartney, Hale, Harris, Hedlund, Higgins, Hollifield, Hooper, Horvath, Infanger, Isaac, Johnson (6), Johnson (29), Jones,

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Whereupon the President declared S 1480 passed, title was approved and the bill ordered transmitted to the House.

Motion to Suspend Rules

Moved by Senator Risch, seconded by Senator Mitchell, that all rules of the Senate interfering with the immediate passage of S 1481 be suspended; that the portions of Section 15 Article 3 of the Constitution of the State of Idaho requiring all bills to be read on three several days be dispensed with, this being a case of urgency, and that S 1481 be read the first time by title, second time by title, and the third time at length, section by section, and be put upon its final passage.

The question being, "Shall the rules be suspended?"

Roll call resulted as follows:

AYES — Abrahams, Auld, Barker, Beitelspacher, Bilyeu, Bradshaw, Budge, Clemm, Crystal, Dobler, Fairchild, Floyd, Gould, Kiebert, Klein, Lannen, Little, Marley, Merrill, Mitchell, Moore, Noh, Parry, Peavey, Ricks, Risch, Steen, Sverdsten, Swenson, Twilegar, Van Engelen, Watkins, Williams, Yarbrough. Total — 34.

NAYS — None.

Absent and Excused — Brassey. Total — 1.

Total — 35.

More than two-thirds having voted in the affirmative the President declared the rules suspended.

S 1481 was read the first time by title, second time by title and the third time at length, section by section, and placed before the Senate for final consideration, the question being, "Shall the bill pass?"

Roll call resulted as follows:

AYES — Abrahams, Beitelspacher, Bilyeu, Budge, Clemm, Dobler, Floyd, Gould, Kiebert, Klein, Lannen, Little, Marley, Merrill, Mitchell, Noh, Peavey, Risch, Steen, Twilegar, Watkins, Williams. Total — 22.

NAYS — Auld, Barker, Bradshaw, Crystal, Fairchild, Moore, Parry, Ricks, Sverdsten, Swenson, Van Engelen, Yarbrough. Total — 12.

Absent and excused — Brassey. Total — 1.

Total — 35.

Whereupon the President declared S 1481 passed, title was approved and the bill ordered transmitted to the House.

Motion to Suspend Rules

Moved by Senator Risch, seconded by Senator Mitchell that all rules of the Senate interfering with the immediate passage of H 786 be suspended; that the portions of Section 15 Article 3 of the Constitution of the State of Idaho requiring all bills to be read on three several days be dispensed with, this being a case of urgency, and that H 786 be read the first time by title, second time by title, and the third time at length, section by section, and be put upon its final passage.

The question being, "Shall the rules be suspended?"

Roll call resulted as follows:

AYES — Abrahams, Auld, Barker, Beitelspacher, Bilyeu, Bradshaw, Budge, Clemm, Crystal, Dobler, Fairchild, Floyd, Gould, Kiebert, Klein, Lannen, Little, Marley, Merrill, Mitchell, Moore, Noh, Parry, Peavey, Ricks, Risch, Steen, Sverdsten, Swenson, Twilegar, Van Engelen, Watkins, Williams, Yarbrough. Total — 34.

NAYS — None.

Absent and Excused — Brassey. Total — 1.

Total — 35.

More than two-thirds having voted in the affirmative the President declared the rules suspended.

H 786 was read the first time by title, second time by title and the third time at length, section by section, and placed before the Senate for final consideration, the question being, "Shall the bill pass?"

Roll call resulted as follows:

AYES — Abrahams, Auld, Barker, Beitelspacher, Bradshaw, Budge, Clemm, Crystal, Dobler, Fairchild, Floyd, Kiebert, Klein, Lannen, Little, Merrill, Mitchell, Moore, Noh, Parry, Ricks, Risch, Steen, Sverdsten, Swenson, Twilegar, Van Engelen, Watkins, Williams, Yarbrough. Total — 30.

NAYS — Bilyeu, Gould, Marley, Peavey. Total — 4.

Absent and Excused — Brassey. Total — 1.

Total — 35.

Whereupon the President declared H 786 passed, title was approved and the bill ordered returned to the House.

On request by Senator Bradshaw, granted by unanimous consent, the following "Letter of Intent" from Mr. Earl Hardy to Senator Twilegar regarding H 786 was ordered spread upon the pages of the Journal.

March 23, 1982

The Honorable Ron J. Twilegar
Senate Minority Leader
Idaho State Senate
STATEHOUSE
Boise, Idaho 83720

Dear Senator Twilegar:

As I stated to you, I am prepared to dedicate the land above the Upper Box Canyon as described in House Bill 786 to appropriate public use. Additionally, I am prepared to dedicate the canyon land for natural scientific study and limited recreational use.

Since the use of the lands within and around the upper canyon may be devoted to different public uses and interests, the public agency or agencies that will act as the custodian of the dedicated lands should be determined in the negotiations with the State Land Board as provided in House Bill 786.

Sincerely,
/s/ Earl Hardy

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Motion to Suspend Rules

Moved by Senator Risch, seconded by Senator Kiebert, that all rules of the Senate interfering with the immediate passage of H 833 be suspended; that the portions of Section 15 Article 3 of the Constitution of the State of Idaho requiring all bills to be read on three several days be dispensed with, this being a case of urgency, and that H 833 be read the first time by title, second time by title, and the third time at length, section by section, and be put upon its final passage.

The question being, "Shall the rules be suspended?"

Roll call resulted as follows:

67-4310. Box Canyon — Appropriation of waters in trust for people — Lands devoted to natural scientific study and limited recreational use — Legislative finding of fact concerning desirability of public use of water and private land within upper Box Canyon — Legislative direction for cooperation by state agencies to facilitate negotiations. — The park and recreation board is hereby authorized and directed to appropriate in trust for the people of the state of Idaho the unappropriated natural spring flow arising upon the area described as follows, to-wit:

Only that portion of the stream which is known as Box Canyon Creek, situated in the northwest quarter (NW 1/4) of section 27, township 8 south, range 14 east of the Boise Meridian; and

The east half (E 1/2) of the northeast quarter (NE 1/4), in section 28, township 8 south, range 14 east of the Boise Meridian.

