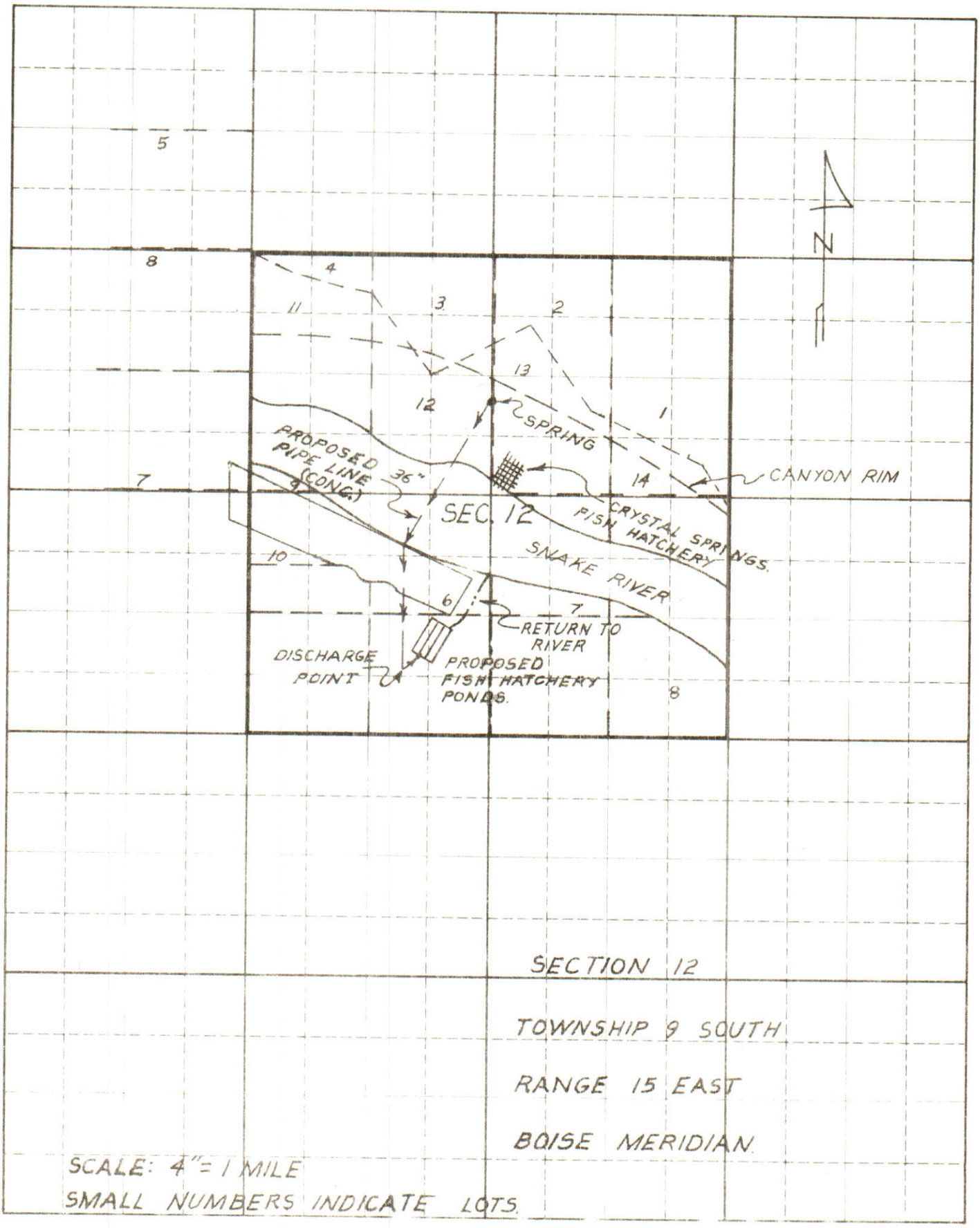
11. Map of proposed project:




Scale: 4 inches equal 1 mile

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

Joseph F. Bindt
(Applicant)

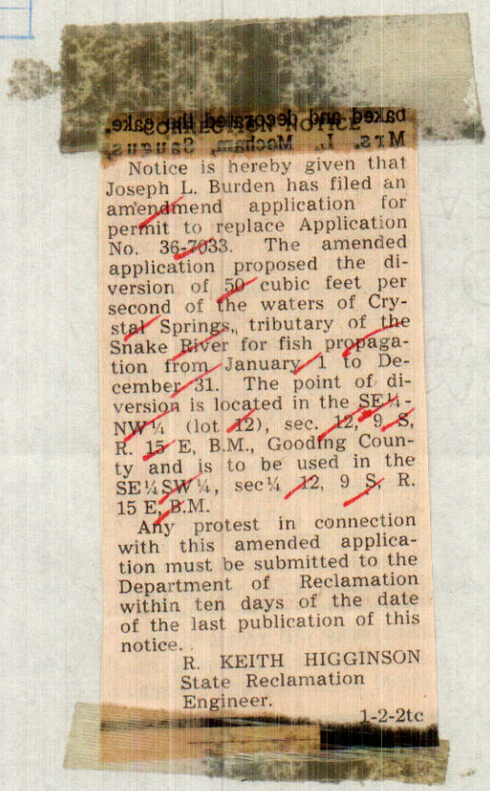
36 7033

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|---|---|
| | RECL. ENGR. |
| | DEPUTY |
| ✓ | WATER RIGHTS |
| | APP. PROP |
| | DIST |
| | ADJ |
| | INVESTIGATION |
| | WELLS |
| | MS |
| | ACCOUNTING |
| | FILE |
| | RETURN TO |
| | DISCARD |

RECEIVED

FEB 26 1969

Department of Reclamation



NOTICE

Notice is hereby given that Joseph L. Burden has filed an amendmend application for permit to replace Application No. 36-7033. The amended application proposed the diversion of 50 cubic feet per second of the waters of Crystal Springs, tributary of the Snake River for fish propagation from January 1 to December 31. The point of diversion is located in the SE¼ NW¼ (lot 12), sec. 12, 9 S, R. 15 E, B.M., Gooding County and is to be used in the SE¼ SW¼, sec¼ 12, 9 S, R. 15 E, B.M.

Any protest in connection with this amended application must be submitted to the Department of Reclamation within ten days of the date of the last publication of this notice.

R. KEITH HIGGINSON
State Reclamation Engineer.

1-2-2tc

County of Gooding
STATE OF IDAHO } ss

I, ....., being duly sworn, say that I am the ..... of THE WENDELL IRRIGATIONIST, a weekly newspaper of general circulation published at Wendell, in the County of Gooding, State of Idaho; that the attached printed copy hereto annexed was published in THE WENDELL IRRIGATIONIST, in the regular edition thereof and not in a supplement, for 2 consecutive weeks, commencing on the 2 day of January, ....., and ending on the 9 day of January, 1969

Myrtle Schrunk Editor
(Title)

Subscribed and sworn to before me this 25 day of February, 1969.

Charlotte Lehman
Notary Public in and for the County of Gooding, State of Idaho

My commission expires 9-10, 1971

36-7033

RECEIVED
AUG 8 1968
Department of Reclamation

County of Gooding }
STATE OF IDAHO } ss

I, Myrtle Schrunk, being duly sworn, say that I am the Editor of THE WENDELL IRRIGATIONIST, a weekly newspaper of general circulation published at Wendell, in the County of Gooding, State of Idaho; that the attached printed copy hereto annexed was published in THE WENDELL IRRIGATIONIST, in the regular edition thereof and not in a supplement, for 3 consecutive weeks, commencing on the 25 day of July, ....., and ending on the 1 day of Aug., 1968

Myrtle Schrunk 1968
(Title)

Subscribed and sworn to before me this 7 day of August, 1968

Notary Public in and for the County of Gooding, State of Idaho

My commission expires 9-10, 1971

**NOTICE OF APPLICATION FOR WATER**

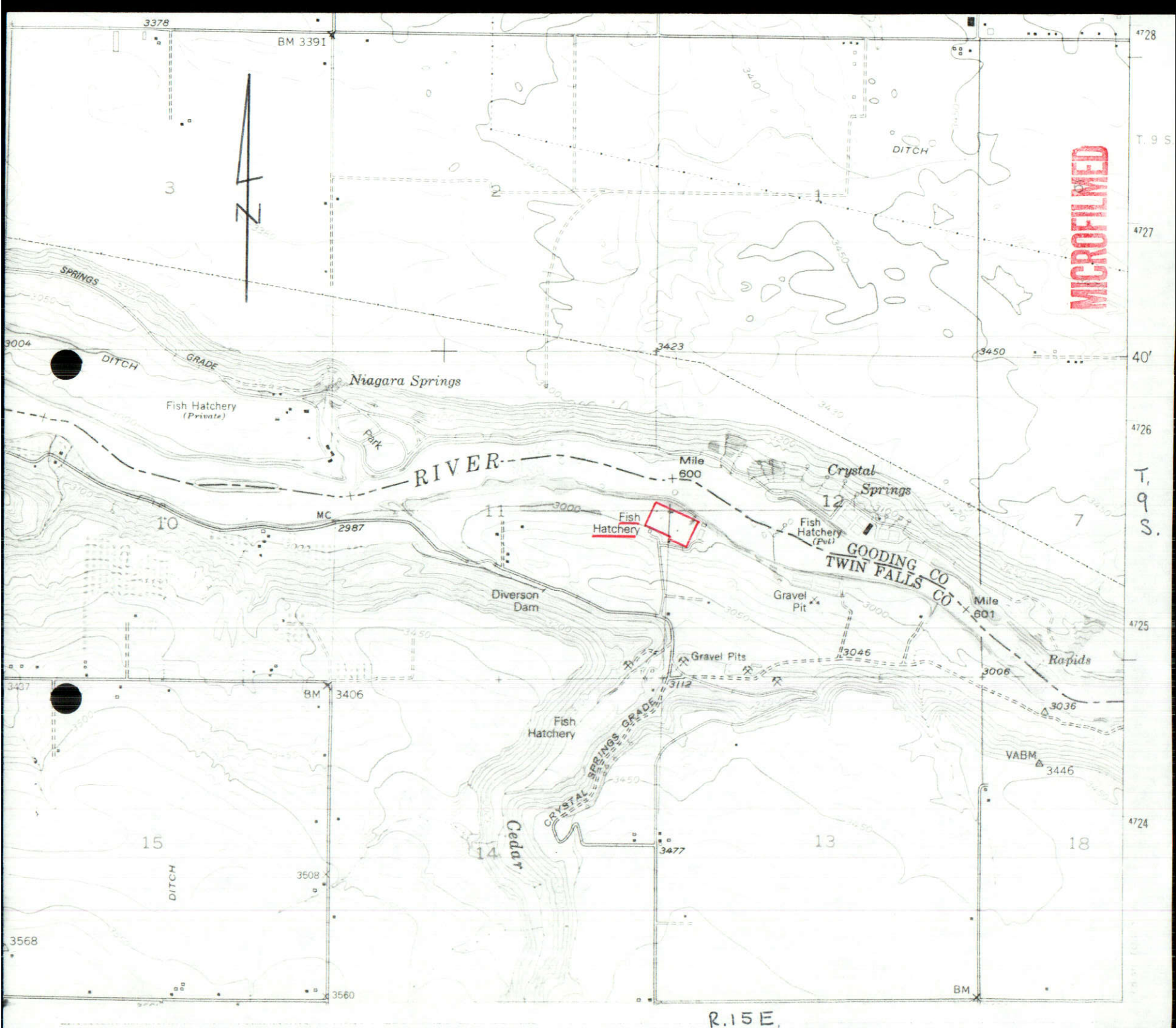
Notice is hereby given that Joseph L. Burden, % H. E. LeMoyne, 1130 Lawndale Drive, Twin Falls, Idaho, has on July 10, 1968 applied for permit to divert 50 cubic feet per second of water from a spring, a tributary of Snake River under application No. 36-7033. Water will be diverted by a headbox and pipe within Lot 3, Sec. 12, Twp. 9 S., Rge. 15 E., B.M. in Gooding County and is to be used from January 1 to December 31 for fish propagation in the SE¼SE¼, Sec. 12, Twp. 9 S., Rge. 15 E., B.M.

Any protest against this application must be filed with the Department of Reclamation within ten days from the last date of publication of this notice.

R. KEITH HIGGINSON
State Reclamation Engineer.

7-25-2tc

36 7033




MICROFILMED


South
Section LINE
11/12


LOWER
PORTION OF
PONDS
WEST

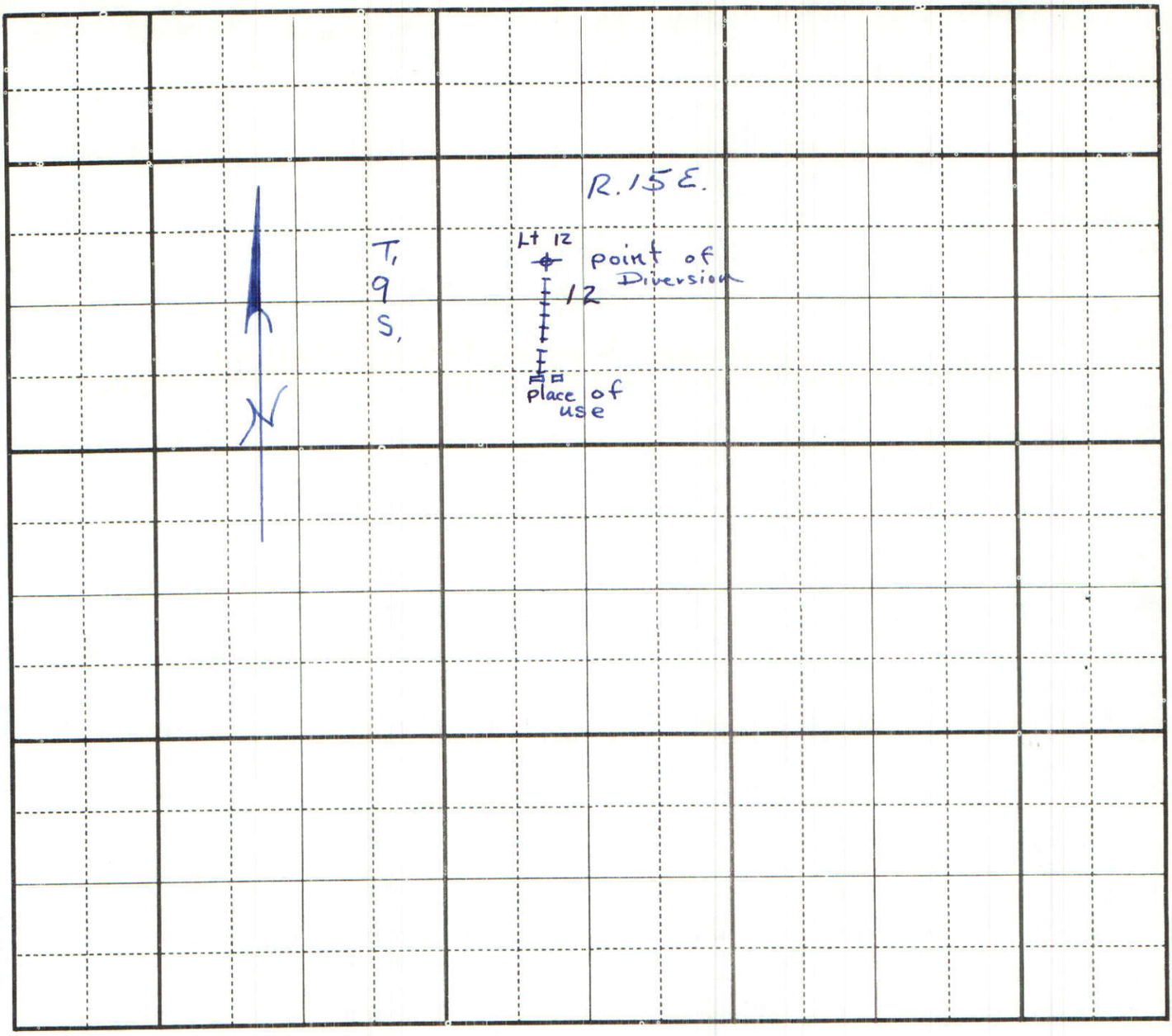
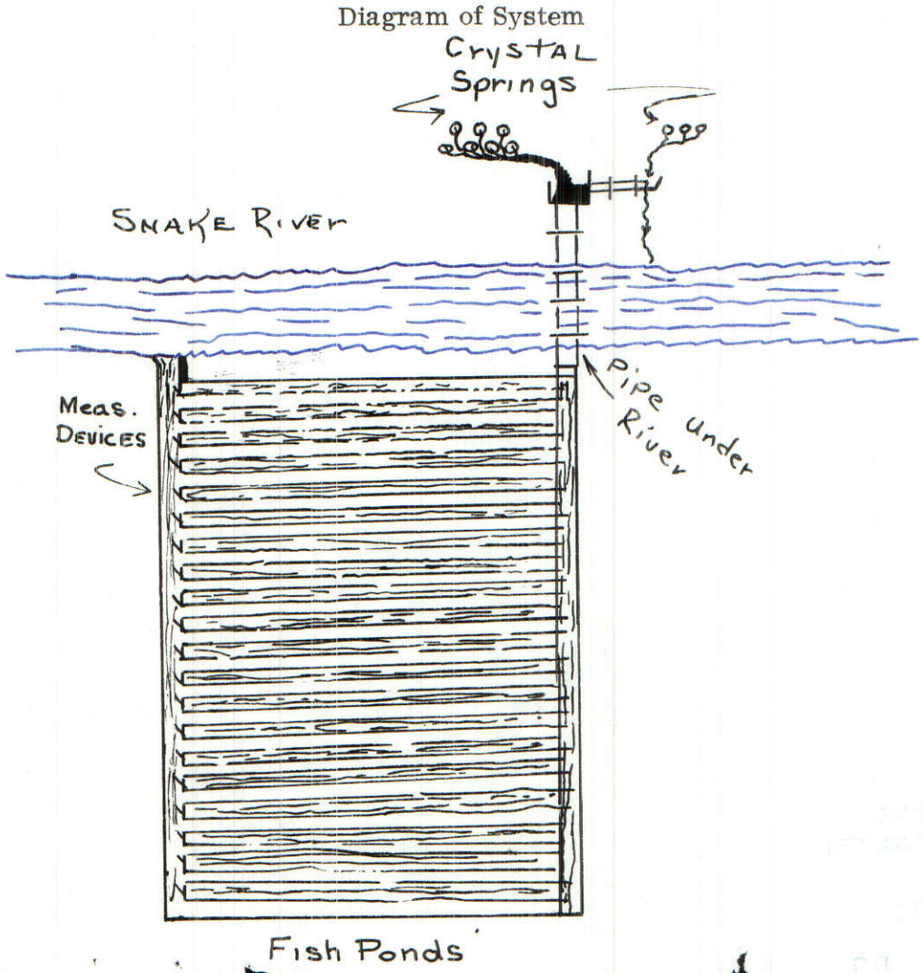



Diagram of System



IDAHO POWER COMPANY
BOISE, IDAHO

RECEIVED
JAN 7 1969
Department of Reclamation

January 6, 1969

JACK — SHOULD WE WRITE TO BURDEN? RKH

NO-

Mr Joseph L Burden
Box 321
Twin Falls, Idaho

Dear Mr Burden:

Idaho Power Company just received a copy of your amended application for Permit No 36-7033. In your application under Section 10 thereof you state, "The applicant is the owner of an easement across the property of the Idaho Power Company, the owner of the land at the proposed point of diversion."

The Company has thoroughly searched its records with respect to this and we are unable to find any easement covering this property, and I would appreciate it if you could give us the recording data concerning this easement.

Very truly yours,

(Sgd.) James E. Bruce

James E Bruce
Vice President and Secretary

JEB:mlm

cc: R Keith Higginson

COPY

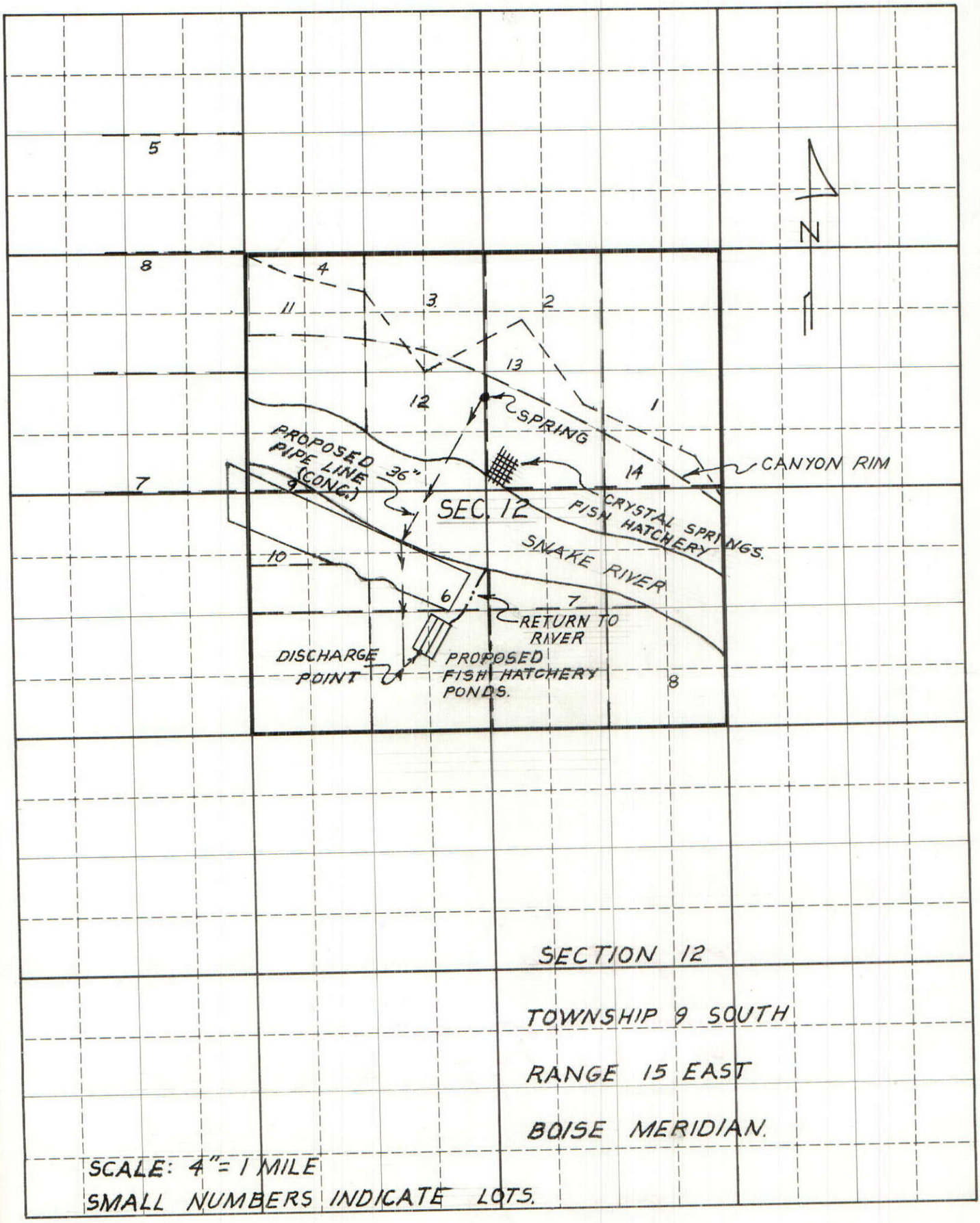
feb 20
1:00 P.M.
Harding County Ct

feb 13 ft H
Harvard ft 23 Jan
Dick more LP
ft Jones II

CS ft Dam

36 7033

11. Map of proposed project:




Scale: 4 inches equal 1 mile

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

Joseph F Burden
(Applicant)

36 7033

State of Idaho

Department of Water Resources

AMENDED **WATER RIGHT LICENSE** AMENDED

License of Water Right No. 36-7033 Priority July 10, 1968 Amount 50.0 cfs

THIS IS TO CERTIFY, that CRYSTAL SPRINGS RANCH, INC.

of Buhl, Idaho, has complied with the terms and conditions of Permit No. 36-7033 issued pursuant to Application for Permit dated July 10, 1968, and has submitted proof to the Department of Water Resources on February 1, 1974, that he has applied water to a beneficial use; an examination by the Department indicates that the works have a capacity for the diversion of 56.49 cfs of water from Crystal Springs, tributary to the Snake River, and that the permit holder has applied to a beneficial use and established a right to use water as follows:

| Beneficial Use | Period of Use | Rate of Diversion | Annual Volume |
|---|---|---|---|
| Fish Propagation | from January 1 to December 31 | at 50.0 cfs | and N/A |
| | from to | at cfs | and |
| | from to | at cfs | and |

(both dates inclusive)

Subject, however, to the condition that no more than 50.0 cfs of water be diverted at any one time, and that the amount of water so diverted and to which such right is entitled and confirmed is for the purpose aforementioned and is limited to the amount which can actually be beneficially used and shall not exceed N/A acre feet per year, said waters to be diverted within the Lot 12 (SE¼NW¼), Sec. 12, Twp. 9S, Rge. 15E, B.M. in the County of Gooding

Description and location of place of use:

| Twp. | Range | Sec. | NE¼ | | | | NW¼ | | | | SW¼ | | | | SE¼ | | | | Totals |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | | | NE¼ | NW¼ | SW¼ | SE¼ | NE¼ | NW¼ | SW¼ | SE¼ | NE¼ | NW¼ | SW¼ | SE¼ | NE¼ | NW¼ | SW¼ | SE¼ | |
| 9S | 15E | 11 | | | | L7 X | | | | | | | | | X | | | | |
| | | 12 | | | | | | | X | | | X | | | | | | | |
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| | | | | | | | | | | | | | | | | | | | |

Total number of acres irrigated _____

The facility volume for this right and right 36-7164 shall not exceed 13.2 acre feet.

Measuring devices of a type approved by the Department and capable of measuring the quantity of water diverted from the springs and the quantity of water returned to the Snake River shall be permanently maintained.

**NOTE**: Modifications to or variance from this license must be made within the limits of Section 42-222, **Idaho Code**, or the applicable Idaho Law. This right may be forfeited by five years of non-use.

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

Witness the seal and signature of the Director, affixed at Boise, Idaho, this 12 day of February, 19 81.

Director

State of Idaho

Department of Water Resources

# WATER RIGHT LICENSE

License of Water Right No. 36-7033 Priority July 10, 1968 Amount 50.0 cfs

THIS IS TO CERTIFY, that CRYSTAL SPRINGS RANCH, INC.

of Buhl, Idaho, has complied with the terms and conditions of Permit No. 36-7033 issued pursuant to Application for Permit dated July 10, 1968, and has submitted proof to the Department of Water Resources on February 1, 1974, that he has applied water to a beneficial use; an examination by the Department indicates that the works have a capacity for the diversion of 56.49 cfs of water from Crystal Springs, tributary to the Snake River, and that the permit holder has applied to a beneficial use and established a right to use water as follows:

| Beneficial Use | Period of Use | | Rate of Diversion | | Annual Volume |
|---|---|---|---|---|---|
| Fish Propagation | from Jan. 1 | to Dec. 31 | at 50.0 cfs | and | n/a |
| | from | to | at | cfs and | |
| | from | to | at | cfs and | |

(both dates inclusive)

Subject, however, to the condition that no more than 50.0 cfs of water be diverted at any one time, and that the amount of water so diverted and to which such right is entitled and confirmed is for the purpose aforementioned and is limited to the amount which can actually be beneficially used and shall not exceed n/a acre feet per year, said waters to be diverted within the Lot 12 ($SE\frac{1}{4}NW\frac{1}{4}$) of Sec. 12, Twp. 9 S, Rge. 15 E, B.M. in the County of Gooding.

Description and location of place of use:

| Twp. | Range | Sec. | NE¼ | | | | NW¼ | | | | SW¼ | | | | SE¼ | | | | Totals |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | | | NE¼ | NW¼ | SW¼ | SE¼ | NE¼ | NW¼ | SW¼ | SE¼ | NE¼ | NW¼ | SW¼ | SE¼ | NE¼ | NW¼ | SW¼ | SE¼ | |
| 9S | 15E | 12 | | | | | | | | | | | | X | | | | | |
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Total number of acres irrigated _____

Measuring devices of a type approved by the Department and capable of measuring the quantity of water diverted from the springs and the quantity of water returned to the Snake River shall be permanently maintained.

**NOTE**: Modifications to or variance from this license must be made within the limits of Section 42-222, **Idaho Code**, or the applicable Idaho Law. This right may be forfeited by five years of non-use.

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

Witness the seal and signature of the Director, affixed at Boise, Idaho, this 8 day of August, 19 75.

Director

RECEIVED

JUL 5 1972

Department of Water Administration

# ASSIGNMENT

For value received, I hereby assign all ~~all~~ of my right, title and interest in and to Permit to Appropriate the Public Waters of the State of Idaho, No. 36-7033 to CRYSTAL SPRINGS RANCH, INC., of Buhl, Idaho 83316

*

Joseph L Burden
Permit Holder

Kathryn Burden
Wife of Permit Holder

STATE OF ~~IDAHO~~ California )
: ss
County of Los Angeles )

On this 23rd day of June, 1972, before me, a Notary Public for the State of ~~IDAHO~~ California, residing at Long Beach Calif personally appeared Joseph L Burden & Kathryn Burden known to me to be the persons whose names is subscribed to the within instrument, and duly acknowledged to me that They executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my Notarial Seal, the day and year in this certificate first above written.

My Commission

OFFICIAL SEAL
MERLE L. TAYLOR
NOTARY PUBLIC-CALIFORNIA
LOS ANGELES COUNTY
My Commission Expires Oct. 21, 1973

Merle L Taylor
Notary Public, Residing at

* If fractional part of permit is to be assigned, the fractional part of the land to which the assigned fraction is appurtenant should be described by legal subdivisions.

36 7033

OK BDF

Identification No. 36-7033 Amend
Application No. 42653
Received 12-26-68

ASSIGNED TO:

Crystal Springs Ranch, Inc.
Buhl,
Idaho 83316

# STATE OF IDAHO
# DEPARTMENT OF RECLAMATION
# AMENDED APPLICATION FOR PERMIT
## To Appropriate the Public Waters of the State of Idaho

APPROVED

1. Name of applicant Joseph L. Burden
   post office address Box 321, Twin Falls, Idaho
2. Source of water supply Crystal Springs which is a tributary of Snake River.
3. a. Location of point of diversion is Lot 12 SE¼ of NW ¼ of Section 12 Township 9 So. Range 15 E., B.M. Gooding County; additional points of diversion if any: _____
   b. If water is not consumed, it will be discharged into Snake River at a point in Lot 6 NE¼ of SW ¼ of Section 12 Township 9 So Range 15 E. B.M.
4. Quantity to be appropriated:
   a. 50 c.f.s. cubic feet per second and/or
   b. _____ acre feet per annum will be stored.
5. Water will be used for the following purposes:
   fish propogation purpose from annual to (both dates inclusive)
   _____ purpose from _____ to _____ (both dates inclusive)
   _____ purpose from _____ to _____ (both dates
6. Proposed diverting works:
   a. Description of ditches, flumes, pumps, headgates, etc. concrete headbox with iron pipeline from point of diversion to proposed fish hatchery ponds to be situated in the SE of the SW, 12, 9, 15.
   b. Height of storage dam _____ feet; active reservoir capacity _____ acre feet; total reservoir capacity _____ acre feet; materials used in storage dam: _____
   c. Proposed well diameter is _____ inches; proposed depth of well is _____ feet.
7. a. Time required for the completion of the works and application of the water to the proposed beneficial use is 2 years.
   b. Estimated construction cost is $ 20,000.00 .
8. Description of proposed uses:
   a. If water is **not** for irrigation:
      (1) Give the place of use of water: SE ¼ of SW ¼ of Section 12 Township 9 Range 15 B.M.
      (2) Amount of power to be generated: _____ hp under _____ feet of head.
      (3) List number of each kind of livestock to be watered _____
      (4) Name of municipality to be served _____, or number of families to be supplied with domestic water _____.
      (5) If water is to be used for other purposes describe: fish propogation

36 7033

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

| TWP. | RANGE | SEC. | NE¼ | | | | NW¼ | | | | SW¼ | | | | SE¼ | | | | TOTALS |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | | | NE¼ | NW¼ | SW¼ | SE¼ | NE¼ | NW¼ | SW¼ | SE¼ | NE¼ | NW¼ | SW¼ | SE¼ | NE¼ | NW¼ | SW¼ | SE¼ | |
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Total number of acres to be irrigated _____

c. Describe any other water rights used for the same purposes _____

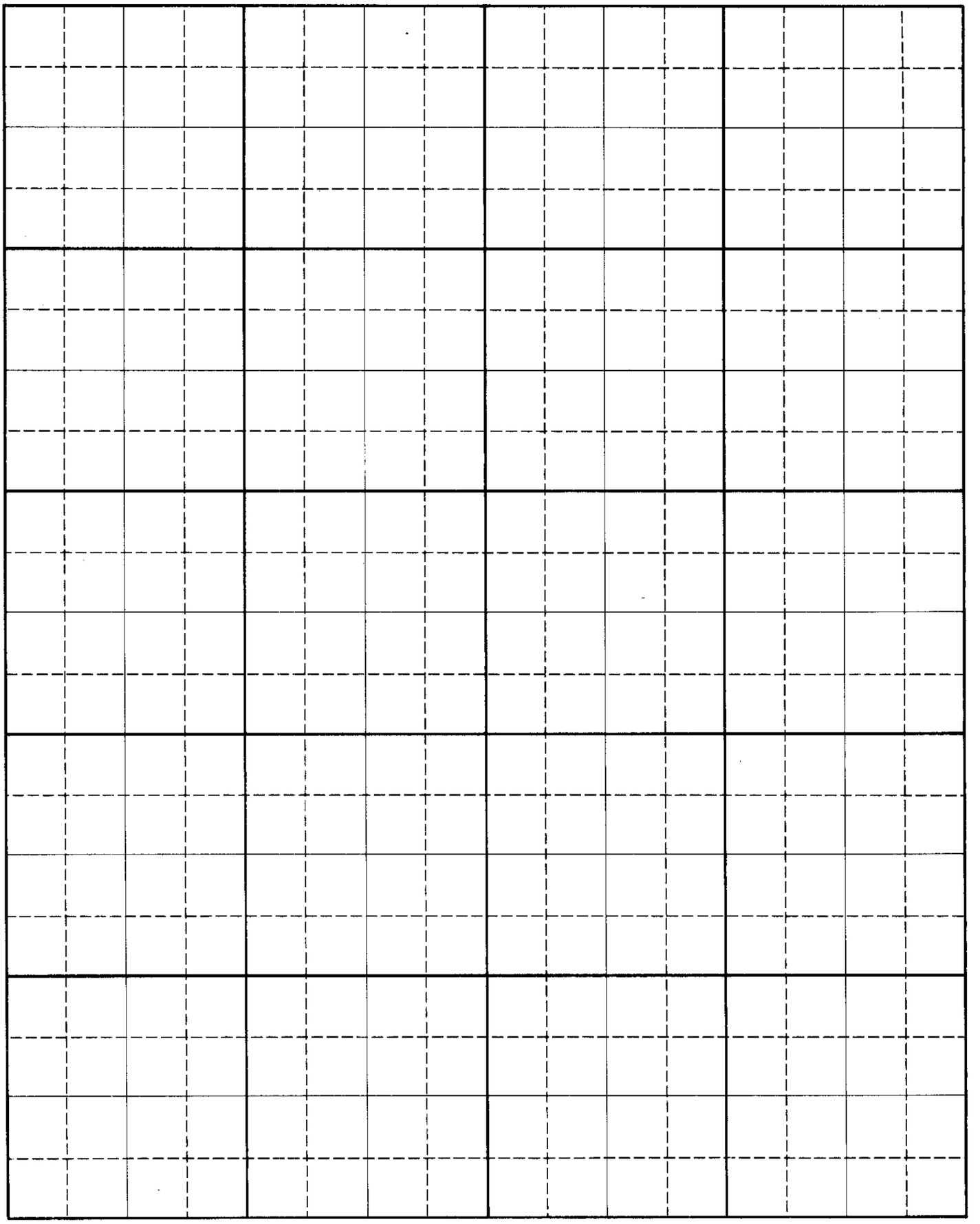
9. a. Who owns the property at the point of diversion Idaho Power Company

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

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

10. Remarks The applicant is the owner of an easement across the property of the Idaho Power Company, the owner of the land at the proposed point of diversion.

11. Map of proposed project:



Scale: 2 inches equal 1 mile

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

(Applicant) Joseph L. Burden, by
Lloyd J. Webb, Agent and Attorney.

36 7033

Amended Applications of 12-26-68 8:00 AM Date

Received by ej Date 7-10-68 Time 8:00 am

Preliminary check by Date Fee $ 100.00 7-11-68

Receipted by ej Date 7-11-68

Readvertising Fee receipted 12-26-68 ew $10.00

Publication prepared by KS Date 7-16-68

Published in Wendell Irrigationist

Publication dates 7-25 & 8-1 - 1968

Publication approved KS Date MoTS

Priority reduced to _____ Reason _____

Protests filed by: Idaho Power Co. - 8-12-68 and 1-31-69
Fish & Game Dept - 11-27-68

Copies of protests forwarded by KS 10-17-68
12-8-68 - F&G

Hearing held by _____ Date _____

Conf. CSA-11-22-68

Recommended for (approval) denial by DEA

**APPROVED**

ACTION OF STATE RECLAMATION ENGINEER

This is to certify that I have examined Application for Permit to appropriate the public waters of the State of Idaho No. 36-7033, and said application is hereby APPROVED

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

   a. SUBJECT TO ALL PRIOR WATER RIGHTS.

   b. Proof of construction of works and application of water to beneficial use shall be submitted on or before January 1, 19 71.

   c. Other: Subject to conditions as listed in the memorandum decision entered on December 8, 1969.

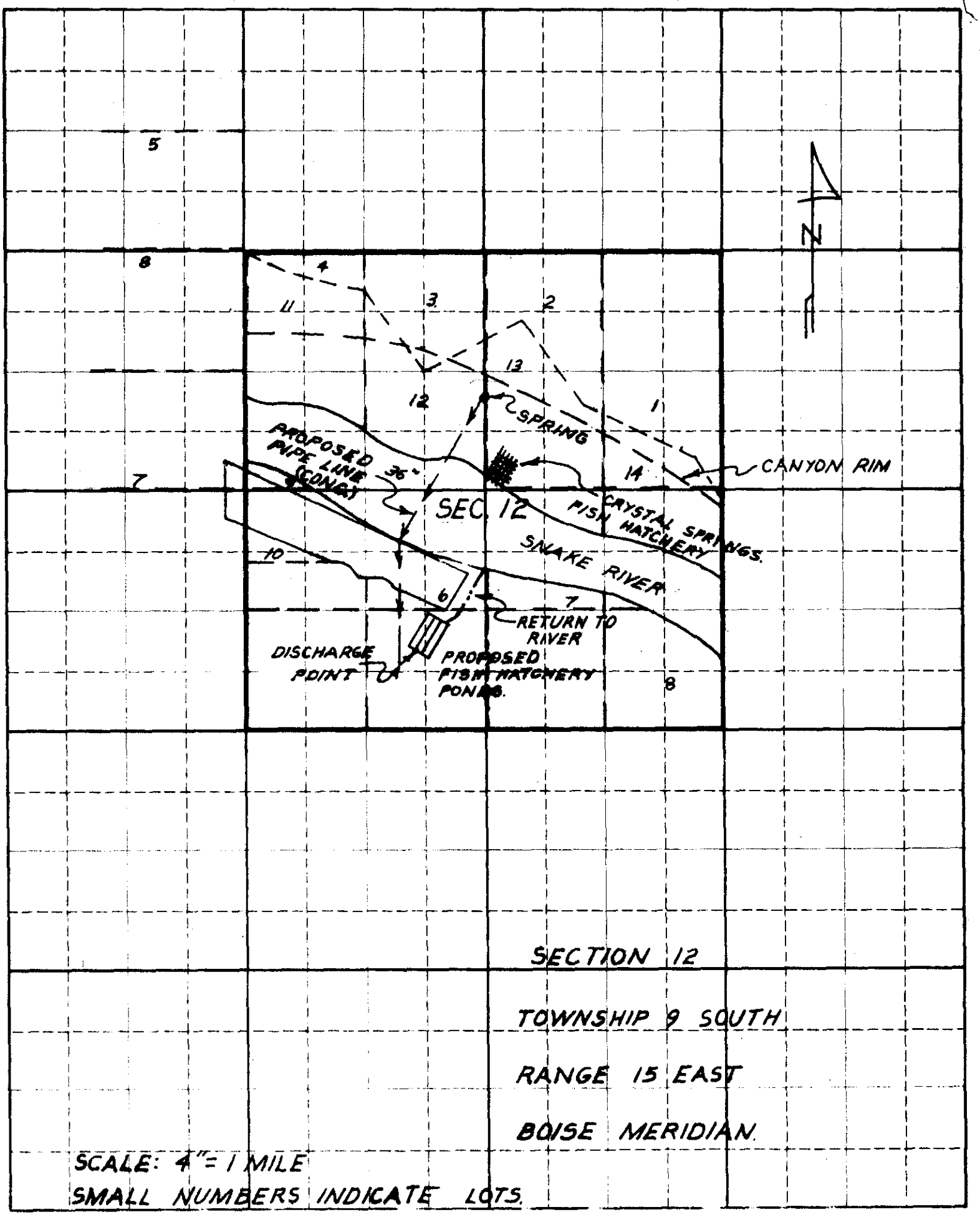
2. Denial of said application is for the following reasons: _____

Witness my hand this 8th day of December 19 69.

L. Kirk Higgins

State Reclamation Engineer

11. Map of proposed project:




Scale: 4 inches equal 1 mile

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

Joseph F. Burden
(Applicant)

36 7033

BEFORE THE STATE RECLAMATION ENGINEER

OF THE

STATE OF IDAHO

| | | |
|---|---|---|
| IN THE MATTER OF APPLICATION FOR | ) | |
| | ) | |
| PERMIT NO. 36-7033 in the name of | ) | MEMORANDUM DECISION |
| | ) | |
| JOSEPH L. BURDEN | ) | |
| | ) | |

Application for permit 36-7033 was filed with the Department of Reclamation on July 10, 1968. The application sought to appropriate water from a spring, tributary to the Snake River, in Lot 3, Sec. 12, T. 9S, R. 15E, B.M., Gooding County. The application requested 50 cubic feet per second of water for fish propagation from January 1 to December 31 each year. The place of use was given as SE¼SE¼, Sec. 12, T. 9S, R. 15E, B.M. Notice of the application was published in the Wendell Irrigationist on July 25 and August 1, 1968.

Protests were received against the issuance of such permit from the Idaho Fish and Game Department and from Idaho Power Company.

The department scheduled a hearing to be held on November 22, 1968, in the Gooding County Courthouse, Gooding, Idaho. An informal conference was held at which the application was discussed with the applicant's attorney and the protestants. As a result, the point of diversion and place of use as described in the application were found to be in error.

An amended application was received by the department on December 26, 1968, correcting the discrepancy as to location of the point of diversion and the location of the place of use. A correction notice was published on January 2 and 9, 1969, setting forth the changes that had been made. The amended application requested the same amount of water from the same source.

Amended protests were received from the Idaho Fish and Game Department and Idaho Power Company.

A hearing was held on February 20, 1969, in the Gooding County Courthouse, Gooding, Idaho. The applicant was represented by Mr. Lloyd J. Webb, Twin Falls, Idaho, and the protestants were represented by Mr. James Bruce, Attorney for the Idaho Power Company, Boise, Idaho, and Mr. T. J. Jones III, Attorney for the Idaho Fish and Game Department, Boise, Idaho.

The parties involved were advised as to the points that could be considered by the department in approving or denying the application. They were also advised that the department could not rule on the questions of abandonment, forfeiture, or whether or not the applicant possessed a valid right-of-way.

The protestants contended that the water which the applicant sought to appropriate was private water until such time as it left the property of the protestants, that the applicant had no valid right-of-way, and that the application did not meet the requirements of law.

The applicant's witnesses testified that the applicant had the financial ability to complete the project, that the applicant intended to complete the project, that the application was not filed for delay or speculative purposes, and that the amount of water was sufficient for the purposes intended..The applicant also sought to establish that he possessed a right-of-way by use across lands owned by the protestant, Idaho Power Company.

The protestants' witnesses stated that the land is owned by Idaho Power Company and that an agreement had been made between Idaho Power Company and the Idaho Fish and Game Commission for public access to the springs. Idaho Power Company also attempted to show that surveys for planning had been made on the property without their consent. The Idaho Fish and Game Department witnesses attempted to show that a decrease in the amount of water available to the Snake River at Crystal Springs would adversely affect fish habitat in the Snake River.

At the close of the hearing, the examiner requested that a brief be submitted by the parties on questions as to availability of water subject to approp-

riation, and whether the application satisfied the requirements of the Idaho Code. The examiner also required that the applicant provide a financial statement and information to justify the amount of water requested. Subsequent to the hearing, the department, in addition, required the applicant to submit a schedule as to the beginning of construction and the starting date of the operation of the hatchery.

The protestants submitted their brief, contending that the subject matter requested to be covered in the brief had become moot since the applicant's filing was void having been initiated in trespass and confined their brief to that point. The protestant, Idaho Fish and Game Department, concurred with Idaho Power Company. In addition, they submitted citations from several civil cases.

In response to the protestants' briefs, the applicant submitted his brief covering the points requested by the examiner. At a later date, he also submitted evidence as to his financial ability. Information was also supplied in support of the 50 c.f.s. of water requested in the application and specified when work would begin and operation of the hatchery start.

The State Reclamation Engineer, having taken the matter under consideration, enters the following decision:

1. That the question of trespass raised by the protestants appears to this office to be immaterial to its action in approving or disapproving the application for permit. Regardless of how the information was acquired upon which the application was based, we are faced only with the question of the availability of unappropriated public water at the point of diversion.

2. That there is unappropriated public water available at the point of diversion.

3. That the water supply available is sufficient for the purposes for which it is proposed to be used.

4. That the applicant has sufficient financial resources with which to complete the proposed project.

5. That the application should be approved subject to the following conditions:

a. Due to the inability of the department to accurately determine the extent to which the applicant may have filed for the water for the purpose of speculation and delay, proof of completion of works and application of water to beneficial use shall be submitted within one year of the date of the approval of this application. Any application for an extension of time will be considered upon a showing that substantial progress has been made by the applicant toward the completion of the construction of the necessary works for use of the water.

b. This permit is specifically granted upon the condition that it not be assigned nor sold to another party without the written concurrence of the Department of Reclamation. Failure to receive such concurrence from the department will be deemed as an admission that the permit was obtained for the purpose of speculation or delay, and will be cause for immediate cancellation of the permit.

c. The applicant shall install permanent measuring devices of the type approved by the Department of Reclamation to measure the quantity of water diverted from the springs and the quantity of water returned to the Snake River.

Dated this 8th day of December, 1969.

R. KEITH HIGGINSON
State Reclamation Engineer

RECE

FEB 20

Department of

[redacted]

Notice is hereby given that Joseph L. Burden has filed an amendmend application for permit to replace Application No. 36-7033. The amended application proposed the diversion of 50 cubic feet per second of the waters of Crystal Springs, tributary of the Snake River for fish propagation from January 1 to December 31. The point of diversion is located in the SE¼-NW¼ (lot 12), sec. 12, T. 9 S., R. 15 E, B.M., Gooding County and is to be used in the SE¼SW¼, sec¼ 12, 9 S. R. 15 E. B.M.

Any protest in connection with this amended application must be submitted to the Department of Reclamation within ten days of the date of the last publication of this notice.

R. KEITH HIGGINSON
State Reclamation
Engineer.

1-2-2tc

[redacted]

County of Gooding
STATE OF IDAHO } ss

I, ....., being duly sworn, say that I am the ..... of THE WENDELL IRRIGATIONIST, a weekly newspaper of general circulation published at Wendell, in the County of Gooding, State of Idaho; that the attached printed copy hereto annexed was published in THE WENDELL IRRIGATIONIST, in the regular edition thereof and not in a supplement, for 2 consecutive weeks, commencing on the 2nd day of January, ....., and ending on the 9 day of January, 1969

Myrtle Schrunk Editor
(Title)

Subscribed and sworn to before me this 25 day of February, 1969.

Charlotte Lehman
Notary Public in and for the County of Gooding, State of Idaho
My commission expires 9-10, 1971

36-7033

Department of Reclamation

DEPARTMENT OF RECLAMATION OF THE STATE OF IDAHO

STATE RECLAMATION ENGINEER

BOISE, IDAHO

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| IN THE MATTER OF AMENDED APPLICATION FOR PERMIT NO 36-7033 IN THE NAME OF JOSEPH L BURDEN TO APPROPRIATE 50 CFS OF WATER FROM CRYSTAL SPRINGS | ) ) ) ) | AMENDED PROTEST |

Comes now the Idaho Power Company, hereinafter referred to as "Protestant," and protests against the granting by the Department of Reclamation of the State of Idaho, of the amended application No 36-7033 by Joseph L Burden, hereinafter referred to as "Applicant," for the appropriation of 50 cubic feet per second of water from Crystal Springs in Gooding County, Idaho, and in support of such protest and as grounds therefor, states as follows:

I

The Idaho Power Company is a corporation organized and existing under the laws of the State of Maine and duly authorized and qualified to do business in the State of Idaho. The principal business office of the Company is located at 1220 Idaho Street, Boise, Ada County, Idaho.

II

The Idaho Power Company, by virtue of certain deeds and conveyances, is now and has been since January 7, 1931, the owner in fee simple of certain property located in Gooding County, Idaho, in Section 12, Township 9 South, Range 15 East, Boise Meridian, the exact description of which is set forth in Exhibit 1 attached hereto and made a part hereof. The foregoing property is the side of certain springs commonly known and referred to as "Crystal" Springs, which springs are entirely upon and within the lands owned by the Idaho Power Company.

III

The Protestant alleges that the waters of Crystal Springs are private waters under 42-212, Idaho Code, and therefore not subject to the issuance or granting of a permit by the Department of Reclamation to any other person other than the owner of said lands unless the Applicant has the written permission of the owner. The Protestant further alleges that the Applicant has not sought or received the permission of the Protestant, the owner of said lands and waters, for the appropriation or diversion of such private waters, and Protestant alleges

that the Applicant's amended application is deficient for failure to meet the requirements of 42-213, Idaho Code, in that it fails to state that the spring water to be appropriated is entirely upon the land of Protestant and that the Applicant has the written, executed and acknowledged permission of the owner. The Protestant is informed and believes and upon such information and belief alleges the fact to be that Applicant does not have easement across the property of Protestant at the proposed point of diversion as set out in Section 10 of the amended application.

IV

Protestant further alleges that the contents of the amended application for permit No 36-7033 and the accompanying map of the proposed works for the diversion and application of the waters above mentioned do not comply with the requirements of Idaho Law as set forth in 42-202, Idaho Code, and do not contain information and facts sufficient to constitute a valid filing to appropriate waters of the State of Idaho for the following reasons:

(a) Applicant fails to include the information relative to the financial resources of the corporation, association, firm or person making the applications and the means by which the funds necessary to construct the proposed works are to be provided.

(b) Applicant's accompanying maps do not contain any definite description or tie as to the points of diversion, nor any information indicating that a survey has been made, nor is there a certificate by the surveyor, and the amended application fails to include information as to the proposed plan of construction, character or dimension of the works proposed to be used in the diversion of the water.

V

The Protestant further alleges and states that the natural beauty of the spring site has and should be preserved for its aesthetic value and for general recreational use by the public. Further, in the interest of promoting the recreational use of the area and in the interests of aiding in the promotion and propagation of fish and waterfowl, the Protestant entered into a license agreement

with the State of Idaho Fish and Game Department, a copy of which agreement is attached hereto as Exhibit 2 and made a part hereof. This agreement is now in force and the Fish and Game Department has spent and intends to spend in the future sums of money for the development of said site for recreational use, including the use of portions of the waters of the springs for fish propagation and rearing ponds. The Protestant therefore alleges and states that the waters of said springs are now being put to a beneficial use for the general public and such use should not be diminished or restricted.

WHEREFORE, Protestant respectfully requests that the amended application filed by Joseph L Burden for permit to appropriate the water of Crystal Springs be disapproved and denied upon the grounds that said amended application does not conform to the requirements of the Idaho Law.

Dated at Boise, Idaho, this 30th day of January, 1969.

IDAHO POWER COMPANY

By Glenn J Hall
Vice President

EXHIBIT 1

CRYSTAL SPRINGS-- Tract No. 3: A tract of land lying within Section 12, Township 9 South, Range 15 E. B. M., Gooding County, Idaho, described as follows:

Beginning at a point from which the section corner common to Sections 1, 2, 11 and 12 of Township 9 South, Range 15 East, Boise Meridian bears north 39 ° 48' West 1095.5 feet; thence south 79 ° 27' East, 1731.1 feet to an angle point which is on the northerly line of Lot 12, as shown on the official plat of the U. S. Dependent Resurvey dated April 17, 1918; of Sections 2, 3, 10, 11 and 12 of Township 9 South, Range 15 East, Boise Meridian from which official angle point #3 lies 39 ° 09' L. 832.7 feet distant and the W. C. to angle point #4 lies 140 ° 51' R. 257.0 feet distant; thence continuing from said angle point South 66 ° East 1683.3 feet to an angle point, from which the North quarter Section corner of said Section 12 bears North 35 ° 37' West 2223 feet distant; thence South 40 ° 51' West 1346.3 feet to a point on the right bank of Snake River in Lot 15 of said Section 12; thence continuing South 40 ° 51' West to the thread of said Snake River; thence downstream upon and along the thread of said Snake River to a point which is South of the real point of beginning; thence North to a point on the right bank of said Snake River; thence continuing North 882.1 feet to the point of beginning, containing 79.6 acres, more or less.

# IN THE PROBATE COURT

of - - - - - - - - GOODING - - - - - - - - - County, State of Idaho.

IN THE MATTER OF THE ESTATE

JAS. H. MAYS

Deceased.

**ORDER CONFIRMING SALE OF REAL ESTATE.**

A. S. Henson and Walter T. Ivy, the executors of the last will and testament and estate of Jas. H. Mays, deceased,

*having made to this Court, and filed in the office of the Clerk thereof, on the* 2nd *day of* July *1928, a return of* their *proceedings under the order of sale herein, duly verified by affidavit, and a hearing on said return having been asked for therein, and said matter, after due proof of due notice, made and given as required by law and order of the judge of this Court, coming on regularly to be heard this* 16th *day of* - - - July - - - - *1928,* the day set for hearing thereof,

*and the Court having examined the said return and heard the testimony of witnesses in support thereof, and it duly appearing to the Court that, in pursuance of said order of sale, said* executors *caused notice of the time and place of holding said sale to be posted up in three of the most public places in* Gooding *County, State of* Idaho, *in which the land ordered to be sold is situated, and to be published in the* Gooding Leader, *a newspaper printed and published in the said* Gooding *County, State of* Idaho, *for* three *weeks successively next before such sale, in which order of sale and notice the lands and tenements to be sold were described with common certainty, as follows, to wit:*

36 7033

NIAGARA SPRINGS—Tract No. 1: A tract of land lying within Section 10, Township 9 South, Range 15 East, Boise Meridian, Gooding County, Idaho, described as follows:

Beginning at the section corner common to Sections 2, 3, 10 and 11 of Township 9 South, Range 15 E. B. M., as shown on the official plat of the U. S. Dependent Resurvey dated April 17, 1918; thence South 89° 51' West upon and along the North Section line of said Section 10 a distance of 427.9 feet; thence South a distance of 1863.8 feet to a point on the right bank of Snake River in the said Section 10; thence continuing South to the thread of Snake River; thence upstream along the thread of said Snake River to the Section Line between said Sections 10 and 11; thence North 8° 44' West along and upon said Section line to the meander corner on right bank of Snake River between said Sections 10 and 11; thence North upon and along the section line between said Sections 10 and 11 a distance of 2073.1 feet to the Section corner common to said Sections 2, 3, 10 and 11, the point of beginning, containing 20 acres more or less.

NIAGARA SPRINGS—Tract No. 2: A tract of land lying within Section 11, Township 9 South, Range 15 East, Boise Meridian, Gooding County, Idaho, described as follows:

Beginning at the section corner common to Sections 2, 3, 10, and 11 of Township 9 South, Range 15 East, Boise Meridian, as shown on the official plat of the U. S. Dependent Resurvey dated April 17, 1918; thence North 89° 44' East upon and along the North Section line of said Section 11, 564 feet; thence South 8° 14' West 1297.9 feet; thence South 25° 47' East 847.7 feet to a point on the right bank of Snake River in said Section 11; thence continuing South 25° 47' East to the thread of Snake River; thence Downstream along and upon the thread of said Snake River to the Section line between said Sections 10 and 11; thence North 8° 44' West upon and along said section line to meander corner on the right bank of Snake River between said Sections 10 and 11; thence North along and upon the Section line between said Sections 10 and 11, a distance of 2073.1 feet to the section corner common to said Sections 2, 3, 10 and 11, the point of beginning, containing 25.3 acres, more or less.

CRYSTAL SPRINGS—Tract No. 3: A tract of land lying within Section 12, Township 9 South, Range 15 E.B.M., Gooding County, Idaho, described as follows:

Beginning at a point from which the section corner common to Sections 1, 2, 11 and 12 of Township 9 South, Range 15 East, Boise Meridian bears north 39° 4' West 1095.5 feet; (8) thence south 79° 27' East, 1751.1 feet to an angle point which is on the northerly line of Lot 12, as shown on the official plat of the U. S. Dependent Resurvey dated April 17, 1918; of Sections 2, 3, 10, 11 and 12 of Township 9 South, Range 15 East, Boise Meridian from which official angle point #3 lies 39° 09' L, 832.7 feet distant and the W. C. to angle point #4 lies 140° 51' R. 257.0 feet distant; thence continuing from said angle point South 66° East 1683.3 feet to an angle point, from which the North Quarter Section corner of said Section 12 bears North 35° 37' West 2223 feet distant; thence South 40° 51' West 1346.3 feet to a point on the right bank of Snake River in Lot 15 of said Section 12; thence continuing South 40° 51' West to the thread of said Snake River; thence downstream upon and along the thread of said Snake River to a point which is South of the real point of beginning; thence North to a point on the right bank of said Snake River; thence continuing North 882.1 feet to the point of beginning, containing 79.6 acres, more or less.



36 7033

Together with all rights or interest now possessed or owned or acquired by the said Jas. H. Mays estate, or of which the said Jas. H. Mays died seized or possessed, in and to all the springs and in and to all the water or waters rising from, having its or their origin in, or flowing under or over, or being under or on, or which may be developed on the said land, or lands. Also together with all rights or interest so possessed or owned or acquired, or of which the said Jas. H. Mays died seized or possessed in water appropriation or water appropriations, in water permit or water license, or permits or licenses, or any application or applications for water permit or water license affecting said springs or waters, or any part of them.

Also together with the real covenant and stipulation running with the land affected, including all those lands hereinafter referred to in Sections 2, 10, 11 and 12, Township 9 S., Range 15 E. B. M., and Sections 7 and 18, Township 9 S., Range 16 E. B. M., Gooding County, Idaho, which covenant and stipulation shall not be construed as a mere personal covenant, that no one, whoever it may be, shall, without written authorization from the Purchaser, or his heirs, representatives, successors or assigns, have any right or privilege or license whatsoever to use, purchase, lease, prospect, develop or appropriate any water or waters rising from and having its or their origin in, or flowing under or over, or being under or on, or which may be developed on any remaining land or lands not included in this sale and purchase, so possessed or owned or acquired, or of which said Jas. H. Mays died seized or possessed, in Sections 2, 10, 11 and 12, Township 9 S., Range 15 E. B. M., and Sections 7 and 18, Township 9 S., Range 16 E. B. M., Gooding County, State of Idaho, nor to use, lease, purchase, prospect, develop, or examine said remaining land or lands, nor to make, license, permit, initiate, perfect or authorize any water filings or appropriations of water on said remaining land or lands, nor to use, permit, license or grant any right of any kind whatsoever in or to the use of said remaining land or lands, or said water or waters for any use or purpose, projected or actual, for hydroelectrical development or uses or purposes, or uses and purposes, nor for any other development or uses or purposes, or uses and purposes, which might jeopardize or impair the rights to the complete and full use or development of the springs, waters, easements, or the lands, or any of them, included in this sale, provided, however, and it is so stipulated and covenanted, that the Sellers reserve the right, subject to and limited by that covenant and stipulation running with the land and in this paragraph first expressed, to use and develop the waters of all springs situate on that portion of said Niagara Farms lying east of the east boundary line of Crystal Springs--Tract No. 3, above described, and, further, Purchaser stipulates and covenants that he, his heirs and assigns, shall not use, develop or appropriate the said waters so reserved or do any act thereto which will diminish the present flow of the waters so reserved, and provided further, but subject to and limited by said covenant and stipulation running with the land and in this paragraph first expressed, that said waters rising from or having its or their origin in said portion of Niagara Farms may be used to generate electricity for the sole and exclusive use of, and for no other use, and limited to an amount sufficient for the use at and of, the fish hatchery and buildings used in connection therewith, now located and as the same now in location said portion of Niagara Farms, the above stipulations and covenants in each and every particular to run with the land and they shall be so construed as real covenants running with the lands affected and not as mere personal covenants.

