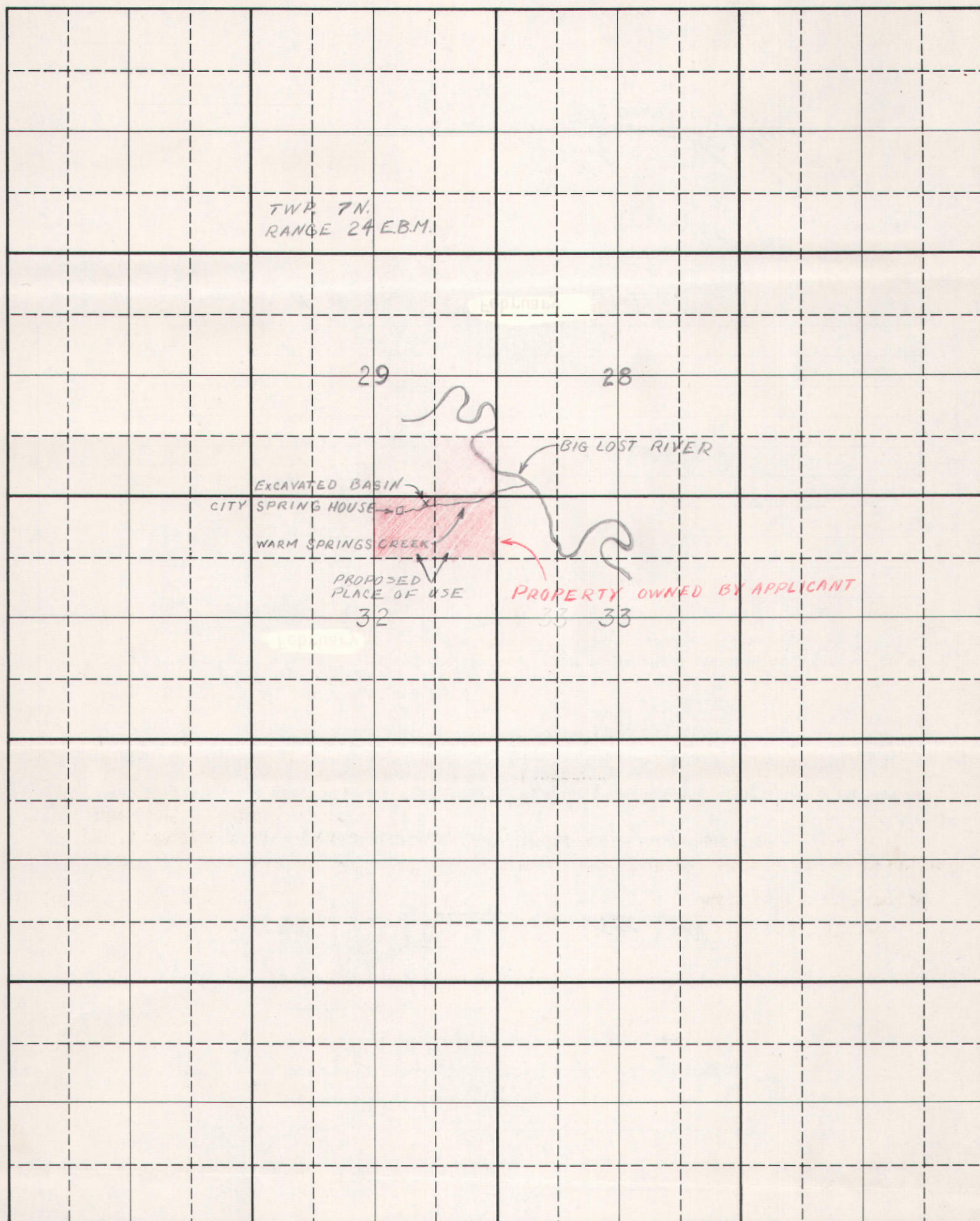


11. Map of proposed project: show clearly the proposed point of diversion, place of use, section number, township and range number.



Scale: 2 inches equal 1 mile

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

*John L. Powers*  
(Applicant)

RECEIVED

JAN 13 1974

Department of Water Resources  
Eastern District Office

**NOTICE OF APPLICATION  
FOR WATER PERMIT**

Notice is hereby given that John L. Powers, 211 N. Main, Mackay, Idaho has on 12-17-74 submitted Application No. 34-7088 for a permit to appropriate 0.2 cubic feet per second of water from a spring tributary of Warm Springs Creek by means of pump and pipeline within the NW $\frac{1}{4}$ NE $\frac{1}{4}$ , Sec. 32, T. 7N, R. 24E, B.M., Custer County; to be used from Apr. 1 to Oct. 31 for the irrigation of 30 acres within the N $\frac{1}{2}$ NE $\frac{1}{4}$ , Sec. 32 T. 7N. R. 24E, B.M.

If issued, this permit will be subject to all prior water rights. Protests against the granting of the permit must be filed with the Idaho Department of Water Resources, 1515 Lincoln Road, Idaho Falls, Idaho, 83401 on or before January 13, 1975.

R. KEITH HIGGINSON  
Director

Published in the Mackay Miner,  
Mackay, Idaho on December 26,  
1974 and January 2, 1975.

**Affidavit of Publication**

STATE OF IDAHO

ss.

County of Custer

I, MARGARET PARKS the  
PUBLISHER

of The MACKAY MINER, a weekly newspaper of General Circulation published weekly and entered in the Post Office Mackay, Idaho, continuously since February 6, 1906, do solemnly swear that a copy of the notice, as per clipping attached, was published weekly in the regular and entire issue of said newspaper and not in any supplement thereof, for 2

                     consecutive weeks commencing with the issue dated

Dec 26, 1974  
and ending with the issue dated

Jan 2, 1975

Margaret Parks

Subscribed and sworn to before me this 9th day of

Jan, 1975

Rebecca Burstad  
Notary Public

10/26/77 my com exp.  
MICROFILMED

STATE OF IDAHO  
DEPARTMENT OF WATER RESOURCES  
**BENEFICIAL USE FIELD REPORT**

**RECEIVED**  
MAY 06 1991

**A. GENERAL INFORMATION**

Permit No. 34-2147 Department of Water Resources

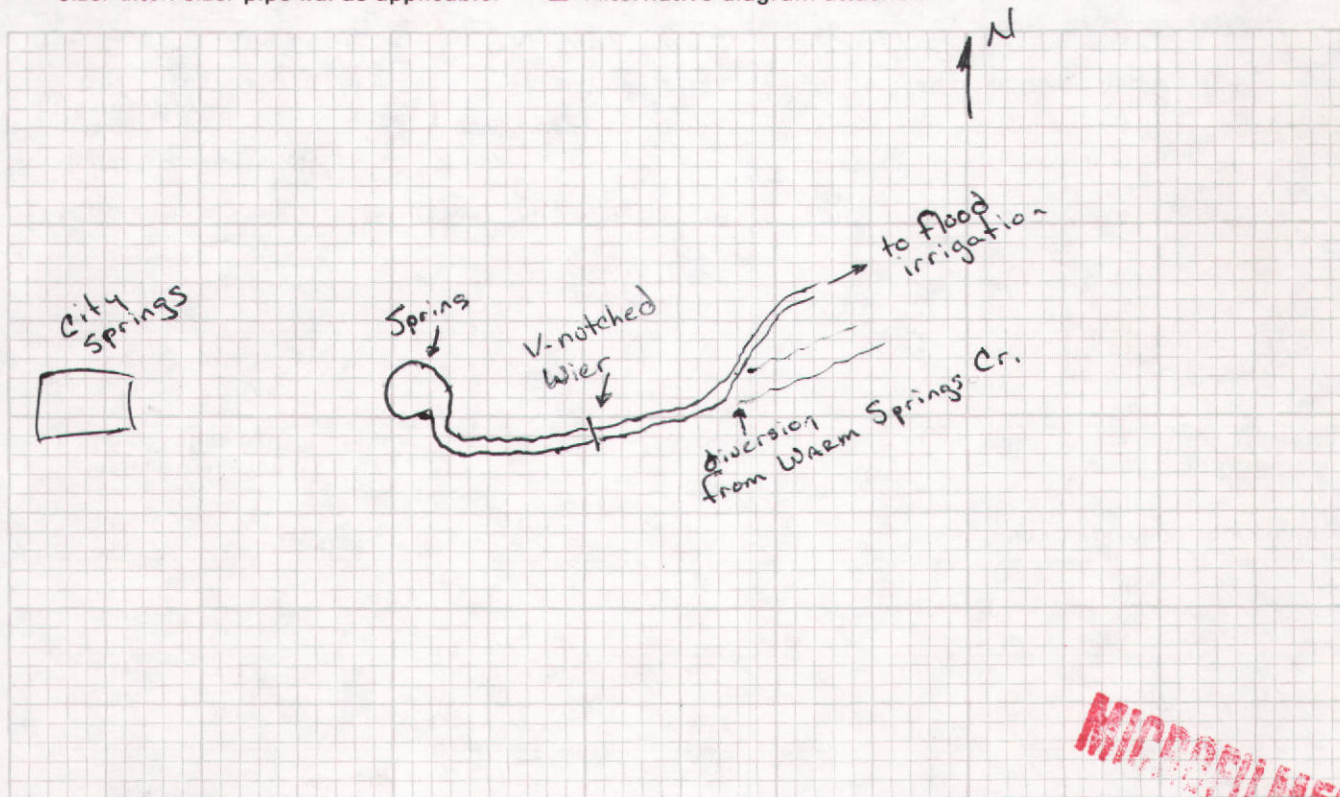
1. Owner: John Powers Phone No. 588-3358  
Current Address: P.O. Box 493 MACRAY, ID 83251  
2. Accompanied by: John Powers EXAM. DATE: 9-11-90  
Address: \_\_\_\_\_ Phone No. \_\_\_\_\_  
Relationship to Permit Holder: Same  
3. Source: John Powers' Spring tributary to Warm Spring Cr.

**B. OVERLAP REVIEW**

1. Other water rights with same place of use: 34-2147 ☐ Copies Attached  
2. Other water rights with same point of diversion: 34-2147 ☐ Copies Attached ☐ Copies of Field Exam's Attached

**C. SYSTEM DESCRIPTION**

1. **Diversion System Diagram:** Indicate all major components and distances between components. Indicate weir size/ditch size/pipe i.d. as applicable. ☐ Alternative diagram attached



Scale: 1" = \_\_\_\_\_

2. ☒ Copy of U.S.G.S. Quadrangle Attached Showing location(s) of point(s) of diversion and place(s) of use (required). ☐ Aerial Photo Attached (required for irrigation of 10 acres or more).  
☒ Photo of Diversion and System Attached (required for all but single household domestic groundwater, and stockwater).

34-7088

T7N

R

2

4

E

L3

A-96  
J.L. POWERS

Grazing

L2

L1

28

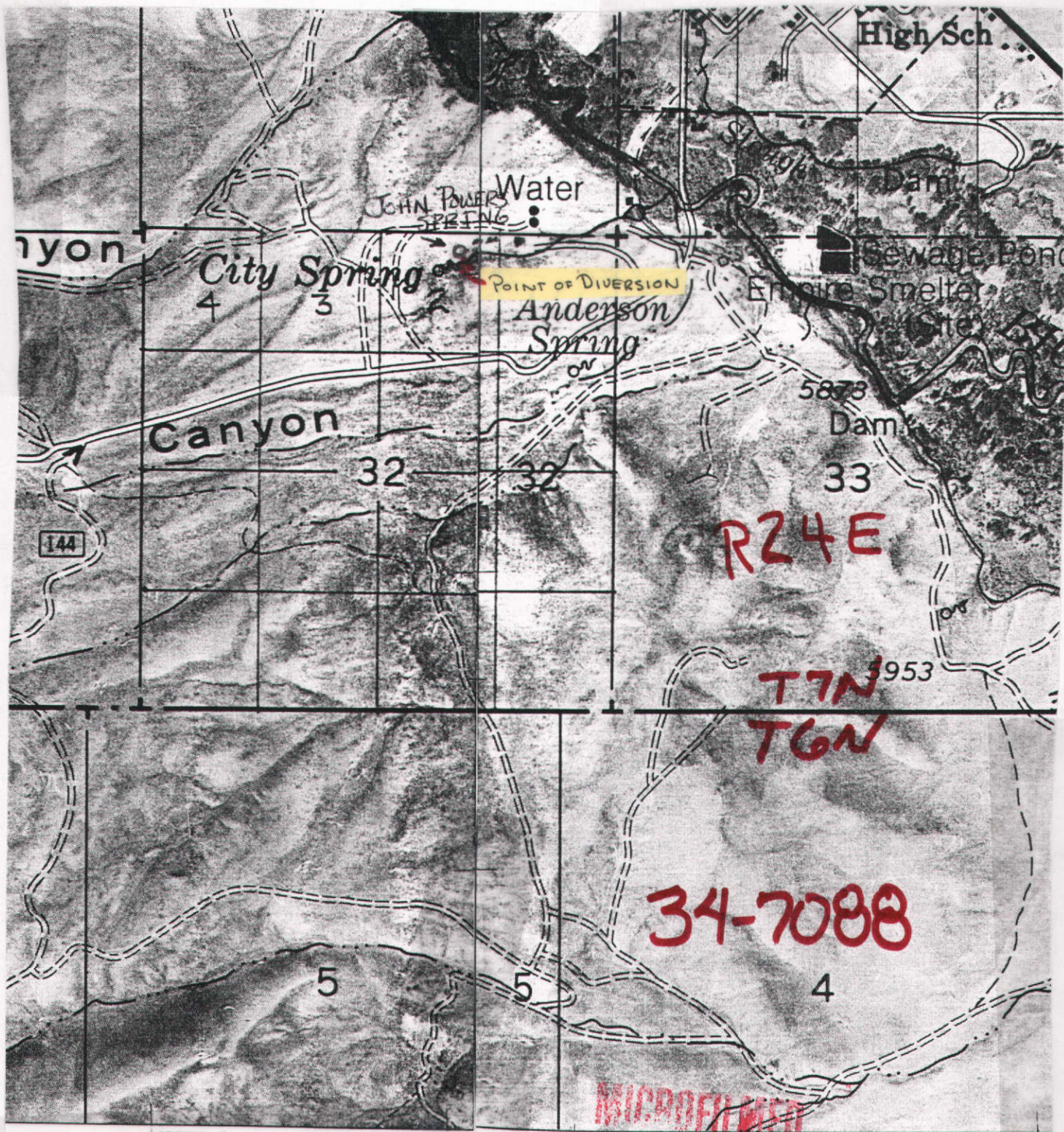
32

33

MICROFILMED

JAN 15 1992

Powers  
34-7088

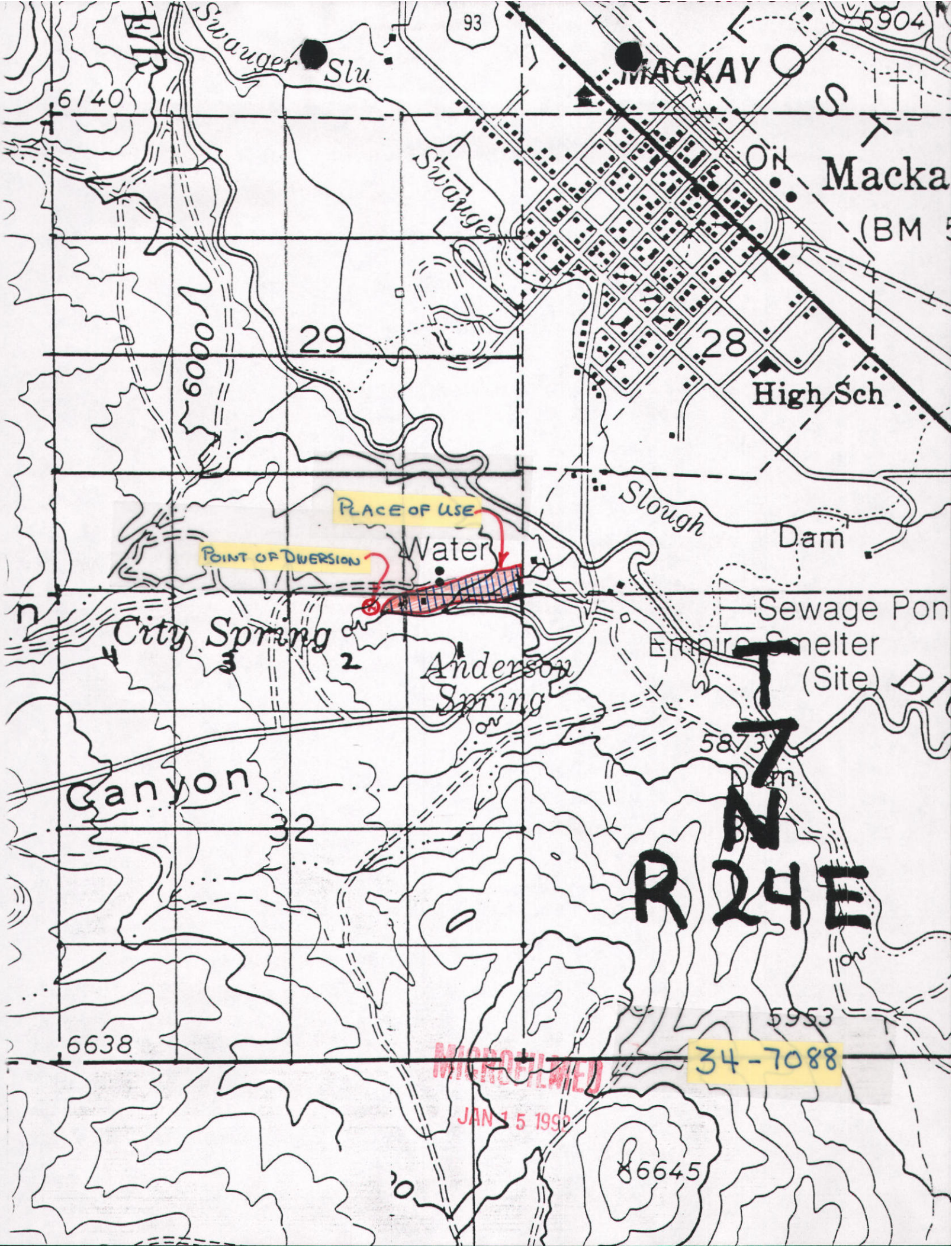


288000m E.

113°37'30"

600 000 FEET

JAN 15 1992



PLACE OF USE

POINT OF DIVERSION

Water

City Spring

Anderson Spring

Canyon

Sewage Pond  
Empire Smelter (Site)

T  
7  
N  
R 24 E

MICROFILMED

JAN 15 1992

34-7088

34-7088  
Powers



SPRING  
←



Measuring  
Device

MICROFIMED  
JAN 15 1992

34-7088

POWERS



measuring  
device -  
V-notch  
Wier

Diversion from old stream bed



ALSO FILMED  
JAN 15 1992

34-7088



Place  
of  
Use

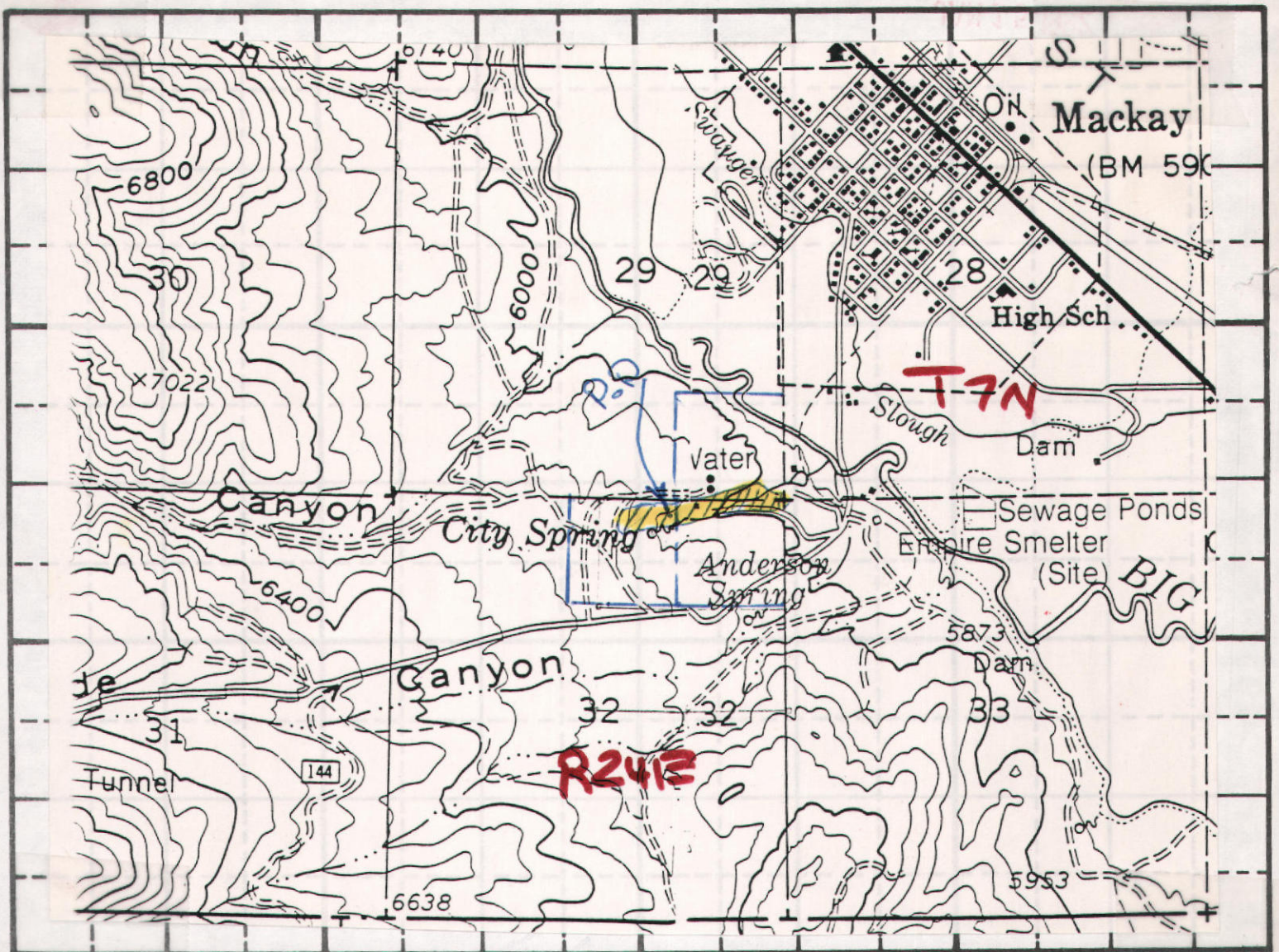


Reservoir

MICROFILMED  
JAN 15 1992

Complete the following map by showing land and point of diversion as proposed by this amendment.

Show 40-acre subdivisions, townships, ranges and ditches.



Scale: 2 inches equal 1 mile.

That no one will be injured by such change, and that such change will be made at permit holder's own risk.

Signed at Boise, ID, this 8 day of February, 19 89.

John L. Preece  
(Signature)

FOR DEPARTMENT USE ONLY

Preliminary check by TJ. Fee = \$20.00

Received by CP Date 2/8/89

Publication prepared by \_\_\_\_\_ Date \_\_\_\_\_

Published in \_\_\_\_\_

Publication dates \_\_\_\_\_

ACTION OF THE DEPARTMENT OF WATER RESOURCES

I, \_\_\_\_\_, of the Department of Water Resources hereby

Witness my hand this \_\_\_\_\_ day of \_\_\_\_\_, 19 \_\_\_\_\_

**MICROFILMED**  
**JAN 15 1992**

A-96  
J.L. POWERS

24 28

32 33

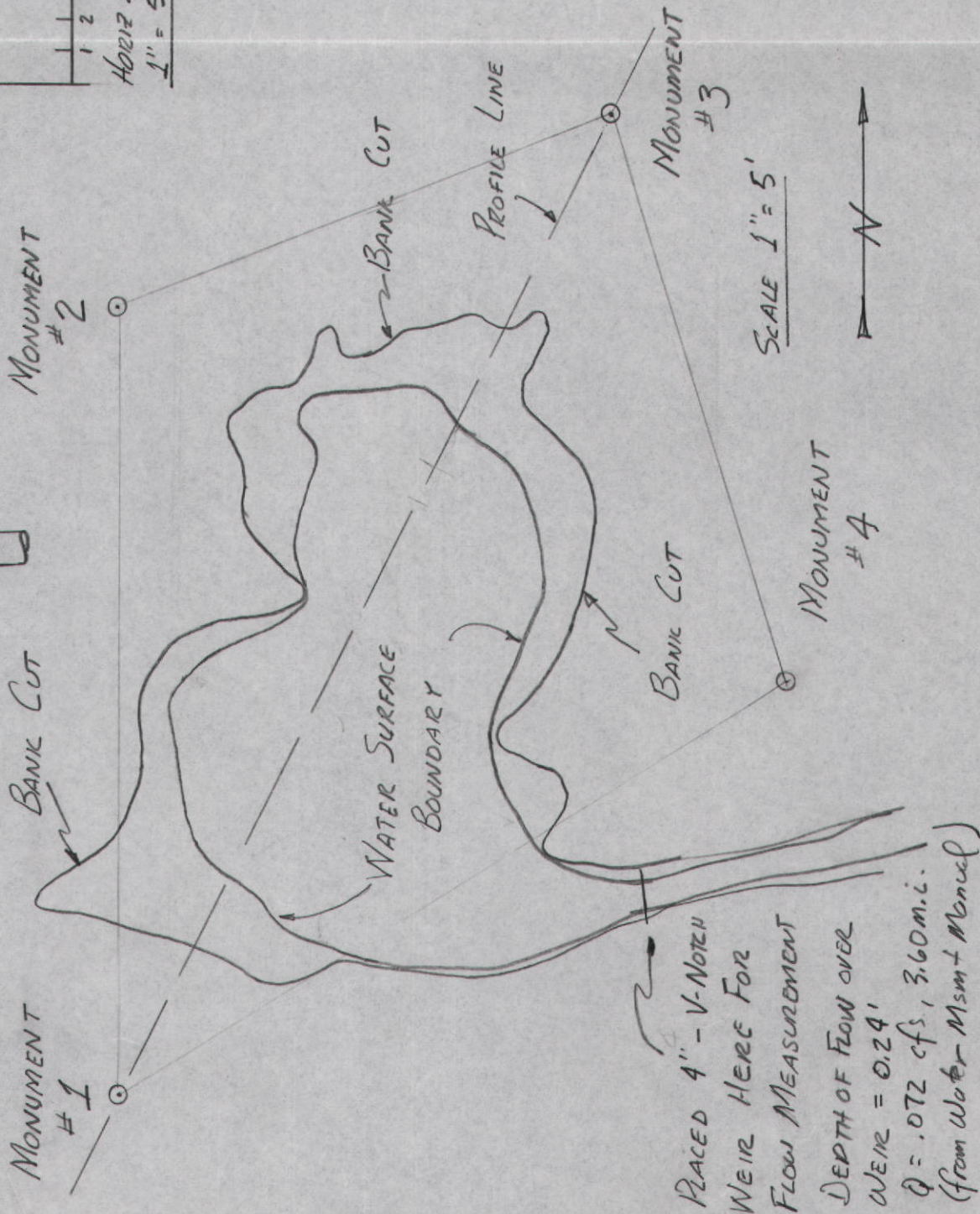
RECEIVED

JAN 15 1992

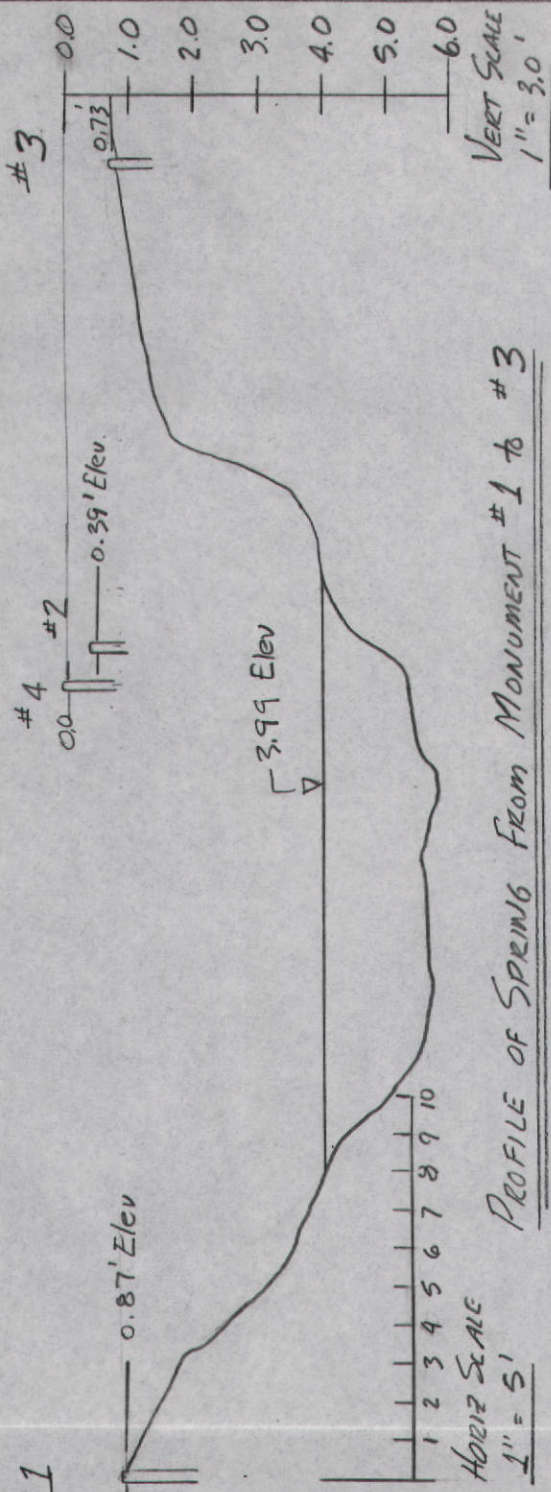
1978

- BRASS CAPS ARE MARKED WITH THE;
- MONUMENT NUMBER
- DATE: 8-27-82
- IDWR

A hand-drawn diagram illustrating a pipe installation. A horizontal line represents the ground level. Below this line, a vertical pipe is shown. The pipe is labeled "2-1\" galvanized pipe. (18\" ±)". The pipe is surrounded by a material labeled "Concrete". At the top of the pipe, a "Brass Cap." is shown, indicated by an arrow. The diagram is labeled "#1" in the top right corner.



PLACED 4" - V-NOTE  
WEIR HERE FOR  
FLOW MEASUREMENT  
DEPTH OF FLOW OVER  
WEIR = 0.24'  
 $Q = .072 \text{ cfs}$ ,  $3.60 \text{ m}^3/\text{s}$   
(from Water Mgmt. M.C.)



PROFILE OF SPRING FROM MONUMENT #1 to #3

# DISTANCES FROM MONUMENT TO MONUMENT

|    |    |    |   |        |   |    |    |    |   |        |
|----|----|----|---|--------|---|----|----|----|---|--------|
| #1 | to | #2 | - | 24.66' | ' | #1 | to | #3 | - | 34.32' |
| #2 | to | #3 | - | 16.13' |   | #2 | to | #4 | - | 23.88' |
| #3 | to | #4 | - | 18.15' |   |    |    |    |   |        |
| #4 | to | #1 | - | 29.40' |   |    |    |    |   |        |

RELATIVE ELEVATIONS OF MONUMENTS.

|                                  |   |                  |
|----------------------------------|---|------------------|
| #4                               | - | 0.00'            |
| #3                               | - | 0.73' (below #4) |
| #2                               | - | 0.39' "          |
| #1                               | - | 0.87' "          |
| H <sub>2</sub> O SURFACE 3.99' " |   |                  |

NW  $\frac{1}{4}$  NE  $\frac{1}{4}$  SEC 32, T. 7N, R. 24 E. B.M. POWERS SPRING MONUMENTS

Aug 27, 1982

IDAHO DEPT. OF WATER RESOURCES,

$\pi$  - Steve McCormick, IDWR  
 $\phi$  - Gerald Ramsay, IDWR

RECEIVED

OCT 7 1982

Department of Water Resources

Dave Tuttle

Photos of Povers Spring Monuments.  
from Stu McCormick, Eastern











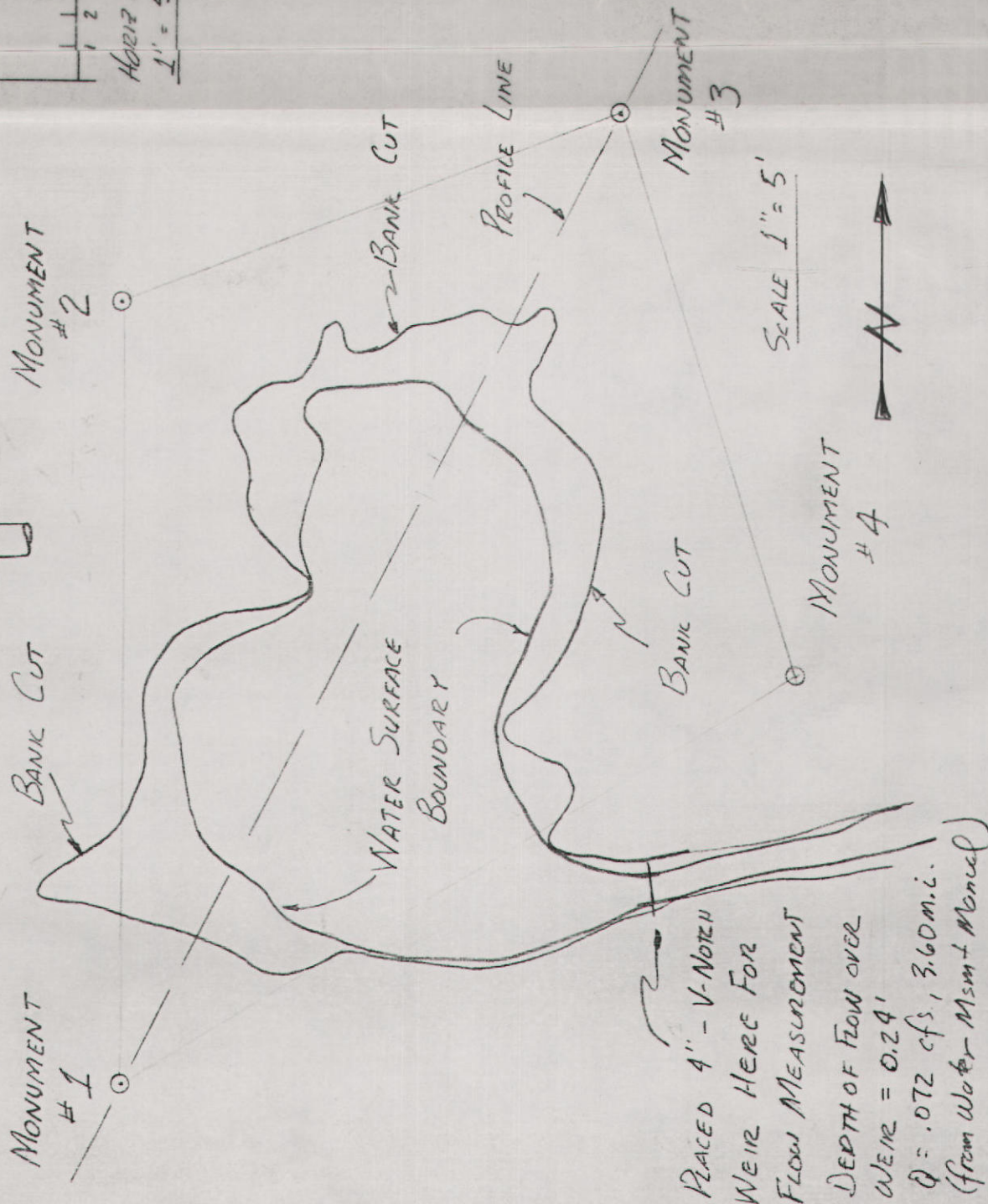






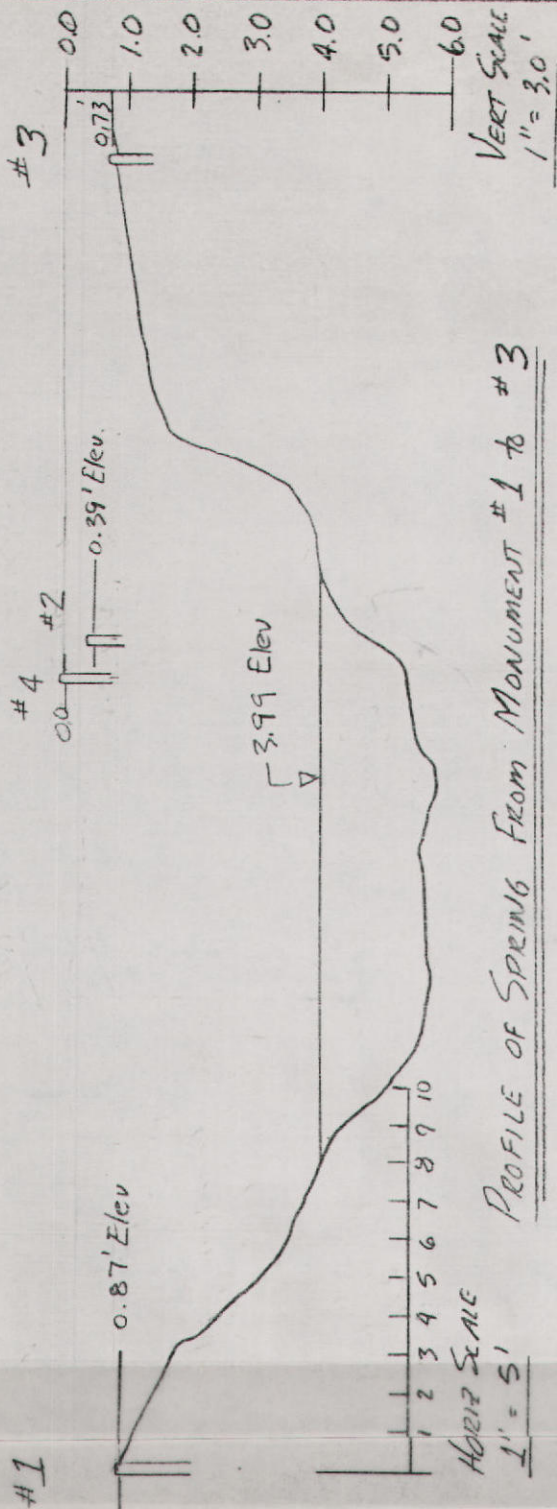
BRASS CAPS ARE  
MARKED WITH THE;  
- MONUMENT NUMBER  
- DATE: 8-27-82  
- IDWR

Brass Cap.  
ground level  
Concrete  
1" galvanized pipe.  
(18" ±)



Placed 4" - V-Notch  
Weir Here For  
Flow Measurement  
DEPTH OF FLOW OVER  
WEIR = 0.24'  
Q = .072 cfs, 3.60 m.i.  
(from water Msm + Moncel)

SCALE 1" = 5'  
N



PROFILE OF SPRING FROM MONUMENT #1 to #3

DISTANCES FROM MONUMENT TO MONUMENT

|          |        |          |        |
|----------|--------|----------|--------|
| #1 to #2 | 24.66' | #1 to #3 | 34.32' |
| #2 to #3 | 16.13' | #2 to #4 | 23.88' |
| #3 to #4 | 18.15' |          |        |
| #4 to #1 | 29.40' |          |        |

RELATIVE ELEVATIONS OF MONUMENTS.

|                          |                    |
|--------------------------|--------------------|
| #4                       | - 0.00'            |
| #3                       | - 0.73' (below #4) |
| #2                       | - 0.39' "          |
| #1                       | - 0.87' "          |
| H <sub>2</sub> O SURFACE | 3.99' "            |

POWERS SPRING MONUMENTS

AUG 27, 1982

IDAHO DEPT. OF WATER RESOURCES.

T - Steve McCormick, IDWR  
P - Gerald Ramsey, IDWR

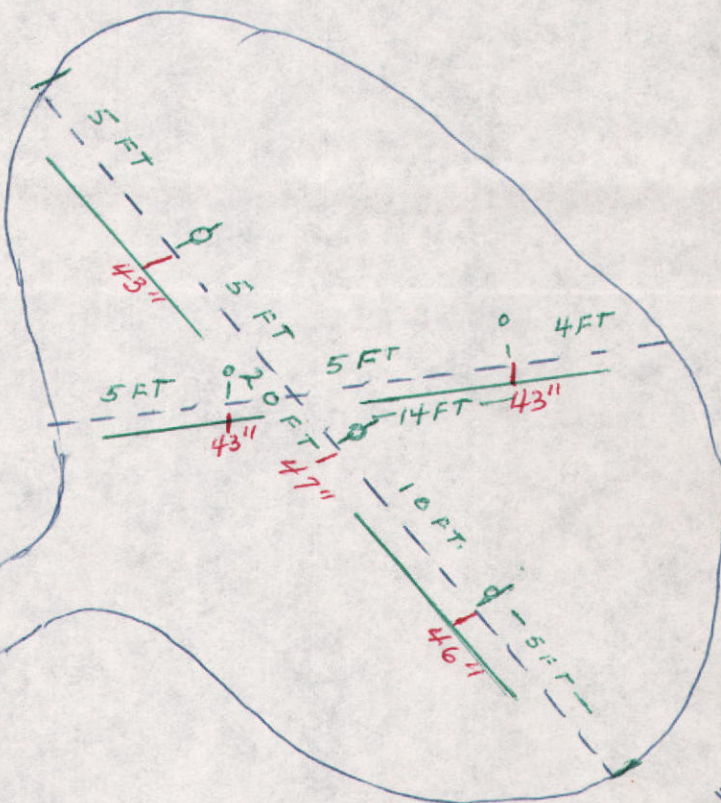
CALIFORNIA

SOUTH

MT.

WEST

WARM SPRINGS CREEK



○ POINTS OF MEASUREMENTS  
RED DEPTHS OF EXCAVATION  
AT POINTS ○

MICROFILMED

BIG LOST RIVER

State of Idaho  
Department of Water Resources

# WATER RIGHT LICENSE

WATER RIGHT NO. 34-07088

Priority: December 22, 1974

Maximum Diversion Rate:

0.20 CFS

Maximum Diversion Volume:

28.5 AF

This is to certify, that JOHN L. POWERS

P.O. BOX 493

MACKAY ID 832510000

has complied with the terms and conditions of the permit, issued pursuant to Application for Permit dated December 17, 1974; and has submitted Proof of Beneficial Use on September 6, 1988. An examination indicates that the works have a diversion capacity of .200 cfs of water from:

SPRING

tributary to BIG LOST RIVER

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

| <u>BENEFICIAL USE</u> | <u>PERIOD OF USE</u> | <u>RATE OF DIVERSION</u> | <u>ANNUAL VOLUME</u> |
|-----------------------|----------------------|--------------------------|----------------------|
| IRRIGATION            | 04/01 to 11/01       | 0.20 CFS                 | 28.5 AF              |

LOCATION OF POINT(S) OF DIVERSION: Lot 2(NENWNE), Sec. 32, Township 07N, Range 24E  
CUSTER County

PLACE OF USE: IRRIGATION

| <u>TWN</u> | <u>RGE</u> | <u>SEC</u> | <u>ACRES</u>    | <u>ACRES</u>  | <u>ACRES</u> | <u>TOTAL</u> |
|------------|------------|------------|-----------------|---------------|--------------|--------------|
| 07N        | 24E        | 29         | SESE 5          |               |              | 5            |
|            |            | 32         | Lot 1(NENE) 2.5 | Lot 2(NWNE) 2 |              | 4.5          |

Total number of acres irrigated:

9.5

CONDITIONS/REMARKS:

1. The maximum diversion volume is defined as the maximum allowable volume of water that may be diverted annually from the source under this right. The use of water confirmed by this right is limited to the amount which can actually be beneficially used. The maximum diversion volume may be adjusted to more accurately describe the beneficial use or to implement accepted standards of diversion and use efficiency.
2. This water right is appurtenant to the described place of use.
3. This right is subject to all prior water rights and may be forfeited by five years of non-use.
4. Modifications to or variance from this license must be made within the limits of Section 42-222, Idaho Code, or the applicable Idaho law.
5. A measuring device and lockable controlling works of a type acceptable to the Department shall be permanently installed and maintained as part of the diverting works.

JAN 15 1992

State of Idaho  
Department of Water Resources

# WATER RIGHT LICENSE

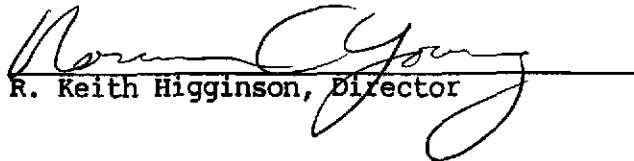
WATER RIGHT NO. 34-07088

CONDITIONS/REMARKS:

6. Use of water under this water right will be regulated by the watermaster of State Water District No. 34.
7. Any cleaning by mechanically or hydraulically powered equipment shall require prior approval by the Department.
8. No cleaning is authorized if the flow from the spring is 0.20 cfs or greater and must be discontinued when the flow from the spring exceeds that amount.
9. Any retaining wall constructed around the spring excavation must be approved by the Department prior to its construction.
10. The depth and dimensions of the spring excavation existing in 1982 shall not be increased by more than six inches at any point or in overall lateral dimension.

This license is issued pursuant to the provisions of Section 42-219, Idaho Code. Witness the seal and signature of the Director, affixed at Boise, this 20<sup>TH</sup> day of DECEMBER, 1991.

Acting for

  
R. Keith Higginson, Director

JAN 15 1992

BEFORE THE DEPARTMENT OF WATER RESOURCES  
OF THE STATE OF IDAHO

IN THE MATTER OF PERMIT NO. 34-7088 IN THE )  
NAME OF JOHN L. POWERS ) ORDER OF REINSTATEMENT  
\_\_\_\_\_ )

WHEREAS, the Department issued the above-captioned permit with the condition that proof of construction of works and application of water to beneficial use (proof of beneficial use) be submitted on or before September 1, 1988; and,

WHEREAS, the Department notified the permit holder by certified mail that proof was due and instructed the permit holder of the steps to be taken to submit the proof of beneficial use; and,

WHEREAS, on September 1, 1988 the permit lapsed for failure of the permit holder to submit proof of beneficial use; and,

WHEREAS, Section 42-218a of the Idaho Code provides that a permit may be reinstated upon a showing of reasonable cause within sixty days of the date of lapsing; and,

WHEREAS, the permit holder has provided a reasonable showing why the permit should be reinstated by submitting proof of beneficial use on September 6, 1988;

IT IS, THEREFORE, HEREBY ORDERED that Permit No. 34-7088 be REINSTATED and the priority advanced to December 22, 1974.

Dated this 19<sup>th</sup> day of October, 1988.