The preservation of water in the area described for its scenic beauty, natural scientific study value, and limited recreational purposes necessary and desirable for all citizens of the state of Idaho is hereby declared to be a beneficial use of such water.

No fee shall be required in connection with said appropriation by the park and recreation board or the permit issued in connection therewith, but license shall issue at any time upon proof of beneficial use to which said waters are now dedicated.

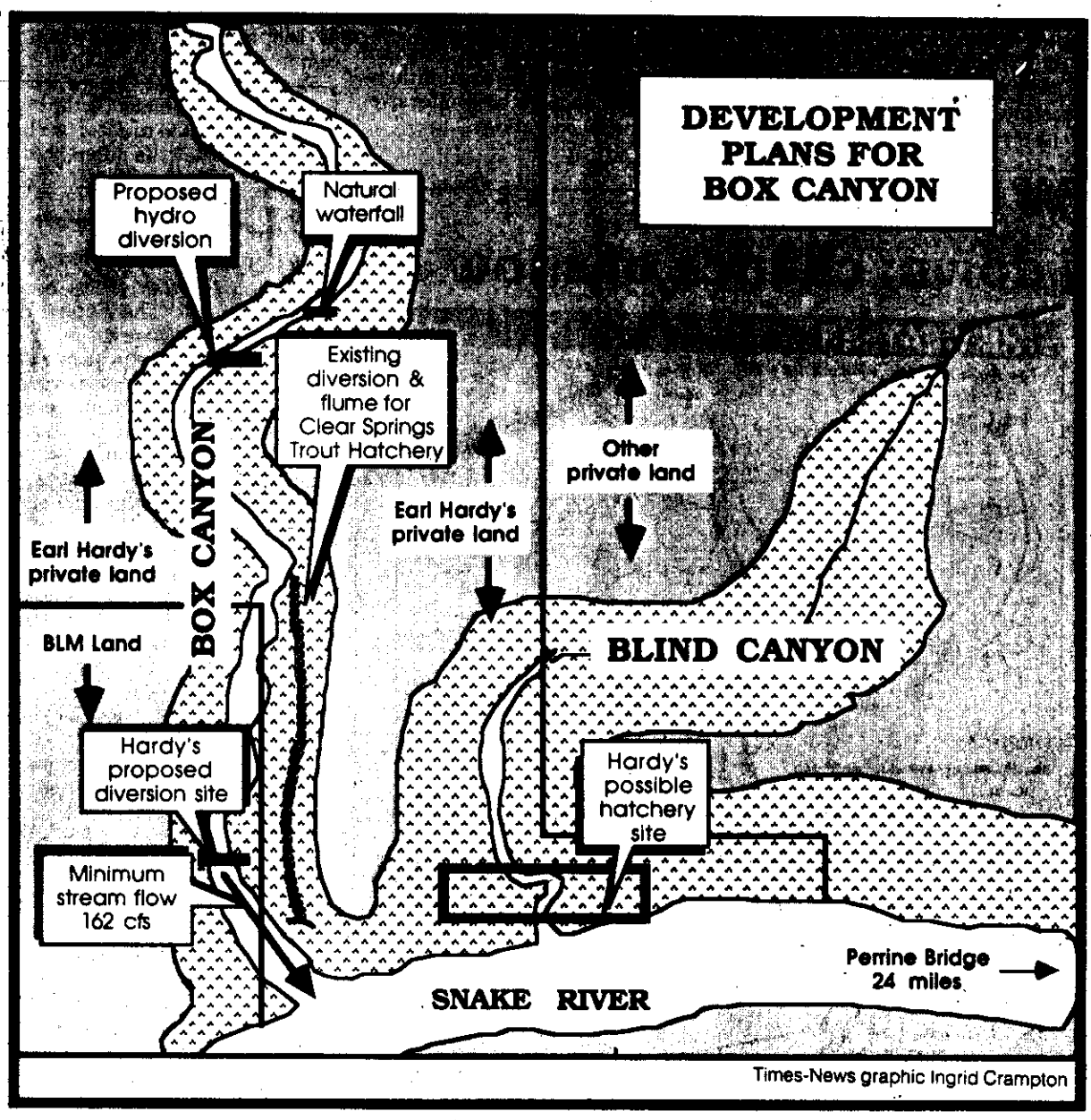
The park and recreation board, or its successor, shall be deemed to be the holder of such permit, in trust for the people of the state, and the public use of the waters in the specific area herein described is declared to be of greater priority than any other use except that of domestic consumption.

It is a legislative finding of fact that the waters arising upon the above described tract within the natural channel of Box Canyon Creek and the private lands within the confines of the canyon walls are desirable for public use in connection with the preservation of the area in its present condition as a place for natural scientific studies and limited recreation for the citizens of the state of Idaho.

The state board of land commissioners is hereby authorized to adjust the boundary established by the provisions of this section by excluding from the operation of this section those lands and waters lying downstream from a point one hundred (100) feet downstream from the crest of the falls in the west half (W 1/2) of the northwest quarter (NW 1/4) of section 27, township 8 south, range 14 east, Boise Meridian, provided they are successful in negotiating with the present landowner, or his successors, those restrictive covenants deemed necessary by the board to promote the public interest for the canyon lands as well as for the waters arising within that canyon, all as declared by this section, and the state board of land commissioners is authorized to expedite the negotiations with the landowner so far as is consistent with the public interest. In order to facilitate these negotiations, all concerned state agencies, namely the department of water resources, the department of fish and game, and the department of parks and recreation are hereby instructed to cooperate with the state board of land commissioners and with the property owner as necessary to assist the orderly, factual, and amicable process of negotiation between the state board of land commissioners and the property owner. [I.C., § 67-4310, as added by 1971, ch. 207, § 4, p. 912; am. 1974, ch. 8, § 15, p. 35; am. 1982, ch. 369, § 1, p. 927.]