Also together with the following road right of way: Beginning at the section corner common to Sections 2, 3, 10 and 11, Township 9 S., Range 15 E., B. M.; thence South 89° 51' West 427.9 feet; thence south 949.5 feet to the real point of beginning,

which is on the west boundary of Tract No. 1 of the Niagara Springs lands hereinbefore described; thence north 74 ° 48' West 1208.8 feet; thence North 52 ° 15' West 472.6 feet; thence North 79 ° 45' West 418.8 feet; thence North 35 ° 50' West 353.2 feet; thence North 66 ° 22' West 3099 feet to a point in the grade at the foot of a bluff of the existing road from the Niagara Springs Ranch to Wendell, provided that when a road is constructed by the Purchaser, or his assigns, over the right of way immediately hereinbefore granted, travel of said Purchaser, or his assigns, shall, insofar as travel over that part of Section 10, Township 9 South, Range 15 E., B. M., now owned or possessed by the estate of Jas. H. Mays, deceased, is concerned, shall be exclusively confined to said road when constructed, except in cases of emergency.

Together with the permanent right to use the private roads now existing across Sections 4, 3, 10, 2, 11 and 12, Township 9 South, Range 15 E. B. M., with the right in grantee to straighten or widen such presently existing roads but to a width in no event to exceed thirty (30) feet.

Also together with such rights of way as are necessary for the development of the waters herein sold and conveyed, through, across, under, over and above all of those portions of Sections 2, 10, 11 and 12, Township 9 S., Range 15 E. B. M., and Sections 7 and 18, Township 9 S., Range 16 E. B. M., Gooding County, State of Idaho, which constitute a part of the estate of Jas. H. Mays, deceased, for the erection and continued maintenance of electric transmission lines of grantee, or his representatives, successors or assigns, with the necessary supports for said lines, avoiding in the erection of said transmission lines the orchard tracts as now planted, and for the additional pur ose of constructing, installing and permanently maintaining such pipe or flume lines as are necessary for the development of said waters.

Excepting and reserving also from this sale the right to use the road as now existing across the lands herein sold, and, in the event of the necessity by grantee, or his successors or assigns, to abandon said road, then the right to the use of such new road to be constructed by grantee, his successors or assigns, across said lands.

And also excepting and reserving from this sale 26 second feet of water from what is known as Niagara Springs, also located on said Farms, for irrigation and domestic purposes on the following ranches only, to-wit: Niagara Ranch and Dalquist Ranch, provided, however, that when said excepted and reserved waters are not desired or used for said purposes, they may be used by the Purchaser, or his representatives, successors or assigns, of the lands and waters herein proposed to be sold, it being expresslyunderstood that said Purchaser, or his representatives, successors or assigns, will not attempt to appropriate or use or apply to a beneficial use said excepted and reserved waters, except subject as hereinbefore otherwise specifically provided, provided that said excepted and reserved waters in this paragraph referred to may also be used to generate power or electricity for the sole and exclusive domestic uses, and for no other, of the owner, present and future, of said Dalquist ranch, said power or electricity to be used only on said ranch, provided further that when the waters, or any part thereof, herein sold to Purchaser are developed for electrical uses, or purposes, then the right and privilege herein reserved to so generate electricity for domestic uses shall automatically cease. It shall be expressly stipulated in deeds of conveyance to Purchaser that such covenant by Purchaser not to attempt to appropriate or use or apply to a beneficial use said excepted and reserved waters except as hereinbefore otherwise specifically provided shall be and shall be construed and considered as a covenant running with the land and shall not be construed as a mere personal covenant.

36 7033

That at such sale Frank A. Reid,

became the purchaser of all of said real estate for the sum of Sixty-Six Thousand Seven Hundred and No/100 ($66,700.00) - - - DOLLARS, lawful money of the United States of America, said Frank A. Reid, being the highest and best bidder and said sum being the highest and best sum bid; that said executors accepted said bid; that said sale was legally made and fairly conducted; that said sum bid was not disproportionate to the value of the property sold; that a sum exceeding such bid, at least ten per cent., exclusive of the expenses of a new sale, can not be obtained; (1) that said real estate has been appraised within one year of the time of such sale; (2) that the sum of Sixty-Six Thousand Seven Hundred and No/100 ($66,700.00) - - - - - - - - - DOLLARS, offered by said Frank A. Reid,

is ninety per cent, of the appraised value of said real estate; and all and singular the law and the premises being by the Court here seen, heard, understood and fully considered, wherefore it is by the Court

ORDERED, ADJUDGED AND DECREED, That the said sale be, and the same is hereby confirmed and approved, and declared valid, and the proper and legal conveyances of all said real estate are hereby directed to be executed to said Frank A. Reid,

purchaser, by said A. S. Henson and Walter T. Ivy, the executors of the estate of Jas. H. Mays, deceased.

Done in open Court this 16th day of - - July - - - 19 28.

E. E. Brandt
Probate Judge.

(1) (2) Omit when sold at public auction.

STATE OF IDAHO, }
County of Gooding. } ss.

C E R T I F I C A T E

I, E. E. Brandt, Judge and ex-officio Clerk of the Probate Court in and for the County of Gooding, State of Idaho, do hereby certify that I have compared the foregoing with the original ORDER CONFIRMING SALE OF REAL ESTATE, rendered and entered in the matter of the estate of Jas. H. Mays, deceased, and filed in my office on the 16th day of July, 1928, and that the same is a full, true and correct copy of said original and the whole thereof.

WITNESS My hand and the seal of said Court this 16th day of July, 1928.

E. E. Brandt
Judge and ex-officio Clerk of the Probate Court in and for Gooding County, Idaho.

No.....

# PROBATE COURT

STATE OF IDAHO,
County of GOODING } ss.

## Order Confirming Sale of Real Estate

IN THE MATTER OF THE ESTATE

JAS. H. MAYS

Deceased

Filed July 16th 19 28

Clerk.

micro Statesman Shop, Boise, Idaho. 364

Return to Wm. Y. Boone, Atty at Law
Box 918 Boise, Idaho

5-60 File as of 4:30 P.M.

7-16

46458

STATE OF IDAHO,
County of Gooding. } ss. No.

I hereby certify that this instrument was filed for record at the request of D. H. Gulpher at 4:30 o'clock P M., this 16 day of July 19 28 in my office, and duly recorded in book 3 Misc at page 224.

Myrtle Hutchins
Ex-officio Recorder.

By A M Miller Deputy.

Fees, $ 5-60

Return to

36 7033

THIS INDENTURE, Made the 16th day of July nineteen hundred and Twenty-eight at the City of Gooding County of Gooding State of Idaho, by and between A. S. HENSON and WALTER T. IVY the duly appointed, qualified and acting executors of the last will and testament of Jas. H. Mays, deceased, late of the County of Gooding, State of Idaho,

the parties of the first part, and FRANK A. REID of New York City State of New York, the party of the second part, Witnesseth:

THAT, WHEREAS, On the 6th day of June nineteen hundred and Twenty-eight the Probate Court of the County of Gooding, State of Idaho, made an order of sale authorizing the said parties of the first part to sell certain real estate and rights and interests in real estate of the said estate of Jas. H. Mays, deceased, situated in the, County of Gooding, State of Idaho, and specified and particularly described in said order of sale, and which said order of sale, now on file and of record in the said Probate Court, is hereby referred to and made a part of this Indenture:

AND WHEREAS, Under and by virtue of said order of sale, and pursuant to legal notices given thereof, the said parties of the first part, on the 25th day of June nineteen hundred and Twenty-eight sold, subject to confirmation of said Probate Court, the said real estate, situated in the said County of Gooding, and specified and described in said order of sale as aforesaid, and at such sale the said party of the second part became the purchaser of the said real estate and rights and interests in said real estate hereinafter particularly described for the sum of Sixty-Six Thousand Seven Hundred ------DOLLARS lawful money of the United States, he being the highest and best bidder, and that being the highest and best sum bid.

AND, WHEREAS, The said Probate Court, upon the due and legal return of their proceedings under the said order of sale, made by the said parties of the first part on the said 25th day of June nineteen hundred and Twenty-eight, after making the said sale, upon the due and legal return of the proceedings, made by the said parties of the first part on the 2nd day of July, 1928, and after due Notice of Hearing on said Return given,

did, on the 16th day of July nineteen hundred and Twenty-eight make an order confirming said sale, and directing conveyances to be executed to the said party of the second part; a certified copy of which order of confirmation was recorded in the office of the County Recorder of said County of Gooding within which the said land is situated, on the 16th day of July

nineteen hundred and - - - Twenty-eight - - - - and which said order of confirmation now on file and of record in said Recorder's office are hereby referred to and made a part of this Indenture.

NOW, THEREFORE, The said A. S. Henson and Walter T. Ivy, as the Executors of the last will and testament & ~~said~~ of the estate of Jas. H. Mays, deceased, as aforesaid, the part ies of the first part pursuant to the order last aforesaid, of the said Probate Court, for and in consideration of the said sum of Sixty-Six Thousand Seven Hundred and No/100 - - - - - - - - - DOLLARS, lawful money of the United States, to them in hand paid by the said party of the second part, receipt whereof is hereby acknowledged, have granted, bargained, sold and conveyed, and by these presents do - - grant, bargain, sell and convey unto the said party of the second part, his heirs and assigns forever, all the right, title, interest and estate of the said Jas. H. Mays, Deceased,

in and to all those certain lots, pieces, or parcels of land, situate, lying and being in said County of - - - - Gooding - - - - - -, State of Idaho, and bounded and described as follows, to wit:

NIAGARA SPRINGS-- Tract No. 1: A tract of land lying within Section 10, Township 9 South, Range 15 East, Boise Meridian, Gooding County, Idaho, described as follows:

Beginning at the section corner common to Sections 2, 3, 10 and 11 of Township 9 South, Range 15 E. B. M., as shown on the official plat of the U. S. Dependent Resurvey dated April 17, 1918; thence South 89 ° 51' West upon and along the North Section line of said Section 10 a distance of 427.9 feet; thence South a distance of 1863.8 feet to a point on the right bank of Snake River in the said Section 10; thence continuing South to the thread of Snake River; thence upstream along the thread of said Snake River to the Section Line between said Sections 10 and 11; thence North 8 ° 44' West along and upon said Section line to the meander corner on right bank of Snake River between said Sections 10 and 11; thence North upon and along the section line between said Sections 10 and 11 a distance of 2073.1 feet to the Section corner common to said Sections 2, 3, 10 and 11, the point of beginning, containing 20 acres more or less.

NIAGARA SPRINGS-- Tract No. 2: A tract of land lying within Section 11, Township 9 South, Range 15 East, Boise Meridian, Gooding County, Idaho, described as follows:

Beginning at the section corner common to Sections 2, 3, 10, and 11 of Township 9 South, Range 15 East, Boise Meridian, as shown on the official plat of the U. S. Dependent Resurvey dated April 17, 1918; thence North 89 ° 44' East upon and along the North Section Line of said Section 11, 564 feet; thence South 8 ° 14' West 1297.9 feet; thence South 25 ° 47' East 847.7 feet to a point on the right bank of Snake River in said Section 11; thence continuing South 25 ° 47' East to the thread of Snake River; thence downstream along and upon the thread of said Snake River to the Section line between said Sections 10 and 11; thence North 8 ° 44' West upon and along said section line to meander corner on the right bank of Snake River between said Sections 10 and 11; thence North along and upon the Section line between said Sections 10 and 11, a distance of 2073.1 feet to the section corner common to said Sections 2, 3, 10 and 11, the point of beginning, containing 25.3 acres, more or less.

CRYSTAL SPRINGS-- Tract No. 3: A tract of land lying within Section 12, Township 9 South, Range 15 E. B. M., Gooding County, Idaho, described as follows:

Beginning at a point from which the section corner common to Sections 1, 2, 11 and 12 of Township 9 South, Range 15 East, Boise Meridian bears north 39 ° 48' West 1095.5 feet; thence south 79 ° 27' East, 1731.1 feet to an angle point which is on the northerly line of Lot 12, as shown on the official plat of the U. S. Dependent Resurvey dated April 17, 1918; of Sections 2, 3, 10, 11 and 12 of Township 9 South, Range 15 East, Boise Meridian from which official angle point #3 lies 39 ° 09' L. 832.7 feet distant and the W. C. to angle point #4 lies 140 ° 51' R. 257.0 feet distant; thence continuing from said angle point South 66 ° East 1683.3 feet to an angle point, from which the North quarter Section corner of said Section 12 bears North 35 ° 37' West 2223 feet distant; thence South 40 ° 51' West 1346.3 feet to a point on the right bank of Snake River in Lot 15 of said Section 12; thence continuing South 40 ° 51' West to the thread of said Snake River; thence downstream upon and along the thread of said Snake River to a point which is South of the real point of beginning; thence North to a point on the right bank of said Snake River; thence continuing North 882.1 feet to the point of beginning, containing 79.6 acres, more or less.

Together with all rights or interest now possessed or owned or acquired by the said Jas. H. Mays estate, or of which the said Jas. H. Mays died seized or possessed, in and to all the springs and in and to all the water or waters rising from, having its or their origin, in, or flowing under or over, or being under or on, or which may be developed on the said land, or lands. Also together with all rights or interest so possessed or owned or acquired, or of which the said Jas. H. Mays died seized or possessed in water appropriation or water appropriations, in water permit or water license, or permits or licenses, or any application or applications for water permit or water license affecting said springs or waters, or any part of them.

Also together with the real covenant and stipulation running with the land affected, including all those lands hereinafter referred to in Sections 2, 10, 11 and 12, Township 9 S., Range 15 E. B. M., and Sections 7 and 18, Township 9 S., Range 16 E. B. M., Gooding County, Idaho, which covenant and stipulation shall not be construed as a mere personal covenant, that no one, whoever it may be, shall, without written authorization from the party of the second part, or his heirs, representatives, successors or assigns, have any right or privilege or license whatsoever to use, purchase, lease, prospect, develop or appropriate any water or waters rising from and having its or their origin in, or flowing under or over, or being under or on, or which may be developed on any remaining land or lands not included in this deed sale and purchase, so possessed or owned or acquired, or of which said Jas. H. Mays died seized or possessed, in Sections 2, 10, 11 and 12, Township 9 S., Range 15 E. B. M., and Sections 7 and 18, Township 9 S., Range 16 E. B. M., Gooding County, State of Idaho, nor to use, lease, purchase, prospect, develop, or examine said remaining land or lands, nor to make, license, permit, initiate, perfect or authorize any water filings or appropriations of water on said remaining land or lands, nor to use, permit, license or grant any right of any kind whatsoever in or to the use of said remaining land or lands, or said water or waters for any use or purpose, projected or actual, for hydroelectrical development or uses or purposes, or uses and purposes, nor for any other development or uses or purposes, or uses and purposes, which might jeopardize or impair the rights to the complete and full use or development of the springs, waters, easements, or the lands, or any of them, included in this sale, provided, and it is so stipulated and covenanted, that the parties of the first part reserve the right, subject to and limited by that covenant and stipulation running with the land and in this paragraph first expressed, to use and develop the waters of all springs situate on that portion of said Niagara Farms lying east of the east boundary line of Crystal Springs--Tract No. 3, above described, and, further, party of the second part stipulates and covenants that he, his heirs and assigns, shall not use, develop or appropriate the said waters so reserved or do any act thereto which will diminish the present flow of the waters so reserved, and provided further, but subject to and limited by said covenant and stipulation running with the land and in this paragraph first expressed, that said waters rising from or having its or their origin in said portion of Niagara Farms may be used to generate electricity for the sole and exclusive use of, and for no other use, and limited to an amount sufficient for the use at and of, the fish hatchery and buildings used in connection therewith, ~~now located and as the same remain located on said portion of Niagara Farms~~, the above stipulations and covenants in each and every particular to run with the land and they shall be so construed as real covenants running with the lands affected and not as mere personal covenants.

Also together with the following road right of way: Beginning at the section corner common to Sections 2, 3, 10 and 11, Township 9 S., Range 15 E. B. M.; thence South 89 ° 51' West 427.9 feet; thence south 949.5 feet to the real point of beginning, which is on the west boundary of Tract No. 1 of the Niagara Springs Lands hereinbefore described; thence north 74 ° 48' West 1208.8 feet; thence North 52 ° 15' West 472.6 feet; thence North 79 ° 45' West 418.8 feet; thence North 35 ° 50' West 353.2 feet; thence North 66 ° 22' West 3099 feet to a point in the grade at the foot of a bluff of the existing road from the Niagara Springs Ranch to Wendell, provided that when a road is constructed by the party of the second part, or his assigns, over the right of way immediately hereinbefore granted, travel of said party of the second part, or his assigns, shall, insofar as travel over that part of Section 10, Township 9 South, Range 15 E., B. M., now owned or possessed by the estate of Jas. H. Mays, deceased, is concerned, shall be exclusively confined to said road when constructed, except in cases of emergency.

Together with the permanent right to use the private roads now existing across Sections 4, 3, 10, 2, 11 and 12, Township 9 South, Range 15 E. B. M., with the right in party of the second part to straighten or widen such presently existing roads but to a width in no event to exceed Thirty (30) feet.

Also together with such rights of way as are necessary for the development of the waters herein sold and conveyed, through, across, under, over and above all of those portions of Sections 2, 10, 11 and 12, Township 9 S., Range 15 E. B. M., and Sections 7 and 18, Township 9 S., Range 16 E. B. M., Gooding County, State of Idaho, which constitute a part of the estate of Jas. H. Mays, deceased, for the erection and continued maintenance of electric transmission lines of party of the second part, or his representatives, successors or assigns, with the necessary supports for said lines, avoiding in the erection of said transmission lines the orchard tracts as now planted, and for the additional purpose of constructing, installing and permanently maintaining such pipe or flume lines as are necessary for the development of said waters.

Excepting and reserving also from this sale the right to use the road as now existing across the lands herein sold, and, in the event of the necessity by party of the second part, or his successors or assigns, to abandon said road, then the right to the use of such new road to be constructed by party of the second part, his successors or assigns, across said lands.

And also excepting and reserving from this sale 26 second feet of water from what is known as Niagara Springs, also located on said farms, for irrigation and domestic purposes on the following ranches only, to-wit: Niagara Ranch and Dalquist Ranch, provided, however, that when said excepted and reserved waters are not desired or used for said purposes, they may be used by the party of the second part, or his representatives, successors or assigns, it being expressly understood that said party of the second part, or his representatives, successors or assigns, will not attempt to appropriate or use or apply to a beneficial use said excepted and reserved waters, except subject as hereinbefore otherwise specifically provided, provided that said excepted and reserved waters in this paragraph referred to may also be used to generate power or electricity for the sole and exclusive domestic uses, and for no other, of the owner, present and future, of said Dalquist ranch, said power or

tricity to be used only on said ranch, provided further that when the waters, or any part thereof, herein sold to party of the second part are developed for electrical uses, or purposes, then the right and privilege herein reserved to so generate electricity for domestic uses shall automatically cease. It shall be expressly stipulated in deeds of conveyance to party of the second part that such covenant by party of the second part not to attempt to appropriate or use or apply to a beneficial use said excepted and reserved waters except as hereinbefore otherwise specifically provided shall be and shall be construed and considered as a covenant running with the land and shall not be construed as a mere personal covenant.

Subject to the ordinary property taxes and assessments levied against premises for the year 1928 and subsequent years.

and covenants

*together with all the tenements, hereditaments, and appurtenances whatsoever to the same belonging or in any wise appertaining.*

*TO HAVE AND TO HOLD, All and singular the above mentioned and described premises, together with the appurtenances, unto the said part y of the second part, h is heirs and assigns forever.*

*IN WITNESS WHEREOF, The said part ies of the first part,* the executors of the last will and testament and estate of Jas. H. Mays, deceased, *as aforesaid, have hereunto set* their *hands and seals the day and year first above written.*

SIGNED, SEALED AND DELIVERED IN THE PRESENCE OF

A. S. Henson (Seal)

Walter F. Ivy, (SEAL)

Executors of the

the last will and testament and

Estate of Jas. H. Mays, deceased.

36 7033

36 7033

State of Idaho, } ss.
County of GOODING }

On this 16th day of - - - - July - - - - - - in the year 19 28, before me - - - - - a - - - - - Notary Public - - - - - - in and for said County, personally appeared A. S. Henson

known to me to be the person whose name is subscribed to the within instrument, and acknowledged to me that - he - executed the same as executor of the last will and testament and estate of Jas. H. Mays, deceased.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal, the day and year in this certificate first above written.

A. S. Henson

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

STATE OF TENNESSEE, } ss.
County of Hamblen. }

On this 16th day of July, in the year 1928, before me, Paul Pierce, a Notary Public in and for said State, personally appeared Walter T. Ivy, known to me to be the person whose name is subscribed to the within instrument, and acknowledged to me that he executed the same as an executor of the last will and testament and estate of Jas. H. Mays, deceased

IN WITNESS WHEREOF, I have hereunto set my hand affixed my official seal, the day and year in this certificate first above written.

Paul Pierce

Notary Public in and for the State of Tennessee, residing at Morristown, Tenn.

My Commission Expires April 4th 1932

No. 16459

DEED OF

A. S. Henson et al

— TO —

Frank A. Reed

Dated ..... 19

State of Idaho, } ss.
County of Gooding }

I hereby certify that this instrument was filed for record at the request of A. S. Henson at 45 minutes past 11 o'clock A.M., this 16 day of July A. D. 1928 in my office, and duly recorded in Book 22 of Deeds at page 162.

Fannie A. Ewing Ex-Officio Recorder.

By A. M. Miller Deputy.

Fees, $ 6.60

1 cre Statesman Shop, Boise, Idaho. 305

# QUITCLAIM DEED

THIS INDENTURE, made the 16th day of July, in the year of our Lord one thousand nine hundred and twenty-eight, between A. S. HENSON and Nina E. HENSON, his wife and WALTER T. IVY and Bonnie E. IVY, his wife, of Gooding County, State of Idaho the parties of the first part, and FRANK R. REID of New York City, State of New York the party of the second part.

WITNESSETH, that the said parties of the first part, for and in consideration of the sum of One Dollar lawful money of the United States of America and other valuable considerations in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, do by these presents remise, release and forever quitclaim, unto the said party of the second part, and to his heirs and assigns, all those certain lots, pieces or parcels of land, situate, lying and being in Gooding County, State of Idaho, bounded and particularly described as follows, to-wit:

NIAGARA SPRINGS-- Tract No. 1: A tract of land lying within Section 10, Township 9 South, Range 15 East, Boise Meridian, Gooding County, Idahoo described as follows:

Beginning at the section corner common to Sections 2, 3, 10 and 11 of Township 9 South, Range 15 E. B. M., as shown on the official plat of the U. S. Dependent Resurvey dated April 17, 1918; thence South 89 ° 51' West upon and along the North Section line of said Section 10 a distance of 427.9 feet; thence South a distance of 1863.8 feet to a point on the right bank of Snake River in the said Section 10; thence continuing South to the thread of Snake River; thence upstream along the thread of said Snake River to the Section Line between said Sections 10 and 11; thence North 8 ° 44' West along and upon said Section line to the meander corner on right bank of Snake River between said Sections 10 and 11; thence North upon and along the section line between said Sections 10 and 11 a distance of 2073.1 feet to the Section corner common to said Sections 2, 3, 10 and 11, the point of beginning, containing 20 acres more or less.

NIAGARA SPRINGS--Tract No. 2: A tract of land lying within Section 11, Township 9 South, Range 15 East, Boise Meridian, Gooding County, Idaho, described as follows:

Beginning at the section corner common to Sections 2, 3, 10 and 11 of Township 9 South, Range 15 East, Boise Meridian, as shown on the official plat of the U. S. Dependent Resurvey dated April 17, 1918; thence North 89 ° 44' East upon and along the North Section Line of said Section 11, 564 feet; thence South 8 ° 14' West 1297.9 feet; thence South 25 ° 47' East 847.7 feet to a point on the right bank of Snake River in said Section 11; thence continuing South 25 ° 47' East to the thread of Snake River; thence downstream along and upon the thread of said Snake River to the Section line between said Sections 10 and 11; thence North 8 ° 44' West upon and along said section line to meander corner on the right bank of Snake River between said Sections 10 and 11; thence North along and upon the Section line between said Sections 10 and 11, a distance of 2073.1 feet to the section corner common to said Sections 2, 3, 10 and 11, the point of beginning, containing 25.3 acres, more or less.

CRYSTAL SPRINGS--Tract No. 3: A tract of land lying within Section 12, Township 9 South, Range 15 E. B. M., Gooding County, Idaho, described as follows:

Beginning at a point from which the section corner common to Sections 1, 2, 11 and 12 of Township 9 South, Range 15 East, Boise Meridian bears north 39 ° 48' West 1095.5 feet; thence south 79 ° 27' East, 1731.1 feet to an angle point which is on the northerly line of Lot 12, as shown on the official plat of

the U. S. Dependent Resurvey dated April 17, 1918; of Sections 2, 3, 10, 11 and 12 of Township 9 South, Range 15 East, Boise Meridian from which official angle point #3 lies 39 ° 09' L. 832.7 feet distant and the W. C. to angle point #4 lies 140 ° 51' R. 257.0 feet distant; thence continuing from said angle point South 66 ° East 1683.3 feet to an angle point, from which the North Quarter Section corner of said Section 12 bears North 35 ° 37' West 2223 feet distant; thence South 40 ° 51' West 1346.3 feet to a point on the right bank of Snake River in Lot 15 of said Section 12; thence continuing South 40 ° 51' West to the thread of said Snake River; thence downstream upon and along the thread of said Snake River to a point which is South of the real point of beginning; thence North to a point on the right bank of said Snake River; thence continuing North 882.1 feet to the point of beginning, containing 79.6 acres, more or less.

TOGETHER, With all and singular the tenements, hereditaments and appurtenances thereunto belonging or in anywise appertaining, and the reversion and reversions, remainder and remainders, rents issues and profits thereof.

TO HAVE AND TO HOLD ALL and singular, the said premises together with the appurtenances, unto the said party of the second part, and to his heirs and assigns forever.

A. S. Henson
Verna E Henson
x Walter T. Ivy.
x Mrs. Bonnie E. Ivy

STATE OF IDAHO }
County of Gooding } SS.

On this 20th day of July, in the year 1928, before me, the undersigned, a Notary Public in and for the said County personally appeared A. S. HENSON and Verna E. HENSON, husband and wife known to me to be the persons whose names are subscribed to the within instrument, and acknowledged to me that they executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate above written.

O. T. Luttrell
Notary Public in and for the State of Idaho, residing at Gooding, Ida.

STATE OF TENNESSEE }
County of Hamblen } SS.

On this 16th day of July, in the year 1928, before me, the undersigned, a Notary Public in and for said County, personally appeared WALTER T. IVY and Bonnie E. IVY, husband and wife, known to me to be the persons whose names are subscribed to the within instrument, and acknowledged to me that they executed the same.

36 7033

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

THIS INDENTURE, Made this 7th day of January, 1931, between Frank A. Reid, a bachelor, of New York City, New York, party of the first part, and Idaho Power Company, a corporation of the State of Maine, the party of the second part,

WITNESSETH that the said party of the first part, for and in consideration of the sum of One and no/100 ($1.00) Dollar lawful money of the United States to him in hand paid by the said party of the second part, and other valuable considerations, receipt of which is hereby acknowledged, by these presents grants and conveys unto the said party of the second part and to its successors and assigns forever the following property and rights and interests therein, all located in the County of Gooding, State of Idaho, to-wit:

> All the lands, waters, premises, property (real, personal and mixed), and all rights and interests of every kind and description therein, as described, mentioned and set out in that certain executors' deed dated July 16, 1928, in the estate of Jas. H. Mays, deceased, in the probate court of Gooding County, State of Idaho, as said deed is recorded in Book 22 of Deeds, at Page 162, of the records of the County Recorder of Gooding County, Idaho.

TOGETHER with all and singular the tenements, hereditaments and appurtenances of whatsoever kind or nature belonging, or in anywise appertaining, to the aforesaid property and rights and interests therein, or any part thereof, with the reversion and reversions, remainder and remainders, rents, issues, income and profits thereof, and all the estate, right, title, interest and claim whatsoever, at law as well as in equity, which Frank A. Reid now has, or may hereafter acquire, in and to the aforesaid property, and every part and parcel thereof.

TO HAVE AND TO HOLD, All and singular the above mentioned or described property, together with the appurtenances, unto the party of the second part and to its successors and assigns forever, subject to all the

terms, provisions and covenants which grantee herein accepts and agrees to be bound by, as set forth, mentioned and described in said deed.

IN WITNESS WHEREOF, the said party of the first part has hereunto set his hand and seal the day and year first above written.

WITNESS: Samuel W. Murphy — Frank A. Reid (SEAL)

STATE OF NEW YORK, )
) ss.
COUNTY OF New York )

On this 7th day of January, 1931, before me, Mary J. Gulfoyle, a Notary Public in and for said State and County, personally appeared Frank A. Reid, a bachelor, known to me to be the person whose name is subscribed to the 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.

(NOTARIAL SEAL)

Mary J. Gulfoyle
Notary Public
Residing at: 2866 Heath Ave., N.Y.
My Commission expires: March 30, 1931.

NOTARY PUBLIC, BRONX COUNTY
New York County Clerk's No. 203, Register's No. 16183
Bronx County Clerk's No. 134, Register's No. 3140
Commission Expires March 30, 1931

36 7033

EXHIBIT 2

LICENSE AGREEMENT

THIS AGREEMENT, made this 30th day of July, 1953, by and between IDAHO POWER COMPANY, a corporation having its principal office and place of business at Boise, Idaho, hereinafter called "Company", and the STATE OF IDAHO, acting by and through its DEPARTMENT OF FISH AND GAME, as Licensee, hereinafter called "Department", WITNESSETH:

WHEREAS, the Company is the owner of certain lands in Gooding County, Idaho, together with the springs and waters commonly known as Niagara and Crystal Springs, which rise upon, and thence flow across said lands to and into Snake River, said properties including the following:

NIAGARA SPRINGS--Tract No. 1: A tract of land lying within Section 10, Township 9 South, Range 15 East, Boise Meridian, Gooding County, Idaho, described as follows:

Beginning at the section corner common to Sections 2, 3, 10 and 11 of Township 9 South, Range 15 E.B.M., as shown on the official plat of the U. S. Dependent Resurvey dated April 7, 1918; thence South 89° 51' West upon and along the North Section line of said Section 10 a distance of 427.9 feet; thence South a distance of 1863.8 feet to a point on the right bank of Snake River in the said Section 10; thence continuing South to the thread of Snake River; thence upstream along the thread of said Snake River to the Section Line between said Sections 10 and 11; thence North 8° 44' West along and upon said Section line to the meander corner on right bank of Snake River between said Sections 10 and 11; thence North upon and along the Section line between said Sections 10 and 11 a distance of 2073.1 feet to the Section corner common to said Sections 2, 3, 10 and 11, the point of beginning, containing 20 acres, more or less.

NIAGARA SPRINGS--Tract No. 2: A tract of land lying within Section 11, Township 9 South, Range 15 East, Boise Meridian, Gooding County, Idaho, described as follows:

Beginning at the section corner common to Sections 2, 3, 10 and 11 of Township 9 South, Range 15 East, Boise Meridian, as shown on the official plat of the U. S. Dependent Resurvey dated April 17, 1918; thence North 89° 44' East upon and along the North Section line of said Section 11, 564 feet; thence South 8° 14' West 1297.9 feet; thence South 25° 47' East 847.7 feet to a point on the right bank of Snake River in said Section 11; thence continuing South 25° 47' East to the thread of Snake River; thence downstream along and upon the thread of said Snake River to the Section line between said Sections 10 and 11; thence North 8° 44' West upon and along said Section line to meander corner on the right bank of Snake River between said Sections 10 and 11; thence North along and upon the Section line between said Sections 10 and 11, a distance of 2073.1 feet to the Section corner common to said Sections 2, 3, 10 and 11, the point of beginning, containing 25.3 acres, more or less.

Also together with the following road right of way: Beginning at the section corner common to Sections 2, 3, 10 and 11, Township 9 South, Range 15 E.B.M.; thence South 89° 51' West 427.9 feet; thence South 949.5 feet to the real point

of beginning, which is on the west boundary of Tract No. 1 of the Niagara Springs lands hereinbefore described; thence North 74° 48' West 1208.8 feet; thence North 52° 15' West 472.6 feet; thence North 79° 45' West 418.8 feet; thence North 35° 50' West 353.2 feet; thence North 66° 22' West 3099 feet to a point in the grade at the foot of a bluff of the existing road from the Niagara Springs Ranch to Wendell.

Together with the permanent right to use the private roads now existing across Sections 4, 3, 10, 2, 11 and 12, Township 9 South, Range 15 E.B.M., with the right in Owner to straighten or widen such presently existing roads but to a width in no event to exceed thirty (30) feet.

Together with all rights or interest on July 16, 1928, possessed or owned or acquired by the estate of Jas. H. Mays, deceased, or of which Jas. H. Mays died, seized or possessed, in and to all the springs and in and to all the water or waters rising from, having its or their origin in, or flowing under or over, or being under or on, or which may be developed on the said land, or lands.

CRYSTAL SPRINGS--Tract No. 3: A tract of land lying within Section 12, Township 9 South, Range 15 E.B.M., Gooding County, Idaho, described as follows:

Beginning at a point from which the section corner common to Sections 1, 2, 11 and 12 of Township 9 South, Range 15 East, Boise Meridian bears North 39° 48' West 1095.5 feet; thence South 79° 27' East, 1731.1 feet to an angle point which is on the northerly line of Lot 12, as shown on the official plat of the U. S. Dependent Resurvey dated April 17, 1918; of Sections 2, 3, 10, 11 and 12 of Township 9 South, Range 15 East, Boise Meridian from which official angle point #3 lies 39° 09' L. 832.7 feet distant and the W. C. to angle point #4 lies 140° 51' R. 257.0 feet distant; thence continuing from said angle point South 66° East 1683.3 feet to an angle point, from which the North Quarter Section corner of said Section 12 bears North 35° 37' West 2223 feet distant; thence South 40° 51' West 1346.3 feet to a point on the right bank of Snake River in Lot 15 of said Section 12; thence continuing South 40° 51' West to the thread of said Snake River; thence downstream upon and along the thread of said Snake River to a point which is South of the real point of beginning; thence North to a point on the right bank of said Snake River; thence continuing North 882.1 feet to the point of beginning, containing 79.6 acres, more or less.

Together with the permanent rights to use the private roads now existing across Sections 4, 3, 10, 2, 11 and 12, Township 9 South, Range 15 E.B.M., with the right in Owner to straighten or widen such presently existing roads but to a width in no event to exceed thirty (30) feet.

Together with all rights or interest on July 16, 1928, possessed or owned or acquired by the estate of Jas. H. Mays, deceased, or of which Jas. H. Mays died, seized or possessed, in and to all the springs and in and to all the water or waters rising from, having its or their origin in, or flowing under or over, or being under or on, or which may be developed on the said land, or lands.

WHEREAS, said lands and waters, with proper supervision and development, would provide ideal wildlife and recreational areas for use by

the public, and the Company is desirous of making said areas available for such purposes as herein provided for; and

WHEREAS, the Department is experienced in the development and supervision of such areas, and has indicated to the Company that if the Company would make said properties available to the Department, for wildlife and public recreational purposes, the Department would enter upon the administration and supervision of said lands for such purposes, so as to provide a suitable recreational, wildlife and fishing area for the general public, which the Company feels would assure the maximum development and public use and enjoyment of said properties;

NOW THEREFORE, the Company gives to the Department, for the public uses and purposes herein stated, the license and permit to use, maintain and supervise its said Niagara Springs and Crystal Springs properties, above described, for recreational, wildlife, fishing, boating and other related uses by the general public, in a manner consistent with the funds available to the Department for the customary development of such or like areas, which license and permission shall continue until terminated by the Company, in accordance with the terms and conditions hereinafter set forth:

(a) The Department, working with or through State and local agencies, may provide and maintain an adequate road or roads to said areas;

(b) The Department may install and maintain suitable recreational facilities such as tables, benches, lavatories, piers and river boat-landings, etc., for use by the public; provided, that all toilets and lavatories shall be situated and constructed so as to prevent polution of waters, and in accordance with modern sanitary and safety standards;

(c) The Department will superintend and manage said properties and facilities so as to keep the same in a neat, clean and healthful condition, and will not allow or perform any acts of nuisance or waste, or which would destroy or damage any of said properties, or the scenic attractions thereof, nor permit any other persons to use or divert from

said premises any of the springs, waters or water rights of the Company. The removal or cutting of branches, trees and shrubbery shall not be permitted, except as the Department and the Company shall agree upon a program therefor, in furtherance of the purposes of this agreement. The building of campfires shall be limited to open areas specified by the Department, having due regard to the public safety and fire damage to the areas involved.

(d) The Department will keep open for public use the parts of said lands and premises best suited to recreational purposes and the other uses herein provided for, and, to the extent possible, will provide adequate stocking of fish for the ponds and streams at said sites;

(e) The Department and the Company will cooperate to provide, install and maintain suitable signs on each of the two sites indicating that the premises have been made available for public use through the mutual cooperation of the Idaho Fish and Game Department and the Idaho Power Company;

(f) The Department shall have the full use, management and supervision of said properties for the purposes herein set forth, and may act in cooperation with other public groups and agencies so as to provide for the fullest development, utilization and protection of said sites for public recreation and enjoyment, in accordance with the terms of this Agreement; provided that the Department will not use or permit the use of any of said properties by others for commercial or for any unlawful purposes.

(g) It is understood and agreed that the Company may terminate the license and permission herein granted in the event of violation of the provisions of this agreement, or at any time upon six months' notice given to the Department in writing; provided, that in the event of termination the Company agrees that it will reimburse the Department for the reasonable depreciated value of all improvements and facilities which have been placed upon the premises, to the extent the same are not capable of being salvaged and removed, excepting therefrom any road or bridge improvements.

IN WITNESS WHEREOF, the parties have executed this license agreement on the day and year first hereinabove written.

IDAHO POWER COMPANY

By _____
Vice President

(CORPORATE SEAL)

ATTEST:

_____
Secretary

APPROVED
Asst. Dept.
Dept.

THE STATE OF IDAHO, Acting By and Through

IDAHO FISH AND GAME DEPARTMENT

By _____ 7/30/53.
Director



36 7033

STATE OF IDAHO )
) ss
County of Ada )

On this 30th day of July, 1953, before me, Erma L Dvorak, a Notary Public in and for the State of Idaho, personally appeared A C INMAN and JAMES E BRUCE, to me personally known, who being duly sworn, did say that they are respectively the Vice President and the Assistant Secretary of the corporation that executed the within instrument, and acknowledged to me that such corporation executed the same as the free act and deed of said corporation.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal, the day and year in this certificate first above written.

Erma L Dvorak
Notary Public, residing at Boise, Idaho
My Commission expires May 9, 1956.

(Notarial Seal)



36 7033

STATE OF IDAHO )
) ss
County of Ada )

On this 30th day of July, 1953, before me, Anna Mastro, a Notary Public in and for the State of Idaho, personally appeared T B MURRAY, to me personally known, who being duly sworn, did say that he is the Director of the Department of Fish and Game of the State of Idaho, and acknowledged to me that he executed the foregoing instrument for and on behalf of the State of Idaho.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal, the day and year in this certificate first above written.

Anna Mastro
Notary Public residing in Boise, Idaho
My Commission expires 6/1, 1954

(Notarial Seal)



36 7033

RECEIVED
NOV 27 1968
Department of Reclamation

BEFORE THE STATE OF IDAHO

DEPARTMENT OF RECLAMATION

IN THE MATTER OF THE APPLICATION )
FOR PERMIT NO. 36-7033 IN THE NAME )
OF JOSEPH L. BURDEN )

PROTEST

COMES NOW, the Idaho Fish and Game Department and files herewith its protest to application No. 42653 for Permit No. 36-7033, which protest is based upon the following grounds:

I

That said application is in contravention of Section 42-212, Idaho Code, in that Crystal Springs, the springs named as the source of water supply in application No. 42653 arises entirely upon lands owned by the Idaho Power Company and managed under exclusive license by the Idaho Fish and Game Department; that the applicant has not requested nor obtained the written permission of the Idaho Power Company, the owner of said lands and waters, nor the permission of the licensee thereof, for the diversion and appropriation of said waters; that Section 42-212, Idaho Code, prohibits the State of Idaho Department of Reclamation from issuing or granting permits to divert or appropriate the waters of any spring in the State of Idaho which is located or situated wholly or entirely upon the lands of another person or corporation owning said land, without his or its written permission, executed and acknowledged as required for the conveyances of real estate.

DATED in Boise, Idaho, this 26th day of November, 1968.

IDAHO FISH AND GAME COMMISSION

By _____
Its Special Counsel

36 7033



DON SAMUELSON, Governor
COMMISSION
GLENN STANGER, Idaho Falls
R. J. HOLMES, Twin Falls
ARLIE JOHNSON, Boise
WILLIAM B. DURBON, Moscow
RAY SIMS, Bonners Ferry

# IDAHO FISH AND GAME DEPARTMENT

JOHN R. WOODWORTH, Director

POST OFFICE BOX 25
600 SOUTH WALNUT STREET
BOISE, IDAHO 83707

August 27, 1968

RECEIVED

AUG 28 1968

Department of Reclamation

Department of Reclamation
Statehouse
Boise, Idaho

Attention Mr. Donald E. McEldowney

Gentlemen:

We note from a copy of an application for a permit to appropriate public waters in the State of Idaho submitted by Mr. Joseph L. Burden, who lists his post office address in care of H. F. LaMoyne, Twin Falls, Idaho, that he has applied for appropriation of 50 cfs of water from Crystal Springs, a tributary of Snake River in Gooding County, Idaho. The application is for a permit to appropriate water for fish cultural purposes.

Our Department is very much concerned about diversion of water from Crystal Springs because a reduction in the flow of water into the river at this point would greatly reduce the attraction water for fish and thus reduce the quality of fishing. That portion of Snake River where Crystal Springs and Niagara Springs enter the river is an exceptionally popular fishing area and supports many man-days of fishing each year. The State owns considerable river frontage between the two springs; consequently, public access is no problem.

If a portion of the large inflow of fresh water is transferred elsewhere, then the quality of the fishing likewise declines.

Sincerely,

IDAHO FISH AND GAME DEPARTMENT

John R. Woodworth

John R. Woodworth
Director

36 7033

RECEIVED
AUG 12 1968
Department of Reclamation

BEFORE THE STATE OF IDAHO

DEPARTMENT OF RECLAMATION

| | | |
|---|---|---|
| IN THE MATTER OF THE | ) | |
| | ) | PROTEST |
| APPLICATION NO 42653 | ) | |

COMES NOW, Idaho Power Company and files herewith its Protest to Application No 42653, which Protest is based upon the following grounds:

I

That Crystal Springs, the springs named as the source of water supply in Application No 42653, arises entirely upon lands owned by Idaho Power Company, and the applicant has not requested nor obtained the written permission of Idaho Power Company, the owner of said land, for the diversion and appropriation of said waters.

Dated at Boise, Idaho, this 12th day of August, 1968.

IDAHO POWER COMPANY

By H R Moore
Vice President
Moore

RECEIVED
AUG 12 1968
Department of Reclamation

BEFORE THE STATE OF IDAHO

DEPARTMENT OF RECLAMATION

IN THE MATTER OF THE )
) PROTEST
APPLICATION NO 42653 )

COMES NOW, Idaho Power Company and files herewith its Protest to Application No 42653, which Protest is based upon the following grounds:

I

That Crystal Springs, the springs named as the source of water supply in Application No 42653, arises entirely upon lands owned by Idaho Power Company, and the applicant has not requested nor obtained the written permission of Idaho Power Company, the owner of said land, for the diversion and appropriation of said waters.

Dated at Boise, Idaho, this 12th day of August, 1968.

IDAHO POWER COMPANY

By D C Moore
Vice President

RECEIVED

## NOTICE OF APPLICATION FOR WATER

Notice is hereby given that Joseph L. Burden, % H. E. LeMoyne, 1130 Lawndale Drive, Twin Falls, Idaho, has on July 10, 1968 applied for permit to divert 50 cubic feet per second of water from a spring, a tributary of Snake River under application No. 36-7033. Water will be diverted by a headbox and pipe within Lot 3, Sec. 12, Twp. 9 S., Rge. 15 E., B.M. in Gooding County and is to be used from January 1 to December 31 for fish propagation in the [redacted], Sec. 12, Twp. 9 S., Rge. [redacted] B.M.

Any protest against this application must be filed with the Department of Reclamation within ten days from the last date of publication of this notice.

R. KEITH HIGGINSON
State Reclamation Engineer.

7-25-2tc

County of Gooding } ss
STATE OF IDAHO }

I, Myrtle Schrunk being duly sworn, say that I am the Editor of THE WENDELL IRRIGATIONIST, a weekly newspaper of general circulation published at Wendell, in the County of Gooding, State of Idaho; that the attached printed copy hereto annexed was published in THE WENDELL IRRIGATIONIST, in the regular edition thereof and not in a supplement, for 2 consecutive weeks, commencing on the 25 day of July, ....., and ending on the 1 day of Aug., 1968

Myrtle Schrunk 1968
(Title)

Subscribed and sworn to before me this 7 day of August, 1968

Notary Public in and for the County of Gooding, State of Idaho
My commission expires 9-10, 1971

36 7033

— STATEMENT —

# Wendell Irrigationist

## Wendell, Idaho

Aug 6, 1968

**Account of**

Dept of Reclamation
107 State House
Boise, Ida.

**Advertising for the month of**

| Weeks of Month | 1st | 2nd | 3rd | 4th | 5th | Total | Amount |
|---|---|---|---|---|---|---|---|
| Display, Inches | | | | | | | |
| Classified Ads Or Readers | Permit No. 36-7033 (2 4 times) | | | | | | 6.47 |

**Job Printing and Supplies** **(prev. bal.)**

I hereby cetify that the foregoing account is just and correct, that the amount claimed is legally due, after allowing all just credits, and that no part of same has been paid.

Myrtle Schrunk.

A charge of 1% per month will be made on all accounts over 30 days old.

36 7033

— STATEMENT —

# Wendell Irrigationist

## Wendell, Idaho

Aug. 6, 1968

**Account of**

Dept of Reclamation
607 State House
Boise, Idaho

**Advertising for the month of**

| Weeks of Month | 1st | 2nd | 3rd | 4th | 5th | Total | Amount |
|---|---|---|---|---|---|---|---|
| Display, Inches | | | | | | | |
| Classified Ads Or Readers | Permit No. 36- | 7033 | (29 & Trans) | | | | 6.47 |

**Job Printing and Supplies** (prev. bal.)

I hereby certify that the foregoing account is just and correct, that the amount claimed is legally due, after allowing all just credits, and that no part of same has been paid.

Myrtle Schrunk

A charge of 1% per month will be made on all accounts over 30 days old.

36 7033

July 6, 1983

Dept. of the Army
Attn: M. G. Brammer, P.E.
Chief, Engineering Div.
Walla WallaDDsst., Corps of Engineers
Bldg. 602, City-County Airport
Walla Walla, WA 99362

RE: Water Rights at Crystal Springs

Dear Mr. Brammer:

Your letter dated June 22, 1983, concerning questions about the Corps of Engineers' water rights at Crystal Springs, has been referred to me for response. I will address the questions in the ofder they were presented.

First, regarding the acre-foot limitation applied to water right licenses Nos. 36-7033 and 36-7164, please be advised that this Department considers eadh water right to have three controlling parameters: rate of flow, total volume diverted, and consumptive use. In many situations, only the first of these parameters has been quantified; however, as competition for water supplies in Idaho has increased, there has been a need to more closely examine the latter two parameters to resolve disputes between competing users.

Total volume diverted and consumptive use are diffédult to quantify for fish propagation facilities. However, an assumption can be made that these parameters are usually proportionate to the total volume of the facilitiées Therefore, the "facility volume" is identified on the water right license to indicate the volume of fish ponds functional at thettime the facility is examined. In the case of water right licenses Nos. 36-7033 and 36-7164, the examiner found 32 ponds, each measuring about 150 feet by 30 feet by 4 feet, for a total volume of 13.2 acre-feet. The intent of the corresponding condition of approval on the licenses is to not allow the water diverted under the licenses to be used in more than 32 ponds, for the protection of junior appropriators.

To respond to your second question, yes it is the intent of this Department to quantify the volume of the facility described by water right permit No. 36-7653. However, this volume will not be quantified until (1) proof

of beneficial use is submitted, (2) a field exam is conducted, and (3) a license is issued, because the requirement to submit facility plans was not in effect at the time the permit was issued and there is no indication currently in the file regarding facility size.

I hope that this information will serve to clarify the position of this Department regarding water rights for fish propagation purposes. Please advise this office if you desire further clarification.

Sincerely,

DAVID R. TUTHILL, JR., P.E.
Supervisor, Water Allocation Section

DRT:sc

DEPARTMENT OF THE ARMY
WALLA WALLA DISTRICT, CORPS OF ENGINEERS
BUILDING 602, CITY-COUNTY AIRPORT
WALLA WALLA, WASHINGTON 99362

RECEIVED
MAY 18 1981
Department of Water Resources

REPLY TO
ATTENTION OF:
NPWRE
Crystal Springs Fish Hatchery
Tract 600

14 May 1981

Mr. David R. Tuthill, Jr., P. E.
Supervisor, Water Allocation Section
State of Idaho
Department of Water Resources
Statehouse Mail
Boise, ID 83720

Dear Mr. Tuthill:

The Department of the Army, Corps of Engineers, has acquired the Crystal Springs Fish Hatchery on behalf of the United States of America from Kenneth and Brenda Ellis. As part of the conveyance, Mr. and Mrs. Ellis and Valley Trout Farms, Inc., assigned three water rights on Crystal Springs to the United States, License 36-7033, License 36-7164, and Application for Permit No. 36-7653.

In accordance with our telephone conversation of 13 May, it is requested that Application for Permit No. 36-7653 be assigned to the United States of America and that the assignment of License 36-7033 and 36-7164 to the United States of America be noted on your records. In support of the assignments, the following material is submitted:

a. Assignment of Permit (Permit No. 36-7653).

b. True copy of Assignment (Licenses 36-7033 and 36-7164).

c. True copy of Certification (Minutes of Valley Trout Farms, Inc., Special Meeting).

d. True copy of Minutes of a Special Meeting of the Board of Directors of Valley Trout Farms, Inc.

e. True copy of Warranty Deed.

We have asked Mr. Robert Weaver, Attorney for Valley Trout Farms, Inc., to forward a copy of the power of attorney for the Assignment of Permit directly to you.

MICROFILMED

NPWRE 14 May 1981

Mr. David R. Tuthill, Jr., P. E.

Upon completion of the assignment of permit No. 36-7653 to the United States of America, please advise us of the status of the permit and the steps remaining to perfect the water license.

Sincerely,

Allen L. Baim

ALLEN L. BAIM
Chief, Real Estate Division

5 Incl
As stated

DECLASSIFIED

State of Idaho

Department of Water Resources

ASSIGNMENT OF PERMIT

I, Valley Trout Farms, Inc., hereby assign to United States of America.

of Army Corp of Engineers Box 602 City County Airport, Walla Walla, WA 99362
Address

CHECK ONE

☒ All my right, title, and interest in and to Permit No. 36-7653 to appropriate the public waters of the State of Idaho.

☐ The following described portion of my right, title, and interest in and to Permit No. _____ to appropriate the public waters of the State of Idaho.

(Describe that portion of the permit being assigned by listing the acreage within each 40 acre subdivision, the point of diversion and the amount of water in cubic feet per second for direct diversion, or acre feet for storage)

Made this 4th day of February, 1981.

Robert A. Williams
Permit Holder
attorney for Valley Trout Farms and Father of attorney for the Corp.
Spouse of Permit Holder

State of Idaho )
County of Twin Falls ) ss.

On this 4th day of February, 1981, personally appeared before me the signer(s) of the above instrument, who duly acknowledged to me that he (she) (they) executed the same.

seal

Notary Public residing at
Hansen

My commission expires:
[illegible]

MICROFILMED

# A S S I G N M E N T

KENNETH S. ELLIS and BRENDA ELLIS, husband and wife, assign all of their right, title and interest in and to water license 36-7033 and 36-7164 to UNITED STATES OF AMERICA.

DATED This 18th day of March, 1981.

Kenneth S. Ellis
KENNETH S. ELLIS

Brenda Ellis
BRENDA ELLIS

STATE OF IDAHO )
) ss.
County of Twin Falls )

On this 18 day of March, 1981, before me, the undersigned, a Notary Public in and for said County and State, personally appeared KENNETH S. ELLIS and BRENDA ELLIS, husband and wife, known to me to be the persons who executed the foregoing instrument and acknowledged to me that they 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.

Notary Public for Idaho
Residing at Buhl, Idaho

Allen L. Rasin

Attorney at Law
130 N. Broadway
Buhl, Idaho 83316
Phone (208) 543-8258

# C E R T I F I C A T I O N

I HEREBY CERTIFY That I am the duly elected, qualified and acting Secretary of VALLEY TROUT FARMS, INC.; that the foregoing is a true and correct copy of the minutes of the proceedings of a special meeting of the Board of Directors of VALLEY TROUT FARMS, INC. at its office on the 4th day of February, 1981, at which meeting all directors were present, contituting a quorum of said Board of Directors; that the resolution of which said foregoing is a copy has not been recinded or revoked.

DATED this 4th day of January, 1981.

Brenda Ellis

Secretary

MICROFILMED

MINUTES OF A SPECIAL MEETING OF THE BOARD OF DIRECTORS

OF VALLEY TROUT FARMS, INC.

Buhl, Idaho February , 1981

A special meeting of the Board of Directors of Valley Trout Farms, Inc., was held in Buhl, Idaho, on February , 1981.

Present were the following directors:

Kenneth S. Ellis
Brenda Ellis

being all of the directors of the corporation. Kenneth S. Ellis, President of the corporation acted as Chairman of the meeting and Brenda Ellis, Secretary of the corporation, acted as Secretary of the meeting.

The President announced the purpose of the meeting was to discuss the proposed sale of the Crystal Springs fish hatchery to the United States of America through the Corps of Engineers. After discussion, the following resolution was made by Kenneth S. Ellis, seconded by Brenda Ellis and upon vote passed unanimously:

RESOLVED:

Valley Trout Farms, Inc., agrees to sell any interest it may have in the fish hatchery facilities known as Crystal Springs and any right it may have in State of Idaho water permit No. 36-7653 and State of Idaho water licenses No.s 36-7033 and 36-7164 to the United States of American through the Corps of Engineers.

The President and Secretary are hereby authorized to execute on behalf of the corporation any and all documents necessary to complete the transfer of the real property and improvements and the water permit and water licenses hereinabove referred to.

There being no further business to come before the meeting, the same was adjourned.

Brenda Ellis
Secretary

APPROVED:

Kenneth S. Ellis
President

This is a True Copy
By Allen N. Shaw

MICROFILMED

WAIVER OF NOTICE OF SPECIAL MEETING OF BOARD OF DIRECTORS

We, the undersigned, being all of the Directors of Valley Trout Farms, Inc., do hereby severally waive notice of the time, place and purpose of the meeting of the Board of Directors of said corporation held on the 4th day of February, 1981, and consent to the same being held on that day, being the meeting referred to in the foregoing minutes; and we further consent and ratify the transaction of all business coming before the meeting as aforesaid and agree that all business transacted at said meeting is valid and legal as though notice of said meeting has been duly given.

DATED This 4th day of February, 1981.

MICROFILMED

original letter in file

36-7653

Lower Snake River
Fish & Wildlife
Compensation Plan,
PROJECT: Crystal Springs
Hatchery
Tract 601 and 601E

WARRANTY DEED

FOR AND IN CONSIDERATION of the sum of THREE MILLION FOUR HUNDRED TWENTY-FIVE THOUSAND AND NO/100 ----------DOLLARS ($ 3,425,000.00 ) in hand paid, receipt of which is hereby acknowledged KENNETH S. ELLIS AND BRENDA ELLIS, Husband and Wife, Whose Address is Route 3, Box 50, Buhl, ID 83316, and VALLEY TROUT FARMS, INC., an Idaho Corporation Whose Principal Place of Business is Route 3, Box 50, Buhl, ID 83316 have granted, bargained, and sold and by these presents do hereby grant, bargain, sell, and convey unto the UNITED STATES OF AMERICA and its assigns, all the following bounded and described real property situate in the County of Twin Falls in the State of Idaho:

Tract 600

A tract of land lying in portions of Government Lot 7 and the northeast quarter of the southeast quarter of Section 11; the southwest quarter of the northwest quarter and the northwest quarter of the southwest quarter of Section 12, all in Township 9 South, Range 15 East of the Boise Meridian, Twin Falls County, Idaho, and being more particularly described as follows:

Commencing at the southeast corner of said Section 11;

thence North 07°09'05" West, 1,383.37 feet to the POINT OF BEGINNING;

thence North 07°01'47" East, 780.97 feet;

thence North 84°24'21" West, 22.22 feet;

thence North 53°44'40" West, 717.69 feet;

thence North 83°07'31" West, 284.71 feet;

thence North 10°38'43" East, 411.55 feet to the high water line on the southerly (left) bank of the Snake River;

thence southeasterly along the southerly (left) bank of the Snake River the following courses and distances:

South 83°45'43" East, 816.89 feet;
South 79°02'15" East, 395.38 feet;
South 53°01'23" East, 563.77 feet;
South 33°34'55" East, 143.37 feet;
South 50°33'57" East, 75.83 feet;

thence South 27°06'46" West, 464.20 feet;

thence North 81°09'24" West, 620.66 feet;

thence South 01°08'09" West, 699.75 feet;

MICROFILMED

NPD Form 20
Jan 1952

thence North 78°38'10" West, 242.61 feet to the point of beginning.

There is EXCEPTED therefrom all those portions of Government Lots 9 and 10 and the easterly 1200 feet of the south half of the northwest quarter of the southwest quarter of said Section 12 contained within the above described tract of land.

The tract of land above described contains 25.46 acres, more or less, being acquired by the U. S. Department of the Army, Corps of Engineers.

NOTE: The bearings and distances above referred to were taken from deed descriptions, actual surveys, and Bureau of Land Management Plats.

together with the easement right of ingress and egress over and across the following described land, said easement is subject to joint use right of ingress and egress reserved to Crystal Springs Ranches, Inc.:

Tract 601E

A parcel of land located in the southeast quarter of the southeast quarter of Section 11 and in the southwest quarter of the southwest quarter of Section 12, all in Township 9 South, Range 15 East of the Boise Meridian, Twin Falls County, Idaho, being more particularly described as follows:

Commencing at the southwest corner of said Section 12;

thence North 02°34'14" East, a distance of 984.53 feet to the POINT OF BEGINNING;

thence North 79°22'55" West, a distance of 47.35 feet;

thence North 08°38'36" East, a distance of 262.79 feet;

thence North 02°11'00" West, a distance of 79.13 feet;

thence South 78°38'05.8" East, a distance of 32.19 feet;

thence South 0°44'53" West, a distance of 114.96 feet;

thence South 08°05'51" West, a distance of 114.63 feet;

thence South 01°56'46" West, a distance of 112.90 feet, more or less, to the POINT OF BEGINNING.

There is EXCEPTED therefrom all that part of the above described parcel of land lying within the right-of-way of the county road.

The parcel of land above described contains 0.28 acres, more or less, being acquired by the U. S. Department of the Army, Corps of Engineers.

NOTE: The bearings and distances above referred to were taken from deed descriptions, actual surveys, and Bureau of Land Management Plats.