**MICROFILMED**

NOV 22 1988

  
L. GLEN SAXTON  
Chief, Operations Bureau

RECEIVED

SEP 06 1988

For Office Use Only  
Fee Received \$50.00  
Date 9/7/88  
Receipt # 2002493  
Receipt by CP  
Reviewed by JS  
Sent to region

STATE OF IDAHO

Department of Water Resources

DEPARTMENT OF WATER RESOURCES

PROOF OF BENEFICIAL USE

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

Permit No. 34-7088  
Name(s) of Permit Holder: John L. Potters  
Post Office Address: P.O. Box 493 Marking, Idaho 83251  
Telephone No. 588-3358

Source of Water: Spring  
Extent of Use:

Domestic (number of households) Stockwater (number and type of stock)  
Irrigation 16 acres (acres) Other/Remark

Total rate and/or volume for which proof is submitted 2 cts acre-feet

Show the date water was first diverted and beneficially used under this permit: May 1976

Measuring Device: Required? ☒ Yes ☐ No  
Installed? ☒ Yes ☐ No  
Fee enclosed \$ 50.00  
(See License Examination Fee Schedule)

Flow Measurement Port: Required? ☐ Yes ☒ No  
Installed? ☐ Yes ☐ No

Person to contact to accompany the Department representative during the field examination:

John L. Potters 588-3358  
(Name) (Telephone Number)  
P.O. Box 493 Marking, Idaho 83251  
(Address)

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

Aug 31, 1988 NOV 22 1988  
Date Signature of Permit Holder (and title, if appropriate)

RECEIVED

NOV 6 1986

Idaho Department of Water Resources  
Eastern District Office

STATE OF IDAHO  
DEPARTMENT OF WATER RESOURCES

REQUEST FOR EXTENSION OF TIME

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

For Office Use Only  
\$15 FEE Receipted by MD  
Date 11-7-86  
Receipt # 39932

RECEIVED

NOV 10 1986

Department of Water Resources

The Idaho Department of Water Resources will consider this form as a request that the permit holder(s) be granted an additional period of time in which to complete development of a water right under the provisions of Section 42-204, Idaho Code.

Permit No. 34-7088

Name(s) of Permit Holder: John L. Powers

Post Office Address: Gen. Delivery, Mackay Id 83251

Telephone No. 588-3358

Date Proof Is Due: 1 April 1987

Describe what work has been completed toward the development of this water right: Excavation of  
(This must be filled out! If no work has been completed, show "none".)

Spring

Costing \$ 500<sup>00</sup>

The permit holder(s) has been unable to complete the remainder of the work for the following reasons:

Litigation cost (city of Mackay tried to have court force permit  
Holder to fill excavation)

Permit holder(s) request an extension to 1 April, 1992. John L. Powers  
(1 yr. minimum) (Signature)\*

FEE: \$15.00

\*IF OTHER THAN PERMIT HOLDER,  
POWER OF ATTORNEY MUST BE SUPPLIED.

RECEIVED

NOV 22 1986

ACTION OF THE DEPARTMENT OF WATER RESOURCES

IT IS HEREBY ORDERED that the above request for extension of time be APPROVED and the time within which to submit proof of beneficial use is extended to September 1, 1988. IT IS FURTHER ORDERED that the permit be conditioned as follows: Prior to diversion and use of water under this permit the permit holder shall install a measuring device acceptable to the Director.

Signed this 7<sup>th</sup> day of November, 19 87.

J. Glen Saxton  
Chief, Operations Bureau

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

IN THE MATTER OF APPLICATION FOR PERMIT NO. )  
34-7088 IN THE NAME OF JOHN L. POWERS )

---

MEMORANDUM DECISION  
AND  
ORDER ON REMAND

On December 17, 1974, John L. Powers submitted an application for permit No. 34-7088 to the Department of Water Resources (IDWR). Following the required publication of notice, the City of Mackay filed a protest against approval of the application. A hearing was held to consider the matter on September 19, 1977, and a Memorandum Decision and Order approving the permit with conditions was issued on March 8, 1978 and amended on April 26, 1979. The decision was appealed to the District Court of the Seventh Judicial District, and on June 17, 1981, the court issued a Memorandum Decision and Judgment setting aside the IDWR order approving application for permit No. 34-7088. The matter was remanded to IDWR for a more precise definition of the works authorized to develop the spring area that constitutes the source of water for the application, or the imposition of a condition implementing the excavation depth caution contained in the IDWR order.

A stipulation was entered into on September 29, 1981, between the applicant, protestant, and IDWR detailing the procedure to be followed in determining the nature of the works authorized. On October 5, 1981, the applicant filed a proposal for excavation. On October 22, 1981, the protestant filed a response to the proposal for excavation. On November 1, 1981, the protestant requested that a hearing be set to consider the matter of the proposed excavation. On February 17, 1982, a hearing was held in Idaho Falls to consider the matter of the proposed excavation. The applicant, John L. Powers, was present and represented by Michael D. Crapo and Kent W. Foster, attorneys at law. The protestant was represented by Oval L. Caskey, Rowsel Ellis and Ted Springer, attorney at law.

Arguments were made on the issues of:

1. Permissible depths to which the spring could be cleaned and the methods to be allowed in the cleaning of the spring.
2. The need for measurement of the rate of flow from the spring.

RECEIVED  
MAY 1 1982

Agreement was stipulated on the record to the following:

1. The spring excavation as it existed in both depth and lateral dimensions at the time of the hearing was adequate and satisfactory to both parties.
2. Monuments will be placed under the supervision of IDWR to reference the depth and lateral dimensions of the excavation.
3. Department employees are authorized to enter the property of both applicant and protestant as needed to administer application 34-7088 and any permit subsequently issued.
4. That the following are part of the record:
  - (a) Stipulation -- procedures on remand -- dated 9/29/81.
  - (b) Proposal for excavation -- dated 10/5/81.
  - (c) Response of protestant -- dated 10/22/81.
  - (d) Applicant's reply -- dated 11/1/81.
  - (e) Request for hearing -- dated 11/1/81.
  - (f) Negotiation letter from Michael Crapo -- dated 1/15/82.
5. Waiver of a proposed decision for the hearing on remand.

Synopsis of Arguments:

APPLICANT: The present maximum depth of the spring is about 4 feet. Although the present dimensions are adequate, the precise maintenance of existing dimensions during necessary cleaning of the spring will be impossible. The applicant would like the latitude of deepening the excavation to as much as 5 feet deep using a backhoe, shovel or hydraulic pump methods.

He would like the right to build a retaining wall of permanent materials to reduce the need to clean the springs, but does not want to be required to build the wall.

Measurement of spring flow is not needed because the decision of IDWR as upheld by the court found that no interference exists between the applicant's spring and that of the protestant.

PROTESTANT: The present dimensions of the spring are satisfactory, but the depth and lateral dimensions should not be increased by cleaning. Cleaning should only be accomplished by hand without hand tools unless an IDWR inspector is present. Backhoes or hydraulic pumps should not be used in cleaning to prevent disturbance to the walls of the spring.

A retaining wall of permanent material should be required around the spring.

The spring flow should be measured, even at the protestant's expense, to determine when cleaning is needed and the effect of cleaning on the status quo.

### FINDINGS OF FACT

1. The depth and lateral dimensions of the spring excavation existing on the day of the hearing are acceptable to both parties.
2. Uncontrolled cleaning could increase the dimensions of the spring from those in existence on the day of the hearing.
3. The applicant stated that cleaning would be done using either a shovel, backhoe, or hydraulic pump. The type of tool, at least among those identified by the applicant, used to clean the spring will not matter as long as the dimensions are not increased.

### CONCLUSIONS OF LAW

1. The applicant is entitled to a permit to appropriate water from the spring excavation as it existed on the day of the hearing.
2. The applicant is entitled to clean and maintain the spring as necessary to receive the water applied for as long as cleaning and maintaining does not increase the dimensions of the spring excavation and does not reduce the flow of the protestant's spring.
3. Flow from the protestant's spring will not be reduced by cleaning of the applicant's spring if the excavation is not significantly increased in lateral size or depth.

### ORDER

The Memorandum Decision and Order of IDWR issued on March 8, 1978, and as amended on April 26, 1979, is hereby readopted with the following additional conditions:

1. The depth and dimensions of the spring excavation existing on the day of the hearing on February 17, 1982 shall not be increased by more than 6 inches at any point or in overall lateral dimension.
2. Permanent monuments shall be placed to reference the lateral boundaries and depth of the existing excavation. IDWR shall approve the construction and location for the monuments prior to their installation and measure and document their location and elevation with respect to the spring excavation. The cost of monument construction shall be shared equally by the parties.
3. Cleaning may be accomplished by any of the methods outlined by the applicant at the hearing including backhoe, shovel or hydraulic pump methods. If mechanically or hydraulically powered equipment is used to clean the spring excavation, the applicant shall notify IDWR five days in advance of the work being done so that a supervisor can be provided by IDWR; or IDWR, at the

Director's option, may designate a qualified supervisor to be present while cleaning work is done. The cost of said supervision shall be shared equally by applicant and protestant. Cleaning with hand tools shall not require prior notice nor direct supervision during the cleaning process, but the protestant may request that an inspection be made after the work is done. The inspection will be made either by IDWR or a qualified inspector selected by IDWR, but paid jointly by the applicant and protestant.

4. No cleaning is authorized if the flow from the spring is 0.20 cubic per foot per second or greater and must be discontinued when the flow from the spring exceeds that amount.

5. A retaining wall may be constructed around the spring excavation. Plans for a retaining wall must be approved by IDWR prior to its construction.

6. A measuring device of a type acceptable to IDWR shall be installed and maintained on the spring outflow channel, upstream from its confluence with Warm Springs Creek.

7. The Director of IDWR retains jurisdiction of this permit. Failure to adhere to the conditions of approval shall constitute cause for the Director to void the permit.

8. Proof of construction of works and application of water to beneficial use shall be submitted to IDWR on or before April 1, 1987.

#### ANALYSIS

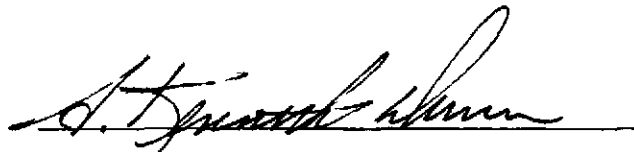
IDWR does not normally exercise jurisdiction over the cleaning and maintenance of springs. It does so in this instance because upon remand, the court directed IDWR to condition the permit to control the size and depth of the excavation. Cleaning and maintaining have the potential of increasing the dimensions of the excavation and perhaps thereby disturbing the barrier layer of clay separating the parties' springs.

Maintenance of the dimensions of the spring excavation as it existed on the day of the hearing, appears to be the objective of both parties. To the extent that cleaning becomes necessary from time to time, the maintenance of any exact dimension becomes impractical. Arguments presented at the hearing on remand indicate that part of the excavation terminates on solid rock. It is unlikely that the excavation at these points will be substantially deepened using the tools identified by the applicant. Likewise, it seems unlikely that the blue clay layer which apparently forms the separation between the applicant's and protestant's springs will be disturbed by a modest additional

excavation. Thus, to give the applicant the needed flexibility to clean the spring, a 6-inch tolerance is herein approved. However, it is not the intent of this approval to allow the excavation to be deepened and expanded 6-inches in every dimension, but only at random points incidental to the cleaning operation.

Measurement of the flow from the springs is necessary to determine the need for cleaning and the effectiveness of the cleaning operation. While this measurement could be done with a portable current meter, the repeated need for measurement and the low cost of a weir or flume for measuring surface flows makes the requirement of a permanently installed measuring device practical.

Signed at Boise, Idaho on this 19<sup>th</sup> day of April, 1982.

A handwritten signature in cursive script, appearing to read "A. Kenneth Dunn", written over a horizontal line.

A. KENNETH DUNN, Director

**MICROFILMED**

BEFORE THE DEPARTMENT OF WATER RESOURCES  
OF THE  
STATE OF IDAHO

IN THE MATTER OF APPLICATION FOR  
PERMIT NO. 34-7088 IN THE NAME  
OF JOHN L. POWERS

---

CERTIFICATE OF MAILING

I HEREBY CERTIFY THAT ON this 21st day of April, 1982, a true and correct copy of the foregoing MEMORANDUM DECISION AND ORDER were mailed, postage prepaid to:

John L. Powers  
211 North Main  
Mackay, ID 83251

Oval L. Caskey, Mayor  
City of Mackay  
City Hall  
Mackay, ID 83251

Kent W. Foster & Michael D. Crapo  
HOLDEN, KIDWELL, HAHN & CRAPO  
P. O. Box 129  
Idaho Falls, ID 83401

Powse1 Ellis  
Box 55  
Mackay, ID 83251

Ted Springer  
HOPKINS, FRENCH, CROCKETT & SPRINGER  
P. O. Box 1219  
Idaho Falls, ID 83402

  
\_\_\_\_\_  
RITA I. FLECK  
Sr. Secretary  
Idaho Department of Water Resources

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

IN THE MATTER OF PERMIT NO. 34-7088  
IN THE NAME OF JOHN L. POWERS

ORDER AMENDING MEMORANDUM DECISION  
AND ORDER OF MARCH 8, 1978

WHEREAS, on March 9, 1978, Application for Permit No. 34-7088 was approved;  
and,

WHEREAS, on March 28, 1978, Mr. Ted C. Springer, attorney for the protest-  
ant, City of Mackay, requested a rehearing for several reasons, one of which is to  
allow the protestant opportunity to review the data gathered by the Department  
during a field visit made after the hearing; and,

WHEREAS, a copy of the information gathered by the Department has been  
sent to the applicant and the protestant and time has been allowed for written  
arguments concerning the additional information; and, written responses were  
received from both the applicant and the protestant; and,

WHEREAS, the March 8, 1978 Memorandum Decision and Order concluded in  
error that the City of Mackay was entitled to all the flow of the "upper city"  
spring with the exception of 0.10 cubic feet per second of water; and,

WHEREAS, the City (Village) of Mackay was decreed in the case of Arthur  
H. Woodman et ux vs. Jake Millonig et al the right to all the water of a certain  
warm spring known as Warm Springs Creek with the exception of 0.10 cubic feet per  
second of water; and,

WHEREAS, all of the other issues raised in the Petition for Rehearing  
by the City of Mackay were considered by the Director in reaching his March 8,  
1978 decision; and,

WHEREAS, after the submission of the written documents by the applicant  
and protestant, the Director has decided pursuant to Rule 11.2 of the Department's  
Rules of Practice and Procedure that the issues on rehearing can be determined  
without a formal hearing;

THEREFORE, it is hereby determined pursuant to Rule 11.2 of the Depart-  
ment's Rules of Practice and Procedure that no further hearing is necessary and  
further that the March 8, 1978 decision is affirmed with the exception of Con-  
clusion of Law No. 1 which is amended as follows:

**MICROFILMED**

1) The City has a right to use all of the flow of that certain spring known as Warm Springs Creek with the exception of 0.10 cubic feet per second of water which must be supplied to the applicant.

Dated this 26 day of April, 1979.

A handwritten signature in dark ink, appearing to read "A. Kenneth Dunn", is written over a horizontal line.

A. KENNETH DUNN

Deputy Director

DEPARTMENT OF WATER RESOURCES

STATE OF IDAHO

COUNTY OF ADA

CERTIFICATE OF MAILING

I HEREBY CERTIFY That I have on this date served a true and correct copy of the foregoing ORDER AMENDING MEMORANDUM DECISION AND ORDER OF MARCH 8, 1978 by depositing a copy thereof in the United States mail postage pre-paid and addressed to:

John L. Powers  
211 North Main  
Mackay, ID 83251

Ted C. Springer  
P. O. Box 409  
Challis, ID 83226

Kent W. Foster  
HOLDEN, KIDWELL, HAHN & CRAPO  
P. O. Box 129  
Idaho Falls, ID 83401

City of Mackay  
City Hall  
Mackay, ID 83251

Dated this 27<sup>th</sup> day of April, 1979.

Rita Fleck

On this 27<sup>th</sup> day of April, 1979, personally appeared before me the signer of the above instrument, who duly acknowledged to me that she executed the same.

Katherine J. Weaver  
Notary Public  
Residing at Burien

My commission expires: 6-15-1981

RECORDED

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

IN THE MATTER OF APPLICATION FOR PERMIT  
NO. 34-7088 IN THE NAME OF JOHN L. POWERS

---

MEMORANDUM DECISION  
AND ORDER

The matter of water rights held by John Powers and the City of Mackay on Warm Springs and Warm Springs Creek first came before the Department of Water Resources on July 24, 1974, when the Seventh District Court of the State of Idaho requested the Department, pursuant to Section 42-701, Idaho Code, conduct an examination of certain waters in the Northeast quarter (NE $\frac{1}{4}$ ), Sec. 32, Twp. 7N, Rge. 24E, B.M., Custer County, Idaho, known as Warm Springs Creek.

A preliminary investigation was conducted on July 24, 1974, and a more extensive investigation by the Department was conducted on August 12 and 13, 1974. This study included an examination of the City of Mackay Spring and the John Powers Spring. This study resulted in a proposed finding of water rights which was submitted to the court on January 23, 1975.

On December 17, 1974, the Department received an application from John Powers requesting the appropriation of an additional 0.20 cubic feet per second from the springs located within the NW $\frac{1}{4}$ NE $\frac{1}{4}$ , Sec. 32, Twp. 7N, Rge. 24E, B.M., Custer County, for the irrigation of 30 acres of land.

Notice of this application was published in the Mackay Miner on December 26, 1974 and January 2, 1975, and subsequently was protested by the City of Mackay through their attorney, Ted Springer.

A hearing in the matter was first scheduled on April 29, 1975, but was continued pending court action. On May 24, 1976, the City of Mackay requested further postponement of the hearing to allow the City an opportunity to seek technical assistance in conducting further studies on the City's spring and surrounding area. Pursuant to the City's request, the Department conducted an additional study on August 23 and 24 of 1975. The results were submitted to the City on September 3, 1976.

In November of 1976, Sherl Chapman, a consulting geologist, was retained by the City of Mackay to conduct another study. Mr. Chapman's conclusions were completed in January of 1977 and a report was submitted to the Department for review in September of 1977. A hearing before the Department was then scheduled for September 19, 1977. The applicant was present and represented by Kent W. Foster,

**MICROFILM**

Attorney at Law, of the firm Holden, Holden, Kidwell, Hahn and Crapo, of Idaho Falls, Idaho. The protestant, the City of Mackay, was represented by Ted C. Springer, Attorney at Law, Challis, Idaho.

Testimony and evidence was submitted on behalf of both the applicant and protestant. The Department has taken the matter under consideration and having reviewed all pertinent information, the Director of the Department of Water Resources makes the following Findings of Fact, Conclusions of Law, and Order:

FINDINGS OF FACT

1. The applicant is holder of Right No. 34-0959 representing 0.10 cubic feet per second of water with a priority of January 1, 1904, to be diverted from Warm Springs Creek for irrigation within the NE $\frac{1}{4}$  Lot 2, Sec. 32, SE $\frac{1}{4}$ SE $\frac{1}{4}$ , Sec. 29, Twp. 7N, Rge. 24E; Right No. 34-0961, representing 0.08 cubic feet per second of overflow from the City's facilities, with a priority of June 29, 1952, to be diverted for irrigation and stockwater within the SW $\frac{1}{4}$ SW $\frac{1}{4}$ , Sec. 28, SE $\frac{1}{4}$ SE $\frac{1}{4}$ , Sec. 29, all in Twp. 7N, Rge. 24E.

2. The City is holder of Right No. 34-0960 with a priority of January 2, 1904, and is thereby entitled to all of the flow of a certain spring located in the NW $\frac{1}{4}$  of Lot 2, Sec. 32, Twp. 7N, Rge. 24E, at the source of Warm Springs Creek less the 0.10 cubic feet per second of flow of right 34-0959.

3. The Department of Water Resources' studies revealed a clay barrier between the City's spring and the one proposed to be developed by the applicant. The Department found the water quality of both the City spring and the applicant's spring to be very comparable. However, it was found that the applicant's spring was considerably warmer.

City of Mackay - August 12, 1974, temperature 17<sup>0</sup> C (63<sup>0</sup>F)

John Powers - August 12, 1974, temperature 21<sup>0</sup> C (70<sup>0</sup>F)

4. The consultant hired by the City of Mackay installed four observation wells and one "test pit" in the area between the City's spring and the spring which has been excavated by the applicant. The procedure used by the consultant included damming the outlet of the applicant's spring and then monitoring any changes that could be observed in the observation wells during a fourteen-day period. The City's consultant concluded that because the water levels in one of the observation wells increased from the time the test started until its conclusion and because observation well no. 4 began to gain water eleven days after the test started, there was a direct relationship between the applicant's spring and the city's spring.

However, the Department conducted an additional field review of the area on November 30, 1977, and found the water levels in observation well no. 1 to be higher than it was when the study for the City was done one year earlier. Observation well no. 4 had about one-half ( $\frac{1}{2}$ ) foot of water in the bottom of it. In addition, it was determined that the bottom of observation well no. 4 was about two feet higher in elevation than the top of the dam the City's consultant used in conducting his test and, therefore, could not have caused the change in the water level in this observation well by damming.

#### CONCLUSIONS OF LAW

1. The City has a right to use all of the flow of the upper "city" spring with the exception of 0.10 cubic feet per second which must be supplied to the applicant.

2. The consultant for the City of Mackay erred in his interpretation of his data. No relationship between the City's spring and the applicant's spring has been shown in any of the studies that have been done.

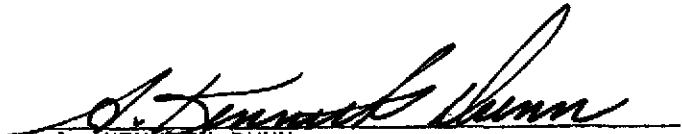
3. The applicant is entitled to a permit from the Department of Water Resources.

#### ORDER

IT IS, THEREFORE, HEREBY ORDERED and Application for Permit No. 34-7088 is APPROVED subject to the following conditions:

1. This permit is subject to all prior water rights.
2. Any development of the spring area must not disturb the clay barrier separating the applicant's spring from the city's spring.
3. Proof of construction of works and application of water to beneficial use shall be submitted to the Department on or before March 1, 1983.

Dated this 8 day of March, 1978.

  
A. KENNETH DUNN  
Deputy Director

Identification No. 34 7088  
Application No. \_\_\_\_\_

STATE OF IDAHO  
DEPARTMENT OF WATER ADMINISTRATION  
**APPLICATION FOR PERMIT APPROVED**  
**To Appropriate the Public Waters of the State of Idaho**  
(TYPE OR PRINT IN INK)

- 1 Name of applicant JOHN L. POWERS  
post office address 211 N. Main, Mackay, Idaho
- 2 Source of water supply Spring which is a tributary of Warm Springs Creek
- 3 a. Location of point of diversion is NW  $\frac{1}{4}$  of NE  $\frac{1}{4}$  of Section 32 Township 7 N.  
Range 24 E. B.M. Custer County; additional points of diversion if any \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
- b. If water is not consumed, it will be discharged into Warm Springs Creek at a point in NE  $\frac{1}{4}$   
of NE  $\frac{1}{4}$  of Section 32 Township 7 N. Range 24 E. B.M. \_\_\_\_\_
- 4 Water will be used for the following purposes:  
Amount .2 for irrigation purpose from April 1 to Oct. 31 (both dates inclusive)  
(cfs or acre-feet per annum)  
Amount \_\_\_\_\_ for \_\_\_\_\_ purpose from \_\_\_\_\_ to \_\_\_\_\_ (both dates inclusive)  
(cfs or acre-feet per annum)  
Amount \_\_\_\_\_ for \_\_\_\_\_ purpose from \_\_\_\_\_ to \_\_\_\_\_ (both dates inclusive)  
(cfs or acre-feet per annum)
5. Total quantity to be appropriated.  
a .2 cubic feet per second and/or  
b \_\_\_\_\_ acre feet per annum.
- 6 Proposed diverting works:  
a. Description of ditches, flumes, pumps, headgates, etc A basin will be excavated to collect ground water which will essentially form a spring tributary to Warm Springs Creek. Water thus developed will be pumped through a pipeline to higher ground for sprinkling.  
\_\_\_\_\_  
\_\_\_\_\_
- b. Height of storage dam \_\_\_\_\_ feet, active reservoir capacity \_\_\_\_\_ acre feet; total reservoir capacity \_\_\_\_\_ acre feet, materials used in storage dam \_\_\_\_\_  
Period of year during which storage will occur \_\_\_\_\_ to \_\_\_\_\_ inclusive.  
(Mo. Day) (Mo. Day)
- 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 5 years  
b Estimated construction cost is \$ 5,000.
8. Description of proposed uses  
a If water is **not** for irrigation.  
(1) Give the place of use of water \_\_\_\_\_  $\frac{1}{4}$  of \_\_\_\_\_  $\frac{1}{4}$  of Section \_\_\_\_\_ Township \_\_\_\_\_  
Range \_\_\_\_\_ B M  
(2) Amount of power to be generated \_\_\_\_\_ 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 \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**RECEIVED**

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

| TWP | RANGE | SEC | NE1/4 |       |       |       | NW1/4 |       |       |       | SW1/4 |       |       |       | SE1/4 |       |       |       | TOTALS |
|-----|-------|-----|-------|-------|-------|-------|-------|-------|-------|-------|-------|-------|-------|-------|-------|-------|-------|-------|--------|
|     |       |     | NE1/4 | NW1/4 | SW1/4 | SE1/4 | NE1/4 | NW1/4 | SW1/4 | SE1/4 | NE1/4 | NW1/4 | SW1/4 | SE1/4 | NE1/4 | NW1/4 | SW1/4 | SE1/4 |        |
| 7 N | 24E   | 32  | 15    | 15    |       |       |       |       |       |       |       |       |       |       |       |       |       |       | 30     |
|     |       |     |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |        |
|     |       |     |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |        |
|     |       |     |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |        |
|     |       |     |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |        |
|     |       |     |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |        |
|     |       |     |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |        |
|     |       |     |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |        |
|     |       |     |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |        |

Total number of acres to be irrigated 30

c Describe any other water rights used for the same purposes as described above Applicant claims a right to the use of 24 inches from Warm Springs Creek which he proposes to combine with this 10 inches for irrigation of this 30 acres plus pasture already irrigated.

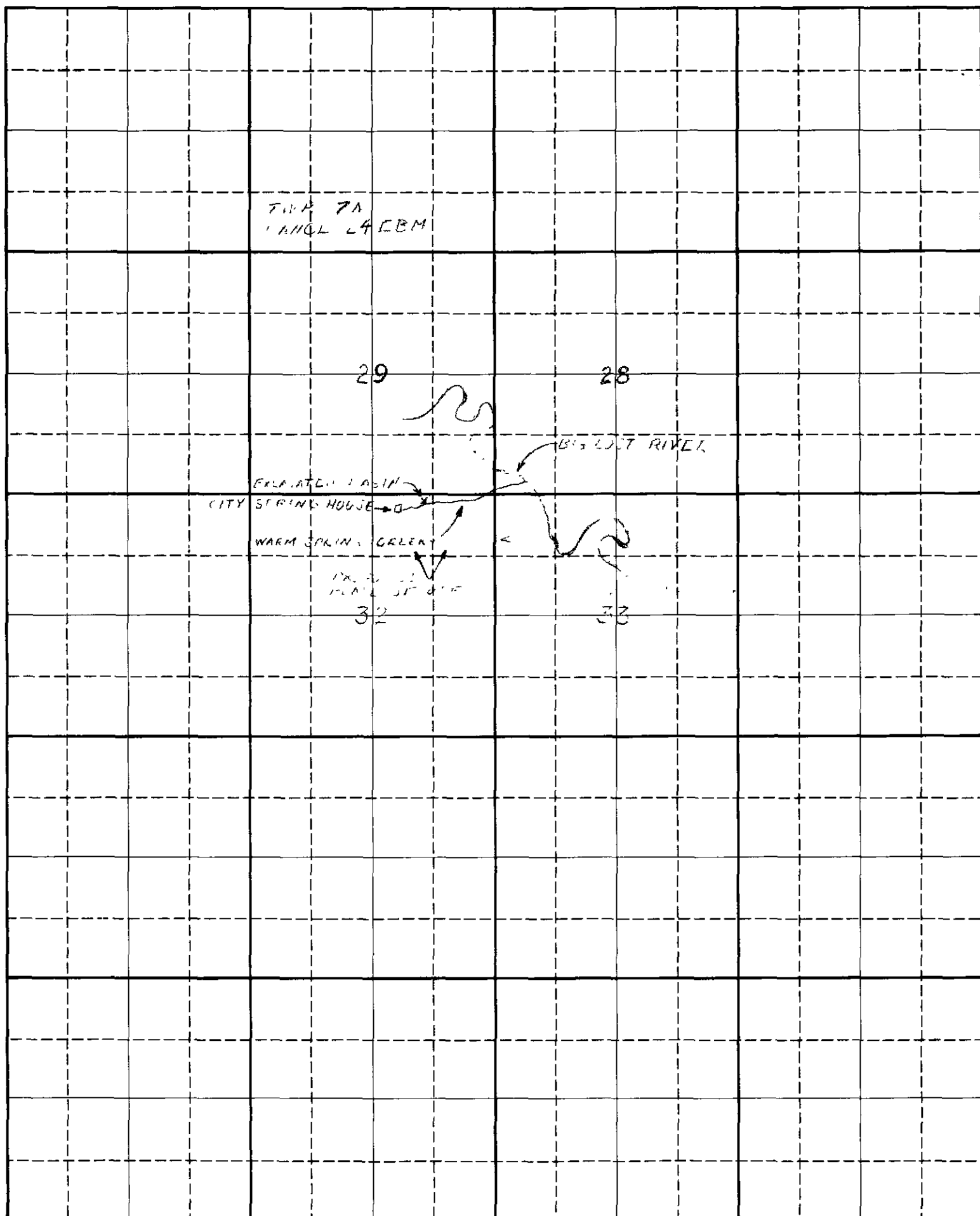
9 a. Who owns the property at the point of diversion Applicant

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

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

10. Remarks \_\_\_\_\_

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



Scale: 2 inches equal 1 mile

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

*John L. Powers*  
(Applicant)

12-17-1974  
Proposed Priority

Received by MB Date 12-17-74 Time 11:00 A  
Preliminary check by 57 Fee \$ 10.00  
Receipted by MB Date 12-17-74 # 4006  
Publication prepared by MB Date 12-14-74  
Published in The Mercury News  
Publication dates Dec 26, 1974 & Jan 2, 1975  
Publication approved W Date 1-13-75  
Priority reduced to \_\_\_\_\_ Reason \_\_\_\_\_

Protests filed by: City of Medford by Ted Springer

Copies of protests forwarded by MB  
Hearing held by \_\_\_\_\_ Date \_\_\_\_\_  
Recommended for approval denial by R. W. H. W. H.

ACTION OF THE DIRECTOR, DEPARTMENT OF WATER ADMINISTRATION

This is to certify that I have examined Application for Permit to appropriate the public waters of the State of Idaho No. 34-7088, 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 March 1, 1983 April 1, 1987 per Mem. Dec. & Order on Remand
- c. Other: PURSUANT TO MEMORANDUM DECISION AND ORDER DATED THIS DATE.  
PURSUANT TO MEMORANDUM DECISION AND ORDER ON REMAND.

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

Witness my hand this 8 day of March 19 78.

  
Deputy Director

RECORDED  
JAN 13 1974

Department of Water Resources  
Eastern District Office

Notice is hereby given that John L. Powers, 211 N. Main, Mackay, Idaho has on 12-17-74 submitted Application No. 34-7088 for a permit to appropriate 0.3 cubic feet per second of water from a spring tributary of Warm Springs Creek by means of pump and pipeline within the NW $\frac{1}{4}$ NE $\frac{1}{4}$ , Sec. 32, T. 7N, R. 24E, B.M., Custer County; to be used from Apr. 1 to Oct. 31 for the irrigation of 30 acres within the N $\frac{1}{2}$ NE $\frac{1}{4}$ , Sec. 32 T. 7N. R. 24E, B.M.

If issued, this permit will be subject to all prior water rights. Protests against the granting of the permit must be filed with the Idaho Department of Water Resources, 1515 Lincoln Road, Idaho Falls, Idaho, 83401 on or before January 13, 1975.

R. KEITH HIGGINS  
Director

## Affidavit of Publication

STATE OF IDAHO  
County of Custer

ss.

I, MARGARET PARKS the  
PUBLISHER

of The MACKAY MINER, a weekly newspaper of General Circulation published weekly and entered in the Post Office Mackay, Idaho, continuously since February 6, 1906, do solemnly swear that a copy of the notice, as per clipping attached, was published weekly in the regular and entire issue of said newspaper and not in any supplement thereof, for 2

                     consecutive weeks  
commencing with the issue dated

Dec 26, 1974  
and ending with the issue dated

Jan 2, 1975

Margaret Parks

Subscribed and sworn to before  
me this 9th day of

Jan, 1975

Rebecca Burdett  
Notary Public

10/26/77 my com exp.

DEPARTMENT OF WATER RESOURCES  
- STAFF ANALYSIS -

Item Initial Date

Application No. Powells

- ☒ Source  
☒ Point of Diversion  
☒ County  
☒ Quantity of Water and Period of Use  
☒ Description of Diverting Works  
☒ Time required for B/U of water  
☒ Place of Use or Acres Irrigated  
☒ Map  
☒ Signature  
☒ Fee

LA 12-17-74

(1) LA 12-17-74

In form to receipt yes

(2) " "

Send Copies to:

- NA ☐ Idaho State Health Department  
☐ Idaho Fish and Game Department  
☐ Bureau of Land Management  
☒ Watermaster, Bis Lost R. ☒  
☐ Request Special Use Permit from U.S.F.S.  
☐ Request Easement from B.L.M.  
NA ☐ Request Information from Applicant

(3) " "

(4) " "

In form for advertising yes

(5) " "

Platted on Map No. "

(6) " "

Located within Water District No. 34

(7) " "

NA Critical groundwater area: yes " no "

(8) " "

NA Groundwater levels:

" Declining, " Stable, " Increasing

(comment) "

(9) " "

Other rights on the same place of use NO

(10) " "

Comments: Claim to .48 cfs Relieved Dec 16, 1974.  
Warm Springs Ct.

(11) PW 1-13-75

Affidavit of Publication received(date) Jan. 13, 1975

(12) PW 1-9-75

Final date for protests January 13, 1975  
Protests received: yes ☒ no ☐

(13) RDC 12/1/77

All requested information received from agencies or applicant: yes ☒ no ☐

(14) " "

Action recommended:

☒ Approve ☐ Deny

12/12/77 Proposed Priority

" Reason for Reduction "

NO Measuring device required

☒ See attached sheet for other conditions of approval

" No special conditions for approval

MEMO DECISION

(15) District E

By RDC

12/1/77

SCANNED  
SEP 29 2004



State of Idaho

DEPARTMENT OF WATER RESOURCES

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

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

CECIL D. ANDRUS  
GOVERNOR

R. KEITH HIGGINSON  
DIRECTOR

January 9, 1992

JOHN L. POWERS  
PO BOX 493  
MACKAY ID 832510000

RE: WATER RIGHT NO. 34-07088

Dear Water Right Holder(s):

Enclosed is a copy of your water right license.

This right is included in the Snake River Basin Adjudication and you will be receiving further information regarding this in the near future.

If you have any questions, please let me know.

Sincerely,

JIM JOHNSON  
Water Rights Supervisor

JJ:blm

Enclosure

RECEIVED

JAN 15 1992

STATE OF IDAHO  
DEPARTMENT OF WATER RESOURCES  
**BENEFICIAL USE FIELD REPORT**

**RECEIVED**  
MAY 06 1991

**A. GENERAL INFORMATION**

Permit No. 34-2147 Department of Water Resources

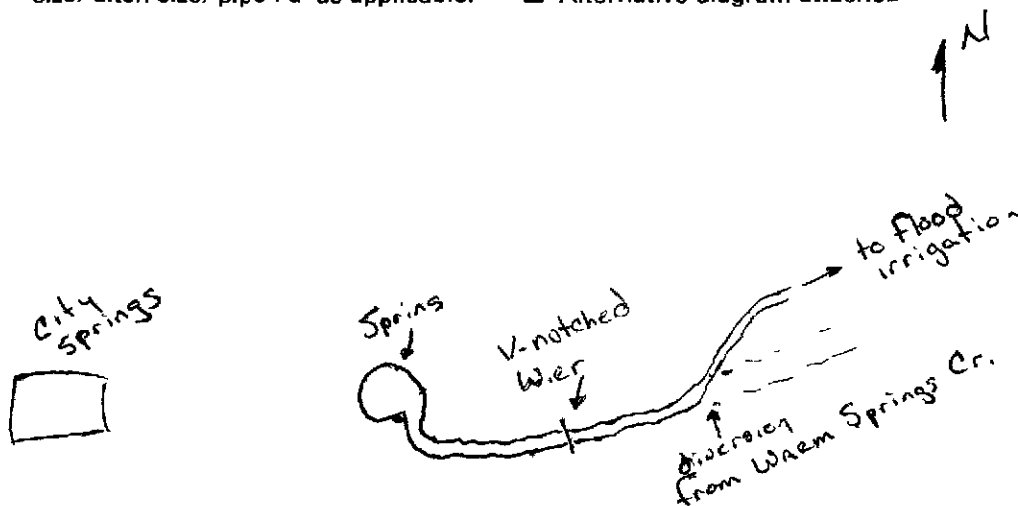
- 1 Owner John Powers Phone No 588-3358  
Current Address P.O. Box 493 MACRAY, ID 83251  
2 Accompanied by John Powers EXAM. DATE 9-11-90  
Address: \_\_\_\_\_ Phone No. \_\_\_\_\_  
Relationship to Permit Holder: Same  
3 Source John Powers' Spring tributary to Warm Spring Cr.

**B. OVERLAP REVIEW**

- 1 Other water rights with same place of use: 34-2147  
\_\_\_\_\_  
☐ Copies Attached  
2 Other water rights with same point of diversion: 34-2147  
\_\_\_\_\_  
☐ Copies Attached ☐ Copies of Field Exam's Attached

**C. SYSTEM DESCRIPTION**

1. **Diversion System Diagram:** Indicate all major components and distances between components. Indicate weir size/ditch size/pipe i d as applicable. ☐ Alternative diagram attached



Scale: 1" = \_\_\_\_\_

- 2 ☒ Copy of U.S.G.S. Quadrangle Attached  
Showing location(s) of point(s) of diversion and  
place(s) of use (required). ☒ Aerial Photo Attached  
(required for irrigation of 10 acres or more)  
☒ Photo of Diversion and System Attached  
(required for all but single household domestic groundwater, and stockwater.)

**RECEIVED**  
JAN 15 1992

**System Description (continued)**

3. **Narrative:** Description (As operating at time of measurement. Indicate pressure, number of sprinklers, etc.)

Spring to ditch to flood irrigation approx 10 acres.  
(20 head cattle max) Wastewater is collected in ponds.

☐ See Remarks on page 4 for continuation

4

| Well or Diversion Identification No.* | Motor Make | Hp | Motor Serial No. | Pump Make | Pump Serial No. or Discharge Size |
|---------------------------------------|------------|----|------------------|-----------|-----------------------------------|
| -                                     | -          | -  | -                | -         | -                                 |
|                                       |            |    |                  |           |                                   |
|                                       |            |    |                  |           |                                   |
|                                       |            |    |                  |           |                                   |

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

5 **Point(s) of Diversion:**

| Ident. No. | Gov't. Lot | 1/4 | 1/4 | 1/4 | Sec. | Twp. | Rge. | County | Method of Determination/Remarks |
|------------|------------|-----|-----|-----|------|------|------|--------|---------------------------------|
|            | 2          | NE  | NW  | NE  | 32   | 7N   | 42E  | COSTER | 1/5/65, On site inspection      |
|            |            |     |     |     |      |      |      |        |                                 |
|            |            |     |     |     |      |      |      |        |                                 |
|            |            |     |     |     |      |      |      |        |                                 |

6 **Place(s) of Use:**

Indicate Method of Determination

| Twp. | Rge. | Sec. | NE 1/4    |         |        |        | NW 1/4 |        |        |        | SW 1/4 |        |        |        | SE 1/4 |        |        |        | Totals |
|------|------|------|-----------|---------|--------|--------|--------|--------|--------|--------|--------|--------|--------|--------|--------|--------|--------|--------|--------|
|      |      |      | NE 1/4    | NW 1/4  | SW 1/4 | SE 1/4 | NE 1/4 | NW 1/4 | SW 1/4 | SE 1/4 | NE 1/4 | NW 1/4 | SW 1/4 | SE 1/4 | NE 1/4 | NW 1/4 | SW 1/4 | SE 1/4 |        |
| 7N   | 24E  | 32   | L1<br>2.5 | L2<br>2 |        |        |        |        |        |        |        |        |        |        |        |        |        |        | 4.5    |
|      |      | 29   |           |         |        |        |        |        |        |        |        |        |        |        |        |        |        | 5      | 5.0    |
|      |      |      |           |         |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |
|      |      |      |           |         |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |
|      |      |      |           |         |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |
|      |      |      |           |         |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |
|      |      |      |           |         |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |
|      |      |      |           |         |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |
|      |      |      |           |         |        |        |        |        |        |        |        |        |        |        |        |        |        |        | 9.5    |

Do not use this space

Do not use this space

#### D. FLOW MEASUREMENTS

☐ Additional Data Sheets Attached

1.

| Measurement Equipment | Type    | Make       | Model No. | Serial No. | Size | Calib. Date |
|-----------------------|---------|------------|-----------|------------|------|-------------|
| 2 1/2 Gal Bucket      |         |            |           |            | 10gt |             |
| STOPWATCH             |         |            |           |            |      |             |
| WIER                  | V-Notch | JohnPowers |           |            |      |             |
|                       |         |            |           |            |      |             |

2. Measurements: (S:ilver)

10gt Bucket - 2 seconds - 3 trials  $\Rightarrow$  ~~16~~ .167 cfs

V-notch Wier: Head  $\Rightarrow$  4 1/8" = .197 cfs

#### E. FLOW CALCULATIONS

☐ Additional Computation Sheets Attached

1. Measured Method: V-notch wier 4 1/8" head  $\Rightarrow$  Q = .197 cfs

2. Alternate Method for Checking Purposes: 10 gt bucket / stopwatch  $\Rightarrow$  Q = .167 cfs

#### F. PUMP EFFICIENCY DATA (Optional)

Discharge Pressure: \_\_\_\_\_ psi x 2.31 = \_\_\_\_\_ ft (1); Dynamic pumping level: \_\_\_\_\_ ft (2)

Total Head: (1) + (2) = \_\_\_\_\_ (3) ; Flow rate: \_\_\_\_\_ cfs (4)

Water HP: (3) x (4)  $\div$  8.8 = \_\_\_\_\_ (5)

Meter Input KW: 3.6 x \_\_\_\_\_ KH x \_\_\_\_\_ CTR or \_\_\_\_\_ MULT x \_\_\_\_\_ PTR x \_\_\_\_\_ N/ \_\_\_\_\_ T = \_\_\_\_\_ (6)

Meter Input HP: (6) x 1.34 = \_\_\_\_\_ (7)

Panel Input KW: \_\_\_\_\_ Ave PF x \_\_\_\_\_ Ave Volts x \_\_\_\_\_ Ave Amps x .001732 = \_\_\_\_\_ (6)

Panel Input HP: (6) x 1.34 = \_\_\_\_\_ (7) Efficiency: (5)/(7) x 100 = \_\_\_\_\_ %

#### G. VOLUME CALCULATIONS

1. Volume Calculations for Irrigation:

$V_{IR} = (\text{Acres Irrigated}) \times (\text{Irrigation Requirement}) = (9 \frac{1}{2}) (3.0) = 28.5 \text{ AF/season}$

$V_{DR} = [\text{Diversion Rate (cfs)}] \times (\text{Days in Irrigation Season}) \times 1.9835 = (2) (214) (1.9835) = 84.9 \text{ AF/season}$

V = Smaller of  $V_{IR}$  and  $V_{DR}$  = 28.5 AF/season

2. Volume Calculations for Other Uses:

Reservoir:

STOCKWATER:

JAN 15 1992

[illegible]

## 1 Recommended Amounts

| Beneficial Use | Period of Use |      | Rate of Diversion<br>Q (cfs) | Annual Volume<br>V (afa) |
|----------------|---------------|------|------------------------------|--------------------------|
|                | From          | To   |                              |                          |
| Irrigation     | 4-1           | 11-1 | 0.20                         | 28.5                     |
|                |               |      |                              |                          |
|                |               |      |                              |                          |
|                |               |      |                              |                          |
| Totals:        |               |      | 0.20                         | 28.5                     |

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

Field Examiner's Name Scott N King  
Signature Scott N King  
Certification Date \_\_\_\_\_  
Field Report Preparation Date \_\_\_\_\_

**K. Licensing recommendation shall be prepared by an Idaho Department of Water Resources employee on a computer printout attached hereto.**

JAN 15 1992

MEASUREMENT:

90° V-notch Weir pp 28 "Water MEASUREMENT" Book

HEAD

FLOW

0.36' 4 <sup>5</sup>/<sub>16</sub>"

Q = 0.197 cfs

NOTE: 90° V-notch weir is approximately 20° off of vertical

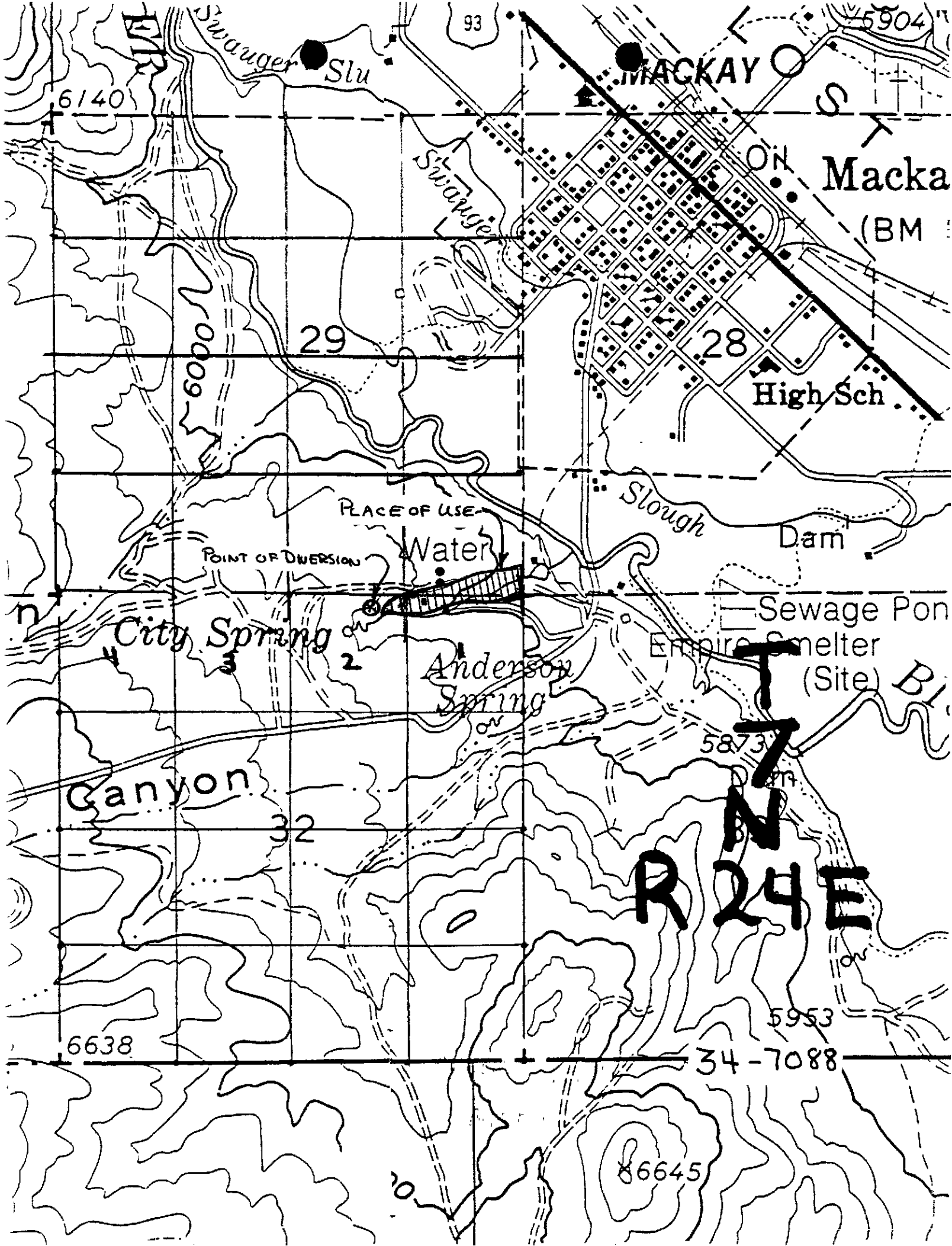
ASSUME: Weir pond level would not change if 90° V-notch weir were vertical.

$$\therefore Q = 0.197 \text{ cfs} = 0.20 \text{ cfs}$$

*Scott M King*

**MICROFILMED**

**JAN 15 1992**



MACKAY

Macka

(BM

High Sch

PLACE OF USE

Water

POINT OF DIVERSION

City Spring

Anderson Spring

Sewage Pon  
Empire Smelter  
(Site)

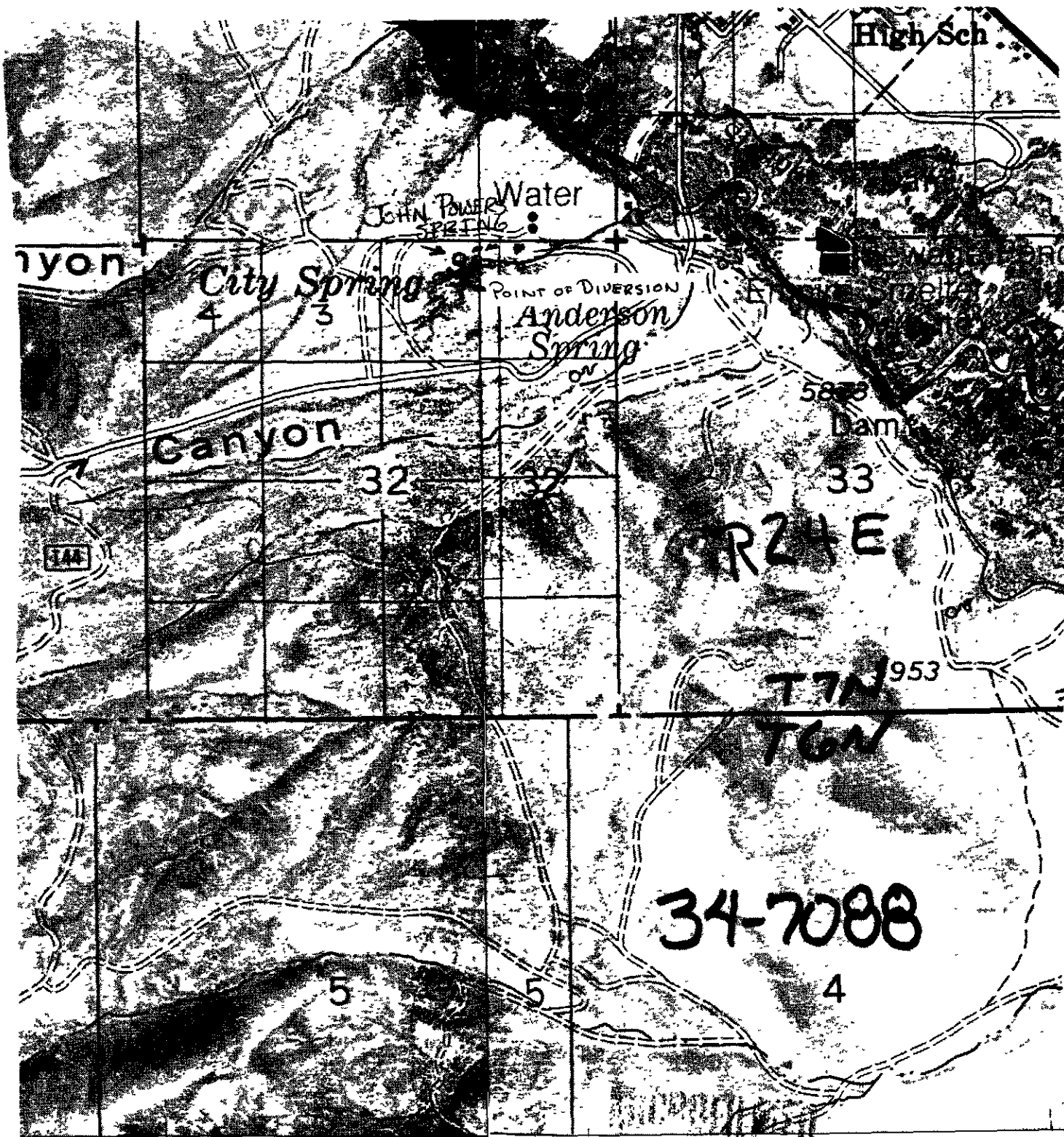
Canyon

R 24 E

6638

34-7088

6645



288000m E.