Compiler's notes. Section 2 of S.L. 1982, ch. 369 declared an emergency. Approved April 2, 1982.

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Box Canyon flow request catches the BLM spotlight

By JANE ROBISON
Times-News writer

TWIN FALLS — Bureau of Land Management officials are hoping to hear the sweet sounds of applause Tuesday night over a minimum stream flow request in Box Canyon, a site rife with underlying currents of controversy.

"Everyone should support and applaud this minimum stream flow request," said BLM area manager Bob Cordell. "We've worked hard on it."

For almost 20 years, bureaucrats, environmentalists and area residents have been circling the wagons in Box Canyon, trying to fend off development by Boise businessman and trout farmer Earl Hardy, who owns nearly all the land surrounding the stream.

Hardy plans to build a hydro-generation project just below the base of the Box Canyon falls and a trout hatchery on his neighboring land in Blind Canyon, just south of Box Canyon Creek. The canyon is located in Gooding County, about 24 miles downstream from the Perrine Bridge along the Snake River.

Plans for a hydro project are in the final stages and moving along, Hardy told *The Times-News* Wednesday.

But Hardy's goal of building a trout hatchery is closer. He said construction will begin next year.

After 19 years of wrangling, Hardy and the BLM

• See CANYON on Page A3

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Senate panel OKs bill for Box Canyon

BOISE — A Senate committee has approved passage of a bill to limit environmental protection of scenic Box Canyon near Hagerman.

Trout farmer Earl Hardy is seeking legislative intervention to allow him to negotiate water and land swaps with state agencies as a means of building a hydroelectric plant in the middle of the canyon. Hardy says the swap would allow preservation of the pristine upper canyon for public use.

Hardy has a water right to build five series of fish ponds in the canyon, but it expires March 1, 1983, if he hasn't started construction.

"Mr. Hardy wants to preserve the upper canyon, but he's not willing to give his water rights away, in their entirety, without some sort of compensation," said Boise lawyer Bill Ringert.

The measure, which already has passed the House, asks the Department of Parks and Recreation to shorten its protected-stream area to allow Hardy to refile the anticipated use of his water right from trout rearing to power generation. In exchange, he says he will give the state permanent easement and use of the upper third of the canyon, which remains unspoiled by development.

Box Canyon Creek, an aquifer stream, is the nation's 11th largest natural spring.

Opposition to the bill — HB786 — centers on three major points:

- It strikes reaffirmation of the state's ownership of the streambed, a contention Hardy has opposed for 11 years.
- The measure amounts to single-interest legislation, which the sponsors admit.
- If passed, it could set a precedent for relinquishing the public interest claim to four other springs and several lakes, including Niagara Springs and Malad Gorge.

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Bill for Box Canyon wins panel approval

BY BRUCE HAMMOND
Times-News writer

BOISE — A controversial bill that would limit the recreational and scenic designation of Box Canyon near Hagerman received a favorable vote by a House committee Tuesday.

After considering two hours of testimony — most opposing any development of the canyon — during a public hearing Friday, the House Resources and Conservation Committee voted to support the bill on the House floor.

The bill is sponsored by trout farmer Earl Hardy who owns practically all the property bordering Box Canyon Creek. He is seeking permission to alter protection standards placed on the stream by the Legislature. Hardy wants to build a hydroelectric-generating diversion in the middle of winding canyon, but current standards prevent him from doing so.

Box Canyon Creek, the 11th largest spring in the nation, has been designated by biologists as one of the few remaining areas with vegetation and water that remain unaffected by development in southern Idaho.

"I think Box Canyon is a treasure, and I appreciate Mr. Hardy's preservation of it over all these years," said Rep. Lyman "Gene" Winchester, R-Kuna.

"But the overwhelming thing to me is that it is private property, and we are not going to get what the people want and protect the area unless we pass this bill and get negotiations for some sort of trade under way."

Hardy has proposed giving the state permanent easement for the upper third of the canyon, the most unaffected area, in exchange for diverting water he already holds rights to through a generating turbine in the middle section of the canyon.

The water for the diversion would come from water rights he holds for two trout-rearing proposals that he has not developed.

"If we don't do something like this, there will be commercial fish production in that canyon," said Rep. Myran Jones, R-Malad, "because otherwise, Mr. Hardy is going to be forced to develop his water rights before they expire next year."

The Idaho Conservation League and members of various Hagerman Valley groups are opposing the House bill because they believe it gives up state rights to public water and stream beds.

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Proposal may settle dispute

On Box Canyon development

By HAL BERNTON
Times-News writer 9-15-83

BOISE — The decade-old dispute between trout farmer Earl Hardy and state officials over development of Box Canyon edged a step closer to resolution on Tuesday with the presentation of a tentative new agreement to the State Land Board.

Under the terms of the agreement, Hardy would preserve the upper two-thirds of Box Canyon in a pristine state, granting university scientists and an average of 20 sightseers a day the right to visit the area, said Steve Goddard, state Fish and Game official.

In return for the preservation of the upper canyon, the state would agree to grant Hardy the water rights required to build a hydroelectric plant in the lower canyon in the Thousand Springs area of the Hagerman Valley.

Hardy owns the upper two-thirds of the canyon and has sought to develop its water resources in years past. This development has been vigorously opposed by conservation groups and various state agencies.

Hardy also wants to divert some waters from the lower Box Canyon to nearby Blind Canyon and through a still-to-be constructed trout hatchery. However, in order for this project to move ahead, Hardy must still obtain a right-of-way from the Bureau of Land Management so he can divert the water across federal land.

Hardy told The Times-News he expects the land board to approve the agreement at its next meeting scheduled for October. After the agreement is approved, he will then attempt to negotiate a right-of-way with the BLM.