MICROFILMED

And further, for the consideration hereinabove set forth, the Grantors convey all right, title, and interest in and to State of Idaho Easement No. 4261 granted to Joseph L. Burden on 11 April 1972; State of Idaho Easement No. 4262 granted to Joseph L. Burden on 11 April 1972; State of Idaho Department of Water Resources Water Right License No. 36-7033 with priority of 10 July 1968 in the amount of 50.0 c.f.s. granted to Crystal Springs Ranches, Inc.; State of Idaho Department of Water Resources Water Right License No. 36-7164 with priority of 5 March 1971 in the amount of 6.49 c.f.s. granted to Crystal Springs Ranches, Inc.; and State of Idaho Department of Water Resources Application for Permit No. 36-7653 by Valley Trout Farms, Inc., in the amount of 69.0 c.f.s. with proposed priority of 3 November 1976.

EXCEPTING AND RESERVING to the Grantors the right to remove from the project area on or before 1 March 1982, a 40' x 80' concrete hatchery building and equipment; a 20' x 36' metal frame, metal covered hatchery building and equipment; two metal feed bins; a railroad car feed storage building; and an oxygen storage tank. In the event said improvements are not removed on or before said date, the United States shall have a good and indefeasible title to said buildings and improvements without notice or further compensation.

In consideration of the protection and maintenance of the land, buildings, and structures, protection of the property against loss by fire, waste, or other causes, Grantors reserve occupancy of said property until 1 March 1982, said occupancy is reserved to Grantors exclusively and shall not be sublet or transferred.

During the term of occupancy reserved to Grantors, the United States or its agents shall have the right to enter upon the property conveyed for any purpose whatsoever, provided that such entry shall not unduly interfere with or disrupt Grantors operation of the property.

Together with all and singular the tenements, hereditaments, and appurtenances thereunto belonging or in anywise appertaining.

SUBJECT TO existing easements for public roads, public highways, public utilities, railroads, and pipelines; reservations, exceptions, and any other outstanding rights contained in or referred to in patents issued by the United States.

TO HAVE AND TO HOLD the above described and granted premises unto the UNITED STATES OF AMERICA and its assigns, forever. We covenant to and with the above named grantee and its assigns that we are lawfully seized and possessed of the above granted premises in fee; have a good and lawful right and power to sell and convey the same; that the same are free and clear of all encumbrances except as above noted, and we will and our heirs, executors, and administrators, shall warrant and forever defend the above granted premises, and every part and parcel thereof, against the lawful claims and demands of all persons whomsoever.



MICROFILMED

AND FURTHER, for the consideration aforesaid, we the grantors above named hereby convey and quitclaim unto the said UNITED STATES OF AMERICA and its assigns, all right, title, and interest which we may have in and to the banks, beds, and waters of any streams opposite to or fronting upon the lands above described and in any alleys, roads, streets, ways, strips, gores, or railroad rights-of-way abutting or adjoining said land and in any means of ingress or egress appurtenant thereto.

DATED this 14 day of March 1981.

VALLEY TROUT FARMS, INC.,
an Idaho Corporation

By _____
KENNETH S. ELLIS
President

_____
KENNETH S. ELLIS

_____
BRENDA ELLIS

ATTEST:

By _____
BRENDA ELLIS
Secretary

STATE OF IDAHO )
) ss.
COUNTY OF TWIN FALLS )

On the 18 day of March 1981, personally came before me, as Notary Public in and for said County and State, the within named Kenneth S. Ellis and Brenda Ellis

to me personally known to be the identical persons describe. in and who executed the within and foregoing instrument and acknowledge. to me that they executed the same as their free and voluntary act and deed, for the uses and purposes therein mentioned.

GIVEN under my hand and official seal the day and year last above written.

(SEAL)

Notary Public in and for the
State of Idaho
Residing at Twin Falls
My Commission Expires 3 Dec. 1984

RECORDED

Acknowledgment
SLD Form 20c
June 1952

(CORPORATE FORM)

STATE OF IDAHO )
) ss.
COUNTY OF TWIN FALLS )

On this 18th day of March A.D. 19 81, before me, the undersigned, a Notary Public in and for the State of Idaho, duly commissioned and sworn personally appeared Kenneth S. Ellis and Brenda Ellis to me known to be the President and Secretary, respectively of Valley Trout Farms, Inc., the corporation that executed the foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said corporation, for the uses and purposes therein mentioned, and on oath stated that they are authorized to execute the said instrument and that the seal affixed is the corporate seal of said corporation.

WITNESS my hand and official seal hereto affixed the day and year in this certificate above written.

(SEAL)

Notary Public in and for the
State of Idaho
Residing at Twin Falls
My Commission expires [illegible]

STATE OF IDAHO
County of Twin Falls ss.
I hereby certify that this instrument was filed for record at the request of SAFECO Title
at 2:31 o'clock P.M. this MAR 18 1981
in my office and duly recorded in book 231 of Mtgs. page 349.
RICHARD A. RENO
Ex-Officio Recorder
By [illegible] Deputy
Fee $ [illegible]
Return to SAFECO Title

2093552

NEW FORM
Mak 1964 29 (Replaces NPW Form 197 (Test) which may be used)

State of Idaho
DEPARTMENT OF WATER RESOURCES
STATE OFFICE, 450 W. State Street, Boise, Idaho

JOHN V. EVANS
Governor

C. STEPHEN ALLRED
Director

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

February 13, 1981

Crystal Springs Ranch, Inc.
Buhl,
Idaho 83316

Dear Sirs,

RE: License No.'s 36-7033 & 36-7164

Enclosed is a copy of the Water Right License issued on the above referenced Permit.

Sincerely,

JIM JOHNSON
Water Distribution Supervisor

JJ:mr

Enclosure

MICROFILMED

# MEMORANDUM

TO: 36-7033 and 36-7014

FROM: Dave Tuthill

DATE: February 12, 1981

RE: Amendment of Permit

The filing fee for the order-amendment enabling the amended licensing of the above referenced files was $20.00 each. This filing fee of $40.00 Total was paid by Ken Ellis and was receipted with receipt No. 17586.

MICROFILMED

NELSON, ROSHOLT, ROBERTSON, TOLMAN & TUCKER
ATTORNEYS AT LAW
P. O. BOX 1906
TWIN FALLS, IDAHO 83301
TELEPHONE (208) 734-0700

THOMAS G. NELSON
JOHN A. ROSHOLT
J. EVAN ROBERTSON
STEVEN K. TOLMAN
JAMES C. TUCKER

SUN VALLEY-KETCHUM OFFICE
P.O. BOX 2399
SUN VALLEY, IDAHO 83353
TELEPHONE (208) 726-4491

February 11, 1981

Mr. C. Steven Allred, Director
Idaho Department of Water Resources

RE: Amendment of Permits and Licenses

Dear Steve:

Enclosed is the Motion of Crystal Springs Ranch, Inc. to affect amendments to permits and licenses 36-7033 and 36-7164. I presume that the reason that this mistake was not caught at the time of proof of application of water to beneficial use was that the forms then submitted did not require a representation by the permitholder as to the legal description of the place of use unless the water was for irrigation. I enclose copies of those proofs for your convenience. In addition, the Department probably relied upon the description in the permit at the time of licensing. I submit a copy of the letter dated July 4, 1975 executed by Bobby D. Fleenor, indicating the place of use as the SE 1/4 SW 1/4 of Section 12, Township 9 South, Range 15 East, Boise Meridian, Twin Falls County. A recent survey shows that the place of use should properly have been Lot 7 and the NE 1/4 SE 1/4 of Section 11, and SW 1/4 NW 1/4 and the NW 1/4 SW 1/4 in Section 12, all in Township 9 South, Range 15 East, Boise Meridian.

Thank you in advance for your expeditious handling of this matter.

Sincerely,

John A. Rosholt

JAR:tv
Enclosures

MICROFILMED

BEFORE THE DIRECTOR

OF THE

IDAHO DEPARTMENT OF WATER RESOURCES

* * * * *

| | | |
|---|---|---|
| In the Matter of Idaho Water Licenses 36-7033 and 36-7164, Crystal Springs Ranch, Inc., an Idaho corporation, | ) | Case No._____ |
| | ) | MOTION FOR AMENDMENT OF PERMITS & LICENSES |

* * * * *

COMES NOW, John A. Rosholt, attorney for Crystal Springs Ranch, Inc., and moves the Director of the Idaho Department of Water Resources to order the amendment of permits and licenses 36-7033 and 36-7164 for the following reasons:

1. That Crystal Springs Ranch, Inc., is an Idaho corporation and was validly assigned permit numbers 36-7033 and 36-7164. Said permits entitled the permitholder to appropriate the public waters of the State of Idaho a maximum of 100 c.f.s. for use for fish propagation purposes in the SE 1/4 of the SW 1/4 of Section 12, Township 9 South, Range 15 East, Boise Meridian, Twin Falls County, Idaho.
2. That the applicant proceeded in good faith and believed that the ponds had been constructed on said property as authorized in the permit.
3. That on February 1, 1974, proof of beneficial use of water was submitted to the Department of Water Resources and pursuant to said proof, and following the Department's examination of the constructed works, the facilities were issued licenses 36-7033 for 50 c.f.s. with a priority date of July 10, 1968, and 36-7164 for 6.49 c.f.s. with a priority date of March 5, 1971, but due to the mutual mistake and inadvertance of the applicant and the Department, it was not discovered until a recent survey that the place of use was other than as indicated on said permits and licenses.



MICROFILMED

4. That Crystal Springs Ranch, Inc. is the contract purchaser of the property where the fish propagation facilities are located. The recent survey indicates the correct place of use for the water represented by licenses 36-7033 and 36-7164 in Lot 7 and the NE 1/4 SE 1/4 of Section 11, and the SW 1/4 NW 1/4 and the NW 1/4 SW 1/4 of Section 12, all in Township 9 South, Range 15 East, Boise Meridian, Twin Falls County, Idaho, rather than as indicated on present permits and licenses.

5. That at the time the original applications for permit were filed, the then applicant owned the property then indicated to be the intended place of use.

6. That the granting of said motion and amending the permits and licenses will not injure any other water user.

Whereupon movant requests the Director of the Department of Water Resources order the amendment of permits and licenses 36-7033 and 36-7164 to show the correct place of beneficial use of water so as to correct the mutual mistake and oversight.

DATED this 11th day of February, 1981.

John A. Rosholt

John A. Rosholt, Attorney for
Crystal Springs Ranch, Inc.

ORDER

Upon reading the motion of Crystal Springs Ranch, Inc. for amendment of permits and licenses number 36-7033 and 36-7164 to reflect the actual place of use of the water as Lot 7 and the NE 1/4 SE 1/4 of Section 11, and the SW 1/4 NW 1/4 and the NW 1/4 SW 1/4 of Section 12, all in Township 9 South, Range 15 East, Boise Meridian, Twin Falls County, Idaho, it is ordered that said permits and licenses be so amended.

DATED this 12 day of February, 1981.

C. Steven Allred, Director
Department of Water Resources
State of Idaho



MICROFILMED

# POWER OF ATTORNEY

Crystal Springs Ranch, Inc., an Idaho corporation, hereby grants John A. Rosholt a special power of attorney to do all things necessary to obtain the correcting amendments to water licenses 36-7033 or 36-7164 issued to the corporation.

DATED this 11 day of FEBRUARY, 1981.

L. R. Bylund

L. R. Bylund, President

ATTEST:

Thomas G. Walker Jr.

Secretary

STATE OF IDAHO )
)ss.
County of Twin Falls )

On this 11 day of FEBRUARY, 1981, before me, a Notary Public for said county and state, personally appeared L. R. Bylund, known to me to be the President of Crystal Springs Ranch, Inc., an Idaho corporation, whose name is subscribed to the within 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 first above written.

John A. Rosholt

NOTARY PUBLIC FOR IDAHO
Residing at Twin Falls

STATE OF IDAHO )
)ss.
County of Twin Falls )

On this 11 day of FEBRUARY, 1981, before me, a Notary Public for said county and state, personally appeared Thomas G. Walker, Jr., known to me to be the Secretary of Crystal Springs Ranch, Inc., an Idaho corporation, whose name is subscribed to the within 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 first above written.

Kaylynne Field

NOTARY PUBLIC FOR IDAHO
Residing at Twin Falls

KAYLYNNE FIELD
NOTARY PUBLIC - STATE OF IDAHO
Residing at Twin Falls, Idaho
Commission Expires 8-23-82



MICROFILMED

# M E M O R A N D U M

TO: Glen Saxton

FROM: Dave Tuthill DRT

DATE: February 10, 1981

RE: Place of Use of Licenses 36-7033 & 36-7164 and Permit 36-7653.

The U.S. Corps of Engineer s is in the process of purchasing the fish propagation facilities described by the above referenced water rights from Valley Trout Farms, Inc., the current owner. In the process of the sale, the place of use shown for the water rights was found to be different from the legal description of the property on which the fish facilities are located. (See survey map in 36-7653)

To verify the validity of change in place of use, the Department staff has (1) re-examined the place of use (see attached examiner's report), (2) reviewed the files in detail (see attached synopsis), (3) verified ownerships through the county assessor (Josiph L. Burden had possessory interest in both the incorrect and the correct places of use at the time of filing the applications), and (4) documented the request for change (see attached letter). (from John Rosholt 2-11-81)

In addition we have reviewed the aerial photos (which are very distorted due to the canyon elevation differences) and found no additional information.

Based on this analysis, I recommend that the Director approve amended licenses that correct the place of use for 36-7033 and 36-7164, and that the Operations Bureau Chief approve an Application for Amendment for Permit No. 36-7653, with no advertising necessary.

HISTORY OF DEVELOPMENT OF FISH PROPAGATION WATER RIGHTS

AT

CRYSTAL SPRINGS RANCH, INC.

| | |
|---|---|
| 07/08/1968 | Application No. 36-7033 filed by Joseph L. Burden. |
| 08/12/1968 | Protest filed by Idaho Power Company and Fish and Game Dept. |
| 11/27/1968 | Protest filed by Idaho Department of Fish and Game. |
| 12/26/1968 | Amended Application submitted by Joseph L. Burden. |
| 02/20/1969 | Hearing at Gooding County Courthouse. |
| 12/08/1969 | Memorandum Decision issued approving 36-7033. |
| 03/03/1971 | Proof due date extended to 01/01/1972 for 36-7033. |
| 03/05/1971 | Application No. 36-7164 filed by Joseph L. Burden. |
| 09/22/1971 | Application No. 36-7164 approved. |
| 12/22/1971 | Extension of Time requested for 36-7033. |
| 03/14/1972 | Petition to cancel permits 36-7033 and 36-7164 filed by Clear Springs Trout Sales, Inc. |
| 06/12/1972 | Proof due date extended to 04/01/1974 for 36-7033. |
| 06/16/1972 | Petition to cancel permits 36-7033 and 36-7164 withdrawn by Clear Springs Trout Sales, Inc. |
| 06/23/1972 | Permit 36-7033 assigned to Crystal Springs Ranch, Inc. ; 36-7164 |
| 07/17/1972 | Order to Show Cause why 36-7033 and 36-7164 should not be cancelled. |
| 08/03/1972 | Assignment of Permit No. 36-7033 and 36-7164 to Crystal Springs Ranch, Inc. approved and Order to Show Cause quashed. |
| 02/01/1974 | Proof of Beneficial Use submitted for both 36-7164 and 36-7033. |
| 05/01/1975 | Field exam made for both 36-7164 and 36-7033. |
| 08/08/1975 | Licenses issued for both 36-7164 and 36-7033 in the name of Crystal Springs Ranch, Inc. |
| 11/03/1976 | Application No. 36-7653 filed by Valley Trout Farms, Inc. |

MICROFILMED

February 10, 1981

MEMORANDUM:

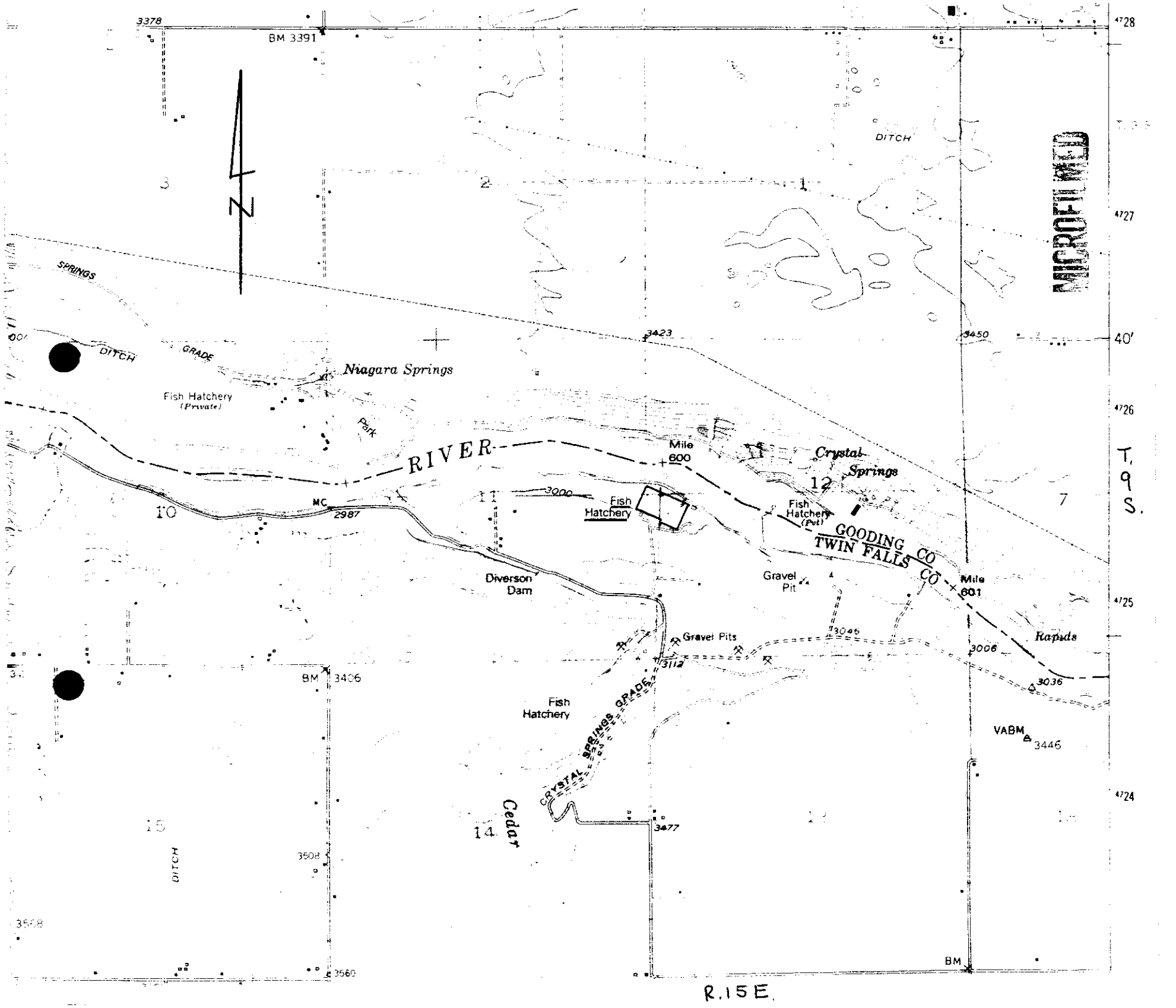
TO: File

FROM: Gary L. Sunderburg

Subject: Valley Trout Farms Fish Facilities

On February 6, 1981, I made a field trip to check the location of Valley Trout Farms, Inc., fish facilities at Crystal Springs. Butch Tadlock of Valley Trout Farms, Inc.. met with me and we walked over the location originally filed for the fish facilities. There were no facilities nor were there signs of facilities constructed in the past. This ground is located on a hillside where large rocks, brush and a hayfield lays. It appears the applicant of the original application misinterpreted the legal description. The fish facilities are located in the SE¼NE¼ (Govt Lt. 7); NE¼SE¼, Sec. 11; SW¼NW¼, NW¼SW¼, Sec. 12, T9S, R15E., which includes the Salt Grass Placer claim #2693. The ~~transfer~~ amendment lists the property ownership which includes the fish facilities. After reviewing with the assessor's office, the title fact office and Safeco Title Insurance Co., I feel the ~~transfers and the~~ amendment ~~are~~ is correct.

MICROFILMED


3378
BM 3391
4728
DITCH
4727
SPRINGS
DITCH
GRADE
Niagara Springs
Fish Hatchery
(Private)
Park
3423
3450
40'
4726
RIVER
Mile
600
Crystal
Springs
12
T.
9
S.
7
10
MC
2987
11
3000
Fish
Hatchery
Fish
Hatchery
(Put)
GOODING CO
TWIN FALLS CO
Diversion
Dam
Gravel
Pit
Mile
601
4725
Gravel Pits
3046
Rapids
3006
3112
3036
BM 3406
Fish
Hatchery
CRYSTAL SPRINGS GRADE
VABM
3446
15
14
Cedar
3477
DITCH
3508
3508
3560
BM
R.15E.

RECEIVED

FEB 13 1981

Department of Water Resources

INTER-DEPARTMENT MEMO — 1

FROM GARY FUNDERBURG

DATE 2/10/1981

TO DAVE TUTHILL

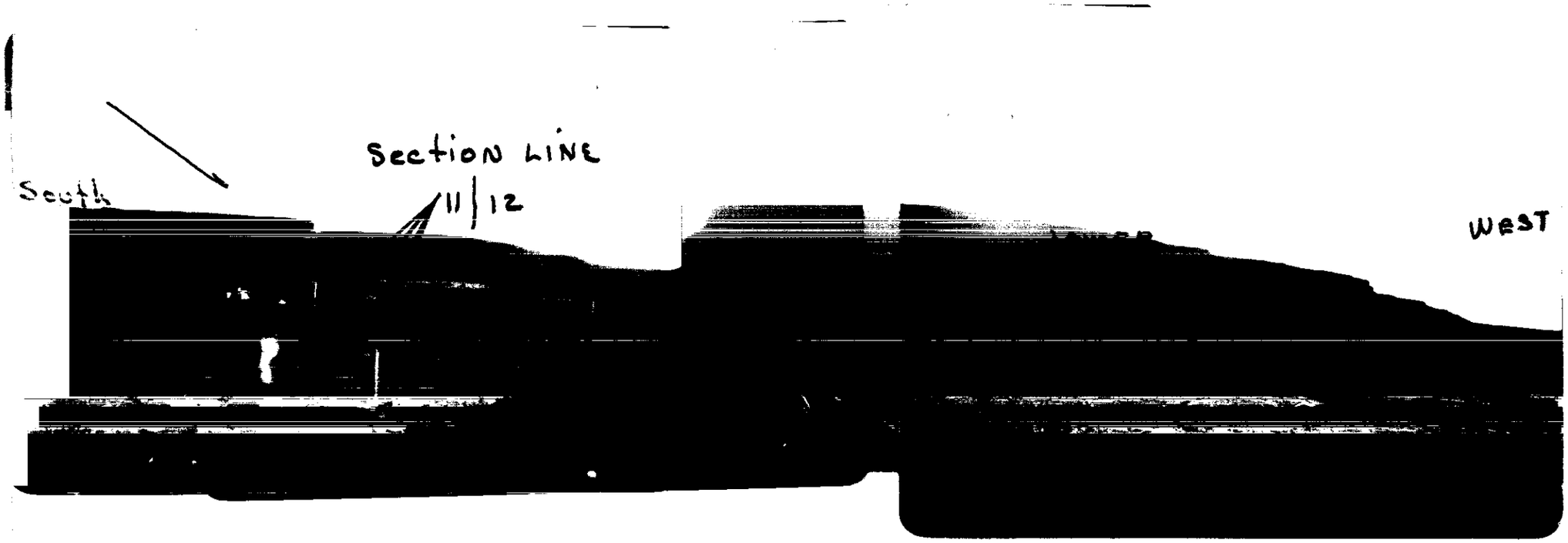
SUBJECT VALLEY TROUT FARMS INC. (CRYSTAL SPRINGS RANCH)

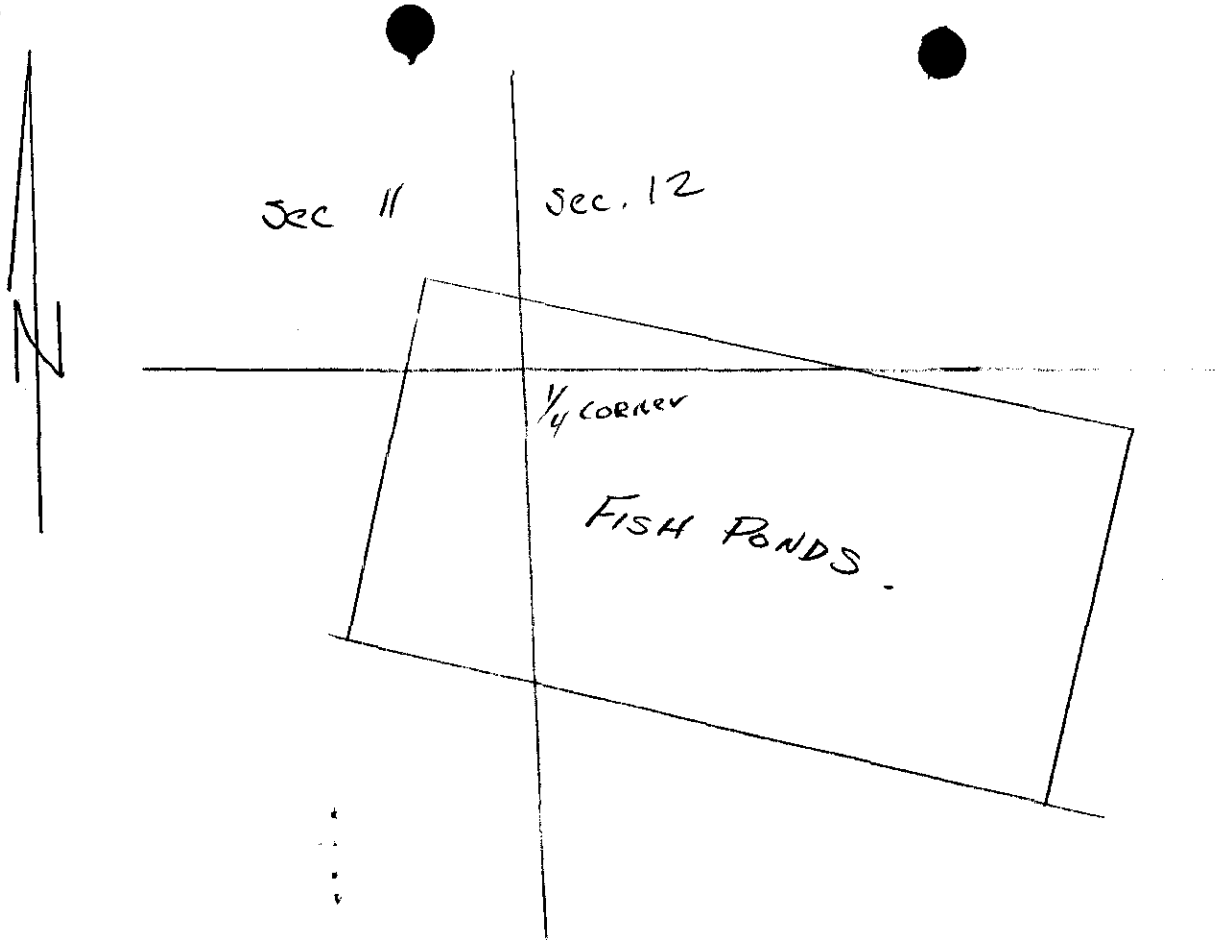
HERE ARE THE PHOTOS I TOOK OF THE SECTION LINE THAT WAS SURVEY BY THE ENGINEERS. EACH Blue line in THE MIDDLE OF THE PHOTO'S SHOW THE STAKE'S THAT WERE SURVEYED IN. THE SECTION LINE CUTS THRU THE LOWER CORNER OF THE PONDS. Hope THIS IS HELPFULL.

Gary

SIGNATURE

MICROFILMED


South
Section LINE
11 | 12
WEST


N
Sec 11
Sec. 12
1/4 CORNER
FISH PONDS.

# MEMORANDUM

TO: Permit No. 36-7653, License Nos. 36-7033 & 36-7164

FROM: Dave Tuthill

DATE: February 6, 1981

RE: Place of Use

Due to a pending sale of property by Valley Trout Farms, Inc., the place of use for the above referenced water rights has been examined closely. A survey performed on 04/04/1977 by Don Wolford Land Surveying (copy in file 36-7653) indicates that the actual place of use of the fish propogation facility is Lot 7 (SENE), NESE Sec. 11; SWNW, NWSW Sec. 12, T. 9 S., R. 15 E.

Per a memo from the senior agent who performed the licensing field exam (see file 36-7653), the place of use found by the Wolford survey appears to be correct. Per a telecon he indicated that there is only one fish propogation facility in the area of concern.

Based on this information it appears that the appropriate course of action is to solicit an Application for Amendment for the permit, and issue two amended licenses, correcting only the place of use.

MICROFILMED

State of Idaho
DEPARTMENT OF WATER RESOURCES
STATE OFFICE, 450 W. State Street, Boise, Idaho

JOHN V. EVANS
Governor

C. STEPHEN ALLRED
Director

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

February 5, 1981

Mr. Bill Henry
Corps of Engineers
Building 602, City-County Airport
Walla Walla, Washington 99362

Dear Mr. Henry:

Re: Permit No. 36-7653 and License Nos. 36-7033 and 36-7164

Pursuant to a request by Mr. Bob Weaver I have personally reviewed the place of use for the above referenced water rights. Based upon a telephone conversation with our field examiner and a 1977 survey by Don Wolford Land Surveying it appears that the place of use of each of the rights should be modified to conform to the survey.

The necessary documentation to make the change is an Application for Amendment for the Permit, which has already been properly filed, and amended licenses which have been prepared. I foresee no reason why these documents will not be signed by the Director by February 6, 1981.

Sincerely,

DAVID R. TUTHILL JR., P. E.
Supervisor, Water Allocation Section

DRT:mr

Enclosures

MICROFILMED

August 11, 1975

Re: Permit No. 36-7164 & 36-7033

Crystal Springs Ranch, Inc.
P. O. Box 109
Buhl, ID 83316

Gentlemen:

Enclosed herewith are copies of the water licenses issued on the above referenced permits.

Sincerely,

D. DARRENE REICH
Water Rights Supervisor

DDR:rb

Enc.

July 24, 1975

Crystal Springs Ranch, Inc.
P.O. Box 109
Buhl, Idaho 83316

Re: Permits No. 36-7033 & 36-7164

Gentlemen:

A representative of this Department has made an examination of the works covered by the above referenced permits and has found the following:

Permit 36-7033

Quantity of water diverted: 56.49 cfs Source: Crystal Springs

Amount of water that can be recognized as beneficially used under Idaho law: 50.0 cfs

Point of diversion: Lot 12 ($SE\frac{1}{4}NW\frac{1}{4}$), Sec. 12, Twp. 9 S, Rge. 15 E, B.M., Gooding County

Beneficial use: Fish propagation purposes within the $SE\frac{1}{4}SW\frac{1}{4}$, Sec. 12, Twp. 9 S, Rge. 15 E, B.M.

Priority date established: July 10, 1968

Permit 36-7164

Quantity of water diverted: 56.49 cfs Source: Crystal Springs

Amount of water that can be recognized as beneficially used under Idaho law: 6.49 cfs

Point of diversion: Lot 12 ($SE\frac{1}{4}NW\frac{1}{4}$), Sec. 12, Twp. 9 S, Rge. 15 E, B.M., Gooding County

Beneficial use: Fish propagation purposes within the $SE\frac{1}{4}SW\frac{1}{4}$, Sec. 12, Twp. 9 S, Rge. 15 E, B.M.

Priority date established: March 5, 1971

If you do not concur with these findings please contact us within 10 days, otherwise water licenses will be issued as set forth above.

Sincerely,

BOBBY D. FLEENOR
Chief, Water Rights

BDF:DR

PARRY, ROBERTSON, DALY & LARSON
LAWYERS
THE IDAHO FIRST NATIONAL BANK BUILDING
P. O. BOX 525
TWIN FALLS, IDAHO 83301

TELEPHONE
(208) 733-3722

R. P. PARRY
T. M. ROBERTSON
JOHN H. DALY (1913-1968)
BERT LARSON
C. G. McINTYRE
JOHN R. COLEMAN
THOMAS G. NELSON
JOHN A. ROSHOLT
FRED D. DECKER
ROBERT C. PAINE

February 12, 1974

RECEIVED
FEB 14 1974
Department of Water Administration
Southern District Office

Mr. Robert G. Haynes
District Engineer
Department of Water Administration
1041 Blue Lakes Boulevard North
Twin Falls, Idaho 83301

Re: Permit No.'s 36-7033 & 36-7164

Dear Bob:

Thank you for your letter indicating that you had received the proof of application of water to beneficial use on the above captioned permits. We understand that a field exam will be conducted some time in October or November when the springs are at their highest peak. We further understand that there is no necessity to put in a measuring device in the headgate at this time. There are cipolletti weirs in the tail races. It is our understanding that if at the field exam it is determined that a measuring device is necessary, we can install it at that time.

Thank you for your continuing help.

Sincerely,

Robert C. Paine

ROBERT C. PAINE

RCP:ddm
cc: Mr. LeRoy Bylund

# DEPARTMENT OF WATER ADMINISTRATION

FIELD REPORT

RECEIVED
FEB 6 1974
Department of Water Administration
Southern District Office

1. Name of permit holder Crystal Springs Ranch, Inc.

Post office address P. O. Box 109, Buhl, ID 83316 Phone

Person to contact _____ Phone _____

2. Source of water supply: Groundwater ☐ Surface water ☒ Crystal Springs
(name spring, stream, etc.)

Tributary to Snake River

3. Water will be used for the following purposes:

Amount 50 c.f.s. for fish propagation
_____ AF/Annum (nature of use)

Period of Use: from Jan. 1 to Dec. 31
(mo.-day) inclusive (mo.-day)

Amount _____ c.f.s. for _____
_____ AF/Annum (nature of use)

Period of Use: from _____ to _____
(mo.-day) inclusive (mo.-day)

Amount _____ c.f.s. for _____
_____ AF/Annum (nature of use)

Period of Use: from _____ to _____
(mo.-day) inclusive (mo.-day)

Other uses: _____

Permit No. 36-7033

Examination for b/u

PRIORITY: Please make during 1974 irrigation season, permit holder requests during November specifically.

4. Total amount to be appropriated:

Max Rate of Diversion 50 cubic feet per second and annual volume _____ AF/Annum.

5. Location of Point(s) of Diversion:

Township 9S N/S, Range 15E E/W, B.M., Section 12, Subdivision Lot #12 SE ¼ NW ¼, Gooding County

Township _____ N/S, Range _____ E/W, B.M., Section _____, Subdivision _____ ¼ _____ ¼, _____ County

Township _____ N/S, Range _____ E/W, B.M., Section _____, Subdivision _____ ¼ _____ ¼, _____ County

Other Points of Diversions: _____

Description of diverting works: Concrete flume captures water at spring, gravity flows into 36" pipe - pipe under Snake River to the south side - delivers water to concrete headgate & diversion box for use in fish raceways.

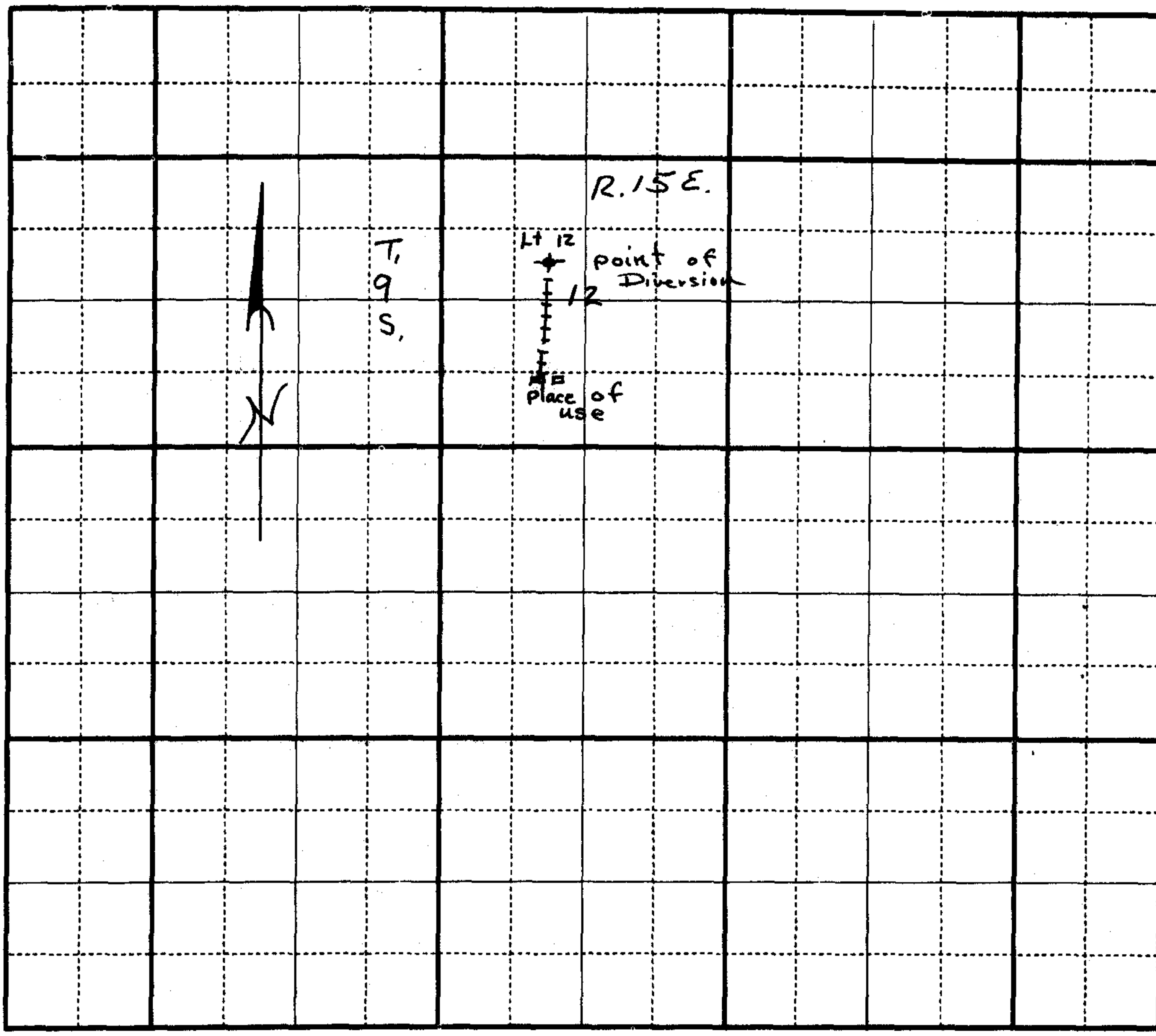
Measuring device required: yes ☒ no ☐ Required to measure water diverted from springs & to measure water returned to the Snake River.

6. Lands to be irrigated or place of use.

| TWP. | RANGE | SEC. | NE¼ | | | | NW¼ | | | | SW¼ | | | | SE¼ | | | | TOTALS |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | | | NE¼ | NW¼ | SW¼ | SE¼ | NE¼ | NW¼ | SW¼ | SE¼ | NE¼ | NW¼ | SW¼ | SE¼ | NE¼ | NW¼ | SW¼ | SE¼ | |
| 9S | 15E | 12 | | | | | | | | | | | | X | | | | | |
| | | | | | | | | | | | | | | | | | | | |
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TOTAL ACREAGE

MICROFILMED



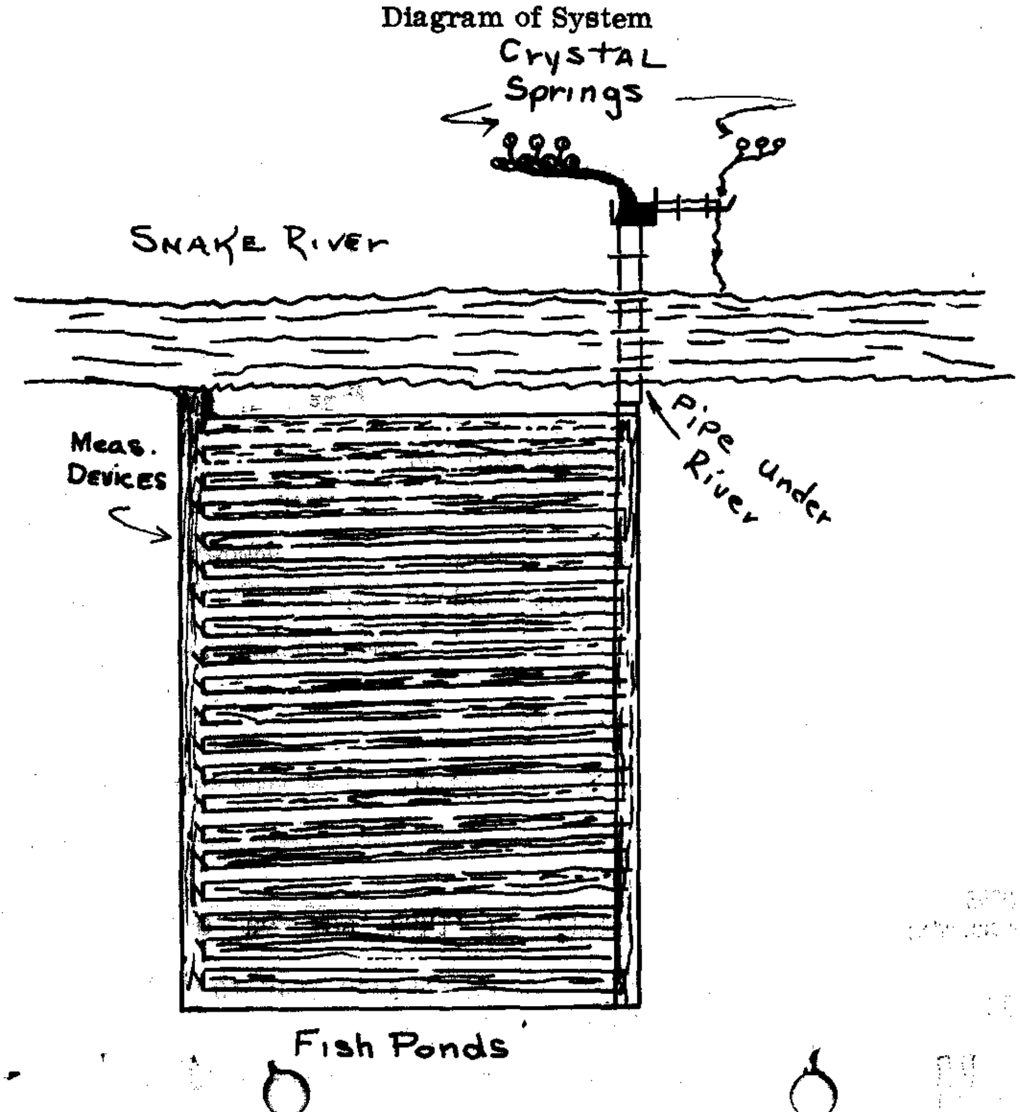




Diagram of System

DATE OF EXAM Nov. 5-75

ACREAGE
Found ✓
Recommended ✓

Irrigation Requirement ✓ Ac Ft/Ac

USE
Irrigation Q=____ c.f.s. V=____ AF/Ann. from ____ to ____
Domestic Q=____ c.f.s. V=____ AF/Ann. from ____ to ____
Livestock Q=____ c.f.s. V=____ AF/Ann. from ____ to ____
Fish Propogation Q=50.0 c.f.s. V=None Required AF/Ann from Jan 1 to Dec 31

Is water co-mingled? yes____ no ✓

Name source: ____
twp.____ N/S, Rge____ E/W, B.M., Sec.____, Sub.____ ¼____ ¼____ County

Exchange? yes____ no ✓

Name source exchanged with: ____
twp.____ N/S, Rge____ E/W, B.M., Sec.____, Sub.____ ¼____ ¼____ County

Point of injection:
twp.____ N/S, Rge____ E/W, B.M., Sec.____, Sub.____ ¼____ ¼____ County

Point of exchange:
twp.____ N/S, Rge____ E/W, B.M., Sec.____, Sub.____ ¼____ ¼____ County

Total Q measured 56.49 c.f.s. Method of measurement 48" Cipoiletti Weirs (24)

Total Q recommended 50.0 cfs. Meter No. ✓ Type ✓ Condition New

Total V recommended Not Required

Recommended Amendments:

P.D. ✓
Place of Use ✓
Other ✓
None ✓

MEASUREMENT CALCULATION:
Q = 56.49 c.f.s. Meas.
Q = 50.00 cfs. Recommended Amount Applied for.

SYSTEM DESCRIPTION:
Spring divert into Concrete devider which diverts into a steel pipe that Conveys The water Over To Fish Ponds.
32 Ponds each measuring 150' x 30' x 4' = 13.2 AF Total Facility Volume
Per Telecon with Gary Funderburg Dec 2/12/81

REMARKS:
permit 36-7164 uses this same Water and diversion @ 6.49 cfs

Examiner's Signature Gary Lee Funderburg Date 5-1-75
Checked by Bob Haynes Date 7-11-75
Approved by ____ Date ____

February 5, 1974

Re: Permit No.'s 36-7033 & 36-7164

Crystal Springs Ranch, Inc.
P. O. Box 109
Buhl, Idaho 83316

Gentlemen:

We acknowledge receipt of the affidavits submitted as proof of beneficial use for the above referenced permits.

Before licenses can be issued, field examinations must be made by a representative of this Department. We cannot tell just when these examinations will be made but our examiner will try to contact you at the time he makes the examinations so that you may show him the systems.

If you have any questions concerning the field examin please contact our Southern District Office at 1041 Blue Lakes Blvd., North, Twin Falls, Idaho.

Sincerely,

D. Darlene Reich
Water Rights Supervisor

DDR:JC

36 7033

Identification No. 36-7033

Permit No. _____

# STATE OF IDAHO
# DEPARTMENT OF RECLAMATION

RECEIVED
FEB 1 1974
Department of Water Administration
Southern District Office

## PROOF OF APPLICATION OF WATER TO BENEFICIAL USE

1. a) Name of Permit Holder CRYSTAL SPRINGS RANCH, INC.

   b) Post Office Address P.O. BOX 109, BUHL, IDAHO 83316

2. Permit Number 37-7033

3. Date of Priority that you are prepared to establish July 10, 1968

4. a) Source from which water was appropriated Crystal Springs

   b) Location of the point of diversion: Lot 12, SE ¼ NW ¼, Section 12 Township 9 South, Range 15 East Gooding County Boise Meridian, Other points of diversion: _____

5. a) The amount of water and use to which the water has been applied:

   amount 50 c/f/s for Fish propagation purposes from 1/1 to 12/31 incl.
   (cfs and/or acre feet per annum) (Month-Day) (Month-Day)

   amount _____ for _____ purposes from _____ to _____ incl.
   (cfs and/or acre feet per annum) (Month-Day) (Month-Day)

   amount _____ for _____ purposes from _____ to _____ incl.
   (cfs and/or acre feet per annum) (Month-Day) (Month-Day)

   b) Total amount appropriated 50 c/f/s cfs and/or acre feet per annum

   c) Describe how and by whom measurement of rate of flow or amount of storage was made and the qualifications of the person making the measurement: Measured with Cypuletti Weir at end of tail race. Otto Lynn - Fish Biologist, Rangan Inc. - 20 years experience measuring water - formerly employed by State of Nevada Fish & Game - had to measure water as part of job.

6. If the means of diversion and conveyance are owned by someone other than the Permit Holder:

   a) Give the name or description of the canal, ditch or other works by which the water is conducted to the place of use: Not applicable

   b) Describe the agreement or understanding by which you take water from the works: Not applicable

7. a) Breifly describe the works for diverting and conveying the water to the place of use, (If from a subterranean source, give the pump size, motor size, size of well casing, depth of well; if from surface water, give breif description of diversion structure and/or canal or ditch) Concrete flume captures water at spring - gravity flows in to 36" pipe - pipe was under Snake River to the south side - delivers water to concrete headgate and diversion box for use in fish raceways.

   b) Describe the type and size of measuring device which you have installed at your point of diversion: _____
   See Item 5(c)

   c) Give well drillers name and address and date the well was completed Not applicable

Note: Crystal Spring fluxuates in production. At present time the production of the springs is deminishing. Request field exam be done in November when highest annual spring flow is available.

36 7033

Exam typed 2/5/74 By jc

8. If for other than irrigation, describe the beneficial use to which you have applied the water and the place of use water conveyed to 32 fish ponds - water used for raising and propagation of commercial fish.

9. Irrigation uses: Describe the lands irrigated by giving the acreages irrigated within each 40 acre subdivision:

| TWP. | RANGE | SEC. | NE¼ | | | | NW¼ | | | | SW¼ | | | | SE¼ | | | | TOTALS |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | | | NE¼ | NW¼ | SW¼ | SE¼ | NE¼ | NW¼ | SW¼ | SE¼ | NE¼ | NW¼ | SW¼ | SE¼ | NE¼ | NW¼ | SW¼ | SE¼ | |
| | | | | | | | | | | | | | | | | | | | |
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Total number of acres irrigated

10. Remarks:

The above information is a true statement of the extent to which the above numbered permit has been developed.

January 15, 1974 (Date)

Crystal Springs Ranch Inc S.R. Bylund Vice Pres (Signature)

State of IDAHO )
ss.
County of Twin Falls )

On this 15 day of January, 1974, personally appeared before me the signer(s) of the above instrument, who duly acknowledged to me that he (she) (they) executed the same.

Lori Paine

Notary Public residing at Twin Falls, Ida

My commission expires October '78

38 7033

**SENDER: Be sure to follow instructions on other side**

**PLEASE FURNISH SERVICE(S) INDICATED BY CHECKED BLOCK(S)**
*(Additional charges required for these services)*

☐ Show address where delivered

☐ Deliver ONLY to addressee

## RECEIPT

***Received the numbered article described below***

REGISTERED NO.

CERTIFIED NO.

25125

INSURED NO.

DATE DELIVERED

2/9/74

**SIGNATURE OR NAME OF ADDRESSEE** *(Must always be filled in)*

1

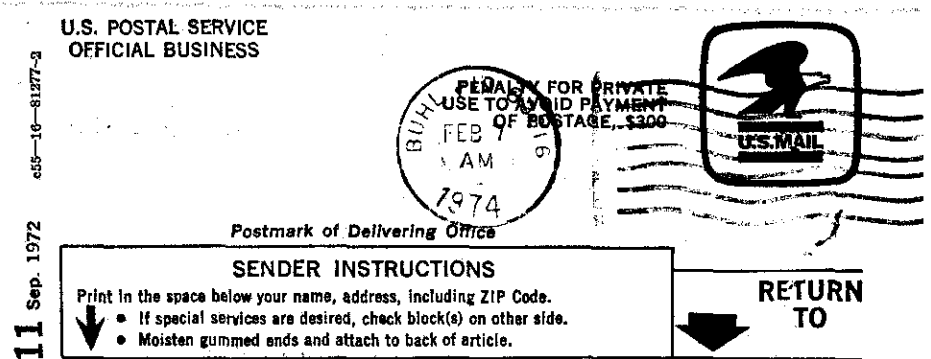
**SIGNATURE OF ADDRESSEE'S AGENT, IF ANY**

2

LeRoy Brown

**SHOW WHERE DELIVERED** *(Only if requested, and include ZIP Code)*

3


U.S. POSTAL SERVICE
OFFICIAL BUSINESS
PENALTY FOR PRIVATE USE TO AVOID PAYMENT OF POSTAGE, $300
U.S. MAIL
FEB 7
AM
1974
Postmark of Delivering Office
SENDER INSTRUCTIONS
Print in the space below your name, address, including ZIP Code.
• If special services are desired, check block(s) on other side.
• Moisten gummed ends and attach to back of article.
RETURN TO
DEPARTMENT OF WATER ADMINISTRATION
ANNEX #2
PS Form 3811 Sep. 1972
e55—16—81277-3

January 31, 1974 CERTIFIED MAIL # 25125

Re: Permit No.'s 36-7033 & 3607164

Crystal Springs Ranch, Inc.
Buhl,
Idaho 83316

Gentlemen:

One of the conditions of approval of your water Permit No.'s 36-7033 and 36-7164 (see last page of your approved permits) was that evidence of the extent of development be submitted as proof of application of water to beneficial use to this office on or before April 1, 1974. Enclosed are affidavit forms which must be used to submit the required proofs of beneficial use.

If you have not fully completed your projects, and you have not previously received extensions of time, you may request an extension of time provided the delay is for reasonable causes as indicated in Section 42-204, Idaho Code, amended. If you have been prevented from proceeding by a governmental gency or by litigation, more than one extension of time can be granted for each permit.

Either the beneficial use affidavits or request for extensions of time must be received by this Department on or before the above mentioned date, otherwise the permits will lapse and be of no further force or effect.

R. Keith Higginson

R. KEITH HIGGINSON
Director

RKH:JC
Enc: Proof affidavits (2)

cc: Parry, Robertson, Daly & Larson
Attn: Robert C. Paine
The Idaho 1st National Bank Bldg.
P. O. Box 525
Twin Falls, Idaho 83301

36 7033

PARRY, ROBERTSON, DALY & LARSON

LAWYERS

THE IDAHO FIRST NATIONAL BANK BUILDING

P. O. BOX 525

TWIN FALLS, IDAHO 83301

TELEPHONE
(208) 733-3722

R. P. PARRY
T. M. ROBERTSON
JOHN H. DALY (1913-1968)
BERT LARSON
C. G. McINTYRE
JOHN R. COLEMAN
THOMAS G. NELSON
JOHN A. ROSHOLT
FRED D. DECKER
ROBERT C. PAINE

August 17, 1972

Mr. R. Keith Higginson
Executive Director
Department of Water Administration
State House, Annex 2
Boise, Idaho 83707

Re: Crystal Springs Ranch, Inc.

Dear Keith:

Enclosed herewith please find a copy of a letter dated August 16, 1972, which we have this date received from J-U-B Engineers, Inc., regarding the survey of Crystal Springs Ranch, Inc.

Sincerely,

ROBERT C. PAINE

RCP/bb
Enclosure

RECEIVED
AUG 18 1972
Department of Water Administration

38 7033

J-U-B ENGINEERS, INC.

149 Third Avenue East Twin Falls, Idaho 83301 Telephone: 733-2414

August 16, 1972

AUG 1 7 1972

Robert C. Paine, Attorney-at-Law
Parry, Robertson, Daly & Larson
Idaho First National Bank Bldg.
Twin Falls, Idaho 83301

Dear Rob:

This letter is to inform you that we have checked the inlet and head works being constructed by Roy Bylund for his fish farm near Crystal Springs. We found that the entire head works lies within Lot 12 of Section 12, T.9S., R.15E., B.M..

Our original survey was based on a field survey and is represented on a drawing entitled Application For Relocation Of Pipeline Easement. Portions of our calculations and platting of the drawing are based on the Government Land Office plats on record with the B.L.M..

It was our suggestion to Mr. Bylund that we perform an as-built survey of the facilities as constructed after the project is complete. This will be in a month or two and something we will do at our convenience.

We appreciate the opportunity to be of service to Mr. Bylund and your firm.

Yours truly,

J-U-B Engineers, Inc.

John J. Straubhar, P.E.

John J. Straubhar, P.E.

JJS/cs

c.c. Roy Bylund

36 7033

PARRY, ROBERTSON, DALY & LARSON

LAWYERS

THE IDAHO FIRST NATIONAL BANK BUILDING

P. O. BOX 525

TWIN FALLS, IDAHO 83301

TELEPHONE
(208) 733-3722

R. P. PARRY
T. M. ROBERTSON
JOHN H. DALY (1913-1968)
BERT LARSON
C. G. McINTYRE
JOHN R. COLEMAN
THOMAS G. NELSON
JOHN A. ROSHOLT
FRED D. DECKER
ROBERT C. PAINE

August 14, 1972

Mr. R. Keith Higginson
Executive Director
Department of Water Administration
State House, Annex 2
Boise, Idaho 83707

Re: Crystal Springs Ranch, Inc.

Dear Keith:

After receiving your letter indicating that based upon field examinations there was a possibility that one of the sources of water being diverted by Crystal Springs Ranch, Inc., was in Lot 11, we immediately had JUB Engineers do a preliminary survey. I am no engineer, but my understanding is that they went down to the springs and based upon one of the quarter corner marks established coordinates for each of the springs. They found that none of the springs were in Lot 11. Apparently the most easterly spring is a spring which has been developed by Crystal Springs Ranch, Inc. However, they found none of the development was in Lot 11.

Jack Straubhar, the engineer with JUB who did the work on Saturday, will forward a certification letter to me immediately certifying that all of the water sources and diversion works are in Lot 12. I will forward to you a copy of that certification letter.

It was decided that in light of the fact that the Fish & Game has filed an application for permit in that area, it has been determined that we should have a complete survey so that there may be no question in the future. JUB has advised

36 7033

that the survey should not be conducted until the pipe has been laid so that all of the diversion works are in place. Based upon their stakes, they are certain that nothing will be in Lot 11 but they do want to wait until everything is completed for the survey, so that again there can be no question. It is anticipated that that survey will be done the latter part of August or the first part of September, and again, we will furnish you with a copy for your examination.

We want to thank you very much for alerting us to this potential problem, so that any question can be cleared up immediately.

Sincerely,

Robt. C. Paine

ROBERT C. PAINE

RCP/bb

cc: Mr. Bobby Fleenor

RECEIVED
AUG 7 1972
Department of Water Administration
Southern District Office

August 3, 1972

Mr. Robert C. Paine
Parry, Robertson, Daly & Larson
Lawyers
The Idaho First National Bank Building
P. O. Box 525
Twin Falls, Idaho 83301

Dear Bob:

Enclosed is an order approving the conveyance of permits 36-7033 and 36-7164 to the Crystal Springs Ranch, Inc.

In order that there be no future misunderstanding and feeling on your part that the department has approved activities of Crystal Springs Ranch, I feel I should call your attention to what appears to be a discrepancy in the description of the point of diversion. Both permits 36-7033 and 36-7164 provide for diversion of water in Lot 12, SE1/4NW1/4, Section 12; Township 9 South, Range 15 East,B.M. I'm enclosing a copy of the survey plat on which I have drawn an outline of Lot 12 in red.

From a recent field examination, it has been reported to us that some of the construction activity is taking place within Lot 11. You should be aware that the Idaho Fish & Game Department, in its recent Application 36-7256, has filed to appropriate 100 second feet of water from Crystal Springs from within Lots 11, 12, and 13. It would appear, therefore, that they may have a prior filing to any application for amendment, which you will need to file in the event that our information is correct and you are developing springs in Lot 11. I felt that I should call this to your attention so that you would not assume that our silence could be interpreted as approval of any change in point of diversion which you may have made.

Very truly yours,

R. KEITH HIGGINSON
Director

RKH:mjl

cc: Mr. Robert Haines, District Engineer
Idaho Department of Water Administration
1041 Blue Lakes Blvd. North
Twin Falls, Idaho 83301

Encs: 2 Order and Survey Plat

STATE OF IDAHO

DEPARTMENT OF WATER ADMINISTRATION

In the Matter of Water )
)
Permit Nos. 36-7033 ) AFFIDAVIT OF JOSEPH BURDEN
)
AND 36-7164 )

STATE OF IDAHO )
) ss.
County of Twin Falls )

JOSEPH BURDEN, being first duly sworn on oath, says:

1. I am JOSEPH BURDEN and the matters testified to herein are within my own personal knowledge and I am competent to testify thereto.

2. I purchased that real property which is known as Crystal Springs Ranch in the County of Twin Falls, Idaho, and correctly described in the affidavit of LeRoy Bylund filed in the above-captioned matter for the sum of $325,000 with no water rights thereon.

3. Subsequent to purchasing Crystal Springs Ranch, I filed for water permit Nos. 36-7033 and 36-7164.

4. After filing for the above-mentioned permits, I contacted Mr. Thorleif Rangen of Buhl, Idaho, for the purpose of investigating the construction of fish ponds on Crystal Springs Ranch and for the purpose of appropriating and developing the waters provided for in the above-mentioned permits. Mr. Rangen referred me to Jack Chipmann, who was in the employ of Mr. Rangen. I retained Mr. Chipmann for the purpose of developing the said water rights.

5. Mr. Chipmann did begin on the design for the development

36 7033

of the water rights. At approximately the same time Mr. Chipmann began work, I suffered approximately a two million dollar loss in another business venture. For that reason I told Mr. Chipmann to wait on the development of the water rights.

6. As a result of things not related to the Crystal Springs Ranch, I lost interest in said ranch, and for that reason I determined to sell it. I have entered into an agreement with Crystal Springs Ranch, Inc., to sell the property to them for the sum of $280,000 with water rights. This constitutes a monetary loss of at least $45,000 to me on this transaction.