113°37'30"

600000 FEET

JAN 15 1992

34-7088

T7N  
R  
2  
4  
E L3

A-96  
J.L. POWERS

L2 Grazing L1

28  
32 33

Powers  
34-7088

RECEIVED

JAN 15 1992

34-7088  
Powers



SPRING  
←



Measuring  
Device

34-7088

POWERS



measuring  
device -  
V-notch  
Wier

Diversion from old stream bed



34-7088

34-7088



Place  
of  
Use



Reservoir



State of Idaho

DEPARTMENT OF WATER RESOURCES

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

March 24, 1989

CECIL D. ANDRUS

GOVERNOR

R. KEITH HIGGINSON

DIRECTOR

John L. Powers  
P.O. Box 493  
Mackay, ID 83251

RE: Re-advertising Fee Refund (Permit No. 34-7088)

Dear Mr. Powers:

Enclosed is a refund of the re-advertising fee for the above referenced permit which you paid when you visited the office here in Boise last month.

After you left the office, I noticed in the file that you had submitted proof for 10 acres under this permit in September of 1988. You also submitted sufficient evidence showing that the 10 acres were developed and irrigated prior to July of 1985.

Since you already submitted proof on 10 acres, the Department can issue a license from this permit for that amount of acreage only. Since the 10 acres were developed prior to July of 1985, the permit is exempt from any of the Swan Falls processing and review requirements of Section 42-203D, Idaho Code. The Department, therefore, is not required to re-advertise this permit.

Your submittal of proof also means that it was not necessary for you to file an amendment. As I reviewed your amendment, the only change I noticed was a reduction in the number of acres irrigated. More specifically, the acres were reduced from 30 to 16. I saw no reason why we should accept an amendment since the only change is in the number of acres irrigated and the fact that proof was already submitted on a portion of that acreage. Your proof on 10 acres still allows you the opportunity to obtain a license for the full statutory water duty of 0.02 cfs/acre or 0.20 cfs for the 10 acres. In a more recent follow-up phone conversation, you told me that the original intent of the filing was to appropriate only 0.20 cfs from the spring. Since the amendment is not necessary, I am requesting that the Department send you a refund for this fee as well. You should receive this within the next few weeks.

Please call me if you have any questions concerning this matter, or if you disagree with any of the actions I have taken.

Sincerely,

TIM LUKE  
Sr. Water Resource Agent

TL:hm  
Enclosure

JAN 15 1989

5 1392

EXPENDITURE VOUCHER

AUDITOR USE

STATE OF IDAHO  
Office of State Auditor

AGENCY USE

|                  |
|------------------|
| 5270             |
| Date<br>04/04/89 |
| Code<br>193002   |

**VENDOR:** If you require additional information regarding this payment, please contact the State agency listed below.

AGENCY NAME DEPT. OF WATER RESOURCES

|                               |                           |
|-------------------------------|---------------------------|
| Document No<br><b>2133473</b> |                           |
| Pre-Audit                     | Date<br><b>APR 6 1989</b> |
| Warrant No                    |                           |

CHECK ONE:

PAY JOHN POWERS  
RETURN WARRANT TO FISCAL

( 1 ) MISCELLANEOUS EXPENDITURE  
( ) STATE CONTRACT

PAYMENT: ( ) PARTIAL ( ) FINAL

Encumbrance Reference No

( ) PURCHASE ORDER  
( ) MISCELLANEOUS ENCUMBRANCE REQUISITION

| LINE No. | PROGRAM   | FUND | ACCT. |     | DESCRIPTION                                                                                                                                                                                      | LINE AMOUNT | AGENCY USE |
|----------|-----------|------|-------|-----|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------|------------|
|          |           |      | Maj   | Min |                                                                                                                                                                                                  |             |            |
| 1        | 06 10 199 | 1238 | 8831  |     | REFUNDS<br>PER T. LUKE<br>3/21/89 20.00<br><b>PERMIT # 34-7088</b><br><i>Refund for Amendment Application - J.L.</i><br><i>4/12</i><br><i>Mr. Powers picked up check while in effect on 4/12</i> | 20.00       |            |
| TOTAL    |           |      |       |     |                                                                                                                                                                                                  | 20.00       |            |

NOTE: Final payment must be accompanied by a receiving copy

TO STATE AUDITOR

Request is hereby made that a warrant be authorized and drawn in payment of the item or items described above. I hereby certify that the items described were ordered by proper authority, that they are necessary in the public service, that the items have been received and accounted for, and that the account as stated is correct and just.

AUDITOR'S CERTIFICATE

I hereby certify that the above account is in proper form, that totals carried hereon are correct; that receipts when required by law or regulation of the State Board of Examiners covering items for which reimbursement is asked are submitted herewith, and that there are funds in the state treasury and balances in appropriation accounts out of which the same may be lawfully paid.

Date

Head of Agency or Institution

State Auditor

STATE OF IDAHO

APPLICATION FOR AMENDMENT OF A PERMIT

To change the point of diversion and/or the place of use.

Comes now JOHN L POWERS Phone 588-3358  
of (address) Box 493 Mackay, ID 83251, and represents to the  
Director of the Idaho Department of Water Resources.

That he is the owner and holder of Permit to Appropriate the Public Waters of the State of Idaho  
No. 34-7088, and requests that the permit and permit map be changed as follows.

1. NO CHANGE  
Point of diversion: Box 1/4 NE 1/4, Section 32, Township 7N, Range 24E, B.M.,  
County of Cluster. Other points of diversion: \_\_\_\_\_

2. Period and nature of use: (irrigation, domestic, stock watering, industrial, etc.)

Amount 0.20 for Irrigation purposes from 4-1 to 11-1 (both dates inclusive)  
(cfs or acre feet per annum)  
Amount \_\_\_\_\_ for \_\_\_\_\_ purposes from \_\_\_\_\_ to \_\_\_\_\_ (both dates inclusive)  
(cfs or acre feet per annum)  
Amount \_\_\_\_\_ for \_\_\_\_\_ purposes from \_\_\_\_\_ to \_\_\_\_\_ (both dates inclusive)  
(cfs or acre feet per annum)  
Amount \_\_\_\_\_ for \_\_\_\_\_ purposes from \_\_\_\_\_ to \_\_\_\_\_ (both dates inclusive)  
(cfs or acre feet per annum)

3. Place of use or land to be irrigated:

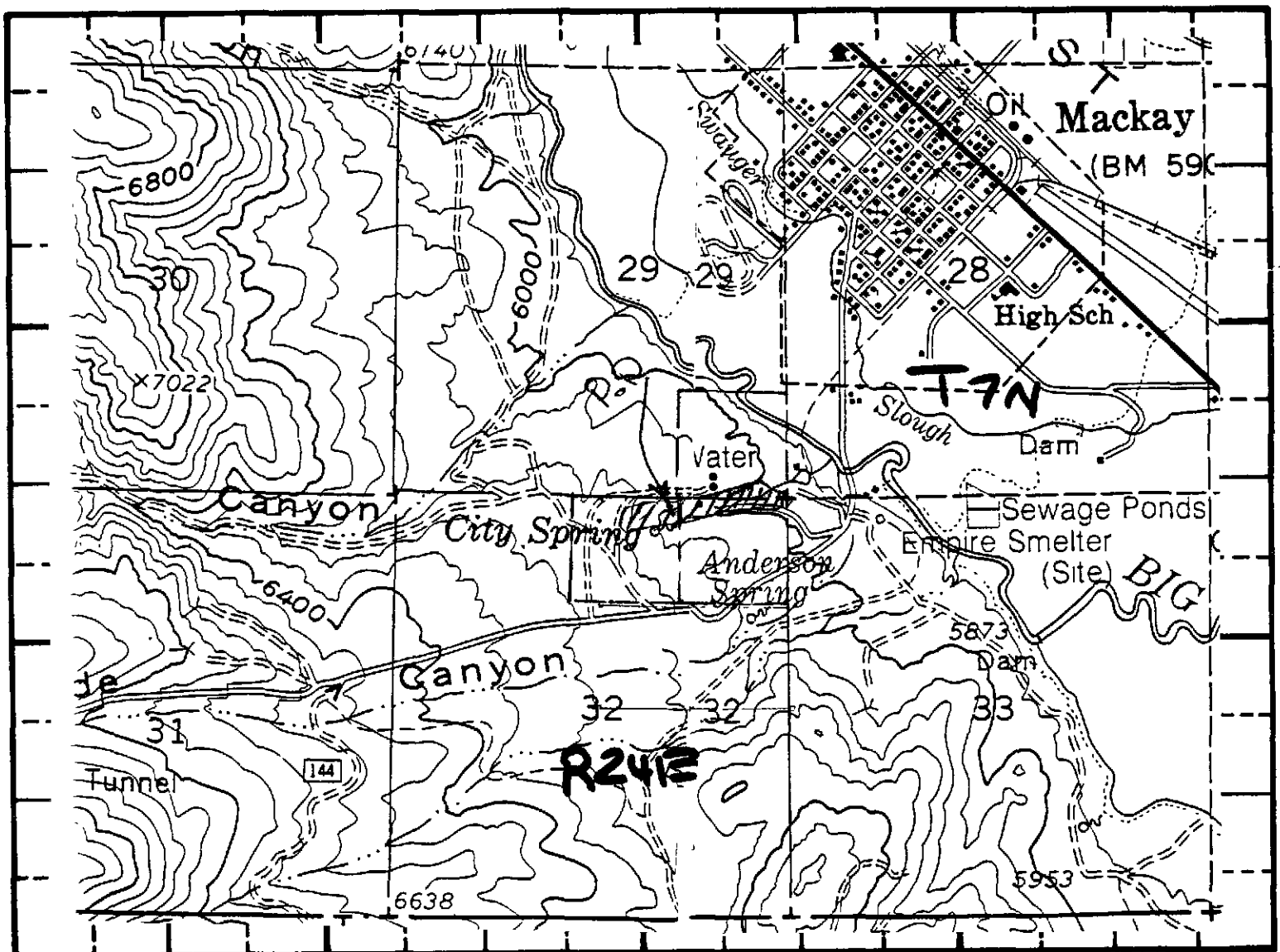
| TWP       | RGE        | SEC       | NE 1/4   |          |        |        | NW 1/4 |        |        |        | SW 1/4 |        |        |        | SE 1/4 |        |        |          | TOTALS    |
|-----------|------------|-----------|----------|----------|--------|--------|--------|--------|--------|--------|--------|--------|--------|--------|--------|--------|--------|----------|-----------|
|           |            |           | NE 1/4   | NW 1/4   | SW 1/4 | SE 1/4 | NE 1/4 | NW 1/4 | SW 1/4 | SE 1/4 | NE 1/4 | NW 1/4 | SW 1/4 | SE 1/4 | NE 1/4 | NW 1/4 | SW 1/4 | SE 1/4   |           |
| <u>7N</u> | <u>24E</u> | <u>29</u> |          |          |        |        |        |        |        |        |        |        |        |        |        |        |        | <u>2</u> | <u>2</u>  |
|           |            | <u>32</u> | <u>7</u> | <u>7</u> |        |        |        |        |        |        |        |        |        |        |        |        |        |          | <u>14</u> |
|           |            |           |          |          |        |        |        |        |        |        |        |        |        |        |        |        |        |          |           |
|           |            |           |          |          |        |        |        |        |        |        |        |        |        |        |        |        |        |          |           |
|           |            |           |          |          |        |        |        |        |        |        |        |        |        |        |        |        |        |          |           |
|           |            |           |          |          |        |        |        |        |        |        |        |        |        |        |        |        |        |          |           |
|           |            |           |          |          |        |        |        |        |        |        |        |        |        |        |        |        |        |          |           |

Total number of acres to be irrigated = 16

4. a. Who owns the property at the point of diversion? Applicant  
b. Who owns the land to be irrigated or the 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: \_\_\_\_\_

JAN 15 1992

Show 40-acre subdivisions, townships, ranges and ditches.



Signed at Boise, ID, this 8 day of February, 19 89.

of FeBarney, 19 89.  
John L. Preece  
 (Signature)

Preliminary check by TZ. Fee = \$20.00

NT USE ONLY C005443  
Received by CP Date 2/8/89

Publication prepared by \_\_\_\_\_ Date \_\_\_\_\_

Published in \_\_\_\_\_

Publication dates: 2017-01-01 to 2017-01-01

## ACTION OF THE DEPARTMENT OF WATER RESOURCES

I, \_\_\_\_\_, of the Department of Water Resources hereby

Witness my hand this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_\_

JAN 15 1992

# EXPENDITURE VOUCHER

AUDITOR USE

STATE OF IDAHO  
Office of State Auditor

AGENCY USE

|      |          |
|------|----------|
| Date | 4958     |
| Code | 03/01/89 |
|      | 193002   |

**VENDOR:** If you require additional information regarding this payment, please contact the State agency listed below.

AGENCY NAME DEPT. OF WATER RESOURCES

|                               |                             |
|-------------------------------|-----------------------------|
| Document No<br><b>2190000</b> |                             |
| Pre-Audit                     | Date<br><b>MAR - 2 1989</b> |
| Warrant No                    |                             |

CHECK ONE:

( 1 ) MISCELLANEOUS EXPENDITURE

( ) STATE CONTRACT

( ) PURCHASE ORDER

( ) MISCELLANEOUS ENCUMBRANCE REQUISITION

PAY  
TO

JOHN POWERS

RETURN WARRANT TO FISCAL

**34-7088**

~~7503~~

~~7089~~

Encumbrance ~~650~~

PAYMENT. ( ) PARTIAL ( ) FINAL

| LINE No. | PROGRAM   | FUND | ACCT. |     | DESCRIPTION                             | LINE AMOUNT | AGENCY USE |
|----------|-----------|------|-------|-----|-----------------------------------------|-------------|------------|
|          |           |      | Maj   | Min |                                         |             |            |
| 1        | 06 10 199 | 1238 | 8831  |     | REFUNDS<br>PER T. LUKE<br>2/24/89 20.00 | 20.00       |            |
| TOTAL    |           |      |       |     |                                         | 20.00       |            |

**JAN 15 1992**

NOTE: Final payment must be accompanied by a receiving copy

TO STATE AUDITOR

Request is hereby made that a warrant be authorized and drawn in payment of the item or items described above. I hereby certify that the items described were ordered by proper authority; that they are necessary in the public service, that the items have been received and accounted for, and that the account as stated is correct and just.

AUDITOR'S CERTIFICATE

I hereby certify that the above account is in proper form; that totals carried hereon are correct, that receipts when required by law or regulation of the State Board of Examiners covering items for which reimbursement is asked are submitted herewith, and that there are funds in the state treasury and balances in appropriation accounts out of which the same may be lawfully paid.

Date

Head of Agency or Institution

State Auditor

MEMORANDUM

TO: FILE

FROM: TIM LUKE

RE: SWAN FALLS PROCESSING

DATE: 2/22/89

=====

I spoke with Mr. Powers via phone today in order to follow up on his recent visit and clarify a few matters. In particular, some confusion existed as to Powers filing a proof statement in September of 1988 on 16 acres while submitting evidence in February of 1989 that only 10 acres had been irrigated.

Powers again verified today that only 10 acres described under this permit had ever been developed from the spring source named in the permit. Powers explained that the original intent of filing the application for permit was to appropriate 10 inches or .20 cfs flow of water from the spring and that he wishes only to prove up on those 10 inches.

I informed Powers that since he already filed the proof and submitted evidence on 10 acres, that we would consider the 10 acres developed and restrict any future license to 10 acres. I further informed Powers that we would refund his readvertisement fee since evidence is satisfactory that the development of the 10 acres was completed prior to 7/1/85.

The Department will: 1) remove the filing from the Swan Falls process list and thus exempt it from further review of 42-203D, and 2) refund the permittee his \$20.00 readvertisement fee.

RECEIVED  
JAN 15 1992

JAN 15 1992

AFFIDAVIT

We, the undersigned, being familiar with and knowledgeable of the operation of certain lands located in the Northwest 1/4 of the Northeast 1/4, Section 32, Township 7 North, Range 24 East Boise Meridian and owned by John Powers do hereby verify and affirm that a portion of said lands containing 10 acres, more or less, have been irrigated by said John Powers with water from a warm spring under application #347088 since 1975.

Also observed at the Southwest side of the project is a pumping station with necessary equipment for sprinkling an additional 6 acres, more or less.

Betty Halverson  
M Marx Hintze

RECORDED

JAN 15 1992

STATE OF IDAHO )  
COUNTY OF CLUSTER ) SS

SUBSCRIBED AND SWORN AND AFFIRMED BEFORE ME THIS  
5<sup>TH</sup> DAY OF FEBRUARY, 1989, BY BETTY HALVERSON AND  
M. MARX HINTZE

James L. McKelvey  
Notary Public  
Comm. Expires 5-31-94

A-96  
J.L. POWERS

24 28

32 33

JAN 15 1992



State of Idaho

**DEPARTMENT OF WATER RESOURCES**

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

CECIL D. ANDRUS

GOVERNOR

R. KEITH HIGGINSON

DIRECTOR

January 30, 1989

RE: PERMIT NO. \_\_\_\_\_

Dear PERMIT HOLDER:

Due to the Swan Falls litigation, development proposed by the enclosed permit may have been delayed. The Department is presently reviewing the permit and may authorize completion of development proposed under the permit.

The purpose of this letter is to determine: (1) the extent of development under the permit, and (2) your continued interest in developing or completing development under the permit.

Enclosed are two forms which will help the Department expedite the reprocessing of the permit.

Please complete and return the enclosed questionnaire if you wish to continue with your plans of development or have completed all or a portion of your development before July 1, 1985.

Please complete the enclosed relinquishment form and return it to the Department if you have abandoned or have no interest in continuing with your plans for development of the project.

If the entire project was not completed prior to July 1, 1985, and you still wish to proceed with your plans of development, then you must submit a \$20.00 re-advertisement fee to the Department as required by Water Appropriation Rule 4,2,3. and Section 42-221F, Idaho Code.

Failure to return the questionnaire and pay any required re-advertisement fee within thirty (30) days of the date of this letter is cause for the Department to cancel the permit.

If the incomplete portion of your project is for irrigation of more than 200 acres, the Department will issue a notice requesting additional information as required by Water Appropriation Rule 4.5. (copy enclosed).

JAN 15 1992

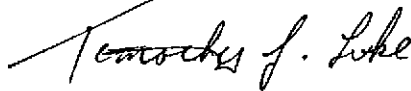
Page 2

If you have questions concerning the content of this letter or about completing the forms, please contact Tim Luke at the address below or by calling directly at 334-7864. The enclosed forms and all other relative information must be returned within thirty (30) days to:

Idaho Department of Water Resources  
Statehouse Mail  
Boise, Idaho 83720  
Attn: Tim Luke - Water Allocation/Trust Water

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

Sincerely,

A handwritten signature in cursive script that reads "Timothy F. Luke".

TIM LUKE  
Sr. Water Resource Agent

Enclosures

JAN 18 1992

January 4, 1989

RE: Permit No. 34-7088

John L. Powers  
P.O. Box 493  
Mackay, ID 83251

Dear Permit Holder:

We acknowledge receipt of your statement submitted as proof of beneficial use for the above referenced permit. Enclosed please find a copy of an order pertinent to your permit.

Before a license can be issued, a field examination must be made by a representative of this Department.

A field examiner will contact you to arrange to examine your system.

If you have any questions regarding the field examination, please contact this office by phone at 525-7161, or in person in the third floor State Office Building, 150 Shoup, Idaho Falls, Idaho.

Sincerely,

KEITH C. WILSON  
Sr. Resource Agent

KCW:CW

Enclosure

1/88

PROOF OF BENEFICIAL USE

ANALYSIS SHEET

Permit No. 34-7088

Date: 10/19/88

General Considerations:

Y Name same as permit  
Y Signature the same as permit holder  
Y Address change \_\_\_\_\_ If yes, prepare a data entry  
N Proof received timely  
Y Reinstated

Source of Water:

Y Surface water  
\_\_\_\_\_ Groundwater  
\_\_\_\_\_ 1. well log in file  
\_\_\_\_\_ 2. drilling permit  
\_\_\_\_\_ A. amount of drilling fee paid for proposed uses

Extent of Use and Rate of Diversion:

Y Rate of diversion appropriate for uses  
Y Is rate or volume and fee appropriate?  
Y Has permit holder indicated when water was first put to a beneficial use?

Measuring Device:

Y Is a measuring device or access port required?  
Y Has one been installed?  
N/A Waiver or modification of measuring device requested

Remarks: *Proof acceptable*  
*Reinstate*

|          |                              |                     |              |
|----------|------------------------------|---------------------|--------------|
| <u>Y</u> | <u>Priority Calculation:</u> |                     |              |
|          | Date proof received          | <u>Sept. 6, '88</u> | <u>249</u>   |
|          | Date proof due               | <u>Sept. 1, '88</u> | <u>- 244</u> |
|          | No. of days late             |                     | <u>= 5</u>   |
|          | Priority date                | <u>Dec. 17, '74</u> | <u>+ 351</u> |
|          | NEW PRIORITY DATE            | <u>Dec. 22, '74</u> | <u>= 356</u> |

SEND FILES TO DATA ENTRY AND THEN TO MICROFILM

138036  
CERTIFIED MAIL  
June 30, 1988

POWERS, JOHN L.  
GENERAL DELIVERY  
MACKAY, ID 83251

**PROOF DUE NOTICE**

RE: Permit No. 34-7088

Dear Permit Holder:

One of the conditions of approval of the above referenced water permit was that proof of the extent of your beneficial use must be submitted to this office on or before September 1, 1988. (See last page of your approved permit or your last approved extension request.) Enclosed is a form which when accompanied by the license examination fee or a completed field examination report prepared by a certified water right examiner may be used to submit the required proof.

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

Either an acceptable proof of beneficial use submittal or an acceptable request for an extension of time must be received by this Department on or before the above described proof due date, or the permit will no longer be of any force nor effect.

Sincerely,

RITA FLECK  
Secretary/Records Manager

Enclosures

  
NOV 22 1988

3/24/88

PHOTOS & SURVEY MEASUREMENTS  
AROUND THE POWERS SPRING WAS  
SENT BACK TO EASTERN PER  
E. CARLSON'S REQUEST.

CHELY

NOV 22 1988

November 4, 1987

John L. Powers  
General Delivery  
Mackay, ID 83251

Dear Mr. Powers:

Re: Permit No. 34-7088

Enclosed is a copy of the approved request for extension of time. The time within which to submit proof of beneficial use is extended to September 1, 1988.

Note the condition of approval added as part of the action of the department. Please submit to the department's Eastern Regional office for review and approval prior to installation, detailed drawings showing the dimensions and location of the measuring device.

If you have any questions concerning this matter, please feel free to contact this office.

Sincerely,

RITA I. FLECK  
Secretary/Records Manager

Enclosure

c: Eastern Region

**RECEIVED**

NOV 22 1988



STATE OF IDAHO  
DEPARTMENT OF WATER RESOURCES  
EASTERN REGION

John V. Evans  
Governor

A. Kenneth Dunn  
Director

150 Shoup — Suite 15  
Idaho Falls, Idaho 83402  
(208) 525-7161

MEMORANDUM

TO: Glenn Saxton

FROM: Ernest Carlsen *EC*

RE: Request for Extension of Time  
on Permit No. 34-7088

DATE: October 5, 1987

In response to an inquiry from one of the residents of Mackay, I have reviewed the Department's decisions concerning Permit No. 34-7088 and have a suggestion should the Department approve Mr. Powers' request for an extension of time.

I feel it is important to expedite the installation of the measuring device. This would provide measured flow data rather than having the two parties speculate over how much water the spring is producing. Furthermore, order no. 4 in the Department's April 19, 1982, decision, forbids cleaning of the spring when the flow exceeds 0.20 cfs. Consequently, until a measuring device is installed, any activity to clean the spring is unauthorized.

It is my recommendation that the measuring device be installed no later than April 1, 1988, and that the applicant provide detailed drawings of the location and dimensions of this measuring device to the Department prior to the installation. The cost of drawings and installation of the measuring device should not place a financial burden on the permit holder and would help to dampen the emotional nature of the situation.

In response to a conditioned approval of Mr. Powers' request, and considering the volatile nature of this matter between the City and Mr. Powers, I think it would be beneficial for personnel from this office to conduct an inspection of the spring this fall. The inspection would reveal whether or not Mr. Powers is in compliance with the permitted conditions. Plus, pictures of the spring site could provide valuable documentation for future reference.

dg

**RECEIVED**

EC

NOV 22 1988

**RECEIVED**

OCT 07 1987

Department of Water Resources

MEMORANDUM

Date: October 27, 1987  
To: File 34-7088  
From: L. Glen Saxton *LS*  
RE: Discussion relative to pending Extension Request

Mr. Powers visited the state office today in response to my letter dated October 5, 1987. He stated he has the pump, motor and sprinkling equipment with which to apply the water to a beneficial use.

Mr. Powers verbally requested two years in which to apply the water to a beneficial but said he intended to apply the water next spring.

Since the permit is named in the Idaho Power Company law suit, I advised Mr. Powers that he might want to pursue dismissal. I gave him a copy of the contract and advised him of whom to contact relative to dismissal.

*[Handwritten signature]*

NOV 22 1988

October 27, 1987

William G. Carlson  
Mackay City Attorney  
P.O. Drawer 804  
Arco, ID 83213-0804

RE: PERMIT 34-7088 JOHN POWERS

Dear Mr. Carlson:

Our Eastern regional office in Idaho Falls has forwarded your letter of inquiry dated September 24, 1987 to this office for response.

Mr Powers sent the department a copy of a Judgment in connection with Case No. 2253 entitled John Powers v. City of Mackay. Enclosed at your request is a copy of the information submitted.

Sincerely,

L. GLEN SAXTON

Encl: 1

c: E. Region

**MICROFILMED**

NOV 22 1988

MASONIC BUILDING  
260 W GRAND AVE

WILLIAM G. CARLSON  
ATTORNEY AT LAW  
P O DRAWER 804  
ARCO, IDAHO 83213-0804

RECEIVED

OCT 05 1987

AREA CODE 208  
527-3458

September 24, 1987 Department of Water Resources

Department of Water Resources  
150 Shoup Ave. - Suite 15  
Idaho Falls, ID 83402

Attn: Ernest Carlsen, Water  
Rights Supervisor

RECEIVED  
SEP 25 1987

Department of Water Resources  
Eastern District Office

Re: Permit 34-7088, John Powers

Gentlemen:

In your letter to us, dated August 21, 1987, you indicated that the Applicant was to furnish information concerning his efforts to develop the project, by September 12, 1987.

Would you please advise whether Mr. Powers has provided additional information to the Department. If additional written submissions have been made, we would appreciate receiving copies, on behalf of Protestant City of Mackay.

Very truly yours,

*William G. Carlson*

William G. Carlson  
Mackay City Attorney

WGC/sm

RECEIVED

NOV 22 1988

INTER-DEPARTMENT MEMO — 1

FROM

*Bita Fleck*

DATE

*9-28-1987*

TO

*File 34-7088*

SUBJECT

*According to the Custer County Clerk's  
Office case # 2253. John Powers vs -  
City of Mackay was filed on May 20,  
1974.*

NOV 22 1988

SIGNATURE

RECEIVED

SEP 24 1987

Department of Water Resources

John L. Power  
PO Box 493  
Mackay Idaho 83251

Dept Water Resources  
State of Idaho  
Statehouse  
Boise Idaho 83720  
L Glen Dwyer  
Operation Bar. Chgs  
Dear Mr. Dwyer

Please enclosed the final decision  
of the courts concerning litigation  
between the City of Mackay and  
myself. If you need something  
else please write or call me

Sincerely

John Power

RECEIVED

NOV 22 1988

SEP 24 1987

Department of Water Resources

Filed at 4:00 PM  
9-16-1986  
CLERK OF THE DISTRICT COURT  
BY Barbara Freedlone  
DEPUTY

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF CUSTER

|                 |   |               |
|-----------------|---|---------------|
| JOHN POWERS,    | ) |               |
| Plaintiff,      | ) | CASE NO. 2253 |
|                 | ) |               |
| -vs-            | ) | JUDGMENT      |
|                 | ) |               |
| CITY OF MACKAY, | ) |               |
| Defendant.      | ) |               |
| _____           |   |               |

This cause having been tried to the court, and Memorandum  
Decision containing findings of fact, conclusions of law and order for  
judgment having been filed;

Pursuant thereto judgment is hereby rendered the plaintiff's  
complaint and defendant's counterclaim are dismissed and held for  
naught.

DATED AND DONE this 15th day of September, 1986.

*James G. Beebe*  
DISTRICT JUDGE

FILED

NOV 22 1986

October 5, 1987

John L. Powers  
General Delivery  
Mackay, ID 83251

RE: PERMIT 34-7088 - REQUEST FOR EXTENSION OF TIME

Dear Mr. Powers:

The department has received the copy of the final judgment in Case No. 2253 which you forwarded with your letter dated September 22, 1987.

Based on the information you have provided, the department is willing to grant an extension of time in connection with development of the project. The department, however, needs a basis to determine the amount of time to grant.

Please provide a specific time schedule for completion of the work associated with the project together with any supporting evidence you may have in order that the department can determine a reasonable length of time to extend the permit. An example of evidence to support the time requested might be a copy of an executed but non-completed construction or installation contract connected with the project.

The policy of the department with respect to the length of time to grant on extension requests is to provide only the length of time which the permit holder can demonstrate is needed for completion of the project. The purpose of this policy is to to maintain more current outstanding permits.

Please forward the information to my attention.

Sincerely,

L. GLEN SAXTON  
Chief, Operations Bureau

c: Eastern Region

**RECEIVED**

NOV 22 1988

John Powers  
Box 493  
Mackay Idaho 83251  
Sept 11, 1987

RECEIVED

SEP 14 1987

Department of Water Resources

Mr  
L Glen Dapton, Chief  
Operations Bureau  
Dept. of Water Resources  
State Office  
450 W. State St.  
Boise Idaho  
RE: Permit - 34-7088  
Dear Mr Dapton

Yesterday I had a visit with Ernie  
Barisen since the 30 day time limit  
was nearly expired. He advised me  
to write your relative to your letter  
of Aug 12. He also said he would be  
talking to you on this matter.

Answer to question No. 1 - yes, I have  
been in litigation with the city with-  
in the past 5 years. This matter was  
resolved early this year. I have been  
unable to date to get a copy of this  
decision, but will get one as soon as  
possible and forward it to you.  
Question No. 2, Ans. I have approx 15-20  
NOV 22 1988

Acres cleared and ready to irrigate.  
I am however hoping to get the  
full 5 inches of water from the  
City spring to merge with my spring  
so as to have a larger head and con-  
sequently a more economical operation.  
I would then rotate <sup>the water</sup> between the meadow  
and upper bench land. If I am  
not successful in getting this done  
I will go ahead and irrigate with  
the smaller head. All irrigation is  
available and ready to be put to use

Another issue is the action that  
Idaho Power has against many farmers.  
I am among those and have not yet  
been released so I really don't know  
where I stand

I hope this will suffice and provide  
the answer you need and also hope  
you can see fit to making an apt  
Thank you

Amicably,  
John Power

NOV 22 1992

August 12, 1987

John L. Powers  
General Delivery  
Mackay, ID 83251

Re: Permit 34-7088 - Request for Extension of Time

Dear Mr. Powers:

Subsequent to my letter of February 10, 1987, to you, I have reviewed in detail the above referenced water right file and the request for extension of time which you submitted to the department on November 6, 1986.

The request for extension of time states that the work accomplished to date (During the 5 year period allowed for development of the water right) consists of excavating the spring. The request also shows that development of the water right has not been completed due to costs of litigation with the City of Mackay.

The department is aware of the June 17, 1981 Judgement of the court in this matter. The Judgement precipitated the stipulation entered into on September 29, 1981, between you, the City of Mackay and the department relative to the nature of the works authorized in the department's April 26, 1987 approval of the application.

The questions for which the department now needs information in order to consider the request for extension of time are as follows:

1. Has there been litigation between you and the City of Mackay subsequent to the department's Memorandum Decision and Order on Remand which was issued on April 19, 1982? If so, please provide the department with copies which show the starting and ending dates of the litigation.

2. Specifically, what development relative to diversion and application of water from the spring to a beneficial use have you accomplished during the five (5) year period from April 1982 to April 1987 which was allowed for development? **MAILED**  
any of the thirty (30) acres being irrigated from the spring?

NOV 22 1988

John L. Powers

-2-

August 12, 1987

Please provide this information to the department within thirty (30) days in order for the department to be able to further consider the pending request for extension of time.

If you have questions relative to the information you need to submit, please feel free to contact the department.

Sincerely,

L. GLEN SAXTON, Chief  
Operations Bureau

c: E. Region

RECEIVED

NOV 2 1987



# STATE OF IDAHO

## DEPARTMENT OF WATER RESOURCES EASTERN REGION

John V. Evans  
Governor

A. Kenneth Dunn  
Director

150 Shoup — Suite 15  
Idaho Falls, Idaho 83402  
(208) 525-7161

34-7088

August 21, 1987

William G. Carlson  
Attorney at Law  
P.O. Drawer 804  
Arco, Idaho 83213-0804

RE: Permit 34-7088, John Powers

Dear Mr. Carlson:

The Department is currently evaluating Mr. Powers' request for an extension of time on the above captioned permit. In this regard, he has been asked to furnish information concerning his efforts to develop the project. This information is due by September 12, 1987.

By copy of your letter dated August 20, 1987, our state office has been notified of the City of Mackay's position concerning compliance with the condition of approval for permit 34-7088. But further action by the Department will be deferred until there has been an opportunity to review any information submitted by Mr. Powers.

Respectfully submitted,

Ernest Carlsen  
Water Rights Supervisor

EC/dg

cc L. Glen Saxton ✓

MAILED

NOV 22 1988

MASONIC BUILDING  
260 W. GRAND AVE.

WILLIAM G. CARLSON  
ATTORNEY AT LAW  
P O. DRAWER 804  
ARCO, IDAHO 83213-0804

AREA CODE 208  
527-3458

August 20, 1987

State of Idaho  
Department of Water Resources  
150 Shoup Ave. - Suite 15  
Idaho Falls, ID 83402

RECEIVED

AUG 26 1987

AUG 21 1987

Department of Water Resources  
Eastern District Office

Attn: Ernest Carlsen

Re: City of Mackay/John Powers  
Application for Permit  
No. 34-7088

Gentlemen:

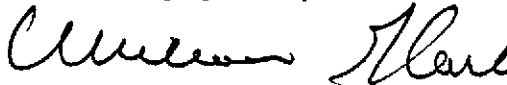
Mackay City officials have consulted us regarding Mr. Carlsen's letter to Councilman Ellis, dated August 5, 1987. As noted in that letter, the City has expressed its willingness to install a 2" pipe in the city spring house, to deliver the 5 miner's inches of water to Mr. Powers.

At a City Council Meeting on August 4, 1987, Mr. Powers was present and was advised by City representatives that the city would install the device by October 1, 1987.

The City does have a concern with Mr. Powers activities viz-a-viz the "Powers Spring," however. City officials feel that Mr. Powers has lowered the outflow from "his" spring, without justification, and that this has adversely impacted the City spring. The Department's "Order on Remand," entered April 19, 1982, clearly prohibits cleaning of the spring unless the flow drops below 0.20 cfs. The Order also requires the installation and maintenance of a "measuring device" acceptable to Idaho Department of Water Resources, for the purpose of determining the outflow from the spring. This has never been done.

We ask that you initiate the necessary action to require Mr. Powers to conform to the requirements of the permit.

Very truly yours,

  
William G. Carlson  
Mackay City Attorney

WGC/sm

CC: City of Mackay

NOV 22 1988

STATE OF IDAHO  
DEPARTMENT OF WATER RESOURCES

• Eastern District Office  
150 Shoup • Idaho Falls, Idaho

183402

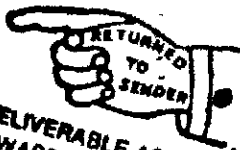
JAN 8 1982

Dept. of Water Resources  
Eastern District Office

REGISTERED MAIL

12873

RETURN RECEIPT REQUESTED



UNDELIVERABLE AS ADDRESSED  
FORWARDING ORDER EXPIRED

*Hopkins & Frevon*  
*P.O. Box 1219*  
*Idaho Falls, Idaho*  
*523-4445*  
*Ed C. Springer*

Ed C. Springer,  
Attorney at Law  
P.O. Box 625  
Challis, ID 83226

**MICROFILMED**

CLAIM CHECK  
NO.

713505

☐ HOLD

DATE

1982

1ST NOTICE

2ND NOTICE

RETURN

Detached from  
PS Form 3849-A  
May 1980

PS Form 3811, Jan. 1979

|                                                                                                                                                                                                                                                                                                                                                                                                                                                               |                                            |                  |                |               |             |  |       |  |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------|------------------|----------------|---------------|-------------|--|-------|--|
| <b>SENDER:</b> Complete items 1, 2, and 3.<br>Add your address in the "RETURN TO" space on reverse.                                                                                                                                                                                                                                                                                                                                                           |                                            |                  |                |               |             |  |       |  |
| 1. The following service is requested (check one.)<br><input checked="" type="checkbox"/> Show to whom and date delivered. .... \$<br><input type="checkbox"/> Show to whom, date and address of delivery. .... \$<br><input type="checkbox"/> RESTRICTED DELIVERY<br>Show to whom and date delivered. .... \$<br><input type="checkbox"/> RESTRICTED DELIVERY.<br>Show to whom, date, and address of delivery. \$ _____<br><br>(CONSULT POSTMASTER FOR FEES) |                                            |                  |                |               |             |  |       |  |
| 2. ARTICLE ADDRESSED TO:<br><i>2nd Springer, Attorney</i><br><i>P.O. Box 625</i><br><i>Challis Id. 83226</i>                                                                                                                                                                                                                                                                                                                                                  |                                            |                  |                |               |             |  |       |  |
| 3. ARTICLE DESCRIPTION:<br><table border="1"> <tr> <td>REGISTERED NO.</td> <td>CERTIFIED NO.</td> <td>INSURED NO.</td> </tr> <tr> <td></td> <td>12873</td> <td></td> </tr> </table><br>(Always obtain signature of addressee or agent)                                                                                                                                                                                                                        |                                            |                  | REGISTERED NO. | CERTIFIED NO. | INSURED NO. |  | 12873 |  |
| REGISTERED NO.                                                                                                                                                                                                                                                                                                                                                                                                                                                | CERTIFIED NO.                              | INSURED NO.      |                |               |             |  |       |  |
|                                                                                                                                                                                                                                                                                                                                                                                                                                                               | 12873                                      |                  |                |               |             |  |       |  |
| I have received the article described above.<br>SIGNATURE <input type="checkbox"/> Addressee <input type="checkbox"/> Authorized agent                                                                                                                                                                                                                                                                                                                        |                                            |                  |                |               |             |  |       |  |
| 4. DATE OF DELIVERY                                                                                                                                                                                                                                                                                                                                                                                                                                           | POSTMARK<br>CHALLIS ID<br>JAN 7 1982<br>PM |                  |                |               |             |  |       |  |
| 5. ADDRESS (Complete only if requested)                                                                                                                                                                                                                                                                                                                                                                                                                       |                                            |                  |                |               |             |  |       |  |
| 6. UNABLE TO DELIVER BECAUSE:                                                                                                                                                                                                                                                                                                                                                                                                                                 |                                            | CLERK'S INITIALS |                |               |             |  |       |  |

RETURN RECEIPT, REGISTERED, INSURED AND CERTIFIED MAIL

☆GPO 1975-255-348

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

IN THE MATTER OF PROTESTS AGAINST APPROVAL  
OF APPLICATION FOR PERMIT NO. 34-7088 IN  
THE NAME OF JOHN L. POWERS

---

NOTICE OF REHEARING

On December 17, 1974, John L. Powers filed with the Department of Water Resources an application to appropriate the public waters of the State of Idaho. The Memorandum Decision issued was appealed to the District Court and on June 17, 1981, the matter was remanded back to the Department of Water Resources by the District Court judge.

The Department has set the matter for hearing for Thursday, January 21, 1981, at 10:00 a.m. in the basement meeting room, Memorial Building, Arco, Idaho. The hearing will be held in accordance with Chapter 2, Title 42 of the Idaho Code and adopted Rules of Practice and Procedure of the Department of Water Resources. Opportunity shall be afforded all parties to respond and present evidence and argument on all issues involved.

Dated this 6<sup>th</sup> day of January, 1982.



RONALD D. CARLSON

Eastern Regional Supervisor

## CONFERENCE AND HEARING INFORMATION

### IN THE MATTER OF APPROVAL OF AN APPLICATION FOR PERMIT

In accordance with Idaho Code, Section 42-203, the following issues are involved in the consideration of the application and protest(s):

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

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 at the expense of the requesting party. 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.

If the hearing is conducted by a hearing officer appointed by the Director, rather than the Director himself, a proposed decision will be submitted to the parties and the parties may be afforded an opportunity to file exceptions to the proposed decisions and present briefs and oral arguments to the Director prior to the issuance of a final decision by the Director. This procedure is required by Idaho Code, Section 42-1701A.

The parties by written stipulation may waive their right to a proposed decision, however, the failure of either party to waive a proposed decision will not prejudice the Director's review of a party's evidence and arguments. However, such a waiver will shorten the decision-making process and may expedite substantially the issuance of a final decision. Whether compliance with Section 42-1701A is waived will not affect a party's right to petition for a rehearing of the final decision pursuant to Rule 11 of the Department's Rules of Practice and Procedure or affect a party's right to appeal the final decision to the district court.

Under the provisions of the Idaho Code, Sections 42-1701A and 67-5215, any court review of the Department's decision on appeal shall be confined to the record created before the Department.

Failure to appear at the time and place set for hearing by the applicant or protestant(s) may allow the Department to dismiss without prejudice the protest(s) or the application. Any and all cost incurred by reason of such non-appearance may be assessed against such non-appearing parties.

June 12, 1987

William G. Carlson  
Mackay City Attorney  
P. O. Drawer 804  
Arco, ID 83213-0804

Dear Mr. Carlson:

Re: Permit No. 34-7088

In response to your letter of inquiry dated June 4, 1987, please be advised that on November 6, 1986, the department received a request for extension of time in which to submit proof of beneficial use for Permit No. 34-7088.