"I think the state is getting more than I am but I'll be glad to have this step behind me," he said. "I think the agreement offers a solution that can hopefully satisfy everyone. I've been hoping to find something that would preserve the upper canyon and provide for limited development of the lower canyon."

The state was authorized to enter into the agreement by controversial legislation approved by the 1982 Legislature. The legislation was opposed by the Idaho Conservation League and several Magic Valley legislators.

Pat Ford, director of the Idaho Conservation League, says his organization has not yet decided whether to offer its support for the proposed agreement.

"We are leery of any agreement that preserves the upper Box Canyon at the expense of the lower Box Canyon," he added, however.

By the October State Land Board meeting, Ford says his organization will have developed a formal position on the proposed agreement.

The proposed agreement would establish a committee composed of Hardy and state officials to manage the upper Box Canyon area.

•See CANYON on Page B2

Canyon—

•Continued from Page B1

Bruce Boccard, wildlife biologist, says the upper canyon is the third most significant wildlife ecosystem in Idaho. The canyon's oxygen-charged crystal waters support rare species of snail and sculpin, a fish found only in the Thousand Springs area, he says.

The committee would manage public access to the area and help facilitate its study by university groups.

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League fears BLM reversal over canyon

By DAVID MOFFAT
Times-News writer 3-21-83

WENDELL — The Magic Valley chapter of the Idaho Conservation League thinks the state office of the federal Bureau of Land Management may be trying to back out of a BLM district office recommendation concerning scenic Box Canyon.

Richard Jordan, president of the Magic Valley chapter of the ICL, said Friday that the BLM should let people know where it stands on a request for a right-of-way by fish farmer Earl Hardy.

Hardy wants the right-of-way to construct a pipeline to divert natural spring water from Box Canyon to neighboring Blind Canyon, where he plans to construct a new fish farm.

"Although the decision on this right-of-way has been on the BLM state director's desk for many months, we still don't know when the decision will be made, nor if a public hearing will be held," Jordan said.

He thinks the BLM should hold a public hearing on the matter right away.

But Charles Hazzier, of the BLM's state office in Boise, said Friday that the BLM cannot act on the request until the State Land Board decides whether or not it wishes to enter into an agreement with Hardy for joint management of other lands in the canyon.

And Mark Riddoch, an attorney for the State Department of Lands, said a decision on that matter won't be forthcoming until several state agencies, including the Idaho Fish and Game and Parks and Recreation departments, have submitted comments on the proposal.

Riddoch said the Land Board, which is composed of top state officials including the governor, secretary of state, and attorney general, meets the second Tuesday of each month. The next meeting will not be until April 12, he said.

In January, 1980, the Shoshone District BLM office recommended that Hardy be denied a right-of-way across BLM land in the canyon, Jordan said.

The recommendation was based on a determination that the existing natural uses of the land — for fish, wildlife, and scenic value — be preserved.

"There are widespread rumors that the state (BLM) office intends to reverse (this) recommendation," Jordan said.

One reason he suspects this is that last year the state legislature passed a bill which established a framework under which state agencies could become a party to Hardy's proposed development.

The legislation would allow Hardy to develop his "first option" on certain water in the canyon in exchange for allowing the state to enter a joint agreement to manage Hardy's other lands there.

The legislation was criticized as benefitting narrow special interests, but it passed by a wide margin. Legislators noted Hardy's desire to preserve his first option on the water as well as the primitive quality of the upper portions of the canyon.

In the original BLM district hearings on the proposal, state agencies had criticized Hardy's plans. Now, Hazzier said, the state BLM director is waiting to hear whether that position has changed as a result of the possibilities offered by the legislation.

But if the state does change its position, "there would undoubtedly be another public hearing," Hazzier said.

At this point the BLM [illegible] indication of how the Land [illegible] vote on the matter, he said.

He described the status of [illegible]

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Box Canyon

3-7-82

Ecologist urges House to restrict development

By BRUCE HAMMOND
Times-News writer



BOISE — A House committee heard emotional testimony Friday on the proposed development of scenic Box Canyon near Hagerman.

No action was taken, however, on whether the House Resource and Conservation Committee would support a bill requiring state agencies to negotiate an easement arrangement with trout farmer Earl Hardy, who owns nearly all the land surrounding the stream.

"Box Canyon is as close to pristine as we are going to find," said Robert Steele, an ecologist for the Idaho Forest and Range Experiment Station in Boise.

"It represents what vegetation (surrounding an aquifer spring) looked like before settlement times," Steele said. "It merits national recognition."

In 1971, the Legislature designated Box Canyon Creek and four other springs as scenic resources and ordered the State Parks and Recreation Department to file for a preservation water right. However, Hardy holds a prior right of 330-cubic-feet-per-second flow.

Box Canyon Creek, the 11th largest spring in the nation, flows only a few miles before emptying into the Snake River.

Hardy has not been able to obtain a Bureau of Land Management land easement that would allow him to divert water from the creek to neighboring Blind Canyon for fish farming. And now, he is seeking to build a hydroelectric project within the boundaries of the preserve, before his water-right permit expires next year. He does have the right to build five fish ponds in the upper canyon anytime prior to expiration of his permit.

"I appreciate Mr. Hardy," said parks director Dale Christenson. "He hasn't lost his patience these 11 years and gone in with a bulldozer to make himself a recreational homesite or build trout farms. He certainly has had that right all these years."

Christenson agreed with the bill, which would require renewed negotiations to solve the dilemma. But he argued that it may be too restrictive, in that it essentially outlines the final project to be agreed upon.

Hardy is offering the state permanent easement within his land deed, essentially giving the state total jurisdiction over upper Box Canyon. In exchange, he wants the scenic designation of the stream to be shortened by about a quarter mile to allow him enough of an elevation drop to build a hydro project in mid-canyon. This arrangement would solve several water-right and priority-date problems Hardy faces in the hydro project.