Joseph Burden

Subscribed and sworn to before me this 31 day of July, 1972.

H. F. LeMoyne
Notary Public for Idaho
Residing at: Twin Falls, Idaho

36 7033

PARRY, ROBERTSON, DALY & LARSON

LAWYERS

THE IDAHO FIRST NATIONAL BANK BUILDING

P. O. BOX 525

TWIN FALLS, IDAHO 83301

TELEPHONE
(208) 733-3722

R. P. PARRY
T. M. ROBERTSON
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BERT LARSON
C. G. McINTYRE
JOHN R. COLEMAN
THOMAS G. NELSON
JOHN A. ROSHOLT
FRED D. DECKER
ROBERT C. PAINE

July 21, 1972

Mr. Steve Allred
Department of Water Administration
State of Idaho
State House, Annex 2
Boise, Idaho 83707

Re: Crystal Springs Ranch, Inc.
Water Permits Nos. 36-7033 and 36-7164

Dear Steve:

Enclosed herewith please find a copy of the letter which I sent to Mr. Higginson today. That letter contains the information which I spoke with you about by telephone.

After our telephone conversation, I contacted Mr. LeMoyne's secretary in Salmon, Idaho, and dictated an affidavit to her for Mr. Burden's signature. She stated that she would type the affidavit today and give it to Mr. LeMoyne, who will in turn take it to Mr. Burden for examination and signature if he finds it to be correct.

The affidavit contains the same information which is outlined in the letter to Mr. Higginson. Mr. LeMoyne anticipated that he would be back in Twin Falls on Monday, and should have the signed affidavit with him at that time. Therefore, you should have the signed affidavit on your desk by Tuesday or Wednesday.

Your help and cooperation in this matter is appreciated.

Sincerely,

Robert C. Paine

ROBERT C. PAINE

RCP/bb

Enclosure

36 7033

July 21, 1972

Mr. R. Keith Higginson
Executive Director
Department of Water Administration
State House, Annex 2
Boise, Idaho 83707

Re: Water Permits Nos. 36-7033 and 36-7164

Dear Keith:

With respect to Mr. Burden's intentions regarding the above water permits, it is believed the following information is pertinent and may help Mr. Higer in evaluating whether Mr. Burden's intentions were speculative.

Mr. Burden purchased the Crystal Springs Ranch, Inc., with no water rights for the sum of $325,000.00. The ranch was sold to Crystal Springs Ranch, Inc., with water rights for the sum of $280,000.00.

Shortly after Mr. Burden purchased the ranch, he talked with Mr. Rangen of Buhl, Idaho, about constructing fish ponds on the property. Mr. Rangen referred him to Jack Chipman, who was an employee of Mr. Rangen, and Mr. Chipman was retained by Joseph and Kathryn Burden for the purpose of drawing plans and beginning construction of fish ponds on the property. Shortly after Mr. Chipman was retained, Mr. Burden suffered business losses in California of approximately two million dollars, and informed Mr. Chipman to wait a while before the fish ponds were constructed. At a later point, Mr. Burden told Mr. Chipman to go ahead and begin construction on the fish ponds, and at that time, Mr. Burden's son was killed in an automobile accident. Mr. Burden was very upset over his son's death and again told Mr. Chipman to cease any further work on the fish ponds. After his son's death, Mr. Burden lost interest in the place and told Harry LeMoyne that

36 7033

he would like to sell it. The property was then sold to Crystal Springs Ranch, Inc., for $280,000.00, which was a net loss to Mr. Burden of $45,000.00.

If Mr. Higer wishes an affidavit to this respect, Mr. Burden will be happy to furnish it to him immediately.

Your help and cooperation in this matter is sincerely appreciated.

Sincerely,

ROBERT C. PAINE

RCP/bb

PARRY, ROBERTSON, DALY & LARSON
LAWYERS
THE IDAHO FIRST NATIONAL BANK BUILDING
P. O. BOX 525
TWIN FALLS, IDAHO 83301

TELEPHONE

R. P. PARRY
T. M. ROBERTSON
JOHN H. DALY (1913-1968)
BERT LARSON
C. G. McINTYRE
JOHN R. COLEMAN
THOMAS G. NELSON
JOHN A. ROSHOLT
FRED D. DECKER
ROBERT C. PAINE

JUL 1972
Department of Water Administration

July 21, 1972

Mr. R. Keith Higginson
Executive Director
Department of Water Administration
State House, Annex 2
Boise, Idaho 83707

Re: Water Permits Nos. 36-7033 and 36-7164

Dear Keith:

With respect to Mr. Burden's intentions regarding the above water permits, it is believed the following information is pertinent and may help Mr. Higer in evaluating whether Mr. Burden's intentions were speculative.

Mr. Burden purchased the Crystal Springs Ranch, Inc., with no water rights for the sum of $325,000.00. The ranch was sold to Crystal Springs Ranch, Inc., with water rights for the sum of $280,000.00.

Shortly after Mr. Burden purchased the ranch, he talked with Mr. Rangen of Buhl, Idaho, about constructing fish ponds on the property. Mr. Rangen referred him to Jack Chipman, who was an employee of Mr. Rangen, and Mr. Chipman was retained by Joseph and Kathryn Burden for the purpose of drawing plans and beginning construction of fish ponds on the property. Shortly after Mr. Chipman was retained, Mr. Burden suffered business losses in California of approximately two million dollars, and informed Mr. Chipman to wait a while before the fish ponds were constructed. At a later point, Mr. Burden told Mr. Chipman to go ahead and begin construction on the fish ponds, and at that time, Mr. Burden's son was killed in an automobile accident. Mr. Burden was very upset over his son's death and again told Mr. Chipman to cease any further work on the fish ponds. After his son's death, Mr. Burden lost interest in the place and told Harry LeMoyne that

he would like to sell it. The property was then sold to Crystal Springs Ranch, Inc., for $280,000.00, which was a net loss to Mr. Burden of $45,000.00.

If Mr. Higer wishes an affidavit to this respect, Mr. Burden will be happy to furnish it to him immediately.

Your help and cooperation in this matter is sincerely appreciated.

Sincerely,

ROBERT C. PAINE

RCP/bb

BEFORE THE DIRECTOR OF THE

DEPARTMENT OF WATER ADMINISTRATION FOR

THE STATE OF IDAHO

| | | |
|---|---|---|
| In the Matter of Water Permits Nos. 36-7033 and 36-7164 | ) | AFFIDAVIT OF JACK CHIPMANN |

STATE OF IDAHO )
) ss.
County of Twin Falls )

JACK CHIPMANN, being first duly sworn on oath, says:

1. I was an employee of Rangen's, Buhl, Idaho. At the time when Mr. Joseph Burden was purchasing the Crystal Springs Ranch. Matters stated herein are within my own personal knowledge and I am competent to testify thereto. This affidavit is made in support of Mr. Joseph Burden's application to transfer water Permit Nos. 36-7033 and 36-7164 to Crystal Springs Ranch, Inc.

2. I had several meetings with either the agents of Mr. Joseph Burden or Mr. Burden himself for the purpose of discussing with him the appropriation of waters from Crystal Springs, piping the water under the Snake River, and developing and using such water for fish propagation purposes at the Crystal Springs Ranch.

3. I had several meetings with Mr. Harry LeMoyne, who was an agent for Joseph Burden, and Mr. Milton, and discussed with them the development of waters in Crystal Springs on the Crystal Springs Ranch. I escorted Mr. Harry LeMoyne and Mr. Milton around to the various fish farms in this area and discussed with them how fish farms can be developed and how the water is used.

4. After Mr. Burden had purchased the Crystal Springs Ranch, I met with Mr. Joseph Burden, his two sons, and Harry

LeMoyne for a dinner meeting. We discussed at that time how the waters in Crystal Springs Ranch could be developed. Mr. Burden's intentions were very clear. He intended to bring water from the Crystal Springs under the Snake River and use that water for commercial fish propagation purposes. At that time I drew several sketches for him detailing how this project could be accomplished. He also discussed with me his intention to use the water to develop ponds for the purpose of raising catfish on the Crystal Springs Ranch.

5. I had known Mr. Burden for several years and I knew he had interests in large corporations in other states with many employees. At a meeting with Mr. Burden he further informed me that he intended to build something like a club house on the Crystal Springs Ranch for use by his employees. Mr. Burden intended to use some of the water which he appropriated in Crystal Springs Ranch in developing areas around the club house and ponds wherein fish would be grown.

6. All of my conversations with Mr. Burden and with his agents or employees were very clear that he intended to use the water which he appropriated in Crystal Springs for fish propagation purposes on Crystal Springs RAnch.

7. Oneof the difficulties which I foresaw in my dealings with Mr. Burden or his employees was that initially Mr. Burden was talking of only appropriating 50 cubic feet per second of water. I informed him that due to the expense of bringing the water under the river, I felt that 50 feet was insufficient and that I would not have anything to do with it on that basis. I further informed him that if he was going to have a fish propagation business he would need more water to make it commercially feasible and I advised him to appropriate more water.

8. Shortly after my conversations with Mr. Burden regarding the development of the waters on Crystal Springs Ranch for fish

propagation purposes I was informed that one of his sons who had attended the above-mentioned meeting, had been burned to death in an automobile accident in Mexico. Mr. Burden took his son's death very hard and it is my belief that as a result of this, he lost interest in developing Crystal Springs Ranch.

9. All of the conversations which I had with Mr. Joseph Burden and Mr. Harry LeMoyne, his agent, regarded the development of waters which they appropriated, or intended to appropriate, for fish propagation purposes. In all of the conversations they made it very clear that they intended to develop and use the waters on Crystal Springs Ranch for the purpose of fish propagation and use on the ranch.

JACK Chipmann

Subscribed and sworn to before me this 21 day of July, 1972.

Notary Public for Idaho
Residing at Twin Falls, Idaho

BEFORE THE DIRECTOR OF THE

DEPARTMENT OF WATER ADMINISTRATION OF

THE STATE OF IDAHO

In the Matter of Water )
Permits Nos. 36-7033 ) AFFIDAVIT OF JOHN C. HEPWORTH
and 36-7164 )

STATE OF IDAHO :
: ss.
County of Twin Falls :

John C. Hepworth, being duly sworn under oath, says:

1. I am an attorney duly licensed and practicing in the State of Idaho. I am the secretary of Clear Springs Trout Co., and its wholly-owned subsidiary corporation, Clear Springs Trout Sales, Inc.

2. I am not acquainted with Joseph Burden and I know of my own personal knowledge that neither I nor any other officer or agent of Clear Springs Trout Co., or its subsidiary, Clear Springs Trout Sales, Inc., has ever made any offer to Joseph Burden or any of his agents or employees to purchase Crystal Springs Ranch or any of the water rights or water filings appurtenant thereto.

John C. Hepworth

Subscribed and sworn to before me this 25th day of July, 1972.

Notary Public for Idaho
Residing at Buhl, Idaho

36 7033

LAW OFFICES
HEPWORTH
NUNGESTER
AND
FELTON
BUHL, IDAHO

BEFORE THE DIRECTOR OF THE

DEPARTMENT OF WATER ADMINISTRATION OF

THE STATE OF IDAHO

| | | |
|---|---|---|
| In the Matter of Water | ) | |
| | ) | |
| Permits Nos. 36-7033 | ) | AFFIDAVIT OF THORLEIF RANGEN |
| | ) | |
| and 36-7164 | ) | |

STATE OF IDAHO )
) ss.
County of Twin Falls )

THORLEIF RANGEN, being first duly sworn, deposes and says:

1. I am one of the principals in Rangen's, Inc., of Buhl, Idaho. The matters stated herein are within my own personal knowledge and I am competent to testify thereto.

2. One of the principal business activities of Rangen's, Inc., is the production of food for fish propagation purposes.

3. At the time when Mr. Joseph Burden was involved in the purchase of Crystal Springs Ranch either he or Mr. Harry LeMoyne, his agent, contacted me concerning bringing water from the Crystal Springs under the Snake River to the Crystal Springs Ranch and using that water for fish propagation.

4. In my conversations with Mr. LeMoyne and Mr. Burden, it was very clear that they intended to develop the waters appropriated from Crystal Springs for fish propagation purposes.

5. I informed Mr. LeMoyne and Mr. Burden that if they intended to develop waters which they appropriated in Crystal Springs for fish propagation purposes, they should contact Mr. Chipmann. It is my understanding that Mr. Burden did retain Mr. Jack Chipman for that

36 7033

purpose.

Thorleif Rangen

Subscribed and sworn to before me this 25 day of July, 1972.

Notary Public for Idaho
Residing at Twin Falls, Idaho

36 7033

BEFORE THE DIRECTOR OF THE

DEPARTMENT OF WATER ADMINISTRATION FOR

THE STATE OF IDAHO

| | | |
|---|---|---|
| In the Matter of Water Permits Nos. 36-7033 and 36-7164 | ) | AFFIDAVIT OF HARRY LeMOYNE |

STATE OF IDAHO )
) ss.
County of Idaho )

HARRY LeMOYNE, being first duly sworn on oath, says:

1. I am a real estate agent in the State of Idaho and am the owner of LeMoyne Realty in Twin Falls, Idaho. Matters stated herein are within my own personal knowledge and I am competent to testify thereto. This affidavit is made in support of Joseph Burden's application for transfer of Water Permits Nos. 36-7033 and 36-7164 from Joseph Burden to Crystal Springs Ranch, Inc.

2. I have for many years been the agent of and represented Mr. Joseph Burden or his corporations in their real estate transactions in the State of Idaho.

3. I represented Mr. Joseph Burden in his purchase of Crystal Springs Ranch, the proper description for said ranch can be found in the affidavit of LeRoy Bylund filed in the above-captioned cause.

4. At the time of the purchase of Crystal Springs Ranch from Oren Diamond by Joseph Burden there had been no water appropriated in the Crystal Springs.

5. At the time of the purchase of Crystal Springs Ranch, Inc., by Joseph Burden I had many conversations with him concerning the development of that land. Mr. Burden informed me that he

36 7033

wanted to appropriate water in the Crystal Springs for the purpose of developing fish propagation ponds. I had numerous conversations with Mr. Burden and it was very clearly his intention to appropriate water in the Crystal Springs, pipe it under the Snake River and use that water in fish propagation on the Crystal Springs Ranch.

6. At Mr. Burden's request, I had several conversations with Mr. Thorleif Rangen, owner of Rangen's, Inc., in Buhl, Idaho. Mr. Thorleif Rangen was an expert in the area of fish propagation. Mr. Rangen advised me that Mr. Burden should get in contact with Mr. Jack Chipmann, an employee of Mr. Rangen, as Mr. Chipmann was an expert in the area of fish propagation.

7. I had several meetings with Mr. Jack Chipmann. Mr. Chipmann took myself, as an agent for Joseph Burden, and Mr. Milton, another developer, to all of the various fish hatcheries in the area showing what could be done.

8. Sometime in 1969, about the time that application for Permit No. 36-7033 had been filed, Mr. Joseph Burden, his two sons and myself met for dinner with Mr. Jack Chipmann. We discussed with Mr. Chipmann exactly what would be necessary for the development of the waters for fish propagation purposes. Mr. Chipmann informed us that he thought that 50 cubic feet per second of water would be insufficient. Mr. Chipmann explained that due to the cost of bringing water under the Snake River the development for fish propagation with only 50 cfs of water would not be profitable. He suggested that more water be appropriated. Subsequent to our conversations with Mr. Chipmann, a second water permit was filed, being application for water Permit No. 36-7164.

9. As an agent for Joseph Burden, I expended a great deal of time with Mr. Chipmann and others, in preliminary work to development the waters appropriated in Permits Nos. 36-7033 and 36-7164 for fish propagation. It was absolutely Mr. Burden's inten-

tion at the time of the filing of the Permits Nos. 36-7033 and 36-7164 to use that water for the purpose of fish propagation. All of the dealings which I had on behalf of Mr. Burden with Mr. Thorleif Rangen, Mr. Jack Chipmann, and others, was for the purpose of developing the water rights in Permits Nos. 36-7033 and 36-7164 for fish propagation purposes.

Harry F. LeMoyne

Subscribed and sworn to before me this 25 day of July, 1972.

Robert Laine
Notary Public for Idaho
Residing at Twin Falls, Idaho

36 7033

BEFORE THE DIRECTOR

OF THE

IDAHO DEPARTMENT OF WATER ADMINISTRATION

---

In the Matter of Permit Nos. )
36-7033 and 36-7164, in the ) AFFIDAVIT OF LeROY BYLUND
name of JOSEPH L. BURDEN. )

---

STATE OF IDAHO )
) ss.
County of Twin Falls )

LeROY BYLUND, being first duly sworn on oath, deposes and says:

1. I am the Vice-President of Crystal Springs Ranch, Inc. This affidavit is made from my own personal knowledge, and I am competent to testify to the matters contained herein.

2. On or about March 31, 1972, Roy Bylund, P. O. Box 109, Buhl, Idaho, Wesley Helth, 273 Court Street, Elko, Nevada, and Otto Lynn, P. O. Box 109, Buhl, Idaho, formed a corporation entitled Crystal Springs Ranch, Inc.

3. Crystal Springs Ranch, Inc., is incorporated under the laws of the State of Idaho, and is in good standing. The 1972 annual statement of $150.00 was paid on July 17, 1972. The corporation has authorized capital in the amount of $300,000.00. There are authorized 3,000 shares of capital stock with a par value of $100.00 per share. At the time the corporation was formed, 1,000 shares were issued, 334 shares to Wesley Helth, Corporation President, 333 shares to Roy Bylund, Corporation Vice-President, and 333 shares to Otto Lynn, Corporation Secretary and Treasurer.

4. On or about March 31, 1972, the corporation entered into a purchase contract with Joseph Burden and Kathryn L. Burden, husband and wife, for the purchase of certain real property located in Twin Falls County, and more particularly described as follows:

36 7033

Township 9 South, Range 15 East, Boise Meridian,
Twin Falls, County, Idaho.

Section 11: NE-1/4 SW-1/4, N-1/2 SE-1/4, SE-1/4 SE-1/4, Lots 5, 6 and 7.
Section 12: S-1/2 NW-1/4 SW-1/4, S-1/2 SW-1/4, SW-1/4 SE-1/4, Lots 6, 7 and 8.
Section 14: NE-1/4 NE-1/4.

The Salt Grassland Sand Placer Mining Claims, designated by the Surveyor General as Survey No. 2693, embracing a portion of Sections 11 and 12, said Township and Range, bounded, described and platted as BEGINNING for the description of the Salt Grass Placer claim, at corner no. 1 a pine post 5 feet long, 5 inches square, marked SG-1-2693, in mound of rock, from which the quarter corner between Sections 11 and 12 in Township 9 South, Range 15 East of the Boise Meridian, bears North 69°5' East 504.7 feet distant;

Thence first course, South 67°38' East 509.8 feet intersect the East line of the Southeast Quarter of Section 11 in Township 9 South, Range 15 E., B.M., at South 374.2 feet from the East Quarter corner of said Section 1268.9 feet intersect the North line of the S-1/2 NW-1/4 SW-1/4 of Section 12, said Township and Range, 1303 feet to corner no. 2, a pine post 5 feet long, 5 inches square, marked SG-2 SP 2-2693, in mound of rocks;

Thence Second course, North 9°10' East 13.03 feet intersect the North line of said S-1/2 NW-1/4 SW-1/4 of Section 12, 430 feet to corner no. 3, a pine post 5 feet long, marked SG3- SP 1-2693, in mound of earth;

Thence Third course, North 64°20' West 1406.8 feet to corner No. 4, a pine post 5 feet long, marked SG 4-2693;

Thence Fourth course, South 35' West 357.67 feet intersect the North line of said SE-1/4 of Section 11 at North 89°59' West 469.61 feet from the East quarter corner 538 feet to corner no. 1, the place of beginning.

BEGINNING, for the description of the Sand Placer claim at corner no. 1, identical with corner no. 3 of said Salt Grass Placer Claim, from which said Quarter Section corner bears North 72°35' West 840.5 feet distant;

Thence First course, South 9°10' West 416.97 feet intersection the North line of said S-1/2 NW-1/4 SW-1/4 of Section 12, at North 89°45' West 581.35 feet from the Northeast corner, 430 feet to corner no. 2, identical with corner no. 2 of said Salt Grass Placer claim;

Thence Second course, South 64°2' East 648.95 feet intersect the East line of said S-1/2 NW-1/4 SW-1/4 of Section 12, at South 294.46 feet from the Northeast corner, also intersect the West line of the Lot 6 of said Section 12, 1324.7 feet to corner no. 3, a pine post 5 feet long, marked SP-3-2693, in mound of rock;

Thence Third course, North 25° 30' East 460 feet to corner no. 4, a pine post 5 feet long, marked SP-4-2693, in mound of earth;

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Thence Fourth course, North 65°57' West 882.14 feet intersect the West line of said Lot 6 of Section 12, 1446 feet to corner no. 1, the place of beginning. EXPRESSLY EXCEPTING AND EXCLUDING from these premises all that portion of the ground hereinbefore described embraced in said SE-1/4 of Section 11 and the S-1/2 NW-1/4 SW-1/4 and said Lot 6 of Section 12.

Township 9 South, Range 16 East, Boise Meridian, Twin Falls County, Idaho.

Section 7: Lot 10.
Section 17: All that part of Lots 9 and 10 lying North and below the South Rim of Snake River Canyon.
Section 18: Lot 12, that part of Lots 3, 5, 10, 13, 14 and 15 lying North and below the South rim of Snake River Canyon.

5. Joseph and Kathryn L. Burden were at the time of the above-mentioned purchase the holders of Water Permit Nos. 36-7033 in the amount of 50 c.f.s. granted on December 8, 1969, and Water Permit No. 36-7164 in the amount of 50 c.f.s. granted September 21, 1971.

6. On or about July 5, 1972, Joseph and Kathryn Burden assigned to said corporation all of their interests in the above-mentioned water permits.

7. On or about July 19, 1972, said corporation received by Registered Mail from the Director of the Idaho Department of Water Administration an Order to Show Cause why the above mentioned permits should not be cancelled pursuant to the provisions of Idaho Code Section 42-203.

8. On or about July 19, 1972, Joseph and Kathryn C. Burden were issued 250 shares of capital stock in Crystal Springs Ranch, Inc., said shares of stock to be held by Joseph and Kathryn Burden until the Contract of Sale, a copy of which is attached hereto as Exhibit "A," is paid in full, at which time said shares may be redeemed by the corporation. A true copy of the corporate minutes and a true copy of the shares of stock issued to Burdens are attached hereto as Exhibits "B" and "C" respectively.

36 7033

9. Joseph Burden and Kathryn Burden have a financial interest of at least $115,688.25 in said corporation as evidenced by paragraph 2(h) of page 3 of Exhibit "A" attached hereto. Said $115,688.25 is to be paid by the corporation to the Burdens in annual installments, beginning April 1, 1973, of $10,000.00 each.

10. Since June of 1972, considerable time and money having been expended by the corporation to perfect Permits Nos. 36-7033 and 36-7164. Over $20,000 has been expended for pipe. Northwest Crane, Rigging & Transport Company has been hired to construct the pipeline under the Snake River with work presently in progress. Approximately $100,000.00 has been invested to construct concrete fish ponds and excavate the area where the water will be used. Easements No. 4261 and 4262 have been obtained from the State of Idaho permitting the construction of the pipeline. The project will be finished by fall of 1972, and the water will then be diverted to beneficial use.

DATED, this 20 day of July, 1972.

LeROY BYLUND

SUBSCRIBED and SWORN TO BEFORE ME, this 20 day of July, 1972.

NOTARY PUBLIC IN AND FOR IDAHO
Residing at Twin Falls, Idaho.



36 7033

Order to Show Cause dated July 17, 1972, sent by certified mail to the following on July 18, 1972:

Joseph L. Burden, Box 321, Twin Falls, Idaho #23813

Robert C. Paine, Parry, Robertson, Daly & Larson,
P.O. Box 525, Twin Falls, Idaho #23814

Crystal Springs Ranch, Inc., Buhl, Idaho #23815

By Darlene Finch

Certified cards filed in 36-7164.

CONTRACT OF SALE

THIS CONTRACT, made and entered into this 31 day of March, 1972, by and between JOSEPH L. BURDEN and KATHRYN L. BURDEN, husband and wife, hereinafter called "Sellers," and CRYSTAL SPRINGS RANCH, INC., an Idaho corporation, hereinafter called "Buyer";

W I T N E S S E T H:

1. PURCHASE AGREEMENT: For and in consideration of the mutual promises and covenants herein contained and the sum of money hereinafter agreed to be by the Buyer paid and the covenants and agreements of the Buyer herein contained, well and truly to be by them performed, Sellers do hereby agree to sell and convey a good and sufficient Warranty Deed, Buyer does hereby agree to purchase of and from Sellers, according to the terms and conditions hereinafter set out, the following described real property situated in Twin Falls County, Idaho, to-wit:

All that part of Lots 9 and 10 in Section 17, and Lots 10, 13, 14, and 15 in Section 18, Township 9 South, Range 16 East of the Boise Meridian, Twin Falls County, Idaho, lying North and below the South rim of Snake River; That portion of Lots 3 and 5 of Section 18, Township 9 South, Range 16 East of the Boise Meridian, lying North of and below the Rim of Snake River Canyon; Lots 5, 6, and 7 in Section 11, Township 9 South, Range 15 East of the Boise Meridian; The Jim Cross claim comprising the Lots 5 and 6 of Section 11 in Township 9 South, Range 15 East of the Boise Meridian and the Rosa Boll claim comprising the Lot 7 of said Section 11 and the Salt Grass and Sand Placer Mining Claims, designated by the Surveyor General as Survey No. 2693, embracing a portion of Sections 11 and 12, said Township and Range, bounded, described and platted as
BEGINNING for the description of the Salt Grass Placer claim, at corner No. 1 a pine post five feet long, five inches square, marked SG-1-2693, in mound of rock, from which the quarter corner between Sections 11 and 12 in Township 9 South, Range 15 East of the Boise Meridian, bears North 69°5' East 504.7 feet distant;
THENCE first course, South 67°38' East 509.8 feet intersect the East line of the Southeast Quarter of Section 11 in Township 9 South, Range 15 E.B.M., at South 374.2 feet from the East quarter corner of said Section 1268.9 feet intersect the North line of the S 1/2 NW 1/4 SW 1/4 of Section 12, said Township and Range, 1303 feet to corner No. 2 a pine post five feet long, five inches square, marked SG-2-SP 2-2693, in mound of rocks;

EXHIBIT "A"

THENCE Second course, North 9°10' East 13.03 feet intersect the North line of said S 1/2 NW 1/4 SW 1/4 of Section 12, 430 feet to corner No. 3 a pine post five feet long, marked SG-3-SP 1-2693, in mound of earth;
THENCE Third course, North 64°20'West 1406.8 feet to corner No. 4 a pine post five feet long, marked SG-4-2693;
THENCE Fourth course, South 35' West 357.67 feet intersect the North line of said SE 1/4 of Section 11 at North 89° 59' West 469.61 feet from the East quarter corner 538 feet to corner No. 1 the place of beginning.

BEGINNING, for the description of the Sand placer claim at corner No. 1, identical with corner No. 3 of said Salt Grass Placer Claim, from which said Quarter Section corner bears North 72°35' West 840.5 feet distant;
THENCE First course, South 9°10' West 416.97 feet intersection the North line of said S 1/2 NW 1/4 SW 1/4 of Section 12, at North 89°45' West 581.35 feet from the Northeast corner, 430 feet to Corner No. 2, identical with corner No. 2 of said Salt Grass Placer claim;
THENCE Second course, South 64°2' East 648.95 feet intersect the East line of said S 1/2 NW 1/4 SW 1/4 of Section 12, at South 294.46 feet from the Northeast Corner, also intersect the West line of the Lot 6 of said Section 12, 1324.7 feet to corner No. 3 a pine post five feet long marked SP-3-2693, in mound of rock;
THENCE Third course, North 25°30' East 460 feet to corner No. 4 a pine post five feet long, marked SP-4-2693, in mound of earth;
THENCE Fourth course, North 65°57' West 882.14 feet intersect the West line of said Lot 6 of Section 12, 1446 feet to Corner No. 1, the place of beginning, EXPRESSLY, EXCEPTING AND EXCLUDING from these premises all that portion of the ground hereinbefore described embraced in said SE 1/4 of Section 11 and the S 1/2 NW 1/4 SW 1/4 and said Lot 6 of Section 12.

AND, NE 1/4 NE 1/4 of Section 14, Township 9 South, Range 15 East of the Boise Meridian, Twin Falls County, Idaho. Lot 10 in Section 7 and Lot 12 in Section 18, in Township 9 South, Range 16 East of the Boise Meridian. The NE 1/4 SW 1/4 the N 1/2 SE 1/4, SE 1/4 SE 1/4 of Section 11, the SW 1/4 SW 1/4 and the S 1/2 NW 1/4 SW 1/4 in Section 12, all in Township 9 South, Range 15 East of the Boise Meridian, AND, the SE 1/4 SW 1/4, SW 1/4 SE 1/4 and Lots 6, 7 and 8 in Section 12, Township 9 South, Range 15 East of the Boise Meridian, ALL in Twin Falls County, Idaho.

2. PURCHASE PRICE. Buyer, in consideration of the above described premises, including machinery and all water rights appurtenant to said real property, agrees to pay Sellers for said property the sum of $280,000.00, at the times, in the amounts, and in the manner described as follows:

(a) $1,000.00, to be paid in cash to the LeMoyne Realty Company Trust Account, the receipt of which is hereby acknowledged;

(b) $9,000.00, to be paid in cash upon execution of this Agreement, to be paid to the LeMoyne Realty Company Trust Account;

(c) $20,000.00, to be paid in cash on or before April 6, 1972, to be paid to the LeMoyne Realty Company Trust Account;

(d) $104,879.58 by assuming the Contract of Sale entered into the 27th day of October, 1966, by and between LaVern O. Strong and Alda M. Strong, husband and wife, as Sellers, and Oren A. Diamond, dealing with his sole and separate property, as Purchaser (hereinafter referred to as the Strong Contract);

(e) Interest on the Strong Contract of $1,442.19, to April 1, 1972;

(f) $27,000.00 by assuming the obligation to pay the principal balance due and owing as of August 1, 1971, on a certain John Hancock Mutual Life Insurance Company Mortgage, dated June 6, 1961, recorded June 12, 1961, as Instrument No. 504153 in Book 192 of Mortgages, page 98, in the office of the County Recorder of Twin Falls County, Idaho;

(g) $989.98 by assuming interest due on the above-mentioned John Hancock Mutual Life Insurance Company Mortgage to April 1, 1972;

(h) $115,688.25, the balance due on this contract to be paid to Sellers as follows:

$10,000.00, plus interest at the rate of 6-1/2% per annum, on or before April 1, 1973, and $10,000.00 plus interest to be paid on or before the first day of April of each and every succeeding year thereafter until the entire balance due and owing on this contract has been paid in full.

3. PLACE OF PAYMENT. After the April 6, 1972, payment, the above-mentioned mortgage payments and the balance due under this contract are to be paid to the escrow agent hereinafter named in accordance with the terms of sub-paragraphs (d) through (h) of the preceding paragraph of this agreement.

4. EQUIPMENT. It is expressly agreed by and between Buyer and Sellers hereto that for the above-mentioned purchase price, Sellers shall include certain equipment, a list of which is attached hereto and marked Exhibit "A," and by specific reference adopted as though set forth at length herein. A Bill of Sale shall be furnished by Sellers to Buyer, to be put in escrow, released by Sellers after the first annual payment to Sellers has been made by Buyer pursuant to the terms of this contract.

5. OTHER INSTRUMENTS. Simultaneously with the execution of this contract, Sellers agree to execute a good and sufficient Warranty Deed subject to the above-mentioned exceptions, conveying the premises to Buyer.

6. ESCROW.

(a) Escrow Agent: Twin Falls Bank & Trust Company, main offices located in Twin Falls, Idaho, is hereby designated as the escrow agent under the terms of this contract.

(b) Documents to be Placed in Escrow: The parties hereby agree that the following documents are to be placed in escrow upon execution of this agreement:

(1) An executed copy of this contract and Guarantee of Performance thereof;

(2) Warranty Deed;

(3) A copy of the Strong Contract;

(4) Bill of Sale heretofore mentioned in this agreement;

(5) Water stock certificates for 160 shares of Twin Falls Canal Company;

(6) Buyer's insurance policies covering all appurtenances to the above-described premises, with loss payable clauses to LaVern O. Strong and Alda M. Strong, husband and wife, and second, to Joseph Burden and Kathryn L. Burden, husband and wife, and thirdly, to Buyer herein.

(7) Assignment from the Buyer to the Sellers of Permit No. 36-7033.

(8) Assignment from the Buyer to the Sellers under Water Permit No. 36-7164.

The escrow agent is instructed that upon receipt of payment under Paragraph 2(d) of this contract to make the payment as received from the Buyer in accordance with the Strong Contract which is attached to this document and marked as Exhibit "B", and incorporated herein as if set forth in full.

(c) To make the payments to John Hancock Mutual Life Insurance Company as said payments are received in this escrow.

(d) To pay over to the Sellers all other sums paid in accordance with the terms of this agreement by mailing the same to the Sellers at: 500 South Alameda Street, Compton, California.

(e) Costs of Escrow: The initial escrow fees charged by escrow holder shall be paid one-half by the Sellers and one-half by the Buyer. The annual collection charges and escrow fees shall be paid by the Sellers.

(f) The escrow agent is hereby appointed by Buyer, and the Guarantors of the Guarantee attached hereto, as their agent and attorney in fact to accept service of Summons and Complaint on behalf of Buyer and/or Guarantors in any action brought by Buyers to enforce this Contract of Sale and/or the Guarantee attached hereto.

7. PRE-PAYMENT. During the period of this contract, Buyer shall have the right to pre-pay any or all sums due hereunder at any time without penalty. Any such pre-payment in excess of the amount annually due under this contract shall be credited first



36 703

to the accrued interest and then the balance to be subtracted from the end of the contract.

8. TITLE INSURANCE. It is agreed by and between the parties hereto that Sellers shall furnish to Buyer a policy of title insurance at the date of closing written in the amount of $280,000.00, subject to the mortgages above-mentioned, and also subject to all easements and rights of way of record and taxes accruing after January 1, 1972. Upon delivery of the title insurance from the Sellers to the Buyer, the Buyer shall have thirty (30) days within which to object to any exception listed in said policy other than those heretofore mentioned in this paragraph. In the event that any defect in title is raised by the Buyer, the Sellers shall have a reasonable length of time in which to correct the objection.

9. TAXES. Real property taxes and assessments for the year 1972 and thereafter shall be assumed and paid by the Buyer herein.

10. INSURANCE. Buyer will carry fire insurance protection for the improvements on the premises in the amount of their reasonable value in a fire insurance company acceptable to Sellers and Buyer herein, which policy shall insure the parties and the mortgagee as their interest may appear. Such fire insurance policy shall be payable first to LaVern and Alda M. Strong, husband and wife, and second to Joseph Burden and Kathryn L. Burden, with any remainder being in favor of Buyer. The policy of fire insurance shall be held by the escrow agent named herein.

11. POSSESSION. Buyer shall be entitled to possession of the premises on or after April 1, 1972.

It is specifically agreed by and between Sellers hereto that a portion of the above-described premises, known as the Sand Placer area, a description of which is attached hereto as Exhibit "C" and by specific reference adopted as though fully set forth

herein, has been released from the John Hancock Life Insurance Company mortgage above mentioned. LaVern Strong and Alda M. Strong, husband and wife, and Joseph L. Burden and Kathryn L. Burden, husband and wife, by Memorandum Agreement dated the 22nd day of September, 1970, agreed that they will release acreage from the ranch beginning in the Sand Placer area for the sum of $500.00 per acre. It is agreed that Buyer herein shall be a third-party beneficiary to such agreement. Burden will release the same acres that Strong releases for the additional sum of $300.00 per acre. Upon Buyer's paying to LaVern Strong and Alda M. Strong the sum of $500.00 per acre, and paying to Joseph L. Burden and Kathryn L. Burden, husband and wife, an additional $300.00 per acre, Sellers and Strong agree to provide partial and appropriate mortgage releases for each acre sought to be released. The Buyer agrees to pay all costs incident in the preparation of any mortgage release requested, and the Buyer further agrees to pay any sums requested by John Hancock Insurance Company as consideration for the release of additional mortgaged lands.

It is understood and agreed that partial releases will be sought first in the area which has been previously subdivided, known as the Sand Placer area. It is further understood and agreed that the acreage so released shall not be so located in relation to the remaining property subject to this Contract of Sale so that the release thereof would materially decrease the value or marketability of the remaining property.

It is further understood and agreed that the Buyer shall furnish to the Sellers adequate legal description sufficient to satisfy John Hancock Life Insurance Company prior to the Sellers obtaining requested releases.

All transactions under this Subsection No. II shall be pursuant to the Trust Agreement attached hereto as Exhibit "D" and which is by specific reference adopted as though fully set forth at length herein.

It is further understood and agreed for all amounts of money received under this provision of this contract shall be applied directly to the outstanding principal balance due and owing under the provisions of this contract, and such payments, when so applied, shall be in addition to all

36 703

other payments due under this contract.

12. GRAVEL PITS. It is understood by and between Buyer and Sellers herein that there is located upon the property described in Subsection 1 above certain gravel pits. It is expressly agreed that Buyer may immediately begin removing gravel from said gravel pits, said gravel to be sold or used as Buyer deems fit. In the event of default by Buyer herein, Sellers agree that they shall have no claim against Buyer for any gravel which has been excavated and used or sold by Buyer. Seller disclaims and has never made any warranty concerning the quantity, quality, ability to excavate, or any other aspect relating to said gravel pits.

13. WATER RIGHTS. It is expressly understood and agreed by and between the parties hereto that Joseph L. Burden presently holds Application for Water Permit No. 36-7033 in the amount of 50 c.f.s. of water. An application for extension of time to put this water to beneficial use is pending before the Director of Water Administration.

It is further understood and agreed that Burden presently holds Application for Water Permit 36-7164 from the State of Idaho Department of Water Administration for 50 c.f.s. of water, and proof of beneficial use of said water must be made by Burden prior to April 1, 1974.

It is further specifically agreed by and between Sellers hereto that prior to the release of any funds from escrow or trust, the Sellers shall: (a) transfer their rights in Application for Water Permit No. 36-7033 to the Buyer; (b) transfer their water rights in Application for Water Permit No. 36-7164 to the Buyer; (c) obtain permission from the proper Idaho State agency or Federal agency as required to perfect the transfer of the water permit in the "Lower Crystal Springs" in the total amount of 100 c.f.s. of water; (d) Sellers agree to obtain the necessary easements for crossing the Snake River with a pipeline from the appropriate governmental agency.

Upon performance of the foregoing conditions by the Sellers, LeMoyne Realty shall release all funds which are held in trust.

14. CONDITION PRECEDENT. It is expressly agreed by and between Buyer



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and Sellers herein that Sellers obtaining all of the documents referred to in Paragraph 13 above is a condition precedent to performance of this contract by Buyer. In the event Sellers are unable to obtain any of the documents referred to in Paragraph 13 above, ~~neither Buyer nor Seller shall be further obligated under this contract.~~ Buyer may elect Not to be obligated under this contract. If Buyer elects Not to be obligated under this contract then seller shall not be obligated under this contract.

15. PIPELINE. It is understood by and between the parties hereto that approximately $50,000.00 will be required to put a pipeline across the Snake River for the delivery of at least 50 c.f.s. of water from Crystal Springs to the above-described property. Seller has made no representations concerning the cost of said pipeline and Buyer has independently satisfied himself concerning the accuracy of the estimated cost. The pipeline will be installed and paid for upon installation by Buyer, or in the alternative, Buyer shall deposit the sum of $50,000.00 into escrow with the above-mentioned escrow agent, on or before October 1, 1972, to be applied to the payment of said pipeline when installed and operational. The Buyer further agrees to enter into a contract with Northwest Crane, Rigging & Transport Company, a copy of which is attached hereto as Exhibit "E," to put a pipeline long enough and sufficient in diameter to carry at least 50 c.f.s. of water from Crystal Springs across the Snake River to the above-described property and to have said construction completed on or before the first day of October, 1972.

16. GENERAL COVENANTS. In addition to the covenants and agreements by Buyer herein set forth, Buyer further agrees that so long as any part of this contract is unpaid, they will:

(a) Not commit waste upon the premises or allow or permit any mechanic's or materialman's liens to become liens upon said premises.

(b) Pay when due and not permit to become delinquent, any and all taxes and assessments lawfully imposed as a charge upon said premises.



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17. ACCELERATION, FORFEITURE AND RE-POSSESSION. So long as Buyer performs all of the duties and agreements herein assumed by them, they shall have peaceful and quiet possession of the premises subject hereto, but in the event Buyer fails to make any payments herein required or otherwise by act or omission breach any of the agreements and covenants herein contained, then it shall be the option of the Sellers:

(a) To declare all of the unpaid balance of this contract immediately due and payable and to bring action for the collection of the same, together with foreclosure of the vendor's lien in any Court of competent jurisdiction; or,

(b) To declare this contract terminated and all of the Buyer's interest in said premises wholly forfeited, to retain all payments heretofore received and/or paid into escrow hereunder as liquidated damages, to demand and receive from the escrow agent all of the papers, and to enter into and to take possession and title of all of the property subject to this contract, (including said pipeline and all other improvements installed by Buyer), which possession interest in improvements the Buyer agrees peacefully to yield.

Provided, however, before either of the remedies of Sellers shall be exercised, Sellers shall give Buyer written notice specifying Buyer's default or delinquency in giving Buyer a period of thirty (30) days from the time of service of such notice to correct the default or delinquency so specified, except as hereinafter provided. In this connection, notice of default or delinquency shall be deemed properly given and mailed to Buyer at Crystal Springs Ranch, Inc., Route 4, Buhl, Idaho, and to the guarantors as follows:

LeRoy Bylund
Crystal Springs Ranch, Inc.
Route 4
Buhl, Idaho 83316

J. W. Helth
275 Court Street
Elko, Nevada

and,

3€

Otto Lynn
Route 1
Hagerman, Idaho 83332

In the event of any default or delinquency of Buyer pursuant to Paragraph (a) or (b) above, Sellers shall have and recover from Buyer attorney's fees and other expenses reasonably incurred by Sellers in preparation and service of any notice herein provided, or the collection of any funds, or the obtaining of possession of any of the property subject to this contract, whether with or without suit.

18. ASSIGNMENT. Sellers making this sale to Buyer are relying upon the integrity and ability of the Buyer to perform the terms of the contract as herein provided, and Buyer shall not be permitted to assign its interest in the contract, real property or water rights passing hereunder, without first obtaining the written permission from Sellers.

19. OTHER MAINTENANCE CHARGES. Sellers shall pay and discharge all unpaid taxes, assessments, water assessments, and other charges prior to January 1, 1972, unless otherwise specifically provided for in this agreement.

20. BINDING EFFECT UPON HEIRS AND ASSIGNS. The terms and conditions of this agreement shall extend to and be binding upon the heirs, successors, assigns, executors and administrators of the respective parties hereto.

IN WITNESS WHEREOF, the parties have hereunto set their hands the day and year of this agreement first above written.

JOSEPH L. BURDEN

KATHRYN L. BURDEN

"Sellers"

CRYSTAL SPRINGS RANCH, INC.

By: C W Webb
Its: President

ATTEST:

Secretary

"Buyer"

STATE OF IDAHO )
) ss.
County of Twin Falls )

On this 31 day of March, 1972, before me, a Notary Public in and for said State, personally appeared JOSEPH L. BURDEN and KATHRYN L. BURDEN, husband and wife, known to me to be the persons who executed the foregoing instrument, and duly acknowledged to me that they executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal, the same day and year in this certificate first above written.

Robert C Lane'
NOTARY PUBLIC IN AND FOR IDAHO
Residing at: Twin Falls

(SEAL)

STATE OF IDAHO )
) ss.
County of Twin Falls )

On this 31 day of March, 1972, before me, a Notary Public in and for said State, personally appeared D. W Heath, known to me to be the President of CRYSTAL SPRINGS RANCH, INC., the corporation described in and which executed the within instrument, who duly acknowledged to me that he executed the foregoing instrument on behalf of the said corporation.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal, the same day and year in this certificate first above written.

Robert C Lane
NOTARY PUBLIC IN AND FOR IDAHO
Residing at: Twin Falls

(SEAL)

EXHIBIT "A"

Crystal Springs Ranch inventory as of 3-3-72.

1 Wisconsin motor and pump.
2 four wheel rubber tired wagons
1 sorting and conveyor table for apples
1 Case 3 point hitch disc
1 Case 3 point hitch corrugator
1 285 gallon gas tank and pump
1 rubber tired 2 wheel weed sprayer and pump with gas motor
1 1962 Dodge ½ ton pickup #1181232073
1 840 Ford tractor #EAF 6015-J
1 1966 Ford Diesel Tractor Model 5,000 #C-5NE6015B
1 1966 Ford mowing machine
1 1966 Ford 3 bottom two way plow Model 129
1 Speco Super #12 land plane #LS21123
1 Allis Chalmers 6½' all crop drill
1 Post hole auger
1 Tractor mounted post driver
1 Phosphate spreader
1 3 point hitch V type ditcher
1 Tool bar with spring shanks
1 Spring tooth harrow 3 point hitch
1 8' tandem disc, pull type
1 roll over scraper
Miscellaneous tools and supplies
1 Allis Chalmers skip loader

EXHIBIT "B"

# REAL PROPERTY MORTGAGE

THE MORTGAGOR, OREN A. DIAMOND, whose wife is Gayle R. Diamond, of Santa Barbara, California, mortgage to LAVERN STRONG and ALDA M. STRONG, husband and wife, of Filer, Idaho, the MORTGAGEES, that real property in Twin Falls County, Idaho, described on Exhibit A attached hereto and made a part hereof.

TOGETHER with all hereafter acquired right, title and interest of the Mortgagor herein, and the possession, rents, issues, profits and income thereof, and all easements, appurtenances, tenements, hereditaments, water and water rights, ditches and ditch rights and privileges now or hereafter appurtenant or belonging to or used in connection with the premises or any part thereof.

This is a purchase money mortgage being an encumbrance on the real property hereinabove described which was conveyed to Oren A. Diamond by warranty deed of LaVern Strong and Alda M. Strong, husband and wife. This mortgage is to secure payment of the principal sum of $127,321.67, being a part of the purchase price, with interest from December 1, 1966, at the rate of five and one-half percent (5-1/2%) per annum payable in annual installments of $8,000.00 beginning on the 1st day of January, 1968, and a like installment on the 1st day of January each consecutive year thereafter until the principal balance with interest is paid in full and with the final installment due January 1, 2005.

Mortgagor covenants and agrees to defend this mortgage as a first mortgage lien upon the above described premises against the claims, lawful or otherwise, of all persons whatsoever; to pay prior to delinquency all taxes, liens, assessments and governmental levies against the mortgaged premises no waste and nothing that lessens the value of the premises or impairs or endangers the validity of the insurance policies thereon.

If Mortgagor fails to pay taxes, liens, assessments or governmental levies against the mortgaged premises in the manner above provided, or to pay encumbrances against the premises, Mortgagees may at their option pay

the same; all sums expended by Mortgagees for any such purposes, together with interest thereon at eight percent (8%) per annum from dates of payment, shall be at once due and payable to Mortgagees from the Mortgagor, be a lien upon said premises and be secured by this mortgage.

Time is material and of the essence hereof, and if default be made by Mortgagor in the payment of the debt hereby secured, or interest, or in the performance of any of their covenants herein, or in the event of a sale or transfer of the mortgaged premises by the Mortgagor, then in any of said cases, the balance of unpaid principal, with accrued interest, and all of the indebtedness hereby secured, shall at Mortgagees' election, become immediately due, without notice, and this mortgage may be foreclosed. In any suit to foreclose this mortgage, or any suit or proceedings which Mortgagees may defend to protect the lien hereof, Mortgagor agrees to pay a reasonable sum of attorney's fees, and further agree to pay the reasonable costs of searching the records and abstracting the same as may necessarily be incurred in foreclosing this mortgage or in defending the same, which sums shall be secured hereby and included in the decree of foreclosure.

Mortgagees' omission to enforce their rights upon a breach of Mortgagor of the terms of this mortgage or of the note secured thereby or on Mortgagor's default in the performance of any of his covenants herein, shall not require the Mortgagees to give notice to Mortgagor that they will thereafter demand strict performance or be a waiver of the power to enforce such rights immediately upon the occurrence of any subsequent breach or default.

IN WITNESS WHEREOF, the Mortgagor has executed this instrument this ____ day of _____, 1966.

Oren A. Diamond



38 7033

STATE OF IDAHO )
) ss.
County of Twin Falls )

On this 15 day of October, 1966, before me, the undersigned, a Notary Public in and for said County and State, personally appeared OREN A. DIAMOND, known to me to be the person who executed the 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.

Notary Public for Idaho
Residing at Twin Falls, Idaho.



36 7033

EXHIBIT A

All that part of Lots 9, and 10 in Section 17 and Lots 10, 13, 14, and 15 in Section 18, Township 9 South Range 16 East of the Boise Meridian, Twin Falls County, Idaho, lying North and below the South rim of Snake River; That portion of Lots 3 and 5 of Section 18, Township 9 South, Range 16 East of the Boise Meridian, lying North of and below the Rim of Snake River Canyon; Lots 5, 6, and 7 in Section 11, Township 9 South Range 15, East of the Boise Meridian; The Jim Cross claim comprising the Lots 5 and 6 of Section 11 in Township 9 South Range 15 East of the Boise Meridian and the Rosa Bell claim comprising the Lot 7 of said Section 11 and the Salt Grassand Sand Placer Mining Claims, designated by the Surveyor General as Survey No. 2693, embracing a portion of Sections 11 and 12, said Township and Range, bounded, described and platted as BEGINNING for the description of the Salt Grass Placer claim, at corner No. 1 a pine post five feet long, five inches square, marked SG-1-2693, in mound of rock, from which the quarter corner between Sections 11 and 12 in Township 9 South, Range 15 East of the Boise Meridian, bears North 69°5' East 504.7 feet distant;

Thence first course, South 67°38' East 509.8 feet intersect the East line of the Southeast Quarter of Section 11 in Township 9 South, Range 15 E.,B.M., at South 374.2 feet from the East quarter corner of said Section 1268.9 feet intersect the North line of the S½NW¼SW¼ of Section 12, said Township and Range, 1303 feet to corner No. 2 a pine post five feet long, five inches square, marked SG-2 SP 2 -2693, in mound of rocks;

Thence Second course, North 9°10' East 13.03 feet intersect the North line of said S½NW¼SW¼ of Section 12, 430 feet to corner No. 3 a pine post five feet long, marked SG3-SP 1-2693, in mound of earth;

Thence Third course, North 64°20' West 1406.8 feet to corner No. 4 a pine post five feet long, marked SG 4-2693;

Thence Fourth course, South 35' West 357.67 feet intersect the North line of said SE¼ of Section 11 at North 89°59' West 469.61 feet from the East quarter corner 538 feet to corner No. 1 the place of beginning.

BEGINNING, for the description of the Sand placer claim at corner No. 1, identical with corner No. 3 of said Salt Grass Placer Claim, from which said Quarter Section corner bears North 72°35' West 840.5 feet distant;

Thence First course, South 9°10' West 416.97 feet intersection the North line of said S½NW¼SW¼ of Section 12, at North 89°45' West 581.35 feet from the Northeast corner, 430 feet to Corner No. 2, identical with corner No. 2 of said Salt Grass Placer claim;

Thence Second course, South 64°2' East 648.95 feet intersect the East line of said S½NW¼SW¼ of Section 12, at South 294.46 feet from the Northeast corner, also intersect the West line of the Lot 6 of said Section 12, 1324.7 feet to corner No. 3 a pine post five feet long marked SP-3-2693, in mound of rock;

Thence Third Course, North 25°30' East 460 feet to corner No. 4 a pine post five feet long, marked SP-4-2693, in mound of earth;

Thence Fourth course, North 65°57' West 882.14 feet intersect the West line of said Lot 6 of Section 12, 1446 feet to Corner No. 1, the place of beginning, EXPRESSLY, EXCEPTING AND EXCLUDING from these premises all that portion of the ground hereinbefore described embraced in said SE¼ of Section 11 and the S½NW¼SW¼ and said Lot 6 of Section 12.

AND, NE¼NE¼ of Section 14, Township 9 South Range 15 East of the Boise Meridian, Twin Falls County, Idaho. Lot 10 in Section 7 and Lot 12 in Section 18, in Township 9 South, Range 16 East of the Boise Meridian. The NE¼SW¼ the N½SE¼, SE¼SE¼ of Section 11, the SW¼SW¼ and the S½NW¼SW¼ in Section 12, all in Township 9 South, Range 15 East of the Boise Meridian, AND, the SE¼SW¼, SW¼SE¼ and Lots 6, 7 and 8 in Section 12, Township 9 South, Range 15 East of the Boise Meridian, ALL in Twin Falls County, Idaho.

36 7033

559698 Mtg

Drew A Diamond

to

Pauahi Bldg

Hawaii Land Title Company

STATE OF HAWAII } ss.

Filed for record at the request of .....

.....

.....

.....

.....

.....

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EXHIBIT "B"

PROMISSORY NOTE

$127,321.67 October 28, 1966

FOR VALUE RECEIVED, I, promise to pay to the order of LAVERN O. STRONG and ALDA M. STRONG, One Hundred Twenty-Seven Thousand, Three Hundred Twenty-One and 67/100 Dollars, in lawful money of the United States of America, at the Twin Falls Bank & Trust Company, Twin Falls, Idaho, in installments payable as follows:

$8,000.00 annually, beginning on the 1st day of January, 1968, and on the 1st day of January of each and every consecutive year thereafter, and the balance of principal on the 1st day of January, 2005, together with interest thereon from December 1, 1966, until paid at the rate of 5-1/2% per annum, included in the annual installment and said annual installments to be credited first to interest and then to principal.

In case of default in any of the payments as herein stipulated, then it shall be optional with the legal holder of this note to declare the entire principal sum hereof due and payable, and proceedings may at once be instituted for the recovery of the same by law, with accrued interest and costs, including reasonable attorneys' fees.

Payments may be made by makers at any time in any amount without penalty after January 1, 1967.

The makers, sureties, grantors and endorsers hereof severally waive presentment for payment, protest, notice of protest and nonpayment of this note.

Oren A. Diamond

Oren A. Diamond

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ASSIGNMENT SEPARATE FROM CERTIFICATE

FOR VALUE RECEIVED, I hereby sell, assign and transfer unto OREN A. DIAMOND, all of my right, title and interest in and to 160 shares of the capital stock of the Twin Falls Canal Company, standing in the name of Lavern Strong, on the books of the said corporation evidenced by Certificate No. 18829, and do hereby irrevocably constitute and appoint an authorized officer or agent of said corporation as attorney to transfer the said stock on the books of said corporation with full power of substitution in the premises.

DATED October 27, 1966.

Lavern Strong

## EXHIBIT "C"

Portions of Section 11, Township 9 South, Range 15 East, Boise Meridian, Twin Falls County, Idaho; based on the U.S.Government Dependent Resurvey as approved by the U.S. Surveyor General on April 17, 1918; more specifically described as follows:

All of Lot 5, Lot 6 and Lot 7 of said Section 11, including all of the Salt Grass and Sand Placer Claim Survey No. 2693 included in said Lot 7; and all of the land embraced in the Salt Grass and Sand Placer Claim Survey No. 2693 located in the Northeast Quarter, Northeast Quarter, Southeast Quarter ($NE\frac{1}{4}$, $NE\frac{1}{4}$, $SE\frac{1}{4}$) of said Section 11.

Portions of Section 12, Township 9 South, Range 15 East, Boise Meridian, Twin Falls County, Idaho; based on the U. S. Government Dependent Resurvey as approved by the U. S. Surveyor General on April 17, 1918; more specifically described as follows:

All of the land embraced by the Salt Grass and Sand Placer Claim Survey No. 2693 located within said Section 12.

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-----Dollars,
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12----------

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EXHIBIT "D"

TRUST AGREEMENT

THIS AGREEMENT, made and entered into this 31 day of _____, by and among JOSEPH L. BURDEN and KATHRYN L. BURDEN, husband and wife, hereinafter called "Sellers," CRYSTAL SPRINGS RANCH, INC., hereinafter called "Buyer," and TWIN FALLS BANK & TRUST COMPANY, hereinafter called "Trustee,"

W I T N E S S E T H:

1. That Sellers are the owners of certain real property in Twin Falls County, Idaho, described as follows:

All that part of Lots 9 and 10 in Section 17, and Lots 10, 13, 14, and 15 in Section 18, Township 9 South, Range 16 East of the Boise Meridian, Twin Falls County, Idaho, lying North and below the South rim of Snake River; That portion of Lots 3 and 5 of Section 18, Township 9 South, Range 16 East of the Boise Meridian, lying North of and below the Rim of Snake River Canyon; Lots 5, 6, and 7 in Section 11, Township 9 South, Range 15 East of the Boise Meridian; The Jim Cross claim comprising the Lots 5 and 6 of Section 11 in Township 9 South, Range 15 East of the Boise Meridian and the Rosa Boll claim comprising the Lot 7 of said Section 11 and the Salt Grass and Sand Placer Mining Claims, designated by the Surveyor General as Survey No. 2693, embracing a portion of Sections 11 and 12, said Township and Range, bounded, described and platted as
BEGINNING for the description of the Salt Grass Placer claim, at corner No. 1 a pine post five feet long, five inches square, marked SG-1-2693, in mound of rock, from which the quarter corner between Sections 11 and 12 in Township 9 South, Range 15 East of the Boise Meridian, bears North 69°5' East 504.7 feet distant;
THENCE first course, South 67°38' East 509.8 feet intersect the East line of the Southeast Quarter of Section 11 in Township 9 South, Range 15 E.B.M., at South 374.2 feet from the East quarter corner of said Section 1268.9 feet intersect the North line of the S 1/2 NW 1/4 SW 1/4 of Section 12, said Township and Range, 1303 feet to corner No. 2 a pine post five feet long, five inches square, marked SG-2-SP 2-2693, in mound of rocks;
THENCE Second course, North 9°10' East 13.03 feet intersect the North line of said S 1/2 NW 1/4 SW 1/4 of Section 12, 430 feet to corner No. 3 a pine post five feet long, marked SG-3-SP 1-2693, in mound of earth;
THENCE Third course, North 64°20'West 1406.8 feet to corner No. 4 a pine post five feet long, marked SG-4-2693;
THENCE Fourth course, South 35' West 357.67 feet intersect the North line of said SE 1/4 of Section 11 at North 89° 59' West 469.61 feet from the East quarter corner 538 feet to corner No. 1 the place of beginning.

BEGINNING, for the description of the Sand placer claim at corner No. 1, identical with corner No. 3 of said Salt Grass Placer Claim, from which said Quarter Section corner bears North 72°35' West 840.5 feet distant;
THENCE First course, South 9°10' West 416.97 feet intersection the North line of said S 1/2 NW 1/4 SW 1/4 of Section 12, at North 89°45' West 581.35 feet from the Northeast corner, 430 feet to Corner No. 2, identical with corner No. 2 of said Salt Grass Placer claim;
THENCE Second course, South 64°2' East 648.95 feet intersect the East line of said S 1/2 NW 1/4 SW 1/4 of Section 12, at South 294.46 feet from the Northeast Corner, also intersect the West line of the Lot 6 of said Section 12, 1324.7 feet to corner No. 3 a pine post five feet long marked SP-3-2693, in mound of rock;
THENCE Third course, North 25°30' East 460 feet to corner No. 4 a pine post five feet long, marked SP-4-2693, in mound of earth;
THENCE Fourth course, North 65°57' West 882.14 feet intersect the West line of said Lot 6 of Section 12, 1446 feet to Corner No. 1, the place of beginning, EXPRESSLY, EXCEPTING AND EXCLUDING from these premises all that portion of the ground hereinbefore described embraced in said SE 1/4 of Section 11 and the S 1/2 NW 1/4 SW 1/4 and said Lot 6 of Section 12.

AND, NE 1/4 NE 1/4 of Section 14, Township 9 South, Range 15 East of the Boise Meridian, Twin Falls County, Idaho. Lot 10 in Section 7 and Lot 12 in Section 18, in Township 9 South, Range 16 East of the Boise Meridian. The NE 1/4 SW 1/4 the N 1/2 SE 1/4, SE 1/4 SE 1/4 of Section 11, the SW 1/4 SW 1/4 and the S 1/2 NW 1/4 SW 1/4 in Section 12, all in Township 9 South, Range 15 East of the Boise Meridian, AND, the SE 1/4 SW 1/4, SW 1/4 SE 1/4 and Lots 6, 7 and 8 in Section 12, Township 9 South, Range 15 East of the Boise Meridian, ALL in Twin Falls County, Idaho.