Since the permit is one of many named in the Idaho Power Company suit with respect to the Swan Falls Dam controversy, the department has subsequently written to the permit holder and advised that we will hold the request for extension of time without action until the permit can be reviewed for compliance with the provisions of Sec. 42-203D, Idaho Code.

Another way of describing the status of the permit is that it is valid, but presently in a "holding pattern" until the permit can be reviewed with respect to some spinoff matters from the Swan Falls controversy.

Please feel free to contact this office if you have other questions.

Sincerely,

L. GLEN SAXTON  
Chief, Operations Bureau

LGS:rf

RECEIVED

NOV 22 1988

MASONIC BUILDING  
260 W GRAND AVE

WILLIAM G. CARLSON  
ATTORNEY AT LAW  
P O DRAWER 804  
ARCO, IDAHO 83213-0804

AREA CODE 208  
527-3458

June 4, 1987

RECEIVED  
JUN 09 1987

State of Idaho  
Department of Water Resources  
Statehouse  
Boise, ID 83720

Department of Water Resources

Attn: L. Glen Saxton, Chief  
Operations Bureau

Re: John L. Powers -  
Permit No. 34-7088

Gentlemen:

We represent the City of Mackay, Protestant in the Application for the above permit. We note that Powers, the Permittee, was required by the Director's Memorandum Decision and Order on Remand, to install a measuring device on the spring outflow channel. Also, he was to submit Proof of Construction of Works and Application to Beneficial Use, by April 1, 1987.

Representatives of our client advise that he has neither installed the device nor has he applied the water to any substantial beneficial use.

Would you please advise us of the current status of this permit, particularly whether Powers presented the necessary proof prior to April 1, 1987.

Very truly yours,



William G. Carlson  
Mackay City Attorney

WGC/sm

CC: City of Mackay

MAILED

NOV 22 1988

February 10, 1987

John L. Powers  
General Delivery  
Mackay, ID 83251

Dear Mr. Powers:

Re: Permit No. 34-7088

The department has reviewed the request for extension of time submitted in connection with the above referenced permit. The department will hold the request without action until the permit is reprocessed in compliance with the provisions of Sec. 42-203D, Idaho Code. Upon completion of reprocessing, an appropriate development period will be granted if the permit is to be continued.

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

Sincerely,

L. GLEN SAXTON  
Chief, Operations Bureau

LGS:rf

cc: Region

**RECEIVED**

NOV 22 1988

November 25, 1986

John L. Powers  
General Delivery  
Mackay, ID 83251

Dear Mr. Powers:

Re: Permit No. 34-7088

The department received and reviewed the Request for Extension of Time submitted in connection with the above referenced permit. Before the department takes action on the request additional information is needed.

The request indicates that litigation is the bases for the extension request. Please supply copies of documents which support your request for extension of time. Specifically, the department would like to have copies of items which show how you were delayed in the development of this project after April 19, 1982. Also, any support data which bring the title of the water into question.

Please supply this information within thirty days. If you have any questions concerning this matter, please feel free to contact this office.

Sincerely,

RITA I. FLECK  
Secretary/Records Manager

RECEIVED

NOV 22 1988



State of Idaho

## DEPARTMENT OF WATER RESOURCES

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

JOHN V. EVANS  
Governor

A. KENNETH DUNN  
Director

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

SEPTEMBER 1, 1985

DEAR PERMIT HOLDER:

ACCORDING TO OUR RECORDS, YOU ARE THE HOLDER OF A WATER PERMIT ON WHICH PROOF OF BENEFICIAL USE OF WATER WAS NOT SUBMITTED BEFORE JULY 1, 1985, WHICH INDICATES YOUR PROJECT IS NOT COMPLETE. THEREFORE, YOU NEED TO BE AWARE OF CHANGES IN IDAHO LAW, EFFECTIVE JULY 1, 1985, WHICH IMPACT ALL WATER PERMITS ISSUED BY THIS DEPARTMENT.

SPECIFICALLY, PURSUANT TO SECTION 42-203D, IDAHO CODE, THE DEPARTMENT MUST REVIEW ALL PERMITS FOR WHICH DEVELOPMENT OF WATER USE WAS NO COMPLETED ON OR BEFORE JULY 1, 1985, TO DETERMINE IF THEY MEET THE NEW REQUIREMENTS OF CHAPTER 2, TITLE 42, IDAHO CODE. RULES AND REGULATIONS GOVERNING THE RE-EVALUATION OF PERMITS ARE NOT YET FINALIZED. HOWEVER, IF YOU COMPLETED THE DEVELOPMENT UNDER YOUR PERMIT BEFORE JULY 1, 1985, YOU SHOULD SUBMIT A PROOF OF BENEFICIAL USE STATEMENT, STATING THAT THE PROJECT WAS COMPLETED BEFORE JULY 1, 1985 SO THAT YOUR PERMIT WILL NOT BE SUBJECT TO THE REVIEW REQUIREMENTS OF SECTION 42-203D, WHICH READS AS FOLLOWS:

42-203D. REVIEW OF PERMITS - OPPORTUNITY FOR HEARING. - (1)THE DEPARTMENT SHALL REVIEW ALL PERMITS ISSUED PRIOR TO THE EFFECTIVE DATE [JULY 1, 1985] OF THIS SECTION, EXCEPT TO THE EXTENT A PERMIT HAS BEEN PUT TO BENEFICIAL USE PRIOR TO JULY 1, 1985, TO DETERMINE WHETHER THEY COMPLY WITH THE PROVISIONS OF CHAPTER 2, TITLE 42, IDAHO CODE. IF THE DEPARTMENT FINDS THAT THE PROPOSED USE DOES NOT SATISFY THE CRITERIA OF CHAPTER 2, TITLE 42, IDAHO CODE, THEN THE DEPARTMENT SHALL EITHER CANCEL THE PERMIT OR IMPOSE THE CONDITIONS REQUIRED TO BRING THE PERMIT INTO COMPLIANCE WITH CHAPTER 2, TITLE 42, IDAHO CODE. IF THE DEPARTMENT FINDS THAT THE PERMIT SATISFIES THE CRITERIA ESTABLISHED IN CHAPTER 2, TITLE 42, IDAHO CODE, THEN THE DEPARTMENT SHALL ENTER AN ORDER CONTINUING THE PERMIT.  
(2)THE DEPARTMENT SHALL PROVIDE AN OPPORTUNITY FOR HEARING IN ACCORDANCE WITH SECTION 42-1701A, IDAHO CODE, AND SECTIONS 67-5209 THROUGH 67-5215, IDAHO CODE, FOR EACH HOLDER OF A PERMIT THAT IS PROPOSED EITHER TO BE CANCELLED OR MADE SUBJECT TO NEW CONDITIONS.

YOU MAY OBTAIN PROOF OF BENEFICIAL USE FORMS FROM THE DEPARTMENT. IF YOU HAVE ANY QUESTIONS, PLEASE LET US KNOW.

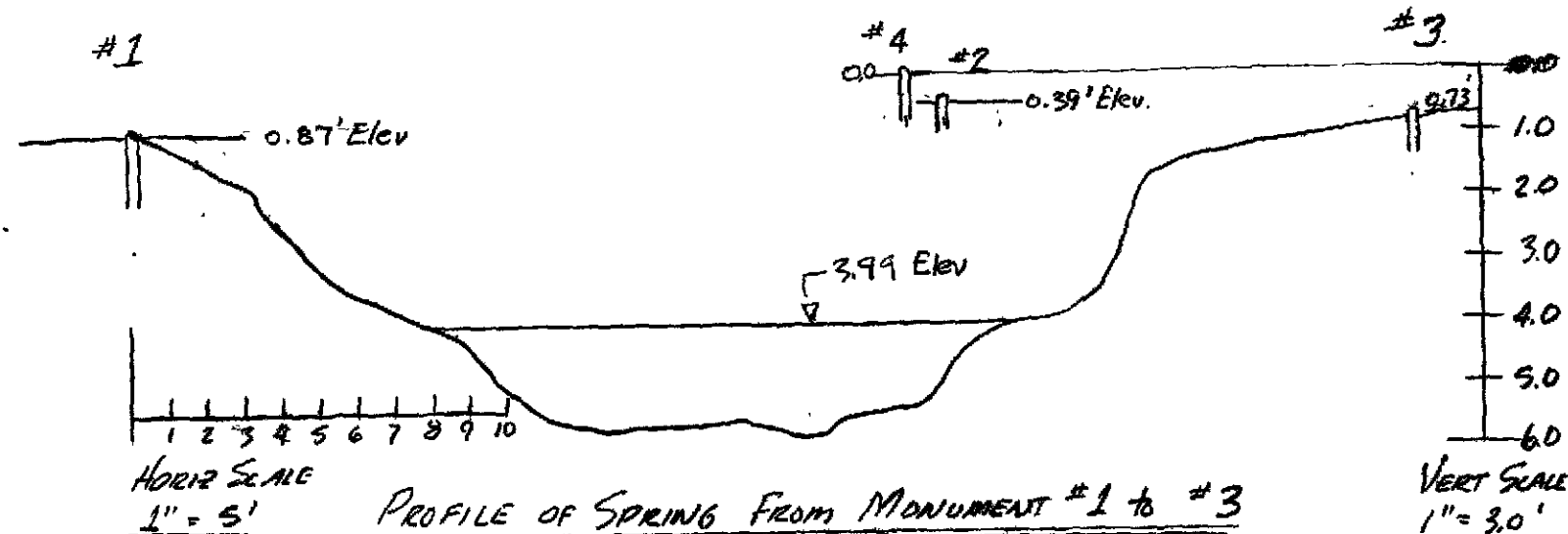
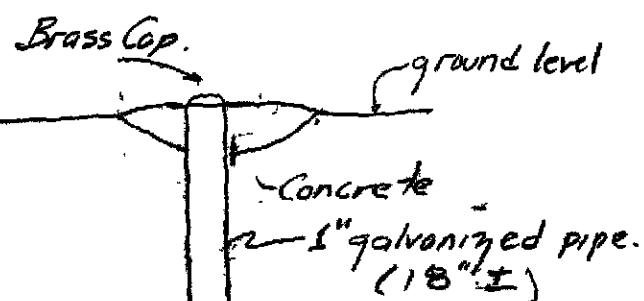
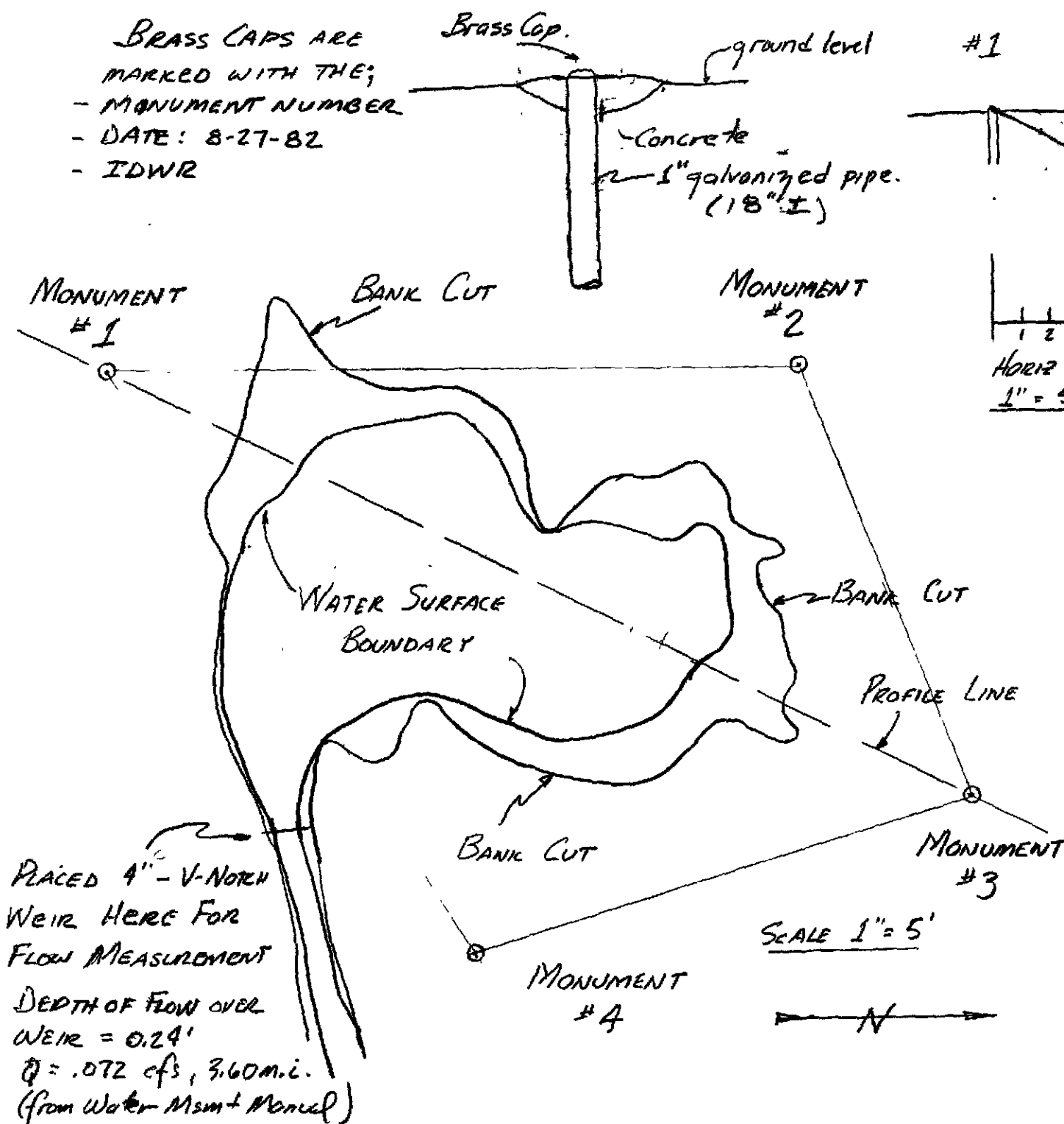
SINCERELY,

*L. Glen Saxton*  
L. GLEN SAXTON  
CHIEF, OPERATIONS BUREAU

RECEIVED

NOV 22 1988

- BRASS CAPS ARE  
MARKED WITH THE;  
- MONUMENT NUMBER  
- DATE: 8-27-82  
- IDWR



#### DISTANCES FROM MONUMENT TO MONUMENT

|                   |                   |
|-------------------|-------------------|
| #1 to #2 - 24.66' | #1 to #3 - 34.32' |
| #2 to #3 - 16.13' | #2 to #4 - 23.88' |
| #3 to #4 - 18.15' |                   |
| #4 to #1 - 29.40' |                   |

#### RELATIVE ELEVATIONS OF MONUMENTS.

|                                  |
|----------------------------------|
| #4 - 0.00'                       |
| #3 - 0.73' (below #4)            |
| #2 - 0.39' "                     |
| #1 - 0.87' "                     |
| H <sub>2</sub> O SURFACE 3.99' " |

NW 1/4 NE 1/4 SEC 32, T.7N, R.24E.B.M. POWERS SPRING MONUMENTS

AUG 27, 1982

IDAHO DEPT. OF WATER RESOURCES.

π - Steve McCormick, IDWR  
φ - Gerald Ramsey, IDWR

DEM 17303000

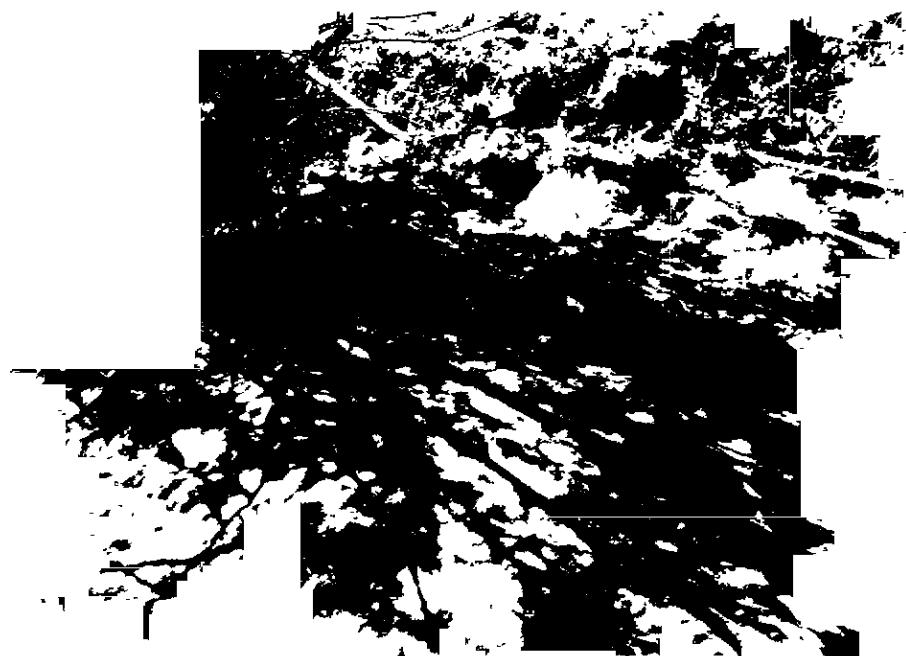
RECEIVED

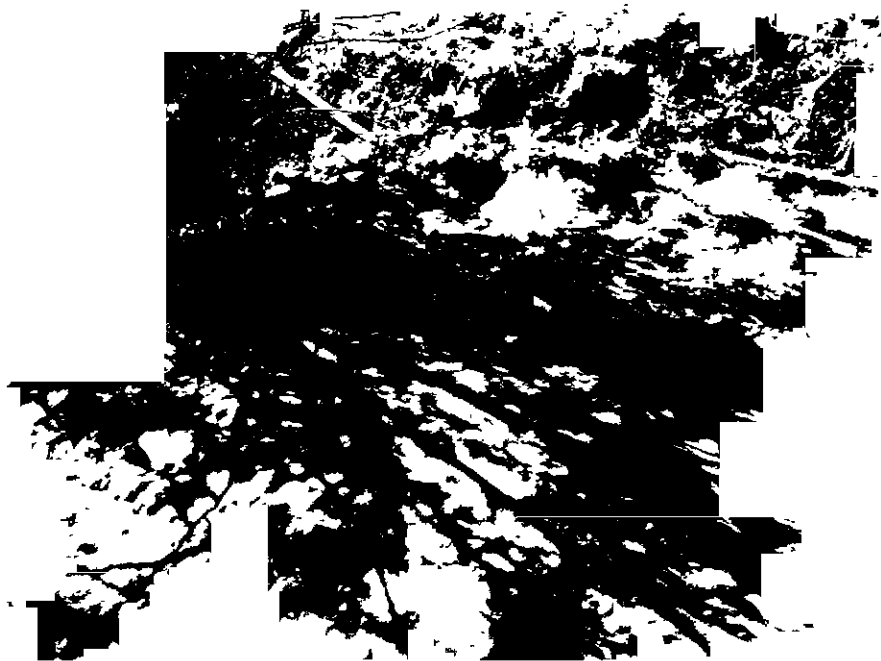
OCT 7 1982

Department of Water Resources

Dave Tuttle

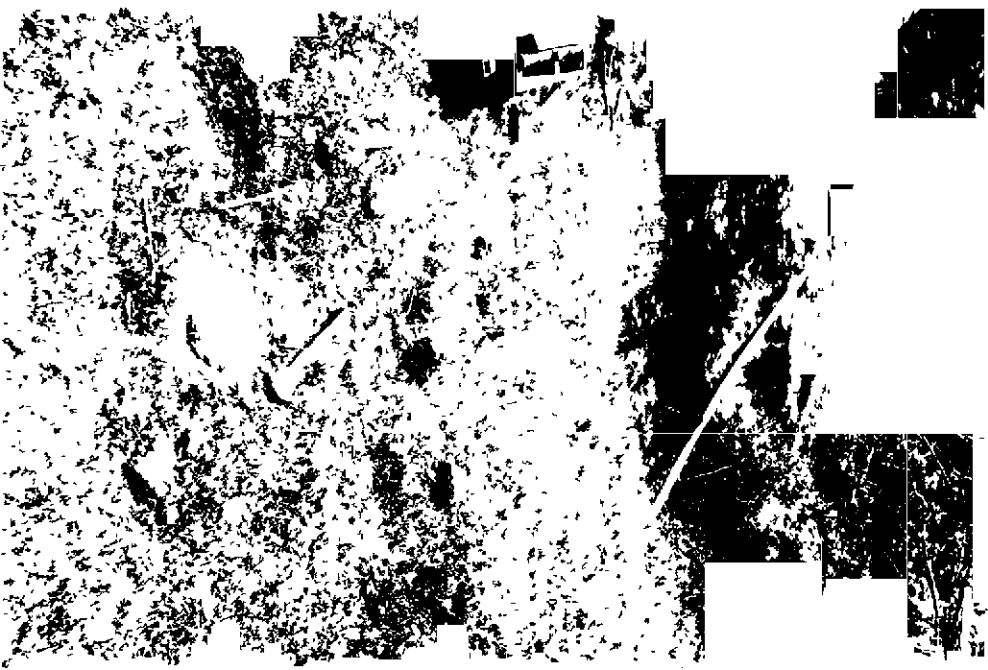
Photos of Povers Spring Monuments.  
from Stu McCormick, Eastern



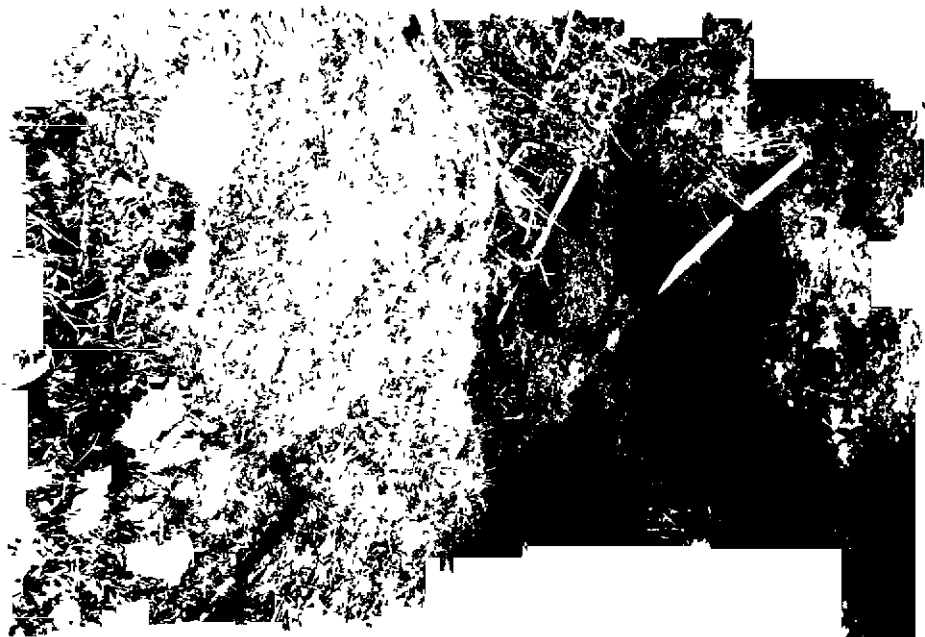


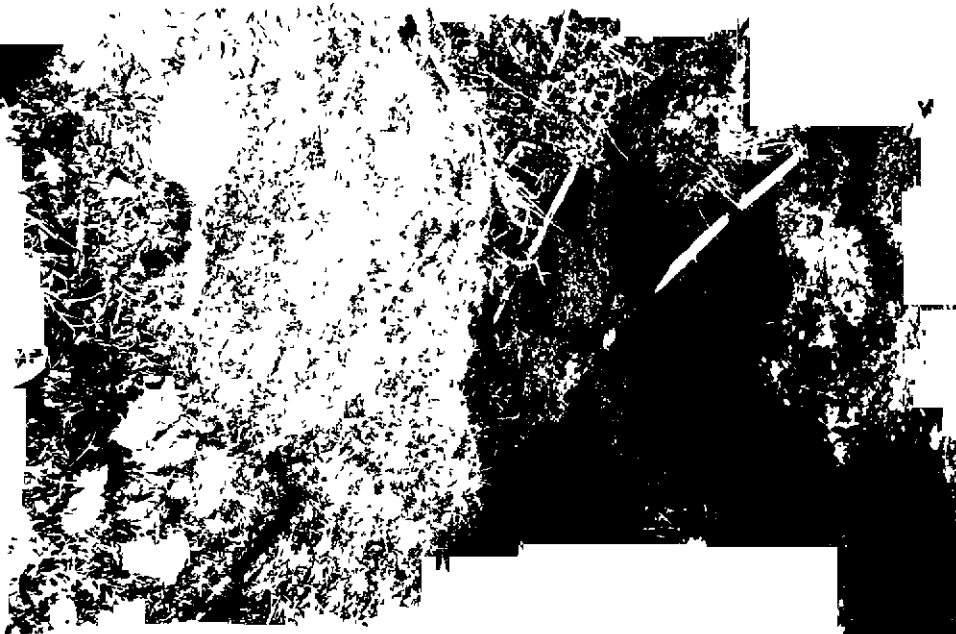












INTER-DEPARTMENT MEMO — 1

FROM Norm Young

DATE August 2, 1982

TO Ron Carlson

SUBJECT Permit No. 34-7088

Enclosed is a copy of the memorandum decision on the above permit and a copy of a letter from Mayor Caskey of Mackay.

Please arrange the requested inspection.

NCY:dc

**MICROFILMED**

---

SIGNATURE

203 SOUTH MAIN ST

**CITY OF MACKAY**  
CUSTER COUNTY  
IDAHO 83251

July 27, 1982

P.O. BOX 418

**RECEIVED**

JUL 29 1982

Department of Water Resources

L. Glen Saxton  
Chief, Operations Bureau  
Idaho Department of Water Resources  
Statehouse  
Boise, Idaho 83720

Re: Permit No. 34-7088 Memorandum Decision and Order on Remand

Dear Mr. Saxton:

The City of Mackay has accepted the memorandum decision of the IDWR as amended on April 19, 1982, concerning John Power's application for permit on Powers Spring.

We request that the measuring of the lateral boundaries and depth of Powers Spring, which is to be done by the IDWR, be completed as soon as possible so that the permanent monuments can be placed.

We also ask that Mr. Powers be encouraged to install the required measuring device now that he has completed cleaning and deepening the ditch which connects to the spring outflow.

Please let us know when the IDWR will be able to arrange for the measuring of the spring dimensions and its waters.

Thank you for your consideration of this matter.

Sincerely yours,

*Oval L. Caskey*  
Oval L. Caskey, Mayor

OLC/nm

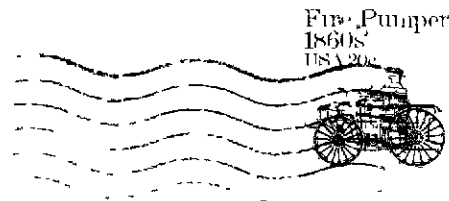
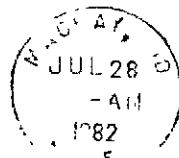
**CITY OF MACKAY**

CUSTER COUNTY

IDAHO 83251

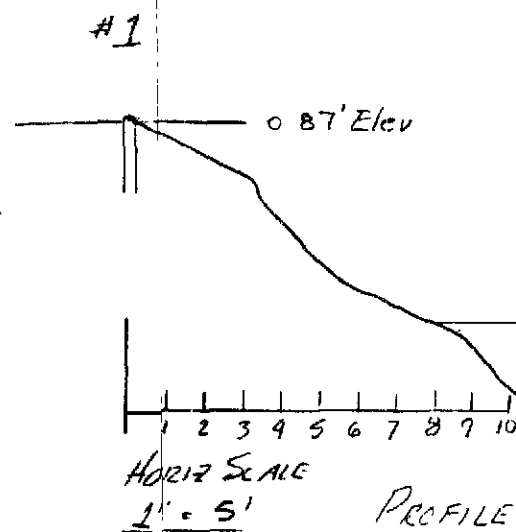
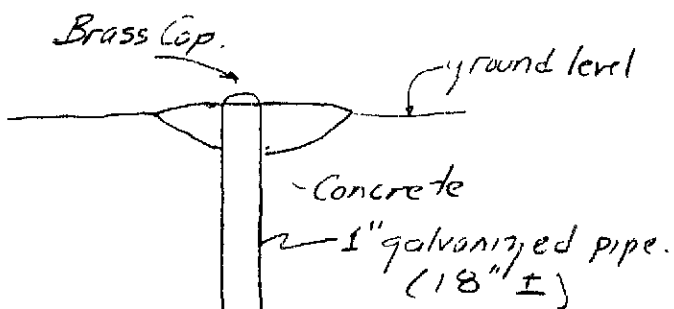
**MICROFILMED**

**ENJOY LOST RIVER'S FAMOUS FISHING**

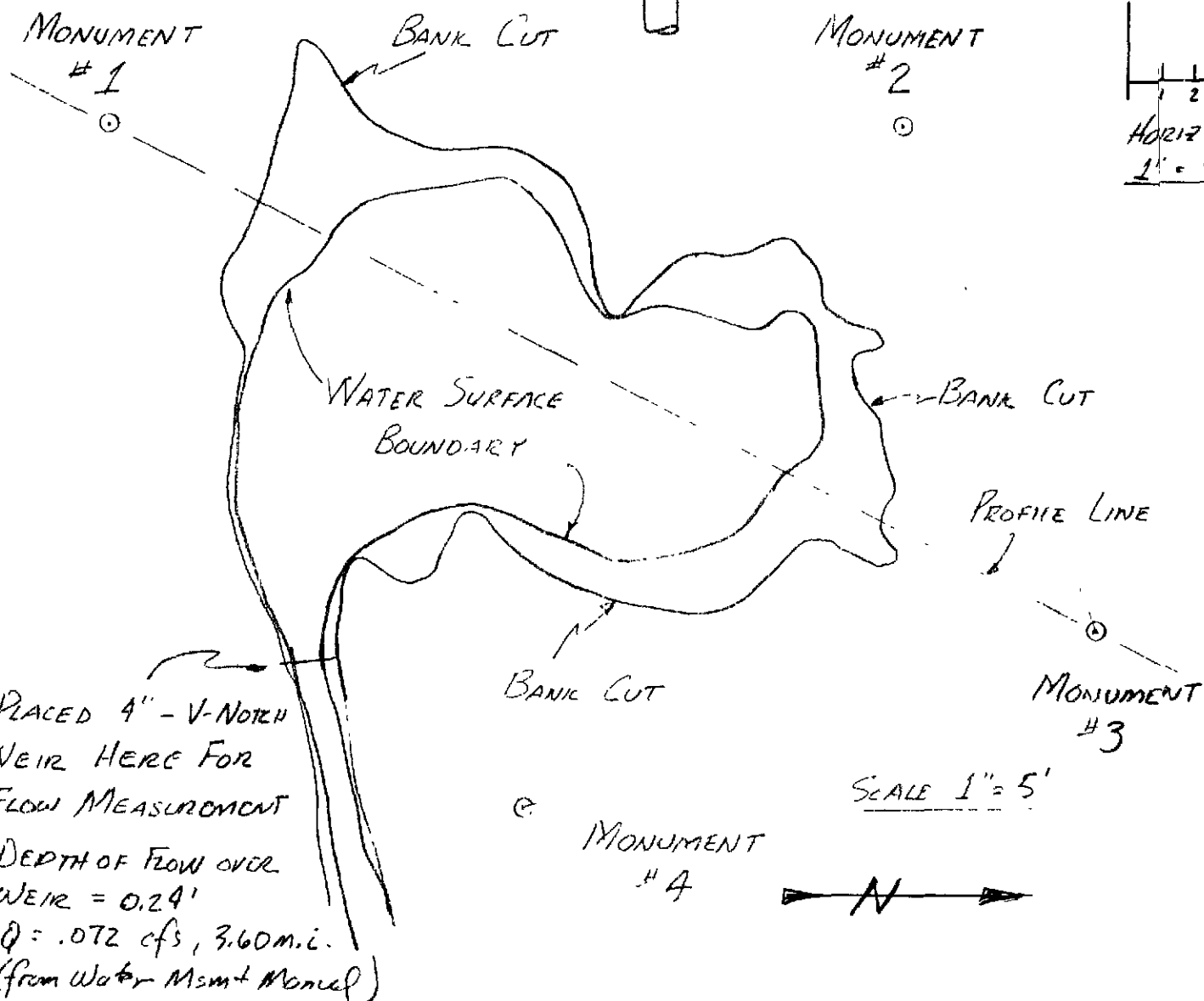
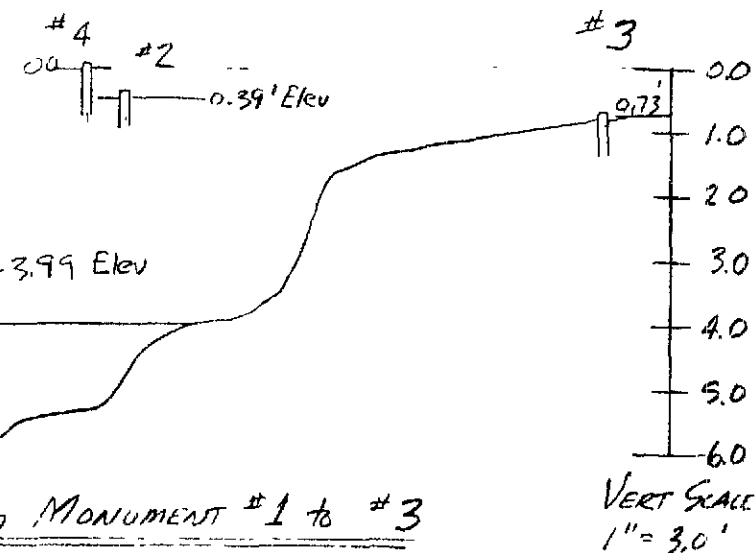


L. Glen Saxton  
Chief, Operation Bureau  
Idaho Department of Water Resources  
Statehouse  
Boise, Idaho 83720

BRASS CAPS ARE  
MARKED WITH THE;  
- MONUMENT NUMBER  
- DATE: 8-27-82  
- IDWR



PROFILE OF SPRING FROM MONUMENT #1 to #3



PLACED 4" - V-NOTCH  
WEIR HERE FOR  
FLOW MEASUREMENT  
DEPTH OF FLOW OVER  
WEIR = 0.24'  
Q = .072 cfs, 3.60 m.i.  
(from Water Msm + Manual)

DISTANCES FROM MONUMENT TO MONUMENT

#1 to #2 - 24.66'    #1 to #3 - 34.32'  
#2 to #3 - 16.13'    #2 to #4 - 23.88'  
#3 to #4 - 18.15'  
#4 to #1 - 29.40'

RELATIVE ELEVATIONS OF MONUMENTS.

#4 - 0.00'  
#3 - 0.73' (below #4)  
#2 - 0.39' "  
#1 - 0.87' "  
H<sub>2</sub>O SURFACE 3.99' "

POWERS SPRING MONUMENTS

AUG 27, 1982

IDAHO DEPT. OF WATER RESOURCES.

π - Steve McCormick, IDWR  
φ - Gerald Ramsay, IDWR

April 21, 1982

John L. Powers  
211 North Main  
Mackay, ID 83251

Dear Mr. Powers:

Re: Application for Permit No. 34-7088

Enclosed is a copy of your approved Application for Permit along with a copy of the Memorandum Decision and Order on Remand. We direct your attention to the conditions of approval as set forth in this order.

You should be aware that any person who does not agree with the decision may request a rehearing before the director of the Department of Water Resources within twenty (20) days or may appeal directly to the district court within sixty (60) days from the date the decision is mailed.

Sincerely,

L. GLEN SAXTON  
Chief, Operations Bureau

LGS:rf

Enclosures

cc: Michael D. Crappo and Kent W. Foster  
Oval L. Caskey  
Rowse Ellis  
Ted Springer

MICROFILMED

34-7088 - John L. Powers

Second Floor Conference Room, State Office Building  
Idaho Falls, Idaho

Wednesday, February 17, 1982 - 10:00 a.m.

ROSTER OF ATTENDANCE

Hearing Officer NORMAN C. YOUNG

| Name             | Address               | Representing   |
|------------------|-----------------------|----------------|
| TED SPRINGER     | Box 1219, IDAHO FALLS | CITY OF MACKAY |
| Erval A. Caskey  | Box 41                | Mackay         |
| Russell Ellis    | " 55                  | "              |
| Michael D. Cryso | P.O. Box 129          | I. F.          |
| John L. Powers   | Gen del               | Mackay Idaho   |
| Kent M. Vester   | Idaho Falls           | Mr. Powers.    |

MICROFILMED

Powers - vs. City of Mackay  
FEBRUARY 17, 1982 10:00 AM  
State office Bldg T F  
Hearing on remand for 34-7088

Applicant John Powers  
Terry Chaps  
Kent Foster

Protestant - Ted Springer, Oval Caskey,  
Rowell Ellis

Dept — Norm Young, hearing officer  
Ron Carlson

Pre-hearing Conference

① Issues Identified

① Cleaning — permissible depths —  
devices to be used for cleaning  
— object to pumps —

② Measurement of Power's flow

② Issues Agreement — excavation as it exists is  
adequate & satisfactory

monuments to be placed, dept supervise — trespass  
OK for dept  
Hearing — Notice of this remand hearing was given 11/1/81

Purpose — obtain a "more precise  
definition of the works authorized" or a  
condition to implement the excavation depth  
caution".

Process — Remand - 6/17/81

Stipulation of how to proceed - 7/29/81

Work Plan - 10/5/81

City Response - 10/24/81

Powers Reply - 11/1/81

Request for hearing 11/1/81 — City

Negotiation letter 1/15/82

MICROFILMED

stipulated all  
as part of  
record —

① note request to exp. it to  
waive prelim. dec.

②

### Applicant's argument - Terry Crogo

① Beebe's decision - record supports finding of no interference

② Beebe only concerned that permit have a depth restriction.

③ Power's measured spring - found max. of 4 feet - wants latitude to 5 feet.

④ May use backhoe, shovel, or pump

⑤ Needs fee-way can't be precise

⑥ Wants right to build retaining wall

⑦ Couldn't agree on margin of error - asking dept to decide

⑧ Method clearing - city concerned about pump moving silt & clay upsetting the spring - will only clear to original depth -

⑨ Measurement wanted by city - shows that city won't accept Beebe's decision.

⑩ No need for flow measuring device - pumping will be from creek not spring.

⑪ Any conditions must relate to Sledge depth caution.

⑫ Urges prompt - dept action to allow applicant to irrigate this year.

### Protestant's argument - Springer

① City is relieved by agreement of no further excavation - preserve status quo

② Feels 5 feet is arbitrary - spring is already excavated to bed rock -

③ Supports dept establishing monument for depth & lateral boundaries.

MICROFILMED

- (4) City understands that powers will not pump water from the spring but from the creek downstream.
- (5) Feels existing boundaries should be limit of clearing -
- (6) Weeds should be removed by hand -
- (7) Endorse retaining wall to prevent sloughing <sup>transit</sup> dept should require it of permanent material.
- (8) Concerned that backhoe could disturb wells & floor of spring
- (9) Pump - not controllable - could water wells & draw out fines from around rocks - urge pump not be allowed.
- (10) Hand tools only - no supervision - City can't agree to this -
- (11) Measurement of water - relevant to court order -  
 not suggesting measurement devices - only do so when monuments are placed & whenever clearing is done.  
 City will bear expense of measurement because they asked for it.

## Rebuttal

### Crops -

(1) Confine applicant to status quo - they agree except for power on clearing procedure -

Powers is saying he will keep at the present depth but don't haul me into court if I go an extra inch - reasonable leeway to avoid litigation

(4) Further modest development" ok -  
Castella - City trench -  $4\frac{1}{2}$  feet

(5) Bedrock is part of present bottom of spring

(6) Retaining wall has always only been an option not a requirement - great expense - not reasonable

(7) Pump - If not a pump, then a shovel or backhoe - not could dig

(8) Agrees that if only hand tools then no need for supervision -

(9) Cleaning does not include pulling weeds by hand or shovel - city agrees except shovels shouldn't be used except under supervision

(10) Measurement - would provide evidence that city's spring had been interfered with - No correlation could be made - If stay on status quo, no need to measure. only used to set up next count round

### Springer's Rebuttal

(1) City is not on a vendetta - public obligation

(2) City wants constraints to avoid litigation

(3) Pump will create unnecessary disturbance

(4) Measurement - need to insure compliance with permit

(5) Status Quo is the goal, don't give additional room for expansion

(6) Questions relevance of trench - only  $4\frac{1}{2}$  feet

Stipulated on record that decision would be final not proposed

Powers does not object to measurement, but is opposed to having to pay for having measuring done.

TED SPRINGER ATTY -

Existing depth - 43' 47"

City endorse a retaining wall

Do not allow pump for cleaning

Measurement is relevant

5' depth arbitrary

Rebutal

Mike Caprio - Powers has to have some leeway

Weeds are removed by hand

no objection to  
willing to live by Dept rules

Ted Springer

Nervous about enlargement of spring, but not concerned about existing development.

MICROFILMED

34-7088

Feb 17, 1982

## REHEARING

### ISSUES

1. General agreement
  - a. excavation as it exists is OK

\$

2. Problems

- a. Cleaning depths

Equipment

Use of a pump for cleaning is a concern because of weakening spring by moving fines.

Remand hrg

Issues of agreement

Excavation as it now exists is acceptable to all parties  
Powers will go along w/ dept  
supervising cleaning.

MIKE CRADO ATTY

Applicant asking for leeway in  
cleaning. 5 foot depth +

What should be margin of error  
for ~~exc~~ excavation depth

UNRECORDED



State of Idaho

## DEPARTMENT OF WATER RESOURCES

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

JOHN V. EVANS

Governor

A. KENNETH DUNN

Director

Mailing address:

Statehouse

Boise, Idaho 83720

(208) 334-4440

January 21, 1982

Mr. Ted C. Springer  
P. O. Box 1219  
Idaho Falls, ID 83401

Mr. Mike Crapo  
P. O. Box 129  
Idaho Falls, ID 83401

Gentlemen:

The department has reviewed the settlement proposal outlined in Ted's January 13th letter to Mike. The department would request that the following additions be made to the agreement:

1. Monuments (permanent markers) be installed to mark the lateral boundaries and to provide a reference for the five foot (5') depth. The department will designate the locations for the monuments at the time of the first cleaning of the spring. Since these monuments will benefit both parties, the department believes that they should share the cost.

2. Monitoring - during the first year of this agreement, the department will be present at the first cleaning and one additional one, if it is performed. No more than two visits shall be requested by the city of Mackay during the first year.

In succeeding years, the department may visit the spring or may require the parties, at their expense, to hire a qualified person selected by the department to supervise the cleanings. No inspections will be necessary if Powers notifies the department and the city that he will only use hand tools for the cleaning.

If these proposals present a problem to you and your clients, please contact Norman Young or me.

Sincerely,

HOWARD CARSMAN  
Deputy Attorney General

HC:alw

MICROFILMED

WILLIAM S. HOLDEN  
R. VERN KIDWELL, P. A.  
FRED J. HAHN  
TERRY L. CRAPO  
KENT W. FOSTER  
ROBERT E. FARNAM  
WILLIAM D. FALER, P. A.  
STEPHEN F. MARTIN  
CHARLES A. HOMER

GARY L. MEIKLE  
CURT R. THOMSEN  
RANDALL K. BARTON  
MICHAEL D. CRAPO  
JAMES D. HOLMAN  
GAYLE A. SORENSON

LAW OFFICES  
HOLDEN, KIDWELL, HAHN & CRAPO  
IDAHO FIRST NATIONAL BANK BUILDING  
P. O. BOX 129  
IDAHO FALLS, IDAHO 83402  
TELEPHONE 523-0620  
AREA CODE 208

January 13, 1982

Ted C. Springer, Esq.  
428 Park Avenue  
Idaho Falls, ID 83402

Re: John Powers Water Application/City of Mackay

Dear Mr. Springer:

This letter will confirm the recent discussion which you and I had concerning possible settlement in the above captioned matter. With the understanding that both of our clients would have to give their approval to all of the matters we discussed, we reviewed the elements of concern by both parties in an effort to determine whether a mutual agreement could be reached. As a result of our discussion, we formulated a proposal which we each agreed to discuss with our clients. After our telephone conversation, I contacted Mr. Powers with regard to the proposal. In the interest of avoiding further litigation, he is willing to agree to it. Accordingly, we are summarizing our understanding of the proposal to which Mr. Powers would be willing to agree.

The proposal is as follows:

1. The maximum depth of excavation at any point in the excavation site will be set at 5 feet.

2. The Department of Water Resources shall measure the present lateral boundaries of the spring to determine its lateral dimensions.

3. Mr. Powers agrees that the present excavation is sufficient for the purposes of his permit in its present dimensions with the 5-foot depth restriction, and that further excavation will not be necessary. Mr. Powers further agrees that any further excavation would be undertaken only upon a new application to the Department for a permit. The city would be notified of any such new application.

MICROFILMED

RECEIVED

JAN 15 1982

ARTHUR W. HOLDEN (1877-1962)  
Department of Water Resources

Ted C. Springer, Esq.  
January 13, 1982  
Page Two

4. Due to the fact that it has been administratively and judicially confirmed that the present excavation does not extend into the clay barrier sufficient to interfere with the city springs and Mr. Powers has agreed to conduct no further excavation without first obtaining a new permit from the Department, the need for measurement of the existing flow of the spring and installation of flow devices is not necessary.

5. Mr. Powers will be given the right to clean the spring as needed in a reasonable manner not to cause the depth of the excavation to exceed the agreed 5-foot maximum at any point. Prior to undertaking any cleaning operations, Mr. Powers will give reasonable notice, e.g., five (5) days, to the Department of Water Resources, and will allow a representative of the Department of Water Resources to be present and supervise his cleaning operations to assure that the depth restriction of 5 feet is honored and that the lateral dimensions are not expanded.

6. If Mr. Powers decides to construct a retaining wall, he shall construct it out of a permanent material and shall notify the Department within a reasonable time, e.g., five (5) days, and shall allow the Department to supervise the construction of the retaining wall.

7. It would be specifically understood that by entering this agreement, neither party is waiving any of its legal rights or is estopped from asserting any of its legal rights in the future. Neither is any party waiving any of its defenses.

Obviously, the agreement of not only the city and Mr. Powers, but also of the Department of Water Resources is necessary for this proposal to be finalized. However, it does seem to represent a genuine compromise which should be acceptable to all parties and would pose a minimal burden on the Department of Water Resources.

It is our understanding that you are contacting the Department of Water Resources to determine whether they will set aside the presently scheduled hearing for approximately two weeks to allow us time to determine whether these settlement negotiations will be fruitful. We have no objection to setting aside the hearing for several weeks to see if this proposal will be acceptable. However, we do desire to proceed as quickly as possible in the event that a settlement is not reached.

MICROFILMED

Ted C. Springer, Esq.  
January 13, 1982  
Page Three

After you have had an opportunity to review this matter with the city, please advise us of whether the city would be willing to agree.

Very truly yours,

Michael D. Crapo

MDC:lh

cc: John Powers  
~~Howard~~ Carsman

MICROFILMED

BEFORE THE DEPARTMENT OF WATER RESOURCES  
OF THE  
STATE OF IDAHO

IN THE MATTER OF APPLICATION FOR }  
PERMIT NO. 34-7088 IN THE NAME }  
OF JOHN L. POWERS }

NOTICE OF HEARING RESCHEDULING

Notice is hereby given that the Department of Water Resources has rescheduled the hearing in the above referenced matter at the request of the counsel for the applicant and protestant.