The lower canyon already has been disrupted by a large diversion for a trout hatchery owned by Clear Springs Trout Co. across the Snake River.

Both Christenson and Steele testified that upper Box Canyon is too fragile for full recreational use.

"The pristine plant life and value of the canyon would surely be destroyed by a picnic or camping facility," Christenson said. "No, I don't believe it should be made into a state park."

Instead, Christenson said he hoped as much of the canyon as possible could be preserved as an outdoor classroom for biologists and private study groups, with occasional visits allowed.

But several people testified that Hardy's plan would disrupt at least 20 percent of the "pristine flora" and possibly harm the rest of the canyon.

Perhaps more heatedly contested, however, where charges that the bill would set precedents for special-interest legislation becoming a common occurrence in the Legislature.

"The revised bill keeps language that would allow for the state-owned streambed in Box Canyon to be transferred into the hands of a private citizen — an unheard of precedent," said Renee Quick of the Idaho Conservation League.

"This would pave the way for private ownership of other streambeds in Idaho, having profound implications for all Idaho waters."

"New language in the bill mandates state agencies to negotiate with the bill's intended benefactor," she said. "For some 12 years now, Mr. Hardy has had his water right and has been negotiating with these agencies. These agencies have determined that it is in the public interest that there should be no development of Box Canyon waters or streambed.

"The Legislature should not ignore the agencies' decisions nor the voice of the public," Quick said.

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See Pg 17
Home on Pg 3 middle Sect

AGREEMENT IMPLEMENTING IDAHO CODE SECTION 67-4310,
AS AMENDED BY SESSION LAWS OF 1982, CHAPTER 369

THIS AGREEMENT, Made and entered into this 8th day of November, 1983, between EARL M. HARDY of Boise, Idaho, hereinafter referred to as the "Owner", and the STATE OF IDAHO, acting by and through its Board of Land Commissioners, hereinafter referred to as the "State":

1982 Bill Passed

W I T N E S S E T H:

1. PURPOSE OF THE AGREEMENT

The purpose of this agreement is to implement the provisions of Chapter 369 of the Idaho Session Laws of 1982, by adjusting the boundary established by the provisions of Idaho Code § 67-4310, and by establishing restrictive covenants deemed necessary to promote the public interest for certain canyon lands and waters arising within Box Canyon, as described in Idaho Code § 67-4310, and other related purposes as hereinafter stated.

2. IDENTIFICATION OF LANDS INVOLVED

There is identified in Idaho Code § 67-4310, as amended by S.L. 1982, Chap. 369, a point (the base point) located 100 feet downstream from the crest of the falls in the west half of the northwest quarter of Section 27, Township 8 South, Range 14 East, Boise Meridian. For purposes of this agreement a line is hereby established through that point, extending northeasterly from the middle of Box Canyon Creek to a point on the canyon rim and thence north 0°12' east to a point on the north boundary line of Section 27, Township 8 South, Range 14 East, Boise Meridian, and extending southwesterly from the middle of Box Canyon Creek to a point on the canyon rim and thence south 0°12' west to a point on the south boundary line of the southwest quarter of the northwest quarter of

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said Section 27. Those lands described in Idaho Code § 67-4310 which lie easterly and southerly of said line are sometimes hereinafter referred to as the lands above the base point, and the portions of said described lands lying westerly and northerly of said line are sometimes hereinafter referred to as the lands lying below the base point. Unless otherwise indicated, "land" or "lands", as used in this agreement, refers to land owned by the Owner.

3. RESTRICTION ON OWNER'S USE OF LAND

A. The Owner reserves the right for himself, his family, and their guests, to use of the land above the base point, subject to the following limitations:

(i) The land will be kept in its present condition except as it may be altered by forces of nature; no artificial or mechanical alteration (except the access road) will be made by the Owner or others;

Specifically, without limiting the foregoing provision, no construction of any kind (except the access road) shall be done by the Owner or others, and no material disturbance or removal of plants, soil or rocks, and no diversion of water or alteration of the stream channel, shall be made by the Owner or others.

(ii) These conditions apply to lands above the base point within the canyon and to the lands above the base point and above the canyon rim lying within 250 feet of the rim.

B. The Owner's use of the land lying below the base point shall be limited as follows:

(i) The land above the canyon rim will be used

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only for residential purposes, consisting of nor more than three homes, and for agricultural purposes, including fences, farm buildings, access and service roads, and other improvements related to residential or agricultural use, and for power transmission lines and related service road and support structures;

(ii) Use of land below the rim shall be as follows:

(a) Water diversion works in the stream channel and bank, and a hydroelectric generation facility, with penstock, service roads, appurtenant buildings, transmission lines and other support service structures will be constructed and used in this area. Plants, soil and rock will be disturbed or removed as necessary during construction and in the operation of the facility;

(b) Residential use, limited to one home, with an access road, fences and outbuildings. The least practicable disturbance of plants, soil and rocks will be caused during construction of the home, fences and outbuildings;

(c) Recreational use will be made of the land, including construction of foot or horse trails, with the least practicable disturbance of plants, soil or rocks, during construction and use of the trails;

(d) Rock will be removed for use in construction of roads on the property below the base point, or for use in the construction of

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hydroelectric generating facilities and related improvements and structures, or in the construction of the homes above the rim.