2. Upon the execution of this agreement, Sellers shall convey to the Trustee by Warranty Deed the real property hereinabove last described and shall transfer any shares of the capital stock of the Twin Falls Canal Company appurtenant to said property to the Trustee.

3. It is agreed that the real property hereinabove last described shall be held in trust by the Trustee for the benefit of Buyer and Sellers pursuant to the terms and conditions hereinafter set forth. The Trustee will hold the title to said property in trust for the purposes of dealing, conveying, receiving payments for and otherwise handling the property as a whole or in lots or

parcels. All sales made by Buyer of property held in the name of Trustee shall be for cash, lawful money of the United States of America and each conveyance shall be for an area of one acre or more and the Trustee shall receive $500.00 per acre to be applied to the Strong Contract and $300.00 to be applied to the Sellers' contract attached hereto, which is a total of $800.00 per acre, and shall be exclusive of the selling costs including but not limited to: title insurance and real estate commission. The Trustee will be instructed in writing by Buyer or its authorized representative of the description of the real property and water right to be conveyed and the names of the Grantees. The Trustee is hereby granted full power to do all actions necessary to accomplish the purposes of this trust. The Trustee is authorized to act in accordance with such instructions as it may receive from any officer of Buyer, subject however, to the terms and conditions of this trust agreement herein set forth. Buyer agrees to follow an orderly plan for the development of the real property and agrees with Sellers not to demand from the Trustee conveyance of scattered and disconnected or isolated parcels.*

4. The Trustee is further authorized to sign and file for record at the request of Buyer, restrictions and a plat for the real property but said restrictions shall not terminate the sale or occupancy of said porperty on account of race, color or creed.

5. Buyer agrees that it will fully pay, indemnify, protect, save and hold harmless the Trustee and Sellers from any and all suits, claims, demands, judgments, costs and expenses, including attorneys' fees and other obligations and liabilities of every kind and nature that the Trustee or Sellers may for any reason or at any time suffer, sustain, incur or expend by reason of or in connection with this trust or the administration thereof otherwise



*Buyer further agrees that he will not so develop the real property and demand from the Trustee conveyances thereof in such a manner or in accordance with such a plan, as to render the remainder thereof substantially less valuable or less marketable.

than through their own misconduct or willful neglect. And it is further provided that the Trustee and Sellers shall not be required to pay or attend to the payment of any claims, liens or encumbrances including but not limited to taxes, income, inheritance or estate taxes, or special assessments against the trust property other than from the proceeds received and available hereunder for such payment and shall not attend to any assessment or valuation of the property but all such services shall be performed and all expenses borne by Buyer.

6. It is further understood and agreed that the Trustee shall not be required to commence or defend any suit in connection with this trust or the trust property until there shall have been paid to the Trustee a sum of money sufficient in its judgment to pay all costs thereunder including attorneys' fees and a reasonable compensation to the Trustee for its services and the time of the officers and employees of the Trustee in connection therewith.

7. All instruments affecting any property included in this trust shall be executed solely by the Twin Falls Bank & Trust Company, as Trustee. The Trustee shall not be obligated to warrant title to any property sold or conveyed by it except as against the act of the Trustee only. Any deeds executed by the Trustee shall be made subject to any taxes, assessments, liabilities or obligations against said property.

8. It is understood and agreed between the parties hereto that all funds arising and accruing from the sale of any of the property held under this trust shall be paid to the Trustee and thereafter disbursed by the Trustee as follows:

(1) To the payment of the costs, title insurance fees, expenses, charges, damages and advances, if any, of the Trustee;

(2) To the payment of Sellers as follows:

(a) All funds received by the Trustee to the extent of $800.00 per acre or the equivalent shall be applied in the amount of $500.00 to the Strong Contract and $300.00 to the Sellers' contract which is attached hereto.

All disbursements may be paid by the check of the Trustee.

9. An owner's policy of title insurance in regular form then in use shall be issued in connection with each conveyance by the Trustee and charged as an expense under Paragraph 8 above. The Trustee may procure title insurance from any title insurance company it may select, including the company for which it is acting as an agent.

10. The accounting records of the Trustee shall at all reasonable times be opened to the inspection of Buyer and Sellers. Buyer and Sellers shall be entitled to statements from the Trustee showing all the receipts and disbursements and charges made in connection with this trust.

11. All advertising by Buyer or its representative shall clearly show that Buyer is the author thereof, and the Trustee and Sellers shall not be liable for any statements or representations made therein.

12. It is made one of the terms and conditions of the trust that any party dealing with the Trustee shall not be obligated to ascertain whether or not the Trustee has exceeded its power from any act it may perform or cause to be performed incident or in connection with the management, control, sale, disposal or otherwise handling said property or to see to the proper handling, application or disbursement by the Trustee of any funds paid to the Trustee.



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13. The interests of Buyer and Sellers in this trust are personal property and Buyer and Sellers have not and shall not at any time have any right, title or interest in or to the property covered thereby and shall not and have not any right to apply for or secure the dissolution or termination of this trust or the partition or division of any of the trust property in any manner, except as provided herein. The sole right of Buyer and Sellers is to enforce the performance of the terms of this trust as expressly set forth.

14. Buyer further agrees to pay and discharge when and as the same shall become due and payable all liens to contractors, materialmen, mechanics, laborers and others at any time which may be imposed upon the said trust property through any act of Buyer or its agents, and further agree to protect the Trustee and hold it harmless against any loss, claim, damage or expense on account of any such lien which it may incur by virtue of acting as Trustee under this trust and because of any sales agreements and conveyances made by the Trustee pursuant to the provisions hereof.

15. No assignment or transfer of any interest of any party hereunder at any time shall be valid and binding upon the Trustee until an executed original of the assignment or other instrument evidencing the transfer has been filed with and accepted by the Trustee and the Trustee's assignment fee paid therefor, excepting only where such interest may pass or be transferred by decree or order of court and then only upon satisfactory proof of the regularity and validity of the proceedings in such manner being presented to the Trustee, and the fees of the Trustee's attorney for passing thereon having been paid.

16. This contract and all of the provisions hereof shall be binding upon and accrue to the benefit of the heirs, successors, personal representatives and assigns of the parties hereof.



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17. Sellers have entered into this contract relying on the integrity and ability of Buyer and in the event of any assignment by Buyer of its interest in this agreement, then Buyer shall remain personally liable to Sellers and the Trustee for damages or liabilities caused by Sellers by reason of any breach hereof or other acts or things done or omitted to be done by any of such assignees or subsequent assignees of such interest.

IN WITNESS WHEREOF, the Buyer and Sellers have hereunto set their hands and seals, and the Trustee has caused this agreement to be executed by its officer in Twin Falls, Idaho, on the date first above written.

Joseph L. Burden
JOSEPH L. BURDEN

Kathryn L. Burden
KATHRYN L. BURDEN

"Sellers"

CRYSTAL SPRINGS RANCH, INC.

By: J W Helth
Its: President

ATTEST:

Otto Lynn
Secretary

"Buyer"

LeRoy Bylund
LeROY BYLUND

J W Helth
J. W. HELTH

Otto Lynn
OTTO LYNN

"Individually"

TWIN FALLS BANK & TRUST COMPANY

By: _____
Its: _____

"Trustee"

GUARANTY

THIS GUARANTY is given to JOSEPH L. BURDEN and KATHRYN L. BURDEN, individually and/or jointly, (herein called "Sellers"), by LE ROY BYLUND, J. W. HELTH, and OTTO LYNN, individually and/or jointly, (herein called "Guarantors").

WITNESSETH:

WHEREAS, Guarantors desire Sellers to sell to Crystal Springs Ranch, Inc., an Idaho corporation, (herein called Crystal Springs), certain real property in the County of Twin Falls, State of Idaho, more particularly described in the Contract of Sale, dated March 31, 1972, to which this Guaranty is attached; and

WHEREAS, Crystal Springs is required to make certain payments of the purchase price in the amount of Two Hundred Eighty Thousand Dollars ($280,000.00) as set forth in paragraph 2 of said Contract of Sale; and

WHEREAS, Sellers are willing to sign said Contract of Sale if and only if, Guarantors guarantee (i) the payments by Crystal Springs of the indebtedness evidenced by said Contract of Sale and, (ii) the performance of each covenant, term, provision, and obligation on the part of Crystal Springs to be kept, observed, and performed as provided in said Contract of Sale; and

WHEREAS, Guarantors desire to give the Guaranty required by Seller and to execute this instrument,

NOW, THEREFORE, it is hereby mutually agreed by and between Seller and Guarantors as follows, to wit:

1. Guarantors make this Guaranty both as individuals and collectively, and Sellers may elect to enforce this Guaranty against all or any one of the Guarantors, or any combination thereof, without first proceeding against the other or others.

2. Guarantors do hereby unconditionally guarantee and promise to Sellers, their successors and assigns, forever, that Crystal Springs will duly and punctually pay on or before the due dates thereof all amounts of principal and interest that become due under the terms of said Contract of

NORTHWEST CRANE, RIGGING & TRANSPORT COMPANY
ROUTE #3 - TWIN FALLS, IDAHO 83301 - Phone 733-1234

S A F E R E P L Y

TO Lelley Lylund
Otto Lynn
J.W. Helth

DATE March 10, 1972

Keith Gilgar, President of Northwest Crane, Rigging and Transport Company, hereby contractes to put a pipeline not to exceed 36" diameter and 1800' length across Snake River from Crystal Springs to the Burden Ranch for an amount not to exceed $24,000 exclusive of pipe, within 60 working days from date of arrival of pipe on job site. Final completion date to be no later than September 30, 1972.

SIGNED Keith Gilgar

DATE

SIGNED

COPY AVAILABLE FROM GRAYARC CO., INC. 552 THIRD AVE., B'KLYN 38, N. Y.

PERSON ADDRESSED RETURN THIS COPY TO SENDER

EXHIBIT "E"

GG 7003

Sale, and that Crystal Springs will duly, faithfully and punctually keep, observe, and perform all of the covenants, terms, and conditions of the said Contract of Sale.

In the performance of this Guaranty, Guarantors will, on demand of Sellers pay Sellers any amounts as to which Crystal Springs may be in default to Sellers, whether by acceleration, or otherwise, under the terms of said Contract of Sale, and that Guarantors will perform any of the terms, covenants, and conditions as to which Crytal Springs may be in default to Sellers under the terms and provisions of said Contract of Sale.

3. This Guaranty shall be construed as an absolute, continuing, and unlimited guaranty of payment and performance of any liability of obligation of Crystal Springs by and under the terms of said Contract of Sale without regard to the regularity, validity or enforceability of any liability or obligation of Crystal Springs thereunder.

4. Guarantors, without affecting their liability to Sellers hereunder, consent and authorize Sellers to do any or all of the following, upon such terms as Sellers in their sole discretion may deem advisable.

A. Give grace and indulgence in the collection of the payment of any sum or sums due or to become due under said Contract of Sale or in the performance of any of the terms or provisions thereof;

B. Renew, extend, accelerate or otherwise change the payment of any sum or sums due or to become due under said Contract of Sale, or for the performance of any of the terms, provisions, covenants or conditions therein contained;

C. Change, modify or alter the terms, provisions, covenants, or conditions contained in said Contract of Sale, and agree to the compromise of any claim against the Guarantors, arising from said Contract of Sale;

D. Take and hold security from Crytal Springs for the payment of the sums due or to become due under the terms of said Contract of Sale, and for the performance of the terms, provisions, convenants, and conditions therein contained, and exchange, enforce, waive, and release such

security;

E. Apply such security and direct the order and manner of sale thereof as Sellers in their sole discretion may determine;

F. Without notice, assign this Guaranty, in fully or in part, without waiving Sellers' rights hereunder or relieving the Guarantors of their obligations hereunder.

5. Guarantors expressly waive the following:

A. All presentments or demands for performance or notices of non-payment or non-performance or default in the terms and provisions of said Contract of Sale, or any other presentments, demands or notices, similar or dissimilar, excepting such notice of default as required under paragraph 17 of said Contract of Sale;

B. Notice of acceptance of this Guaranty, and all matters relating thereto.

6. Guarantors waive any right to require Sellers to:

A. Proceed first, or at any time against Crystal Springs;

B. Proceed against or exhaust any security held by Crystal Springs;

C. Pursue any other remedy in Sellers' power whatsoever.

Upon any default of Crystal Springs under said Contract of Sale, Sellers may proceed directly and immediately, without notice, except that required under paragraph 17 of said Contract of Sale, against Guarantors to collect the full amount hereby guaranteed, or any portion thereof, without first proceeding, or at any time proceeding against Crystal Springs, or any other party, and without foreclosing upon, selling, or otherwise disposing of or applying any property subject to said Contract of Sale.

7. Guarantors expressly waive, for the greatest period allowed by law, the benefit of any statute of limitations affecting their liability hereunder or the enforcement thereof. Guarantors further waive any defense arising by reason of any defense of any nature whatsoever to the liability of Crystal Springs hereunder, except any such defense as relates only to proving the payment in full of all amounts due under said Contract of Sale,

and the full and complete performance by Crystal Springs of its obligations under the terms of said Contract of Sale against a claim to the contrary.

8. Until all indebtedness of Crystal Springs to Sellers under the terms of said Contract of Sale shall have been paid in full and until all other obligations of Crystal Springs thereunder shall have been fully discharged:

A. Guarantors shall be and remain obligated to Seller hereunder;

B. Guarantors shall have no right of subrogation and Guarantors waive any right to enforce any remedy which Sellers have or may hereafter have against Crystal Springs;

C. Guarantors waive the benefit of any right to participate in any security now or hereafter held by Sellers for performance by Crystal Springs of its obligations;

D. Specifically, and without limitation of any waivers contained in this Guaranty, Guarantors hereby waive any rights or defenses given or predicated upon the provisions of California Code of Civil Procedure, Sections 580(a), 580(b), 580(d), and 726, California Civil Code, Sections 2809, 2810, 2845, and 2849, and California Uniform Commercial Code, Sections 3601, 3604, 3605, and 3606, and with equal specificity, Guarantors hereby waive any rights or defenses given or predicated upon any similar provisions contained in the laws or codes of the State of Idaho, or any other state or jurisdiction where any action is commenced to enforce the terms hereof.

Guarantor specifically agrees that the foreclosure of any security given to Sellers by Crystal Springs, whether by non-judicial proceedings or by judicial foreclosure, shall not operate as a bar to or preclude Sellers from enforcing Guarantors' obligations and liabilities hereunder, including without limitation, the recovery of a judgment for any deficiency remaining after the proceeds of any such foreclosure sale are applied to the indebtedness or obligations due or owing from Crystal Springs to Sellers.

9. In the event of default, any indebtedness of Crystal Springs now or hereafter owed to Guarantors is hereby subordinated to the

indebtedness of Crystal Springs to Sellers.

10. Guarantors further represent, covenant, and warrant to Sellers as follows:

A. The execution and delivery of this Guaranty instrument and the performance of the provisions hereof will not result in the breach or termination of, constitute a default under, or result in the creation of any lien, charge, or encumbrance upon any of Guarantors' property or assets pursuant to any other agreement or instrument to which Guarantors are parties, either individually or collectively.

B. This Guaranty is supported by adequate consideration;

C. Nothing exists to impair the effectiveness of the liability of Guarantors to Sellers hereunder, or the immediate taking effect of this Guaranty as the sole agreement between Guarantors and Sellers with respect to guaranteeing the obligations of Crystal Springs under said Contract of Sale.

11. Guarantors agree to pay reasonable attorneys' fees and all other costs and expenses which may be incurred by Sellers in the enforcement of this Guaranty.

12. This Guaranty shall be binding upon Guarantors, their successors and assigns forever and shall inure to the benefit of Sellers, their successors and assigns.

13. The Guarantors, individually and/or collectively, hereby expressly appoint Twin Falls Bank & Trust Company, Main Offices located in Twin Falls, Idaho, as their agent and Attorney in Fact, pursuant to the terms of said Contract of Sale, executed concurrently herewith, to accept Service of

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Summons and Complaint on behalf of the Guarantors, individually and/or collectively, in any action brought by Sellers to enforce the terms of this Guaranty.

IN WITNESS WHEREOF, Guarantors have executed this Guaranty on the _____ day of March, 1972.

GUARANTORS:

_____
LeRoy Bylund

_____
J. W. Helth

_____
Otto Lynn

CONSENT TO GUARANTY:

In the event any of the above-named Guarantors are married persons, their respective wife(ves) hereby consent and join in making this Guaranty to the extent of their joint or community assets.

_____

_____

_____

36 7037

STATE OF IDAHO )
) ss.
County of Twin Falls )

On this 31 day of March, 1972, before me, a Notary Public in and for said state, personally appeared LeROY BYLUND, J. W. HELTH, and OTTO LYNN, known to me to be the persons who executed the foregoing instrument, and duly acknowledged to me that they executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal, the same day and year in this certificate first above written.

Notary Public
NOTARY PUBLIC IN AND FOR IDAHO
Residing at: Twin Falls

(SEAL)



36 7033

MEETING OF THE BOARD OF DIRECTORS AND CORPORATE OFFICERS

OF CRYSTAL SPRINGS RANCH, INC.

Twin Falls, Idaho July 19, 1972

A meeting of the Board of Directors and Corporate Officers of Crystal Springs Ranch, Inc., was held on July 19, 1972, in the office of corporate attorney, Robert C. Paine. In attendance were Roy Bylund, Vice-President, Otto Lynn, Secretary and Treasurer, and Robert C. Paine. President and Chairman of the Board Wes Helth was contacted by telephone in Elko, Nevada, agreed to the meeting of the Board of Directors and Corporate Officers, and was fully informed of all business conducted during the meeting. President Wes Helth confirmed by telephone that he agreed to all of the business conducted at said corporate meeting.

Upon motion duly made by Vice-President Roy Bylund, and seconded, the following Resolution was passed:

> "BE IT RESOLVED that Joseph Burden and Kathryn L. Burden be immediately issued 250 shares of capital stock in Crystal Springs Ranch, Inc."

The issuance of the said 250 shares of capital stock to Joseph Burden and Kathryn L. Burden was then discussed. Mr. Paine, corporate attorney, was instructed to draw any agreements between Crystal Springs Ranch, Inc., and Joseph L. Burden and Kathryn L. Burden, which in his opinion are deemed necessary.

The execution of all the necessary agreements, documents and the stock certificate by any of the Corporate Officers to bind the Corporation was authorized.

All business having been concluded, the meeting was adjourned.

Robert C. Paine
Corporate Attorney

ATTEST:

_____
Vice-President

EXHIBIT "B"

NUMBER 4

SHARES 250

INCORPORATED UNDER THE LAWS OF THE STATE OF IDAHO

# CRYSTAL SPRINGS RANCH, INC.

**Authorized Capital Stock $300,000 — Par Value $100 Per Share**

This Certifies that JOSEPH L. BURDEN & KATHRYN L. BURDEN is/are owner of

Two Hundred Fifty---------- fully paid and non-assessable Shares

**of the Capital Stock of CRYSTAL SPRINGS RANCH, INC.**

transferable only on the books of the Corporation by the holder hereof in person or by duly authorized Attorney upon surrender of this Certificate properly endorsed.

In Witness Whereof, the said Corporation has caused this Certificate to be signed by its duly authorized officers and to be sealed with the Seal of the Corporation this 19th day of July A.D. 1972

SECRETARY

PRESIDENT

EXCELSIOR-LEGAL STATIONERY CO., INC., 62 WHITE STREET, NEW YORK

EXHIBIT "C"

Fur [redacted] 1633

PARRY, ROBERTSON, DALY & LARSON
LAWYERS
THE IDAHO FIRST NATIONAL BANK BUILDING
P. O. BOX 525
TWIN FALLS, IDAHO 83301
TELEPHONE
(208) 733-3722

R. P. PARRY
T. M. ROBERTSON
JOHN H. DALY (1913-1968)
BERT LARSON
C. G. McINTYRE
JOHN R. COLEMAN
THOMAS G. NELSON
JOHN A. ROSHOLT
FRED D. DECKER
ROBERT C. PAINE

Department of Water Administration

August 7, 1972

Mr. R. Keith Higginson
Executive Director
Department of Water Administration
State House, Annex 2
Boise, Idaho 83707

Re: Crystal Springs Ranch, Inc.

Dear Keith:

Thank you very much for your letter of August 3, 1972.

Prior to entering into any construction, Harry LeMoyne, for Joseph Burden, had JUB Engineers survey the area. After receiving your letter, I immediately went to JUB and they feel certain that they can certify that all of the springs from which Crystal Springs Ranch is taking water are within Lot 12. They plan tomorrow to go down and make their investigation.

My understanding is that their original survey was based upon the U. S. Geological Survey Topographical maps of that area which were completed in 1950 and the re-survey which was conducted subsequent to that time. I am not much of an engineer, but it is my understanding that there is a North Quarter Corner in Lot 12. From that North Quarter Corner they can establish coordinates for all of the springs and determine from that coordinates whether the springs are within Lot 12. If they are correct and find that all of the springs are within Lot 12, they will supply us with a certification to that effect and we will immediately forward a copy of that certification to you.

36 7033

Please be advised by this letter that we are immediately investigating the possibility that some of the springs from which we are taking water are in Lot 11 and we will advise you of our findings as soon as we have them.

Thank you very much for calling this problem to our attention in your letter of August 3rd. Your help is greatly appreciated.

Sincerely,

Robert C. Paine

ROBERT C. PAINE

RCP/bb

36 7033

August 8, 1972

COPY

Mr. Robert C. Paine
Parry, Robertson, Daly & Larson
Lawyers
The Idaho First National Bank Building
P. O. Box 525
Twin Falls, Idaho 83301

Dear Mr. Anderson:

Enclosed herewith are the permit copies you requested: Re: 36-7164 and 36-7033.

The fee for these copies is $2.00 which you may remit to this office.

Very truly yours,

ELEANOR J. WOODS
Records Supervisor

EJW/df

Enclosure

36 7033

August 4, 1972

Re: Permits No. 36-7164 & 36-7033

Crystal Springs Ranch, Inc.
Buhl,
Idaho 83316

Gentlemen:

Enclosed is an Order approving the conveyance of the above referenced permits to you. The assignments have been recorded and the Department's records changed accordingly.

If we may be of assistance at any time, please contact us.

Sincerely,

BOBBY D. FLEENOR
Assistant Director

BDF:DR
Enc: Order

cc: Joseph L. Burden
Box 321, Twin Falls, Idaho
Enc: Copy of Order

COPY

36 7033

BEFORE THE DIRECTOR

OF THE

IDAHO DEPARTMENT OF WATER ADMINISTRATION

In the Matter of Water )
Permit Nos. 36-7033 and )
36-7164 )

ORDER

On July 17, 1972, the Idaho Department of Water Administration issued an order directing Joseph L. Burden and other interested parties on or before September 15, 1972, to show cause, if any they have, why Permit Nos. 36-7033 and 36-7164 should not be cancelled for failure to comply with conditions of those permits.

The permit holder, through his attorneys, submitted numerous affidavits to this department for the purpose of showing that the permits were not obtained for speculative purposes. In addition, a petition to allow the transfer of permits 36-7033 and 36-7164 was filed by the permit holder. The department has reviewed those affidavits and petition and considers them an adequate showing, as required by the order to show cause.

Therefore, based upon those affidavits, it is ordered and this does order that the transfer by Joseph L. Burden of Permit Nos. 36-7033 and 36-7164 to Crystal Springs Ranch, Inc., an Idaho corporation, be and the same is hereby approved.

It is further ordered that the order to show cause issued on July 17, 1972, be and the same is hereby quashed.

Dated this 30 day of August, 1972.

R. KEITH HIGGINSON
Director

36 7033

August 3, 1972

Mr. Robert C. Paine
Parry, Robertson, Daly & Larson
Lawyers
The Idaho First National Bank Building
P. O. Box 525
Twin Falls, Idaho 83301

Dear Bob:

Enclosed is an order approving the conveyance of permits 36-7033 and 36-7164 to the Crystal Springs Ranch, Inc.

In order that there be no future misunderstanding and feeling on your part that the department has approved activities of Crystal Springs Ranch, I feel I should call your attention to what appears to be a discrepancy in the description of the point of diversion. Both permits 36-7033 and 36-7164 provide for diversion of water in Lot 12, SE1/4NW1/4, Section 12; Township 9 South, Range 15 East,B.M. I'm enclosing a copy of the survey plat on which I have drawn an outline of Lot 12 in red.

From a recent field examination, it has been reported to us that some of the construction activity is taking place within Lot 11. You should be aware that the Idaho Fish & Game Department, in its recent Application 36-7256, has filed to appropriate 100 second feet of water from Crystal Springs from within Lots 11, 12, and 13. It would appear, therefore, that they may have a prior filing to any application for amendment, which you will need to file in the event that our information is correct and you are developing springs in Lot 11. I felt that I should call this to your attention so that you would not assume that our silence could be interpreted as approval of any change in point of diversion which you may have made.

Very truly yours,

R. KEITH HIGGINSON
Director

36 7033

RKH:mjl

cc: Mr. Robert Haines, District Engineer
Idaho Department of Water Administration
1041 Blue Lakes Blvd. North
Twin Falls, Idaho 83301

Encs: 2 Order and Survey Plat

BEFORE THE DIRECTOR

OF THE

IDAHO DEPARTMENT OF WATER ADMINISTRATION

In the Matter of Permit Nos. )
36-7033 and 36-7164, in the )
name of JOSEPH L. BURDEN )

ORDER TO SHOW CAUSE

Permit Nos. 36-7033 and 36-7164 were granted to Joseph L. Burden, Box 321, Twin Falls, Idaho, on December 8, 1969 and September 22, 1971 respectively. These permits provide for diversion of 50 second feet of water each from Crystal Springs, at a point of diversion within Lot 12 (SENW) Section 12; Township 9 South, Range 15 East, B.M. The water is to be diverted from the springs and conveyed by pipeline across the channel of the Snake River and used for fish propagation purposes in the SE1/4SW1/4, Section 12; Township 9 South, Range 15 East, B.M.

Permit No. 36-7033 was granted with the following conditions:

"This permit is specifically granted upon the condition that it not be assigned nor sold to another party without the written concurrence of the Department of Water Administration. Failure to receive such concurrence from the department will be deemed as an admission that the permit was obtained for the purpose of speculation or delay, and will be cause for immediate cancellation of the permit."

Permit No. 36-7164 was granted with similar language as follows:

"That the applicaton and permit not be assigned by the applicant without first securing the approval of the Director of the Department of Water Administration. Violation of this condition will cause the permit to become void and of no further force or effect."

The purpose of including these conditions in the two permits was to prevent the applicant from filing to appropriate the water for speculative or delay purposes, which is prohibited under the provisions of Section 42-203, Idaho Code.

It is the interpretation of this department that "speculation" as it relates to applications for a water permit is intended to prevent an applicant from filing for water without personally intending to develop that water through his own effort and financing. We feel that the legislative intent was to prohibit individuals from making a profit from the mere filing of an application without any real effort on his part to put the water to beneficial use.

On July 5, 1972, the department received assignments, whereby Joseph L. Borden and his wife purport to transfer their right, title, and interest in Permits 36-7033 and 36-7164 to the Crystal Springs Ranch, Inc. These assignments appear to be in violation of the conditions of granting these two permits.

It is therefore ordered, and the permit holder and all other parties having an interest in the permits are notified that they should show cause, if any there be, by affidavit submitted to the department on or before September 15, 1972, why said permits should not be cancelled.

Dated this 17TH day of July, 1972

R. KEITH HIGGINSON
Director

RECEIVED

JUL 5 1972

Department of Water Administration

# ASSIGNMENT

For value received, I hereby assign all ~~all~~ of my right, title and interest in and to Permit to Appropriate the Public Waters of the State of Idaho, No. 36-7033 to CRYSTAL SPRINGS RANCH, INC., of Buhl, Idaho 83316

*

Joseph L Bunder
Permit Holder

Kathryn Bunder
Wife of Permit Holder

STATE OF ~~IDAHO~~ California )
:
County of Los Angeles )

On this 23rd day of June, 1972, before me, a Notary Public for the State of ~~Idaho~~ California, residing at Long Beach Calif personally appeared Joseph L Bunder & Kathryn Bunder known to me to be the person s whose name s is subscribed to the within instrument, and duly acknowledged to me that The y executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my Notarial Seal, the day and year in this certificate first above written.

My Commission Expires

OFFICIAL SEAL
MERLE L. TAYLOR
NOTARY PUBLIC-CALIFORNIA
LOS ANGELES COUNTY
My Commission Expires Oct. 21, 1973

Merle L Taylor
Notary Public, Residing at

* If fractional part of permit is to be assigned, the fractional part of the land to which the assigned fraction is appurtenant should be described by legal subdivisions.

CL 337

RECEIVED
JUN 16 1972
Department of Water Administration

HEPWORTH, NUNGESTER & FELTON
1020 Main, Buhl, Idaho 83316
Tel. No. 208-543-4368
Attorneys for Clear Springs Trout Sales, Inc.
and Farmers National Bank, Buhl, Idaho

BEFORE THE DEPARTMENT OF WATER ADMINISTRATION
OF THE
STATE OF IDAHO

IN THE MATTER OF )
)
PERMIT NO. 36-7033 and )
NO. 36-7164 ) WITHDRAWAL OF PROTEST
)
Issued in the name of )
)
JOSEPH L. BURDEN. )

COMES NOW Clear Springs Trout Sales, Inc., by and through John C. Hepworth, a corporate officer in and attorney for said corporation, and the Farmers National Bank, Buhl, Idaho, by and through its attorney of record, John C. Hepworth, and withdraws their protest to Water Permit No. 36-7033 and Permit No.36-7164, heretofore filed by petitioner herein on March 14, 1972.

CLEAR SPRINGS TROUT SALES, INC.

By: John C. Hepworth
John C. Hepworth, Secretary

FARMERS NATIONAL BANK, BUHL, IDAHO

By: John C. Hepworth
John C. Hepworth, Attorney

PARRY, ROBERTSON, DALY & LARSON
LAWYERS
THE IDAHO FIRST NATIONAL BANK BUILDING
P. O. BOX 525
TWIN FALLS, IDAHO 83301

R. P. PARRY
T. H. ROBERTSON
JOHN H. DALY (1913-1968)
BERT LARSON
C. G. McINTYRE
JOHN R. COLEMAN
THOMAS G. NELSON
JOHN A. ROSHOLT
FRED D. DECKER
ROBERT C. PAINE

RECEIVED
JUN 16 1972
Department of Water Administration

TELEPHONE
(208) 733-3722

June 15, 1972

BDF

Mr. R. Keith Higginson
Executive Director
Department of Water Administration
State House, Annex 2
Boise, Idaho 83707

Re: In the Matter of Application for
Permits Nos. 36-7033 and 36-7164
Joseph L. Burden

Dear Mr. Higginson:

Enclosed herewith please find the withdrawal of the protest filed in the above-captioned matter by Mr. Hepworth.

We have completed the applications for the transfer of Mr. Burden's permits to Crystal Springs Ranch, Inc. We have sent them to Mr. Burden for his signature. As soon as we have received them, we will forward the same to you for your consideration.

If you have any questions concerning this matter, please advise. Thank you for all of your help in this matter.

Sincerely,

Robert C. Paine

ROBERT C. PAINE

RCP/bb

Enclosure

June 13, 1972 CERTIFIED MAIL

Re: Permits No. 36-7033 & 36-7164

Mr. Joseph L. Burden
Box 321
Twin Falls, Idaho 83301

Dear Mr. Burden:

Enclosed please find a Memorandum Decision and Order in connection with the above referenced permits.

You will note that the time within which to submit proof of beneficial use under Permit No. 36-7033 has been extended to April 1, 1974.

We wish to bring to your attention the last paragraph of the Memorandum Decision and Order whereby you are ordered to show cause on or before August 12, 1972, why said permits should not be cancelled.

Very truly yours,

C. STEPHEN ALLRED
Deputy Director

36 7033

CSA:DR
Enc: Memorandum Decision and Order
Copy of Petition to Cancel
cc: Harry F. LeMoyne
John C. Hepworth

Certified cards filed in 36-7164

BEFORE THE DIRECTOR
STATE OF IDAHO
DEPARTMENT OF WATER ADMINISTRATION

In the Matter of Application )
for Permit Nos. 36-7033 and )
36-7164, Joseph L. Burden ) Memorandum Decision and Order

Mr. Joseph L. Burden, Box 321, Twin Falls, Idaho, holds Application for Permit Nos. 36-7033 and 36-7164, which provide for diversion of 50 second feet of water each from Crystal Springs, within Lot 12, SE1/4NW1/4, Sec. 12; Twp. 9S, Rge. 15E,B.M. The water is to be conveyed from the springs by pipeline across the Snake River and used for fish propagation purposes within the SE1/4SW1/4, Sec. 12; Twp. 9S, Rge. 15E,B.M.

Proof of Beneficial Use of the water was due to be submitted under Application for Permit No. 36-7033 on January 1, 1972 and is due on Application for Permit No. 36-7164 on April 1, 1974.

On December 22, 1971, the permit holder requested an extension of time on Application for Permit No. 36-7033. In connection with this request, the Department asked for information concerning the status of easements necessary from the State of Idaho, Departments of Parks and Public Lands relative to the collection of water on state property and conveyance of that water across the river.

We have allowed the applicant time within which to obtain these necessary easements, copies of which were received in this office on June 8, 1972. It now appears that the applicant has made reasonable progress in completing the necessary arrangements for development and use of the water as proposed.

It is, therefore, ordered and the permit holder is allowed until April 1, 1974, within which to complete the construction of works and apply water to beneficial use pursuant to Application for Permit No. 36-7033.

On March 15, 1972, the Department received a petition from John C. Hepworth, Attorney for Clear Springs Trout Sales, Inc., and the Farmers National Bank of Buhl, Idaho, requesting that Application for Permit Nos. 36-7033 and 36-7164 be cancelled pursuant to the provisions of Chapter 3, Title 42, Idaho Code. Therefore, as provided in Section 42-303, Idaho Code, the permit holder and all other parties having an interest in the permit, are notified that they should show cause, if any there be, by affidavit submitted to the Department on or before August 12, 1972, why said permit should not be cancelled.

Dated this 12 day of June, 1972

BEFORE THE DIRECTOR
STATE OF IDAHO
DEPARTMENT OF WATER ADMINISTRATION

In the Matter of Application for Permit Nos. 36-7033 and 36-7164, Joseph L. Burden

Memorandum Decision and Order

Mr. Joseph L. Burden, Box 321, Twin Falls, Idaho, holds Application for Permit Nos. 36-7033 and 36-7164, which provide for diversion of 50 second feet of water each from Crystal Springs, within Lot 12, SE1/4NW1/4, Sec. 12; Twp. 9S, Rge. 15E,B.M. The water is to be conveyed from the springs by pipeline across the Snake River and used for fish propagation purposes within the SE1/4SW1/4, Sec. 12; Twp. 9S, Rge. 15E,B.M.

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Dated this 12 day of June, 1972

36 7033

C. STEPHEN ALLRED
Deputy Director

# IDAHO

DEPARTMENT OF PUBLIC LANDS
BOISE, IDAHO 83707



STATE BOARD OF LAND COMMISSIONERS

CECIL D. ANDRUS
GOVERNOR AND PRESIDENT
PETE T. CENARRUSA
SECRETARY OF STATE
W. ANTHONY PARK
ATTORNEY GENERAL
JOE R. WILLIAMS
STATE AUDITOR
DELMER F. ENGELKING
SUP'T OF PUBLIC INSTRUCTION

GORDON C. TROMBLEY
COMMISSIONER


June 7, 1972


RECEIVED
JUN 8 1972
Department of Water Administration


R. Keith Higginson, Director
Department of Water Administration
Building Mail

Dear Mr. Higginson:

Attached hereto are your copies of two State of Idaho Easements numbered 4261 and 4262, issued to Joseph L. Burden.

These are the easements which we discussed by telephone this date and for which you are waiting before taking action on a transfer of certain water rights.

Very truly yours

FOR THE COMMISSIONER

W. J. Mitchell

W. J. Mitchell
Division Chief, Lands

WJM/lgb

Enclosures

35 7033

STATE OF IDAHO EASEMENT

NO. 4261

Department of Water Adm

THIS INDENTURE, made this 11th day of April, 1972, by and between the STATE OF IDAHO, acting by and through the State Board of Land Commissioners, as party of the first part, and JOSEPH L. BURDEN, c/o Harry LeMoyne Realty, 1130 Lawndale Drive, Twin Falls, Idaho 83301, as party of the second part;

WITNESSETH: That for and in consideration of the sum of TWO HUNDRED and no/100 DOLLARS ($200.00), lawful money of the United States of America, receipt whereof is hereby acknowledged, the party of the first part does hereby grant to the party of the second part an easement for the purpose of constructing and maintaining a pipeline in the bed of the Snake River, over and across the following described lands situated in Gooding and Twin Falls Counties, State of Idaho, to-wit: so much of the following described lands that were below the ordinary or natural high water mark on the date the State of Idaho was admitted to the Union with the right to additions thereto and subject to deletions therefrom that have occurred causing the boundary of the State's ownership to change:

A parcel of land being on both sides of the following described line as shown on the attached survey plat and being a portion of the Snake River stream bed adjacent to Lot 12, Section 12, Township 9 South, Range 15 East, Boise Meridian, more particularly described as follows:

Commencing at the northwest corner of the NE¼NE¼ of said Section 12 from which the north one quarter of Section 12 bears N 89°10' W; thence running S 6°02' W for 1950.70 feet; thence N 87°00' W for 2257.89 feet; thence S 28°56' W for 190 feet, more or less, to the apparent northerly high water mark of the Snake River and being the REAL POINT OF BEGINNING; thence describing a strip of land 100.00 feet in width being 50.00 feet right and 50.00 feet left of the following described line; thence S 28°56' W for 865 feet, more or less, to the apparent southerly high water line of the Snake River and the end of said parcel.

The area above described contains approximately 2.0

It is further understood and agreed that the pipeline is to be constructed and maintained in such a manner that will not obstruct the river channel or hinder or affect navigation, recreation, or other authorized and customary use of the river. The State Board of Land Commissioners reserves the right to terminate this easement for failure to construct and maintain the pipeline as herein provided, upon thirty (30) days written notice to the party of the second part.

It is further understood and agreed that in the event the lands hereinabove described are not used for the purposes herein specified for any five year period, the State Board of Land Commissioners may declare such right-of-way forfeited and the use of the lands will revert back to the State of Idaho or to the record owner of the lands.

IN WITNESS WHEREOF, the State Board of Land Commissioners has caused these presents to be executed by its President, the Governor of the State of Idaho, and countersigned by the Secretary of State and the State Land Commissioner.

STATE BOARD OF LAND COMMISSIONERS

Governor of the State of Idaho and
President of the State Board of
Land Commissioners

Countersigned:

Secretary of State

State Land Commissioner

W. J. M.

36 7033

State of _____)
) ss
County of _____)

On this _____ day of _____, 19___, before me, the undersigned, a notary public in and for said State, personally appeared _____
_____
known to me to be the person__ whose name__ is/are subscribed to the foregoing instrument and acknowledged to me that __he__ executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and seal on the day and year last written above.

_____
Notary Public residing at

_____

My commission expires _____

* * * * * * * * * * * * * * * * * * * * * * * * * * * * * * * * * * * * *

State of Idaho)
) ss
County of Ada )

On this 20th day of April, 1972, before me, a notary public in and for said State, personally appeared Cecil D. Andrus, known to me to be the Governor of the State of Idaho and President of the State Board of Land Commissioners, Pete T. Cenarrusa, known to me to be the Secretary of State of Idaho, and G. C. Trombley, known to me to be the State Land Commissioner of the State of Idaho, that executed the said instrument and acknowledged to me that such State of Idaho and State Board of Land Commissioners executed same.

IN WITNESS WHEREOF, I have hereunto set my hand and seal on the day and year last written above.

John B. Bogan
Notary Public residing at Idaho City, Idaho

My commission expires AUG 25 1974

38 703

4. It is assumed that at least 70% of the flow into the middle pond will be interupted and diverted to the 36-inch pipe line. In order to maintain the middle pond to its existing level, rock fill will be placed under the supervision of the Park Officer in charge to restrict the flow at the pond outlet.

5. Any excess rock or soil not used as above proposed shall be hauled from the site and placed and leveled to the satisfaction of the Park Officer in charge at a suitable location within the park area.

6. It is assumed that in the repair and replacement of the existing four-inch line that damage to the area will be small. All disturbed soil shall be replaced in the pipe line trench compacted, leveled, and seeded with Kentucky Blue Grass.

7. On those sites where the pipe lines intersect the water's edge, care will be taken to compact and shape the fill to match the adjacent terrain. Rip rap may be required by the Park Officer in charge should soil movement from water action be evident following the pipeline construction.

It is also understood and agreed that failure to comply with each and every term and condition shown above may be considered adequate cause for termination of the easement by the party of the first part.

It is further understood and agreed that in the event the lands hereinabove described are not used for the purposes herein specified for any five-year period, the State Board of Land Commissioners may declare such right-of-way forfeited and the use of the lands will revert back to the State of Idaho or to the record owner of the lands.

IN WITNESS WHEREOF, the State Board of Land Commissioners has caused these presents to be executed by its President, the Governor of the State of Idaho, and countersigned by the Secretary of State and the State Land Commissioner.

STATE BOARD OF LAND COMMISSIONERS

Countersigned:

Secretary of State

State Land Commissioner

W J M.

Governor of the State of Idaho and President of the State Board of Land Commissioners

STATE OF IDAHO DEPARTMENT OF PARKS

By X Steven W. Bly

Title Director

* * * * * * * * * * * * * * * * * * * * * * * * * * * * * * * *

State of Idaho )
) ss
County of Ada )

On this 18th day of April, 1972, before me, the undersigned, a notary public in and for said State, personally appeared Steven W. Bly, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same.

STATE OF IDAHO EASEMENT

NO. 4262

RECEIVED
JUN 9 1972
Department of Water Administration

THIS INDENTURE, made this 11th day of April, 1972, by and between the STATE OF IDAHO, acting by and through the State Board of Land Commissioners, and the STATE OF IDAHO DEPARTMENT OF PARKS, Boise, Idaho, as party of the first part, and JOSEPH L. BURDEN, c/o LeMoyne Realty, 1130 Lawndale Drive, Twin Falls, Idaho 83301, as party of the second part;

WITNESSETH: That for and in consideration of the sum of TWENTY-FIVE and no/100 DOLLARS ($25.00), lawful money of the United States of America, receipt whereof is hereby acknowledged, the party of the first part does hereby grant to the party of the second part an easement for the purpose of constructing and maintaining a pipeline over and across the following described lands situated in Gooding County, State of Idaho, to wit:

A parcel of land being on both sides of the following described line as shown on the attached survey plat lying between Crystal Springs and the northerly high water mark of the Snake River and being located in and adjacent to Lot 12 of Section 12, Township 9 South, Range 15 East, Boise Meridian, more particularly described as follows:

Commencing at the northwest corner of the NE¼NE¼ of said Section 12 from which the north one-quarter corner of Section 12 bears N 89°10' W; thence running S 6°02' W for 1950.70 feet; thence N 87°00'W for 2257.89 feet to a point, said point being the REAL POINT OF BEGINNING: thence describing a strip of land 100.00 feet in width being 50.00 feet right and 50.00 feet left of the following described line; thence S 28°56' W for 190 feet more or less, to the apparent northerly high water line of the Snake River and the end of said parcel of land. In addition, starting at the REAL POINT OF BEGINNING a strip of land 100.00 feet in width being 50.00 feet right and 50.00 feet left of the following described line; thence N 28°56' E for 30 feet more or less to the intake of the 36-inch pipe. Also two strips of land 50 feet in width being 25.00 feet right and 25.00 feet left of the following described line as follows: Beginning at the intake; thence N 20° E 100 feet more or less; thence on a curving line in a westerly direction 450 feet more or less ending near a large rock on the ridge west of the middle pond, also beginning at the intake thence S 80° E 500 feet more or less ending near the first group of trees and the springs feeding the west end of the large pond.

The areas above described contains approximately 1.5 acres.

It is understood that this easement is issued according to the following terms and conditions:

1. The diversion ditches from the springs to the intake as described above, shall be kept to the minimum width both in clearing and soil disturbance, and that all disturbed soil will be leveled in conformity to the surrounding terrains and seeded with Kentucky Blue Grass.

2. The pipe line excavation and placement from point of intake to the river's edge will require special consideration. Fill material around and over the pipe shall be machine compacted to within three inches of the level of the adjacent terrain. The final three inches of fill shall be leveled with top soil and seeded with Kentucky Blue Grass.

3. That diversion ditch from the intake easterly to the spring feeding the east pond will cross several dry washes. Excess material from the 36-inch pipe trench can be used to bring these washes up to grade. The fill slopes are to be dressed and shaped to conform to the surrounding slopes and are to be seeded with standard Crested Wheat Grass.

State of Idaho Easement No. 4262 (Joseph L. Burden)

IN WITNESS WHEREOF, I have hereunto set my hand and seal on the day and year last written above.

Notary Public residing at Boise, Idaho.

My commission expires 2-25-75

State of Idaho )
) ss
County of Ada )

On this 7th day of June, 1972, before me, a notary public in and for said State, personally appeared Cecil D. Andrus, known to me to be the Governor of the State of Idaho and President of the State Board of Land Commissioners, Pete T. Cenarrusa, known to me to be the Secretary of State of Idaho, and G. C. Trombley, known to me to be the State Land Commissioner of the State of Idaho, that executed the said instrument and acknowledged to me that such State of Idaho and State Board of Land Commissioners executed same.

IN WITNESS WHEREOF, I have hereunto set my hand and seal on the day and year last written above.

Notary Public residing at Idaho City, Idaho

My Commission expires August 25, 1974

36 7033

RECEIVED
1972
Department of Water Administration

April 28, 1972

Mr. Harry F. LeMoyne
Realtor
1130 Lawndale Drive
Twin Falls, Idaho 83301

Dear Harry:

The Idaho State Parks and Recreation Board, at its quarterly meeting in Boise on April 21, directed me to investigate more thoroughly the impact of the small fishing pond (Crystal Springs) if in fact 50 sec. ft. of water were to be diverted above the pond surface.

Upon completion of the impact study, we will then take further action towards your easement request.

Sincerely,

Steven W. Bly
Director

rk

bcc: John Magel
John Hough
Keith Higginson
Land Dept.
Park Board

COPY

36 W033

PLR

PARRY, ROBERTSON, DALY & LARSON
LAWYERS
THE IDAHO FIRST NATIONAL BANK BUILDING
P. O. BOX 525
TWIN FALLS, IDAHO 83301
TELEPHONE
(208) 733-3722

R. P. PARRY
T. M. ROBERTSON
JOHN H. DALY (1913-1968)
BERT LARSON
C. G. McINTYRE
JOHN R. COLEMAN
THOMAS G. NELSON
JOHN A. ROSHOLT
FRED D. DECKER
ROBERT C. PAINE

March 31, 1972

3DF
ok to file
36-7033

Mr. Keith Higginson
Department of Water Administration
State House Annex 2
Boise, Idaho 83707

Dear Mr. Higginson:

Mr. Harry LeMoyne informed me that he had had a conversation with you regarding the transfer of the water rights from Joseph L. Burden to Crystal Springs Ranch, Inc. He further informed me that you desire copies of the contract of sale and trust agreement as well as copies of the memorandum agreement for Clear Springs Trout Farm, Inc. Enclosed herewith please find the above mentioned documents.

If we can supply you with any further information, please feel free to call at any time.

Sincerely,

Robert Paine

ROBERT C. PAINE

RCP:sh

Enc.

36 7033

LAW OFFICES

HEPWORTH, NUNGESTER, AND FELTON

PROFESSIONAL CENTER
1020 MAIN

AREA CODE 208
PHONE 543-4368

BUHL, IDAHO -- 83316

JOHN C. HEPWORTH
WM. L. NUNGESTER
MICHAEL H. FELTON

March 13, 1972

Department of Water Administration
Statehouse-Annex 2
Boise, Idaho 83707

Re: Clear Springs Trout Sales, Inc.
Permit No. 36-7033 and
Permit No. 36-7164

Gentlemen:

Enclosed you will find a Petition To Cancel the above-captioned permits. Will you please send copies of all instruments concerning this matter to John C. Hepworth, 1020 Main, Buhl, Idaho.

Very truly yours,

HEPWORTH, NUNGESTER & FELTON

John C. Hepworth

JCH:bh
Encl.

36 7033

HEPWORTH, NUNGESTER & FELTON
1020 Main, Buhl, Idaho 83316
Tel. No. 208-543-4368
Attorneys for Clear Springs Trout Sales, Inc.

BEFORE THE DEPARTMENT OF WATER ADMINISTRATION
OF THE
STATE OF IDAHO

* * * * * * * * * * * * * *

| | |
|---|---|
| IN THE MATTER OF | ) |
| | PETITION TO CANCEL PERMITS PURSUANT |
| PERMIT No. 36-7033 and No. 36-7164 | ) TITLE 42, CHAPTER 3 OF THE |
| Issued in the name of | ) IDAHO CODE |
| JOSEPH L. BURDEN. | ) |

* * * * * * * * * * * * * *

The petition of Clear Springs Trout Sales, Inc., and The Farmers National Bank, Buhl, Idaho, respectfully represents:

I.

Petitioner, Clear Springs Trout Sales, Inc., obtained Permit No. 36-7083 and Permit No. 36-7151 from the Idaho Department of Water Administration and subsequently assigned said permits for security purposes only to The Farmers National Bank of Buhl, Idaho.

II.

That both of the above permits held by petitioners are from the same water source as Permit No. 36-7164 and Permit No. 36-7033, in the name of Joseph L. Burden.

LAW OFFICES
HEPWORTH
NUNGESTER
AND
FELTON
BUHL, IDAHO

36 7033

III.

That petitioners allege that the Department of Water Administration should cancel and void the permits issued to Joseph L. Burden, being the permit numbers shown in the caption above, by virtue of Section 42-301 of the Idaho Code.

IV.

That with respect to Permit 36-7033 issued in the name of Joseph L. Burden, the permit should be cancelled on the grounds that the permit holder has failed to commence his work within the time required under the terms of his permit and has failed to complete one-fifth of the construction work within one-half of the time allowed for the entire completion of such construction work and further has failed to complete the construction work within the time specified in his permit or within the time specified by the order extending such time.

V.

That the Director of the Department of Water Administration, under an order dated March 3, 1971, extended the time within which to submit proof of beneficial use under Permit No. 36-7033, until January 1, 1972. That such proof has still not been submitted and the time has expired within which such proof may be submitted and, therefore, the Department of Water Administration should cancel said permit.

VI.

That with respect to Permit No. 36-7164, issued in the name of Joseph L. Burden, the permit should be voided, cancelled and set aside on the grounds that the same was initially obtained



LAW OFFICES
HEPWORTH
NUNGESTER
AND
FELTON
BUHL, IDAHO

36 7033

by misrepresentation in that it was represented that the purpose of said permit was not for speculative purposes when, in truth and in fact, the applicant was attempting to sell the property and obtained the permit purely for speculative reasons with the purpose and intent of selling the same and the property upon which the water was to be used.

VII.

The applicant, Joseph L. Burden, knew at the time of applying for Permit No. 36-7164, he had no present nor future intent of developing the fish propogation facilities described in his application. At the time the application was made, he was attempting to sell the property, including the water permit applied for.

WHEREFORE, petitioners pray that both applications be cancelled; that notice be given of a hearing upon this petition as provided by Section 43-303, and that upon said hearing said permits be cancelled and that such other and further orders be entered as may be proper in the premises.

Dated: March 14 , 1972.

CLEAR SPRINGS TROUT SALES, INC.

By _____
John C. Hepworth-Secretary

THE FARMERS NATIONAL BANK, BUHL, IDAHO

By _____
John C. Hepworth-Attorney



LAW OFFICES
HEPWORTH
NUNGESTER
AND
FELTON
BUHL, IDAHO

36 7033

RECEIVED

Department of Water Administration

STATE OF IDAHO EASEMENT

NO. 4191

THIS INDENTURE, made this 29th day of April, 1971, by and between the STATE OF IDAHO, acting by and through the State Board of Land Commissioners, as party of the first part, and JOSEPH L. BURDEN, as party of the second part;

WITNESSETH: That for and in consideration of the sum of TWO HUNDRED and no/100 DOLLARS ($200.00), lawful money of the United States of America, receipt whereof is hereby acknowledged, the party of the first part does hereby grant to the party of the second part an easement for the purpose of constructing and maintaining a pipeline in the bed of the Snake River over and across the following described lands situated in Gooding and Twin Falls Counties, State of Idaho, to-wit: so much of the following described lands that were below the ordinary or natural high water mark on the date the State of Idaho was admitted to the Union with the right to additions thereto and subject to deletions therefrom that have occurred causing the boundary of the State's ownership to change:

A parcel of land being on both sides of the following described line as shown on the attached survey plat and being a portion of the Snake River stream bed adjacent to Lots 6, 12 and 13 of Section 12, Township 9 South, Range 15 East of the Boise Meridian, more particularly described as follows:

Commencing at the North one-quarter corner of said Section 12; thence running S 2°47' W for 1,894 feet, more or less, to a spring; thence S 17°12'24" W for 460 feet, more or less, to the apparent northerly high water mark of the Snake River, being the REAL POINT OF BEGINNING: thence describing a strip of land 100.00 feet in width being 50.00 feet right and 50.00 feet left of the following described line; thence S 17°12'24" W for 990 feet, more or less, to the apparent southerly high water line of the Snake River. The area contains approximately 2.3 acres.

It is further understood and agreed that in the event the lands hereinabove described are not used for the purposes herein specified for any five year period, the State Board of Land Commissioners may declare such right-of-way forfeited and the use of the lands will revert back to the State of Idaho or to the record owner of the lands.

IN WITNESS WHEREOF, the State Board of Land Commissioners has caused these presents to be executed by its President, the Governor of the State of Idaho, and countersigned by the Secretary of State and the State Land Commissioner.

STATE BOARD OF LAND COMMISSIONERS

Countersigned:

Secretary of State

State Land Commissioner

W.J.M

Copy of Governor's facsimile signature, authorized by Section 59-1015 Idaho Code.

Governor of the State of Idaho and President of the State Board of Land Commissioners

36 7033

State of _____)
) ss
County of _____)

On this _____day of _____, 19___, before me, the undersigned, a notary public in and for said State, personally appeared _____
_____
known to me to be the person_ whose name_ is/are subscribed to the foregoing instrument and acknowledged to me that _he_ executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and seal on the day and year last written above.

_____
Notary Public residing at

_____

My commission expires _____

* * * * * * * * * * * * * * * * * * * * * * * * * * * * * * * * * * * * * * *

State of Idaho)
) ss
County of Ada )

On this 11th day of May, 1971, before me, a notary public in and for said State, personally appeared Cecil D. Andrus, known to me to be the Governor of the State of Idaho and President of the State Board of Land Commissioners, Pete T. Cenarrusa, known to me to be the Secretary of State of Idaho, and G. C. Trombley, known to me to be the State Land Commissioner of the State of Idaho, that executed the said instrument and acknowledged to me that such State of Idaho and State Board of Land Commissioners executed same.

IN WITNESS WHEREOF, I have hereunto set my hand and seal on the day and year last written above.

John L. Bogart
Notary Public residing at Boise, Idaho
Idaho City, Idaho

My commission expires 8-25-74

36 7033

IDAHO
DEPARTMENT OF PUBLIC LANDS
BOISE, IDAHO 83707

GORDON C. TROMBLEY
COMMISSIONER

STATE BOARD OF LAND COMMISSIONERS
CECIL D. ANDRUS
GOVERNOR AND PRESIDENT
PETE T. CENARRUSA
SECRETARY OF STATE
W. ANTHONY PARK
ATTORNEY GENERAL
JOE R. WILLIAMS
STATE AUDITOR
DELMER F. ENGELKING
SUP'T OF PUBLIC INSTRUCTION

February 23, 1972

Harry F. LeMoyne
LeMoyne Realty
1130 Lawndale Drive
Twin Falls, Idaho 83301

Dear Harry:

Your letter of February 14, 1972, to Mr. Phil Peterson of the Idaho Department of Parks, concerning construction plans at Crystal Springs has been forwarded to us for further action.

In order for the easement to be granted we will need the centerline description, tied to a quarter corner or section corner. From what Mr. Peterson has told me about the project, I assume that the centerline description could be obtained by using that description furnished in State of Idaho Easement No. 4191, issued in 1971, covering the Snake River crossing. I am enclosing a photocopy of the first page of that easement for your use.

In that easement, they commence at the north quarter corner of Section 12; thence run S 2°47' W for 1894 feet, more or less, to a spring. I assume that this will be the real point of beginning for the additional easement which you need across the State park lands. I further assume that the next bearing and distance shown in Easement 4191, being S 17°12'24" W for 460 feet, more or less, to the apparent northerly highwater mark of the Snake River to be the description to be used for this proposed easement. Is this correct?

Is the width of 50 feet on each side of the centerline adequate? Also, please specify the purpose of the easement. I understand it is for a pipeline but that also there is some type of structure to be included at the spring.

We will need four copies of a plat showing the tie to the quarter corner and the bearings and distances. It will be satisfactory with us if you will obtain and furnish four copies of Riedesel and Straubhar, Consulting Engineer's plat designated as file No. 82, which was furnished to us in connection with Easement No. 4191. Please designate on that plat, by using a colored pencil, the area included in the proposed easement, as well as the bearings and distances of the centerline description.

36 70 3

The Department of Parks has recommended that this easement be granted for a nominal minimal consideration which we have set at $25.00. Please forward your check in the amount of $30.00 to cover the consideration and the $5.00 application fee. Please make your check payable to the Idaho State Treasurer and forward with the required plats, etc., to the State Land Commissioner, Statehouse, Boise, Idaho 83707. Upon receipt of these items, the easement will be executed.

Please advise also as to whom the easement is to be granted and the name and address to which it is to be mailed.

Very truly yours

FOR THE COMMISSIONER

W. J. Mitchell

W. J. Mitchell
Division Chief, Lands

WJM/lgb

Enclosure

38 7023

February 16, 1972

Re: Permit No. 36-7033
Joseph L. Burden

Mr. Lloyd J. Webb
Rayborn, Rayborn, Webb and Pike
Attorneys at Law
P. O. Box 321
Bank of Idaho Building
Twin Falls, Idaho 83301

Dear Mr. Webb:

It is my understanding that the matter of your proposed permit from the Department of Parks for construction of facilities at Crystal Springs was to be the subject of the Parks' Board meeting in January. We ask that this office be informed of the results of that meeting in order to allow us to act on your extension of time request which was received on December 22, 1971. To date, we have received no word from any party indicating whether the permit will be granted.

Please let us know the current status of this matter so that we may know what further action to take regarding your extension request.

Very truly yours,

R. KEITH HIGGINSON
Director

RKH:mjl

cc: Idaho Department of Parks
Statehouse Mail
Boise, Idaho 83707

36 7033

*STATE OF IDAHO*
*DEPARTMENT OF WATER ADMINISTRATION*
Statehouse – Annex 2
Boise, Idaho 83707
(208) 384-2215

R. Keith Higginson
Director

Water Rights Administration
Water Resource Investigations
Dam and Reservoir Safety
Water Well Drilling
Flood Plain Management
Irrigation and
Flood Control Districts

February 23, 1972

Re: Application for Permit No. 36-7201 - Clear Springs Trout Sales Co.
" " " " 36-7218 - Clear Springs Trout Co.
Permit No. 36-7033 - Joseph L. Burden
" " 36-7164 - " " "

Hepworth, Nungester & Felton
1020 Main
Buhl, Idaho 83316

ATTN: John Hepworth

Dear John:

Pursuant to your telephone request, please find enclosed copies of the above referenced applications and permits.

The fee for these copies will be $5.70. If we can be of any further assistance, please contact us.

Very truly yours,

Donald W. McEldowney
Appropriation Supervisor

DWM:CR

Enc: copies

36 7033

Webb, Pike, Burton and Carlson
ATTORNEYS AT LAW
P. O. BOX 857
BANK OF IDAHO BUILDING
TWIN FALLS, IDAHO 83301

LLOYD J. WEBB
EMIL F. PIKE
J. RILEY BURTON
MONTE B. CARLSON

TELEPHONE
AREA CODE 208
734-4450

Department of Water Resources

February 8, 1972

State of Idaho
Department of Water Administration
Statehouse, Annex No. 2
Boise, Idaho 83707

RE: Joseph L. Burden

Gentlemen:

Please be advised that the law firm of Rayborn, Rayborn, Webb and Pike was terminated as of the close of business on the 31st day of December, 1971, and the law firm of Webb, Pike, Burton and Carlson is hereby substituted as counsel in the above captioned matter.