The hearing has been rescheduled for Wednesday, February 17, 1982, at 10:00 a.m. in the second floor conference room, State Building, 150 Shoup, Idaho Falls, Idaho.

Dated this 14<sup>th</sup> day of January, 1982.



RONALD D. CARLSON

Eastern Regional Supervisor

MICROFILMED

BEFORE THE DEPARTMENT OF WATER RESOURCES  
OF THE  
STATE OF IDAHO

IN THE MATTER OF PROTESTS AGAINST  
APPROVAL OF APPLICATION FOR PERMIT  
NO. 34-7088 IN THE NAME OF JOHN L. POWERS

NOTICE OF HEARING CHANGE

Notice is hereby given that the Department of Water Resources has changed the hearing location concerning the above referenced application.

The Department has rescheduled the matter for hearing for Thursday, January 21, 1982 at 10:00 a.m. in the second floor conference room, State Office Building, 150 Shoup Avenue, Idaho Falls, Idaho. The hearing will be held in accordance with Chapter 2, Title 42 of the Idaho Code and adopted Rules of Practice and Procedure of the Department of Water Resources. Opportunity shall be afforded all parties to respond and present evidence and argument on all issues involved.

Dated this 11<sup>th</sup> day of January, 1982.



RONALD D. CARLSON

Eastern Regional Supervisor

Issues to be considered at this hearing were stipulated by the District Court; therefore, please disregard the attachment sent with the previous notice.

**RECEIVED**



STATE OF IDAHO

OFFICE OF THE ATTORNEY GENERAL

BOISE 83720

DAVID H. LEROY  
ATTORNEY GENERAL

DEPARTMENT OF WATER RESOURCES  
STATEHOUSE B.J.S.F. IDAHO 83720  
TELEPHONE (208) 334 4448

January 7, 1982

Mr. Ted C. Springer  
P.O. Box 1219  
Idaho Falls, ID 83402

Dear Ted:

I am pleased that you and Mike Crapo are attempting to resolve your clients' differences to avoid another hearing. To be on the safe side, and to keep this matter moving along, the department is setting a hearing date. If the hearing date poses a problem for you, please contact me.

The department is not currently able to provide a field investigation of the Powers excavation. The department could not send anyone until the spring, and even then may not have the funds to send someone. We appreciate your offer to pay for the department's expenses, but your payment would not help. It would go directly to the state's general fund and would not be available to offset funds spent from this year's budget.

The department could recommend qualified groundwater hydrologists who could take the measurements you have described. Please feel free to contact me if I can be of assistance.

Sincerely,

*[Handwritten signature]*

Howard Carsman  
Deputy Attorney General  
Dept. of Water Resources

HC:dc

cc: Mike Crapo

**MICROFILMED**

**UNITED STATES POSTAL SERVICE**

OFFICIAL BUSINESS

**SENDER INSTRUCTIONS**

Print your name, address, and ZIP Code in the space below.

- Complete items 1, 2, and 3 on the reverse.
- Attach to front of envelope if space permits, otherwise affix to back of article.
- Endorse article "Receipt Requested" adjacent to number.

PENALTY FOR PRIVATE  
USE TO AVOID PAYMENT  
OF POSTAGE, \$300



**RETURN  
TO**

DEPARTMENT OF WATER RESOURCES  
EASTERN DISTRICT OFFICE  
150 SHOUP AVE  
IDAHO FALLS, IDAHO 83401

\_\_\_\_\_  
(Name of Sender)

\_\_\_\_\_  
(Street or P.O. Box)

\_\_\_\_\_  
(City, State, and ZIP Code)

**JAN 8 1982**

Department of Water Resources  
Eastern District Office

- **SENDER:** Complete items 1, 2, and 3.  
Add your address in the "RETURN TO" space on reverse.

1. The following service is requested (check one.)

- ☒ Show to whom and date delivered.....\$  
☒ Show to whom, date and address of delivery.....\$  
☐ **RESTRICTED DELIVERY**  
 Show to whom and date delivered.....\$  
☐ **RESTRICTED DELIVERY.**  
 Show to whom, date, and address of delivery.\$ \_\_\_\_

(CONSULT POSTMASTER FOR FEES)

2. **ARTICLE ADDRESSED TO:**

*John L Powers*  
*211 N Main*  
*Mackay, Id. 83251*

3. **ARTICLE DESCRIPTION:**

| REGISTERED NO. | CERTIFIED NO. | INSURED NO. |
|----------------|---------------|-------------|
|                | 12871         |             |

(Always obtain signature of addressee or agent)

I have received the article described above.

SIGNATURE ☒ Addressee ☐ Authorized agent

*John L Powers*

DATE OF DELIVERY

*01-07-82*

5. **ADDRESS** (Complete only if requested)

6. **UNABLE TO DELIVER BECAUSE**

**MICROFILMED**

POSTMARK

**JAN**

**1982**

CLERK'S INITIALS

*32*

**UNITED STATES POSTAL SERVICE**

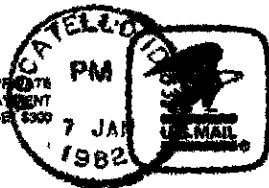
**OFFICIAL BUSINESS**

**SENDER INSTRUCTIONS**

Print your name, address, and ZIP Code in the space below.

- Complete items 1, 2, and 3 on the reverse.
- Attach to front of article if space permits, otherwise affix to back of article.
- Endorse article "Return Receipt Requested" adjacent to number.

PENALTY FOR PRIVATE  
USE TO AVOID PAYMENT  
OF POSTAGE \$300



DEPARTMENT OF WATER RESOURCES

EASTERN DISTRICT OFFICE

150 SHOUP AVE.

IDAHO FALLS, IDAHO 83401

RECEIVED



REPROFILED

JAN 8 1982

Department of Water Resources  
Eastern District Office

\_\_\_\_\_  
(Name of Sender)

\_\_\_\_\_  
(Street or P.O. Box)

\_\_\_\_\_  
(City, State, and ZIP Code)

- **SENDER:** Complete items 1, 2, and 3.  
Add your address in the "RETURN TO" space on reverse.

## 1. The following service is requested (check one.)

- ☒ Show to whom and date delivered. .... \$  
☐ Show to whom, date and address of delivery. .... \$  
☐ **RESTRICTED DELIVERY**  
 Show to whom and date delivered. .... \$  
☐ **RESTRICTED DELIVERY.**  
 Show to whom, date, and address of delivery. \$

(CONSULT POSTMASTER FOR FEES)

2. **ARTICLE ADDRESSED TO:**

Miky Crapo, Attorney  
 P.O. Box 129  
 Idaho Falls, Id. 83402

3. **ARTICLE DESCRIPTION:**

REGISTERED NO.

CERTIFIED NO.

INSURED NO.

12874

(Always obtain signature of addressee or agent)

I have received the article described above.

SIGNATURE

☐ Addressee☐ Authorized agent

Natale Joseph

4.

DATE OF DELIVERY

POSTMARK

5. **ADDRESS** (Complete only if request is)6. **UNABLE TO DELIVER**

MICROFILMED

RETURN RECEIPT, REGISTERED, INSURED AND CERTIFIED MAIL

**UNITED STATES POSTAL SERVICE**  
**OFFICIAL BUSINESS**

**SENDER INSTRUCTIONS**

Print your name, address, and ZIP Code in the space below.

- Complete items 1, 2, and 3 on the reverse.
- Attach to front of article if space permits, otherwise affix to back of article.
- Endorse article "Return Receipt Requested" adjacent to number.

PENALTY FOR PRIVATE  
USE TO AVOID PAYMENT  
OF POSTAGE, \$300



**RETURN**

**TO**

UNDELIVERED  
RETURN TO SENDER  
NO POSTAGE  
NECESSARY  
IF MAILED  
IN THE  
UNITED STATES

8861 EE NY

DEPARTMENT OF WATER RESOURCE  
EASTERN DISTRICT OFFICE  
150 SHCUP AVE.  
IDAHO FALLS, IDAHO 83401

(Name of Sender)

(Street or P.O. Box)

(City, State, and ZIP Code)

- **SENDER:** Complete items 1, 2, and 3.  
Add your address in the "RETURN TO" space on reverse.

1. The following service is requested (check one.)

- ☒ Show to whom and date delivered..... \$  
☐ Show to whom, date and address of delivery..... \$  
☐ **RESTRICTED DELIVERY**  
 Show to whom and date delivered..... \$  
☐ **RESTRICTED DELIVERY**,  
 Show to whom, date, and address of delivery \$

(CONSULT POSTMASTER FOR FEES)

2. **ARTICLE ADDRESSED TO:**

City of Mackay  
 City Hall  
 Mackay, Id.

3. **ARTICLE DESCRIPTION:**

| REGISTERED NO. | CERTIFIED NO. | INSURED NO. |
|----------------|---------------|-------------|
|                | 12872         |             |

(Always obtain signature of addressee or agent)

I have received the article described above.

SIGNATURE ☐ Addressee ☐ Authorized agent

4. *Debbie Clark*  
 DATE OF DELIVERY

01-08-82 -

5. **ADDRESS** (Complete only if requested)

6. **UNABLE TO DELIVER**

CLERK'S  
 INITIALS

J.L.

NAME AND ADDRESS OF SENDER

DEPARTMENT OF WATER RESOURCES

EMERGENCY DISTRICT OFFICE

100 SHILOH AVE.

Indicate type of mail:  
☒ Registered  
☐ Insured  
☐ CertifiedIndicate class of mail:  
☐ Commercial Insurance  
☐ A deductible class ofAffix stamp from U.S. Treasury or  
Postmaster's Office or U.S. Treasury  
Postmaster's Office or U.S. Treasury

| NAME AND ADDRESS OF SENDER              | NUMBER OF ARTICLE | POSTAGE | FEE | Handling Charge | Actual Value (if registered) | INSURED VALUE IF C.O.D. | REGISTERED VALUE IF C.O.D. | CERTIFIED VALUE IF C.O.D. |
|-----------------------------------------|-------------------|---------|-----|-----------------|------------------------------|-------------------------|----------------------------|---------------------------|
| 13871 (March 1979) 2111 Main, Monday    | 20                | 75      |     |                 |                              |                         | 60                         | 34.7088                   |
| 13972 (March 1979) Monday               | 20                | 75      |     |                 |                              |                         | 60                         | "                         |
| 13973 (March 1979) 60 Bell St. (Monday) | 20                | 75      |     |                 |                              |                         | 60                         | "                         |
| 13974 (March 1979) 60 Bell St. (Monday) | 20                | 75      |     |                 |                              |                         | 60                         | "                         |
| 13975 (March 1979) 60 Bell St. (Monday) | 20                | 75      |     |                 |                              |                         | 60                         | "                         |
| 13976 (March 1979) 60 Bell St. (Monday) | 20                | 75      |     |                 |                              |                         | 60                         | "                         |
| 13977 (March 1979) 60 Bell St. (Monday) | 20                | 75      |     |                 |                              |                         | 60                         | "                         |
| 13978 (March 1979) 60 Bell St. (Monday) | 20                | 75      |     |                 |                              |                         | 60                         | "                         |
| 13979 (March 1979) 60 Bell St. (Monday) | 20                | 75      |     |                 |                              |                         | 60                         | "                         |
| 13980 (March 1979) 60 Bell St. (Monday) | 20                | 75      |     |                 |                              |                         | 60                         | "                         |
| 13981 (March 1979) 60 Bell St. (Monday) | 20                | 75      |     |                 |                              |                         | 60                         | "                         |
| 13982 (March 1979) 60 Bell St. (Monday) | 20                | 75      |     |                 |                              |                         | 60                         | "                         |
| 13983 (March 1979) 60 Bell St. (Monday) | 20                | 75      |     |                 |                              |                         | 60                         | "                         |
| 13984 (March 1979) 60 Bell St. (Monday) | 20                | 75      |     |                 |                              |                         | 60                         | "                         |
| 13985 (March 1979) 60 Bell St. (Monday) | 20                | 75      |     |                 |                              |                         | 60                         | "                         |
| 13986 (March 1979) 60 Bell St. (Monday) | 20                | 75      |     |                 |                              |                         | 60                         | "                         |
| 13987 (March 1979) 60 Bell St. (Monday) | 20                | 75      |     |                 |                              |                         | 60                         | "                         |
| 13988 (March 1979) 60 Bell St. (Monday) | 20                | 75      |     |                 |                              |                         | 60                         | "                         |
| 13989 (March 1979) 60 Bell St. (Monday) | 20                | 75      |     |                 |                              |                         | 60                         | "                         |
| 13990 (March 1979) 60 Bell St. (Monday) | 20                | 75      |     |                 |                              |                         | 60                         | "                         |
| 13991 (March 1979) 60 Bell St. (Monday) | 20                | 75      |     |                 |                              |                         | 60                         | "                         |
| 13992 (March 1979) 60 Bell St. (Monday) | 20                | 75      |     |                 |                              |                         | 60                         | "                         |
| 13993 (March 1979) 60 Bell St. (Monday) | 20                | 75      |     |                 |                              |                         | 60                         | "                         |
| 13994 (March 1979) 60 Bell St. (Monday) | 20                | 75      |     |                 |                              |                         | 60                         | "                         |
| 13995 (March 1979) 60 Bell St. (Monday) | 20                | 75      |     |                 |                              |                         | 60                         | "                         |
| 13996 (March 1979) 60 Bell St. (Monday) | 20                | 75      |     |                 |                              |                         | 60                         | "                         |
| 13997 (March 1979) 60 Bell St. (Monday) | 20                | 75      |     |                 |                              |                         | 60                         | "                         |
| 13998 (March 1979) 60 Bell St. (Monday) | 20                | 75      |     |                 |                              |                         | 60                         | "                         |
| 13999 (March 1979) 60 Bell St. (Monday) | 20                | 75      |     |                 |                              |                         | 60                         | "                         |
| 14000 (March 1979) 60 Bell St. (Monday) | 20                | 75      |     |                 |                              |                         | 60                         | "                         |

FORM MUST BE COMPLETED BY TYPEWRITER, INK OR BALL POINT PEN \* U.S. GOVERNMENT PRINTING OFFICE: 1979-301-994

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

IN THE MATTER OF PROTESTS AGAINST APPROVAL  
OF APPLICATION FOR PERMIT NO. 34-7088 IN  
THE NAME OF JOHN L. POWERS

NOTICE OF REHEARING

On December 17, 1974, John L. Powers filed with the Department of Water Resources an application to appropriate the public waters of the State of Idaho. The Memorandum Decision issued was appealed to the District Court and on June 17, 1981, the matter was remanded back to the Department of Water Resources by the District Court judge.

The Department has set the matter for hearing for Thursday, January 21, 1981, at 10:00 a.m. in the basement meeting room, Memorial Building, Arco, Idaho. The hearing will be held in accordance with Chapter 2, Title 42 of the Idaho Code and adopted Rules of Practice and Procedure of the Department of Water Resources. Opportunity shall be afforded all parties to respond and present evidence and argument on all issues involved.

Dated this 6<sup>th</sup> day of January, 1982.



RONALD D. CARLSON

Eastern Regional Supervisor

MICROFILMED

CONFERENCE AND HEARING INFORMATION

IN THE MATTER OF APPROVAL OF AN APPLICATION FOR PERMIT

In accordance with Idaho Code, Section 42-203, the following issues are involved in the consideration of the application and protest(s):

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

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 at the expense of the requesting party. 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.

If the hearing is conducted by a hearing officer appointed by the Director, rather than the Director himself, a proposed decision will be submitted to the parties and the parties may be afforded an opportunity to file exceptions to the proposed decisions and present briefs and oral arguments to the Director prior to the issuance of a final decision by the Director. This procedure is required by Idaho Code, Section 42-1701A.

The parties by written stipulation may waive their right to a proposed decision, however, the failure of either party to waive a proposed decision will not prejudice the Director's review of a party's evidence and arguments. However, such a waiver will shorten the decision-making process and may expedite substantially the issuance of a final decision. Whether compliance with Section 42-1701A is waived will not affect a party's right to petition for a rehearing of the final decision pursuant to Rule 11 of the Department's Rules of Practice and Procedure or affect a party's right to appeal the final decision to the district court.

**RECEIVED**

Under the provisions of the Idaho Code, Sections 42-1701A and 67-5215, any court review of the Department's decision on appeal shall be confined to the record created before the Department.

Failure to appear at the time and place set for hearing by the applicant or protestant(s) may allow the Department to dismiss without prejudice the protest(s) or the application. Any and all cost incurred by reason of such non-appearance may be assessed against such non-appearing parties.

**MICROFILMED**

RECEIVED

NOV 4 1981

WILLIAM S. HOLDEN  
R. VERN KIDWELL, P. A.  
FRED J. HAHN  
TERRY L. CRAPO  
KENT W. FOSTER  
ROBERT E. FARNAM  
WILLIAM D. FAHER, P. A.  
STEPHEN E. MARTIN  
CHARLES A. HOMER

LAW OFFICES  
HOLDEN, KIDWELL, HAHN & CRAPO

IDAHO FIRST NATIONAL BANK BUILDING

P. O. BOX 129

IDAHO FALLS, IDAHO 83401

TELEPHONE 523-0620

AREA CODE 208

Department of Water Resources  
ARTHUR W. HOLBE (1911-1981)  
ROBERT B. HOLDEN (1911-1971)

GARY L. MEIKLE  
CURT R. THOMSEN  
RANDALL K. BARTON  
MICHAEL D. CRAPO  
JAMES D. HOLMAN  
GAYLE A. SORENSON

November 2, 1981

Howard Carsman, Esq.  
Deputy Attorney General  
Department of Water Resources  
Statehouse  
Boise, Idaho 83720

Ted C. Springer, Esq.  
HOPKINS, FRENCH, CROCKETT & SPRINGER  
P. O. Box 1219  
Idaho Falls, Idaho 83402

Re: John L. Powers/City of Mackay

Dear Howard and Ted:

We note that the City of Mackay has requested a hearing in the above matter and we were wondering if it would be possible to make arrangements for the hearing to be held in Idaho Falls. This would be a convenience for Mr. Powers and presumably the City of Mackay, but we recognize that it would represent an additional cost to the department.

Also, regardless of where the hearing is held, we would like to request that it be scheduled as soon as possible so that further delay in reaching a final resolution of this matter can be avoided. Ted indicated in his letter of October 30, 1981 that there may be points on which the parties can reach a reconciliation without the need for a hearing. We would welcome an opportunity to resolve any or all of the matters at issue without the necessity for a hearing.

Very truly yours,

  
Michael D. Crapo

MDC:jd  
cc: John L. Powers

MICROFILMED

HOPKINS, FRENCH, CROCKETT & SPRINGER

LAWYERS

C TIMOTHY HOPKINS  
SEWARD H FRENCH, III  
GREGORY L CROCKETT  
TED C SPRINGER  
LARRY L GOINS  
LARRY S LARSON  
PAUL D VEASY

SALISBURY BUILDING-428 PARK AVENUE  
P O. BOX 1219  
IDAHO FALLS, IDAHO 83402-1219

TELEPHONE  
AREA CODE 208  
523-4445

December 18, 1981

34-7021

Howard Carsman, Esq.  
Deputy Attorney General  
Department of Water Resources  
Statehouse  
Boise, Idaho 83720

Re: John L. Powers Water Application/City of Mackay

Dear Howard:

Mike Crapo and I, and our clients, are attempting to reconcile our respective positions in the above pending matter to avoid the necessity of another hearing before the Department.

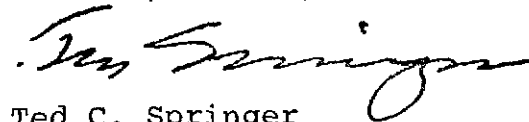
For the City's information, could you advise me whether the Department would be available to perform a current measurement of the flow from the John Powers excavation, to determine the exact quantity of water flowing at this time.

Also, would the Department be available to measure the exact present depth and lateral boundaries of the John Powers excavation. With the flow and the size measurements, we could measure future developments. Would you also advise me whether there would be a charge of the Department for this service. Thank you very much, and we will keep you informed of our progress.

Best wishes for the holidays, I am

very truly yours,

HOPKINS, FRENCH, CROCKETT & SPRINGER



Ted C. Springer

TCS:kb

City of Mackay  
Michael D. Crapo  
Sherl Chapman

MICROFILMED

RECEIVED

NOV 27 1981

WILLIAM S. HOLDEN  
R. VERN KIDWELL, P. A.  
FRED J. HAHN  
TERRY L. CRAPO  
KENT W. FOSTER  
ROBERT E. FARNAM  
WILLIAM D. FALER, P. A.  
STEPHEN E. MARTIN  
CHARLES A. HOMER  
GARY L. MEIKLE  
CURT R. THOMSEN  
RANDALL K. BARTON  
MICHAEL D. CRAPO  
JAMES D. HOLMAN  
GAYLE A. SORENSON

LAW OFFICES  
HOLDEN, KIDWELL, HAHN & CRAPO  
IDAHO FIRST NATIONAL BANK BUILDING  
P. O. BOX 129  
IDAHO FALLS, IDAHO 83401  
TELEPHONE 523-0620  
AREA CODE 208

Department of Water Resources  
ARTHUR W. HOLDEN (1971-1977)  
ROBERT B. HOLDEN (1977-1981)

November 23, 1981

Howard W. Carsman, Esq.  
Deputy Attorney General  
Department of Water Resources  
Statehouse  
Boise, Idaho 83720

Re: John L. Powers/City of Mackay

Dear Howard:

Ted and I have conferred with regard to an agreeable time for the hearing which the city has requested in the above referenced matter. We would both be available for a hearing, preferably in Idaho Falls, any time during the last three weeks of January, 1982. If the Department could schedule the hearing in this matter during that time period we would appreciate it. Also, we would again like to request that the hearing be scheduled as soon as possible during that time period, to avoid any further possibility of the final resolution of this matter extending into the next irrigation season.

With regard to the possibility of limiting the scope of the hearing or resolving some matters prior to the hearing, Ted is presently in the process of contacting the city to determine what might be accomplished along those lines. Both Ted and I will do our best to assure that as many issues as possible are resolved prior to the hearing.

Thank you very much for your assistance.

Very truly yours,



Michael D. Crapo

MDC:jd  
cc: Ted Springer, Esq.  
Mr. John Powers

MICROFILMED

HOPKINS, FRENCH, CROCKETT & SPRINGER  
LAWYERS

C TIMOTHY HOPKINS  
SEWARD H FRENCH, III  
GREGORY L. CROCKETT  
TED C SPRINGER  
LARRY L GOINS  
LARY S LARSON  
PAUL D. VEASY

SALISBURY BUILDING-428 PARK AVENUE  
P O. BOX 1219  
IDAHO FALLS, IDAHO 83402-1219

TELEPHONE  
AREA CODE 208  
523-4445

October 30, 1981

RECEIVED

NOV 1 1981

Department of Water Resources

Mr. Howard Carsman, Esq.  
Deputy Attorney General  
Department of Water Resources  
Statehouse  
Boise, Idaho 83720

Michael D. Crapo, Esq.  
P. O. Box 129  
Idaho Falls, Idaho 83401

Re: John L. Powers/City of Mackay

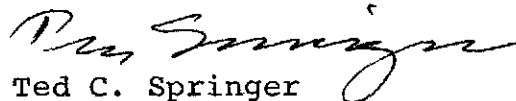
Dear Howard and Mike:

I just received the Reply of John Powers in the above matter. Since there are still some items in dispute, I am by this letter requesting a hearing before the Department to further express the respective positions.

In the meanwhile, we are critically evaluating the Reply, to see if we can reconcile certain of the points, reach voluntary agreement between the parties and narrow any remaining issues for the Department. I will try to commence this discussion with Mike in about ten days. Thanks.

Very truly yours,

HOPKINS, FRENCH, CROCKETT & SPRINGER

  
Ted C. Springer

TCS:kb  
cc: Oval Caskey, Mayor

MICROFILMED

RECEIVED

OCT 30 1981

WILLIAM S. HOLDEN  
R. VERN KIDWELL, P. A.  
FRED J. HAHN  
TERRY L. CRAPO  
KENT W. FOSTER  
ROBERT E. FARNAM  
WILLIAM D. FALER, P. A.  
STEPHEN E. MARTIN  
CHARLES A. HOMER

LAW OFFICES  
HOLDEN, KIDWELL, HAHN & CRAPO

IDAHO FIRST NATIONAL BANK BUILDING

P. O. BOX 129

IDAHO FALLS, IDAHO 83401

TELEPHONE 523-0620

AREA CODE 208

Department of Water Resources  
ROBERT B. HOLDEN (1911-1971)

GARY L. MEIKLE  
CURT R. THOMSEN  
RANDALL K. BARTON  
MICHAEL D. CRAPO  
JAMES D. HOLMAN  
GAYLE A. SORENSON

October 29, 1981

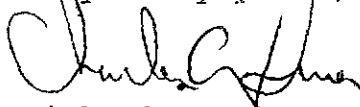
Director of the Department  
of Water Resources  
Statehouse  
Boise, Idaho 83720

Re: John Powers/City of Mackay

Dear Sir:

Enclosed please find The Reply of John L. Powers  
in regard to the above captioned matter.

Very truly yours,

  
for Michael D. Crapo

MDC:jd  
Enclosure

MICROFILMED

RECEIVED

OCT 30 1981

Department of Water Resources

HOLDEN, KIDWELL, HAHN & CRAPO  
KENT W. FOSTER, ESQ.  
MICHAEL D. CRAPO, ESQ.  
P. O. Box 129  
Idaho Falls, Idaho 83401  
Telephone: (208) 523-0620

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

IN THE MATTER OF PERMIT 34-708, )  
IN THE NAME OF JOHN L. POWERS )                      REPLY OF JOHN L. POWERS  
BEFORE THE DEPARTMENT OF WATER )  
RESOURCES. )  
\_\_\_\_\_ )

COMES NOW respondent-appellant John L. Powers by his counsel of record, and submits the following written reply to the response of the City of Mackay to his proposal for excavation of his spring. This reply is submitted in accordance with the stipulation dated September 29, 1981. Mr. Powers reply will be numbered in eight sections corresponding to the eight items of the response by the City of Mackay.

1. Measurement of Existing Flow.

The City has requested that the existing flow be measured to determine whether applicant has available .2 cfs as applied for in his permit without further excavation. Although Mr. Powers feels that this determination already has been made to his satisfaction, he would not object to another measurement of the flow of water from the existing excavation, with the following provisos. First, because of the extensive delay already caused to Mr. Powers and the injury which will further accrue if he is prohibited for another irrigation season from utilizing this spring, any such measurements should be conducted promptly so that a final determination of this entire matter can be made before next year's irrigation season

RECEIVED

begins. Second, Mr. Powers is satisfied that no further measurement of the flow of the existing excavation is necessary; if one is provided for pursuant to the City's request, the City of Mackay should bear any costs involved.

2. Imposition of a Pump Sizing Requirement.

The City of Mackay requests that because Mr. Powers contemplates pumping water to higher ground for sprinkling, the Department should impose a pump sizing requirement and a continuous totalizing inline flow meter on any pumping system. However, the City has misunderstood Mr. Powers' intention with regard to pumping. In his application, Mr. Powers contemplates that the spring created by the excavation would become a tributary to Warm Springs Creek. The water developed by the spring would be allowed to spill into Warm Springs Creek to be retrieved further down. In addition to this water, Mr. Powers is also entitled to five minors inches of the water of Warm Springs Creek pursuant to an earlier permit. He would probably let the waters of the Powers' Spring flow into Warm Springs Creek and then withdraw the spring waters together with his five minors inches at a lower point. Furthermore, Mr. Powers is also entitled to the overflow of the City tanks during certain months of the year and these waters would also be allowed to spill into the Warm Springs Creek to be withdrawn by Mr. Powers at a lower point. Thus, the pumping which Mr. Powers contemplates would vary depending on the time of year and the amount of overflow. It would not be feasible to impose a pump sizing requirement or a continuous totalizing inline flow meter on any such pumping system.

In addition, a further reason that such pump sizing requirements should not be imposed is that there is no

NOT  
FILMED

justification either in the record or in the remand by the court for enforcing against Mr. Powers any conditions on his permit which are more restrictive than those imposed on other applicants in this regard. The findings of the Department which were upheld by the court are that at its present level of excavation there is no showing of interference between Mr. Powers' spring and the City's spring. The court's remand was focused primarily, if not entirely, on assuring that deeper excavation was not made by Mr. Powers. This condition requested by the City is not responsive to the court's concern and is in direct contradiction to the express findings of the Department which the district court has affirmed as being based upon substantial competent evidence. It is again reiterated that the district court found that the director's decision and order was based on substantial competent evidence "except the evidence dictates the need for more precise definition of the works authorized, or a condition be adopted to implement the excavation depth caution". Memorandum Decision and Judgment at page 3.

3. Presence of City of Mackay at Excavation.

The City of Mackay requests that the Department impose a condition that a representative of the City be present at the time of any excavation made by Mr. Powers. Mr. Powers has conceded that the present excavation is sufficient to satisfy his permit. Thus, it would not be necessary for any further excavation.

Furthermore, if, for any reason, the Department determines that further excavation is needed, and that such excavation should be supervised, such supervision should be provided by the Department of Water Resources, not the City of

RECEIVED  
MAY 10 1960

Mackay. The City's request in this regard requests for the City the right to come on to Mr. Powers' land to supervise his compliance with the Department's order. However, this is tantamount to a request by the City for "watchdog" authority over Powers which is unnecessary and offensive.

4. Establishment of Maximum Excavation Depth.

Mr. Powers has no objection to the establishment of the maximum excavation depth at five feet or the lateral boundaries at their present dimensions.

5. Further Testing to Determine Exact Location of Clay Barrier.

The City of Mackay requests that the Department perform further testing to determine the exact location of the clay barrier.

Mr. Powers does not believe such testing is necessary, because extensive tests already have been made and further testing would not be useful to a resolution of this matter. However, he would not oppose further testing so long as it did not delay the implementation of his use of the excavation right for the next irrigation season and so long as he was not obligated to pay for any costs of such unnecessary testing. Finally, if a five foot depth maximum is established, there would be no need for the additional restriction requested by the City that any cleaning be stopped if "clay material" is revealed.

6. Advance Determination of Procedure for Plugging the Excavation.

The City of Mackay has requested that a specific procedure and/or device should be approved by the Department in advance for plugging the Powers' excavation if interference actually develops. However, such a determination is premature

MICROFILMED

since the findings of the Department are that interference has not occurred. The City bears the burden of establishing any interference, which it has not carried. There will be adequate time in the future, if any such showing is ever made by the City, for evaluation of remedies.

7. Notice to City of Cleaning of the Spring Excavation.

The City of Mackay requests that it be notified three (3) days in advance of any cleaning of the excavation proposed by Mr. Powers. Again, this places a burden on Mr. Powers, because it may not be possible for him to determine with precision the times when it will be necessary to clean the spring. Mr. Powers is a farmer and must clean and maintain the spring in conjunction with other farming activities which may or may not allow him to make precise scheduling such as is requested by the City. Moreover, Mr. Powers again objects to the City's request which is tantamount to a request that it be established as a "watch-dog" over his spring. Again, the determination has been made that the spring does not interfere with the City's water supply. So long as Mr. Powers keeps his excavation within the depth provided for by the Department, the City has no right to supervise or interfere or trespass. The proposal by the City in this respect makes the unwarranted assumption that Mr. Powers will intentionally breach the terms of the Department's permit and we find it offensive.

8. Retaining Wall.

The City agrees to the construction of a retaining wall, but specifies certain types of materials out of which the wall must be constructed. Although Mr. Powers has no objection to the use of the general types of materials specified by the City, it is not clear to him why it is necessary that the

Department specify the particular materials which he must use in the construction of a retaining wall. Finally, although Mr. Powers has requested the right to build a retaining wall, this should not be a mandatory requirement.

In conclusion, we would like to reiterate on Mr. Powers' behalf that although the district court on appeal did remand this case, the district court's opinion affirmed the decision and order of the Department with the single exception of the court's concern for the establishment of an excavation depth. Mr. Powers has willingly complied with this concern by providing the present measurements and asking for leeway to the five foot depth level to allow him to clean and maintain the spring. The City's response asks the Department to establish not only a maximum excavation depth, but also to impose numerous additional restrictions on Mr. Powers' right to operate under his permit, to the point of even insisting that the City be present whenever Mr. Powers performs work on the excavation site. Yet most of the City's requests focus not on the concern of depth of excavation expressed by the court, but on the City's personal concerns with the other findings of the Department which were affirmed by the district court.

Mr. Powers has lost two irrigation seasons because of the City's spurious objection. Now, after the Department has determined that interference will not exist at the present levels of excavation and the district court has affirmed these findings, it is requested by him that a maximum depth of five feet be established and Mr. Powers be allowed to proceed to use the water from his spring.

MICROFILMED

Respectfully submitted this 29 day of October, 1981.

HOLDEN, KIDWELL, HAHN & CRAPO

By *Kent W. Foster*  
Kent W. Foster  
Attorney for Respondent-  
applicant, John L. Powers

CERTIFICATE OF SERVICE

I hereby certify that I am a duly licensed attorney in the State of Idaho, resident of and with my office in Idaho Falls, Idaho; that I served a copy of the following described pleading or document on the attorneys listed below by hand delivering or by mailing, with the correct postage thereon, a true and correct copy thereof on this 29 day of October, 1981.

Document Served: REPLY OF JOHN L. POWERS

Attorneys Served:

Howard Carsman, Esq.  
Deputy Attorney General  
Department of Water Resources  
Statehouse  
Boise, Idaho 83720

Ted Springer, Esq.  
HOPKINS, FRENCH, CROCKETT & SPRINGER  
P. O. Box 1219  
Idaho Falls, Idaho 83401

*Kent W. Foster*  
Kent W. Foster  
HOLDEN, KIDWELL, HAHN & CRAPO

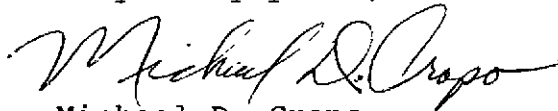
RECEIVED

Howard Carsman Esq.  
September 9, 1981  
Page Three

modest development of John Powers' spring is unlikely to have any measureable effect on Mackay City Spring. Casterlin Report at 8. The five foot excavation depth which we are requesting constitutes only a modest increase in depth to accomodate the need for cleaning the excavation. Second, the Casterlin Report also found that on one occassion a trench was dug through the blue clay barrier in this area to a depth of approximately 4.5 feet with no resultant seepage. Casterlin Report at 1. This would indicate that in the range of depth excavation which we are requesting, there would be no interference with the city spring.

Please advise us if there is anything further which you desire that we submit to you in order for you to make a determination in this matter.

Very truly yours,

  
Michael D. Crapo

MDC:jd

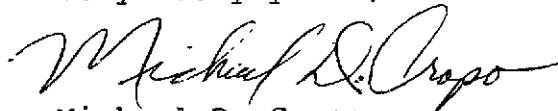
MICROFILMED

Howard Carsman Esq.  
September 9, 1981  
Page Three

modest development of John Powers' spring is unlikely to have any measureable effect on Mackay City Spring. Casterlin Report at 8. The five foot excavation depth which we are requesting constitutes only a modest increase in depth to accomodate the need for cleaning the excavation. Second, the Casterlin Report also found that on one occassion a trench was dug through the blue clay barrier in this area to a depth of approximately 4.5 feet with no resultant seepage. Casterlin Report at 1. This would indicate that in the range of depth excavation which we are requesting, there would be no interference with the city spring.

Please advise us if there is anything further which you desire that we submit to you in order for you to make a determination in this matter.

Very truly yours,

  
Michael D. Crapo

MDC:jd

MICROFILMED

*improvement 12 de*  
**HOPKINS, FRENCH, CROCKETT & SPRINGER**  
LAWYERS

C TIMOTHY HOPKINS  
SEWARD H. FRENCH, III  
GREGORY L CROCKETT  
TED C SPRINGER  
LARRY L GOINS  
LARY S LARSON  
PAUL D VEASY

SALISBURY BUILDING-428 PARK AVENUE  
P. O. BOX 1219  
IDAHO FALLS, IDAHO 83401

*Carsman*  
*not*  
TELEPHONE  
AREA CODE 208  
523-4445

October 19, 1981

**RECEIVED**

**OCT 22 1981**

Howard Carsman, Esq.  
Deputy Attorney General  
Department of Water Resources  
Statehouse  
Boise, Idaho 83720

Department of Water Resources

Re: In The Matter of Permit No. 34-708  
In The Name of John L. Powers,  
Case No. 2554: Proposal for Excavation  
at Powers' Spring

Dear Howard:

Herewith, pursuant to the Stipulation between the parties, is the Response of the City of Mackay to the applicant's proposal for excavation, within the constraints of Judge Beebe's Memorandum Decision and Judgment, dated June 17, 1981.

Thank you for your letter confirming that a hearing could be requested after all written comments are submitted.

Very truly yours,

HOPKINS, FRENCH, CROCKETT & SPRINGER

Ted C. Springer

TCS:kb  
cc: Michael D. Crapo, Esq.  
Oval Caskey, Mayor

**MICROFILMED**

HOPKINS, FRENCH, CROCKETT & SPRINGER  
Ted C. Springer  
428 Park Avenue  
P. O. Box 1219  
Idaho Falls, Idaho 83401  
Telephone: 208-523-4445  
Attorneys for City of Mackay, Idaho

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

|                                 |   |                         |
|---------------------------------|---|-------------------------|
| IN THE MATTER OF PERMIT 34-708, | ) |                         |
| IN THE NAME OF JOHN L. POWERS   | ) | RESPONSE OF THE CITY OF |
| BEFORE THE DEPARTMENT OF WATER  | ) | MACKAY                  |
| RESOURCES.                      | ) |                         |
| <hr/>                           |   |                         |

COMES NOW the City of Mackay, Idaho, by and through its undersigned special counsel, and submits the following written comments on the proposal of John L. Powers for excavation of his spring, in accordance with the Stipulation dated September 29, 1981.

1. Prior to any excavation by the applicant, the flow of water from the Powers' existing excavation should be measured to determine if the applicant has available .2 cfs applied for, without further excavation. If .2 cfs is available without enlargement or deepening, no further excavation except normal cleaning operations should be done. G and

2. The application for permit contemplates that water from the excavation would be pumped through a pipeline to higher ground for sprinkling. The Department should impose a pump sizing requirement which would not allow Mr. Powers to pump in excess of .2 cfs, and a continuous totalizing inline flow meter on any pumping system should be required. J/K

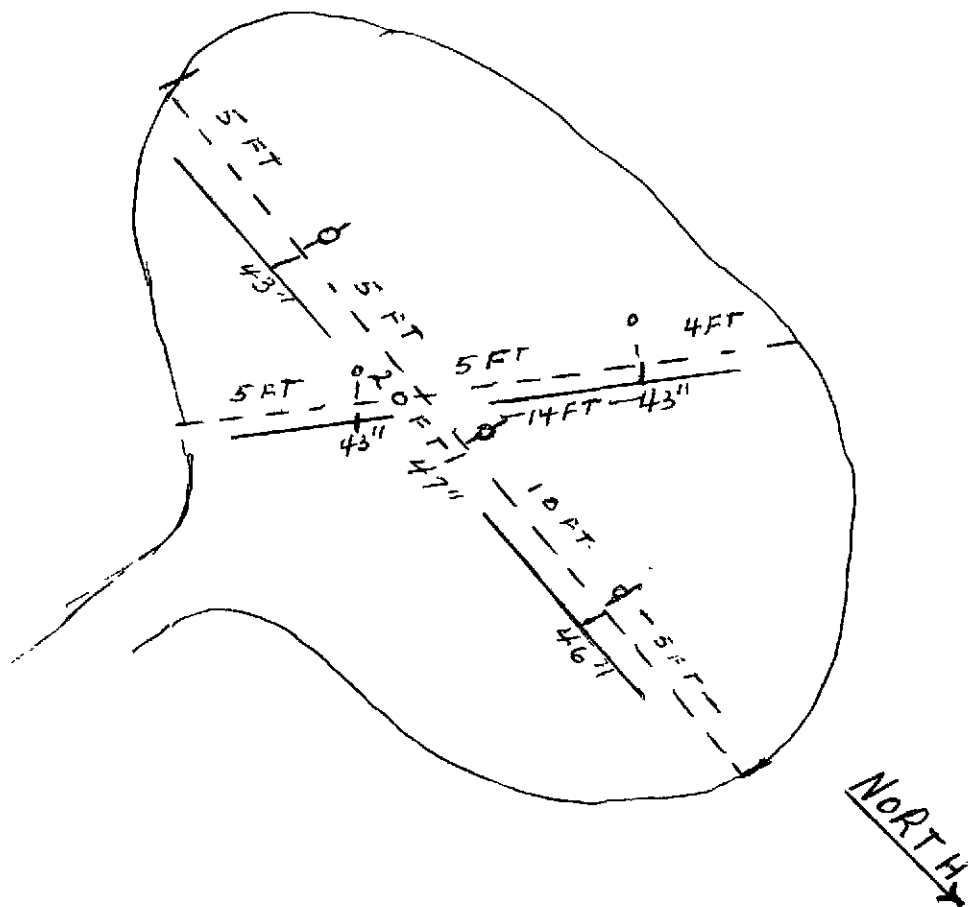
3. A representative from the City of Mackay should be present at the time any excavation is made by Mr. Powers, to insure compliance with the permit. J/K

SOUTH

MT.

WEST

WARM SPRINGS CREEK



O POINTS OF MEASUREMENTS  
RED DEPTHS OF EXCAVATION  
AT POINTS O

MICROFILMED

EAST

BIG LOST RIVER

LAW OFFICES

HOLDEN, KIDWELL, HAHN & CRAPO

IDAHO FIRST NATIONAL BANK BUILDING

P O BOX 129

IDAHO FALLS, IDAHO 83401

TELEPHONE 523-0620

AREA CODE 208

ARTHUR W HOLDEN (1877-1967)  
ROBERT B HOLDEN (1911-1971)

WILLIAM S HOLDEN  
R VERN KIDWELL, P A  
FRED J HAHN  
TERRY L CRAPO  
KENT W FOSTER  
ROBERT E FARNAM  
WILLIAM D FALER, P A  
STEPHEN E MARTIN  
CHARLES A HOMER

GARY L MEIKLE  
CURT R THOMSEN  
RANDALL K BARTON  
MICHAEL D CRAPO  
JAMES D HOLMAN  
GAYLE A SORENSON

October 1, 1981

Ted Springer, Esq.  
428 Park Ave.  
Idaho Falls, Idaho 83401

Re: In The Matter Of Permit No. 34-708  
In The Name Of John L. Powers, Case  
No. 2554: Proposal For Excavation At  
Powers Spring

Dear Ted:

Enclosed please find a copy of the written proposal which we have mailed on today's date to the Department of Water Resources. This proposal is submitted as the written proposal to the department regarding the excavation at Mr. Powers' spring in accord with the stipulation which has been entered between the parties. It is our understanding that the City of Mackay will have twenty (20) days from the date of your receipt of this proposal to submit written comments to the department.

Very truly yours,

Michael D. Crapo

MDC:jd  
Enclosures  
cc: Howard Carsman, Esq.

MICROFILMED

RECEIVED

SEP 22 1981

Department of Water Resources

HOLDEN, KIDWELL, HAHN & CRAPO  
MICHAEL D. CRAPO, ESQ.  
P. O. Box 129  
Idaho Falls, Idaho 83402  
Telephone: (208) 523-0620

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

IN THE MATTER OF PERMIT NO.     )  
34-708, IN THE NAME OF         )  
JOHN L. POWERS BEFORE THE     )     STIPULATION  
DEPARTMENT OF WATER RESOURCES )  
                                  )  
\_\_\_\_\_ )

WHEREAS, on June 17, 1981, the Honorable Arnold  
T. Beebe issued a Memorandum Decision and Judgment Setting  
Aside Order Allowing Application for Permit; and,

WHEREAS, said decision did remand the above-  
entitled matter to the Department of Water Resources (herein-  
after "department") for consideration for more precise defini-  
tion of the works authorized, or a condition be adopted to im-  
plement the excavation depth; and,

WHEREAS, the parties wish to resolve this matter  
by further proceedings before the director of the department;

NOW THEREFORE, the parties do hereby agree that  
the following procedure be used upon the remand of this pro-  
ceeding:

1) the applicant will submit in writing to the  
department his proposal for excavation at his spring, along  
with any supporting data or analysis;

2) the City of Mackay will then have twenty (20)  
days from the date of its receipt of the applicant's proposal  
to submit written comments to the department on the applicant's  
proposal;

RECEIVED

3) the applicant shall then have ten (10) days from his receipt of the City of Mackay's written comments to submit a written response to the department;

4) the department will then render a decision specifying the manner in which the excavation will be made;

5) Any party aggrieved by the department's decision may seek immediate review of that decision by the district court, said review being upon the record, which would consist of the applicant's written submission, the City of Mackay's written comments, the applicant's response, if any, and the department's decision.

DATED this 29<sup>TH</sup> day of September, 1981.

Howard W. Carsman

HOWARD W. CARSMAN  
Deputy Attorney General  
Counsel for the Department  
of Water Resources

Ted C. Springer

TED C. SPRINGER,  
Counsel for the City of  
Mackay

Michael D. Crafo

MICHAEL D. CRAPO,  
Counsel for the applicant  
John L. Powers

O R D E R

IT IS SO ORDERED this 29 day of September,  
1981.

Howard W. Carsman  
DIRECTOR

MICROFILMED

RECEIVED

JUN 19 1981

Department of Water Resources

FILED IN CHAMBERS AT ELASTPORT,  
BINGHAM COUNTY, IDAHO.

34-7088

*Filed, June 17, 1981*

*4:06 P.M.*

*Charles E. Beebe*  
DISTRICT JUDGE

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF CUSTER

IN THE MATTER OF PERMIT NO. )  
34-7088 IN THE NAME OF )  
JOHN L. POWERS. )

Case No. 2554

MEMORANDUM DECISION

AND

JUDGMENT SETTING ASIDE

ORDER ALLOWING APPLICATION

FOR PERMIT

This is an appeal from a decision of the Director of the Department of Water Resources ordering approval of a permit to John L. Powers to appropriate .2 cfs for irrigation purposes.

The Court's review is pursuant to I.C. 67-5215.

Transcript before the Department of Water Resources is designated "Tr."; transcript of rehearing before the Director of the department is designated "Tr.A".

The appellant, City of Mackay, Idaho, (hereinafter Mackay) has a right to all the water from a spring known as the City Springs, except 5 miners inches, which is a right belonging to Respondent, John R. Powers (hereinafter Powers). In the same area is a spring known as the Powers' Spring, the water from which is a right belonging to Powers. In the area is Warm Springs Creek, to which the City and Powers' springs would, if not diverted, contribute.

The waters of the two springs and Warm Springs Creek are discharge from an aquifer - - a common source (Tr.A 68; Tr. 12).

The permit in question would allow Powers to excavate the area of Powers' Spring, which is located some 130 feet

MICROFILMED

downgrade from, and about 9 feet lower than, the City Spring. Mackay's concern that this would decrease the output of the City Spring brought on contest before the Department of Water Resources, the director and this appeal.