4. DEDICATION TO LIMITED PUBLIC USES

A. Land in the canyon above the base point, including the stream channel, shall be dedicated to limited public uses in the following categories, and no other uses shall be permitted or authorized, unless expressly stated in some other part of this agreement:

(i) Recreational use in the form of viewing and sightseeing, by not more than an average of 20 persons per day during any 365-day period;

(ii) Natural scientific studies by the Idaho Department of Parks and Recreation, the Idaho Department of Fish and Game, the University of Idaho, Idaho State University, Boise State University, and the College of Idaho, and by such other individuals or public or private entities as are specifically authorized by a committee composed of the Owner or his representative designated in writing, and a person designated by the Idaho State Board of Land Commissioners. The committee also shall adopt guidelines to be followed in conducting the studies, as hereinafter specified;

(iii) All recreational use and natural scientific studies shall be conducted in such manner as not to disturb or remove plants, soil or rocks, or divert water from Box Canyon Creek or alter the stream channel, except that samples of plants, soil, rocks or water may be taken and removed, if authorized by the guidelines;

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(iv) Reasonable access for the purposes stated in subparagraph (i) through (iii), above. No additional roads or trails shall be constructed on the land above the base point without the consent of the Owner as to location, size and type of construction, and the Owner agrees that such consent shall not be withheld unreasonably.

B. Land above the canyon rim and above the base point may be used for access as hereinafter provided, and for the construction, use and maintenance of one combination residence and administration building and not more than two outbuildings for storage of such equipment and supplies as are reasonably necessary for the uses contemplated by this Agreement and for related laboratory and study purposes. Construction of any such buildings shall not be commenced until the Owner has approved the location and design, which approval shall not be withheld unreasonably by the Owner.

C. Lands below the base point shall not be used by any persons or entities without the express written consent of the Owner or his representative designated in writing.

5. MANAGEMENT

A. Management guidelines for the use of the land and water in the canyon above the base point shall be prepared, and from time to time may be revised, by a committee composed of the Owner (or his representative designated in writing) and a person appointed by the Idaho Board of Land Commissioners. The guidelines, and any revisions thereof, made by the committee shall be submitted to the Board of Land Commissioners for approval, and shall become effective upon approval by the Board. Use of the

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land and water in the canyon above the base point shall be managed by the Idaho Department of Parks and Recreation or by such other agency or entity as may be designated by the Board of Land Commissioners and approved by the Owner under the guidelines and revisions made and approved as specified in this paragraph. Such management shall be subject to the provisions of Section 3A of this Agreement. The Department of Parks and Recreation, or any other agency or entity designated for management as hereinbefore provided, may, in connection with such management, contract with any public, non-profit or private organization for the performance of services required in connection with such management, but any such contract shall not be effective until approved by the Board of Land Commissioners and by the Owner.

B. The land and water below the base point, and the land above the canyon rim above the base point, shall be managed by the Owner, subject to the restrictions imposed on his use by the terms and conditions of this agreement.

6. CHANGES IN WATER PERMIT AND IN APPLICATION FOR PERMIT

A. As authorized by Session Laws of 1982, Chapter 369, the boundary established by the provisions of Idaho Code § 67-4310 is hereby adjusted by excluding from the operation of § 67-4310 those lands and waters lying downstream from the base point hereinbefore identified.

The Idaho Department of Parks and Recreation shall file with the Director of the Department of Water Resources of the State of Idaho an application to amend its pending application (No. 36-7198) for an appropriation under § 67-4310, to change the area covered by the application and by the appropriation to conform to the adjustment in boundary made in the preceding paragraph.

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B. The State agrees that it will not file protests against any application for a change in point of diversion, place of use or nature of use that the Owner might file with the Director of the Department of Water Resources of the State of Idaho in order to amend Water Permit No. 36-7175 to change from fish propagation above the base point to hydropower generation below the base point. The Owner agrees that he will withdraw his protest against the pending application (No. 36-7198) of the Idaho Department of Parks and Recreation for a water permit as authorized by Idaho Code § 67-4310, and that he will not file any further protests against that application. The State further agrees that, if the Owner elects to file an application for a new water permit in lieu of amending Permit No. 36-7175, the State will not file a protest against any such application for a new permit for the appropriation of waters of Box Canyon Creek for hydropower generation, on any grounds other than minimum stream flow.

C. The Owner agrees that approval by the Idaho Department of Water Resources of changes in point of diversion, place of use, and nature of use under Water Permit No. 36-7175, or issuance of any new water permit to the Owner for the use of waters of Box Canyon Creek for hydropower generation, may be conditioned upon the other provisions of this Agreement becoming effective, and the Owner further agrees that he shall not construct any diversion works or divert any water from Box Canyon Creek for hydropower generation under Water Permit No. 36-7175 or under any such new permit, until this Agreement has become fully effective.

D. The State agrees that approval by the Idaho Department of Water Resources of Application No. 36-7198, and the issuance of a water permit under that application, may be conditioned upon the

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The State's use of the land and water in the canyon above the base point, and its use of land above the rim and above the base point for the purposes specified in Section 4B, shall not commence until the Idaho Department of Parks and Recreation, or some other agency or entity designated and approved as provided in Section 5A, has assumed, and has begun discharging, the management responsibilities specified in Section 5A.

B. The Owner shall have the right to enforce by injunction the conditions imposed by this agreement for use of the lands above the base point. No cause of action for damages shall accrue to the Owner by reason of the State's violation of any condition imposed by this agreement on the use of the land above the base point, but this waiver shall not apply to any officer, agent or employee of the State acting beyond the course and scope of his employment.

If the State shall violate any condition of this agreement with respect to use of the lands above the base point, and such violation shall continue for a period of 365 consecutive days following delivery of written notice from the Owner requiring compliance with the condition then being violated by the State, the Owner shall have the absolute right to declare the dedication to the State and the restrictive covenants made by the Owner in this agreement to be terminated, and upon such declaration being made in writing and delivered to the State, the dedication and the restrictive covenants shall terminate and shall be of no further force and effect whatsoever.

C. The limitations and restrictions upon his use of his property in the northwest quarter of Section 27 and in the east half of the northeast quarter of Section 28, Township 8 South,

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other provisions of this Agreement becoming effective, and the parties acknowledge that it is their mutual intention that the Owner shall not be entitled to proceed with an appropriation for hydropower generation purposes until this Agreement has become fully effective, and that the State shall not be entitled to proceed with its appropriation for the purposes stated in Idaho Code § 67-4310 until this Agreement has become fully effective.