Sincerely yours,

Lloyd J. Webb

LJW:c

33-2688

November 11, 1971

Mr. Joseph L. Burden
Lemoyne Realty
1130 Lawndale Drive
Twin Falls, Idaho 83301

Dear Mr. Burden:

This is in reply to your letter of October 27, 1971, in which you inquired as to the possibility of obtaining an extension of time in connection with Permit 36-7003.

As we discussed when you visited this office earlier, it is provided in the Idaho Code, Section 42-204, for the granting of an extension of time where the applicant is prevented from proceeding by his failure to obtain necessary consent from the federal government on any matter within the jurisdiction of the United States. Even though there is no similar provision covering necessary consent from the State of Idaho, we feel that the same principle may apply.

However, our understanding of the State of Idaho easement is that you made application for such easement on March 17, 1971, and that it was granted on April 29, 1971. I am certain that you will agree that that period of time does not constiture an unreasonable delay. As we read Section 42-204, we are not authorized to grant more than one extension on any application that does not fit the cirteria indicated. Since we have already extended the time on this application in March of this year, we feel that we will not be able to grant an extension if you should request it beyond the present January 1, 1972, proof due date.

If you would care to discuss this matter further with us, please let me know.

Very truly yours,

R. KEITH HIGGINSON
Director

RKH:pk

36-7033

**Le Moyne Realty**
1130 LAWNDALE DRIVE
PHONE 208 733-0874
TWIN FALLS, IDAHO
83301




October 27, 1971

BDF

Mr. Keith Higginson
Director, Department of Water Administration
State House Annex
Boise, Idaho 83707

Dear Mr. Higginson:

In accordance with our recent conversation regarding the Crystal Springs water permits held by Joseph L. Burden, I am herewith sending to you a copy of State of Idaho Easement No. 4191.

It is my understanding that you will write a letter to me in the near future regarding the possibility of an extension of Permit No. 36-7033. Please address any correspondence to Mr. Joseph L. Burden in care of LeMoyne Realty, 1130 Lawndale Drive, Twin Falls, Idaho 83301.

Thank you.

Very truly yours,

Harry F. LeMoyne

Harry F. LeMoyne

HFL:al
enclosure

36 7033

December 30, 1971

Re: Permit No. 36-7033
Joseph L. Burden

Mr. Lloyd J. Webb
Rayborn, Rayborn, Webb and Pike
Attorneys at Law
P. O. Box 321
Bank of Idaho Building
Twin Falls, Idaho 83301

Dear Mr. Webb:

This is to acknowledge receipt of your letter dated December 21, 1971, with which you forwarded a request for an extension of time concerning the Joseph L. Burden Permit No. 36-7033. It is my understanding that the request made by Mr. Burden to the Department of Parks for permits to build diversion works upon State Parks' lands will be considered at the Board's meeting in mid-January. Therefore, we will withhold further action on your request for an extension of time until the Parks Board determines at that January meeting whether it will grant you the necessary approvals.

Please keep us advised of the outcome of your discussion with them.

Very truly yours,

R. KEITH HIGGINSON
Director

RKH:mjl

36 7033

Keith.

Extension request states they were also delayed by Dept of Parks

Nov 19, 1971 The applicant formally made application to the Parks Board.

According to Phil Peterson of Dept of Parks.

Bob 12/22/71

Rayborn, Rayborn, Webb and Pike
ATTORNEYS AT LAW
P O BOX 321
BANK OF IDAHO BUILDING
TWIN FALLS IDAHO 83301

TELEPHONE
AREA CODE 208
733-2601

E.L.RAYBORN (1893-1970)
E.M.RAYBORN
R.E.RAYBORN
LLOYD J.WEBB
EMIL F. PIKE
J.RILEY BURTON
RUDOLF D.BARCHAS
MONTE B.CARLSON

December 21, 1971

State of Idaho
Department of Water Administration
Statehouse, Annex No. 2
Boise, Idaho 83707

RECEIVED
DEC 1971
Department of Water Administration

Re: Joseph L. Burden.

Dear Sir:

Enclosed herewith for filing please find Request for Extension of Time Within Which to Make Proof of Application of Water to Beneficial Use to be filed in the above captioned matter.

36 7033

Sincerely yours,

Lloyd J. Webb
by: P.A.
LLOYD J. WEBB

LJW/pa
Encl.

36 7033

RECEIVED
Department of Water Administration

BEFORE THE STATE OF IDAHO, DEPARTMENT OF WATER ADMINISTRATION

* * * * * * * *

| | |
|---|---|
| In the Matter of the Application of JOSEPH L. BURDEN, Permit No. 36-7033 | REQUEST FOR EXTENSION OF TIME WITHIN WHICH TO MAKE PROOF OF APPLICATION OF WATER TO BENEFICIAL USE |

STATE OF IDAHO )
) ss.
County of Twin Falls )

LLOYD J. WEBB, being first duly sworn, deposes and states:

I.

The affiant is Idaho counsel for Joseph L. Burden, who is the permit holder in this matter.

II.

Pursuant to the terms of the permit and according to the letter of the Department mailed to the permit holder on October 30, 1970, proof of application of beneficial use was required on or before the 1st day of January, 1971. On the 3rd day of March, 1971, the Department extended the time for submission of proof of beneficial use under the said permit to January 1, 1972.

RAYBORN, RAYBORN, WEBB AND PIKE
ATTORNEYS AT LAW
BANK OF IDAHO BUILDING
BOX 321
TWIN FALLS, IDAHO 83301
733-2601

RAYBORN, RAYBORN, WEBB AND PIKE
ATTORNEYS AT LAW
BANK OF IDAHO BUILDING
BOX 321
TWIN FALLS, IDAHO 83301
733-2601

III.

The permit holder has been unable to make application to beneficial use, although he has spent considerable time and effort and has completed engineering studies, developed financial facilities and has otherwise been ready to proceed with necessary construction. Because of the fact that the site of the point of diversion has been made a part of the State Park System of the State of Idaho and permits both for diversion works and for conduits at the point of diversion and from the point of diversion in Gooding County, Idaho, must be obtained from the State Park Board and although applications have been made to that Board and persistent attempts have been made to obtain clearance of such permits, no such clearance has yet been obtained and the permit holder has not been able to proceed with his plans.

IV.

The permit holder has, however, accomplished the following with regard to the application of waters to beneficial use:

(a) He has sought and obtained engineering studies necessary to the completion of the water works at the spring and the transportation of the water under the Snake River to his property.

(b) He has made application to the State of Idaho for consent to the necessary river crossing of the Snake River with the pipeline which will be required to transport the waters from Crystal Springs to the permit holder's property.

36 7038

(c) He has accomplished necessary engineering on the overall problems of the pipeline, the water works at the springs and the facilities where the water is to be used upon his property in Twin Falls County.

(d) He has made application to the Parks Board of the State of Idaho for permits to build diversion works and conduits from the diversion works through State Parks lands at Crystal Springs, Gooding County, Idaho, and has diligently and persistently attempted to obtain these permits which have not yet been granted.

V.

It is the belief of the affiant that the permit holder has taken all of the steps which he could have reasonably been expected to take during 1971.

VI.

The affiant has been connected with negotiations conducted between the permit holder and those persons who are expected to accomplish the actual construction of the fishery works upon his Twin Falls County properties, and he believes that these construction works are now ready to commence and have been ready to commence for the past several months, and just as soon as clearance can be obtained from the State Parks Board construction can get under way. Because of the fact that it is now winter certain parts of the construction cannot be completed until better weather, but it is the belief of the affiant that

RAYBORN, RAYBORN, WEBB AND PIKE
ATTORNEYS AT LAW
BANK OF IDAHO BUILDING
BOX 321
TWIN FALLS, IDAHO 83301
733-2601

38 3033

if extended the waters of Crystal Springs as subject to the permit can be appropriated to beneficial use within twelve (12) months from the date of expiration of the extended time as here specified.

VII.

The permit holder has made substantial investments of time and monies in the engineering and acquisition features of this permit and very sincerely intends to apply the water to beneficial use at the earliest possible moment. Accordingly, your affiant believes that to deny the requested extension would be a great disservice to the permit holder and to the public in the development of this beneficial use of the waters of the state.

On the 22nd day of September, 1971, the Department of Water Administration granted a permit unto the applicant under Application 36-7164 for an additional 50 cfs of water of Crystal Springs for use in connection with the water which is subject to Permit No. 36-7033. Beneficial use as permitted in Permit No. 36-7164 may be proved on or before April 1, 1974. It is intended that these two permits be developed together and the granting of this application for extension will permit this.

WHEREFORE, the applicant, through this affiant, prays that he be granted an additional extension of twelve (12) months for proof of application to beneficial purpose.

SUBSCRIBED AND SWORN to before me this 21st day of December, 1971.

NOTARY PUBLIC for Idaho
Residence: Twin Falls, Idaho

36 7033



RAYBORN, RAYBORN, WEBB AND PIKE
ATTORNEYS AT LAW
BANK OF IDAHO BUILDING
BOX 521
TWIN FALLS, IDAHO 83301
733-2601

Idaho DEPT. OF PARKS

MAIL: STATEHOUSE, BOISE, IDAHO 83707
OFFICE: 2201 WARM SPRINGS AVENUE
PHONE: 384-2154 (AREA CODE 208)

STATE PARK BOARD

EARL T. GUNNELL, Chairman
Box 215
Soda Springs, Idaho 83276

WILLIAM M. FROME, Member
505 East Main Street
St. Anthony, Idaho 83445

GEORGE P. MILLER, Vice-Chairman
Box 247
Bonners Ferry, Idaho 83805

MERLE ALLISON, Member
Box 336
Filer, Idaho 83328

KENT GEBT, Member
Box 349
Fruitland, Idaho 83619

WILLIAM A. STELLMON, Member
1122 10th Avenue
Lewiston, Idaho 83501

STEVEN W. ELY
Director

RECEIVED

Department of Water Administration

December 8, 1971

Mr. Harry F. LeMoyne
1130 Lawndale Drive
Twin Falls, Idaho

Dear Harry:

I have, this date, contacted Keith Higginson, Director of the State Water Administration, informing him of the impending Park Board tour of the Crystal Springs area. He stated that he would put a hold order on any action concerning your water permit until he has heard from this office regarding the decision on the easement.

I am looking forward to meeting with you for this Board tour on January 17.

Sincerely,

R. P. Peterson
Deputy Director

rk
cc: Keith Higginson

36 7033

PLEASE FURNISH SERVICE(S) INDICATED BY CHECKED BLOCK(S).
REQUIRED FEE(S) PAID.

☐ Show to whom, date and address where delivered

☐ Deliver ONLY to addressee

**RECEIPT**

*Received the numbered article described below.*

REGISTERED NO.

CERTIFIED NO. 23139

INSURED NO.

DATE DELIVERED 11-1-71

1 SIGNATURE OR NAME OF ADDRESSEE (*Must always be filled in*) Joseph L. Burden

2 SIGNATURE OF ADDRESSEE'S AGENT, IF ANY Peggy K. Dahmer Lloyd F. Webb

3 SHOW WHERE DELIVERED (*only if requested*) 36 7023

c55—16—71548-11 847-198 GPO

POST OFFICE DEPARTMENT
OFFICIAL BUSINESS






PENALTY FOR PRIVATE USE TO AVOID PAYMENT OF POSTAGE, $300

POSTMARK OF DELIVERING OFFICE

Print your name and address below. If you want to restrict delivery, or to have the address of delivery shown on this receipt, check block(s) on other side. Moisten gummed ends and attach this card to back of article.

RETURN TO

DEPARTMENT OF WATER ADMINISTRATION
STATEHOUSE - ANNEX #2
BOISE, IDAHO 83707

36 7088

POD Form 3811 Apr. 1969 035—16—71648-11

October 29, 1971 CERTIFIED MAIL #P 313 9

Re: Permit No. 36-7033

Joseph L. Burden
Box 321
Twin Falls, Idaho 83301

Dear Mr. Burden:

One of the conditions of approval of your water Permit No. 36-7033 (see last page of your approved permit) was that evidence of the extent of development be submitted as proof of application of water to beneficial use to this office on or before January 1, 1972. Enclosed is an affidavit form which must be used to submit the required proof of beneficial use.

If you have not fully completed your project, and you have not previously received an extension of time, you may request an extension of time provided the delay is for reasonable cause as indicated in Section 42-204, Idaho Code, amended. If you have been prevented from proceeding by a governmental agency or by litigation, more than one extension of time can be granted.

Either the beneficial use affidavit or a request for an extension of time must be received by this Department on or before the above mentioned date, otherwise the permit will lapse and be of no further force or effect.

R. KEITH HIGGINSON
Director

36 7033

Enc: Proof affidavit
dr

from the desk of
Darlene Reich

Do Not Forward.
per RKH
x Ltr of
12-8-71
V Parker

36 7033

BEFORE THE DEPARTMENT OF WATER ADMINISTRATION

OF THE

STATE OF IDAHO

| | |
|---|---|
| IN THE MATTER OF EXTENDING THE PROOF DUE DATE IN CONNECTION WITH PERMIT NO. 36-7033 IN THE NAME OF JOSEPH L. BURDEN | ORDER |

WHEREAS, on July 10, 1968, Joseph L. Burden applied to the Department of Water Administration (formerly the Department of Reclamation) for a permit to appropriate 50.0 cubic feet per second of water from Crystal Springs, tributary to the Snake River, to be diverted from a point within Lot 12 (SE¼NW¼), Sec. 12, T. 9S, R. 15E, B.M., Gooding County, to be used for fish propagation purposes from January 1 to December 31; and,

WHEREAS, on December 8, 1969, the Department approved the said application subject to conditions as listed in the Memorandum Decision entered on December 8, 1969, and with the condition that proof of construction of works and application of water to beneficial use be submitted to the Department on or before January 1, 1971; and,

WHEREAS, on October 30, 1970, the permit holder was notified by certified mail that he was required to submit proof of beneficial use and was instructed as to the steps to be taken to make said proof; and,

WHEREAS, on December 29, 1970, the Department received a request for an extension of time within which to submit proof of beneficial use; and,

WHEREAS, on February 23, 1971, the Department received additional information in connection with the request for an extension of time; and,

WHEREAS, the Department has reviewed the request for an extension of time and found that the permit holder has shown reasonable cause as to why the time within which to submit proof of beneficial use should be extended;

THEREFORE, IT IS HEREBY ORDERED that the time within which to submit proof of beneficial use under Permit No. 36-7033 be extended to January 1, 1972.

Dated this 3rd day of March, 1971.

R. KEITH HIGGINSON
Director

DWM:DR

36 7033

March 8, 1971

Re: Permit No. 36-7033

Mr. Joseph L. Burden
Box 321
Twin Falls, Idaho 83301

Dear Mr. Burden:

Enclosed please find an Order which extends the time within which to submit proof of beneficial use for the above referenced permit to January 1, 1972.

The Department will notify you 60 days in advance of the above due date.

Very truly yours,

Donald W. McEldowney
Appropriation Supervisor

DWM:DR
Enclosure

cc: Mr. Lloyd J. Webb
RAYBORN, RAYBORN, WEBB & PIKE
P.O. Box 321
Twin Falls, Idaho 83301

36 7033

Except to the extent that engineering has been ordered for this purpose, we are unable to supply you with further information.

(3) Copies of the construction contracts or a copy of the construction schedule. As indicated in Mr. Straubhar's letter of February 16, 1971, work in this direction is under way, but we are unable to provide this at this time.

(4) A report of progress on the acquisition of an easement at the Springs site itself. Mr. LeMoyne's Affidavit pretty well covers our problems in this area, and we are doing everything we can to secure this easement as soon as possible.

(5) The copy of our Application to the Idaho State Department of Public Lands. This is covered in Straubhar's letter of December 23, 1970, to Mr. W. J. Mitchell, the Division Chief of the Department of Public Lands.

We hope that you will give this supplementary material your favorable consideration. Mr. Burden is very sincere in his wish to obtain the additional time so that he will be able to perfect his right under the Permit.

Sincerely yours,

LLOYD J. WEBB

LJW:rl
Encls.

Rayborn, Rayborn, Webb and Pike
ATTORNEYS AT LAW
BANK OF IDAHO BUILDING
TWIN FALLS, IDAHO
83301

E. L. RAYBORN
(1893-1970)
E. M. RAYBORN
R. E. RAYBORN
LLOYD J. WEBB
EMIL F. PIKE
J. RILEY BURTON
RUDOLF D. BARCHAS
MONTE B. CARLSON

P. O. BOX 321
TELEPHONE 733-2601
AREA CODE 208

RECEIVED
FEB 23 1971
Department of Water Administration

February 22, 1971

Keith Higgenson
Director
Department of Water Administration
Statehouse Annex 2
Boise, Idaho 83707

Re: Permit No. 36-7033
Joseph L. Burden

Dear Keith:

Please find enclosed our supporting documentation attempting to comply with your letter of January 21, 1971, requiring additional information in support of the request for extension of time.

As I understand the requirements set out in the letter of January 21, we needed additional proof in the categories which I will here set out with the specification of the additional material which we are forwarding:

(1) An agreement with an engineering firm to do the engineering on the project. I enclose a copy of my letter to Riedesel and Straubhar dated December 24, 1970, authorizing them to proceed with the engineering work. Since that letter refers to their letter of June 28, 1968, I also enclose a copy of their letter of that date.

(2) Reports or engineering plans related to the following subjects:

(a) Diversion works at the springs. I enclose a copy of Riedesel and Straubhar's letter of February 16, 1971, where they indicate that the work has begun on the studies for the diversion structure.

(b) The pipeline crossing of the river. I enclose a copy of Riedesel and Straubhar's letter of December 23, 1970, on this subject, which letter is directed to Mr. Burden, and a copy of Riedesel and Straubhar's letter of December 23, 1970, to W. J. Mitchell of the Department of Public Lands. Also enclosed is a copy of the check which was drawn against the Crystal Springs Ranch account for the Department of Public Lands.

(c) The actual works facilities for the hatchery.

36-7033

Rayborn, Rayborn, Webb and Pike
ATTORNEYS AT LAW
BANK OF IDAHO BUILDING
TWIN FALLS, IDAHO 83301

P. O. BOX 321
TELEPHONE 733-2601
AREA CODE 208

E. L. RAYBORN (1893-1970)
E. M. RAYBORN
R. E. RAYBORN
LLOYD J. WEBB
EMIL F. PIKE
J. RILEY BURTON
RUDOLF D. BARCHAS
MONTE B. CARLSON

December 24, 1970

Riedesel & Straubhar
Consulting Engineers
1615 Addison Ave. East
Twin Falls, Idaho

Re: Joseph Burden.

ATTEN: JOHN J. STRAUBHAR

Dear Jack:

I am advised by Mr. Burden that I should authorize you to proceed with your engineering work on the fish hatchery project at Crystal Springs.

I believe that you outlined the preliminary work very nicely in your letter of June 28, 1968 and I realize that you have since accomplished a substantial part of the work on a piece-work basis. I realize that the river crossing work has been done and that the diversion site preliminary studies are underway and this should constitute your authority to proceed with that part of the work which you have not yet accomplished.

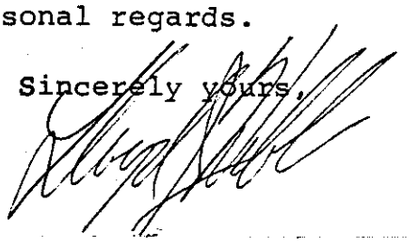
Mr. Burden is anxious to get this work done now that the money situation has loosened in California and he requests that I advise you to proceed with all possible speed.

We expect in the next few days to make application for extension of time within which to make proof on our water filing and assuming that we are able to get this extension of time we will want to have the construction well underway within six months and completed within the next year.

We appreciate your assistance in this matter.

With best personal regards.

Sincerely yours,



38 7033

CONSULTING ENGINEERS, FORMERLY CHARLES W. GLASBY & ASSOCIATES

DALE L. RIEDESEL AND ASSOCIATES

687 FILER AVENUE • TWIN FALLS, IDAHO 83301 • TELEPHONE 733-2414

DALE L. RIEDESEL, P.E.
JOHN J. STRAUBHAR, P.E.

June 28, 1968

Mr. Joseph Burden
c/o Harry LeMoyne, Realtor
1130 Lawndale Drive
Twin Falls, Idaho 83301

Ref: Siphon and Water Works at Crystal Springs

Dear Mr. Burden:

The following is a brief report on the work we performed for Mr. LeMoyne on the above-mentioned project. The report includes the results of our surveying and calculations, a sketch of the area, and our recommendations and conclusions.

We surveyed the area under consideration; the locations, elevations, and distances are as shown on the attached sketch. There are 22 feet of fall (or head) from the Crystal Springs Inlet to the proposed outlet site. The horizontal length is 3227 feet. We used an effective length of 3400 feet in our calculations, which is a 5% increase for sag and construction allowances.

By using a head of 22 feet, a length of 3400 feet, a pipe diameter of 36 inches, and assuming welded steel pipe will be used; we conclude that you would have an effective head of approximately 6.5 to 7.0 feet after losses. These losses are due to friction on pipe, entrance, bend, and exit losses. This would yield a total flow of approximately 65 cubic feet per second.

This total flow could possibly be increased by several methods. Some of these methods are lowering the elevation of the outlet site, booster pumps and a force main, using two pipes of smaller diameter, and increasing the pipe size from 36-inch to something larger. All of these methods have their advantages and disadvantages, and should be given further consideration, if you desire more water.

We, also, considered tapping the existing 4-inch line with a 1½-inch line for supplying water to the proposed trailer site. The pressure at the junction of the 1½-inch and 4-inch line is approximately 36 psi; assuming 82 feet of head and a calculated flow of 160 gallons per minute. The pressure at the trailer site would be approximately 14 psi and a calculated flow of less than 5 gallons per minute. This would not be adequate for the proposed use. Flow and pressure could be increased in this line by increasing the size of the line, or installation of a pump. We would suggest that a pump be installed at the 4-inch line or, possibly, tap the 36-inch pipe and then go to a pump. This would then provide adequate water for your proposed trailer site and facilities.

We have been in contact with an engineer in the irrigation sales business, who has access to some 42-inch diameter steel pipe which could be purchased at a lower cost than 36-inch diameter pipe. This pipe is not as heavy as standard 36-inch pipe; but would be more than adequate for your purposes. The construction costs for the larger pipe would not exceed those for 36-inch pipe, too much; because the weights would be the same. Increasing the pipe diameter from 36 to 42 inches would increase the flow by approximately 35 per-cent.

After viewing the proposed project and discussing the matter with Mr. LeMoyne, we feel that a project feasibility report should be considered. This project could possibly involve the expenditure of considerable money and should be proven feasible from an economic and engineering standpoint.

Some of the problem areas that need further investigation are:

1. Is there sufficient water available at the spring to meet your needs?
2. The collection of the springs at an inlet structure will be a big problem.
3. The river bottom should be profiled to obtain the shape of the river bed.
4. The river bottom should be tested to see the type of material you will encounter; which could be boulders, sand, etc.
5. The state and government may require that a pipe line be buried across the stream bed. They will also require easements, rights-of-way, and plans and specifications.

There are many other problems which are unique to this type construction and require study in detail.

If we were to prepare a feasibility report for you, it would include the following:

1. Project Scope and Limits
2. Water System - Existing & Proposed
3. Source of Water
4. Construction Items
5. Cost Estimates
6. Financial Analysis
7. Alternate Systems
8. Summary (Recommendations - Conclusions)
9. Necessary Maps & Sketches
10. Requirements of State Agencies

This information would be sufficient for you to determine whether or not you with to continue toward final plans and construction.

We would recommend that before you proceed further, you consider an engineering feasibility analysis and preliminary report. There are many facets and considerations in a project of this size which are hard to tie together, if assembled in a piecemeal fashion; but an engineering report can present this information so it will be readily usuable.

We are enclosing, with this letter, an estimate of our cost to prepare a feasibility report for you, as directed by Mr. LeMoyne.

Please contact us if you wish us to proceed with a feasibility report for the proposed project.

We appreciate the opportunity to be of service to you.

Yours very truly,

DALE L. RIEDESEL & ASSOCIATES

John J. Straubhar, P.E.

John J. Straubhar, P.E.

JJS:lsk

Enc.

RIEDESEL & STRAUBHAR

DALE L. RIEDESEL, P.E.
JOHN J. STRAUBHAR, P.E.



CONSULTING
ENGINEERS

1615 ADDISON AVE. EAST
PHONE: 733-2414
TWIN FALLS, IDAHO
83301

February 16, 1971

Mr. Joseph Burden
c/o Lloyd Webb, Attorney-at-Law
P.O. Box 321
Twin Falls, Idaho 83301

Dear Mr. Burden:

This letter is to inform you of the work we have accomplished over the past few months. We have performed field surveys for determination of the easement across the Snake River; we have profiled portions of the river bed and your property; we have prepared estimates of costs for the river crossing and diversion structure; we have also made the application documents necessary for an easement across the Snake River from the Idaho State Land Board.

Prior to this, we developed the alignment of the proposed river crossing and some approximate cost estimates for development of the 50 cfs of water you have applied for. We have provided you with information regarding the amount of water you can obtain through different sizes of pipes and by varying the difference in elevation head.

We will continue to work with Mr. LeMoyne and Lloyd Webb, Attorney, on the project and direct our correspondence through them.

Sincerely yours,

RIEDESEL & STRAUBHAR

John J. Straubhar, P.E.

John J. Straubhar, P.E.

JJS:lkb

36 7033

(A)

Copy


RIEDESEL & STRAUBHAR

DALE L. RIEDESEL, P.E.
JOHN J. STRAUBHAR, P.E.


December 23, 1970




CONSULTING ENGINEERS

1615 ADDISON AVE. EAST
PHONE: 733-2414
TWIN FALLS, IDAHO
83301


Mr. Joseph Burden
C/O Harry LeMoyne, Realtor
1130 Lawndale Drive
Twin Falls, Idaho 83301

Dear Mr. Burden:

We are enclosing with this letter a copy of the plat for Application for Pipeline Easement, a copy of the description for the easement we wrote for the property owned by the State Land Board, and a copy of the letter to the State Land Board. This plat shows the survey we performed, the description as written, and the approximate topography of the area.

The balance of this letter deals with the profile we made for you on the southerly bank of the Snake River and the amount of water that can be delivered by various sizes of pipe to the area between the trailer site and steel tower. By using a difference in elevation or head of 36 feet from Crystal Springs to the proposed outlet site, a length of approximately 2800 linear feet, the quantities of water for various sizes of pipe would be as follows:

| | |
|---|---|
| Diameter of 22 inches (inside) | Flow = 20 cfs |
| 30 inches (inside) | Flow = 50 cfs |
| 36 inches (inside) | Flow = 75 cfs |

These sizes and flows are approximate, but are adequate for approximate cost estimates.

As we mentioned in our letter of June 26, 1968, we feel you should consider a project feasibility report. A river crossing project involves the expenditure of considerable money and should be proven feasible from an engineering and economic standpoint. There are some unique construction problems involved in a river crossing project that require study in detail.

If we are to prepare a feasibility report for you, it would include the following information and data:

1. Project scope and limits
2. Water system- existing and proposed
3. Source of water investigation
4. Investigation of construction problems such as quantity of water, footings for inlet structure, profile of river bottom, testing of river bottom.
5. Alternate systems
6. List of construction items and quantities
7. Cost estimates

38-7033

8. Financial analysis
9. Summary with recommendations and conclusions
10. Necessary maps and sketches
11. Requirements of State agencies

This information would be sufficient for you to determine whether or not you wish to continue toward final plans and construction.

We could prepare this feasibility report for you and have it ready for your use within two months if you should direct us to proceed.

If we can be of further service, please call on us.

Yours very truly,

RIEDESEL & STRAUBHAR

John J. Straubhar, P.E.

John J. Straubhar, P.E.

JJS:lkb

36 7033

(B)


RIEDESEL & STRAUBHAR

DALE L. RIEDESEL, P.E.
JOHN J. STRAUBHAR, P.E.





CONSULTING ENGINEERS

1615 ADDISON AVE. EAST
PHONE: 733-2414
TWIN FALLS, IDAHO
83301


December 23, 1970

Mr. W.J. Mitchell, Division Chief
Department of Public Lands
Statehouse
Boise, Idaho 83707

Re: Easement across Snake River at Crystal Springs

Dear Mr. Mitchell:

Enclosed with this letter is a plat showing the requested easement and a description of the easement.

Also enclosed with this letter is a check for payment in the amount of $200.00 from Mr. Burden for the consideration of the river crossing easement.

Mr. Burden's mailing address is Joseph L. Burden, C/O Harry LeMoyne, 1130 Lawndale Drive, Twin Falls, Idaho. You can forward Mr. Burden's copy of the easement to this address.

If we can be of further service, please call on us.

Yours very truly,

RIEDESEL & STRAUBHAR

John J. Straubhar, P.E.

John J. Straubhar, P.E.

JJS:lkb

cc: Joseph Burden
Harry LeMoyne

Enclosures

23 7023

DESCRIPTION OF EASEMENT

JOSEPH L. BURDEN

A parcel of land being on both sides of the following described line as shown on the attached survey plat and being a portion of the Snake River stream bed adjacent to Lots 6, 12, and 13 of Section 12, Township 9 South, Range 15 East of the Boise Meridian in Gooding and Twin Falls Counties, Idaho, more particularly described as follows:

Commencing at the North one-quarter corner of said Section 12; thence running S2°47'W for 1,894 feet, more or less, to a spring; thence S17°12'24"W for 460 feet, more or less, to the apparent northerly high water mark of the Snake River, being the REAL POINT OF BEGINNING: thence describing a strip of land 200.00 feet in width being 100.00 feet right and 100.00 feet left of the following described line; thence S17°12'24"W for 990 feet, more or less, to the apparent southerly high water line of the Snake River.

The area above described contains approximately 4.5 acres.

John J. Straubhar

REGISTERED PROFESSIONAL ENGINEER 1616 12/22/70 STATE OF IDAHO JOHN J. STRAUBHAR

36 7033

ENDORSEMENT OF THIS CHECK BY PAYEE ACKNOWLEDGES RECEIPT IN FULL FOR THE FOLLOWING ACCOUNTS

| DESCRIPTION | AMOUNT |
|---|---|
| | |
| | |
| | |
| | |
| | |

| CHARGE | |
|---|---|
| | GROSS AMOUNT |
| | DISCOUNT |
| | AMOUNT PAYABLE |

CRYSTAL SPRINGS RANCH

305

90-1069
1222

12-28 1972

PAY TO THE ORDER OF Department of Parks & Recr $200.00

EXACTLY 200 AND 00 CTS DOLLARS

COMPTON BRANCH
Bank of America
NATIONAL TRUST & SAVINGS ASSOCIATION
165 EAST COMPTON BOULEVARD
COMPTON, CALIFORNIA 90220

For Jan B Smith

⑆1222⑆1069⑆ 00608⑈01697⑈

BEFORE THE STATE OF IDAHO, DEPARTMENT OF WATER ADMINISTRATION

* * * * * * * *

| | |
|---|---|
| IN THE MATTER OF THE APPLICATION) OF JOSEPH L. BURDEN, PERMIT NO. ) 36-7033. ) | AFFIDAVIT IN SUPPORT OF REQUEST FOR EXTENSION OF TIME WITHIN WHICH TO MAKE PROOF OF APPLICATION OF WATER TO BENEFICIAL USE. |

* * * * * * * *

STATE OF IDAHO, )
(ss.
County of Twin Falls,)

HARRY F. LeMOYNE, being first duly sworn, deposes and states:

I.

The affiant has been engaged in association with Joseph Burden for the purpose of establishing a fish hatchery operation on certain real property owned by Joseph Burden in Twin Falls County, across the Snake River from Crystal Springs. This association with Mr. Burden has continued for a period of time in excess of two years.

II.

During the last few months of 1970 this affiant engaged in negotiations with the Idaho Power Company for the purpose of attempting to obtain an easement for a pipe line across real property owned by Idaho Power Company in Gooding County, Idaho, immediately in connection with Crystal Springs. It is believed by the affiant that Joseph Burden has easement rights to some extent in this property but it was believed to be necessary to avoid further litigation to obtain a grant of easement from Idaho Power Company with regard to the real property. In connection with these negotiations the affiant discussed the matter at some



36 7033

RAYBORN, RAYBORN, WEBB AND PIKE
ATTORNEYS AT LAW
BANK OF IDAHO BUILDING
BOX 321
TWIN FALLS, IDAHO 83301
733-2601

length with James Bruce, a Vice President of the Idaho Power Company and the man in charge of these properties.

III.

In the course of conversations with Mr. Bruce the affiant was advised that the Power Company would not resist a request for an easement across the property necessary to implement the permit for water from Crystal Springs granted by the Idaho Department of Water Administration.

IV.

During the month of January, 1971, before an easement could be obtained from Idaho Power Company, Idaho Power Company deeded the property in question to the State of Idaho for use as a park. Since no grant had been made before the deed to the State of Idaho it has become necessary for Joseph Burden to make application to the State of Idaho, particularly to the State Parks Board, and to the Land Board. These applications are in process but because of the change in ownership it has not been possible for the affiant to this date to obtain the necessary easements.

V.

It is the desire of Joseph Burden to pursue to completion his attempt to obtain easements and the right to transport water from Crystal Springs to his property in Twin Falls County, Idaho. All reasonable steps are being employed by this affiant on behalf of Mr. Burden and by Lloyd J. Webb, legal counsel for Mr. Burden, to accomplish the ends here specified and these attempts will be continued to fruition.

WHEREFORE, The affiant joins in the Petition of Joseph Burden for an extension of time within which to prove up on his permit for water from Crystal Springs.

Harry F. LeMoyne

36 [illegible]



RAYBORN, RAYBORN, WEBB AND PIKE
ATTORNEYS AT LAW
BANK OF IDAHO BUILDING
BOX 321
TWIN FALLS, IDAHO 83301
733-2601

SUBSCRIBED and SWORN to before me this 22d day of February, 1971.

NOTARY PUBLIC
Residence: Twin Falls, Idaho.

RAYBORN, RAYBORN, WEBB AND PIKE
ATTORNEYS AT LAW
BANK OF IDAHO BUILDING
BOX 321
TWIN FALLS, IDAHO 83301
733-2601

36 7033

January 21, 1971

Re: Permit No. 36-7033 - Joseph L. Burden

Rayborn, Rayborn, Webb and Pike
P. O. Box 321
Twin Falls, Idaho 83301

Attention: Mr. Lloyd J. Webb

Dear Sirs:

In considering your request for an extension of time on the above numbered permit, which you submitted on December 28, 1970, we find that additional information is necessary. We cannot ascertain from your request to what extent progress has been made and would, therefore, suggest that you submit several items in support of your request. You should submit such items as: a copy of any agreements you have with an engineering firm to do the engineering on your project; any reports completed or engineering plans and specifications of the diversion works at the spring, the pipeline crossing, and the facilities where the water is to be used; copies of any construction contracts or agreements which you have entered into; or a copy of your proposed construction schedule.

We must also evaluate the progress that you have made in negotiating with Idaho Power Company in regard to the easement across their property. You should obtain from them and send to us a letter or an affidavit which indicates the present status of the negotiations and how they are presently progressing.

You should also provide a copy of your application to the Idaho Department of Public Lands for your river crossing along with a letter from them concerning the present status of your application.

We will withhold action on your request for extension for twenty days to allow you time to gather and send us the requested information. If any of the information is of a confidential nature, I am sure that we could agree to return the material after our review. If you have any questions, please feel free to contact us.

Very truly yours,

C. STEPHEN ALLRED
Deputy Director

CSA/kh

cc. Joseph L. Burden

Rayborn, Rayborn, Webb and Pike
ATTORNEYS AT LAW
BANK OF IDAHO BUILDING
TWIN FALLS, IDAHO
83301

P. O. BOX 321
TELEPHONE 733-2601
AREA CODE 208

E. L. RAYBORN
(1893-1970)
E. M. RAYBORN
R. E. RAYBORN
LLOYD J. WEBB
EMIL F. PIKE
J. RILEY BURTON
RUDOLF D. BARCHAS
MONTE B. CARLSON

December 28, 1970

Idaho State Department of Water Administration
Statehouse-Annex 2
Boise, Idaho 83707

Dear Sirs: RE: Joseph Burden, Permit No. 36-7033

Please find enclosed for your consideration our Request for Extension of Time Within Which to Make Proof in the above captioned matter.

Sincerely,

RAYBORN RAYBORN WEBB & PIKE

By _____
Lloyd J. Webb

LJW:pd

36 7033

BEFORE THE STATE OF IDAHO, DEPARTMENT OF WATER ADMINISTRATION

* * * * * * * * * *

In the Matter of the Application of)
)REQUEST FOR EXTENSION OF TIME
JOSEPH L. BURDEN, )WITHIN WHICH TO MAKE PROOF OF
)APPLICATION OF WATER TO BENE-
Permit No. 36-7033)FICIAL USE.

* * * * * * * * * *

STATE OF IDAHO, )
(ss.
County of Twin Falls,)

LLOYD J. WEBB, being first duly sworn, deposes and states:

I.

The affiant is Idaho counsel for Joseph L. Burden who is the permit holder in this matter.

II.

Pursuant to the terms of the permit and according to the letter of the Department mailed to the permit holder on October 30, 1970, proof of application of beneficial use was required on or before the 1st day of January, 1971.

III.

The permit holder has been unable to make application to beneficial use because of a number of complicating factors in the acquisition of right of way and the completion of engineering studies necessary to the transportation of the water from the spring situated in Gooding County, Idaho to the permit holder's property situated in Twin Falls County, Idaho.

IV.

The permit holder has, however, accomplished the following with regard to the application of waters to beneficial use:

(A) He has sought and obtained engineering studies necessary to the completion of the water works at the spring and the transportation of the water under the Snake River to his property.

RAYBORN, RAYBORN, WEBB AND PIKE
ATTORNEYS AT LAW
BANK OF IDAHO BUILDING
BOX 321
TWIN FALLS, IDAHO 83301
733-2601



36 7033

(B) He has engaged in negotiations with the Idaho Power Company for a construction permit upon premises owned by them where the springs are situated. In this regard, it is the belief of the permit holder that he has an easement upon the Idaho Power Company properties but he has believed that it would be less expensive and take less time to voluntarily obtain necessary rights for the transportation of the water rather than to acquire title for the necessary easement.

(C) He has made application to the State of Idaho for consent to the necessary river crossing of the Snake River with the pipe line which will be required to transport the waters from Crystal Springs to the permit holder's property.

(D) He has accomplished necessary engineering on the overall problems of the pipe line, the water works at the springs and the facilities where the water is to be used upon his property in Twin Falls County.

V.

It is the belief of the affiant that the permit holder has taken all of the steps which he could have reasonably been expected to take during 1970. His situation was additionally complicated by depressed conditions in the construction industry in the State of California which is the base of the permit holder's financial status and this has caused it to be necessary for him to progress in an orderly fashion rather than move on an emergency financial basis as to this property to minimize the risk of any loss through the failure of any engineering or right of way acquisition.

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ATTORNEYS AT LAW
BANK OF IDAHO BUILDING
BOX 321
TWIN FALLS, IDAHO 83301
733-2601



36 7023

VI.

The affiant has been connected with negotiations conducted between the permit holder and those persons who are expected to accomplish the actual construction of the fishery works upon his Twin Falls County properties and he believes that these construction works are now ready to commence within the next few weeks and he believes that the waters of the Crystal Springs as subject to the permit can be appropriated to beneficial use within the next twelve months.

VII.

The permit holder has made substantial investments of time and monies in the engineering and acquisition features of this permit and very sincerely intends to apply the water to beneficial use at the earliest possible moment. Accordingly, the affiant believes that to deny the requested extension would be a great dis-service to the permit holder and to the public in the development of this beneficial use of the waters of the State.

WHEREFORE, The applicant, through this affiant, prays that he be granted an extension of twelve months for proof of application to beneficial purpose.

SUBSCRIBED and SWORN to before me this ____ day of December, 1970.

NOTARY PUBLIC
Residence: Twin Falls, Idaho.

RAYBORN, RAYBORN, WEBB AND PIKE
ATTORNEYS AT LAW
BANK OF IDAHO BUILDING
BOX 321
TWIN FALLS, IDAHO 83301
733-2601



38 703

BEFORE THE STATE OF IDAHO, DEPARTMENT OF WATER ADMINISTRATION

* * * * * * * * * * *

In the Matter of the Application of)
)REQUEST FOR EXTENSION OF TIME
JOSEPH L. BURDEN, )WITHIN WHICH TO MAKE PROOF OF
)APPLICATION OF WATER TO BENE-
Permit No. 36-7033)FICIAL USE.

* * * * * * * * * * *

STATE OF IDAHO, )
(ss.
County of Twin Falls,)

LLOYD J. WEBB, being first duly sworn, deposes and states:

I.

The affiant is Idaho counsel for Joseph L. Burden who is the permit holder in this matter.

II.

Pursuant to the terms of the permit and according to the letter of the Department mailed to the permit holder on October 30, 1970, proof of application of beneficial use was required on or before the 1st day of January, 1971.

III.

The permit holder has been unable to make application to beneficial use because of a number of complicating factors in the acquisition of right of way and the completion of engineering studies necessary to the transportation of the water from the spring situated in Gooding County, Idaho to the permit holder's property situated in Twin Falls County, Idaho.

IV.

The permit holder has, however, accomplished the following with regard to the application of waters to beneficial use:

(A) He has sought and obtained engineering studies necessary to the completion of the water works at the spring and the transportation of the water under the Snake River to his property.

36 7033



RAYBORN, RAYBORN, WEBB AND PIKE
ATTORNEYS AT LAW
BANK OF IDAHO BUILDING
BOX 321
TWIN FALLS, IDAHO 83301
733-2601

(B) He has engaged in negotiations with the Idaho Power Company for a construction permit upon premises owned by them where the springs are situated. In this regard, it is the belief of the permit holder that he has an easement upon the Idaho Power Company properties but he has believed that it would be less expensive and take less time to voluntarily obtain necessary rights for the transportation of the water rather than to acquire title for the necessary easement.

(C) He has made application to the State of Idaho for consent to the necessary river crossing of the Snake River with the pipe line which will be required to transport the waters from Crystal Springs to the permit holder's property.

(D) He has accomplished necessary engineering on the overall problems of the pipe line, the water works at the springs and the facilities where the water is to be used upon his property in Twin Falls County.

V.

It is the belief of the affiant that the permit holder has taken all of the steps which he could have reasonably been expected to take during 1970. His situation was additionally complicated by depressed conditions in the construction industry in the State of California which is the base of the permit holder's financial status and this has caused it to be necessary for him to progress in an orderly fashion rather than move on an emergency financial basis as to this property to minimize the risk of any loss through the failure of any engineering or right of way acquisition.

RAYBORN, RAYBORN, WEBB AND PIKE
ATTORNEYS AT LAW
BANK OF IDAHO BUILDING
BOX 321
TWIN FALLS, IDAHO 83301
733-2601

VI.

The affiant has been connected with negotiations conducted between the permit holder and those persons who are expected to accomplish the actual construction of the fishery works upon his Twin Falls County properties and he believes that these construction works are now ready to commence within the next few weeks and he believes that the waters of the Crystal Springs as subject to the permit can be appropriated to beneficial use within the next twelve months.

VII.

The permit holder has made substantial investments of time and monies in the engineering and acquisition features of this permit and very sincerely intends to apply the water to beneficial use at the earliest possible moment. Accordingly, the affiant believes that to deny the requested extension would be a great dis-service to the permit holder and to the public in the development of this beneficial use of the waters of the State.

WHEREFORE, The applicant, through this affiant, prays that he be granted an extension of twelve months for proof of application to beneficial purpose.

LLOYD J. WEBB

SUBSCRIBED and SWORN to before me this ____ day of December, 1970.

NOTARY PUBLIC
Residence: Twin Falls, Idaho.

RAYBORN, RAYBORN, WEBB AND PIKE
ATTORNEYS AT LAW
BANK OF IDAHO BUILDING
BOX 321
TWIN FALLS, IDAHO 83301
733-2601



36 7033

August 3, 1972

COPY

Mr. Robert C. Paine
Parry, Robertson, Daly & Larson
Lawyers
The Idaho First National Bank Building
P. O. Box 525
Twin Falls, Idaho 83301

Dear Bob:

Enclosed is an order approving the conveyance of permits 36-7033 and 36-7164 to the Crystal Springs Ranch, Inc.

In order that there be no future misunderstanding and feeling on your part that the department has approved activities of Crystal Springs Ranch, I feel I should call your attention to what appears to be a discrepancy in the description of the point of diversion. Both permits 36-7033 and 36-7164 provide for diversion of water in Lot 12, SE1/4NW1/4, Section 12; Township 9 South, Range 15 East,B.M. I'm enclosing a copy of the survey plat on which I have drawn an outline of Lot 12 in red.

From a recent field examination, it has been reported to us that some of the construction activity is taking place within Lot 11. You should be aware that the Idaho Fish & Game Department, in its recent Application 36-7256, has filed to appropriate 100 second feet of water from Crystal Springs from within Lots 11, 12, and 13. It would appear, therefore, that they may have a prior filing to any application for amendment, which you will need to file in the event that our information is correct and you are developing springs in Lot 11. I felt that I should call this to your attention so that you would not assume that our silence could be interpreted as approval of any change in point of diversion which you may have made.

Very truly yours,

R. KEITH HIGGINSON
Director

RKH:mjl

cc: Mr. Robert Haines, District Engineer
Idaho Department of Water Administration
1041 Blue Lakes Blvd. North
Twin Falls, Idaho 83301

Encs: 2 Order and Survey Plat

MICROFILMED

## INSTRUCTIONS TO DELIVERING EMPLOYEE

☐ Show to whom, date, and address where delivered ☐ Deliver ONLY to addressee

*(Additional charges required for these services)*

## RECEIPT

*Received the numbered article described below.*

REGISTERED NO.

CERTIFIED NO.

22303

INSURED NO.

DATE DELIVERED

NOV 1997

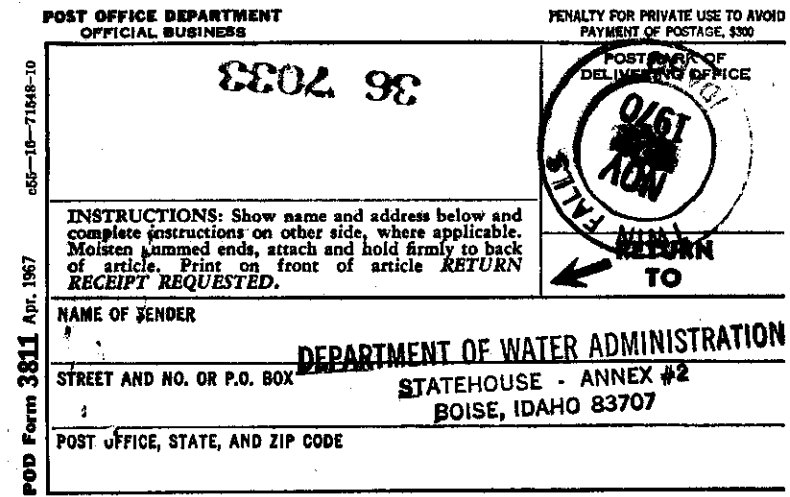
1 SIGNATURE OR NAME OF ADDRESSEE (*Must always be filled in*)

2 SIGNATURE OF ADDRESSEE'S AGENT, IF ANY

3 SHOW WHERE DELIVERED (*only if requested*)

36-2033

o55—16—71548-10 GPO


POST OFFICE DEPARTMENT
OFFICIAL BUSINESS

PENALTY FOR PRIVATE USE TO AVOID PAYMENT OF POSTAGE, $300

POST MARK OF DELIVERING OFFICE

NOV 1970

FALLS

INSTRUCTIONS: Show name and address below and complete instructions on other side, where applicable. Moisten gummed ends, attach and hold firmly to back of article. Print on front of article *RETURN RECEIPT REQUESTED.*

RETURN TO

NAME OF SENDER

DEPARTMENT OF WATER ADMINISTRATION

STREET AND NO. OR P.O. BOX

STATEHOUSE - ANNEX #2
BOISE, IDAHO 83707

POST OFFICE, STATE, AND ZIP CODE

POD Form 3811 Apr. 1967

c55—10—71648-10

October 30, 1970

Re: Permit No. 36-7033

Mr. Joseph L. Burden
Box 321
Twin Falls, Idaho 83301

Dear Mr. Burden:

One of the conditions of the approval of your Permit No. 36-7033 was that proof of application of the water to beneficial use be submitted to this office on or before January 1, 1971.

Enclosed is an affidavit form which must be used to submit proof of beneficial use. You may request an extension of time provided the delay is for reasonable cause as indicated in Section 42-204, Idaho Code, amended.

Either the proof affidavit or a request for extension of time must be received by this Department on or before the above mentioned date, otherwise the permit will lapse and be of no further force or effect.

Director

Enc: Proof affidavit
dr

CERTIFIED MAIL
# 22303

36-7033

December 9, 1969

Re: Application for Permit No. 36-7033

COPY

Department of Fish and Game
State of Idaho
Building Mail

Dear Sirs:

Enclosed you will find a copy of a Memorandum Decision issued by the State Reclamation Engineer regarding the above numbered permit application. This Memorandum Decision sets forth the conditions for approval of this permit application.

Very truly yours,

C. Stephen Allred, Deputy
State Reclamation Engineer

CSA:kh
Enclosure

cc. T. J. Jones III
1611 W. Jefferson
Boise, Idaho

36 7033

December 9, 1969

Re: Application for Permit No. 36-7033

COPY

Idaho Power Company
H. R. Moore, Vice-President
807 Idaho Street
Boise, Idaho

Dear Mr. Moore:

Enclosed you will find a copy of a Memorandum Decision issued by the State Reclamation Engineer regarding the above numbered permit application. This Memorandum Decision sets forth the conditions for approval of this application.

Very truly yours,

C. Stephen Allred, Deputy
State Reclamation Engineer

CSA:kh
Enclosure

cc. Jay C. Smith, Attorney
Box 770
Boise, Idaho 83701

36 7033

Rayborn, Rayborn, Webb and Pike
ATTORNEYS AND COUNSELLORS AT LAW
P. O. BOX 321
126 SECOND ST. EAST
TWIN FALLS, IDAHO
83301

TWIN FALLS, ID
M
JUL 17
1969

6c
FRANKLIN D. ROOSEVELT

MR. C. STEPHEN ALLRED
Assistant State Reclamation Engineer
Department of Reclamation
State House, Annex 2
Boise, Idaho, 83707

March 21, 1969

COPY

Re: Application No. 36-7033

Mr. Joseph L. Burden
Box 321
Twin Falls, Idaho

Dear Mr. Burden:

Enclosed you will find a copy of a brief in connection with the protest filed in opposition to the above refemenced application. The brief was submitted by Mr. James E. Bruce, attorney for the Idaho Power Company.

Very truly yours,

Donald W. McEldowney
Appropriation Examiner

DWM:ks

enclosure: Copy of Brief

36 7033

Based upon rule of thumb values

A halotron may produce about 8000 # per each cfs annually.

50 cfs x 9000 = 400000 < than 5-600000 # planned

using raceway dimensions 4x10x100 & 4x4x100

cubic ft = 176,000

must change 2½ times per hour = 440,000 cubic ft/hr

= 122 cubic ft/sec > 50 requested

E. L. RAYBORN
E. M. RAYBORN
R. E. RAYBORN
LLOYD J. WEBB
EMIL F. PIKE
J. RILEY BURTON

Rayborn, Rayborn, Webb and Pike
ATTORNEYS AND COUNSELLORS AT LAW
P. O. BOX 321
126 SECOND ST. EAST
TWIN FALLS, IDAHO
83301

TELEPHONE
AREA CODE 208
733-2601

RECEIVED
JUL 18 1969
Department of Reclamation

July 16, 1969

MR. C. STEPHEN ALLRED
Assistant State Reclamation Engineer
Department of Reclamation
State House, Annex 2
Boise, Idaho 83707

Re: Application No. 36-7033,
Joseph L. Burden.

Dear Steve:

Please find enclosed the supplementary statement as required by your letter of June 16, 1969.

I appreciate your patience,

Sincerely yours,

RAYBORN, RAYBORN, WEBB AND PIKE

By _____
Lloyd J. Webb

LJW:bn

Enclosure

36 7033

JUL 19 '71
Department of Reclamation

DEPARTMENT OF RECLAMATION OF THE STATE OF IDAHO
STATE RECLAMATION ENGINEER
BOISE, IDAHO.

| | | |
|---|---|---|
| In the Matter of the Amended Application for Permit No.36-7033 In the Name of JOSEPH L. BURDEN To Appropriate 50 C.F.S. of Water From Crystal Springs. | ) ) ) ) ) | STATEMENT OF PROPOSED FISHERY CONSTRUCTION. |

* * * * * * *

JOSEPH L. BURDEN, the applicant, advises the Department of Reclamation of the State of Idaho that he intends the construction of the following improvements for the production of the amount of fish here specified within the period of time here specified.

1. Proposed Production Facilities:

The applicant proposes to produce between 500,000 and 600,000 pounds of trout per year if he is allowed the permit requested with the following physical facilities for that production:

Forty (40) Race-ways of the following dimensions:

4 feet in depth
10 feet wide
100 feet long, each with individual water and drainage supplies.

Ten (10) Nursery Race-ways of the following dimensions:

4 feet in depth
4 feet wide
100 feet long, each with individual water and drainage supplies.

RAYBORN, RAYBORN, WEBB AND PIKE
ATTORNEYS AT LAW
BOX 321
TWIN FALLS, IDAHO
733-2601



36 7033

A hatchery building of the approximate dimensions of 45 feet by 60 feet to enclose the following:

1. An office;
2. A laboratory room;
3. A feed storage room;
4. A trout egg incubator of 250,000 egg capacity; and
5. 15 hatching troughs of standard size.

A building for fish dressing and packing with facilities for cold storage of the approximate dimension of 40' x 60';

A lake of from 8 to 10 acres to receive the water from the race-ways before returning them to the river; and

3,400 feet of 36 inch diameter pipe from Crystal Springs across the Snake River to the proposed fishery.

The anticipated investment involved may be calculated as follows:

| | |
|---|---|
| 1. Installation of fishery excluding buildings (calculated at $2,500.00 per C.F.S. of water supply based on previous studies) | $125,000.00 |
| 2. Installation of supply pipe from Crystal Springs (consistent with testimony expressed at the hearing - this is believed to be a high figure) | $ 56,000.00 |
| 3. Buildings and other construction | $ 44,000.00 |

It is anticipated that construction would be achieved and the fishery would be placed in operation within one year of the allowance of the permit but pursuant to established cautionary standards the fishery and the supporting works should be allowed two years within which to achieve completion.

RAYBORN, RAYBORN, WEBB AND PIKE
ATTORNEYS AT LAW
BOX 321
TWIN FALLS, IDAHO
733-2601



36 7033

If permit is allowed it is anticipated that immediate development work will begin as to the water supply by the appropriate engineering studies and the construction of the tile and its water origination structures.

Respectfully submitted,

JOSEPH L. BURDEN

By _____
LLOYD J. WEBB
Attorney for Applicant
Residence and Office
Twin Falls, Idaho, 83301.

CERTIFICATE OF MAILING

LLOYD J. WEBB, a resident attorney, hereby certifies that on the 17th day of July, 1969, he served a copy of the foregoing Statement of Proposed Fishery Construction upon the following named persons: Mr. James E. Bruce, Attorney at Law, Idaho Power Company, 807 Idaho Street, Boise, Idaho; and to Mr. T. J. Jones, III, Special Counsel, Idaho Fish & Game Department, P. O. Box 1003, Boise, Idaho.

_____

RAYBORN, RAYBORN, WEBB AND PIKE
ATTORNEYS AT LAW
BOX 321
TWIN FALLS, IDAHO
733-2601



36 7033

December 9, 1969

Re: Permit No. 36-7033

Mr. Joseph L. Burden
Box 321
Twin Falls, Idaho 83301

Dear Mr. Burden:

Enclosed you will find a Memorandum Decision issued by the State Reclamation Engineer regarding the above numbered permit. This Memorandum Decision sets forth the conditions for approval of your permit.

We are also enclosing a copy of your approved application for permit 36-7033. Be sure to note that a special condition requiring you to install and maintain a measuring device at your point of diversion has been placed upon your permit. We are enclosing an informational letter regarding different types of measuring devices.

Very truly yours,

C. Stephen Allred, Deputy
State Reclamation Engineer

CSA:kh
Enclosures: Copy of Permit
Memorandum Decision
Receipt No. 1097 for $100
Receipt No. 2438 for $10
1 informational letter

cc. Rayborn, Rayborn, Webb and Pike
Attn: Lloyd J. Webb
P.O. Box 321
Twin Falls, Idaho 83301

36 7033

June 16, 1969

Re: Application for Permit 36-7033

Rayborn, Rayborn, Webb and Pike
P.O. Box 321
Twin Falls, Idaho 83301

Attn: Lloyd J. Webb

Dear Mr. Webb:

I am in receipt of your letter of June 11, 1969. I still feel that this office needs a definitive statement as to the number of pounds of fish produced, the tentative design of the fish facilities, size of the runs, number of runs, and dimensional information about the actual size of the fish facilities. I would, in addition, wish to impose one additional requirement, that would be a brief timetable as to when construction would commence and be completed.

I would appreciate receiving this information prior to June 30th, 1969. Thank you for your cooperation.

Very truly yours,

C. Stephen Allred, Assistant
State Reclamation Engineer

CSA:kh

cc. Mr. James E. Bruce
Attorney at Law
Idaho Power Company
807 Idaho Street
Boise, Idaho

Mr. T. J. Jones, III
Special Counsel
Idaho Fish & Game Dept.
P.O. Box 1003
Boise, Idaho

36 7033

COPY

Rayborn, Rayborn, Webb and Pike
ATTORNEYS AND COUNSELLORS AT LAW
P. O. BOX 321
126 SECOND ST. EAST
TWIN FALLS, IDAHO
83301

E. L. RAYBORN
E. M. RAYBORN
R. E. RAYBORN
LLOYD J. WEBB
EMIL F. PIKE
J. RILEY BURTON

TELEPHONE
AREA CODE 208
733-2601

RECEIVED
JUN 13 1969
Department of Reclamation

June 11, 1969

C. Stephen Allred
Assistant State Reclamation Engineer
Department of Reclamation
Statehouse, Annex 2
Boise, Idaho 83707

Re: Application No. 36-7033,
Joseph L. Burden.

Dear Steve:

The only thing lacking in our application, as I understand it, is a definitive statement of water needs. I have discussed this matter with Mr. LeMoyne and with Mr. Burden himself and they believe that the full 50 C.F.S. is needed for the full development of the fishery which they have in mind. Any excess, of course, will be returned to the river in its pure state and, as I understand it, an abundance of water in fisheries makes for a more acceptable return to the stream.

Accordingly, unless a definitive statement is necessary to your consideration of this question we wish to rest on our request for 50 C.F.S.

Sincerely yours,

RAYBORN, RAYBORN, WEBB & PIKE

By _____
Lloyd J. Webb

LJW:mh

ccs: Mr. James E. Bruce
Attorney at Law
Idaho Power Company
807 Idaho Street
Boise, Idaho

Mr. T. J. Jones, III.
Special Counsel
Idaho Fish & Game Department
P.O. Box 1003
Boise, Idaho

36-7033

Rayborn, Rayborn, Webb and Pike
ATTORNEYS AND COUNSELLORS AT LAW
P. O. BOX 321
126 SECOND ST. EAST
TWIN FALLS, IDAHO
83301

E. L. RAYBORN
E. M. RAYBORN
R. E. RAYBORN
LLOYD J. WEBB
EMIL F. PIKE
J. RILEY BURTON

TELEPHONE
AREA CODE 208
733-2601

May 22, 1969

RECEIVED
MAY 23
Department of Reclamation

Mr. C. Stephen Allred, Assistant
State Reclamation Engineer
Department of Reclamation
Statehouse, Annex 2
Boise, Idaho 83707

Re: Application No. 36-7033, Joseph L. Burden.

Dear Steve:

Please find enclosed a copy of Mr. Burden's financial statement which I neglected to submit with the Brief.

We still lack a definitive statement of the water needs for the proposed installation which waters will be, as I understand, returned to the river, and I will have that and submitted to you within the next week.