Unquestioned is Mackay's right to have the groundwater flow regimen of its spring unaffected. The basis of the decision granting Powers' application for a permit to excavate at his spring site to capture additional groundwater in the area can be gleaned from the Memorandum Decision and Order (Tr. 19, 20) in the light of the evidence and contentions. The crucial question was whether or not excavation in the Powers' Spring area would affect the flow of the City Spring. The answer depends upon the nature of any hydrologic relationship between the two springs (Tr. 60 - - Chapman evaluation). The existence of a relatively impermeable blue clay barrier between the seepage areas of the two springs, and test evaluations led one expert to the conclusions that excavations accomplished at the Powers' Spring had no measurable effect under present conditions on the Mackay spring and further modest development unlikely would have any effect (Tr. 100 - - Casterlin Memorandum).

The decision of the Director was to the effect the studies (presumably geologic and hydrologic) disclosed no relationship between the springs. A condition of the approval "Any development of the springs area must not disturb the clay barrier separating the applicant's spring from the city's spring" emphasizes the clay barrier as being the basis for the conclusion there is no direct relationship between the springs.

The decision which only so conditions further development of the Powers' Spring ignores Casterlin's (upon whose expertise the decision is extensively based) caution that further development should not extend much deeper than the present excavation to preclude any chance of future interference.

A Mackay contention is that the order is erroneous in failing to specify as a condition of the permit a limitation on method of spring development (Appellant's Brief, 'P.2; Appellant's Reply Brief, P.2), contending, inter alia, the Casterlin caution as to depth of excavation should be implemented as a condition.

The approved Application for Permit describes the proposed diverting works:

"A basin will be excavated to collect ground water which will essentially form a spring tributary to Warm Springs Creek. Water thus developed will be pumped through a pipeline to higher ground for sprinkling."

The description is indefinite as to dimensions of the excavation.

I.C. 42-202(4) provides an application must set forth a description of the proposed work and amount of water to be diverted. In many instances, the amount of water to be diverted might well modify and aid in making definite a description of the works. In the case of excavation for ground water, the water quantity seems more a result of the works than a modifier of the nature of the works.

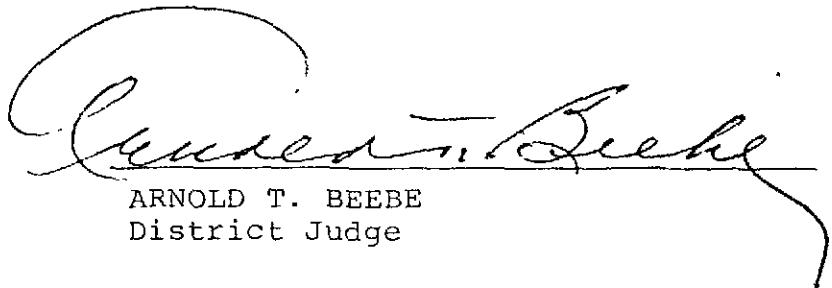
The record supports the Director's decision and order as being based upon substantial, competent evidence, except the evidence dictates need for more precise definition of the works authorized, or a condition be adopted to implement the excavation depth caution.

The expert testimony in the record, whether of Chapman or Casterlin, indicates potential interference with the City Spring waters by excavation. Casterlin's caution should be defined more precisely than "not extend very much deeper than the present excavation" and the limitation made a condition of the allowance of the application. Having not implemented this bottom line of protection of Mackay's water right, the allowance of the application is clearly erroneous.

MICROFILMED

The Order is set aside and the matter remanded for further consideration.

DATED and DONE this 17<sup>th</sup> day of June, 1981.

  
ARNOLD T. BEEBE  
District Judge

cc: Michael D. Crapo, Esq.  
Howard Carsman, Esq.  
Ted C. Springer, Esq.

**MICROFILMED**

March 31, 1980

M E M O R A N D U M

TO: Bob Fleenor  
Ron Carlson  
Paul Castelin

FROM: Mike Hyer

RE: CITY OF MACKAY VS. POWERS, PERMIT NO. 34-7088

Counsel for the parties in this appeal agreed to allow the City of MacKay to augment the record with an affidavit by Sherl L. Chapman.

In accordance with the stipulation, the City submits the affidavit to the Department, which then may modify or amend the decision. The Department then forwards the affidavit and any changes in the decision to the District Court, where it is made part of the Court's record on appeal.

Attached is a copy of the material submitted by Chapman. Please advise whether it warrants any changes or revisions in our decision.

Attachment

MICROFILMED

STATE OF IDAHO

DEPARTMENT OF WATER RESOURCES

Eastern District Office

1515 Lincoln Road • Idaho Falls, Idaho  
83401

34-7088

Returned Receipts

REC-11

- **SENDER:** Complete items 1 and 2.  
Add your address in the "RETURN TO" space on reverse.

## 1. The following service is requested (check one):

- ☒ Show to whom and date delivered..... 15¢  
☐ Show to whom, date, & address of delivery.. 35¢  
☐ DELIVER ONLY TO ADDRESSEE and  
show to whom and date delivered..... 65¢  
☐ DELIVER ONLY TO ADDRESSEE and  
show to whom, date, and address of  
delivery ..... 85¢

## 2. ARTICLE ADDRESSED TO:

## 3. ARTICLE DESCRIPTION:

REGISTERED NO.

CERTIFIED NO.

INSURED NO.

636

(Always obtain signature of addressee or agent)

I have received the article described above.  
SIGNATURE

4. DATE OF DELIVERY

APR 17

POSTMARK

5. ADDRESS (Complete only if requested)

6. UNABLE TO DELIVER BECAUSE:

CLERK'S  
INITIALS

C

UNITED STATES POSTAL SERVICE  
OFFICIAL BUSINESS

SENDER INSTRUCTIONS APR 17 5

- Print your name, address, and ZIP Code in the space below.
- Complete Items 1 and 2 on reverse side.
  - Moistened gummed ends and attach to back of article.

RETURN  
TO

DEPARTMENT OF WATER RESOURCES

EASTERN DISTRICT OFFICE

1515 LINCOLN ROAD

IDAHO FALLS, IDAHO 83401

PENALTY FOR PRIVATE  
USE TO AVOID PAYMENT  
OF POSTAGE \$300



RECEIVED

APR 17 1975

Department of Water Resources  
Eastern District Office

- **SENDER:** Complete items 1 and 2.  
Add your address in the "RETURN TO" space on reverse.

## 1. The following service is requested (check one).

- ☒ Show to whom and date delivered..... 15¢  
☐ Show to whom, date, & address of delivery.. 35¢  
☐ **DELIVER ONLY TO ADDRESSEE** and show to whom and date delivered..... 65¢  
☐ **DELIVER ONLY TO ADDRESSEE** and show to whom, date, and address of delivery ..... 85¢

## 2. ARTICLE ADDRESSED TO:

## 3. ARTICLE DESCRIPTION:

| REGISTERED NO. | CERTIFIED NO. | INSURED NO. |
|----------------|---------------|-------------|
|                | 625           |             |

(Always obtain signature of addressee or agent)

I have received the article described above.

SIGNATURE

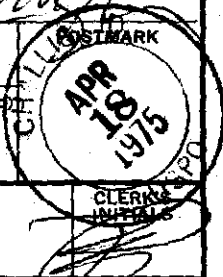
4.

DATE OF DELIVERY

4-18-75

5. ADDRESS (Complete only if requested)

6. UNABLE TO DELIVER BECAUSE:



UNITED STATES POSTAL SERVICE

OFFICIAL BUSINESS

PENALTY FOR PRIVATE  
USE TO AVOID PAYMENT  
OF POSTAGE, \$300

SENDER INSTRUCTIONS

Print your name, address, and ZIP Code in the space below.

- Complete items 1 and 2 on reverse side.
- Moisten gummed ends and attach to back of article.

RETURN  
TO

DEPARTMENT OF WATER RESOURCES

EASTERN DISTRICT OFFICE

1515 LINCOLN ROAD

IDAHO FALLS, IDAHO 83401

RECEIVED

APR 21 1975

Department of  
Eastern District Office



34-7088

- **SENDER:** Complete items 1 and 2.  
Add your address in the "RETURN TO" space on reverse.

## 1. The following service is requested (check one).

- ☒ Show to whom and date delivered..... 15¢  
☐ Show to whom, date, & address of delivery.. 35¢  
☐ DELIVER ONLY TO ADDRESSEE and  
show to whom and date delivered..... 65¢  
☐ DELIVER ONLY TO ADDRESSEE and  
show to whom, date, and address of  
delivery ..... 85¢

## 2. ARTICLE ADDRESSED TO:

## 3. ARTICLE DESCRIPTION:

| REGISTERED NO. | CERTIFIED NO. | INSURED NO. |
|----------------|---------------|-------------|
|                | 634           |             |

(Always obtain signature of addressee or agent)

I have received the article described above.  
SIGNATURE

4. DATE OF DELIVERY

5. ADDRESS (Complete only if requested)

6. UNABLE TO DELIVER BECAUSE:

POSTMARK

CLERK'S  
INITIALS

UNITED STATES POSTAL SERVICE

OFFICIAL BUSINESS

SENDER INSTRUCTIONS

Print your name, address, and ZIP Code in the space below.

- Complete Items 1 and 2 on reverse side.
- Moistened gummed ends and attach to back of article.

RETURN  
TO

DEPARTMENT OF WATER RESOURCES

EASTERN DISTRICT OFFICE

1515 LINCOLN ROAD

IDAHO FALLS, IDAHO 83401

PENALTY FOR PRIVATE  
USE TO AVOID PAYMENT  
OF POSTAGE, \$300

RECEIVED

APR 21 1975

Department of Water Resources  
Eastern District Office



- **SENDER:** Complete items 1 and 2.  
Add your address in the "RETURN TO" space on reverse.

1. The following service is requested (check one).

- ☒ Show to whom and date delivered..... 15¢  
☐ Show to whom, date, & address of delivery.. 35¢  
☐ **DELIVER ONLY TO ADDRESSEE** and show to whom and date delivered..... 65¢  
☐ **DELIVER ONLY TO ADDRESSEE** and show to whom, date, and address of delivery ..... 85¢

2. ARTICLE ADDRESSED TO:

3. ARTICLE DESCRIPTION:

| REGISTERED NO. | CERTIFIED NO. | INSURED NO. |
|----------------|---------------|-------------|
|                | 637           |             |

(Always obtain signature of addressee or agent)

I have received the article described above.

SIGNATURE

*City of Washington*  
*Charles R. Wright*

4.

DATE OF DELIVERY

4-18-75

5. ADDRESS (Complete only if requested)

6. UNABLE TO DELIVER BECAUSE:

POSTMARK

APR  
18  
1975

CLERK'S  
INITIALS

UNITED STATES POSTAL SERVICE

OFFICIAL BUSINESS

SENDER INSTRUCTIONS

Print your name, address, and ZIP Code in the space below.

- Complete items 1 and 2 on reverse side.
- Moisten gummed ends and attach to back of article.

PENALTY FOR PRIVATE  
USE TO AVOID PAYMENT  
OF POSTAGE, \$300

RETURN

TO



DEPARTMENT OF WATER RESOURCES

EASTERN DISTRICT OFFICE

1515 LINCOLN ROAD

IDAHO FALLS, IDAHO 83401

RECEIVED

APR 21 1975

Department of Water Resources  
Eastern District Office



IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF  
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF CUSTER

JOHN POWERS,

Plaintiff,

vs.

CITY OF MACKAY, HILMER LINDBURG,  
ROWSEL ELLIS, WAYNE BONE, DANA  
HARRINGTON, TED HANAWALT, and  
FORREST HUNTER & SONS CONSTRUCTION CO.

Defendants.

)  
)  
) Civil No. 2253  
)  
) REQUEST FOR  
) EXAMINATION  
)  
)  
)

TO: The State of Idaho Department of Water Administration:

WHEREAS, the above action is now pending in the above-entitled Court,  
and

WHEREAS, the priority and source of certain waters is in issue,

NOW THEREFORE, IT IS HEREBY REQUESTED, pursuant to Idaho Code  
42-1401, that the State of Idaho Department of Water Administration conduct  
an examination of certain waters in the NE<sup>1</sup>/<sub>4</sub> of Section 32, T. 7N., R. 24E.,  
B.M., Custer County, Idaho, known as the Warm Springs Creek, and to  
examine the City of Mackay spring and spring house located thereon, and  
other springs, wells, and holes located thereon from which water is with-  
drawn to determine:

1. Whether and to what extent under the terms of those certain judgments  
and supplemental judgments and decrees in the above-entitled Court (then  
Sixth Judicial District) actions entitled Charles R. Potts vs. Idaho Improve-  
ment Company, et. al. Case No. 368, decree entered August 8, 1917, and  
Arthur Woodman et ux vs. Jack Milling et al, Case No. 1589, decree  
entered July 14, 1932, the plaintiff and the defendant City of Mackay have  
the right to develop springs located on land owned by the plaintiff in above  
mentioned section of property in Custer County, Idaho.
2. Whether and to what extent, a) water withdrawn from on said property  
from holes, wells or springs developed by plaintiff affect the flow of water  
from the City of Mackay spring thereon, b) whether said spring and the

water withdrawn therefrom by the City of Mackay is part of "Warm Springs" or "Warm Springs Creek", and whether said waters constitute a spring, and c) whether holes, wells or springs developed by plaintiff on said property are part of said "Warm Springs" or "Warm Springs Creek",

3. The use made of the waters from "Warm Springs" or "Warm Springs Creek" by the plaintiff John Powers, and by the defendants, the City of Mackay.

4. Any other information relative to the adjudication of the priority of rights to the use of the waters of the "Warm Springs" or "Warm Springs Creek", and under the decrees and judgments heretofore entered regarding said waters, the respective rights of the parties hereto to future development of said waters.

IT IS FURTHER REQUESTED that the appropriate survey and report in the nature of a proposed findings of water rights be submitted to the above-entitled Court as soon as practicable.

DATED this 16<sup>th</sup> day of July, 1974.

ARNOLD T. BEEBE

Arnold T. Beebe  
District Judge



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

March 31, 1980

### M E M O R A N D U M

TO: Bob Fleenor  
Ron Carlson  
Paul Castelin

FROM: Mike Hyer *myh*

RE: CITY OF MACKAY VS. POWERS, PERMIT NO. 34-7088

Counsel for the parties in this appeal agreed to allow the City of MacKay to augment the record with an affidavit by Sherl L. Chapman.

In accordance with the stipulation, the City submits the affidavit to the Department, which then may modify or amend the decision. The Department then forwards the affidavit and any changes in the decision to the District Court, where it is made part of the Court's record on appeal.

Attached is a copy of the material submitted by Chapman. Please advise whether it warrants any changes or revisions in our decision.

Attachment

RECEIVED

MAR 24 1980

TED C. SPRINGER

ATTORNEY AT LAW

P. O. BOX 645

CHALLIS, IDAHO 83226

Department of Water Resources

208-879-2312

March 3, 1980

Michael H. Hyer, Esq.  
Deputy Attorney General  
Department of Water Resources  
Statehouse  
Boise, Idaho 83720

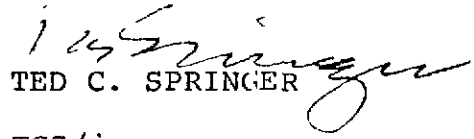
Re: City of Mackay/John L. Power Application for  
Permit No. 34-7088  
Custer County Case No. 2554

Dear Mike:

Herewith, pursuant to the Stipulation to Augment Record  
dated January 22, 1980, is the Affidavit of Sherl L.  
Chapman.

Would you kindly present this to the Director in  
accordance with the Stipulation. Thank you.

Very truly yours,

  
TED C. SPRINGER

TCS/js

cc: Michel D. Crapo, Esq.

MAR 21 1980

TED C. SPRINGER, Esq.      Department of Water  
Attorney for Appellant  
P.O. Box 645  
Challis, Idaho 83226  
(208) 879-2312

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF  
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF CUSTER

|                             |   |                               |
|-----------------------------|---|-------------------------------|
| IN THE MATTER OF PERMIT NO. | ) |                               |
| 34-7088, In the Name of     | ) |                               |
| JOHN L. POWERS              | ) | Case No. 2554                 |
|                             | ) |                               |
| Before the Idaho Department | ) | AFFIDAVIT OF SHERL L. CHAPMAN |
| of Water Resources.         | ) |                               |
|                             | ) |                               |

STATE OF IDAHO    )  
                          )    ss.  
County of Ada     )

SHERL L. CHAPMAN, deposes and says:

1. That he is a ground water geologist and water resource consultant, with offices in Boise, Idaho, and that he testified at the hearing before the Department of Water Resources on September 19, 1976, in the above-entitled matter.

2. That the attached statement dated January 29, 1980 is submitted to augment the record in the above matter with respect to the additional field review by the Department of Water Resources after the hearing on September 19, 1977, and with respect to the measuring devices or controls on the amount of water to be diverted by the applicant.

DATED: February 26, 1980.

*Sherl L. Chapman*  
Sherl L. Chapman

SUBSCRIBED AND SWORN TO before me this 27 day of February, 1980.

*Mar C. Black*  
Notary Public for Idaho  
Residing at:  
Comm. Expires: 5/30/83

(SEAL)

*Sheryl L. Chapman*  
CONSULTANT

4706 FAIRVIEW AVENUE BOISE IDAHO 83704 PHONE 375 6131

RECEIVED

January 29, 1980

MAR 24 1980

Mr. Ted Springer      Department of Water Resources  
P. O. Box 645  
Challis, Idaho 83226

Dear Mr. Springer:

I have reviewed the results of the hearing before the Idaho Department of Water Resources and the memorandum decision as requested in behalf of the City of Mackay. I would offer the following comments on areas of the memorandum decision I feel especially pertinent to the City's position and the validity of the decision.

The memorandum decision, dated March 8, 1978, includes information and data allegedly obtained during an additional field investigation conducted by Department of Water Resources personnel. This test was conducted approximately one year after the study I conducted and several conclusions relating to the final decision were based upon these data. I would like to point out that in the time period between the tests that I made and the test conducted by the State that there was no control of access, modification, or potential tampering with the piezometers, excavations, or other measuring sections at the site. The piezometers, for example, are open tubes and could have been partially filled with trash, water, either from the activities of man or precipitation, or otherwise modified so as to render them totally incorrelatable with earlier data. To rely on data collected from such an investigation demonstrates a serious lack of concern for scientific control and accuracy and in my opinion renders the data suspect and conclusions without basis.

As I pointed out in my investigation, the fact that the water table slopes steeply in the spring area does not render my earlier conclusions or study invalid. It is an extremely common occurrence for a water table, especially in an area adjacent to a mountain front such as this, to roughly parallel the land surface beneath which it lies. In the case of the spring area investigated, the slope of the water table does appear to parallel the topography. Additionally, because of the nature of the fine grained sediments in this area the resistance to ground water movement is high. In order for ground water to move through the sediments and discharge in the spring area, a steep gradient, or slope of the water table

Mr. Ted Springer  
January 29, 1980  
Page 2

must be formed to develop the head or pressure required to move the water through the sediments to the discharge point under the force of gravity. The only mechanism in nature that allows this steepening of the gradient and movement of ground water through these sediments is for the water table to rise upgradient or west of the spring area to a height above the springs sufficient to drive the water through these "tight" sediments. The conclusion of the State, that because the piezometer bottom is two feet above the spring and therefore outside the influence of the spring discharge is inaccurate and demonstrates a lack of understanding of the hydrologic system in this local.

The memorandum decision and subsequent correspondence of the Department of Water Resources indicate that they feel little need for measuring devices or controls on the amount of water to be diverted. I would like to point out that if, in fact, the Department intends to allow a permit for the diversion of 10 miners inches or 90 gallons per minute and expects to administer that water right as they are required by law, then there should be no objection to providing an inline totalizing measuring device which will allow the state, the city, and the operator of the system to determine the instantaneous flow through the system as well as the total amount of water pumped the irrigation season. The Department has stated that the amount of water will be licensed and subject to their normal examination but it is obvious from past experience that this measurement will be made only once in a 5 year period and that no follow-up enforcement will ever be conducted, especially in this area where there is no water district or watermaster. Therefore, the Department, in the interest of accuracy and equitability, should require an inline measuring device on the discharge assembly such as a McCrometer totalizing inline flow meter and should limit the applicant as to pump size in order that he cannot over-pump the spring in excess of his allocated water right. If the applicant overexcavates the spring and allows more water to flow from the spring either by pumping or to waste in the creek, the damage to the hydrologic system will be irreparable and irretrievable.

The above remarks reflect my position and thoughts on the memorandum decision of the Department of Water Resources dated March 8, 1978. If you need additional information or an expansion of these conclusions, please feel free to contact me at any time.

Sincerely yours,

  
Sherl L. Chapman  
Consultant

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

IN THE MATTER OF APPLICATION FOR PERMIT  
NO. 34-7088 IN THE NAME OF JOHN L. POWERS

MEMORANDUM DECISION  
AND ORDER

The matter of water rights held by John Powers and the City of Mackay on Warm Springs and Warm Springs Creek first came before the Department of Water Resources on July 24, 1974, when the Seventh District Court of the State of Idaho requested the Department, pursuant to Section 42-701, Idaho Code, conduct an examination of certain waters in the Northeast quarter (NE $\frac{1}{4}$ ), Sec. 32, Twp. 7N, Rge. 24E, B.M., Custer County, Idaho, known as Warm Springs Creek.

A preliminary investigation was conducted on July 24, 1974, and a more extensive investigation by the Department was conducted on August 12 and 13, 1974. This study included an examination of the City of Mackay Spring and the John Powers Spring. This study resulted in a proposed finding of water rights which was submitted to the court on January 23, 1975.

On December 17, 1974, the Department received an application from John Powers requesting the appropriation of an additional 0.20 cubic feet per second from the springs located within the NW $\frac{1}{4}$ NE $\frac{1}{4}$ , Sec. 32, Twp. 7N, Rge. 24E, B.M., Custer County, for the irrigation of 30 acres of land.

Notice of this application was published in the Mackay Miner on December 26, 1974 and January 2, 1975, and subsequently was protested by the City of Mackay through their attorney, Ted Springer.

A hearing in the matter was first scheduled on April 29, 1975, but was continued pending court action. On May 24, 1976, the City of Mackay requested further postponement of the hearing to allow the City an opportunity to seek technical assistance in conducting further studies on the City's spring and surrounding area. Pursuant to the City's request, the Department conducted an additional study on August 23 and 24 of 1975. The results were submitted to the City on September 3, 1976.

In November of 1976, Sherl Chapman, a consulting geologist, was retained by the City of Mackay to conduct another study. Mr. Chapman's conclusions were completed in January of 1977 and a report was submitted to the Department for review in September of 1977. A hearing before the Department was then scheduled for September 19, 1977. The applicant was present and represented by Kent W. Foster,

Attorney at Law, of the firm Holden, Holden, Kidwell, Hahn and Crapo, of Idaho Falls, Idaho. The protestant, the City of Mackay, was represented by Ted C. Springer, Attorney at Law, Challis, Idaho.

Testimony and evidence was submitted on behalf of both the applicant and protestant. The Department has taken the matter under consideration and having reviewed all pertinent information, the Director of the Department of Water Resources makes the following Findings of Fact, Conclusions of Law, and Order:

FINDINGS OF FACT

1. The applicant is holder of Right No. 34-0959 representing 0.10 cubic feet per second of water with a priority of January 1, 1904, to be diverted from Warm Springs Creek for irrigation within the NE $\frac{1}{4}$  Lot 2, Sec. 32, SE $\frac{1}{4}$ SE $\frac{1}{4}$ , Sec. 29, Twp. 7N, Rge. 24E; Right No. 34-0961, representing 0.08 cubic feet per second of overflow from the City's facilities, with a priority of June 29, 1952, to be diverted for irrigation and stockwater within the SW $\frac{1}{4}$ SW $\frac{1}{4}$ , Sec. 28, SE $\frac{1}{4}$ SE $\frac{1}{4}$ , Sec. 29, all in Twp. 7N, Rge. 24E.

2. The City is holder of Right No. 34-0960 with a priority of January 2, 1904, and is thereby entitled to all of the flow of a certain spring located in the NW $\frac{1}{4}$  of Lot 2, Sec. 32, Twp. 7N, Rge. 24E, at the source of Warm Springs Creek less the 0.10 cubic feet per second of flow of right 34-0959.

3. The Department of Water Resources' studies revealed a clay barrier between the City's spring and the one proposed to be developed by the applicant. The Department found the water quality of both the City spring and the applicant's spring to be very comparable. However, it was found that the applicant's spring was considerably warmer.

City of Mackay - August 12, 1974, temperature 17 $^{\circ}$  C (63 $^{\circ}$ F)

John Powers - August 12, 1974, temperature 21 $^{\circ}$  C (70 $^{\circ}$ F)

4. The consultant hired by the City of Mackay installed four observation wells and one "test pit" in the area between the City's spring and the spring which has been excavated by the applicant. The procedure used by the consultant included damming the outlet of the applicant's spring and then monitoring any changes that could be observed in the observation wells during a fourteen-day period. The City's consultant concluded that because the water levels in one of the observation wells increased from the time the test started until its conclusion and because observation well no. 4 began to gain water eleven days after the test started, there was a direct relationship between the applicant's spring and the city's spring.

However, the Department conducted an additional field review of the area on November 30, 1977, and found the water levels in observation well no. 1 to be higher than it was when the study for the City was done one year earlier. Observation well no. 4 had about one-half ( $\frac{1}{2}$ ) foot of water in the bottom of it. In addition, it was determined that the bottom of observation well no. 4 was about two feet higher in elevation than the top of the dam the City's consultant used in conducting his test and, therefore, could not have caused the change in the water level in this observation well by damming.

#### CONCLUSIONS OF LAW

1. The City has a right to use all of the flow of the upper "city" spring with the exception of 0.10 cubic feet per second which must be supplied to the applicant.
2. The consultant for the City of Mackay erred in his interpretation of his data. No relationship between the City's spring and the applicant's spring has been shown in any of the studies that have been done.
3. The applicant is entitled to a permit from the Department of Water Resources.

#### ORDER

IT IS, THEREFORE, HEREBY ORDERED and Application for Permit No. 34-7088 is APPROVED subject to the following conditions:

1. This permit is subject to all prior water rights.
2. Any development of the spring area must not disturb the clay barrier separating the applicant's spring from the city's spring.
3. Proof of construction of works and application of water to beneficial use shall be submitted to the Department on or before March 1, 1983.

Dated this 8 day of March, 1978.

  
A. KENNETH DUNN  
Deputy Director

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

IN THE MATTER OF PERMIT NO. 34-7088

IN THE NAME OF JOHN L. POWERS

ORDER AMENDING MEMORANDUM DECISION

AND ORDER OF MARCH 8, 1978

WHEREAS, on March 9, 1978, Application for Permit No. 34-7088 was approved;  
and,

WHEREAS, on March 28, 1978, Mr. Ted C. Springer, attorney for the protest-  
ant, City of Mackay, requested a rehearing for several reasons, one of which is to  
allow the protestant opportunity to review the data gathered by the Department  
during a field visit made after the hearing; and,

WHEREAS, a copy of the information gathered by the Department has been  
sent to the applicant and the protestant and time has been allowed for written  
arguments concerning the additional information; and, written responses were  
received from both the applicant and the protestant; and,

WHEREAS, the March 8, 1978 Memorandum Decision and Order concluded in  
error that the City of Mackay was entitled to all the flow of the "upper city"  
spring with the exception of 0.10 cubic feet per second of water; and,

WHEREAS, the City (Village) of Mackay was decreed in the case of Arthur  
H. Woodman et ux vs. Jake Millonig et al the right to all the water of a certain  
warm spring known as Warm Springs Creek with the exception of 0.10 cubic feet per  
second of water; and,

WHEREAS, all of the other issues raised in the Petition for Rehearing  
by the City of Mackay were considered by the Director in reaching his March 8,  
1978 decision; and,

WHEREAS, after the submission of the written documents by the applicant  
and protestant, the Director has decided pursuant to Rule 11.2 of the Department's  
Rules of Practice and Procedure that the issues on rehearing can be determined  
without a formal hearing;

THEREFORE, it is hereby determined pursuant to Rule 11.2 of the Depart-  
ment's Rules of Practice and Procedure that no further hearing is necessary and  
further that the March 8, 1978 decision is affirmed with the exception of Con-  
clusion of Law No. 1 which is amended as follows:

1) The City has a right to use all of the flow of that certain spring known as Warm Springs Creek with the exception of 0.10 cubic feet per second of water which must be supplied to the applicant.

Dated this 26 day of April, 1979.

  
A. KENNETH DUNN

Deputy Director

RECEIVED

MAR 24 1980

Department of Water Resources

TED C. SPRINGER

ATTORNEY AT LAW

P O BOX 645

CHALLIS, IDAHO 83226

208-879-2312

March 3, 1980

Michael H. Hyer, Esq.  
Deputy Attorney General  
Department of Water Resources  
Statehouse  
Boise, Idaho 83720

Re: City of Mackay/John L. Power Application for  
Permit No. 34-7088  
Custer County Case No. 2554

Dear Mike:

Herewith, pursuant to the Stipulation to Augment Record dated January 22, 1980, is the Affidavit of Sherl L. Chapman.

Would you kindly present this to the Director in accordance with the Stipulation. Thank you.

Very truly yours,

  
TED C. SPRINGER

TCS/js

cc: Michel D. Crapo, Esq.

# Sheryl L. Chapman

CONSULTANT

4706 FAIRVIEW AVENUE / BOISE, IDAHO 83704 PHONE 375-6131

RECEIVED

January 29, 1980

MAR 24 1980

Mr. Ted Springer      Department of Water Resources  
P. O. Box 645  
Challis, Idaho 83226

Dear Mr. Springer:

I have reviewed the results of the hearing before the Idaho Department of Water Resources and the memorandum decision as requested in behalf of the City of MacKay. I would offer the following comments on areas of the memorandum decision I feel especially pertinent to the City's position and the validity of the decision.

The memorandum decision, dated March 8, 1978, includes information and data allegedly obtained during an additional field investigation conducted by Department of Water Resources personnel. This test was conducted approximately one year after the study I conducted and several conclusions relating to the final decision were based upon these data. I would like to point out that in the time period between the tests that I made and the test conducted by the State that there was no control of access, modification, or potential tampering with the piezometers, excavations, or other measuring sections at the site. The piezometers, for example, are open tubes and could have been partially filled with trash, water, either from the activities of man or precipitation, or otherwise modified so as to render them totally incorrelatable with earlier data. To rely on data collected from such an investigation demonstrates a serious lack of concern for scientific control and accuracy and in my opinion renders the data suspect and conclusions without basis.

As I pointed out in my investigation, the fact that the water table slopes steeply in the spring area does not render my earlier conclusions or study invalid. It is an extremely common occurrence for a water table, especially in an area adjacent to a mountain front such as this, to roughly parallel the land surface beneath which it lies. In the case of the spring area investigated, the slope of the water table does appear to parallel the topography. Additionally, because of the nature of the fine grained sediments in this area the resistance to ground water movement is high. In order for ground water to move through the sediments and discharge in the spring area, a steep gradient, or slope of the water table

SPECIALIST IN

GROUND-WATER HYDROLOGY / WATER RIGHTS / WATER WELL DESIGN / GEOTHERMAL RESOURCES

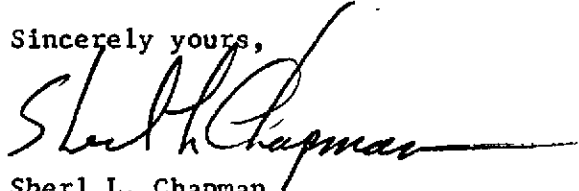
Mr. Ted Springer  
January 29, 1980  
Page 2

must be formed to develop the head or pressure required to move the water through the sediments to the discharge point under the force of gravity. The only mechanism in nature that allows this steepening of the gradient and movement of ground water through these sediments is for the water table to rise upgradient or west of the spring area to a height above the springs sufficient to drive the water through these "tight" sediments. The conclusion of the State, that because the piezometer bottom is two feet above the spring and therefore outside the influence of the spring discharge is inaccurate and demonstrates a lack of understanding of the hydrologic system in this local.

The memorandum decision and subsequent correspondence of the Department of Water Resources indicate that they feel little need for measuring devices or controls on the amount of water to be diverted. I would like to point out that if, in fact, the Department intends to allow a permit for the diversion of 10 miners inches or 90 gallons per minute and expects to administer that water right as they are required by law, then there should be no objection to providing an inline totalizing measuring device which will allow the state, the city, and the operator of the system to determine the instantaneous flow through the system as well as the total amount of water pumped the irrigation season. The Department has stated that the amount of water will be licensed and subject to their normal examination but it is obvious from past experience that this measurement will be made only once in a 5 year period and that no follow-up enforcement will ever be conducted, especially in this area where there is no water district or watermaster. Therefore, the Department, in the interest of accuracy and equitability, should require an inline measuring device on the discharge assembly such as a McCrometer totalizing inline flow meter and should limit the applicant as to pump size in order that he cannot over-pump the spring in excess of his allocated water right. If the applicant overexcavates the spring and allows more water to flow from the spring either by pumping or to waste in the creek, the damage to the hydrologic system will be irreparable and irretrievable.

The above remarks reflect my position and thoughts on the memorandum decision of the Department of Water Resources dated March 8, 1978. If you need additional information or an expansion of these conclusions, please feel free to contact me at any time.

Sincerely yours,

  
Sherl L. Chapman  
Consultant

MAR 24 1980

TED C. SPRINGER, Esq. Department of Water Resources  
Attorney for Appellant  
P.O. Box 645  
Challis, Idaho 83226  
(208) 879-2312

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF  
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF CUSTER

IN THE MATTER OF PERMIT NO. )  
34-7088, In the Name of ) Case No. 2554  
JOHN L. POWERS )  
Before the Idaho Department ) AFFIDAVIT OF SHERL L. CHAPMAN  
of Water Resources. )

STATE OF IDAHO )  
County of Ada ) ss.  
County of Ada )

SHERL L. CHAPMAN, deposes and says:

1. That he is a ground water geologist and water resource consultant, with offices in Boise, Idaho, and that he testified at the hearing before the Department of Water Resources on September 19, 1976, in the above-entitled matter.

2. That the attached statement dated January 29, 1980 is submitted to augment the record in the above matter with respect to the additional field review by the Department of Water Resources after the hearing on September 19, 1977, and with respect to the measuring devices or controls on the amount of water to be diverted by the applicant.

DATED: February 26, 1980.

*Sherl L. Chapman*  
Sherl L. Chapman

SUBSCRIBED AND SWORN TO before me this 26 day of February, 1980.

*Max C. Black*  
Notary Public for Idaho  
Residing at:  
Comm. Expires: 5/30/83

(SEAL)

MEMORANDUM

TO: File 34-7088

April 2, 1980

FROM: Bob Fleenor

Sherl's January 29, 1980 letter contains the same objection argued by December 15, 1978 brief concerning timing of our field exam.

The measuring device would serve no purpose since Power's water comes from a different source than the city's. If a meter is needed for Power's then the city should also be required to install a totalizing-recording meter so that an expansion of their right is prevented.

Further if the pump has a maximum putput of 0.20 cfs then an expansion (\$400 for 0.20 cfs) meter is not needed.

March 31, 1980

M E M O R A N D U M

TO: Bob Fleenor  
Ron Carlson  
Paul Castelin

FROM: Mike Hyer

RE: CITY OF HACKAY VS. POWERS, PERMIT NO. 34-7088

Counsel for the parties in this appeal agreed to allow the City of Hackay to augment the record with an affidavit by Sheri L. Chapman.

In accordance with the stipulation, the City submits the affidavit to the Department, which then may modify or amend the decision. The Department then forwards the affidavit and any changes in the decision to the District Court, where it is made part of the Court's record on appeal.

Attached is a copy of the material submitted by Chapman. Please advise whether it warrants any changes or revisions in our decision.

Attachment

May 17, 1979

Mr. Ted C. Springer  
Attorney at Law  
P. O. Box 645  
Challis, ID 83226

Dear Mr. Springer:

As requested in your letter of May 8, 1979, enclosed is a certified copy of Application for Permit No. 34-7088. I am taking the liberty of also enclosing certified copies of "Order Amending Memorandum Decision and Order of March 8, 1978" and "Memorandum Decision and Order" which will be necessary in the event the city of Mackay wishes to appeal to the district court.

The fee for certification is \$1 per document and 25¢ per sheet for copies. You may remit \$5.25 to this office.

If you need further assistance, please do not hesitate to contact us.

Sincerely,

Roberta Garrett  
Records Supervisor

Enclosures

April 27, 1979

John L. Powers  
211 North Main  
Mackay, ID 83251

Dear Mr. Powers:

Re: Permit No. 34-7088

Enclosed is a copy of the Order Amending Memorandum Decision and Order of March 9, 1978. Please note that Conclusion of Law #1 on the original order has been amended.

Any person who does not agree with the decision of the Department may appeal directly to the district court within 60 days of the date of the decision.

Sincerely,

L. GLEN SAXTON  
Chief, Operations Bureau

LGS:rf

Enc: Order

cc: Kent W. Foster  
Ted C. Springer  
City of Mackay  
(w/enc.)

*Roberta*

TED C. SPRINGER  
ATTORNEY AT LAW  
P. O. BOX 645  
CHALLIS, IDAHO 83226  
208-879-2312

May 8, 1979

L. Glen Saxton, Chief  
Operations Bureau  
Idaho Department of Water Resources  
Statehouse  
Boise, Idaho 83720

RECEIVED  
MAY 10 1979  
Department of Water Resources

Re: Application of John L. Powers  
Permit No. 34-7088  
City of Mackay, Idaho

Dear Mr. Saxton:

I am in receipt of the Order Amending Memorandum  
Decision dated April 26, 1979 in the above matter.

In the event the City of Mackay wishes to appeal to  
District Court, would you kindly furnish to me at this  
time a certified copy of the application in the above  
matter, as required by Idaho Code 42-203. If you  
require a fee in advance for the certified copy please  
advise, and thank you.

Very truly yours,

*Ted C. Springer*  
TED C. SPRINGER  
Mackay City Attorney

TCS/js  
cc: Oval Caskey, Mayor  
Carole Wright, Clerk

HOLDEN, KIDWELL, HAHN & CRAPO

IDAHO FIRST NATIONAL BANK BUILDING

P O. BOX 129

IDAHO FALLS, IDAHO 83401

TELEPHONE 523-0620

AREA CODE 208

WILLIAM S. HOLDEN  
R. VERN KIDWELL  
FRED J. HAHN  
TERRY L. CRAPO  
KENT W. FOSTER  
ROBERT E. FARNAM  
WILLIAM D. FALER  
STEPHEN E. MARTIN

---

CHARLES A. HOMER  
GARY L. MEIKLE  
CURT R. THOMSEN

ARTICLE 100, NEW YORK STATE  
ROBERT B. GOLDEN (1911-1971)

RECEIVED

APR 10 1978

**Department of Water Resources  
Eastern District Office**

April 7, 1978

Department of Water Resources  
Eastern District Office  
1515 Lincoln Road  
Idaho Falls, Idaho 83401

Re: Permit No. 34-7088

Gentlemen:

We are enclosing our Response to Petition for Rehearing for filing in the above matter.

Thank you for your assistance.

Yours very truly,

Kent W. Foster

KWF : j t

Enclosure

## STATE OF IDAHO

IN THE MATTER OF APPLICATION FOR PERMIT )  
 ) RESPONSE TO PETITION  
NO. 34-7088 IN THE NAME OF JOHN L. POWERS) FOR REHEARING  
 )

COMES NOW John L. Powers, and by and through Holden, Kidwell, Hahn & Crapo, his attorneys of record in the above entitled matter hereby submits the following response to the Petition for Rehearing of the City of Mackay, protestant.

The primary thrust of protestant's Petition for Rehearing appears to us to amount only to an expression of dissatisfaction with the decision rendered by the department. Both of the studies or investigations which were performed; that is the study or investigation performed by the department, as well as the second or later study performed by Mr. Sherl Chapman, were done at the request of the protestant. Since both of those investigations were before the department, it had the responsibility of resolving conflicts in evidence. In most disputed matters, there is conflicting evidence and the judicial or quasi-judicial officer must make a decision. That the decision went one direction or another, is not of itself normally grounds for a rehearing. Usually there must be a substantial showing that important evidence was not considered, because for one reason or another it was not available. The protestant clearly has not indicated that there was additional evidence not available to or not considered by the department.

The protestant complains about the department's efforts to resolve apparent conflicts between the studies done by the various

experts on behalf of the City of Mackay. As we understand it, the department's "field review" on November 30, 1977, was not in the nature of a further study or test, but rather done strictly for the purpose of verifying data so as to be able to make a correct factual decision. In the case of an administrative agency with special expertise on this subject matter with responsibility for rendering a quasi-judicial decision, we think this activity would not only be within the rights of the agency but that it would have an obligation to verify such facts.

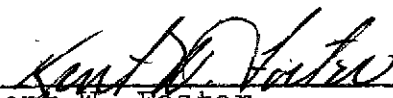
The protestant talks about the "need" of the City of Mackay. To our knowledge "need" is not a relevant legal consideration in the case.

Neither is there any legal requirement in the law that the order specify such things as measuring devices or pump sizes. The statutory law of the state already provides one receiving waters from the public water supply must construct a measuring device and that would be a requirement whether the order or the permit requires it or not. Finally, and perhaps this summarizes our reaction to the city's Petition for Rehearing, Paragraph No. 3 objects that the department's order is unreasonable because it excepts 0.10 cubic feet per second, rather than 5 miner's inches. In Idaho, 1.0 cubic foot per second is equal to 50 miner's inches. We have suspected the city of using a different kind of math than the rest of us throughout this proceeding, but we are still convinced that 0.10 cubic foot per second is equal to 5 miner's inches.

Respectfully submitted this 7 day of April, 1978.

HOLDEN, KIDWELL, HAHN & CRAPO

By:

  
Kent W. Foster

CERTIFICATE OF MAILING

I hereby certify that I am a duly licensed attorney for the State of Idaho, resident of and with my office in Idaho Falls, Idaho; that I served a copy of the foregoing Response to Petition for Rehearing by mailing a true and correct copy thereof to the following attorney, prepaying the postage thereon this 7 day of April, 1978.

A handwritten signature in cursive script, reading "Kent W. Foster", is written over a horizontal line.

Ted C. Springer, Esq.  
P.O. Box 409  
Challis, Idaho 83226

*page*

TED C. SPRINGER

ATTORNEY AT LAW  
P. O. Box 409  
CHALLIS, IDAHO 83226  
208-879-2312

RECEIVED  
DEC 15 1978  
Department of Water Resources

TO

Bobby D. Fleenor, Chief  
Department of Water Resources  
Statehouse  
Boise, Idaho 83720

DATE December 15, 1978

SUBJECT Permit No. 34-7088

Dear Bobby:

Please make the following correction on page 2, line  
18 of the City's Memorandum of December 15, 1978:  
the line should read "be difficult if not impossible..."

Thank you.

Very truly yours,

*T.C. Springer*  
TED C. SPRINGER

TCS/js

RECEIVED

## INTER-DEPARTMENT MEMO — 1

FROM

Norm

DATE

4/10/78

TO

F/renan

SUBJECT

34-7088

Probably need to distribute memo concerning field visit at 11/30/77 & allow both sides to brief. Then reissue a decision without a formal oral hearing — see rule 11.2.

MICR  
SIGNATURE

RECEIVED

TED C. SPRINGER  
ATTORNEY AT LAW  
P. O. BOX 409  
CHALLIS, IDAHO 83226  
208-879-2312

APR 12 1978

Department of Water Resources

April 10, 1978

Director  
Department of Water Resources  
State Office  
373 West Franklin Street  
Boise, Idaho 83702

re: Application of John L. Powers  
City of Mackay  
Permit No. 34-7088

|                    |  |
|--------------------|--|
| DIRECTOR           |  |
| DEPUTY DIR.        |  |
| DESIGN. DIV.       |  |
| DESIGN. ANALYSIS   |  |
| DESIGN. ENGINEER   |  |
| DESIGN. SURV.      |  |
| DESIGN. STUD. BUR. |  |
| DESIGN.            |  |
| DESIGN.            |  |
| PERSONNEL          |  |
| FILES              |  |
|                    |  |

Dear Director:

I am in receipt of the Response to Petition for Rehearing Filed on behalf of John L. Powers. In partial response to Mr. Powers' in which he questions paragraph 3 of the petition, that paragraph objects to the phrase "upper city spring" used by the Department, and not the calculation of 5 miner's inches.

In light of the response filed by Mr. Powers, the City of Mackay would request the opportunity to present oral argument in support of the petition, which should expedite this matter.

Please advise and thank you.

Very truly yours,

*Ted C. Springer*  
TED C. SPRINGER  
Mackay City Attorney

TCS/lh

cc: Oval Caskey, Mayor  
Kent W. Foster, Esq.

*John Young*

LAW OFFICES

HOLDEN, KIDWELL, HAHN & CRAPO

IDAHO FIRST NATIONAL BANK BUILDING

P O BOX 129

IDAHO FALLS, IDAHO 83401

TELEPHONE 523-0620

AREA CODE 208

*Flennett*  
*SATCO*  
*NOT*

WILLIAM S. HOLDEN  
R. VERN KIDWELL  
FRED J. HAHN  
TERRY L. CRAPO  
KENT W. FOSTER  
ROBERT E. FARNAM  
WILLIAM D. FALER  
STEPHEN E. MARTIN  
CHARLES A. HOMER  
GARY L. MEIKLE  
CURT R. THOMSEN  
RANDALL K. BARTON

ARTHUR W. HOLDEN (1877-1967)  
ROBERT B. HOLDEN (1911-1971)

October 20, 1978

Mr. Ronald D. Carlson  
Department of Water Resources  
Eastern District Office  
1515 Lincoln Road  
Idaho Falls, Idaho 83401

Re: Application of John L. Powers - City of Mackay -  
Permit No. 34-7088

Dear Ron:

The last thing I have in my file on this matter is a letter from Ted Springer to the Director of the Department requesting oral argument on his Petition for Rehearing. That request was dated April 10, 1978, and I am wondering whether there has been any decision made yet, or course of action adopted by the department.

We would very much appreciate hearing from you as to the status of the matter.

Yours very truly,

*Kent*

Kent W. Foster

KWF:jt

cc: John Powers

RECEIVED

OCT 23 1978

Department of Water Resources  
Eastern District Office



State of Idaho

## DEPARTMENT OF WATER RESOURCES

STATE OFFICE, 373 W. Franklin Street, Boise, Idaho

JOHN V. EVANS

Governor

C. STEPHEN ALLRED

Director

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

April 4, 1978

MEMO

TO: Norm Young  
FROM: Bob Fleenor *BF*  
RE: City of Mackay request for rehearing

I recommend that we not allow a rehearing since no new evidence on the issues raised is proposed to be entered by the City.

INTER-DEPARTMENT MEMO — 1

FROM

Norm

DATE

3/30/78

TO

Glen & Bob

SUBJECT

Rehearing on 39-7088

Let's discuss before a response  
is drafted.

**MICROFILMED**

SIGNATURE

November 20, 1978

Mr. Kent W. Foster  
HOLDEN, KIDWELL, HAHN & CRAPO  
P. O. Box 129  
Idaho Falls, ID 83401

Dear Mr. Foster:

Re: Permit No. 34-7083

The request for rehearing submitted by Mr. Springer on behalf of the City of Mackay raised several questions which may result in an amended memorandum decision. A copy of our letter to Mr. Springer is enclosed along with a copy of the information obtained during the field visit made subsequent to the hearing.

Please submit any additional briefs on our interpretation of the data gathered during the field visit and also a further discussion, if you desire, of the other issues raised in Mr. Springer's rehearing request, before December 18, 1978 so that the decision on the permit can be finalized.