7. AD VALOREM TAXES AND ROAD MAINTENANCE

A. So long as this agreement continues in force and effect, the State agrees that it will cooperate with the Owner, to the fullest extent permitted by the laws of this state, in urging that the Owner's land affected by this Agreement shall be assessed for ad valorem tax purposes in a manner that reflects the public benefits to be derived from the operation of this Agreement and that reflects the limitations on the Owner's use of the land resulting from the operation of this Agreement.

B. Subject to the availability of state funds, the State and the Owner shall share equally in the costs and expense of maintaining that portion of the main access road that is located upon the lands above the base point and upon lands owned by a third party, adjacent to the lands above the base point. The State shall not use the main access road when it does not have funds available to pay its share of the maintenance.

8. DURATION, ENFORCEMENT AND TERMINATION

A. The Owner's dedication of the land above the base point to the State for the purposes and upon the conditions specified in this agreement shall continue in force and effect for so long as the State shall use that land for the purposes herein specified and shall comply with the conditions imposed by this agreement.

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Range 14 East, B.M., to which the Owner has herein agreed, shall continue in full force and effect until this Agreement is terminated as provided in subsection B of this section 8, immediately above.

D. The State shall have the right to enforce by injunction compliance with any limitation, restriction or restrictive covenant to which the Owner has herein agreed. No cause of action for damages shall accrue to the State or to any third party beneficiary by reason of the Owner's violation of any provision of this agreement.

E. If this agreement shall be terminated as hereinbefore provided, the Owner, immediately upon such termination, shall have the right to resume full and complete use and control of his property in the northwest quarter of Section 27 and in the east half of the northeast quarter of Section 28, Township 8 South, Range 14 East, B.M.

9. INDEMNIFICATION

Because this agreement contemplates that the Owner shall not have complete control over the use of the lands above the base point, the State agrees to indemnify and hold harmless the Owner from all claims of every kind and nature whatsoever made by any person on account of injury or other damage arising out of the negligent or otherwise wrongful acts or omissions of the State and those of its employees acting within the course and scope of their employment or duties whether arising out of a governmental or proprietary function, where the State, or any governmental entity involved in the wrongful acts or omissions, if a private person or entity would be liable for money damages under the laws of the State of Idaho. To the extent allowed by law, the State agrees to

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defend the Owner in any action brought for any such claim, and agrees to pay all reasonable attorney fees and costs, whether incurred in court or out of court, necessary for the defense of any such claim.

10. CONDITIONS PRECEDENT

The parties acknowledge that the Owner intends to construct and operate a hydrogeneration facility on the lands below the base point, and intends to divert water from Box Canyon Creek for use in trout propagation facilities to be located in Blind Canyon, to the south of Box Canyon Creek, and that various permits, licenses, easements and other forms of authorization are necessary for the construction and operation of those facilities. Therefore, the parties agree that this agreement shall not become effective until the Owner shall have obtained all licenses, permits, easements, rights of way, and other forms of authorization for activities or rights to the use of the water and land, or renewals or extensions thereof, required for the construction and operation of the hydrogeneration facility on the lands below the base point and required for the construction and operation of (a) diversion works on Box Canyon Creek, (b) a water transmission facility from Box Canyon Creek to Blind Canyon, (c) trout propagation facilities in Blind Canyon, and (d) water discharge facilities from the Blind Canyon trout propagation facilities into the Snake River.

11. GENERAL PROVISIONS

A. The section headings in this agreement are intended for convenience of reference, only, and are not intended to be used in the interpretation or construction of this agreement.

B. The parties to this agreement contemplate that they, and any third party beneficiaries of this agreement, shall be guided

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by rules of reasonableness and the spirit of cooperation in both the performance of this agreement and the use of the property covered by this agreement.

C. The parties acknowledge that it is their desire to coordinate both the Owner's use and the State's use of lands under this Agreement with other activities contemplated by the Owner on other nearby lands, as indicated in Section 10, above. In that regard, the Idaho Department of Fish and Game has advised the Owner that the Department will request that the Bureau of Land Management of the United States Department of the Interior impose a condition on any right of way granted pursuant to the Owner's application (Serial No. I-2880, for a right of way from Box Canyon Creek to Blind Canyon) requiring that this Agreement become fully effective before the Owner can make use of the right of way. The parties further acknowledge that the Idaho Department of Fish and Game deems itself obligated to request that certain conditions be imposed by the Federal Energy Regulatory Commission in the granting of any exemption or license for hydropower generation by the Owner in Box Canyon, and the parties agree that they will attempt to agree upon terms to be submitted to the Federal Energy Regulatory Commission with respect to any such exemption or license.

Fish + Game

FERC

D. The covenants herein contained shall bind, and the benefits and advantages hereof shall inure to, the parties hereto and their respective heirs, personal representatives, successors and assigns.

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IN WITNESS WHEREOF, the Owner has hereunto subscribed his name, and the State has caused its name to be hereunto subscribed by its officials hereunto duly authorized, all as of the day and year herein first above written.

Earl M. Hardy (Owner)

STATE OF IDAHO

By _____
Title: President of the State Board of Land Commissioners, and Governor of the State of Idaho

COUNTERSIGNED:

Secretary of the State of Idaho

Director, Department of Lands

FILMED
MAY 17 1989

13-am

STATE OF IDAHO)
)ss.
COUNTY OF ADA)

On this 8th day of November, 1983, before me, the undersigned, a notary public in and for said state, personally appeared EARL M. HARDY, known to me to be the person whose name is subscribed to the within and foregoing instrument, and acknowledged to me that he executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal, the day and year in this certificate first above written.

Anita C. McCormick
Notary Public for the State of Idaho
Residing at Boise, Idaho

STATE OF IDAHO)
)ss.
COUNTY OF ADA)

On this 16 day of November, 1983, before me, the undersigned, a notary public in and for said state, personally appeared John V. Evans, known to me to be the Governor for the State of Idaho, and acknowledged to me that he executed the foregoing instrument for and on behalf of the said State of Idaho and said Board of Land Commissioners.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal, the day and year in this certificate first above written.