Sincerely yours,

RAYBORN, RAYBORN, WEBB AND PIKE

By Lloyd J. Webb
Lloyd J. Webb By: P.a

LJW/pa
Encl.
ccs: Mr. James E. Bruce
Idaho Power Company
807 Idaho
Boise, Idaho

Mr. T. J. Jones, III.
Special Counsel
Idaho Fish and Game Department
1611 West Jefferson Street
P. O. Box 1003
Boise, Idaho 83701

36 7033

RECEIVED
JAN 23 1969
Department of Reclamation

Joseph L. Burden
Financial Statement
As of December 31, 1968

| | |
|---|---|
| Cash in Banks | $ 49,500.00 |
| Stocks & Bonds | 4,344,800.00 |
| Cash Surrender Value of Life Ins. | 150,000.00 |
| Real Estate | 915,000.00 |
| Interest in Profit Sharing Trust | 45,000.00 |
| | $5,504,300.00 |

| | |
|---|---|
| Notes Payable | $ 125,000.00 |
| Real Estate Indebtedness | 271,000.00 |
| Net Worth | 5,108,300.00 |
| | $5,504,300.00 |

Certified correct by
M.L. Taylor - Treasurer

May 15, 1969

Re: Application No. 36-7033
Joseph L. Burden

COPY

Rayborn, Rayborn, Webb and Pike
P.O. Box 321
Twin Falls, Idaho 83301

Attn: Lloyd J. Webb

Dear Mr. Webb:

We have on this date received your Brief of Applicant. Within this brief you stated that a financial statement and a supplementary statement was to be submitted with the brief, however, said statements were not submitted.

We would appreciate receiving these statements.

Very truly yours,

C. Stephen Allred, Assistant
State Reclamation Engineer

CSA:kh

36 7033

RECEIVED
MAY 15 1969
Department of Reclamation

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

In the Matter of the Amended )
Application for Permit No. 36-7033 )
in the name of JOSEPH L. BURDEN ) BRIEF OF APPLICANT.
to appropriate 50 C.F.S. of water )
from Crystal Springs. )

STATEMENT OF FACTS:

The statement of facts contained in the Protestant's Brief is basically accurate, but it contains three highly significant errors of fact:

1. The waters sought to be appropriated are not wholly situated upon the Protestant's land;

2. The waters are not incapable of appropriation without Protestant's agreement;

3. The preliminary feasibility study made on behalf of the Applicant was not accomplished through entry upon Protestant's land without the implied consent of the Protestant.

Additionally, the Protestant neglects to state that the Applicant is the owner of a well established easement upon the Protestant's land through which the Applicant and its predecessors have transported water from the springs to the area of the proposed use for at least forty years.

The evidence also indicated that at least 400 C.F.S. of water flows from the springs into the Snake River in an area almost directly beneath the proposed point of diversion. This water has not been appropriated for beneficial use.

PROCEDURAL BACKGROUND:

It is suggested in the Protestant's Brief that the Applicant has failed to cause his Petition to conform with 42-202,

RAYBORN, RAYBORN, WEBB AND PIKE
ATTORNEYS AT LAW
BOX 321
TWIN FALLS, IDAHO
733-2601


36 7033

Idaho Code, but it is not suggested in what fashion the Petition may be inadequate. The Petition certainly answers the questions posed by the code section except that it does not specifically state the Petitioner's financial situation, but the Applicant does contemporaneously with this Brief submit a financial statement from the Applicant showing that he has more than ample resources for the proposed construction and appropriation. A supplementary statement is also submitted contemporaneously with this Brief upon the amount of water actually expected to be used with the operation of the fish hatchery and the amount of water to be returned to the Snake River after its use.

The Examiner also requested comment upon these issues:

1. Whether the water is subject to appropriation;

2. Whether there will be any reduction of the quantity of water available under existing water rights;

3. Whether there is a sufficient water supply;

4. Whether the application is for a delay and not in the public good.

It is the belief of the Applicant that the evidence at the hearing rather strongly showed that this is unappropriated water and that the supply is more than ample to provide the Applicant with the 50 C.F.S. requested in his application. We believe that the application, the proof, and the statement of financial condition appended hereto are more than ample to show that this application is for a legitimate purpose, and is essential to the commencement of a rather substantial commercial installation of value as far as employment and the production of wealth is concerned to Twin

RAYBORN, RAYBORN, WEBB AND PIKE
ATTORNEYS AT LAW
BOX 321
TWIN FALLS, IDAHO
733-2601



36 7033

Falls County and Southern Idaho generally.

Other issues raised by the Examiner as well as issues raised in the Protestant's Brief are discussed below.

STATEMENT OF LAW:

Protestant's suggestion upon hearing that these waters were not subject to appropriation in that they were private waters seems to have been abandoned by the Protestant in favor of a rather esoteric theory that we are not entitled to proceed because of some trespass allegedly committed by our agents in procuring the data which went into their feasibility study for this project. Nevertheless, it would appear that comment ought to be made upon the first suggestion of the Protestant and the first issue certified by the Examiner.

It was well said in Jones v. McIntire, 60 Idaho 338, 352 (1939):

> "While the rule prevails that lakes of a surface area of less than five acres and pools and springs, located wholly upon and within the lands of the person or corporation, are appurtenant to and a part of the lands and belong exclusively to the owners of the land (citations), it is also well settled that the waters of natural springs, which form a natural stream or streams flowing off the premises on which they arise, are public waters subject to acquirement by appropriation, diversion and application to a beneficial use."

In the rather difficult fact situation of Nordick v. Sorensen, 81 Idaho 117, 129 (1959), this same rule is applied, and our Court rules that springs which flow off privately-owned lands and form natural channels do become public waters subject to appropriation, diversion and application to a beneficial use.

Actually reference to case law is scarcely necessary when the statute, as contained at 42-101, Idaho Code, specifically

RAYBORN, RAYBORN, WEBB AND PIKE
ATTORNEYS AT LAW
BOX 321
TWIN FALLS, IDAHO
733-2601



36 7033

defines as being subject to appropriation to beneficial use:

> "All the waters of the state, when flowing in their natural channels, including the waters of all natural springs and lakes . ."

It can hardly be argued that the 400+ C.F.S. water of Crystal Springs is a private spring percolating up on private property and not subject to appropriation.

In their Brief the Protestants rely solely upon the invocation of the 1912 doctrine of Marshall v. Niagara Springs Orchard Co., Ltd., 22 Idaho 144. In that case condemnation was sought to obtain a point of diversion necessary for the appropriation of a water supply at Niagara Springs. Permit had already been issued by the State Engineer. A decree of condemnation issued by the District Court was reversed. The basis for the reversal was that the "necessary examination and making (of) the surveys and maps" was accomplished through the collection of data obtained through trespass upon the appellant's land. The Court poses these interesting questions (at p. 149):

> "Can an appropriation of water upon private land be initiated by a trespass upon private property, and is the attempted appropriation void as against the land owner whose land has been trespassed upon?"

The Court answers the first question negatively. No statute is relied upon for this very interesting conclusion, and we would argue that it is wholly unsound in logic and reason. How the information was obtained upon which the appropriation was sought would seem, absent legislative proscription, to be wholly immaterial. If one wishes to punish trespass one should logically prosecute a person in the criminal courts. We believe that if called upon again (and the most recent decision cited by the Protestant was in 1941) our Court would refuse to follow this doctrine.

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ATTORNEYS AT LAW
BOX 321
TWIN FALLS, IDAHO
733-2601



36 7033

Nevertheless, the doctrine is wholly inapplicable to our situation for the following reasons:

1. By the terms of the Marshall v. Niagara Springs Orchard Co., Ltd., decision, its doctrine is inapplicable to the obtaining of a permit by the State Engineer;

2. No trespass occurred.

In the Marshall decision the Court ruled at page 153:

> "It is apparent from the provisions of the statute that a permit issued by the State Engineer to appropriate the public water of the state is not an appropriation of the water, but that such permit is the consent only of the state that the applicant may proceed under the law and make an appropriation of public water."

The Department of Reclamation is not asked in this case to pass upon the highly complex legal questions of property which relate to the Applicant's right to place his point of diversion at the point sought or his right to enlarge the pipeline necessary to transport the 50 C.F.S. of water from its source to its place of use. For reasons which we will discuss later, we believe that we have every right to do these things, but this is not the question presently before the Department of Reclamation. As is correctly said in Marshall v. Niagara Springs Orchard Co., Ltd., the question now is simply whether the state will consent to the appropriation of public water. If the state does consent, it then becomes our problem to obtain the necessary, if there be any, rights to see to the transportation of the water to its place of use.

Two things became apparent in the course of the hearing which have significant bearing upon the question of trespass. Firstly, it became apparent that the Applicant has an easement

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BOX 321
TWIN FALLS, IDAHO
733-2601



36 7033

upon the real property of the Protestant which is said to have been trespassed upon. Secondly, the Protestant made it clear that the use of its property in the Crystal Springs area is permitted to the general public and indeed one of its arguments for denial of the application is that the proposed installation would in some fashion interfere with the enjoyment of the property by the general public. From this it must be clear that general use of the property, presumably including use by the Applicant, was licensed by the Protestant.

It is basic law, of course, that the owner of an easement is entitled to go upon the servient estate for purposes associated with the maintenance of the easement, the repair of the easement, and the improvement of the easement within its limits. Annotation, 112 A.L.R. 1303. It is said in Cox v. Glenbrook Co., 271 P.2d 647, 653 (Nev. 1962):

> "As a general rule, the owner of an easement may prepare, maintain, improve or repair the way in a manner and to an extent reasonably calculated with the purposes for which it was created."

In Bernards v. Link, 248 P.2d 341, 349 (Ore. 1952) it is said:

> "Although the owner of a right-of-way over land of another is limited in his use of the right to the terms of the grant, yet it is settled that the grantee may avail himself of modern improvement which will enable him to enjoy more fully the rights which were granted."

Within this general rule it would seem obvious that the Applicant had every right to go upon the land of the Protestant to survey the land and to determine whether another and more full use of his right-of-way for transportation of water might be made. In doing this he was not, of course, a trespasser.

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BOX 321
TWIN FALLS, IDAHO
733-2601



36 7033

One cannot, in any event, claim trespass where license to use the property has been granted either expressly or impliedly. It is said thusly at 53 C.J.S. 808:

> "A license may be implied from the words and acts of the parties, from the relation, whether of blood or of business, which they sustain towards each other, from the exigencies of the case, or from custom and usage. .. A license to the general public to enter premises, in a proper manner and for proper purpose, may be implied where a person publicly carries on a business, or opens the public way, or where he knowingly permits the public use of his land, leaving it open in such a way as to lead others to think that they are invited to use it." (Emphasis supplied).

Said another way at 52 Am.Jur. 866:

> "Consent may be implied from custom, usage, or conduct."

It seems apparent from the evidence produced at the hearing of this case that license was given to members of the public generally to go upon the land of the Protestant for general purposes. Under these circumstances the Protestant would be unable to claim trespass for any purpose and certainly for the purpose here in question.

An interesting case on the subject of license is State v. Pierce, 132 N.E.2d 102, 104 (Ohio 1956) where it was sought to prohibit a person from using land owned by a railroad to which the public had long had access. Deciding in favor of the user of the real property, the Court ruled:

> ". . many people through the years had come upon this property for the purpose of hunting, fishing, and boating, and that the railroad company, owners of the property, made no effort to keep them off. . The public generally assumed the right, as a long recognized custom, to enter upon the premises for their recreational purposes named. . Under such circumstances these persons were not trespassers but licensees. A licensee is one who stands in

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TWIN FALLS, IDAHO
733-2601



36 7033

> no contractual relationship to the owner or occupier of the premises, but is permitted or tolerated thereon, expressly, impliedly or inferentially, merely for his own interest, conveyance or pleasure."

Again in Reed Logging Co. v. Marekanos, 196 P.2d 737, 739 (Wash. 1948) it is said:

> ". . when an owner of land, with full knowledge of the facts, tacitly permits another repeatedly to do acts upon the land, license may be implied from his acquiescense or failure to object."

It simply cannot be argued in this case that the agents of the Applicant were trespassers.

CONCLUSION:

From the evidence presented at the hearing I believe that it must be observed that the allegations of the petition are all substantiated. The feasibility from an engineering standpoint has been fully established. The economic feasibility is established by the evidence presented at the hearing and by the financial statement of the Applicant appended hereto. It is clear that the Applicant, through his predecessors, has a valid prescriptive easement in operation upon the real property apparently owned by the Protestant, Idaho Power Company. The proposal for diversion results in no substantial change in the physical setup now extant for the diversion and transportation of water from the Crystal Springs area to the Applicant's place of use. There is more than ample water available in Crystal Springs for this purpose,and the proposed diversion would not substantially reduce the flow of the springs either at the point of diversion or where the stream joins the Snake River. It was not shown that there would be any adverse effect upon fishing or recreational use in the area. The

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TWIN FALLS, IDAHO
733-2601



36 7033

suggestion was made that it might result in some damage to the natural beauty of the area, but the evidence indicated that the damage to aesthetic considerations would indeed be minimal if the works proposed by the Applicant are constructed with due consideration for these matters.

The waters are subject to appropriation, and the doctrine invoked by the Protestants regarding trespass is inapplicable to this matter as a general proposition and is specifically inapplicable for the reason that the agents of the Applicant were not trespassers at the time the information which they gave at the hearing was acquired.

The Applicant proposes the diversion of a fractional quantity of water from Crystal Springs through transit areas long subject to his easement for a highly beneficial purpose, both to the owner of the lands south of the Snake River and to the community generally.

For these reasons the Applicant prays that permit issue as requested.

Respectfully submitted,

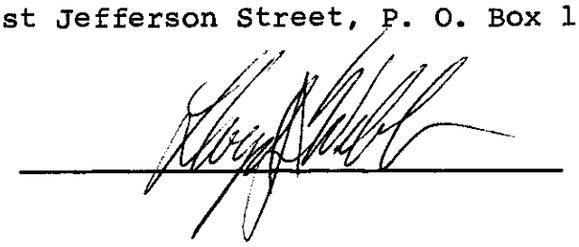
RAYBORN, RAYBORN, WEBB AND PIKE

By_____
Attorneys for Applicant
Residence: Twin Falls, Idaho.

RAYBORN, RAYBORN, WEBB AND PIKE
ATTORNEYS AT LAW
BOX 321
TWIN FALLS, IDAHO
733-2601

## CERTIFICATE OF MAILING.

LLOYD J. WEBB, a resident attorney, does hereby certify that on the 14th day of May, 1969, he served copies of the foregoing Brief of Applicant by mailing copies thereof to the following: Mr. James E. Bruce, Attorney for Protestant, Idaho Power Company, c/o Idaho Power Company, 807 Idaho, Boise, Idaho, 83702; and to Mr. T. J. Jones, III, Special Counsel, Idaho Fish and Game Department, 1611 West Jefferson Street, P. O. Box 1003, Boise, Idaho, 83701.



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ATTORNEYS AT LAW
BOX 321
TWIN FALLS, IDAHO
733-2601



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RECEIVED
MAR 21 1968
Department of Reclamation

DEPARTMENT OF RECLAMATION OF THE STATE OF IDAHO

STATE RECLAMATION ENGINEER

BOISE, IDAHO

| | | |
|---|---|---|
| IN THE MATTER OF AMENDED APPLICATION FOR PERMIT NO. 36-7033 IN THE NAME OF JOSEPH L. BURDEN TO APPROPRIATE 50 CFS OF WATER FROM CRYSTAL SPRINGS | ) ) ) ) | CONCURRENCE BY PROTESTANT, IDAHO FISH AND GAME DEPARTMENT, IN BRIEF OF PROTESTANT, IDAHO POWER COMPANY |

COMES NOW, the Idaho Fish and Game Department, one of the Protestants against the granting by the Department of Reclamation of the State of Idaho, of the Amended Application for Permit No. 36-7003 in the name of Joseph L. Burden to appropriate 50 cubic feet per second of water from Crystal Springs in Gooding County, Idaho, and concurs in the Statement of Facts, Points and Authorities, Argument and Conclusion of the Brief heretofore filed by the other Protestant in this matter, the Idaho Power Company.

In addition to those Idaho authorities cited by Protestant, Idaho Power Company, which hold that in Idaho an appropriation of water upon State or private lands cannot be initiated by trespass and that any such attempted appropriation is void, ab initio, as against the landowner whose land is trespassed upon, we should like to cite additional authorities from our own Supreme Court and other jurisdictions which further support this Idaho Rule. They are as follows:

LeQuime v. Chambers,
15 Idaho 405,
98 Pac. 415 (1908)

Rabido v. Furey,
33 Idaho 56,
190 Pac. 73 (1920)

Hall v. Taylor,
57 Idaho 662,
67 P. 2d 901 (1937)

United States Freehold Land & Emigration Co. v. Gallegos,
89 Fed. 770 (C.C.A. 8th 1889, Colo)

Smith v. Denniff,
24 Mont. 20,
60 Pac. 398 (1900)

Prentice v. McKay,
38 Mont. 114,
98 Pac. 108 (1909)

Respectfully submitted,

T. J. Jones, III
Special Counsel
Idaho Fish and Game Department
1611 West Jefferson Street
Post Office Box 1003
Boise, Idaho 83701

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on the 20th day of March, 1969, I mailed a true and correct copy of the above and foregoing Concurrence in Brief in the above-captioned matter to

Lloyd J. Webb
Rayborn, Rayborn, Webb & Pike
126 Second Street East
Twin Falls, Idaho 83301
Attorney for Applicant

James E. Bruce
Idaho Power Company
807 Idaho
Boise, Idaho 83702
Attorney for Protestant

postage prepaid, by depositing the same in the United States mail.

T. J. Jones, III

E. L. RAYBORN
E. M. RAYBORN
R. E. RAYBORN
LLOYD J. WEBB
EMIL F. PIKE

J. RILEY BURTON

Rayborn, Rayborn, Webb and Pike
ATTORNEYS AND COUNSELLORS AT LAW
P. O. BOX 321
126 SECOND ST. EAST
TWIN FALLS, IDAHO
83301

TELEPHONE
AREA CODE 208
733-2601

May 5, 1969

RECEIVED
MAY 8 1969
Department of Reclamation

Mr. Donald W. McEldowney
Appropriation Examiner
Department of Reclamation
Statehouse - Annex 2
Boise, Idaho 83707

Re: Application No. 36-7033, Joseph L. Burden.

Dear Mr. McEldowney:

I note that I am way past due on my responding Brief in this matter. Part of the reason is that I have not yet received the financial statement regarding Mr. Burden which was desired by the Examiner.

I am today writing to Mr. Burden's business manager for this. He had called me previously and advised me that it was on its way.

If you will abide with me for a few more days, I will expect to have a Brief to you.

Sincerely yours,

RAYBORN, RAYBORN, WEBB AND PIKE

By_____
Lloyd J. Webb

LJW/pa

36 7033

March 24, 1969

COPY

Re: Application No. 36-7033

Mr. Joseph L. Burden
Box 321
Twin Falls, Idaho

Dear Mr. Burden:

Enclosed is a copy of the amended brief of protest filed by Mr. James E. Burce, attorney for Idaho Power Company.

If we may be of further assistance, please contact us.

Very truly yours,

Donald W. McEldowney
Appropriation Examiner

DWM:ks

enclosure: Amended brief

36 7033

SNAKE RIVER



HYDRO POWER

# IDAHO POWER COMPANY

BOX 770 • BOISE, IDAHO 83701

March 21, 1969

Department of Reclamation

State of Idaho
Department of Reclamation
Statehouse - Annex 2
Boise, Idaho 83707

Attention: Donald W McEldowney
Appropriation Examiner

Re: Application No 36-7033
Joseph L Burden

Dear Mr McEldowney:

Enclosed find original and copy of Motion to Amend Brief of Protestant Idaho Power Company, in the above captioned matter. As you will note it is merely to correct the spelling of a name.

I hope this will be satisfactory. We have enclosed a copy for the Applicant and I have forwarded a copy to Protestant Fish & Game Department.

Very truly yours,

Jay C Smith

Jay C Smith
Attorney

JCS:bp

Encl

36 7033

DEPARTMENT OF RECLAMATION OF THE STATE OF IDAHO

STATE RECLAMATION ENGINEER

BOISE, IDAHO

| | | |
|---|---|---|
| IN THE MATTER OF AMENDED APPLICATION FOR PERMIT NO 36-7033 IN THE NAME OF JOSEPH L BURDEN TO APPROPRIATE 50 CFS OF WATER FROM CRYSTAL SPRINGS | ) ) ) ) | MOTION TO AMEND BRIEF OF PROTESTANT IDAHO POWER COMPANY BY INTERLINEATION |

Comes now the above entitled Protestant, Idaho Power Company, and moves the Department of Reclamation for an order allowing said Protestant to amend its brief filed in the above entitled action by interlineation as follows: To delete the words, "Mr Birdsell," in the 8th line of paragraph two of page two of the Brief, and replace said words with the words "Mr Dale Reidesel."

Dated this 21st day of March, 1969.

James E Bruce

James E Bruce
Residing at Boise, Idaho
Attorney for Idaho Power Company

36 7033

March 21, 1969

Re: Application No. 36-7033
Joseph L. Burden

COPY

Mr. James E. Bruce
Attorney at Law
1220 Idaho Street
Boise, Idaho

Dear Mr. Bruce:

Please be advised that the Department of Reclamation is in receipt of the Brief in connection with the protest filed on the above referenced application. A copy has been forwarded to the applicant.

Very truly yours,

Donald W. McEldowney
Appropriation Examiner

DWM:ks

enclosure: none

cc: Idaho Power Company

36 7033

RECEIVED
MAR 18 1969
Department of Reclamation
3:05 p.m.

DEPARTMENT OF RECLAMATION OF THE STATE OF IDAHO

STATE RECLAMATION ENGINEER

BOISE, IDAHO

IN THE MATTER OF AMENDED APPLICATION )
FOR PERMIT NO 36-7033 IN THE NAME )
OF JOSEPH L BURDEN TO APPROPRIATE )
50 CFS OF WATER FROM CRYSTAL SPRINGS )

BRIEF OF PROTESTANT
IDAHO POWER COMPANY

STATEMENT OF FACTS

On July 10, 1968, Joseph L Burden, hereinafter referred to as the "Applicant," by Lloyd J Webb, Agent and Attorney, filed with the Department of Reclamation an application for permit No 36-7033 to appropriate the public waters of the State of Idaho.

The application requested that Applicant be allowed to appropriate 50 cubic feet per second of water from "Crystal Springs" located on the Snake River in Gooding County, Idaho, in Section 12, Township 9 South, Range 15 East, Boise Meridian. The point of Applicant's diversion being in Lot 12 of the Southeast quarter of the Northwest quarter (SE¼NW¼) of said location.

Applicant desires to appropriate this water allegedly for fish hatchery ponds for fish propogation. Said ponds to be located across the Snake River in Twin Falls County, Idaho, in the Southeast quarter of the Southwest quarter (SE¼SW¼) of Section 12, Township 9 South, Range 15 East, Boise Meridian.

On December 26, 1968, the Applicant filed an amended application for permit No 36-7033 - Amended, correcting certain mapping errors in the alleged location of the point of diversion.

Because the water to be appropriated is situated entirely upon property owned in fee simple by the Protestant, Idaho Power Company, which fact was stipulated and agreed to by all parties at the formal hearing, Protestant, on August 12, 1968, filed a protest to the application with the Department of Reclamation. On January 30, 1969, Protestant filed an amended protest to the amended application alleging that (1) the waters to be appropriated are private rather than public waters and, being situated wholly upon Protestant's land, are incapable of being appropriated by Applicant without Protestant's prior executed permission which had not been obtained; (2) the contents of the amended application do not comply with the requirements as set forth 42-202, Idaho Code; and, (3) the natural beauty of the springs

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should be preserved for its aesthetic and recreational value to the public.

A formal hearing on the matter was held in the Gooding County Courthouse, Gooding, Idaho, on February 20, 1969, affording the opportunity for all parties concerned to respond and present evidence and arguments on all issues involved.

During the hearing, Applicant presented evidence and testimony by and through its consulting engineer, Mr John H Straubhar, concerning a map of the proposed diversion and diversion works which was subsequently admitted into evidence as Applicant's exhibit A-1. This map was prepared for the Applicant by Mr Straubhar's consulting firm in cooperation with Mr Harry LaMoyne, real estate agent, also representing the Applicant. Upon being cross-examined by Protestant's attorney, Mr Straubhar admitted that the data for the preliminary feasibility study of the area as shown on the map was obtained in June, 1968, by Mr Birdsell (Mr Straubhar's partner) and survey crew who went on Idaho Power Company land to make the feasibility study as to the point of diversion and location of the pipe and to prepare the map and material for the appropriation. Mr Straubhar admitted that in obtaining such material and entering upon the property they did not have the permission - either express or implied of Idaho Power Company, the admitted owner of the property.

At the conclusion of the formal hearing, Mr C Stephen Allred, hearing examiner, requested that the parties submit briefs on the following issues:

1. Whether or not the waters of Crystal Springs are subject to appropriation as public waters?

2. Whether or not, in filing the application for permit to appropriate, Applicant met the requirements of Title 42, Chapter 1, Section 42-201 of the Idaho Code?

Protestant, Idaho Power Company, respectfully submits that under the evidence developed at the hearing the two points suggested by the Examiner have become moot because Applicant's filing is void, having been initiated in trespass. Therefore, Protestant will confine its brief to this point-that any permit to appropriate water that should be issued to Applicant is a void permit as it was initiated in trespass.

INITIATION OF APPLICANT"S PERMIT
IN TRESPASS RENDERS THE PERMIT VOID

The first Idaho case involving the law point is Marshall v Niagara Springs Orchard Co, 22 Idaho 144, 125 Pac 208. We find our Supreme Court there saying that while the owner of the land on which the spring sought to be appropriated runs made no claims to the waters, he nevertheless could attack the permit on the grounds that the data required to be stated in the application was obtained by the permit holder without consent and by trespass upon his lands.

In holding that the entry for the purposes of making the surveys and plans and specifications which must be set forth in the permit would be trespass without the consent of the owner, our court stated at page 211:

> "The entry, however, for the purpose of investigation, inspection, and the making of surveys, plans and specifications for the purpose of making application for a permit would not necessarily result in the permanent taking of the real property of the appellant; but would result in the necessary entry upon the land of the appellant. The right to enter the land of the appellant, therefore, should have been secured from the appellant, either by an agreement of the parties, or by condemnation proceedings, and, without such remedy being pursued, the respondent in making such entry would be a trespasser. In this instance, therefore, it appears clearly from the record that, in making the entry upon the lands of the appellant for the purpose of making the surveys and plans and maps upon which his application to appropriate the water was based, the respondent was a trespasser upon the lands of the appellant. While the Constitution and laws of this state specifically recognize the right to divert and appropriate the unappropriated waters of any natural stream to beneficial uses, and that such right shall never be denied, still such provisions of the Constitution and statute do not authorize a person to go upon private property of another for the purpose of making an appropriation. The Constitution and laws of this state specifically recognize the right to divert and appropriate the unappropriated waters of any natural stream to a beneficial use, and that such right shall never be denied, but this does not mean that a person is given a right to go upon private property of another for the purpose of making an appropriation, without the license or consent of the owner, or before such right is given by proceedings for condemnation." (Emphasis ours)

The fact that the owner of the land in that case evidently had no plan to use the waters did not alter the situation, the court emphasizing that it was his right to hold his land without trespass and that the state's consent to appropriate water must be based upon the fact that the proposed appropriator has the permission of the land owner whose lands are to be taken in order to make even the first preliminary steps of survey and inspection, the court saying at page 212:

> "It is true that the appellant has made no effort whatever to appropriate the water of said stream or to apply such water to any beneficial use, and in this action the appellant is making no claim whatever to said water by reason of any appropriation or any supposed riparian ownership of the same. But, notwithstanding such facts, it is the appellant's right by reason of his ownership of the land to have exclusive possession of said land, and said owner is protected against any right that is attempted to be acquired by trespass thereon in the way of an attempt to appropriate the water running across said land, and neither the respondent, nor any other person, can divert such water without entering upon and leading it across the lands of the appellant, or using the lands of the appellant in distributing the power created by the use of such water, and committing a continuing trespass upon the premises of appellant."

That case was followed in Tobey v Bridgewood, 22 Idaho 566, 127 Pac 172, and the rules applied to state land. The court stated at page 181:

> "In this case, in order to initiate the right to appropriate water, under the provisions of section 3254, Rev Codes, at a point upon land belonging to the state, it is necessary for the applicant to enter upon land owned by the State of Idaho for the purpose of making the necessary examination and surveys, maps, and plans required in order to make a proper application to the state engineer for a permit, and the respondent by so entering and occupying said land of the state in making such examination and surveys would be a trespasser upon said land, under the provisions of section 1578 Rev Codes. In the case of Marshall v Niagara Springs Orchard Co, 22 Idaho _____, 125 Pac 208, this court had under consideration the right to enter upon private lands for the purpose of initiating the right to appropriate public water, and held that unless such right of entry was first procured by purchase or agreement with the owner or secured through condemnation proceedings, after compensation was determined, such entry was void, and that a permit issued by the state engineer for the right to appropriate such land had no force or effect. We see no reason for not applying the same rule to state land, when the entry upon state or by condemnation proceedings, for the reason that section 1578 specifically declares that such entry is a trespass. In the above case the court says: 'Better reasoning is with the proposition that an appropriation of water at a point upon private land cannot be made by trespass, and that where an attempt is made to initiate the right to appropriate the public water of the state by trespass upon private property, such initiation of such right is void as against the owner of such land.'"

And in the case of Bassett v Swenson, 51 Idaho 256, 5 P(2d) 722, the Court again ruled at page 723:

> "It is quite generally held that a water right initiated by trespass is void; that is to say, one who diverts water and

> puts it to a beneficial use by aid of a trespass, does not, pursuant to such trespass acquire a water right. Any claim of right thus initiated is void. Marshall v Niagara Springs Orchard Company, Ltd, 22 Idaho 144, 125 P 208; Tobey v Bridgewood, 22 Idaho 566, 127 P 178; Prentice v McKay, 38 Mint 114, 98 P 1081; Weil on Water Rights (3d Ed) § 221, and cases cited.
>
> "In Marshall v Niagara Springs Orchard Company, Ltd supra, and in Tobey V Bridgewood, supra, it was held that, because the permit holder had not acquired by purchase or condemnation the right to enter the lands upon which the diversion was situate for the purpose of making the inspection and survey which was necessary in supplying the data for the application, on that account the application and permit pursuant to it were void. The defendants in this case rely upon the authority of the above cases and claim that no permission or grant of right was given plaintiff to enter the lands in question for the purpose of making a survey and acquiring the data in his application and that plaintiff's application and permit founded upon it are void as initiated by trespass, and that condemnation will not be in this case for want in the condemnor of a prior right to appropriate the water."

In that case, however, it was apparent that no trespass had, in fact, been committed; and that the applicant there had not found it necessary, and did not in fact, go upon the land of the complaining parties.

The same situation existed in Bachman v Reynolds Irr Dist, 58 Idaho 507, 55 P (2d) 1314, where the Supreme Court again reiterated the rule. Appellants in that case had based their argument on the trespass doctrine, but the Court pointed out at page 1317:

> " . . . It may be here observed that the rights of respondents were not initiated by trespass on the land of Keith, but under some sort of agreement, license or consent, upon the terms of which the parties are now in accord . . . " (emphasis ours).

The Court continued its pronouncement on the trespass doctrine in Jones v McIntire, 60 Idaho 338, 91 P (2d) 373, wherein the Court cited the Niagara Springs, Tobey, and Bassett cases and said at page 376:

> "Appellants likewise concede the correctness of the proposition that a water right cannot be initiated in trespass upon private lands."

What is probably the latest decision of our Court is found in Idaho Power Company v City of Buhl, 62 Idaho 351, 111 P (2d) 1088. In this case, the Court stated at page 1090:

"It is the settled rule of decision in this state that a water appropriation or permit to appropriate the public waters of the state can not be acquired through trespass. Marshall v Niagara Springs Orchard Co, 22 Idaho 144, 155, 125 P 208; Tobey v Bridgewood, 22 Idaho 566, 575, 127 P 178; Bassett v Swenson, 51 Idaho 256, 259, 5 P 2d 722. It has also been held, and correctly so, we think that it is not 'trespass per se to make application for and receive a permit to appropriate the waters of this state, where the point of diversion is upon the land of another, without first acquiring consent or a grant of such right.' Bassett v Swenson, 51 Idaho 256, 261, 5 P 2d 722, 724." (emphasis ours)

"As observed in Bassett v Swenson, supra, where the necessary data can be furnished as to location, point of diversion, etc., from observation or survey made beyond the premises where the diversion is to take place, there is no trespass and of course no requirement that the information be obtained upon the ground. Such information may have been obtained when the premises belonged to the government, or later by some one who held the property prior to the ownership of the present occupant asserting the trespass. The trespass must be physical, not merely mental."

It is clear by these cases then, that a water appropriation or a permit to appropriate the public waters of the state can not be acquired by one who physically trespasses on another's private property to appropriate or to gather preliminary information needed to acquire a permit to appropriate.

CONCLUSION

This survey has been made without Protestant's knowledge, permission or consent, express or implied, and without any legal proceeding having been instituted or maintained by Applicant to acquire the right. Based upon prior Idaho law it is clear that in making the entry upon the lands of Protestant for the purpose of making the surveys and plans and maps upon which Applicant's application to appropriate the water was based, the Applicant was a trespasser and cannot appropriate nor receive a valid permit to appropriate the public waters of the State of Idaho.

Respectfully submitted,

James E Bruce

James E Bruce
Residing at Boise, Idaho
Attorney for Idaho Power Company

DON SAMUELSON
GOVERNOR

R. KEITH HIGGINSON
State Reclamation Engineer

# STATE OF IDAHO

DEPARTMENT OF RECLAMATION
STATEHOUSE – ANNEX 2
BOISE, IDAHO 83707

RECEIVED
FEB 3 1969
Bureau of Reclamation

February 26, 1969

Re: Application No. 36-7033 - Amended
Joseph L. Burden

Wendell Irrigationist
Wendell,
Idaho

Gentlemen:

Enclosed is the bill of publication for the above referenced application.

Please sign the bill and certify the bill and return it to us for payment.

Very truly yours,

Donald W. McEldowney
Appropriation Examiner

DWM:KS

Enclosure: Bill of publication

36 7033

February 26, 1969

Re: Application No. 36-7033 - Amended
Joseph L. Burden

Wendell Irrigationist
Wendell,
Idaho

Gentlemen:

Enclosed is the bill of publication for the above referenced application.

Please sign the bill and certify the bill and return it to us for payment.

Very truly yours,

Donald W. McEldowney
Appropriation Examiner

DWM:KS

Enclosure: Bill of publication

36 7033

February 21, 1969

COPY

Re: Application No. 36-7033 - Correction notice
Joseph L. Burden

Wendell Irrigationist
Wendell,
Idaho

Gentlemen:

On December 27, 1968 the Department of Reclamation forwarded a correction notice to you for the above referenced application. We requested that the notice be published on January 2 and January 9, 1969.

As of this date we have not received the affidavit of publication or the bill of publication for the application. This application has been protested and is in the process of being resolved in hearings. It is necessary, therefore, that we obtain this affidavit immediately.

Your assistance in this matter is appreciated.

Very truly yours,

Donald W. McEldowney
Appropriation Examiner

DWM:KS

36 7033

P-3

LICENSE AGREEMENT

THIS AGREEMENT, made this 30th day of July, 1953, by and between IDAHO POWER COMPANY, a corporation having its principal office and place of business at Boise, Idaho, hereinafter called "Company", and the STATE OF IDAHO, acting by and through its DEPARTMENT OF FISH AND GAME, as Licensee, hereinafter called "Department", WITNESSETH:

WHEREAS, the Company is the owner of certain lands in Gooding County, Idaho, together with the springs and waters commonly known as Niagara and Crystal Springs, which rise upon, and thence flow across said lands to and into Snake River, said properties including the following:

NIAGARA SPRINGS--Tract No. 1: A tract of land lying within Section 10, Township 9 South, Range 15 East, Boise Meridian, Gooding County, Idaho, described as follows:

Beginning at the section corner common to Sections 2, 3, 10 and 11 of Township 9 South, Range 15 E.B.M., as shown on the official plat of the U. S. Dependent Resurvey dated April 7, 1918; thence South 89° 51' West upon and along the North Section line of said Section 10 a distance of 427.9 feet; thence South a distance of 1863.8 feet to a point on the right bank of Snake River in the said Section 10; thence continuing South to the thread of Snake River; thence upstream along the thread of said Snake River to the Section Line between said Sections 10 and 11; thence North 8° 44' West along and upon said Section line to the meander corner on right bank of Snake River between said Sections 10 and 11; thence North upon and along the Section line between said Sections 10 and 11 a distance of 2073.1 feet to the Section corner common to said Sections 2, 3, 10 and 11, the point of beginning, containing 20 acres, more or less.

NIAGARA SPRINGS--Tract No. 2: A tract of land lying within Section 11, Township 9 South, Range 15 East, Boise Meridian, Gooding County, Idaho, described as follows:

Beginning at the section corner common to Sections 2, 3, 10 and 11 of Township 9 South, Range 15 East, Boise Meridian, as shown on the official plat of the U. S. Dependent Resurvey dated April 17, 1918; thence North 89° 44' East upon and along the North Section line of said Section 11, 564 feet; thence South 8° 14' West 1297.9 feet; thence South 25° 47' East 847.7 feet to a point on the right bank of Snake River in said Section 11; thence continuing South 25° 47' East to the thread of Snake River; thence downstream along and upon the thread of said Snake River to the Section line between said Sections 10 and 11; thence North 8° 44' West upon and along said Section line to meander corner on the right bank of Snake River between said Sections 10 and 11; thence North along and upon the Section line between said Sections 10 and 11, a distance of 2073.1 feet to the Section corner common to said Sections 2, 3, 10 and 11, the point of beginning, containing 25.3 acres, more or less.

Also together with the following road right of way: Beginning at the section corner common to Sections 2, 3, 10 and 11, Township 9 South, Range 15 E.B.M.; thence South 89° 51' West 427.9 feet; thence South 949.5 feet to the real point

of beginning, which is on the west boundary of Tract No. 1 of the Niagara Springs lands hereinbefore described; thence North 74° 48' West 1208.8 feet; thence North 52° 15' West 472.6 feet; thence North 79° 45' West 418.8 feet; thence North 35° 50' West 353.2 feet; thence North 66° 22' West 3099 feet to a point in the grade at the foot of a bluff of the existing road from the Niagara Springs Ranch to Wendell.

Together with the permanent right to use the private roads now existing across Sections 4, 3, 10, 2, 11 and 12, Township 9 South, Range 15 E.B.M., with the right in Owner to straighten or widen such presently existing roads but to a width in no event to exceed thirty (30) feet.

Together with all rights or interest on July 16, 1928, possessed or owned or acquired by the estate of Jas. H. Mays, deceased, or of which Jas. H. Mays died, seized or possessed, in and to all the springs and in and to all the water or waters rising from, having its or their origin in, or flowing under or over, or being under or on, or which may be developed on the said land, or lands.

CRYSTAL SPRINGS--Tract No. 3: A tract of land lying within Section 12, Township 9 South, Range 15 E.B.M., Gooding County, Idaho, described as follows:

Beginning at a point from which the section corner common to Sections 1, 2, 11 and 12 of Township 9 South, Range 15 East, Boise Meridian bears North 39° 48' West 1095.5 feet; thence South 79° 27' East, 1731.1 feet to an angle point which is on the northerly line of Lot 12, as shown on the official plat of the U. S. Dependent Resurvey dated April 17, 1918; of Sections 2, 3, 10, 11 and 12 of Township 9 South, Range 15 East, Boise Meridian from which official angle point #3 lies 39° 09' L. 832.7 feet distant and the W. C. to angle point #4 lies 140° 51' R. 257.0 feet distant; thence continuing from said angle point South 66° East 1683.3 feet to an angle point, from which the North Quarter Section corner of said Section 12 bears North 35° 37' West 2223 feet distant; thence South 40° 51' West 1346.3 feet to a point on the right bank of Snake River in Lot 15 of said Section 12; thence continuing South 40° 51' West to the thread of said Snake River; thence downstream upon and along the thread of said Snake River to a point which is South of the real point of beginning; thence North to a point on the right bank of said Snake River; thence continuing North 882.1 feet to the point of beginning, containing 79.6 acres, more or less.

Together with the permanent rights to use the private roads now existing across Sections 4, 3, 10, 2, 11 and 12, Township 9 South, Range 15 E.B.M., with the right in Owner to straighten or widen such presently existing roads but to a width in no event to exceed thirty (30) feet.

Together with all rights or interest on July 16, 1928, possessed or owned or acquired by the estate of Jas. H. Mays, deceased, or of which Jas. H. Mays died, seized or possessed, in and to all the springs and in and to all the water or waters rising from, having its or their origin in, or flowing under or over, or being under or on, or which may be developed on the said land, or lands.

WHEREAS, said lands and waters, with proper supervision and development, would provide ideal wildlife and recreational areas for use by

said premises any of the springs, waters or water rights of the Company. The removal or cutting of branches, trees and shrubbery shall not be permitted, except as the Department and the Company shall agree upon a program therefor, in furtherance of the purposes of this agreement. The building of campfires shall be limited to open areas specified by the Department, having due regard to the public safety and fire damage to the areas involved.

(d) The Department will keep open for public use the parts of said lands and premises best suited to recreational purposes and the other uses herein provided for, and, to the extent possible, will provide adequate stocking of fish for the ponds and streams at said sites;

(e) The Department and the Company will cooperate to provide, install and maintain suitable signs on each of the two sites indicating that the premises have been made available for public use through the mutual cooperation of the Idaho Fish and Game Department and the Idaho Power Company;

(f) The Department shall have the full use, management and supervision of said properties for the purposes herein set forth, and may act in cooperation with other public groups and agencies so as to provide for the fullest development, utilization and protection of said sites for public recreation and enjoyment, in accordance with the terms of this Agreement; provided that the Department will not use or permit the use of any of said properties by others for commercial or for any unlawful purposes.

(g) It is understood and agreed that the Company may terminate the license and permission herein granted in the event of violation of the provisions of this agreement, or at any time upon six months' notice given to the Department in writing; provided, that in the event of termination the Company agrees that it will reimburse the Department for the reasonable depreciated value of all improvements and facilities which have been placed upon the premises, to the extent the same are not capable of being salvaged and removed, excepting therefrom any road or bridge improvements.

the public, and the Company is desirous of making said areas available for such purposes as herein provided for; and

WHEREAS, the Department is experienced in the development and supervision of such areas, and has indicated to the Company that if the Company would make said properties available to the Department, for wildlife and public recreational purposes, the Department would enter upon the administration and supervision of said lands for such purposes, so as to provide a suitable recreational, wildlife and fishing area for the general public, which the Company feels would assure the maximum development and public use and enjoyment of said properties;

NOW THEREFORE, the Company gives to the Department, for the public uses and purposes herein stated, the license and permit to use, maintain and supervise its said Niagara Springs and Crystal Springs properties, above described, for recreational, wildlife, fishing, boating and other related uses by the general public, in a manner consistent with the funds available to the Department for the customary development of such or like areas, which license and permission shall continue until terminated by the Company, in accordance with the terms and conditions hereinafter set forth:

(a) The Department, working with or through State and local agencies, may provide and maintain an adequate road or roads to said areas;

(b) The Department may install and maintain suitable recreational facilities such as tables, benches, lavatories, piers and river boat-landings, etc., for use by the public; provided, that all toilets and lavatories shall be situated and constructed so as to prevent polution of waters, and in accordance with modern sanitary and safety standards;

(c) The Department will superintend and manage said properties and facilities so as to keep the same in a neat, clean and healthful condition, and will not allow or perform any acts of nuisance or waste, or which would destroy or damage any of said properties, or the scenic attractions thereof, nor permit any other persons to use or divert from

IN WITNESS WHEREOF, the parties have executed this license agreement on the day and year first hereinabove written.

IDAHO POWER COMPANY

By _____
Vice President

(CORPORATE SEAL)

ATTEST:

_____
Secretary

APPROVED

THE STATE OF IDAHO, Acting By and Through

IDAHO FISH AND GAME DEPARTMENT

By _____ 7/30/53.
Director

STATE OF IDAHO )
) ss
County of Ada )

On this 30th day of July, 1953, before me, Erma L Dvorak, a Notary Public in and for the State of Idaho, personally appeared A C INMAN and JAMES E BRUCE, to me personally known, who being duly sworn, did say that they are respectively the Vice President and the Assistant Secretary of the corporation that executed the within instrument, and acknowledged to me that such corporation executed the same as the free act and deed of said corporation.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal, the day and year in this certificate first above written.

Erma L Dvorak
Notary Public, residing at Boise, Idaho
My Commission expires May 9, 1956.

(Notarial Seal)

36 7033

STATE OF IDAHO )
) ss
County of Ada )

On this 30th day of July, 1953, before me, Anna Mastro, a Notary Public in and for the State of Idaho, personally appeared T B MURRAY, to me personally known, who being duly sworn, did say that he is the Director of the Department of Fish and Game of the State of Idaho, and acknowledged to me that he executed the foregoing instrument for and on behalf of the State of Idaho.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal, the day and year in this certificate first above written.

Anna Mastro
Notary Public residing in Boise, Idaho
My Commission expires 6/1, 1957

(Notarial Seal)



36 7033

P-1

THIS INDENTURE, Made the 16th day of July nineteen hundred and Twenty-eight at the City of Gooding County of Gooding State of Idaho, by and between A. S. HENSON and WALTER T. IVY the duly appointed, qualified and acting executors of the last will and testament of Jas. H. Hays, deceased, late of the County of Gooding, State of Idaho,

the parties of the first part, and FRANK A. REID of New York City State of New York, the party of the second part, Witnesseth:

THAT, WHEREAS, On the 6th day of June nineteen hundred and Twenty-eight the Probate Court of the County of Gooding, State of Idaho, made an order of sale authorizing the said parties of the first part to sell certain real estate and rights and interests in real estate of the said estate of Jas. H. Hays, deceased, situated in the, County of Gooding, State of Idaho, and specified and particularly described in said order of sale, and which said order of sale, now on file and of record in the said Probate Court, is hereby referred to and made a part of this Indenture:

AND WHEREAS, Under and by virtue of said order of sale, and pursuant to legal notices given thereof, the said parties of the first part, on the 25th day of June nineteen hundred and Twenty-eight sold, subject to confirmation of said Probate Court, the said real estate, situated in the said County of Gooding, and specified and described in said order of sale as aforesaid, and at such sale the said party of the second part became the purchaser of the said real estate and rights and interests in said real estate hereinafter particularly described for the sum of Sixty-Six Thousand Seven Hundred ------DOLLARS lawful money of the United States, he being the highest and best bidder, and that being the highest and best sum bid.

AND, WHEREAS, The said Probate Court, upon the due and legal return of their proceedings under the said order of sale, made by the said parties of the first part on the said 25th day of June nineteen hundred and Twenty-eight, after making the said sale, upon the due and legal return of the proceedings, made by the said parties of the first part on the 2nd day of July, 1928, and after due Notice of Hearing on said Return given,

did, on the 16th day of July nineteen hundred and Twenty-eight make an order confirming said sale, and directing conveyances to be executed to the said party of the second part; a certified copy of which order of confirmation was recorded in the office of the County Recorder of said County of Gooding within which the said land is situated, on the 16th day of July

36 7033

nineteen hundred and - - - Twenty-eight - - - - and which said order of confirmation now on file and of record in said Recorder's office are hereby referred to and made a part of this Indenture.

NOW, THEREFORE, The said A. S. Henson and Walter T. Ivy, as the Executors of the last will and testament & said of the estate of Jas. H. Mays, deceased, as aforesaid, the part ies of the first part pursuant to the order last aforesaid, of the said Probate Court, for and in consideration of the said sum of Sixty-Six Thousand Seven Hundred and No/100 - - - - - - - - - DOLLARS, lawful money of the United States, to them in hand paid by the said party of the second part, receipt whereof is hereby acknowledged, have granted, bargained, sold and conveyed, and by these presents do grant, bargain, sell and convey unto the said party of the second part, his heirs and assigns forever, all the right, title, interest and estate of the said Jas. H. Mays, Deceased,

in and to all those certain lots, pieces, or parcels of land, situate, lying and being in said County of - - - - Gooding - - - - - -, State of Idaho, and bounded and described as follows, to wit:

NIAGARA SPRINGS-- Tract No. 1: A tract of land lying within Section 10, Township 9 South, Range 15 East, Boise Meridian, Gooding County, Idaho, described as follows:

Beginning at the section corner common to Sections 2, 3, 10 and 11 of Township 9 South, Range 15 E. B. M., as shown on the official plat of the U. S. Dependent Resurvey dated April 17, 1918; thence South 89 ° 51' West upon and along the North Section line of said Section 10 a distance of 427.9 feet; thence South a distance of 1863.8 feet to a point on the right bank of Snake River in the said Section 10; thence continuing South to the thread of Snake River; thence upstream along the thread of said Snake River to the Section Line between said Sections 10 and 11; thence North 8 ° 44' West along and upon said Section line to the meander corner on right bank of Snake River between said Sections 10 and 11; thence North upon and along the section line between said Sections 10 and 11 a distance of 2073.1 feet to the Section corner common to said Sections 2, 3, 10 and 11, the point of beginning, containing 20 acres more or less.

NIAGARA SPRINGS-- Tract No. 2: A tract of land lying within Section 11, Township 9 South, Range 15 East, Boise Meridian, Gooding County, Idaho, described as follows:

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CRYSTAL SPRINGS-- Tract No. 3: A tract of land lying within Section 12, Township 9 South, Range 15 E. B. M., Gooding County, Idaho, described as follows:

Beginning at a point from which the section corner common to Sections 1, 2, 11 and 12 of Township 9 South, Range 15 East, Boise Meridian bears north 39 ° 48' West 1095.5 feet; thence south 79 ° 27' East, 1731.1 feet to an angle point which is on the northerly line of Lot 12, as shown on the official plat of the U. S. Dependent Resurvey dated April 17, 1918; of Sections 2, 3, 10, 11 and 12 of Township 9 South, Range 15 East, Boise Meridian from which official angle point #3 lies 39 ° 09' L. 832.7 feet distant and the W. C. to angle point #4 lies 140 ° 51' R. 257.0 feet distant; thence continuing from said angle point South 66 ° East 1683.3 feet to an angle point, from which the North quarter Section corner of said Section 12 bears North 35 ° 37' West 2223 feet distant; thence South 40 ° 51' West 1346.3 feet to a point on the right bank of Snake River in Lot 15 of said Section 12; thence continuing South 40 ° 51' West to the thread of said Snake River; thence downstream upon and along the thread of said Snake River to a point which is South of the real point of beginning; thence North to a point on the right bank of said Snake River; thence continuing North 882.1 feet to the point of beginning, containing 79.6 acres, more or less.

Together with all rights or interest now possessed or owned or acquired by the said Jas. H. Mays estate, or of which the said Jas. H. Mays died seized or possessed, in and to all the springs and in and to all the water or waters rising from, having its or their origin, in, or flowing under or over, or being under or on, or which may be developed on the said land, or lands. Also together with all rights or interest so possessed or owned or acquired, or of which the said Jas. H. Mays died seized or possessed in water appropriation or water appropriations, in water permit or water license, or permits or licenses, or any application or applications for water permit or water license affecting said springs or waters, or any part of them.

Also together with the real covenant and stipulation running with the land affected, including all those lands hereinafter referred to in Sections 2, 10, 11 and 12, Township 9 S., Range 15 E. B. M., and Sections 7 and 18, Township 9 S., Range 16 E. B. M., Gooding County, Idaho, which covenant and stipulation shall not be construed as a mere personal covenant, that no one, whoever it may be, shall, without written authorization from the party of the second part, or his heirs, representatives, successors or assigns, have any right or privilege or license whatsoever to use, purchase, lease, prospect, develop or appropriate any water or waters rising from and having its or their origin in, or flowing under or over, or being under or on, or which may be developed on any remaining land or lands not included in this deed sale and purchase, so possessed or owned or acquired, or of which said Jas. H. Mays died seized or possessed, in Sections 2, 10, 11 and 12, Township 9 S., Range 15 E. B. M., and Sections 7 and 18, Township 9 S., Range 16 E. B. M., Gooding County, State of Idaho, nor to use, lease, purchase, prospect, develop, or examine said remaining land or lands, nor to make, license, permit, initiate, perfect or authorize any water filings or appropriations of water on said remaining land or lands, nor to use, permit, license or grant any right of any kind whatsoever in or to the use of said remaining land or lands, or said water or waters for any use or purpose, projected or actual, for hydroelectrical development or uses or purposes, or uses and purposes, nor for any other development or uses or purposes, or uses and purposes, which might jeopardize or impair the rights to the complete and full use or development of the springs, waters, easements, or the lands, or any of them, included in this sale, provided, and it is so stipulated and covenanted, that the parties of the first part reserve the right, subject to and limited by that covenant and stipulation running with the land and in this paragraph first expressed, to use and develop the waters of all springs situate on that portion of said Niagara Farms lying east of the east boundary line of Crystal Springs--Tract No. 3, above described, and, further, party of the second part stipulates and covenants that he, his heirs and assigns, shall not use, develop or appropriate the said waters so reserved or do any act thereto which will diminish the present flow of the waters so reserved, and provided further, but subject to and limited by said covenant and stipulation running with the land and in this paragraph first expressed, that said waters rising from or having its or their origin in said portion of Niagara Farms may be used to generate electricity for the sole and exclusive use of, and for no other use, and limited to an amount sufficient for the use at and of, the fish hatchery and buildings used in connection therewith, ~~now located and as the same remain located on said portion of Niagara Farms~~, the above stipulations and covenants in each and every particular to run with the land and they shall be so construed as real covenants running with the lands affected and not as mere personal covenants.

Also together with the following road right of way: Beginning at the section corner common to Sections 2, 3, 10 and 11, Township 9 S., Range 15 E. B. M.; thence South 89 ° 51' West 427.9 feet; thence south 949.5 feet to the real point of beginning, which is on the west boundary of Tract No. 1 of the Niagara Springs Lands hereinbefore described; thence north 74 ° 48' West 1208.8 feet; thence North 52 ° 15' West 472.6 feet; thence North 79 ° 45' West 418.8 feet; thence North 35 ° 50' West 353.2 feet; thence North 68 ° 32' West 3099 feet to a point in the grade at the foot of a bluff of the existing road from the Niagara Springs Ranch to Wendell, provided that when a road is constructed by the party of the second part, or his assigns, over the right of way immediately hereinbefore granted, travel of said party of the second part, or his assigns, shall, insofar as travel over that part of Section 10, Township 9 South, Range 15 E., B. M., now owned or possessed by the estate of Jas. H. Hays, deceased, is concerned, shall be exclusively confined to said road when constructed, except in cases of emergency.

Together with the permanent right to use the private roads now existing across Sections 4, 3, 10, 2, 11 and 12, Township 9 South, Range 15 E. B. M., with the right in party of the second part to straighten or widen such presently existing roads but to a width in no event to exceed Thirty (30) feet.

Also together with such rights of way as are necessary for the development of the waters herein sold and conveyed, through, across, under, over and above all of those portions of Sections 2, 10, 11 and 12, Township 9 S., Range 15 E. B. M., and Sections 7 and 18, Township 9 S., Range 16 E. B. M., Gooding County, State of Idaho, which constitute a part of the estate of Jas. H. Hays, deceased, for the erection and continued maintenance of electric transmission lines of party of the second part, or his representatives, successors or assigns, with the necessary supports for said lines, avoiding in the erection of said transmission lines the orchard tracts as now planted, and for the additional purpose of constructing, installing and permanently maintaining such pipe or flume lines as are necessary for the development of said waters.

Excepting and reserving also from this sale the right to use the road as now existing across the lands herein sold, and, in the event of the necessity by party of the second part, or his successors or assigns, to abandon said road, then the right to the use of such new road to be constructed by party of the second part, his successors or assigns, across said lands.

And also excepting and reserving from this sale 26 second feet of water from what is known as Niagara Springs, also located on said farms, for irrigation and domestic purposes on the following ranches only, to-wit: Niagara Ranch and Dalquist Ranch, provided, however, that when said excepted and reserved waters are not desired or used for said purposes, they may be used by the party of the second part, or his representatives, successors or assigns, it being expressly understood that said party of the second part, or his representatives, successors or assigns, will not attempt to appropriate or use or apply to a beneficial use said excepted and reserved waters, except subject as hereinbefore otherwise specifically provided, provided that said excepted and reserved waters in this paragraph referred to may also be used to generate power or electricity for the sole and exclusive domestic uses, and for no other, of the owner, present and future, of said Dalquist ranch, said power or

tricity to be used only on said ranch, provided further that when the wat[illegible] or any part thereof, he[illegible]n sold to party of the second part are developed for electrical uses, or purposes, then the right and privilege herein reserved to so generate electricity for domestic uses shall automatically cease. It shall be expressly stipulated in deeds of conveyance to party of the second part that such covenant by party of the second part not to attempt to appropriate or use or apply to a beneficial use said excepted and reserved waters except as hereinbefore otherwise specifically provided shall be and shall be construed and considered as a covenant running with the land and shall not be construed as a mere personal covenant.

Subject to the ordinary property taxes and assessments levied against premises for the year 1928 and subsequent years.

and covenants

*together with all the tenements, hereditaments, and appurtenances whatsoever to the same belonging or in any wise appertaining.*

*TO HAVE AND TO HOLD, All and singular the above mentioned and described premises, together with the appurtenances, unto the said part y of the second part, h is heirs and assigns forever.*

*IN WITNESS WHEREOF, The said part ies of the first part,* the executors of the last will and testament and estate of Jas. H. Hays, deceased, *as aforesaid, have hereunto set* their *hands and seals the day and year first above written.*

**SIGNED, SEALED AND DELIVERED IN THE PRESENCE OF**

A. S. Henson (Seal)

Walter F. Hays (SEAL)

Executors of the

the last will and testament and

Estate of Jas. H. Hays, deceased.

36 7033

State of Idaho }
County of GOODING } ss.

On this 16th day of July in the year 19 28, before me a Notary Public in and for said County, personally appeared A. S. Henson

known to me to be the person whose name is subscribed to the within instrument, and acknowledged to me that he executed the same as executor of the last will and testament and estate of Jas. H. Mays, deceased.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal, the day and year in this certificate first above written.

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

STATE OF TENNESSEE, }
County of Hamblen. } SS.

On this 16th day of July, in the year 1928, before me, Paul J. Pierce a Notary Public in and for said State, personally appeared Walter T. Ivy, known to me to be the person whose name is subscribed to the within instrument, and acknowledged to me that he executed the same as an executor of the last will and testament and estate of Jas. H. Mays, deceased.

IN WITNESS WHEREOF, I have hereunto set my hand affixed my official seal, the day and year in this certificate first above written.

Paul J. Pierce,
Notary Public in and for the State of Tennessee, residing at Morristown, Tenn.

My Commission Expires April 4th 1932

No. 16459

DEED OF

A. S. Henson et al

— TO —

Frank A. Reid

Dated 19

State of Idaho, } ss.
County of Gooding

I hereby certify that this instrument was filed for record at the request of A. S. Henson at 45 minutes past 4 o'clock P. M., this 16 day of July A. D. 1928 in my office, and duly recorded in Book 22 of Deeds at page 162.

Fees, $ 6.00

Ex-Officio Recorder. By Mrs. Miller Deputy.

1cre Statesman Shop, Boise, Idaho. 395

STATE OF IDAHO }
County of Gooding } ss.

I, Sibyl Stevens, Clerk of the District Court of the Fifth Judicial District, and ex-officio Auditor and Recorder, in and for the County of Gooding, State of Idaho, do hereby certify that the foregoing is a true and correct copy of the original on file and of record in this office. IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal this 20th day of February 1969

SIBYL STEVENS, Clerk, ex-officio Auditor & Recorder

By Zella Barnes Deputy

36 7033

THIS INDENTURE, Made this 7th day of January, 1931, between Frank A. Reid, a bachelor, of New York City, New York, party of the first part, and Idaho Power Company, a corporation of the State of Maine, the party of the second part,

WITNESSETH that the said party of the first part, for and in consideration of the sum of One and no/100 ($1.00) Dollar lawful money of the United States to him in hand paid by the said party of the second part, and other valuable considerations, receipt of which is hereby acknowledged, by these presents grants and conveys unto the said party of the second part and to its successors and assigns forever the following property and rights and interests therein, all located in the County of Gooding, State of Idaho, to-wit:

> All the lands, waters, premises, property (real, personal and mixed), and all rights and interests of every kind and description therein, as described, mentioned and set out in that certain executors' deed dated July 16, 1928, in the estate of Jas. H. Mays, deceased, in the probate court of Gooding County, State of Idaho, as said deed is recorded in Book 22 of Deeds, at Page 162, of the records of the County Recorder of Gooding County, Idaho.