Sincerely,

BOBBY D. FLEENOR  
Chief, Regional Offices Bureau

BDF:rf

Enc: 2

bcc: Eastern Region

TED C. SPRINGER  
ATTORNEY AT LAW  
P O Box 409  
CHALLIS, IDAHO 83226  
(208) 879 2312

SDF 3-28-78  
NOT  
RECEIVED

MAR 28 1978

Department of Water Resources

March 27, 1978

Director  
Department of Water Resources  
State Office  
373 West Franklin Street  
Boise, Idaho 83702

Re: Applicant of John L. Powers  
City of Mackay  
Permit No. 34-7088

Dear Director:

Enclosed please find a Petition for Rehearing filed  
on behalf of the City of Mackay, Idaho.

Thank you.

Very truly yours,

TED C. SPRINGER

TCS/js  
cc: Kent W. Foster ✓

C  
O  
P  
Y

RECEIVED

MAR 28 1978

Department of Water Resources

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

IN THE MATTER OF APPLICATION FOR PERMIT ) PETITION FOR  
No. 34-7088 IN THE NAME OF JOHN L. POWERS ) REHEARING  
\_\_\_\_\_)

COMES NOW the City of Mackay, Idaho, protestant in the above matter, and petitions the Idaho Department of Water Resources, pursuant to Rule 3 of the Department Rules and Regulations, for a rehearing of the case in which an Order was entered on March 8, 1978, and mailed to the undersigned on March 13, 1978. This Petition is brought for the reasons that the Order is unreasonable, unlawful, erroneous and not in conformity with the law in that:

1. The Order states in Conclusions of Law No. 2 that "no relationship between the city's spring and the applicant's spring has been shown in any of the studies that have been done", which is erroneous, in that studies and evidence before the Department indicate a relationship between the two springs.

2. The Order is unreasonable and contrary to law in that it is based in part on additional field reviews of the area after the hearing on September 19, 1977, which reviews were not subject to examination by the protestant, the City of Mackay, nor available for examination or rebuttal by the protestant.

3. The Order is unreasonable, erroneous, and contrary to the law in that it limits, in Conclusions of Law No. 1, the right of the City to all of the flow of the upper "City" spring with the exception of 0.10 cubic feet per second, when in fact and in law, the City is entitled to all of the waters of the spring known as Warm Springs Creek with the exception of 5 miners inches.

4. The Order is erroneous, unreasonable, and contrary to law

Only if the  
fact the conclusion in  
the stud. is rec'd

Dept. review one  
not subject

0.10 is 5 miners inches

in that it approves of a permit for the withdrawal of water by the applicant from Warm Springs Creek, notwithstanding the right and need of the City of Mackay to all of the waters of Warm Springs Creek for the municipal water supply, thereby reducing the quantity of water under existing water rights.

5. The Order is erroneous and unreasonable in that it fails to acknowledge the amounts of water presently withdrawn by the applicant from Warm Springs Creek in determining whether further development of the spring area should be allowed by applicant.

6. The Order is erroneous and unreasonable in that it fails to specify conditions on the permit, such as requirement of a measuring device by the applicant, limitation on pump size or other device used to withdraw the 0.20 cubic feet per second, limitation on method of development by applicant in addition to non disturbance of the clay barrier, provisions for indemnity of the City of Mackay in the event of interference with the City water supply by applicant.

7. The Order is erroneous and unreasonable in that it allows development of the spring area notwithstanding evidence that interference by applicant with the existing prior rights of the City would be difficult if not impossible to enforce and correct, and irreparable, thereby denying the City its right to the entire flow of the Warm Springs Creek with the exception of the 5 miners inches previously decreed to applicant.

If rehearing is granted, the petitioner would offer evidence pertaining to the requirements of the City of Mackay, the relationship between applicant's spring and the City spring, the existing withdrawal of water by applicant, and such further evidence as is required to support this Petition. Such evidence would be in the form of written and oral testimony in a quantity sufficient to support this Petition.

Petitioner further requests the right to amend and supplement

this Petition in order to fully address all other points and grounds which the petitioner considers the Order to be unreasonable, unlawful, erroneous or not in conformity with the law.

DATED: March 27, 1978.

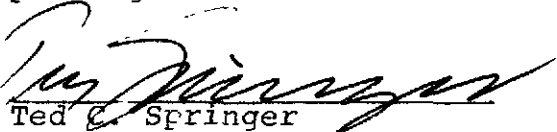
CITY OF MACKAY, IDAHO

By

  
Ted C. Springer  
Attorney at Law  
P.O. Box 409  
Challis, Idaho 83226

CERTIFICATE OF MAILING

I hereby certify that on the 27th day of March , 1978, I mailed a true and correct copy of the above Petition for Rehearing to Kent W. Foster, Esq., Holden, Holden, Kidwell, Hahn & Crapo, Attorneys at Law, P.O. Box 129, Idaho Falls , Idaho 83401 , by placing the same in the U.S. Mail, postage thereon prepaid.

  
Ted C. Springer

November 17, 1978

Mr. Ted C. Springer  
Attorney at Law  
P. O. Box 409  
Challis, ID 83226

Dear Mr. Springer:

Re: Permit No. 34-7088

Sometime ago you requested a rehearing on Permit No. 34-7088 issued to John L. Powers.

Your request raises several questions which could cause an amended memorandum decision and order be issued. Reason number 2 which pointed out that you did not have an opportunity to review the additional field report is sufficient reason to reopen the matter for further information.

Therefore, enclosed is a copy of the information obtained during the field report made subsequent to the hearing.

Please review the information and provide us with a brief discussing our interpretation of this data and also a complete discussion, if you desire, of the other issues you raised in your request for a rehearing.

Mr. Foster has also been given the opportunity of submitting an additional brief in the matter.

Please submit your brief before December 18 so that the decision on the permit can be finalized.

Sincerely,

BOBBY D. FLEENOR  
Chief, Regional Offices Bureau

BDF:rf

Enc: 1

cc: Kent Foster  
bcc: Eastern Region

TED C. SPRINGER  
ATTORNEY AT LAW  
P. O. Box 409  
CHALLIS, IDAHO 83226  
208-879-2312

RECEIVED

MAR 28 1978

Department of Water Resources

March 27, 1978

Director  
Department of Water Resources  
State Office  
373 West Franklin Street  
Boise, Idaho 83702

RECEIVED

MAY 31 1978

Department of Water Resources  
Eastern District Office

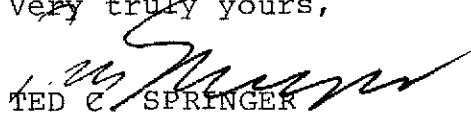
Re: Applicant of John L. Powers  
City of Mackay  
Permit No. 34-7088

Dear Director:

Enclosed please find a Petition for Rehearing filed  
on behalf of the City of Mackay, Idaho.

Thank you.

Very truly yours,

  
TED C. SPRINGER

TCS/js  
cc: Kent W. Foster

IN THE MATTER OF APPLICATION FOR PERMIT ) PETITION FOR  
 ) REHEARING  
No. 34-7088 IN THE NAME OF JOHN L. POWERS )  
 )

1. The Order states in Conclusions of Law No. 2 that "no relationship between the city's spring and the applicant's spring has been shown in any of the studies that have been done", which is erroneous, in that studies and evidence before the Department indicate a relationship between the two springs.

3. The Order is unreasonable, erroneous, and contrary to the law in that it limits, in Conclusions of Law No. 1, the right of the City to all of the flow of the upper "City" spring with the exception of 0.10 cubic feet per second, when in fact and in law, the City is entitled to all of the waters of the spring known as Warm Springs Creek with the exception of 5 miners inches.

208-879 2912

in that it approves of a permit for the withdrawal of water by the applicant from Warm Springs Creek, notwithstanding the right and need of the City of Mackay to all of the waters of Warm Springs Creek for the municipal water supply, thereby reducing the quantity of water under existing water rights.

5. The Order is erroneous and unreasonable in that it fails to acknowledge the amounts of water presently withdrawn by the applicant from Warm Springs Creek in determining whether further development of the spring area should be allowed by applicant.

6. The Order is erroneous and unreasonable in that it fails to specify conditions on the permit, such as requirement of a measuring device by the applicant, limitation on pump size or other device used to withdraw the 0.20 cubic feet per second, limitation on method of development by applicant in addition to non disturbance of the clay barrier, provisions for indemnity of the City of Mackay in the event of interference with the City water supply by applicant.

7. The Order is erroneous and unreasonable in that it allows development of the spring area notwithstanding evidence that interference by applicant with the existing prior rights of the City would be difficult if not impossible to enforce and correct, and irreparable, thereby denying the City its right to the entire flow of the Warm Springs Creek with the exception of the 5 miners inches previously decreed to applicant.

If rehearing is granted, the petitioner would offer evidence pertaining to the requirements of the City of Mackay, the relationship between applicant's spring and the City spring, the existing withdrawal of water by applicant, and such further evidence as is required to support this Petition. Such evidence would be in the form of written and oral testimony in a quantity sufficient to support this Petition.

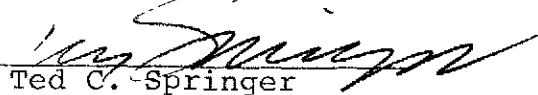
Petitioner further requests the right to amend and supplement

this Petition in order to fully address all other points and grounds which the petitioner considers the Order to be unreasonable, unlawful, erroneous or not in conformity with the law.

DATED: March 27, 1978.

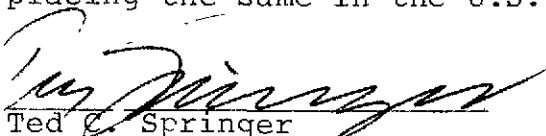
CITY OF MACKAY, IDAHO

By

  
Ted C. Springer  
Attorney at Law  
P.O. Box 409  
Challis, Idaho 83226

CERTIFICATE OF MAILING

I hereby certify that on the 27th day of March, 1978, I mailed a true and correct copy of the above Petition for Rehearing to Kent W. Foster, Esq., Holden, Holden, Kidwell, Hahn & Crapo, Attorneys at Law, P.O. Box 129, Idaho Falls, Idaho 83401, by placing the same in the U.S. Mail, postage thereon prepaid.

  
Ted C. Springer

TED C. SPRINGER  
ATTORNEY AT LAW  
P O. BOX 645  
CHALLIS, IDAHO 83226  
208-879-2312

December 15, 1978

Bobby D. Fleenor, Chief  
Regional Offices Bureau  
State of Idaho  
Department of Water Resources  
Statehouse  
Boise, Idaho 83720

Re: City of Mackay, Idaho  
Permit No. 34-7088

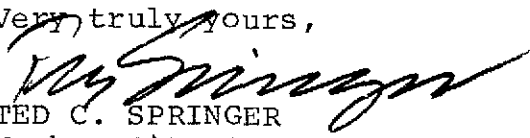
Dear Bob:

Herewith is the City's Memorandum in support of its  
Petition for Rehearing.

We are prepared to further elaborate on the various  
issues presented in this case, and appear for oral  
argument if the Department deems it appropriate.

Thank you.

Very truly yours,

  
TED C. SPRINGER  
Mackay City Attorney

TCS/js  
Enclosure

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

IN THE MATTER OF APPLICATION FOR )  
PERMIT ) MEMORANDUM IN SUPPORT OF  
 ) PETITION FOR REHEARING  
No. 34-7088 In the Name of )  
JOHN L. POWERS )  
\_\_\_\_\_ )

COMES NOW the City of Mackay, Idaho, protestant in the above matter, and submits the following in support of protestant's Petition for Rehearing and in response to the letter from Bobby D. Fleenor, of the Idaho Department of Water Resources dated November 17, 1978.

1. The Additional Field Report. In the Memorandum Decision dated March 8, 1978, in the above matter, the Department relied upon an additional field review dated November 30, 1977. The review indicated differing water levels in the observation wells used by the City's consultant. This test was conducted approximately one year after the City's tests and the City objects to the introduction of the results of the examination in November, 1977, for the reason that there was a complete lack of control over the well holes during the year period, during which time new water could have been introduced into the wells naturally or artificially, and there could have been tampering during that period. These factors alone should render the subsequent examination unreliable. Furthermore, the Department concludes that the "bottom of observation well no. 4 was about two feet higher in elevation than the top of the dam the City's consultant used in conducting his tests, and, therefore, could not have caused the change in the water level in this observation well by damming". The City is prepared to submit the written or oral opinion of the City's consultant to show that the slope of the water table generally follows the slope of the surface of the land, and therefore there is no inconsistency in the results of the consultant's test and the elevations involved.

2. The Water Needs of the City. Applicant, in his Response to Petition for Rehearing, dismisses the municipal water needs of the City of Mackay as not being a relevant legal consideration in this case. The City of Mackay has the right to all of the waters of Warm Springs Creek, with the exception of 5 miner's inches to applicant to be withdrawn by valve in a pipeline at the City spring, according to previous court actions, referred to in the Memorandum Decision and the Proposed Findings of Water Rights incorporated therein. The Findings of Fact in the Proposed Findings of Water Rights states that an aquifer of undetermined extent and recharge potential is the source of the flow of Warm Springs Creek and the source of tributary springs including the City spring. Thus, the City has been assured a municipal water supply for its existing and future needs. The Idaho Supreme Court has recognized the "needs" of a municipality in determining water rights and has held that a municipality, when acquiring water to supply its existing needs, may also acquire and hold rights to additional water for the purpose of supplying future needs. Beus-v-Soda Springs, 62 Idaho 1 (1940). It is the position of the City, therefore, that the Department must consider the existing and the future needs of the City as constituting the City's existing water right, when reviewing any application to withdraw water from the aquifer, and that applicant's proposed withdrawal, over and above the 5 miner's inches to which he is entitled, will reduce the quantity of water under existing water rights, and therefore should be denied under Section 42-203, Idaho Code. Since the development of ground water is an issue in this case, it would be difficult <sup>if</sup> is not impossible to enforce the City's prior right to the waters withdrawn by applicant, due to the nature of the excavation and withdrawal, thereby effectively denying the City its right to the entire flow of the Warm Springs Creek with the exception of applicant's 5 miner's inches. A further consideration in this case is the unique nature of the City's needs to its water right--since weather conditions and the various uses of the City water supply fluctuate so that the

entire right may be subject to demand at any time.

3. Conditions on Permit. When the City has need for all of its decreed water, it would be difficult if not impossible to retrieve from applicant the water for which the instant application is made. Therefore, if the Department sees fit to grant the application subject to the City's prior rights, because of the unique nature of the water source and municipal needs in this case, it would be appropriate for the Department to only grant the permit upon conditions, as provided in Section 42-203, Idaho Code. Thus the City urges, at a minimum, the following conditions upon any permit:

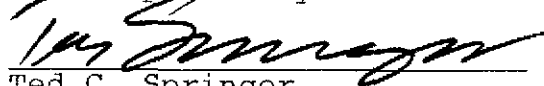
a. Installation by applicant of a recording measuring device on any pumping system which the applicant uses to withdraw water;

b. A pump sizing limitation which would not allow applicant to pump in excess of the 10 miner's inches applied for;

c. Limitations on the manner in which applicant's excavation could be developed, to assure no further disturbance of the City spring; and

d. A procedure whereby applicant's withdrawal of water could be terminated when the City has need for the water and/or the City spring shows any reduction. Such procedures should also include provisions providing for indemnification of the City by applicant for any damages incurred by the City in the event of interference with the City water supply by the applicant.

Respectfully submitted this 15th day of December, 1978.

  
Ted C. Springer  
Attorney for the City of Mackay, Idaho

CERTIFICATE OF MAILING

I hereby certify that on the 15th day of December, 1978, I mailed a true and correct copy of the above Memorandum in Support of Petition for Rehearing to Kent W. Foster, Esq. Holden, Holden, Kidwell, Hahn & Crapo, P.O. Box 129, Idaho Falls, Idaho 83401, by placing the same in the U.S. Mail, postage thereon prepaid.

  
Ted C. Springer

March 10, 1978

Re: Permit No. 34-7088

John L. Powers  
211 North Main  
Mackay, ID 83251

Dear Mr. Powers:

Enclosed is a copy of your approved Application for Permit No. 34-7088 along with a copy of the Memorandum Decision and Order. We direct your attention to the conditions of approval as set forth in the Order.

You should be aware that any person who does not agree with the decision may request a re-hearing before the Director of the Department of Water Resources within 20 days, or may appeal directly to the District Court within 60 days of the date of the decision.

Sincerely,

L. GLEN SAXTON  
Chief, Operations Bureau

LGS:kw

Enc: Copy of permit w/ decision and order

cc: City of Mackay  
Ted Springer, Attorney at Law  
Kent W. Foster, Attorney at Law  
Enc: Copy of Memorandum Decision and Order

34-7088

Sept. 19, 1977

John Powers

John Powers - Kent Foster ATTY  
All of Powers irrigation from  
Springs & Warm Springs creek  
would be an described 30 a.c.

CITY OF Mackay - Ted Springer  
ISSUES

App. has first S.W.

App. has excess at Storage

City has remainder.

1. City contends water fully app.  
by previous adjudication.
- 2. Will water at excavation  
interfere w/ Prior appropriators

~~Stipulations~~

Hearing

- Stipulated into evidence -  
Sherls Report, Castle/Don Report  
Depts Proposed finding.

Kent Foster - No witness

~~Stipulations~~

Ted Springer -

Sherl Chapman

LAW OFFICES

WILLIAM S. HOLDEN  
R. VERN KIDWELL  
FRED J. HAHN  
TERRY L. CRAPO  
KENT W. FOSTER  
ROBERT B. BARNAM  
WILLIAM D. FALER  
STEPHEN M. MATHIN  
CHARLES A. HOMER

HOLDEN, HOLDEN, KIDWELL, HAHN & CRAPO

IDAHO FIRST NATIONAL BANK BUILDING

P O BOX 129

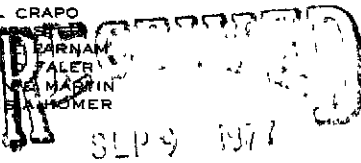
IDAHO FALLS, IDAHO 83401

TELEPHONE 523-0620

AREA CODE 208

ARTHUR W. HOLDEN (1877-1967)

ROBERT B. HOLDEN (1911-1971)



Department of Water Resources  
Eastern Regional Office

September 7, 1977

Mr. Ron Carlson  
Department of Water Resources  
Eastern Regional Office  
1515 Lincoln Road  
Idaho Falls, Idaho 83401

Re: John Powers  
Permit No. 34-7088

Dear Ron:

Pursuant to our telephone conversation, I am enclosing a photocopy of the report prepared for the City of Mackay by Sherl L. Chapman in connection with our client's application for a permit in the above entitled matter.

Yours very truly,

Kent W. Foster

kj  
Encl.

TED C. SPRINGER  
ATTORNEY AT LAW  
P. O. Box 409  
CHALLIS, IDAHO 83226  
208-879-2312

RECEIVED  
SEP 7 1977  
Department of Water Resources  
Eastern District Office

Ronald D. Carlson, Supervisor  
Department of Water Resources  
Eastern District Office  
1515 Lincoln Rd.  
Idaho Falls, Idaho 83401

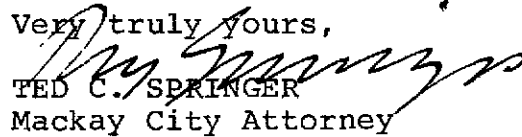
September 6, 1977

re: Application for Permit No. 34-7088, John Powers/  
City of Mackay

Dear Mr. Carlson:

With reference to the above matter, would you please indicate whether or not the Department of Water Resources intends to call any witnesses or introduce any reports by the State of Idaho at the hearing set for September 19, 1977.

If so, would you please provide me with names of witnesses and copies of such reports. Thank you.

Very truly yours,  
  
TED C. SPRINGER  
Mackay City Attorney

TCS/lh

cc: Kent W. Foster, Esq.

RECEIVED

AUG 23 1977

Department of Water Resources  
Eastern District Office

TED C. SPRINGER

ATTORNEY AT LAW

P. O. Box 409

CHALLIS, IDAHO 83226

(208) 879-2312

Mr. Ronald Carlson  
Department of Water Resources  
Eastern District Office  
1515 Lincoln Rd.  
Idaho Falls, Idaho 83401

DATE August 22, 1977

SUBJECT Permit No. 34-7088  
Application of John Powers/City  
of Mackay, Idaho

Dear Mr. Carlson:

The following is an additional unavailable date for me for a  
hearing in the above matter: October 11, 1977.

Thank you.

Very truly yours,

TED C. SPRINGER  
Mackay City Attorney

TCS/lh

- Also Sept. 7 & 8.

TED C. SPRINGER  
ATTORNEY AT LAW  
P. O. Box 409  
CHALLIS, IDAHO 83226  
208-879-2312

RECEIVED

AUG 19 1977

August 18, 1977

Mr. Ronald Carlson  
Department of Water Resources  
Eastern District Office  
1515 Lincoln Rd.  
Idaho Falls, Idaho 83401

Department of Water Resources  
Eastern District Office

re: Permit No. 34-7088 Application of John Powers/  
City of Mackay, Idaho

Dear Mr. Carlson:

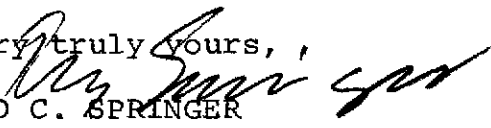
Enclosed please find a copy of a letter sent to me by  
Mr. Sherl L. Chapman, indicating his unavailable dates  
to testify.

The following would be my unavailable dates:

September 12, 13, 14, 15; October 10, 12;  
November 14, 16; December 12, 14, 19 thru 31, 1977;  
January 1 thru 11, 1978.

Your cooperation is appreciated.

Very truly yours, ,

  
TED C. SPRINGER  
Mackay City Attorney  
TCS/lh

cc: Oval Caskey, Mayor  
Kent W. Foster, Esq.

*Sherl L. Chapman*  
CONSULTANT

4706 FAIRVIEW AVENUE / BOISE, IDAHO 83704 / PHONE 375-6131

August 12, 1977

Mr. Ted Springer  
P. O. Box 409  
Challis, Idaho 83226

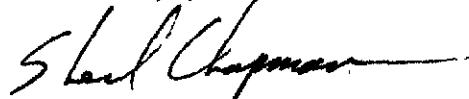
Dear Ted:

I am in receipt of your letter of August 10th requesting dates that I would be available for the hearing in MacKay on the City of MacKay vs. John Powers water right application. Looking at my schedule for the next three months, I think it would be easier for me to provide you with the dates I will be tied up and then let you set the hearing for whatever period best fits your schedule.

In August, I will not be able to participate in the hearing until the 29th of the month. I will also be unavailable the 5th, 6th, 7th, and 8th of September, the first week in October, the 13th and 14th of October, and the 17th through the 28th of October. November appears to be totally open as does most of December. I will be tied up the 13th, 14th, and 15th of that month however. I would suggest that the best time might be the first week in September or the week of the 12th or 19th of that month. If the Department of Water Resources wanted to hold the hearing during the week following Labor Day, I could be available the 7th or 8th of September. October is a very bad month since I am involved in litigation on water rights in Caldwell the first week of that month and am deeply involved in the National Water Resources Association Convention in Boise the week of the 23rd. I will, however, try to work my schedule around so that we will not have to postpone the hearing again.

If you need additional information, please feel free to contact me at any time.

Sincerely yours,



Sherl L. Chapman  
Consultant

SLC:kje

34-7088 - John L. Powers

Conference Room, Department of Water Resources, 1515 Lincoln Road

Idaho Falls, Idaho

September 19, 1977 - 3:00 p.m.

ROSTER OF ATTENDANCE

| Name             | Address              | Representing |
|------------------|----------------------|--------------|
| John L. Powers   |                      |              |
| Kent W. Votaw    | Box 129, Idaho Falls | John Powers  |
| Shirley Chapman  | 4706 Fairview Ave    | Mackay       |
| Rowell           | Boise                |              |
|                  | Ellis                | Mackay       |
| Gay H. Hamed     | P.O. Box 44          | Mackay Idaho |
| Dwight H. Caskey |                      |              |
| Ted Springer     | Box 409              | 'Challie' Id |

BEFORE THE DEPARTMENT OF WATER RESOURCES  
OF THE  
STATE OF IDAHO

In the Matter of Protest Against Approval  
of Application for Permit No. 34-7088 in  
the Name of JOHN L POWERS

NOTICE OF HEARING

Notice is hereby given that the Department of Water Resources has rescheduled the hearing concerning the above referenced application for permit for Monday, September 19, 1977, at 3:00 p.m., in the Conference Room of the Department of Water Resources, 1515 Lincoln Road, Idaho Falls, 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 Water Resources as previously indicated in the conference and/or hearing notice dated April 18, 1977.

Dated this 16<sup>th</sup> day of September, 1977.



RONALD D. CARLSON

Supervisor, Eastern Region

BEFORE THE DEPARTMENT OF WATER RESOURCES  
OF THE  
STATE OF IDAHO

In the Matter of Protests Against Approval  
of Application for Permit No. 34-7088 in  
the name of JOHN L. POWERS

---

NOTICE OF HEARING

Notice is hereby given that the Department of Water Resources has rescheduled the hearing concerning the above referenced application for permit for Monday, September 18, 1977, at 1:00 p.m., in the Conference Room of the Department of Water Resources, 1515 Lincoln Road, Idaho Falls, 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 Water Resources as previously indicated in the conference and/or hearing notice dated April 18, 1977.

Dated this 7<sup>th</sup> day of September, 1977.

/s/ Ronald D. Carlson

Ronald D. Carlson  
Supervisor,  
Eastern Region



**STATE OF IDAHO**  
**DEPARTMENT OF WATER RESOURCES**  
*EASTERN REGION*

John V. Evans  
*Governor*

C. Stephen Allred  
*Director*

1515 Lincoln Road  
Idaho Falls, Idaho 83401  
(208) 523-7186

September 6, 1977

Butte County Courthouse  
Clerk of the District Court  
Arco, Idaho 83213

Dear Sir:

This is to confirm the use of the Commissioner's Room for conference and/or hearing to be held by this office on Monday, September 19, 1977 at 2:30 p.m.

Thank you for your cooperation in this matter.

Very truly yours,

RONALD D. CARLSON  
Supervisor  
Eastern Region

RDC:CD

## DEPARTMENT OF WATER RESOURCES

EASTERN DISTRICT OFFICE

1515 LINCOLN ROAD

IDAHO FALLS, IDAHO 83401

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

IDAHO  
FALLS  
DEC 15 1977

| NUMBER OF ARTICLE | NAME OF ADDRESSEE, STREET AND POST OFFICE ADDRESS                         | POSTAGE | FEE | R.R. FFE | POST OFFICE | ACTUAL VALUE | HANDLING CHARGE | REMARKS |
|-------------------|---------------------------------------------------------------------------|---------|-----|----------|-------------|--------------|-----------------|---------|
| 700               | LeDon J. W. Wilma L. Cray, Rt. 6, Idaho Falls, Id.                        | 13      | 60  |          |             |              |                 | 25-7103 |
| 701               | Larry Boyle, Attorney, 600 W. N. Capital, Idaho Falls, Id.                |         |     |          |             |              |                 | "       |
| 702               | George Peterson, Attorney, 485 "E" St., Idaho Falls, Id.                  |         |     |          |             |              |                 | "       |
| 703               | Kelly Canyon Ski Area, Inc., 2034 Virginia, Idaho Falls, Id.              |         |     |          |             |              |                 | 23-7024 |
| 704               | Jack V. Bell, Attorney, 598 N. Capital, P.O. Box 557, Idaho Falls, Id.    |         |     |          |             |              |                 | "       |
| 705               | Dennis Clifford, Box 56, Ashton, Id.                                      |         |     |          |             |              |                 | 21-7112 |
| 706               | Mayor James Marshall, City of Ashton, Ashton, Id.                         |         |     |          |             |              |                 | "       |
| 707               | Marysville Irrigation Co., Joseph Williams, Ashton, Id.                   |         |     |          |             |              |                 | "       |
| 708               | Reid L. Richey, Star Route, Ashton, Id.                                   |         |     |          |             |              |                 | 21-7115 |
| 709               | Z. D. Egbert, Ashton, Id.                                                 |         |     |          |             |              |                 | "       |
| 710               | Don Marshall, Ashton, Id.                                                 |         |     |          |             |              |                 | "       |
| 711               | Glade Lyon, Box 624, Ashton, Id.                                          |         |     |          |             |              |                 | 21-7108 |
| 712               | Thomas Tolson, Att., Utah Power & Light Co., 1407 W. N. Imp, S.I.C.       |         |     |          |             |              |                 | "       |
| 713               | George M. Hartz, Rt. #1, Box 13, Ashton, Id.                              |         |     |          |             |              |                 | 21-7101 |
| 714               | Gerald D. Cooper, Rt. #1, Box 292, American Falls, Id.                    |         |     |          |             |              |                 | 29-7408 |
| 715               | Raymond Scherer, Box 63, American Falls, Id.                              |         |     |          |             |              |                 | "       |
| 716               | Grant E. Neibauer, Neibauer & West Farms, P.O. Box 4, American Falls, Id. |         |     |          |             |              |                 | "       |
| 717               | John L. Powers, 211 N. Main, Mackay, Id.                                  |         |     |          |             |              |                 | 34-7088 |
| 718               | Hon. Hilma Lindberg, Mayor, City of Mackay, Mackay, Id.                   |         |     |          |             |              |                 | "       |
| 719               | Ed C. Springer, Attorney P.O. Box 409, Challis, Id.                       |         |     |          |             |              |                 | "       |

TOTAL NO. OF PIECES  
LISTED BY SENDER

20

TOTAL NO. OF  
PIECES RECEIVED AT P.O.

20

POSTMASTER'S (Name of receiving employee)

"Show under 'Remarks' class postage paid if other than first or if international

## DEPARTMENT OF WATER RESOURCES

EASTERN DISTRICT OFFICE

1515 LINCOLN ROAD

IDAHO FALLS, IDAHO 83401

and  
Address  
of Sender

Indicate type of mail:

☐ REGISTERED☐ REGISTERED☐ C.O.D.☒ CERTIFIEDAffix stamp here if issued as certificate of mailing or for additional  
copies of this bill  
POSTMARK AND DATE OF RECEIPT

1977

| NUMBER OF<br>ARTICLE | NAME OF ADDRESSEE, STREET AND POST OFFICE ADDRESS         | POSTAGE | FEE | R R<br>FEE | R R ST<br>DEL FEE | ACTUAL<br>VALUE | HANDLING<br>CHARGE | REMARKS         |
|----------------------|-----------------------------------------------------------|---------|-----|------------|-------------------|-----------------|--------------------|-----------------|
| 720                  | Kent W. Foster, Attorney, P.O. Box 129, Idaho Falls, Id.  | 13      | 60  |            |                   |                 |                    | 34-7088         |
| 721                  | Frederick W. Roberts, P.O. Box 21, Coeur d'Alene, Id.     |         |     |            |                   |                 |                    | 75-7088/75-7089 |
| 722                  | Snook & Snook, Box 1227, Salmon, Id.                      |         |     |            |                   |                 |                    | "               |
| 723                  | Lloyd A. Clark, P.O. Box 1451, Salmon, Id.                |         |     |            |                   |                 |                    | "               |
| 724                  | Roy M. Lincoln, Box 303, Salmon, Id.                      |         |     |            |                   |                 |                    | "               |
| 725                  | Yvonne Lincoln, Salmon, Id.                               |         |     |            |                   |                 |                    | "               |
| 726                  | Thomas R. Conrad, Salmon, Id.                             |         |     |            |                   |                 |                    | "               |
| 727                  | Robert D. Pharo, Salmon, Id.                              |         |     |            |                   |                 |                    | "               |
| 728                  | Roland K. Smith, III, Salmon, Id.                         |         |     |            |                   |                 |                    | "               |
| 729                  | Edward E. Sudor, Salmon, Id.                              |         |     |            |                   |                 |                    | "               |
| 730                  | Nancy Jean Ramon, Salmon, Id.                             |         |     |            |                   |                 |                    | "               |
| 731                  | Harry E. Randi, Krimmerud, Box 1379, Salmon, Id.          |         |     |            |                   |                 |                    | 75-7088/75-7089 |
| 732                  | Fred H. Snook, Attorney, P.O. Box 1227, Salmon, Id.       |         |     |            |                   |                 |                    | "               |
| 733                  | Vadnais Bros., A Partnership, Star Route, Dubois, Id.     |         |     |            |                   |                 |                    | 31-7265         |
| 734                  | Orville, Vadnais, Kilgore Rt., Dubois, Id.                |         |     |            |                   |                 |                    | "               |
| 735                  | E. Lee Ranch, Inc., Box 688, Rexburg, Id.                 |         |     |            |                   |                 |                    | T22-0553/-      |
| 736                  | Willie Walker, Chmn., Tetondaland Canal Co., Rexburg, Id. |         |     |            |                   |                 |                    | 0553/0288/0551  |
| 737                  | Wayne Larsen, Box 97, Newdale, Id.                        |         |     |            |                   |                 |                    | T22-2123        |
| 738                  | Reed L. Mass, Attorney, 485 "E" St., Idaho Falls, Id.     |         |     |            |                   |                 |                    | "               |
| 739                  | Lynn Loreli Ashton, Id.                                   |         |     |            |                   |                 |                    | AM 21-7030      |

TOTAL NO. OF PIECES  
SENT BY SENDER

20

TOTAL NO. OF  
PIECES REC'D AT P.O.

20

POSTMASTER, (Name of receiving employee)

\*Show under "Remarks" class postage paid if other than first or  
if international

FD-3677, Dec. 1973

APPLICATION FOR REGISTERED, REGISTERED C.O.D. AND CERTIFIED MAIL

(Declaration of value is required on international registered mail)

★ U. S. GOVERNMENT PRINTING OFFICE: 1974-0-553-738

FORM MUST BE MADE OUT IN INK OR BALL POINT PEN

BEFORE THE DEPARTMENT OF WATER RESOURCES  
OF THE  
STATE OF IDAHO

In the Matter of Protests Against Approval  
of Application for Permit No. 34-7088 in  
the Name of JOHN L. POWERS

NOTICE OF HEARING

Notice is hereby given that the Department of Water Resources has rescheduled the hearing concerning the above referenced application for permit for Monday, September 19, 1977, at 2:30 p.m., in the Commissioner's Room of the Butte County Courthouse, Arco, 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 Water Resources as previously indicated in the conference and/or hearing notice dated April 18, 1977.

Dated this 12th day of September, 1977.

*Ronald D. Carlson*

RONALD D. CARLSON

Supervisor, Eastern Region

LAW OFFICES

WILLIAM S. HOLDEN  
R. VERN KIDWELL  
FRED J. HAHN  
TERRY L. CRAPO  
KENT W. FOSTER  
ROBERT E. FARNAM  
WILLIAM D. FALER  
STEPHEN E. MARTIN  
CHARLES A. HOMER

HOLDEN, HOLDEN, KIDWELL, HAHN & CRAPO

IDAHO FIRST NATIONAL BANK BUILDING

P. O. BOX 129

IDAHO FALLS, IDAHO 83401

TELEPHONE 523-0620  
AREA CODE 208

ARTHUR W. HOLDEN (1877-1967)

ROBERT B. HOLDEN (1911-1971)

August 22, 1977

RECEIVED

AUG 24 1977

Mr. Ronald Carlson  
Department of Water Resources  
Eastern District Office  
1515 Lincoln Road  
Idaho Falls, Idaho 83401

Department of Water Resources  
Eastern District Office

Re: Permit No. 34-7088 John Powers - City of Mackay

Dear Ron:

I have just received a copy of the dates submitted by Mr. Springer when he and Mr. Chapman will be unavailable. It appears to me that the best time would either be sometime between August 30th and September 2nd, or sometime between September 19th and September 23rd. In any event, my schedule would permit a hearing during either of those weeks, and it appears that both Mr. Springer's and Mr. Sherl Chapman's would as well. Again, let me mention if possible, we would like to have the hearing scheduled in Idaho Falls.

Thank you for your assistance.

Yours very truly,

  
Kent W. Foster

KWF:jt

cc: Ted Springer  
John Powers

TED C. SPRINGER  
ATTORNEY AT LAW  
P. O. Box 409  
CHALLIS, IDAHO 83226  
208-879-2312

AUG 11 1977  
Department of Water Resources  
Eastern District Office

August 10, 1977

Mr. Ronald Carlson  
Department of Water Resources  
Eastern District Office  
1515 Lincoln Road  
Idaho Falls, Idaho 83401

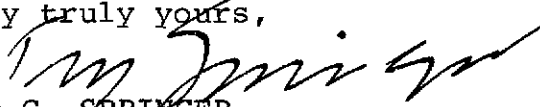
Re: Permit No. 34-7088  
Application of John Powers

Dear Mr. Carlson:

With reference to the letter of August 4, 1977 by Mr. Foster, please allow me to submit the available dates of the witness to be called by the City of Mackay, Mr. Sherl L. Chapman, so that we will not have a conflict with the hearing date.

On this date I am requesting these available dates from Mr. Chapman and will submit them to you immediately upon receipt. Thank you.

Very truly yours,

  
TED C. SPRINGER

TCS/js  
cc: Oval Caskey, Mayor  
Kent W. Foster

LAW OFFICES

WILLIAM S HOLDEN  
R VERN KIDWELL  
FRED J HAHN  
TERRY L CRAPO  
KENT W FOSTER  
ROBERT E FARNAM  
WILLIAM D FALER  
STEPHEN E MARTIN  
CHARLES A HOMER

HOLDEN, HOLDEN, KIDWELL, HAHN & CRAPO

IDAHO FIRST NATIONAL BANK BUILDING

P O BOX 129

IDAHO FALLS, IDAHO 83401

TELEPHONE 523-0620  
AREA CODE 208

ARTHUR W HOLDEN (1877-1967)

ROBERT S HOLDEN (1911-1971)

August 4, 1977

RECEIVED  
AUG 5 1977  
Department of Water Resources  
Eastern District Office

Mr. Ronald Carlson  
Department of Water Resources  
Eastern District Office  
1515 Lincoln Road  
Idaho Falls, Idaho 83401

Re: Permit No. 34-7088 - John Powers

Dear Mr. Carlson:

It has been sometime since this matter was scheduled for hearing and we are, of course, anxious to have the matter resolved as soon as possible. We would appreciate it if a new hearing date could be established as soon as may be.

I believe at one time we talked both with you and Mr. Springer about the possibility of holding the hearing in Idaho Falls, and I believe that was agreeable to everyone. We would appreciate it if the new hearing could be scheduled at an early date in Idaho Falls.

Thank you for your consideration.

Yours very truly,

*Kent W. Foster*  
Kent W. Foster

KWF:jt

cc: Ted Springer, Esq.

INDEXED 100-100000

LAW OFFICES

HOLDEN, HOLDEN, KIDWELL, HAHN & CRAPO

IDAHO FIRST NATIONAL BANK BUILDING

P. O. BOX 129

IDAHO FALLS, IDAHO 83401

TELEPHONE 523-0620

AREA CODE 208

WILLIAM S. HOLDEN  
R. VERN KIDWELL  
FRED J. HAHN  
TERRY L. CRAPO  
KENT W. FOSTER  
ROBERT E. FARNAM  
WILLIAM D. FALER  
STEPHEN E. MARTIN  
CHARLES A. HOMER

ARTHUR W. HOLDEN (1877-1967)

ROBERT B. HOLDEN (1911-1971)

April 26, 1977

Mr. Ted Springer  
Attorney at Law  
P.O. Box 409  
Challis, Idaho 83226

Re: John Powers

Dear Ted:

It has not, of course, been very long since I received your letter indicating that you had requested Sherl Chapman to furnish me with a copy of his report. However, I have not received a copy of that report, and I am quite anxious to do so since it will be quite impossible for us to prepare unless we have had an adequate opportunity to review the report. Will you please see what can be done to get a copy of the report to us as soon as possible.

Thank you for your help.

Yours very truly,

Kent W. Foster

KWF:jt

cc: Ronald J. Carlsen

RECEIVED

APR 27 1977

Department of Water Resources  
Eastern District Office

WFO

LAW OFFICES

HOLDEN, HOLDEN, KIDWELL, HAHN & CRAPO

IDAHO FIRST NATIONAL BANK BUILDING

P O BOX 129

IDAHO FALLS, IDAHO 83401

TELEPHONE 523-0620

AREA CODE 208

WILLIAM S HOLDEN  
R VERN KIDWELL  
FRED J HAHN  
TERRY L CRAPO  
KENT W FOSTER  
ROBERT E FARNAM  
WILLIAM D FALER  
STEPHEN E MARTIN  
CHARLES A. HOMER

ARTHUR W HOLDEN (1877-1967)

ROBERT S HOLDEN (1911-1971)

April 22, 1977

RECEIVED

APR 25 1977

Mr. Ronald J. Carlsen  
Department of Water Resources  
Eastern District Office  
1515 Lincoln Road  
Idaho Falls, Idaho 83401

Department of Water Resources  
Eastern District Office

Re: Application for Permit No. 34-7088

Dear Mr. Carlsen:

This letter will confirm our earlier advice to you of the conflict which we have on May 6th, the date set for hearing in the above matter, and our request for the matter to be rescheduled.

In the meantime, I have received a copy of a letter sent by Ted Springer explaining his and his expert's conflicts on the same date. I have reviewed the unavailable dates referred to by Ted, and I don't believe I would have much difficulty with dates in between the ones he shows as unavailable for him.

Yours very truly,



Kent W. Foster

KWF:jt

RECEIVED

TED C. SPRINGER  
ATTORNEY AT LAW  
P. O. Box 409  
CHALLIS, IDAHO 83226  
208-879-2312

RECEIVED

APR 21 1977

Department of Water Resources  
Eastern District Office

April 19, 1977

Ronald D. Carlson, Supervisor  
Eastern Region  
Department of Water Resources  
1515 Lincoln Road  
Idaho Falls, Idaho 83401

Re: Application for Permit No. 34-7088  
John L. Powers/City of Mackay, Idaho

Dear Mr. Carlson:

I am in receipt of your notice of hearing dated April 18, 1977, setting the above matter for hearing on May 6, 1977.

I have two prior conflicts on that date: I am representing several utilities before the Idaho Public Utilities Commission for curtailment hearings commencing May 2, 1977, which hearings are expected to last the entire week, and am set for a District Court civil case on May 6, 1977. I am attempting to vacate the latter setting in order to attend the PUC hearings. Therefore, I would respectfully ask that you re-schedule this hearing, and the following are my unavailable dates for the next few months:

May 2,3,4,5,6,11,12,18, June 13,15,23,24, 1977.

Additionally, Mr. Sherl L. Chapman, our consultant who will be testifying in this matter, is unavailable during the week of May 2 because of water right hearings in American Falls. Therefore, if you could furnish me with proposed alternate dates for this hearing, I will review them with Mr. Chapman, so that we can set this as soon as possible. I apologize for any inconvenience because of this request, but am unable to alter my schedules during the first week of May.

Very truly yours, .

  
TED C. SPRINGER

TCS/js  
cc: Kent W. Foster

BEFORE THE DEPARTMENT OF WATER RESOURCES  
OF THE  
STATE OF IDAHO

In the Matter of Protest Against  
Approval of Application for Permit  
No. 34-7088 in the Name of JOHN  
L. POWERS

NOTICE OF CANCELLATION

Notice is hereby given that the Department of Water Resources has cancelled the conference and/or hearing concerning the above referenced application at the request of the applicant's attorney, Kent Foster.

The Department will reschedule the conference and/or hearing in the near future, at which time all interested parties will again be notified.

Dated this 20<sup>th</sup> day of April, 1977.



RONALD D. CARLSON

Supervisor, Eastern Region

Sent to: City of Mackay  
Kent Foster  
John Powers  
Ted Springer  
IDWR - State Office

April 20, 1977

Mr. William G. Carlson  
Arco Memorial Building  
Arco, Idaho 83213

Dear Mr. Carlson:

This letter is to cancel our reservation for the use of the Memorial Building for conference on Friday, May 6, 1977, at 9:00 a.m.

We appreciate your cooperation in this matter.

Very truly yours,

RONALD D. CARLSON  
Supervisor,  
Eastern Region

RDC:CW

BEFORE THE DEPARTMENT OF WATER RESOURCES  
OF THE  
STATE OF IDAHO

In the Matter of Protest Against Approval }  
of Application for Permit No. 34-7088 in }  
the Name of JOHN L. POWERS }  
\_\_\_\_\_ }

NOTICE OF HEARING

Notice is hereby given that the Department of Water Resources has rescheduled the hearing concerning the above referenced application for permit for Friday, May 6, 1977, at 9:00 a.m., in the Memorial Building, Arco, 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 Water Resources as previously indicated in the conference and/or hearing notice dated April 16, 1975.

Dated this \_\_\_\_\_ day of April, 1977.

\_\_\_\_\_  
RONALD D. CARLSON

Supervisor, Eastern Region

**Name and Address of Sender**

Indicate type of mail:

☐ REGISTERED ☐ REGISTERED  
☐ C.O.D.  
☐ CERTIFIED

3 "6" stamp here if issued as certificate of mailing or for additional copies of this bill

| NUMBER OF ARTICLE |     | NAME OF ADDRESSEE, STREET AND POST OFFICE ADDRESS      | POSTAGE | FEE | R.R. FLE. | NO. OF DEL. STS. | ACTUAL VALUE | HANDLING CHARGE | REMARKS*     |
|-------------------|-----|--------------------------------------------------------|---------|-----|-----------|------------------|--------------|-----------------|--------------|
|                   | 319 | Mr + Mrs Carl H. Ward, Rayton 83232                    | 13      | 60  |           |                  |              |                 |              |
|                   | 320 | Dr Kayle H. Riccard, 156-505 13th St, Ryeview NY 84065 | 13      | 60  |           |                  |              |                 | 13-7156+B-76 |
|                   | 321 | Frank L. Hart, 112 N. Oakwood Dr. Sayton VT 84041      | 13      | 60  |           |                  |              |                 | "            |
|                   | 322 | Gess Elgar, Clifton 83228                              | 13      | 60  |           |                  |              |                 | "            |
|                   | 323 | Raymond Dook, Rt #1, American Falls 83211              | 13      | 60  |           |                  |              |                 | 01-7008      |
|                   | 324 | Richard J. Buer, 512W Park Ave, American Falls         | 13      | 60  |           |                  |              |                 | "            |
|                   | 325 | Laff River Rural Electric Co-op, Box 617, Malta        | 13      | 60  |           |                  |              |                 | "            |
|                   | 326 | Pope Leadall, Box 31, Keeley Rd, American Falls        | 13      | 60  |           |                  |              |                 | "            |
|                   | 327 | Shel Chapman, 4706 Fairview, Boise 83704               | 13      | 60  |           |                  |              |                 | "            |
|                   | 328 | Virgil Wale, Rt #1, Box 125, American Falls            | B       | 60  |           |                  |              |                 | 29-7364      |
|                   | 329 | Grant J. Heibauer, Box 4, American Falls               | 13      | 60  |           |                  |              |                 | "            |
|                   | 330 | Mrs. Margaret Smith, Rt #1, Box 301 A.F.               | 13      | 60  |           |                  |              |                 | 29-2281      |
|                   | 331 | City of Mackay                                         | 13      | 60  |           |                  |              |                 | 34-7088      |
|                   | 332 | Kent Foster, P.O. Box 129, I.E.                        | 13      | 60  |           |                  |              |                 | "            |
|                   | 333 | John S. Powers, 211 North Main, Mackay                 | 13      | 60  |           |                  |              |                 | "            |
|                   | 334 | Jed Springer, P.O. Box 409, Challis, 83226             | 13      | 60  |           |                  |              |                 | "            |

Sent Certified  
4-18-77  
me

2461  
31

NO. OF PIECES  
BY NUMBER

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.