John V. Evans
Notary Public for the State of Idaho
Residing at Idaho City, Id.

RECORDED
MAY 17 1984

14-am

TRANSPARENCIES

NO. 93 CLASP 9½ x 12¼

CURRENT FILINGS ON BOX CANYON

Water Right	Name	Amount (cfs)	Stage
36-2705	Mountain View Irrigation	200	P
36-7091	Earl Hardy	300	P
36-7175	Earl Hardy	330	P
36-7824	Manteck, Inc.	(300)	P
36-7334	Box Canyon Trout Co. Earl Hardy	600	P
36-7040	Clear Springs Trout Co.	300	L
36-7797	Clear Springs Trout Co.	(300)	P
36-8080	Clear Springs Trout Co.	(300)	P
36-7066	Blind Canyon Aqua Ranch	(100)	P
36-7198	Idaho Parks and Recreation	(850)	A
36-8336	Earl Hardy	(425)	A
		1,730	

BOX CANYON CREEK
MINIMUM STREAMFLOW APPLICATION

Water Right No.: 36-8337

Source: Box Canyon Creek

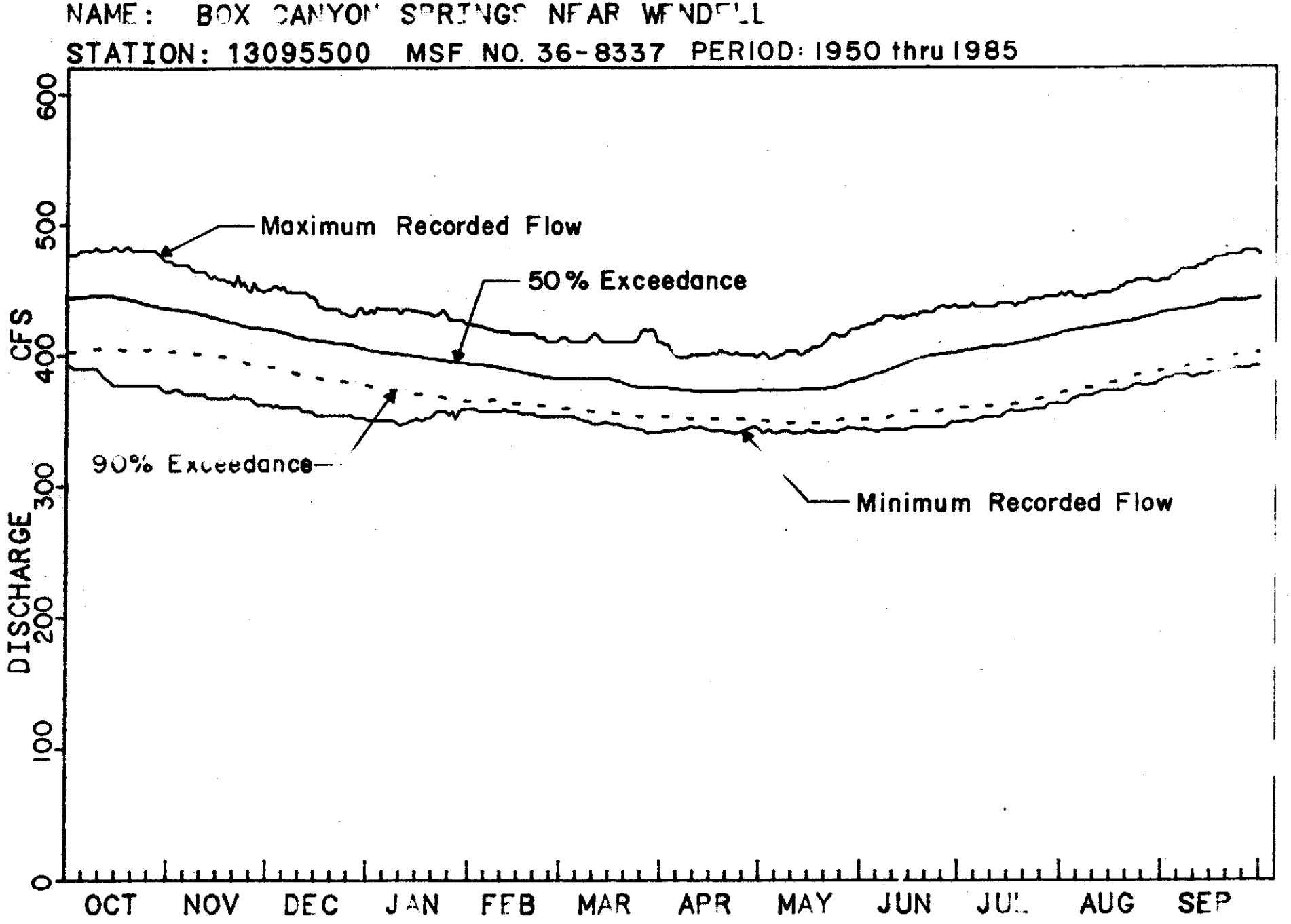
Rate of Flow: 75-162 cfs from 01/01 through 12/31

Date Application Filed: October 16, 1987

Applicant: Idaho Water Resource Board

Requesting Agency: Department of Interior, Bureau of Land Management

Purpose: Preserve fish and wildlife habitat


NAME: BOX CANYON SPRINGS NEAR WENDELL
STATION: 13095500 MSF NO. 36-8337 PERIOD: 1950 thru 1985
Maximum Recorded Flow
50% Exceedance
90% Exceedance
Minimum Recorded Flow
DISCHARGE CFS
0
100
200
300
400
500
600
OCT
NOV
DEC
JAN
FEB
MAR
APR
MAY
JUN
JUL
AUG
SEP

MSF NO. 35-8337
BOX CANYON