TOGETHER with all and singular the tenements, hereditaments and appurtenances of whatsoever kind or nature belonging, or in anywise appertaining, to the aforesaid property and rights and interests therein, or any part thereof, with the reversion and reversions, remainder and remainders, rents, issues, income and profits thereof, and all the estate, right, title, interest and claim whatsoever, at law as well as in equity, which Frank A. Reid now has, or may hereafter acquire, in and to the aforesaid property, and every part and parcel thereof.

TO HAVE AND TO HOLD, All and singular the above mentioned or described property, together with the appurtenances, unto the party of the second part and to its successors and assigns forever, subject to all the

terms, provisions and covenants which grantee herein accepts and agrees to be bound by, as set forth, mentioned and described in said deed.

IN WITNESS WHEREOF, the said party of the first part has hereunto set his hand and seal the day and year first above written.

WITNESS: Samuel W. Murphy Frank A. Reid (SEAL)

STATE OF NEW YORK, )
) ss.
COUNTY OF New York )

On this 7th day of January, 1931, before me, Mary J. Gulfoyle, a Notary Public in and for said State and County, personally appeared Frank A. Reid, a bachelor, known to me to be the person whose name is subscribed to the 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.

(NOTARIAL SEAL)

Mary J. Gulfoyle
Notary Public,
Residing at: 2866 Heath Ave., N.Y.
My Commission expires: March 30, 1931.

NOTARY PUBLIC, BRONX COUNTY
New York County Clerk's No. 1683, Register's No. 16183
Bronx County Clerk's No. 3140, Register's No. 3140
Commission Expires March 30, 1931

STATE OF IDAHO }ss
County of Gooding }

I, Sibyl Stevens, Clerk of the District Court of the Fifth Judicial District, and ex-officio Auditor and Recorder, in and for the County of Gooding, State of Idaho, do hereby certify that the foregoing is a true and correct copy of the original on file and of record in this office. IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal this 20th day of February 1929.

SIBYL STEVENS, Clerk, ex-officio Auditor & Recorder

By Lyla Barnes Deputy

36 7033

App. 36-7033

Hearing

1:30 PM 2-20-1969 Gooding County Courthouse.



Discription + Identt. [redacted]

18 - L Webb
19 - IPC #Bruce
20 - TJ
21 - CSA
27 - C -
28 - TJ
29 - CSA
30 - IPC Bruce
33 - 1
34 - CSA
35 - 10
38 - 1
41 - 1
43 - 2
44 - 1 & 2
64 (cont 5
65 - #9 1 & 2 Cont
89 - 10
91 - 8
92 CSA
93 - 1
94 - 2
101 - 1 & 2
102 - 1
104 - 3
105 - 1 & 2
113 - 10
114 - 2 & 10 9
118 Name Jack Chapman
118 2 & 10
124 - 1 Thru 2 & 10
128 - 10 & 2
144 CSA
144 - 8 9 - 2
154 - 3
154 - 1
155 - 8 & 2
164 - 1 & 2
177 - 10
179 - 1
179 CSA
180 - 10 & 2
181 CSA
182 - 1
185 - 3
186 - 10 - 3
186 - [redacted] 9 - 3 A
233 - 2
233 - 1 9 3 A
235 - 10 - A - 1
236 - 3 A
236 - 1 - B
256 CSA
256 - 10 9 3 A
with Webb Injections
285 CSA
286 8 9 A 3
288 Deme
289 8 9 A 3
294 - 1
295 - 8 9 3 A
296 - 1 - 3
308 CSA -
10
8
309 CSA & 1
311 CSA
312 1 9 A 7
321 CSA
321 1 - 7
324 - 10 - 7

Answer to Interrogs

36 7033

## INSTRUCTIONS TO DELIVERING EMPLOYEE

☐ Show to whom, date, and address where delivered ☐ Deliver ONLY to addressee

*(Additional charges required for these services)*

## RECEIPT

*Received the numbered article described below.*

REGISTERED NO.

CERTIFIED NO. 20472

INSURED NO.

DATE DELIVERED 10-6-68

1. SIGNATURE OR NAME OF ADDRESSEE (*Must always be filled in*) Harry LeMaster

2. SIGNATURE OF ADDRESSEE'S AGENT, IF ANY Alice LeMaster

3. SHOW WHERE DELIVERED (*only if requested*) 36 7033

055—10—71848-10 GPO

POST OFFICE DEPARTMENT
OFFICIAL BUSINESS

PENALTY FOR PRIVATE USE TO AVOID PAYMENT OF POSTAGE, $300

POSTMARK OR DELIVERING OFFICE

TWIN FALLS
NOV 6 1968

INSTRUCTIONS: Show name and address below and complete instructions on other side, where applicable. [illegible] gummed ends, attach and hold firmly to back of article. Print on front of article *RETURN RECEIPT REQUESTED.*

RETURN TO

NAME OF SENDER

Department of Reclamation

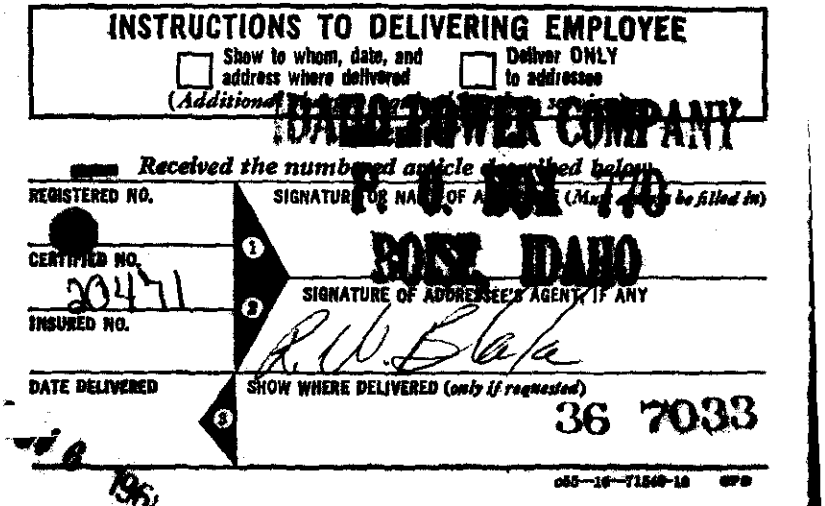
STREET AND NO. OR P.O. BOX

Annex #2 Statehouse

Boise, Idaho 83707

POST OFFICE, STATE, AND ZIP CODE

POD Form 3811 Apr. 1967 GSA—16—71548-10



INSTRUCTIONS TO DELIVERING EMPLOYEE

☐ Show to whom, date, and address where delivered ☐ Deliver ONLY to addressee

(Additional [illegible])

[illegible] POWER COMPANY

[illegible] Received the numbered article described below.

REGISTERED NO.

SIGNATURE OR NAME OF A[illegible] (Must always be filled in)

[illegible] P.O. BOX 70

CERTIFIED NO. 20471

1 BOISE, IDAHO

INSURED NO.

2 SIGNATURE OF ADDRESSEE'S AGENT, IF ANY

R. W. Blake

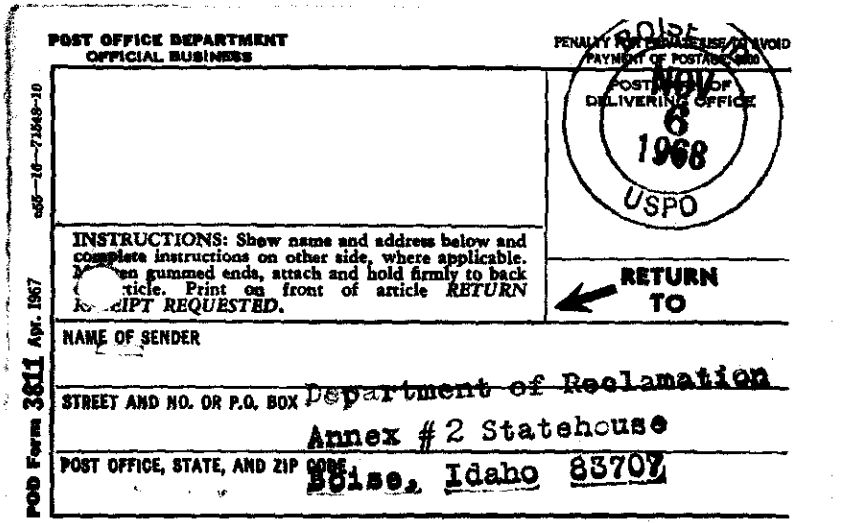
DATE DELIVERED

3 SHOW WHERE DELIVERED (only if requested)

36 7033

6 196

055—16—71540-10 GPO


POST OFFICE DEPARTMENT
OFFICIAL BUSINESS

PENALTY FOR PRIVATE USE TO AVOID PAYMENT OF POSTAGE, $300

POSTMARK OF DELIVERING OFFICE

NOV 6 1968 USPO

INSTRUCTIONS: Show name and address below and complete instructions on other side, where applicable. [illegible] gummed ends, attach and hold firmly to back of article. Print on front of article *RETURN RECEIPT REQUESTED.*

RETURN TO

NAME OF SENDER

STREET AND NO. OR P.O. BOX Department of Reclamation
Annex #2 Statehouse

POST OFFICE, STATE, AND ZIP CODE Boise, Idaho 83707

POD Form 3811 Apr. 1967 e55—16—71569-10

## INSTRUCTIONS TO DELIVERING EMPLOYEE

☐ Show to whom, date, and address where delivered ☐ Deliver ONLY to addressee

*(Additional charges required for these services)*

## RECEIPT

[redacted] *Received the numbered article described below.*

REGISTERED NO.

CERTIFIED NO. 20470

INSURED NO.

1 SIGNATURE OR NAME OF ADDRESSEE (*Must always be filled in*)

Fish + Game

2 SIGNATURE OF ADDRESSEE'S AGENT, IF ANY

Ed Fumbeaugh

DATE DELIVERED

NOV 6 1980

3 SHOW WHERE DELIVERED (*only if requested*)

36 7033

055—16—71548-16 GPO

POST OFFICE DEPARTMENT
OFFICIAL BUSINESS

PENALTY FOR PRIVATE USE TO AVOID PAYMENT OF POSTAGE, $300

POSTMARK OF DELIVERING OFFICE

NOV 6 1968 USPO

INSTRUCTIONS: Show name and address below and complete instructions on other side, where applicable. If gummed ends, attach and hold firmly to back of article. Print on front of article *RETURN RECEIPT REQUESTED.*

RETURN TO

NAME OF SENDER

Department of Reclamation

STREET AND NO. OR P.O. BOX

Annex # 2 Statehouse

POST OFFICE, STATE, AND ZIP CODE

Boise, Idaho 83707

POD Form 3811 Apr. 1967

635—16—71649-10

## INSTRUCTIONS TO DELIVERING EMPLOYEE

☐ Show to whom, date, and address where delivered ☐ Deliver ONLY to addressee

*(Additional charges required for these services)*

## RECEIPT

***Received the numbered article described below.***

REGISTERED NO.

CERTIFIED NO. 20469

INSURED NO.

DATE DELIVERED 10-6-68

1 SIGNATURE OF ADDRESSEE (*Must always be filled in*) Joseph Burden

2 SIGNATURE OF ADDRESSEE'S AGENT, IF ANY Alice LeMayne

3 SHOW WHERE DELIVERED (*only if requested*) 30-7033

c65-16-71569-16 GPO

POST OFFICE DEPARTMENT
OFFICIAL BUSINESS

PENALTY FOR PRIVATE USE TO AVOID PAYMENT OF POSTAGE, $300

POSTMARK OF DELIVERING OFFICE

TWIN FALLS
NOV 6 1968
IDAHO

INSTRUCTIONS: Show name and address below and complete instructions on other side, where applicable. If gummed ends, attach and hold firmly to back of article. Print on front of article *RETURN RECEIPT REQUESTED.*

RETURN TO

NAME OF SENDER

Dep Pyment of Reclamation

STREET AND NO. OR P.O. BOX

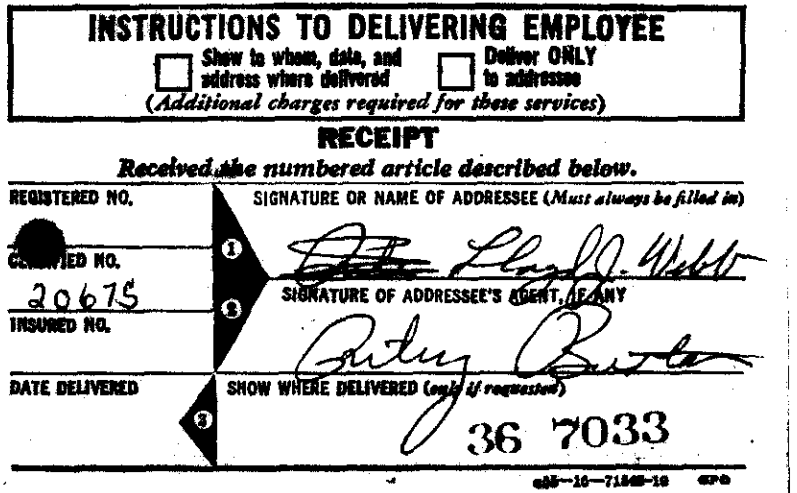
Annex # 2 Statehouse

Boise, Idaho 83707

POST OFFICE, STATE, AND ZIP CODE

POD Form 3811 Apr. 1967

65-16-71868-10



**INSTRUCTIONS TO DELIVERING EMPLOYEE**

☐ Show to whom, date, and address where delivered ☐ Deliver ONLY to addressee

*(Additional charges required for these services)*

**RECEIPT**

*Received the numbered article described below.*

REGISTERED NO.

CERTIFIED NO.

20675

INSURED NO.

1 SIGNATURE OR NAME OF ADDRESSEE (*Must always be filled in*)

Lloyd J. Webb

2 SIGNATURE OF ADDRESSEE'S AGENT, IF ANY

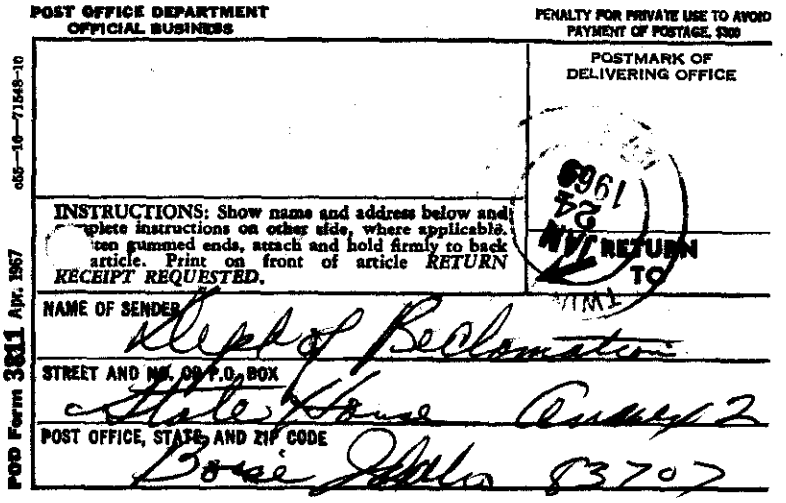
Cathy Burton

DATE DELIVERED

3 SHOW WHERE DELIVERED (*only if requested*)

36 7033

GPO


POST OFFICE DEPARTMENT
OFFICIAL BUSINESS

PENALTY FOR PRIVATE USE TO AVOID PAYMENT OF POSTAGE, $300

POSTMARK OF DELIVERING OFFICE

INSTRUCTIONS: Show name and address below and complete instructions on other side, where applicable. Fasten gummed ends, attach and hold firmly to back of article. Print on front of article *RETURN RECEIPT REQUESTED.*

RETURN TO

NAME OF SENDER

Dept of Reclamation

STREET AND NO. OR P.O. BOX

State House Annex 2

POST OFFICE, STATE, AND ZIP CODE

Boise Idaho 83702

POD Form 3811 Apr. 1967

055—10—71548—10

## INSTRUCTIONS TO DELIVERING EMPLOYEE

☐ Show to whom, date, and address where delivered ☐ Deliver ONLY to addressee

*(Additional charges required for these services)*

## RECEIPT

*Received the numbered article described below.*

REGISTERED NO. [redacted]

CERTIFIED NO.

20672

INSURED NO.

1. SIGNATURE OR NAME OF ADDRESSEE (*Must always be filled in*): Joseph L Burden

2. SIGNATURE OF ADDRESSEE'S AGENT, IF ANY: Clayton, Clayton, Webb + Pike by Estelle Lakey

DATE DELIVERED: JAN 24 19[redacted]

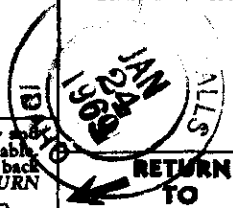
3. SHOW WHERE DELIVERED (*only if requested*): 36 7033

GPO

POST OFFICE DEPARTMENT
OFFICIAL BUSINESS

PENALTY FOR PRIVATE USE TO AVOID PAYMENT OF POSTAGE, $300

POSTMARK OF DELIVERING OFFICE




INSTRUCTIONS: Show name and address below and complete instructions on other side, where applicable. If gummed ends, attach and hold firmly to back of article. Print on front of article *RETURN RECEIPT REQUESTED.*

RETURN TO

NAME OF SENDER
Dept of Reclamation

STREET AND NO. OR P.O. BOX
State House Annex 2

POST OFFICE, STATE, AND ZIP CODE
Boise Idaho 83707

POD Form 3811 Apr. 1967

635—16—71548-10

# RETURN RECEIPT

1. a. POST OFFICE RECORD SHOWS *(Enter below the information shown on delivery record)*

   b. ADDRESSEE IS NOT AVAILABLE

   c. ADDRESSEE DECLINES TO SIGN

2. SIGNATURE OF ADDRESSEE *(Must always be filled in)*

   J. J. Jones III

   SIGNATURE OF ADDRESSEE'S AGENT, IF ANY

| DATE DELIVERED | ADDRESS WHERE DELIVERED *(Only if requested in item 4)* |
|---|---|
| FEB 6 1969 | 36 7033 |

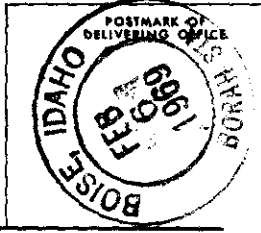
*Official post office record of delivery is held for two years, and it may be examined by either the sender, addressee, or their duly authorized representatives.*

* GPO : 1965 OF—705-959

POST OFFICE DEPARTMENT

OFFICIAL BUSINESS

PENALTY FOR PRIVATE USE TO AVOID PAYMENT OF POSTAGE, $300




| 6. ARTICLE NO. | 7. RETURN TO: |
|---|---|
| REGISTERED No. | NAME OF SENDER State Dept. of Reclamation |
| CERTIFIED No. 20676 | STREET AND NO. OR P. O. BOX Statehouse Annex |
| INSURED No. | CITY, STATE AND ZIP CODE Boise, ID 83707 |

POD Form 3811-A

Q A

334- CSA
334- 8-7
339 1-7
340 10-7
341 - 1-7
351 - 1-2
352 10-8
353 CSA-1
354 1-2
375 10-2
382 CSA
383 8
383 2-
384- CSA
386-10Q-6A
401 [illegible]
402 10Q 6A
411 10-6-1
414 -1
414 10-6
428 1Q 6A
433 8-6
435 CSA 5
436-8Q-5A
459 1Q 5A
465 CSA-10
466 CSAQ-5A
469 8-
469 CSA
470 1
473 10-8-CSA
474 - 10
477 CSA + 8
478-CSA
479-1
479-CSA

36 7033

1. Harry Jemagne –
Oral Contractor.

$200,000 - hatchery

Brief: 1. Public Water subject to appropriation.
2. Whether or not application satisfies the requirements of the Idaho Code

official Notice of USGS Records and Records of the Department of WRB 1 provide a financial statement to establish financial ability.
2 - Information as to justify the amount of water requested

2. John Straubhar.

22 ft elevation difference 3227 ft long

1. Cannot rule on Abandonment of Water right.

We do not have an affidavit of Publ for the new Applic ?

Motion to dismiss 36 7033

Protestant Brief – March 20 – Applicants brief – April 10

36-7033 - Joseph L. Burden

Gooding County Court House

February 20, 1969 at 1:00 p.m.

ROSTER OF ATTENDANCE

| Name | Address | Representing |
|---|---|---|
| 1 Lloyd J. Webb | Box 381 Twin Falls | Joseph Burden |
| 2 Harry F. LeMoyne | 1130 Lawndale Dr. Twin Falls - | Joseph Burden |
| 3 JOHN J. STRAUBAAR | 687 FILER AVE. TWIN FALLS | JOSEPH BURDEN |
| 4 Ted Biladeau | Boise | Fish & Game Dept |
| 5 Jack Fisher | Boise | " " " |
| 6 HR MOORE | Boise | I P. Co |
| 7 Lawrence Strong | 263 North Lee Twin Falls, Ida. | |
| 8 [illegible] | Boise | I.P.&C. |
| 9 Jay C Smith | Boise | I. P. Co. |
| 10 James E Bruce | Boise | J P Co. |

36 7033

POST OFFICE DEPARTMENT

OFFICIAL BUSINESS

PENALTY FOR PRIVATE USE TO AVOID PAYMENT OF POSTAGE, $300

POSTMARK OF DELIVERING OFFICE

| 6. ARTICLE NO. | 7. RETURN TO: |
|---|---|
| REGISTERED No. | NAME OF SENDER State Dept. of Reclamation |
| CERTIFIED No. 20674 | STREET AND NO. OR P. O. BOX State House Annex |
| INSURED No. | CITY, STATE AND ZIP CODE Boise, ID 83707 |

POD Form 3811-A
Sep. 1963

# RETURN RECEIPT

a. POST OFFICE RECORD SHOWS *(Enter below the information shown on delivery record)*

1. b. ADDRESSEE IS NOT AVAILABLE

c. ADDRESSEE DECLINES TO SIGN

SIGNATURE OF ADDRESSEE *(Must always be filled in)*

H. R. Moore, Vice President, Idaho Power Co.

2. SIGNATURE OF ADDRESSEE'S AGENT, IF ANY

| DATE DELIVERED | ADDRESS WHERE DELIVERED *(Only if requested in item 4)* |
|---|---|
| 1-22-69 | 36 7033 |

*Official post office record of delivery is held for two years, and it may be ex- by either the sender, addressee or their duly authorized representatives.*

* GPO : 1963 OF—705-959

20672

NAME AND ADDRESS OF SENDER: Dept of Reclamation

Indicate type of mail: ☑ REGISTERED ☐ REGISTERED C.O.D. ☑ CERTIFIED

Affix stamp here if issued as certificate of mailing or for additional copies of this bill.
POSTMARK AND DATE OF RECEIPT

| | NUMBER OF ARTICLE | NAME OF ADDRESSEE, STREET, AND POST OFFICE ADDRESS | POSTAGE | FEE | R. R. FEE | SPEC. DEL. FEE | ACTUAL VALUE | SURCHARGE | REMARKS* |
|---|---|---|---|---|---|---|---|---|---|
| ✓ 1 | 20672 | Joseph L. Barden, Box 321, Twin Falls Idaho | .06 | .30 | .10 | | | | 36-7033 |
| 2 | 20673 | L. D. Biladeau, State Dept. of Fish & Game, 600 Walnut Street, Boise | .06 | .30 | .10 | | | | 36-7033 |
| ✓ 4 | 20674 | Idaho Power company, H. R. Moore Vice president, 807 Idaho St. Boise Ida. | .06 | .30 | .10 | | | | 36-7033 |
| ✓ 6 | 20675 | Lloyd J. Webb Box 321, Twin Falls Ida | .06 | .30 | .10 | | | | 36-7033 |
| ✓ 7 | 20676 | L. J. Jones III, 1611 W. Jefferson, Boise Ida. | .06 | .30 | .10 | | | | 36-7033 |
| 8 | | | | | | | | | |
| 9 | | | | | | | | | |
| 10 | | | | | | | | | |
| 11 | | | | | | | | | |
| 12 | | | | | | | | | |
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| 14 | | | | | | | | | |
| 15 | | | | | | | | | |
| 16 | | | | | | | | | |
| 17 | | | | | | | | | |
| 18 | 36 | 7033 | | | | | | | |
| 19 | | | | | | | | | |
| 20 | | | | | | | | | |

BOISE IDAHO JAN 13 1969

TOTAL NO. OF PIECES LISTED BY SENDER: 5

TOTAL NO. OF PIECES REC'D AT P. O.

POSTMASTER, PER (*Name of receiving employee*)

*Show under "Remarks" class postage paid if other than first or if international

POD Form 3877, Jan. 1960

**APPLICATION FOR REGISTRATION OR CERTIFICATION**

*(Surcharges are not required on international registered mail)*

o68—16—9702-14 U. S. GOVERNMENT PRINTING OFFICE

POST OFFICE DEPARTMENT

# INQUIRY ABOUT RECEIPT OF MAIL

DATE FEB 5 1969 | CASE NO.

DEAR PATRON:

Please advise this office whether you received the mail described hereon. Complete the reply section below and return to this office. You may use the official window envelope, which requires no postage, for your reply.

POSTMASTER

Mr. H. R. Moore , Vice-Pres.
Idaho Power Co.
P.O. Box 700
Boise, ID 83707

TYPE
[XX] CERTIFIED [ ] REGISTERED [ ] ORDINARY
[ ] INSURED [ ] C.O.D. CHARGES $ _____

NO. 20674
[X] LETTER [ ] PARCEL

MAILED BY State Dept. of Reclamation
State House Annex
Boise, ID 83707

MAILED TO
H. R. Moore, Vice-Pres.
Idaho Power Co.

CONTENT OF LETTER OR PARCEL
Letter

DATE MAILED
1-21-69

[ ] RECORDS OF THE OFFICE OF ADDRESS SHOW THAT THIS MAIL WAS RETURNED TO YOU ON

REPLY

RECEIVED

WAS THIS MAIL RECEIVED? (If yes, give date)
[ ] NO [X] YES, ON 1-22-69

[ ] IF C.O.D., TO WHOM WERE CHARGES PAID?

Department of Reclamation

RETURN TO
SUPERINTENDENT OF MAILS
BOISE, IDAHO 83707
36 7033

(NAME OF FIRM IF APPLICABLE)

J H Moore

(SIGNATURE OF INDIVIDUAL ADDRESSED OR OF FIRM REPRESENTATIVE OR AGENT)

POD Form 1572
Jan 1963

* U.S. GOVERNMENT PRINTING OFFICE : 1963 O—674200

NAME AND ADDRESS OF SENDER: Dept of Reclamation

Indicate type of mail: ☐ Registered ☐ Registered C.O.D. ☑ Certified

Affix stamp here if issued as certificate of mailing or for additional copies of this bill.
POSTMARK AND DATE OF RECEIPT

20469 ~~20470~~ 20468

| | NUMBER OF ARTICLE | NAME OF ADDRESSEE, STREET, AND POST OFFICE ADDRESS | POSTAGE | FEE | R. R. FEE | REST. DEL. FEE | ACTUAL VALUE | SURCHARGE | REMARKS* |
|---|---|---|---|---|---|---|---|---|---|
| 1 | 20469 | Joseph L. Burden c/o H. F. | 6 | 10 | 30 | | | | 36-7033 |
| 2 | | LeMayme 1130 Lawndale Drive | | | | | | | |
| 3 | | Twin Falls Idaho | | | | | | | |
| 4 | 20470 | State of Idaho, Dept. of Highways | | | | | | | 36-70[redacted] |
| 5 | [redacted] | Box 25, 600 South Walnut | | | | | | | |
| 6 | | Street Boise Idaho | | | | | | | |
| 7 | 20471 | H.R. Moore, Vice President | | | | | | | 36-7033 |
| 8 | | Idaho Power Company | | | | | | | |
| 9 | | Boise Idaho | | | | | | | |
| 10 | 20472 | Harry F. LeMayme 1130 | | | | | | | 36-7033 |
| 11 | | Lawndale Drive Twin Falls Ida | | | | | | | |
| 12 | 20473 | Orval C Beus Soda Springs Ida | | | | | | | 34-7006 |
| 13 | 20474 | Idaho Land and Appraisal | | | | | | | 34-7006 |
| 14 | | Box 2161 - Boise, Idaho | | | | | | | |
| 15 | 20475 | DeVon R. Jensen Watermaster | | | | | | | 34-700[redacted] |
| 16 | | Water District #27 Box [redacted] | | | | | | | |
| 17 | [redacted] | 205, Mackay Idaho | | | | | | | |
| 18 | 20476 | Mr. Arthur W. Quist, Pres., | | | | | | | 34-7006 |
| 19 | | Big Lost River Irrigation | | | | | 36 7033 | | |
| 20 | | District Mackay Idaho | | | | | | | |

TOTAL NO. OF PIECES LISTED BY SENDER: 8

TOTAL NO. OF PIECES REC'D AT P.O.: 8

POSTMASTER, PER (Name of receiving employee)

*Show under "Remarks" class postage paid if other than first or if international

POD Form 3877, Jan. 1960

APPLICATION FOR REGISTRATION OR CERTIFICATION

(Surcharges are not required on international registered mail)

o48—16—8792-14 U. S. GOVERNMENT PRINTING OFFICE

January 31, 1969

Re: Application No. 36-7033
Joseph L. Burden

COPY

Idaho Power Company
Boise,
Idaho

Attention: Mr. Glenn J. Hall, Vice President

Gentlemen:

Please be advised that we are in receipt of your amended protest filed in connection with the above referenced application. A copy of the protest has been forwarded to the applicant.

Very truly yours,

Donald W. McEldowney
Appropriation Examiner

DWM:ks

enclosure: none

36 7033

January 30, 1969

Re: Application No. 36-7033

COPY

Mr. Joseph L. Burden
Box 321
Twin FAlls, Idaho

Dear Mr. Burden:

Enclosed is a copy of the amendmd protest filed with our office on January 31, 1969 in connection with the above referenced application.

If we may be of further assistance, please contact us.

Very truly yours,

Donald W. McEldowney
Appropriation Examiner

DWM:ks

enclosure: copy of amended protest

36 7033

BEFORE THE STATE RECLAMATION ENGINEER
OF THE
STATE OF IDAHO

IN THE MATTER OF APPLICATION FOR PERMIT NO. 36-7033 in the name of JOSEPH L. BURDEN

NOTICE OF CONFERENCE AND/OR HEARING FOR PROTEST

On July 10, 1968, Joseph L. Burden, by Lloyd J. Webb, Agent and Attorney, filed with the Department of Reclamation an application to appropriate the public waters of the State of Idaho. On December 26, 1968 an amended application was filed. On August 12, 1968, the Department of Reclamation received a protest filed by H. R. Moore in behalf of Idaho Power Company, Boise, Idaho. On August 28, 1968, the Department of Reclamation received a letter of concern from the State Department of Fish and Game, Boise, Idaho. On November 27, 1968, the Department of Reclamation received a protest filed by T. J. Jones III, Special Counsel of Idaho Department of Fish and Game, Boise, Idaho.

The Department of Reclamation has set the matter of protest for conference and/or hearing on February 20, 1969 at 1:00 p.m. in the Gooding County Courthouse, Gooding, Idaho.

Any hearing will be held in accordance with the rules and regulations of the Idaho Code and adopted Rules of Practice and Procedure of the Department of Reclamation.

Opportunity shall be afforded all parties to respond and present evidence and argument on all issues involved.

Any party may request in writing five (5) days before any hearing that the oral proceedings thereof be taken in the form of stenographic notes. Any party may have such stenographic notes of the oral proceedings, or part thereof, transcribed at his own expense. A taped record of the proceedings will be maintained for the appeal period.

Failure to appear at the time and place set for hearing by the applicant or protestants may allow the Department of Reclamation without prejudice to dismiss the protest or the application. Any and all cost incurred by reason of such non-appearance may be assessed against such non-appearing parties.

Dated this 21 day of JANUARY, 1969.

C. Stephen Allred, Assistant
State Reclamation Engineer

Mailed this 21st day of January, 19 69 to Joseph L. Burden, Box 321, Twin Falls, Idaho certified no. 20672; T. D. Biladeau, State Department of Fish and Game, 600 Walnut Street, Boise, Idaho certified no. 20673; Idaho Power Company, H. R. Moore, Vice President, 807 Idaho Street, Boise , Idaho certified no. 20674; Lloyd J. Webb, P.O. Box 321, Twin Falls, Idaho certified no. 20675; T. J. Jones III, 1611 W. Jefferson, Boise, Idaho be certified mail no. 20676

36 7033

IDAHO POWER COMPANY
BOISE, IDAHO

RECEIVED
JAN 7 1969
Department of Reclamation

January 6, 1969

JACK — SHOULD WE WRITE TO BURDEN? RKH

Mr Joseph L Burden
Box 321
Twin Falls, Idaho

Dear Mr Burden:

Idaho Power Company just received a copy of your amended application for Permit No 36-7033. In your application under Section 10 thereof you state, "The applicant is the owner of an easement across the property of the Idaho Power Company, the owner of the land at the proposed point of diversion."

NO-

The Company has thoroughly searched its records with respect to this and we are unable to find any easement covering this property, and I would appreciate it if you could give us the recording data concerning this easement.

Very truly yours,

(Sgn.) James E. Bruce

James E Bruce
Vice President and Secretary

JEB:mlm

cc: R Keith Higginson

COPY

36 7033

December 27, 1968

Re: Application No. 36-7033 - Correction notice
Joseph L. Burden

Wendell Irrigationist
Wendell,
Idaho 83355

Gentlemen:

Enclosed you will find a legal notice which we wish to have published once a week for two consecutive weekly issues of your newspaper. We have inserted the publication dates allowing ample time for you to submit us a galley proof for review before publication.

After sending us a galley proof, proceed with the publication on the dates we have inserted assuming the notice is correct. If we have any corrections, we will notify you before the first publication date. If you cannot publish the notice on the proposed dates please contact us immediately.

An affidavit of publication must be submitted to the Department of Reclamation, along with the publication bill. In order to receive payment, the following certification must appear on the bill:

> I hereby certify that the foregoing account is just and correct, that the amount claimed is legally due, after allowing all just credits, and that no part of same has been paid.

_____
Signature of claimant

Very truly yours,

Donald W. McEldowney
Appropriation Examiner

36 7033

DWM:ks

CORRECTION NOTICE

Notice is hereby given that Joseph L. Burden has filed an amended application for permit to replace Application No. 36-7033. The amended application proposed the diversion of 60 cubic feet per second of the waters of Crystal Springs, tributary of the Snake River for fish propagation from January 1 to December 31. The point of diversion is located in the SE¼NW¼ (lot 12), sec. 12, T. 9 S, R. 15 E, B.M., Gooding County and is to be used in the SE¼SW¼, sec. 12, T. 9 S, R. 15 E, B.M.

Any protest in connection with this amended application must be submitted to the Department of Reclamation within ten days of the date of the last publication of this notice.

R. KEITH HIGGINSON
State Reclamation Engineer

Published in the Wendell Irrigationist on January 2 and January 9, 1968.

COPY

36 7033

December 26, 1968

Re: Application for Permit No. 36-7033 - Amended

COPY

Mr. Joseph L. Burden
Box 321
Twin Falls, Idaho

Dear Mr. Burden:

Enclosed is a copy of your amended application for permit which has been filed with the Department of Reclamation. The department will advise you in the near future as to the time, place, and date of a hearing to be held in connection with the protests filed agains the original application.

Please contact us if we may be of further assistance.

Very truly yours,

Donald W. McEldowney
Appropriation Examiner

DWM:ks
enclosure: Copy of amended application

cc: Mr. T. J. Jones III, Attorney at Law
Idaho Department of Fish and Game, John R. Woodworth, Director
Idaho Power Company, H. R. Moore, Vice President

36 7033

Rayborn, Rayborn, Webb and Pike
ATTORNEYS AND COUNSELLORS AT LAW
P. O. BOX 321
126 SECOND STREET EAST
TWIN FALLS, IDAHO 83301

E. L. RAYBORN
E. M. RAYBORN
R. E. RAYBORN
LLOYD J. WEBB
EMIL F. PIKE
J. RILEY BURTON

AREA CODE 208
TELEPHONE 733-2601

DEC 26 1968
Department of Reclamation

December 24, 1968

State Reclamation Engineer
State House
Boise, Idaho 83700

ATTEN: STEVE ALLRED

Dear Steve:

Enclosed please find Amended Application for Permit and check to cover same.

Sincerely yours,

RAYBORN, RAYBORN, WEBB & PIKE

By _____
Lloyd J. Webb

LJW:ZM
Encls.

Application No. 42652

# STATE OF IDAHO
# DEPARTMENT OF RECLAMATION
# APPLICATION FOR PERMIT
## To Appropriate the Public Waters of the State of Idaho

Replaced (by) Amendment 12-26-28 Deeds

1. Name of applicant Joseph L. Burden
   post office address C/o H.F. LeMoyne, 1130 Lawndale Dr., Twin Falls, Idaho
2. Source of water supply Spring which is a tributary of Snake River
3. a. Location of point of diversion is Lot 3 ¼ of -- ¼ of Section 12 Township 9 So. Range 15 E. B.M. Gooding County; additional points of diversion if any:

   b. If water is not consumed, it will be discharged into Snake River at a point in NE¼ ¼ of SE¼ ¼ of Section 12 Township 9 S. Range 15 E. B.M.
4. Quantity to be appropriated:
   a. 50- cubic feet per second and/or
   b. no acre feet per annum will be stored.
5. Water will be used for the following purposes:
   Fish Propagation purpose from 1-1 constant use to 12-31 (both dates inclusive)
   Fish Propagation purpose from Jan. 1 to Dec. 31 (both dates inclusive)
   _____ purpose from _____ to _____ (both dates inclusive)
6. Proposed diverting works:
   a. Description of ditches, flumes, pumps, headgates, etc. Concrete headbox-- Iron Pipeline

   b. Height of storage dam _____ feet; active reservoir capacity _____ acre feet; total reservoir capacity _____ acre feet; materials used in storage dam:

   c. Proposed well diameter is _____ inches; proposed depth of well is _____ feet.
7. a. Time required for the completion of the works and application of the water to the proposed beneficial use is 2 years.
   b. Estimated construction cost is $ 20,000.00 .
8. Description of proposed uses:
   a. If water is **not** for irrigation:
      (1) Give the place of use of water: SE¼ ¼ of SE¼ ¼ of Section 12 Township 9 S. Range 15 E. B.M.
      (2) Amount of power to be generated: _____ hp under _____ feet of head.
      (3) List number of each kind of livestock to be watered
      (4) Name of municipality to be served _____, or number of families to be supplied with domestic water _____.
      (5) If water is to be used for other purposes describe: Fish Propagation

36 7033

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

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

Total number of acres to be irrigated_____

c. Describe any other water rights used for the same purposes none

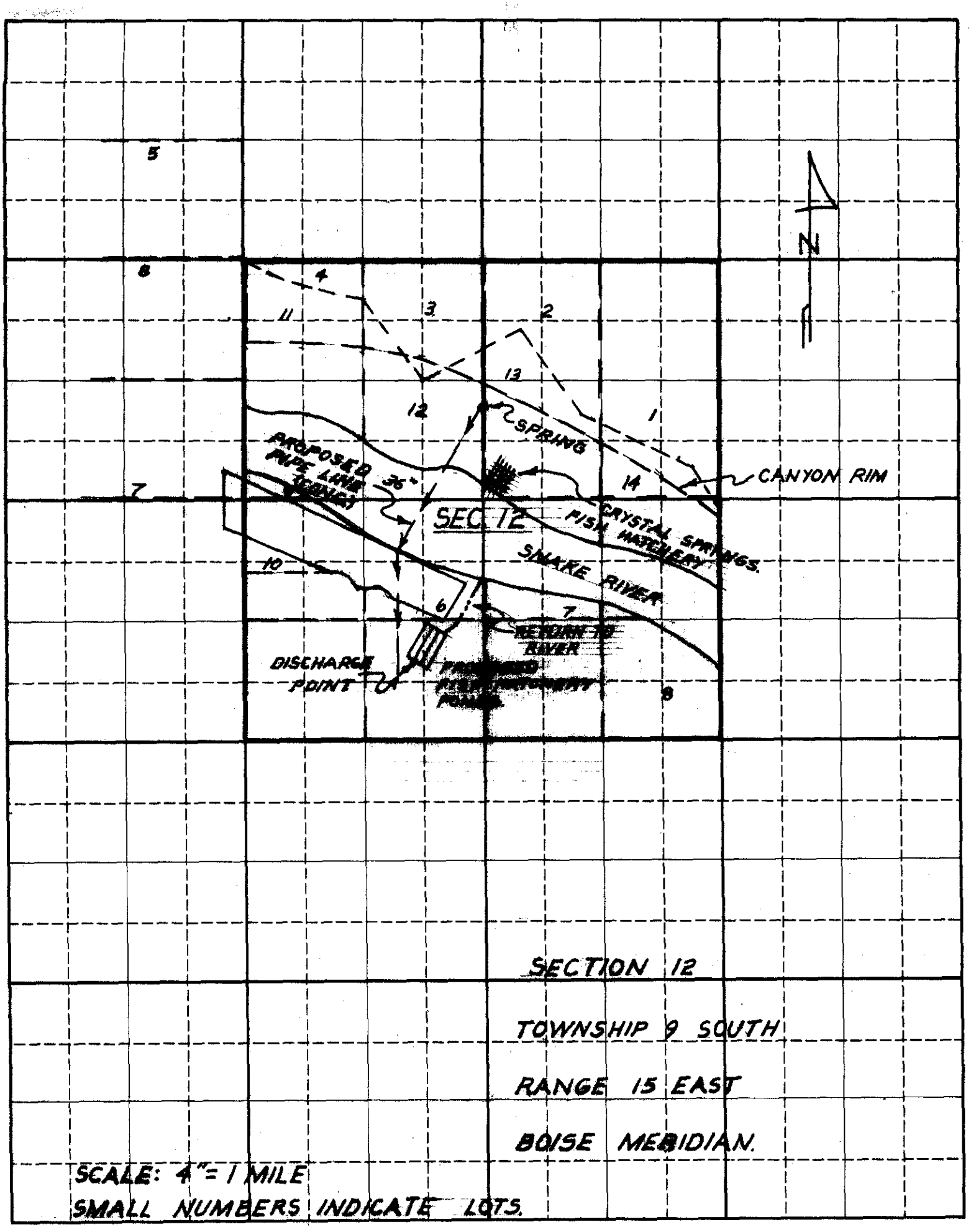
9. a. Who owns the property at the point of diversion Idaho Power Co.

b. Who owns the land to be irrigated or place of use Joseph L. Burden

c. If the property is owned by a person other than the applicant, describe the arrangement enabling the applicant to make this filing Not applicable

10. Remarks The record owner of the Crystal Springs Orchards, where the fish hatchery is to be built is Laverne Strong of Twin Falls, Idaho. Mr. Burden is purchasing this land on a contract of sale..

11. Map of proposed project:




Scale: 4 inches equal 1 mile

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

Joseph L. Burdell
(Applicant)

36 7033

Received by ef Date 7-10-68 Time 8:00a

Preliminary check by Date Fee $ 7-11-68

Receipted by ef Date 7-11-68

Publication prepared by KK Date 7-16-68

Published in Mendell Sun.

Publication dates 7-25 & 8-1

Publication approved KK Date 7-16-68

Priority reduced to _____ Reason _____

Protests filed by: Idaho Power Co.
8-12-68; Fish & Game Dept.
11-27-68

Copies of protests forwarded by KK 10-17-68
12-3-68 ~~KK~~

Hearing held by _____ Date _____
Cont - CSR - 11-22-68

Recommended for approval denial by _____

## ACTION OF STATE RECLAMATION ENGINEER

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. Other: _____

2. Denial of said application is for the following reasons: _____

Witness my hand this _____ day of _____ 19____.

_____
State Reclamation Engineer

December 3, 1968

Re: Application No. 36-7033
Joseph L. Burden

COPY

Mr. John R. Woodworth, Director
State of Idaho, Department of Fish and Game
600 South Walnut Street
Boise, Idaho 83707

Dear Mr. Woodworth:

The Department of Reclamation has received your formal protest which will be substituted for the letter fmm of protest filed on August 27, 1968. A copy has been forwarded to the applicant.

The Department of Reclamation will advise you at allater date as to further requirements.

Very truly yours,

Donald W. McEldowney
Appropriation Examiner

DWM:KS
enclosure: none
cc: Mr. T. J. Jones LLL

36 7033

December 3, 1968

Re: Application No. 36-7033

COPY

Joseph L. Burden:
c/o H, F. LeMoyne
1130 Lawndale Drive
Twin Falls, Idaho

Dear Mr. Burden:

Enclosed is a copy of a formal protest filed by the Department of Fish and Game to replace their letter of protest dated August 28, 1968.

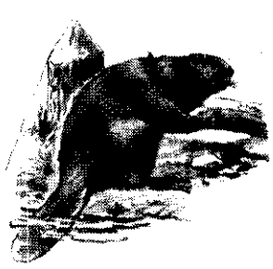
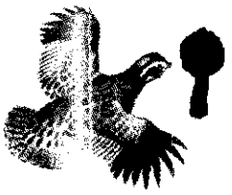
If you have any questions, please contact us.

Very truly yours,

Donald W. McEldowney
Appropriation Examiner

DWM:KS
enclosure: Copy of formal protest

36 7033




RECEIVED
NOV 27 1968
Department of Reclamation

DON SAMUELSON, Governor
COMMISSION
GLENN STANGER, Idaho Falls
R. J. HOLMES, Twin Falls
ARLIE JOHNSON, Boise
WILLIAM B. DURBON, Moscow
RAY SIMS, Bonners Ferry

# IDAHO FISH AND GAME DEPARTMENT

JOHN R. WOODWORTH, Director
POST OFFICE BOX 25
600 SOUTH WALNUT STREET
BOISE, IDAHO 83707

November 26, 1968

Mr. C. Stephen Allred
Assistant State Reclamation Engineer
State of Idaho Department of Reclamation
State House, Annex No. 2
Boise, Idaho 83707

In re: Application for Permit No. 36-7033
Joseph L. Burden

Dear Mr. Allred:

As per the agreement of the parties at the informal hearing conducted on this matter at the Gooding County Courthouse this past Friday, November 22, 1968, I am enclosing herewith the original of the formal Protest filed by the Idaho Fish and Game Department for substitution of the letter form of protest filed heretofore in this matter on August 27, 1968.

Service of copies of this protest has been made as of this date upon counsel for the applicant, Mr. Emil F. Pike of the firm of Rayborn, Rayborn, Webb & Pike, Twin Falls, and upon the other protestant, the Idaho Power Company.

Very truly yours,

T. J. Jones, III
Special Counsel
Idaho Fish and Game Department

TJJ:mfs

Enc.

cc: Emil F. Pike
James E. Bruce, Jr.
T. D. Biladeau

36 7033

CONFERENCE Nov 22 1968

Re: Appl. for Permit 36-7033 Joseph L. Burden

Gooding County Courthouse, Gooding, Idaho

| Name | Address | Representing |
|---|---|---|
| EMIL PIKE | Box 321 TWIN FALLS | JOSEPH BURDEN |
| T. J. JONES III | Box 1003 Boise | Ida. Fish & Game |
| HR MOORE | BOISE | IDAHO POWER CO |
| Gale C Farley | " | " " " |
| Jack Fisher | " | Ida Fish + Game |
| T.D. Biladeau | " | " " " |

36 7033

1. subject to appropriation.
2. Reduce the quantity for existing water rights.
3. Speculative
4. Whether financial ability

Ownership of land is not at issue
Parties stipulated ~~that~~ land is owned by Idaho power.

later part of January or a Thursday
January 26
Hearing
if application can
be noticed and advertised
in time.

November 7, 1968

COPY

Re: Application for Permit No. 36-7033
Joseph L. Burden

Idaho Fish and Game Department
P. O. Box 25
600 Walnut Street
Boise, Idaho 83707

ATTENTION: Mr. Robert L. Balser

Gentlemen:

Enclosed is a copy of the notice of conference and/or hearing for protest in reference to the above application for permit, pursuant to your letter of November 4, 1968.

Very truly yours,

Donald W. McEldowney
Appropriation Examiner

DWM:tg

Enc: Copy of notice of hearing

36 7033



DON SAMUELSON, Governor
COMMISSION
GLENN STANGER, Idaho Falls
R. J. HOLMES, Twin Falls
ARLIE JOHNSON, Boise
WILLIAM B. DURBON, Moscow
RAY SIMS, Bonners Ferry

# IDAHO FISH AND GAME DEPARTMENT

JOHN R. WOODWORTH, Director
POST OFFICE BOX 25
600 SOUTH WALNUT STREET
BOISE, IDAHO 83707

November 4, 1968

RECEIVED
NOV 5 1968
Department of Reclamation

Mr. R. Keith Higginson
Reclamation Engineer
Idaho Department of Reclamation
STATEHOUSE MAIL
Boise, Idaho

Dear Mr. Higginson:

In the matter of the protest filed by the Idaho Power Company pertaining to allowance of Application #36-7033, the Department would appreciate notice as to date, time, and place of a Conference or Hearing that may be scheduled.

Thank you for your cooperation.

Sincerely,

IDAHO FISH AND GAME DEPARTMENT
John R. Woodworth, Director

Robert L. Salter
Robert L. Salter
Assistant Director

cc: J. C. Simpson

36 7033

BEFORE THE STATE RECLAMATION ENGINEER

OF THE

STATE OF IDAHO

IN THE MATTER OF APPLICATION FOR PERMIT NO. )
) NOTICE OF CONFERENCE
36-7033 in the name of JOSEPH L. BURDEN ) AND/OR HEARING FOR PROTEST

On July 10, 1968, Joseph L. Burden filed with the Department of Reclamation an application to appropriate the public waters of the State of Idaho. On August 12, 1968, the Department of Reclamation received a protest filed by Mr. H. R. Moore, Vice President of the Idaho Power Company, Boise, Idaho. On August 28, 1968, the Department of Reclamation received a letter of concern from the State Department of Fish and Game, Boise, Idaho.

The Department of Reclamation has set the matter of protest for conference and possibly a hearing on November 22, 1968 at 10:30 a.m. in the Gooding County Court House, Gooding, Idaho.

Any hearing will be held in accordance with the rules and regulations of the Idaho Code and adopted Rules of Practice and Procedure of the Department of Reclamation.

Opportunity shall be afforded all parties to respond and present evidence and argument on all issues involved. The burden of proof is with the protestant.

Any party may request in writing five (5) days before any hearing that the oral proceedings thereof be taken in the form of stenographic notes. Any party may have such stenographic notes of the oral proceedings, or part thereof, transcribed at his own expense. A taped record of the proceedings will be maintained for the appeal period.

Failure to appear at the time and place set for hearing by the applicant or protestant may allow the Department of Reclamation without prejudice to dismiss the protest or the application. Any and all cost incurred by reason of such non-appearance may be assessed against such non-appearing parties.

Dated this 4 day of November, 1968.

C. Stephen Allred, Assistant
State Reclamation Engineer

Mailed this 4th day of November, 1968 to Joseph L. Burden-certified no. 20469; Dept. of Highways-certified no. 20470; H. R. Moore, Vice President, Idaho Power Company-certified no. 20471; and to Harry F. LeMoyne-certified no. 20472

copy to Fish & Game - Nov 7-68 - tg
see letter of Nov 4-68

36 7033

October 23, 1968

COPY

Re: Application Nos. 36-7013 - Margaret A. LeMoyne
36-7033 - Joseph L. Burden

Mr. T. D. Biladeau
State Department of Fish and Game
600 Walnut Street
Boise, Idaho

Dear Mr. Biladeau:

This letter is in response to your request of the John LeMoyne application for permit.

Please be advised that the Department of Reclamation has not received an application for permit in Mr. LeMoyne's name. We have, however, received an application from Margaret A. LeMoyne. In a further review of our files we found a filing for Mr. Joseph L. Burden, c/o H. F. LeMoyne, Twin Falls, Idaho. The application for Mr. Burden has had a letter of concern from your department filed against it.

If neither of these applications are the ones your department is interested in, please contact us.

Very truly yours,

Donald W. McEldowney
Appropriation Examiner

DWM:ks
enclosure: Copy of application No. 36-7033
Copy of permit 36-7013

36 7033

October 18, 1968

Re: Application No. 36-7033 - Joseph L. Burden
Permit No. 10060
Permit No.31527

Mr. Harry F. LeMoyne
LeMoyne Realty
1130 Lawndale Drive
Twin Falls, Idaho 83301

Dear Mr. LeMoyne:

Thank you for your letters of September 30, 1968 and October 11, 1968. Please forgive us for our delay in replying.

In regard to Application No. 36-7033 filed in the name of Joseph L. Burden, the application at the present time is being protested. Enclosed is a copy of the protest filed by the Idaho Power Company and a letter of concern filed by the Idaho Fish and Game Department. The Department of Reclamation will advise you at a later date as to the time, place, and date of a conference and/or hearing to review the matter of the protest.

Also enclosed is an additional set of proof forms for Permit No. 31527, and Receipt No. 2213 for the amount of $1.50 submitted as payment of copies of Permit No. 10060.

Please contact us if we may be of further assistance.

Very truly yours,

Donald W. McEldowney
Appropriation Examiner

DWMMks
enclosure: Proof forms
Copy of protest
Receipt No. 2213

36 7033

October 17, 1968

Re: Application No. 36-7033
Joseph L. Barden

Mr. John R. Woodworth, Director
Idaho Department of Fish and Game
Box 25, 600 South Walnut Street
Boise, Idaho 83707

Dear Mr. Woodworth:

Thank you for your letter of August 27, 1968 concerning the above referenced application. Please forgive our delay in replying.

A copy of your letter of concern is being forwarded to the applicant. The staff of the Department of Reclamation and the State Reclamation Engineer, R. Keith Higginson, having reviewed your letter of August 27, will enter the letter in the application folder so that it will be available to all parties both in the future and at a protest conference or hearing to be scheduled in the near future to hear the matter of protest filed by the Idaho Power Company.

If it will be of further interest to you we will advise you as to the date, time, place that the conference and/or hearing will be scheduled. Please advise this department by return mail. Thank you for your concern in the matter.

Very truly yours,

Donald W. McEldowney
Appropriation Examiner

DWM:ks

36 7033

October 17, 1968

Re: Application No. 36-7033
Joseph L. Burden

Mr. H. R. Moore, Vice President
Idaho Power Company
807 Idaho Street
Boise, Idaho

Dear Mr. Moore:

Please be advised that the Department of Reclamation is in receipt of the protest filed in opposition to issuance of the above referenced application. A copy of your protest has been forwarded to the applicant.

The Department of Reclamation will advise you at a later date as to the time, place, and date of a conference and/or hearing to review the matter of the protest.

Please contact us if we may be of further assistance.

Very truly yours,

Donald W. McEldowney
Appropriation Examiner

DWM:KS
enclosure: none

36 7033

October 17, 1968

Re: Application No. 36-7033

Joseph L. Burden
c/o H. F. LeMoyne
1130 Lawndale Drive
Twin FAlls, Idaho

Dear Mr. Burden:

Enclosed is a copy of a protest received in connection with the above referenced application. Also enclosed is a copy of a letter of concern. The application protest was received from the Idaho Power Company and the letter of concern was filed by the Idaho Department of Fish and Game.

The Department of Reclamation will advise you at a later date as to the time, place, and date of a conference and/or hearing to review the matters of protest.

Please contact us if we may be of further assistance.

Very truly yours,

Donald W. McEldowney
Appropriation Examiner

DWM:ks
enclosure: Copy of protest
Copy of letter of concern

36 7033

**Le Moyne Realty**
1130 LAWNDALE DRIVE
PHONE 208 733-0874
TWIN FALLS, IDAHO
83301

RECEIVED
OCT 16 1968
Department of Reclamation



October 11, 1968

Mr. Stephen Allred
Department of Reclamation
Statehouse - Annex 2
Boise, Idaho 83707

Dear Mr. Allred:

Thank you for your letter of October 8. The forms for completion proof on Permit No. 31527 were not enclosed in the letter to me. Perhaps you enclosed them in the copy of your letter which you sent to Mr. Melton. If so, this is fine and I will be in touch with him and we will complete the final proof. If not and they were inadvertently left out, please send them to one of us immediately.

In my last letter to the department of Reclamation I asked for a status report on the application of Joeseph L. Burden to appropriate spring water in Gooding County to put on the Crystal Springs Ranch. So far I haven't heard on this matter and wonder if you could drop me a line on it.

Thank you.

Very truly yours,

Harry F. LeMoyne

HFL/ps

36 7033

**Le Moyne Realty**
1130 LAWNDALE DRIVE
PHONE 208 733-0874
TWIN FALLS, IDAHO
83301



September 30, 1968

RECEIVED
OCT 3 1968
Department of Reclamation

Mr. M. Russell Bosch
Department of Reclamation
Statehouse - Annex 2
Boise, Idaho 83707

Dear Mr. Bosch:

I am herewith enclosing my check in the amount of $1.50 for the photostatic copy of Permit #10060. Please accept my apologies for not having sent this money. Apparently the invoice was lost and I had no idea that the bill was not paid.

Thank you.

Very truly yours,

Harry F. LeMoyne

Harry F. LeMoyne

HFL/ps
Enclosure

P. S. Several months ago I filed an application for Mr. Joseph Burden to appropriate Spring waters in Gooding County for use on the Crystal Springs Ranch. I have not heard anything on this application and wondered if you could give me a status report. Thank you.

36-7033
Wtr Rights
7-11-68

36 7033

August 5, 1968

Re: Application No. 36-7033
Joseph L. Burden

Jim Simpson
Department of Fish and Game
600 Walnut Street
Boise, Idaho

Dear Mr. Simpson:

Pursuant to your request we are forwarding a copy of the above referenced application. We would appreciated your views and comments on this application as it may be of interest to your department.

Please contact us if we may be of further assistance.

Very truly yours,

Donald W. McEldowney
Appropriation Examiner

DWM:ks

Enclosure: Copy of application

36 7033

July 16, 1968

Re: Permit No. 36-7033
Joseph L. Burden

Wendell Irrigationist
Wendell,
Idaho 83355

Gentlemen:

Enclosed you will find a legal notice which we wish to have published once a week for two consecutive weekly issues of your newspaper. We have inserted the publication dates allowing ample time for you to submit us a galley proof for review before publication.

After sending us a galley proof, proceed with the publication on the dates we have inserted assuming the notice is correct. If we have any corrections, we will notify you before the first publication date. If you can not publish the notice on the proposed dates please contact us immediately.

An affidavit of publication must be submitted to the Department of Reclamation, along with the publication bill. In order to receive payment, the following certification must appear on the bill:

> I hereby certify that the foregoing account is just and correct, that the amount claimed is legally due, after allowing all just credits, and that no part of same has been paid.

_____
Signature of claimant

Very truly yours,

Donald W. McEldowney
Appropriation Examiner

DWM:kh

Enclosure

36 7033

Form 3

NOTICE OF APPLICATION FOR WATER

Notice is hereby given that Joseph L. Burden, c/o H.F. LeMoyne, 1130 awndale Drive, Twin Falls, Idaho has on July 10, 1968 applied for permit to divert ~~xxxxx~~ 50 cubic feet per second ~~acre feet~~ of water from spring a tributary of Snake River under application No. 36-7033. Water will be diverted by headbox and pipe within the Lot 3 Sec. 12, Twp. 9 S., Rge. 15 E., B.M. in Gooding County and is to be used from January 1 to December 31 for fish propagation in SE¼SE¼ Sec. 12, Twp. 9 S., Rge. 15 E., B.M.

Any protest against this application must be filed with the Department of Reclamation within ten days from the last date of publication of this notice.

R. KEITH HIGGINSON
State Reclamation Engineer

Published in the Wendell Irrigationist, on July 25th and August 1st.

36 7033

**Le Moyne Realty**
1130 LAWNDALE DRIVE
PHONE 208 733-0874
TWIN FALLS, IDAHO
83301



July 8, 1968

RECEIVED
JUL 10 1968
Department of Reclamation

Donald W. McEldowney, Appropriation Examiner
Department of Reclamation
State House
Boise, Idaho 83707

Dear Mr. McEldowney:

I am herewith enclosing a check from Mr. Burden in the amount of $100 as filing fee for 50 cubic second feet of water of Crystal Springs. I am also enclosing the application for permit which has been completely filled out.

The engineering for the actual construction of the raceways, etc. has not been completed and it is my understanding that this would not be normal until the application has been approved. If any further information is necessary at this time, please advise me.

Thank you.

Very truly yours,

Harry F. LeMoyne

HFL:al
enclosures

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