APPLICATION FOR REGISTERED, REGISTERED C.O.D. AND CERTIFIED MAIL

(Declaration of value is required on international registered mail)

\* U. S. GOVERNMENT PRINTING OFFICE: 1974-9-112-723

FORM MUST BE MADE OUT IN INK OR BALL POINT PEN

WILLIAM C. COLE  
FREDERICK L. COLE  
FREDERICK L. COLE  
FREDERICK L. COLE  
FREDERICK L. COLE  
FREDERICK L. COLE  
FREDERICK L. COLE  
FREDERICK L. COLE  
FREDERICK L. COLE  
FREDERICK L. COLE

HOLDEN, HOLDEN, KIDWELL, HAHN & CRAPO

IDAHO DISTRICT COURT BUILDING

BOISE, IDAHO

IDAHO FALLS, IDAHO

PHONE 3-1234  
FAX 3-1234

ARTHUR W. HOLDEN 1877-1967

ROBERT B. HOLDEN 1900-1977

APR 8 1977

April 6, 1977

Department of Resources  
Eastern District Office

Mr. Ted C. Springer  
Attorney at Law  
P. O. Box 409  
Challis, Idaho 83226

Re. Application for Permit No. 34-7088-  
John L. Powers - Mackay, Idaho

Dear Ted:

Our file indicates you wrote on January 10, 1977,  
indicating that your consultant had completed his investiga-  
tion and was preparing his conclusions. To date, we have  
not received a copy of that report and are wondering what the  
status of the matter is. We would appreciate hearing from  
you as soon as it is convenient.

Yours very truly,

Kent W. Foster

AMF:jt

cc: Ronald Carlsen

C  
O  
P  
Y

TED C. SPRINGER  
ATTORNEY AT LAW  
P. O. Box 409  
CHALLIS, IDAHO 83226  
208-879-2312

RECEIVED  
JAN 11 1977

Department of Water Resources  
Eastern District Office

January 10, 1977

Ronald D. Carlson, Supervisor  
Department of Water Resources  
1515 Lincoln Road  
Idaho Falls, Idaho 83401

Re: Application for Permit No. 34-7088  
John L. Powers/City of Mackay, Idaho

Dear Mr. Carlson:

This is to advise you that Sherl L. Chapman, consultant from Boise, Idaho, has completed his investigation and test on the waters involved in the above application.

Mr. Chapman recently advised me that he is preparing his conclusions, and when I have them, I will notify you so that the matter can be re-set. By copy of this letter I am advising Mr. Kent Foster, attorney for applicant of the status of this matter.

Thank you very much for your cooperation in continuing the hearing so that the City could have this test conducted.

Very truly yours,

  
TED C. SPRINGER  
Mackay City Attorney

TCS/js  
cc: Oval Caskey, Mayor  
Kent W. Foster



# STATE OF IDAHO

## DEPARTMENT OF WATER RESOURCES

Cecil D. Andrus  
Governor

R. Keith Higginson  
Director

September 3, 1976

Statehouse  
Boise, Idaho 83720  
(208) 384-2215

Mr. Ted C. Springer  
Attorney at Law  
P.O. Box 409  
Challis, Idaho 83226

SEP 9 1976  
Dep. of Water Resources  
Eastern District Office

Dear Mr. Springer:

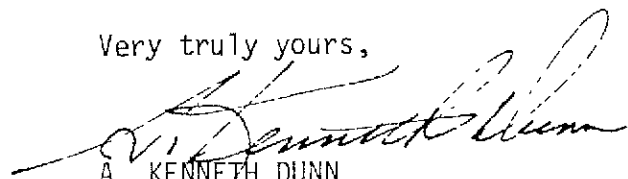
RE: Application for Permit No. 34-7088

At the request of the City of Mackay, the Department has conducted a study of the springs associated with the referenced water right application. Enclosed for your information is a report prepared from data obtained from the study. The investigator concluded that there is no effect on the Mackay City springs by John Powers existing development, and that further modest development of John Powers' springs is unlikely to have measurable effect.

The Department will now proceed with setting a hearing date for 34-7088 to resolve the City of Mackay protest unless the City wishes to withdraw its protest.

Thank you for your cooperation.

Very truly yours,

  
A. KENNETH DUNN  
Administrator, Operations Division

AKD:lm  
Encl.

cc: Mr. John Powers  
Eastern Region;  
Oval Caskey, Mayor  
City of Mackay

BEFORE THE DEPARTMENT OF WATER RESOURCES  
OF THE  
STATE OF IDAHO

In the Matter of Protest Against  
Approval of Application for Permit  
No. 34-7088 in the Name of JOHN  
L. POWERS

NOTICE OF CANCELLATION

Notice is hereby given that the Department of Water Resources has cancelled the conference and/or hearing concerning the above referenced application at the request of Ted C. Springer, Attorney for the City of Mackay.

The Department will reschedule the conference and/or hearing in the near future, at which time all interested parties will again be notified.

Dated this 17<sup>th</sup> day of August, 1976.

s/ Ronald D. Carlson  
RONALD D. CARLSON  
Supervisor, Eastern Region

Copy sent to: City of Mackay  
Kent Foster  
John L. Powers  
Ted C. Springer  
Eugene H. Gabert

34-7088 - John L. Powers

Courtroom, Memorial Building, Arco, Idaho

August 25, 1976 - 9:00 a.m.

ROSTER OF ATTENDANCE

| Name | Address | Representing |
|------|---------|--------------|
|------|---------|--------------|

## ROUTING SLIP

DATE

8-17-76

TIME

TO:

Row

REF. No. (if any)

FROM: (show title)

Callen

## FOR YOUR:

- ☒ Information  
☐ Approval  
☐ Signature

## REVIEW AND:

- ☐ Call Me      ☐ See Me  
☐ Comment & Return  
☐ Take Proper Action  
☐ Draft a Reply for Me

## PER:

- ☐ Our Conversation  
☐ Your Request  
☐ Boss's Request

Talked with Ken Dunn  
 Concerning enclosed letter  
 from Springer. He talked  
 to Paul Castelin & called  
 back & stated "Cancel" for Row.

- ☐ Telephoned      ☐ Returned Your Call      ☐ Will Call Again  
☐ Please Call      ☐ Called to See You

EXT.

NUMBER

AREA CODE

PHONE:

OF

M

TIME

WHILE YOU WERE OUT

TO

NOT FILMED

TED C. SPRINGER  
ATTORNEY AT LAW  
P. O. Box 409  
CHALLIS, IDAHO 83226  
208-879-2312

RECEIVED

AUG 17 1976

Department of Water Resources  
Eastern District Office

August 16, 1976

Loren O. Holmes  
Assistant Regional Supervisor  
Department of Water Resources  
1515 Lincoln Road  
Idaho Falls, Idaho 83401

Re: Application for Permit #34-7088  
John L. Powers-City of Mackay, Idaho

Today I received the notice of hearing dated August 12, 1976, setting the above application for hearing on August 25, 1976, at Arco. The City of Mackay, Idaho, does not wish to unnecessarily delay the hearing on the application but would suggest the following for your consideration:

The City has received a confirmation from your Department that it will assist in testing to determine (1) the amount of flow from the City spring, and (2) the affect of additional spring development by John Powers on the City spring and the volume of water therefrom.

As the record will indicate, the basis of the protest of the City is that the City believes that the additional water desired to be withdrawn by the applicant would jeopardize the existing domestic water supply of the City of Mackay, Idaho. It is our understanding that the test to be conducted by the Department is the most reliable method of determining this. As of this date, however, the test has not been conducted.

By copy of this letter I am advising Mr. Kent Foster, attorney for the applicant of the proposed test, to determine if he feels that the test should first be conducted before the hearing is held.

I would appreciate your earliest response to the above so that we can prepare for the hearing on August 25, 1976, if it is not continued.

Very truly yours,  
  
TED C. SPRINGER

TCS/js  
cc: Kent W. Foster  
Oval Caskey, Mayor  
Paul M. Castelin

BEFORE THE DEPARTMENT OF WATER RESOURCES  
OF THE  
STATE OF IDAHO

In the Matter of Protest Against Approval  
of Application for Permit No. 34-7088 in  
the Name of JOHN L. POWERS

NOTICE OF HEARING

On December 17, 1974, John L. Powers filed with the Department of Water Resources an application to appropriate the public waters of the State of Idaho. On January 9, 1975, the Department received approteast against approval of said application from Ted C. Springer, Attorney at Law, on behalf of the City of Mackay.

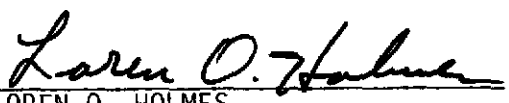
On April 29, 1975, a conference was held in Arco, Idaho to consider the matter of protest filed against the above application. At this conference it was requested that this matter be continued.

The Department has set the matter for hearing on Wednesday, August 25, 1976, at 9:00 a.m., in the Courtroom of the Memorial Building, Arco, 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 Water Resources. 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 without prejudice to dismiss the protests or the application. Any and all cost incurred by reason of such non-appearance may be assessed against such non-appearing parties.

Dated this 12th day of August, 1976

  
LOREN O. HOLMES  
Assistant Regional Supervisor

MAILED 11 1976

Affix stamp here if issued on certificate of mailing or for additional  
 copies of this bill.  
 POSTMARK AND DATE OF RECEIPT

(Declaration of value is required on international registered mail.)  
\* U. S. GOVERNMENT PRINTING OFFICE: 1974-0-541-724

(Declaration of value is required on international registered mail.)

FORM MUST BE MADE OUT IN INK OR BALL POINT PEN

U. S. GOVERNMENT PRINTING OFFICE: 1937  
 34-7145-34-7149 + 34-7088  
 Diet Food Product not Withdrawn

34-27145-34-7149 + 34-7088

August 12, 1976

Memorial Building  
Mr. William G. Carlson  
Drawer 804  
Arco, Idaho 83213

Dear Mr. Carlson:

This is to confirm the use of the Courtroom for conference and/or hearing to be held by this office on Tuesday, August 24, 1976 at 2:00 p.m., and on Wednesday, August 25, 1976, beginning at 9:00 a.m.

Thank you for your cooperation in this matter.

Very truly yours,

RONALD D. CARLSON  
Supervisor,  
Eastern Region

RDC:CW

Microfilm



# STATE OF IDAHO

## DEPARTMENT OF WATER RESOURCES

Cecil D. Andrus  
Governor

R. Keith Higginson  
Director

Statehouse  
Boise, Idaho 83720  
(208) 384-2215

June 17, 1976

Mr. Ted C. Springer  
Attorney at Law  
P. O. Box 409  
Challis, ID 83226

Dear Mr. Springer:

Re: John L. Powers Application for Permit No. 34-7088 Powers vs.  
Mackay (Custer County Case 2253)

With reference to your letter of May 21, 1976, I would like to respond by saying that this Department would be very willing to help to determine "(1) the amount of flow from the City spring and (2) the effect of additional spring development on the City spring and volume of water therefrom." How this might best be done will require some preparation and close coordination.

I would suggest that both the springs be instrumented to record potential changes in stage and discharge, then pump the Powers spring to determine any effects which may occur locally. A centrifugal pump with some means of adjusting the discharge would be suitable. Two 90° V-notch weirs may have to be constructed, one to be placed at the City spring overflow (the break in the concrete wingwall at the southeast corner of the spring box) and the other at the outlet of the excavated area called Powers spring. During a previous investigation at the site in August 1974, a steel plate with a 90° V-notch found at the site was used to measure the discharge from Powers spring.

A point that should be made is that all the above tests will have to be made during a time when no demands are being made on the City spring, possibly at night when demand could be met from water in storage. I would appreciate receiving the names of those individuals who could best help coordinate these tests, as well as any suggestions you may have to help resolve this matter.

Sincerely,

PAUL M. CASTELIN  
Hydrogeologist

PMC:lp

cc Glen Saxton  
Nathan Higer  
A. Kenneth Dunn

RECEIVED  
JUN 21 1976  
STATE OF IDAHO  
DEPARTMENT OF WATER RESOURCES

TED C. SPRINGER  
ATTORNEY AT LAW  
P. O. Box 409  
CHALLIS, IDAHO 83226  
208-879-2312

May 21, 1976

Ronald D. Carlson, Supervisor  
Eastern Region  
Department of Water Resources  
1515 Lincoln Rd.  
Idaho Falls, Idaho 83401

re: John L. Powers Application No. 34-7088  
Warm Springs Creek Appropriation

Dear Mr. Carlson:

To confirm our telephone conversation of this week, please be advised that the pending lawsuit concerning the Warm Springs Creek adjudication, John Powers v. City of Mackay, Custer County Case No. 2253, was not resolved at a pre-trial conference on May 12, 1976.

The above pending department application, to which the City of Mackay has protested, was stayed until a final determination of the District Court case. At issue is the effect of additional spring development by John Powers on the City of Mackay municipal water supply, which is a spring from the same aquifer as the proposed John Powers spring.

The City of Mackay has requested technical assistance from the Department of Water Resources to measure the effect of additional spring development on the city water supply and to measure the flow of the city spring. If the Department is unable to assist us, the City of Mackay will retain private expertise.

On behalf of the City of Mackay, Idaho I would request that a hearing on the above pending application be postponed until the City is able to conclude an examination of the aquifer to present to the Department in protest. The concern of the City is that additional spring development, though junior in right, could effectively and irrevocably diminish the present water rights of the City.

I will keep you advised of our progress in securing expert assistance, and thank you for any consideration the Department could lend us.

Very truly yours,  
  
TED C. SPRINGER, Mackay City Attorney  
TCS/lh  
CC: Oval Caskey, Mayor

REC-11

TED C. SPRINGER  
ATTORNEY AT LAW  
P. O. Box 409  
CHALLIS, IDAHO 83226  
(208) 879-2312

**RECEIVED**

MAY 24 1976

Department of Water Resources  
Eastern District Office

May 21, 1976

R. Keith Higginson, Director  
Department of Water Resources  
Statehouse  
Boise, Idaho 83720

re: John L. Powers Application for Permit No. 34-7088  
Powers vs. Mackay (Custer County Case 2253)

Dear Mr. Higginson:

A pre-trial was held in the pending case of Powers v. City of Mackay, which involves an adjudication of Warm Springs Creek, which is the domestic water supply for the City of Mackay. Present at the pre-trial were Nathan Higer and Glenn Saxton from the Department.

The above application by Powers involves development of additional springs near the spring which is the city water supply, and Powers is presently enjoined by the Court from developing more springs pending a trial on the merits. To adequately resolve the pending application before the Department, to which the City of Mackay has protested, and the pending suit in District Court, a determination must be made as to whether development of additional springs in the area around the City spring would diminish the flow of the City spring.

The Department conducted an investigation of the respective water rights and submitted findings of fact and conclusions of law to the District Court. However, the findings were inconclusive as to the effect of substantial development of additional springs by Powers.

Therefore, to properly resolve this question, I would request, on behalf of the City of Mackay, Idaho that the Department conduct an examination of the aquifer which is the common source for the City of Mackay and for Powers, to determine (1) the amount of flow from the City spring and (2) the effect of additional spring development on the City spring and volume of water therefrom.

May 21, 1976

Page 2

re: Powers v. Mackay

If you have questions regarding the facts as I have outlined them above, Mr. Saxton or Mr. Higer could elaborate. The City would appreciate any assistance the Department could lend us in resolving this matter, and thank you very much for your consideration.

Very truly yours,

FED C. SPRINGER

TCS/lh

CC. Oval Caskey, Mayor

FROM Ron Carlson

DATE May 24, 1976

TO The File

SUBJECT Application for Permit No. 34-7088

I attempted to schedule a hearing for the above referenced application for May 26, 1976, but was unable to do so because Kent Foster, Attorney for the applicant, is out of town and will not be available until after the first of June.

  
MICROFILMED IN 1988  
SIGNATURE

C O N F E R E N C E   M E M O R A N D U M

RE: Application for Permit No. 34-7088 - JOHN L. POWERS

On April 29, 1975, a conference was held in Arco, Idaho, to consider the matter of protests filed against the above referenced application. The applicant, John L. Powers, was present and represented by Kent W. Foster, Attorney at Law. The City of Mackay was represented by Rowse1 Ellis and Ted C. Springer, Attorney at Law. After hearing the issues involved, it appeared that no action could be taken on this application until the adjudication of the rights on Warm Springs Creek has been completed. It was, therefore, requested that this matter be continued until that time.

  
\_\_\_\_\_  
RONALD D. CARLSON  
District Engineer

5/5/75

100-100-100

34-7088

4/29/75

JOHN L. POWERS

Powers has better priority for 5"  
is now using it on 6.5 acres.

WILL CONTINUE THIS UNTIL COURT ACTION  
IS COMPLETED

MICROFILMED

John L. Powers

Courtroom, Memorial Building, Arco, Idaho

April 29, 1975 - 9:00 a.m.

ROSTER OF ATTENDANCE

| <u>Name</u>    | <u>Address</u>       | <u>Representing</u> |
|----------------|----------------------|---------------------|
| John Powers    | Mackay Idaho         | Self                |
| Paul H. Foster | Box 129, Idaho Falls | Applicant           |
| Ted Springer   | Box 409 Challie      | City of Mackay      |
| Russell Ellis  | Box 55 Mackay Ida    |                     |

MICROFILMED

BEFORE THE DEPARTMENT OF WATER RESOURCES  
OF THE  
STATE OF IDAHO

|                                             |                      |
|---------------------------------------------|----------------------|
| In the Matter of Protest Against Approval ) |                      |
| of Application for Permit No. 34-7088 )     | NOTICE OF CONFERENCE |
| in the name of JOHN L. POWERS )             | AND/OR HEARING       |
| _____ )                                     |                      |

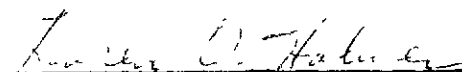
On December 17, 1974, John L. Powers filed with the Department of Water Resources an application to appropriate the public waters of the State of Idaho. On January 9, 1975, the Department received a protest against approval of said application from Ted C. Springer, Attorney at Law, on behalf of the City of Mackay.

The Department has set the matter of protest for conference and/or hearing for Tuesday, April 29, 1975, at 9:00 a.m., in the Courtroom of the Memorial Building, Arco, 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 Water Resources. 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 protestant may allow the Department 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 16th day of April, 1975.



LOREN O. HOLMES

Assistant to the District Engineer

# DEPARTMENT OF WATER RESOURCES

EASTERN DISTRICT OFFICE

1515 LINCOLN ROAD

IDAHO FALLS, IDAHO 83401

NAME AND  
ADDRESS  
OF SENDER

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<br>ARTICLE | NAME OF ADDRESSEE, STREET, AND POST OFFICE ADDRESS | POSTAGE | FEE | R. R.<br>FEE | REST.<br>DEL.<br>FEE | ACTUAL<br>VALUE | SURCHARGE | REMARKS  |
|----------------------|----------------------------------------------------|---------|-----|--------------|----------------------|-----------------|-----------|----------|
| 1 632                | Mary Smith, Atty, 30 S. 2nd St. Redburg            | 10      | 30  | 15           |                      |                 |           | 21-7063  |
| 2 633                | J. Kent Harper, 25 S. 3rd St. Redburg              | 10      | 30  | 15           |                      |                 |           | 22-9120  |
| 3 634                | John A. (Gomer) 211 N. Main, Mackay                | 10      | 30  | 15           |                      |                 |           | 34-7088  |
| 4 635                | Ed C. Sprung, Atty, Box 409, Challis               | 10      | 30  | 15           |                      |                 |           | "        |
| 5 636                | Kent Foster, Atty, Box 129, J. J.                  | 10      | 30  | 15           |                      |                 |           | "        |
| 6 637                | City of Mackay, J. J.                              | 10      | 30  | 15           |                      |                 |           | "        |
| 7 638                | Edna J. Smith, Area - Box 63                       | 10      | 30  | 15           |                      |                 |           | 34-0852B |
| 8 639                | Th. M. Carlson, Atty, Area 804, Area               | 10      | 30  | 15           |                      |                 |           | "        |
| 9 640                | Spencer H. Foster, Area                            | 10      | 30  | 15           |                      |                 |           | "        |
| 10 641               | Charles D. Huggins, Box 371 Rt #1 Area             | 10      | 30  | 15           |                      |                 |           | 34-7082  |
| 11 642               | Ron Babcock, Area                                  | 10      | 30  | 15           |                      |                 |           | "        |
| 12                   |                                                    |         |     |              |                      |                 |           |          |
| 13                   |                                                    |         |     |              |                      |                 |           |          |
| 14                   |                                                    |         |     |              |                      |                 |           |          |
| 15                   |                                                    |         |     |              |                      |                 |           |          |
| 16                   |                                                    |         |     |              |                      |                 |           |          |
| 17                   |                                                    |         |     |              |                      |                 |           |          |
| 18                   |                                                    |         |     |              |                      |                 |           |          |
| 19                   |                                                    |         |     |              |                      |                 |           |          |
| 20                   |                                                    |         |     |              |                      |                 |           |          |

TOTAL NO. OF PIECES  
LISTED BY SENDER

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, Nov. 1968

APPLICATION FOR REGISTRATION OR CERTIFICATION

(Surcharges are not required on international registered mail)

048-16-8702-15 U.S. GOVERNMENT PRINTING OFFICE

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF THE STATE  
OF IDAHO, IN AND FOR THE COUNTY OF CUSTER

JOHN POWERS,

Plaintiff,

-vs-

CITY OF MACKAY, et al,

Defendants.

CIVIL NO. 2253

PROPOSED FINDING  
OF WATER RIGHTS

The Department of Water Resources was requested on July 16, 1974 pursuant to §42-1401, Idaho Code to conduct an examination of certain waters in the Northeast Quarter (NE¼), Section Thirty-Two (32), Township Seven North (7N), Range Twenty-Four East, Boise Meridian (24E, BM), Custer County, Idaho, known as Warm Springs Creek, and to examine the City of Mackay spring and springhouse located thereon, and other springs, wells, and holes located thereon.

A preliminary investigation of the NE¼ - Sec. 32, T7N, R24E was conducted on July 24, 1974. A more extensive investigation was conducted on August 12 and 13, 1974, by the Department including an examination of the City of Mackay Spring and the John Powers Spring.

FINDINGS OF FACT

1) Warm Springs Creek is a stream that arises in Lot 2 (NWNE), Sec. 32, T7N, R24E, BM. An aquifer of undetermined extent and recharge potential is the source of the flow in Warm Springs Creek and is the source of tributary springs. This flow is public water subject to appropriation.

2) A certain warm spring known as the Mackay City Spring is located in the NW $\frac{1}{4}$  of Lot 2, Sec. 32, T7N, R24E. This spring, located at the head of Warm Springs Creek is and has been in the past, the source of municipal water for the City of Mackay. Water from this spring and springhouse is and has been conveyed to storage facilities located in SW $\frac{1}{4}$ SE $\frac{1}{4}$ SE $\frac{1}{4}$ , Sec. 29, T7N, R24E, BM. Overflow from the spring at the springhouse flows into Warm Springs Creek.

3) The John Powers Spring is located approximately one hundred feet (100') northeast of the Mackay City Spring and is located in the NE $\frac{1}{4}$  of Lot 2, Sec. 32, T7N, R24E. This spring at the time of the Department's examination was flowing into Warm Springs Creek at a point downstream from the Mackay spring and springhouse.

4) No other springs were found to be relevant to the determination of existing water rights.

5) The City of Mackay was found to be in the process of updating and improving its conveyance and storage facilities.

6) The City of Mackay was not found to be developing any additional springs or sources of water or using any other springs or sources of water than those used in the past.

7) The John Powers Spring appeared to have been recently excavated or developed, although no newly developed lands or conveyance systems of Mr. Powers were found at the time of the Department's examination.

8) Total discharge of the Mackay City Spring or of the John Powers Spring could not be determined due to the enclosed nature of the system although water samples from each spring were taken and analyzed for various parameters.

9) Previous court actions entitled:

a) Charles R. Potts  
vs.  
Idaho Improvement Company

and

b) Arthur H. Woodman, et al  
vs.  
Jake Millonig, et al

were examined for content involving existing rights and provisions for future development of springs and/or water sources.

10) An overflow channel from the storage tanks located in SE $\frac{1}{4}$ SE $\frac{1}{4}$  - Sec. 29, T7N, R24E was found to exist but was essentially dry at the time of the Department's inspection.

11) The spring developed by John Powers, referred to above as the John Powers Spring had no measurable effect upon the flow of the Mackay City Spring under the conditions and with the extent of development prevailing at the time of the Department's investigation.

#### CONCLUSIONS OF LAW

1) Based upon on-site investigation and laboratory analysis of water samples, both the Mackay City Spring, John Powers Spring and the flow in Warm Springs Creek have a common source of supply, said source of supply being an aquifer of undetermined extent and recharge potential.

2) Discharge from the aquifer through the springs is the sole source of supply for Warm Springs Creek.

3) The spring developed by John Powers, referred to above as the John Powers Spring had no measurable effect upon the flow of the Mackay City Spring under the conditions and with the extent of development prevailing at the time of the Department's investigation.

4) Based upon the previous decree entitled Arthur H. Woodman, et al vs. Jake Millonig, et al, "wastewater" is defined as any water overflowing from the City of Mackay storage facilities located in the SW $\frac{1}{4}$ SE $\frac{1}{4}$ SE $\frac{1}{4}$  - Sec. 29, T7N, R24E.

5) Based upon a review of the claims submitted, a review of prior decrees, Department field investigations, and the Director's understanding of the law, the following Recommended Decree of water rights is proposed by the Director of the Department of Water Resources.

RECOMMENDED DECREE OF WATER RIGHTS

IDENTIFICATION NO: 34-0959

OWNER: John L. Powers  
211 N. Main  
Mackay, Idaho

PRIORITY: January 1, 1904

SOURCE: Warm Springs Creek

PURPOSE: Irrigation and Stockwater

PERIOD OF USE: Irrigation - From April 1 to November 1  
Stockwater - From January 1 thru December 31

MAXIMUM RATE OF DIVERSION: 0.10 cfs (5 m")

POINT OF DIVERSION: NE $\frac{1}{4}$  of Lot 2 (NE $\frac{1}{4}$ NW $\frac{1}{4}$ NE $\frac{1}{4}$ ) Sec. 32, T7N, R24E  
SE $\frac{1}{4}$ SE $\frac{1}{4}$ SE $\frac{1}{4}$  - Sec. 29, T7N, R24E (-)

TYPE OF DIVERSION: Two small dams in Warm Springs Creek channel  
and open ditches to the land irrigated.

|               |                                                    |                   |
|---------------|----------------------------------------------------|-------------------|
| PLACE OF USE: | Sec. 32                                            |                   |
|               | NE $\frac{1}{4}$ of Lot 2                          | 1.5 acres         |
|               | NW $\frac{1}{4}$ of Lot 1                          | 2.5               |
|               | Sec. 29                                            |                   |
|               | SE $\frac{1}{4}$ SE $\frac{1}{4}$ SE $\frac{1}{4}$ | 1.0               |
|               | T7N, R24E                                          |                   |
|               |                                                    | 5.0 acres (TOTAL) |

IDENTIFICATION NO: 34-0960

OWNER: City of Mackay, Idaho

PRIORITY: January 2, 1904

SOURCE: A warm spring at the source of Warm Springs Creek. The warm spring is located in the NW $\frac{1}{4}$  of Lot 2, Sec. 32, T7N, R24E

PURPOSE: Municipal

PERIOD OF USE: From January 1 thru December 31

MAXIMUM RATE OF DIVERSION: All the flow of that certain warm spring located in the NW $\frac{1}{4}$  of Lot 2 - Sec. 32, T7N, R24E at the source of Warm Springs Creek less the five (5) miner's inch flow of right 34-0959. The total flow is estimated to be in excess of 60 miner's inches or in excess of 1.2 cfs.

POINT OF DIVERSION: NW $\frac{1}{4}$  of Lot 2 - Sec. 32, T7N, R24E

TYPE OF DIVERSION: Concrete encased spring with springhouse and pipeline

PLACE OF USE: Within the corporate limits of the City of Mackay which includes parts of:

Sec. 20 - SE $\frac{1}{4}$ SE $\frac{1}{4}$

Sec. 21 - S $\frac{1}{4}$ SW $\frac{1}{4}$

Sec. 28 - N $\frac{1}{2}$ SW $\frac{1}{4}$ , NW $\frac{1}{4}$ SE $\frac{1}{4}$ , NW $\frac{1}{4}$ , W $\frac{1}{2}$ NE $\frac{1}{4}$

Sec. 29 - E $\frac{1}{4}$ NE $\frac{1}{4}$

All in T7N, R24E

IDENTIFICATION NO: 34-0961

OWNER: John L. Powers  
211 W. Main  
Mackay, Idaho

PRIORITY: June 29, 1952

SOURCE: Wastewater (i.e., overflow from the City of Mackay  
storage facilities)

PURPOSE: Irrigation and Stockwater

PERIOD OF USE: Irrigation - From April 1 to November 1  
Stockwater - From January 1 thru December 31

MAXIMUM RATE OF DIVERSION: Irrigation 0.04 cfs  
Stockwater 0.04 cfs  
0.08 cfs (4 mg)

POINT OF DIVERSION: SW $\frac{1}{4}$ SW $\frac{1}{4}$ SW $\frac{1}{4}$  - Sec. 28  
SE $\frac{1}{4}$ SE $\frac{1}{4}$ SE $\frac{1}{4}$  - Sec. 29  
All in T7N, R24E

TYPE OF DIVERSION: One (1) small dam and pond.  
One (1) pick up ditch from storage tank overflow.

PLACE OF USE: Sec. 28  
SW $\frac{1}{4}$ SW $\frac{1}{4}$ SW $\frac{1}{4}$  Stockwater  
Sec. 29  
SE $\frac{1}{4}$ SE $\frac{1}{4}$ SE $\frac{1}{4}$  Stockwater  
SE $\frac{1}{4}$ SE $\frac{1}{4}$ SE $\frac{1}{4}$  1.0 acres  
T7N, R24E  
1.0 acres (TOTAL)

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on the 23rd day of January, 1975  
a true and correct copy of the foregoing PROPOSED FINDING OF WATER  
RIGHTS was mailed, postage prepaid to:

Mr. R.M. Whittier  
P.O. Box 4082  
Pocatello, ID 83201

Mr. Ted C. Springer  
P.O. Box 409  
Challis, ID 83226

Mr. Kent W. Foster  
HOLDEN, HOLDEN, KIDWELL, HAHN  
& CRAPO  
P.O. Box 129  
Idaho Falls, ID 83401

/s/ Nathan W. Higer  
NATHAN W. HIGER  
Legal Counsel  
Idaho Department of Water  
Resources

STUDY REQUEST

TO: Steve A.

FROM: Ken D. *KD*

Date Initiated July 30, 1974

Requested Completion Date August 23, 1974

PROJECT TITLE: John Powers v.s. City of Mackay et. al.

PROBLEM AND/~~OR~~ PURPOSE: Potential Spring Interference -- To determine effect  
of flow of one spring on another.

SCOPE (level or extent of detail): Relative flows, temperatures, and  
amount of interference (if any) are desired.

OBJECTIVES (or other descriptions of work requested)

1. To determine whether or not the flow from a spring recently developed by John Powers in the NW $\frac{1}{4}$ NE $\frac{1}{4}$ , Sec. 32, T7N, R24E affects the flow of water from the City of Mackay Spring located in the same legal subdivision.
2. If the flows are related, to what extent.
3. To make relative measurements of the spring flows. (Include water temperatures.)
- 4.

PROJECT ORIGINATION: By court request (See attachment)

TYPE OF REPORT: Memo transmitting findings to operation division

ANTICIPATED MAN-DAY EFFORT: five (5)

APPROVED BY: \_\_\_\_\_

(Return one copy)

*Completed & Returned*  
*MIC 8/26/74*

~~12157063~~

34-7088

App/  
John L. Powers

Protestant

City of Mackay.  
Ted C. Springer

Both the applicant and protestant agreed to  
continuance until after the pending court case

INMICROFILMED



# STATE OF IDAHO

## DEPARTMENT OF WATER RESOURCES

Cecil D. Andrus  
Governor

R. Keith Higginson  
Director

Statehouse  
Boise, Idaho 83720  
(208) 384-2215

January 21, 1975

Re: Application for Permit No. 34-7088 - John L. Powers

**RECEIVED**

JAN 22 1975

Department of Water Resources  
Eastern District Office

Kent W. Foster  
Attorney at Law  
P. O. Box 129  
Idaho Falls, ID 83401

Dear Kent:

Reference is made to your letter dated January 17, 1975, in which you requested a copy of a memorandum involving Department field work on Warm Springs Creek near Mackay, and a copy of the protest against Application for Permit No. 34-7088 in the name of John L. Powers.

The memorandum to which you referred is an intra-departmental communication which concerns the Department's recommendations to the District Court in its determination of the existing water rights on Warm Springs Creek. Since the memo is of this nature, and may not be the official position of the Department, we can not make a copy of it available to you.

Again we would stress that the memorandum concerns the present existing conditions and is not applicable to additional development of the spring for a future appropriation of water. At the time of the Department's field investigation, there was no use found from the particular spring mentioned in the memo.

Enclosed, as you requested, is a copy of the protest involving the application for permit of John Powers.

If you have any questions regarding this matter, please contact us.

Sincerely,

*L. Glen Saxton*  
L. GLEN SAXTON  
Water Resource Engineer

cc: Eastern District Office ✓

**WATER RESOURCE BOARD:**

John F. Streiff  
Chairman  
Franklin Jones  
Member

George L. Yost  
Vice-Chairman  
M. Reed Hansen  
Member

Donald R. Kramer  
Secretary  
Scott W. Reed  
Member

Edwin C. Schlender  
Member  
Joseph H. Nettleton  
Member

April 16, 1975

Luttrell County Courthouse  
Clerk of the District Court  
Arco, Idaho 83213

Dear Sir:

This is to confirm the use of the Courtroom in the Memorial Building for conferences and/or hearings to be held by this office on Tuesday, April 29, 1975, beginning at 9:00 a.m.

Thank you for your cooperation in this matter.

Very truly yours,

RONALD D. CARLSON  
District Engineer

RDC:MB

January 9, 1975

RE: Application for Permit No. 34-7088 JOHN L. POWERS

Mr. Ted C. Springer  
Attorney at Law  
P.O. Box 409  
Challis, Idaho 83226

Dear Mr. Springer:

This is to acknowledge receipt of the protest filed in behalf of the City of Mackay against the issuance of a permit pursuant to the above referenced application. The following are the principle items we can consider at a conference and/or hearing in either approving or denying an application for permit (Section 42-203, Idaho Code):

1. Will the proposed use reduce the quantity of water under existing water rights?
2. Is the proposed water supply insufficient for the purposes intended?
3. Is the application made in good faith or for delay or speculative purposes?
4. Has the applicant sufficient financial resources with which to complete the project?

The Department may reject an application and refuse issuance of a permit, partially approve the permit, approve the permit for a quantity of water less than applied for, or approve the permit subject to special conditions.

A permit issued by this office is subject to all prior water rights and does not in any way convey or establish a right-of-way over private or governmental lands. Any right-of-way or easement must be obtained by the individuals concerned through action outside of the water right proceedings.

You will be notified at a later date as to the time and place set for conference and/or hearing to discuss the matters of protest. If we may be of further assistance, please contact us.

Very truly yours,

RONALD D. CARLSON  
Acting District Engineer

RDC:MB  
cc: City of Mackay



STATE OF IDAHO  
DEPARTMENT OF WATER RESOURCES  
EASTERN DISTRICT

Cecil D. Andrus  
Governor

January 9, 1975

1515 Lincoln Road  
Idaho Falls, Idaho 83401  
(208) 523-7186

R. Keith Higginson  
Director

RE: Application for Permit No. 34-7088

Mr. John L. Powers  
211 North Main  
Mackay, ID 83251

Dear Mr. Powers:

We have enclosed a copy of the protest filed against the issuance of a permit pursuant to your Application No. 34-7088. You should be aware that the following are the principle items we can consider at a conference and/or hearing in either approving or denying an application for permit (Section 42-203, Idaho Code):

1. Will the proposed use reduce the quantity of water under existing water rights?
2. Is the proposed water supply insufficient for the purposes intended?
3. Is the application made in good faith or for delay or speculative purposes?
4. Has the applicant sufficient financial resources with which to complete the project?

The Department cannot allow a permit for irrigation purposes which would entail the use of more than a continuous flow of 0.02 cubic feet per second of water for each acre of land, or an annual amount of 5 acre feet for each acre of land, unless the applicant can show that more is required. (Section 42-202, Idaho Code)

A permit issued by this office is subject to all prior water rights and does not in any way convey or establish a right-of-way over private or governmental lands. Any right-of-way or easement must be obtained by the applicant through action outside of the water right proceedings.

You will be notified at a later date as to the time and place set for a conference and/or hearing to discuss the matters of protest. Legal counsel is not mandatory at any proceeding before the Department, although you may desire to employ an attorney in your behalf.

If we may be of any assistance, please contact us.

Very truly yours,

RONALD D. CARLSON  
Acting District Engineer

RDC: MB

Enc: Copy of Protest(s)

RECEIVED

JAN 9 1976

Department of Water Resources  
BEFORE THE DIRECTOR  
DEPARTMENT OF WATER RESOURCES  
STATE OF IDAHO

In the matter of the Application of ) APPLICATION NO. 34-7088  
JOHN L. POWERS, for appropriation ) PROTEST  
of water from Warm Springs Creek )

COMES NOW the City of Mackay, Custer County, Idaho, a Municipal Corporation of Idaho, by and through its duly appointed City Attorney and files this Protest to the Application of JOHN L. POWERS for the appropriation of 0.2 cubic feet per second of water from a spring tributary of Warm Springs Creek on the following grounds and for the following reasons:

1. That the proposed use, 0.2 cubic feet per second, or 10 miners inches, will reduce the quantity of water under existing water rights available to the inhabitants of the City of Mackay, Idaho pursuant to that Decree entered July 14, 1952 in the action entitled Woodman et ux vs. Millonig et ux et al, Civil No. 1589, Sixth Judicial District Court of the State of Idaho, in and for the County of Custer, wherein the City of Mackay was decreed the use of all of the waters of the spring known as the Warm Springs Creek which is the water supply for the inhabitants of said City, and which is situated within the real property described in the Notice of Application herein, with the exception of five (5) miners inches.
2. That the City of Mackay, Idaho has recently constructed improvements to the City water system which utilize the entire flow of the Warm Springs Creek, and that the City of Mackay, Idaho and the inhabitants thereof, have, and will continue to have, the need and beneficial use of the entire flow of said Warm Springs Creek Spring.
3. That the Notice of Application for Water Permit filed by JOHN POWERS herein does not specify from which spring the appropriation is sought; that the City of Mackay alleges that the City of Mackay water supply, herein referred to as the Warm Springs Creek and spring, and any other springs developed by JOHN POWERS in the NW $\frac{1}{4}$ NE $\frac{1}{4}$ , Section 32, T. 7 N., R. 24 E., B.M., derive from a common source of water and that withdrawal of water from the Warm Springs Creek Spring or from any other springs within said described property will reduce the quantity of water available to the inhabitants of said City; and that presently pending in the District Court of the Seventh Judicial District of the State of Idaho, in and for the County of Custer, is an action entitled John Powers vs. City of Mackay, et al, Civil no. 2253, wherein, among other issues, the issue of the right of JOHN POWERS, applicant herein and plaintiff therein, to withdraw more than five (5) miners inches from the Warm Springs Creek is in issue, and wherein the Court requested, and was granted, an Examination by the Department of Water Resources to determine, inter alia, the effect of withdrawal of water by JOHN POWERS from Warm Springs Creek upon the City of Mackay water supply, which is the Warm Springs Creek spring.
4. That in addition to the foregoing, the City of Mackay hereby alleges that the City water supply, to-wit: the Warm Springs Creek, is insufficient to supply present and future needs of the City and its inhabitants, if the requested 0.2 cubic feet per second were withdrawn therefrom as requested.

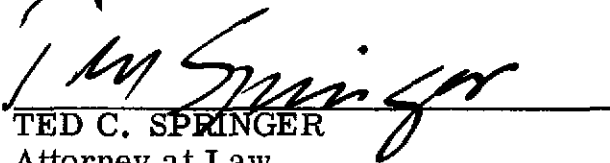
TED C. SPRINGER  
Attorney at Law  
Post Office Box 409  
Challis, Idaho 83226  
(208) 879-2312

5. That as alleged in the Answer of the City of Mackay in the pending District Court action Civil no. 2253 referred to above, and realleged here, applicant JOHN POWERS has failed to apply to beneficial use the waters he has previously withdrawn from Warm Springs Creek, and that the City therefore respectfully protests the withdrawal of additional waters from said Creek.

The CITY OF MACKAY further requests, in furtherance of its protest, copies of the plan, and map of the proposed works for the application of the water sought to be appropriated, showing the location, dimensions and specifics of the spring, pump, and pipeline proposed to be used, and the exact location of the lands proposed to be irrigated.

DATED This 8th day of January, 1975.

Respectfully submitted,  
FOR THE CITY OF MACKAY, IDAHO

  
TED C. SPRINGER  
Attorney at Law  
P.O. Box 409  
Challis, Idaho 83226  
Telephone: 879-2312

#### CERTIFICATE OF MAILING

I hereby certify that on the 8th day of January, 1975, I mailed the original and one copy of the foregoing Protest to Keith Higginson, Director, Department of Water Resources, 1515 Lincoln Road, Idaho Falls, Idaho 83401, and a true copy thereof to Keith Higginson, Director, Department of Water Resources, Statehouse, Boise, Idaho 83707, by placing the same, postage prepaid thereon, in the U.S. Mail at Challis, Idaho.

  
TED C. SPRINGER

TED C. SPRINGER  
Attorney at Law  
P.O. Box 409  
Challis, Idaho 83226  
(208) 879-2312

January 8, 1975

Keith Higginson, Director  
Department of Water Resources  
1515 Lincoln Road  
Idaho Falls, Idaho 83401

RECEIVED

JAN 9 1975

Department of Water Resources  
Eastern District Office

Re: In the matter of Application of JOHN L. POWERS,  
for appropriation of water from Warm Springs Creek

Dear Mr. Higginson:

Enclosed please find one original and one copy thereof of the Protest  
of the City of Mackay, Idaho to the above Application.

In addition, a copy has been sent to your office in Boise, Idaho.

Very truly yours,

*Ted C. Springer*  
TED C. SPRINGER  
Mackay City Attorney

TCS/js  
cc: Honorable Hilmer Lindburg, Mayor  
City of Mackay

December 20, 1974

RE: Application for Permit No. 34-7088 - POWERS

Custer Publishing Company  
P.O. Box 405  
Challis, Idaho 83226

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 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. If you cannot publish the notice on the proposed dates, please contact us immediately.

An affidavit of publication must be submitted to the Department along with the publication bill.

Very truly yours,

RONALD D. CARLSON  
Acting District Engineer

RDC:CW

Bill submitted 1-13-75 by CW

Enc: Legal Notice (1)

**NOTICE OF APPLICATION  
FOR WATER PERMIT**

Notice is hereby given that John L. Powers, 211 N. Main, Mackay, Idaho has on 12-17-74 submitted Application No. 34-7088 for a permit to appropriate 0.2 cubic feet per second of water from a spring tributary of Warm Springs Creek by means of pump and pipeline within the NW $\frac{1}{4}$ NE $\frac{1}{4}$ , Sec. 32, T. 7N. R. 24E. B.M., Custer County: to be used from Apr. 1 to Oct. 31 for the irrigation of 30 acres within the NW $\frac{1}{4}$ NE $\frac{1}{4}$ , Sec. 32 T. 7N. R. 24E. B.M.

If used this permit will be subject to all prior water rights. Protests against the granting of the permit must be filed with the Idaho Department of Water Resources, 1515 Lincoln Road, Idaho Falls, Idaho, 83401 on or before January 13, 1975.

R. KEITH HIGGINSON  
Director

Published in the Mackay Miner,  
Mackay, Idaho on December 26,  
1974 and January 2, 1975.

NOTICE OF APPLICATION FOR WATER PERMIT

Notice is hereby given that John L. Powers,

211 N. Main, Mackay, Idaho

has on 12-17-74 submitted Application No. 34-7088

for a permit to appropriate 0.2 cubic feet per second ~~zero feet per annum~~

of water from a spring tributary of Warm Springs Creek

by means of pump and pipeline

within the NW 1/4, Sec. 32, T. 7N, R. 24E, B.M., Custer County;

to be used from Apr. 1 to Oct. 31

for the irrigation of 30 acres

within the NW 1/4, Sec. 32, T. 7N, R. 24E, B.M.

If issued, this permit will be subject to all prior water rights. Protests against the granting of the permit must be filed with the Idaho Department of Water Resources, 1515 Lincoln Road, Idaho Falls, Idaho, 83401 on or before January 13, 1975.

R. KEITH HIGGINSON

Director

Published in the Mackay Miner, Mackay, Idaho

on December 26, 1974 and January 2, 1975.

CW-A.  
CW-B  
CW-A

MICROFILMED

LAW OFFICES

HOLDEN, HOLDEN, KIDWELL, HAHN & CRAPO

IDAHO FIRST NATIONAL BANK BUILDING

P O BOX 129

IDAHO FALLS, IDAHO 83401

TELEPHONE 523-0620  
AREA CODE 208

WILLIAM S HOLDEN  
R VERN KIDWELL  
FRED J HAHN  
TERRY L CRAPO  
KENT W FOSTER  
ROBERT E FARNAM  
WILLIAM D FALER

ARTHUR W HOLDEN (1877-1967)

ROBERT B HOLDEN (1911-1971)

December 16, 1974

**RECEIVED**

DEC 17 1974

Department of Water Resources  
Eastern District Office

Department of Water Administration  
1515 Lincoln Road  
Idaho Falls, Idaho 83401

Re: Application for Permit to Appropriate  
Water - John L. Powers

Gentlemen:

We are enclosing an Application for a Permit to Appropriate Water on behalf of our client, Mr. John L. Powers. We are also enclosing our check in the amount of \$10.00 for the filing fee for this Application. We would appreciate it if you would contact our office directly for any additional information or any matters in connection with this Permit.

Yours very truly,



Kent W. Foster

KWF:bc

Enclosure

December 18, 1974

RE: Application for Permit No. 34-7088 JOHN L. POWERS

Mr. Kent W. Foster  
Attorney at Law  
P.O. Box 129  
Idaho Falls, ID 83401

Dear Mr. Foster:

Attached herewith is departmental receipt No. 4006 in the amount of \$10.00 for the above referenced application.

Very truly yours,

RONALD D. CARLSON  
Acting District Engineer

RDC:mb

Attachment

December 19, 1974

Mr. Eugene Gabert, Watermaster  
Water District No. 34  
Box 206  
Mackay, ID 83251

Dear Mr. Gabert:

We are enclosing a copy of an application that may be of interest to your water district. Please review the application and if you have any comments, please submit them to our Department as soon as possible. The last date of protest is January 13, 1975, and we are required to take final action shortly thereafter.

If we may be of further assistance, please feel free to contact us.

Very truly yours,

RONALD D. CARLSON  
Acting District Engineer

RDC:MB

Enclosure