

Affidavit of Publication

LeElla Cammack
of the Arco Advertiser, a weekly newspaper of
general circulation, published weekly at Arco,
Idaho, since March, 1909, do solemnly swear that
a copy of this notice, 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 9-29-77

and ending with the issue dated 10-6-77

LeElla Cammack

Subscribed and sworn to before me this

18 day of Oct, 1977

Charles Allen
Notary Public

Residence: Arco, Idaho.
My commission expires 5/14, 1978

RECEIVED

OCT 25 1977

Department of Water Resources
Eastern District Office

PUBLIC NOTICE

NOTICE OF PROPOSED AMENDING OF WATER PERMIT

Notice is hereby given that
Permit No. 34-2493 in the name of
Robert K. Moss was issued for the
diversion of 2.00 c.f.s. of water from
an unnamed drain tributary to Big
Lost River with the point of
diversion within the S $\frac{1}{2}$ SW $\frac{1}{4}$, Sec.
33, T. 6N, R. 26E, B.M., Butte
County; to be used for the irrigation
of 100 acres from Apr. 1 to Oct. 1
within the N $\frac{1}{2}$ NW $\frac{1}{4}$, Sec. 4, T. 5N,
R. 26E, S $\frac{1}{2}$ SW $\frac{1}{4}$, SE $\frac{1}{4}$ SE $\frac{1}{4}$, Sec. 32,
T. 6N, R. 26E, B.M.

The permit holder now proposes
to amend Permit No. 34-2493,
changing the point of diversion to
the SW $\frac{1}{4}$ SW $\frac{1}{4}$, Sec. 33, T. 6N, R.
26E, B.M., Butte County, and the
place of use to the N $\frac{1}{2}$ NW $\frac{1}{4}$, Sec. 4,
T. 5N, R. 26E, SE $\frac{1}{4}$ SE $\frac{1}{4}$, Sec. 32,
S $\frac{1}{2}$ SW $\frac{1}{4}$, Sec. 33, T. 6N, R. 26E,
B.M.

Any protest to the proposed
amending of the permit must be
filed with the Idaho Department of
Water Resources, 1515 Lincoln
Road, Idaho Falls, Idaho, 83401, on
or before October 17, 1977.

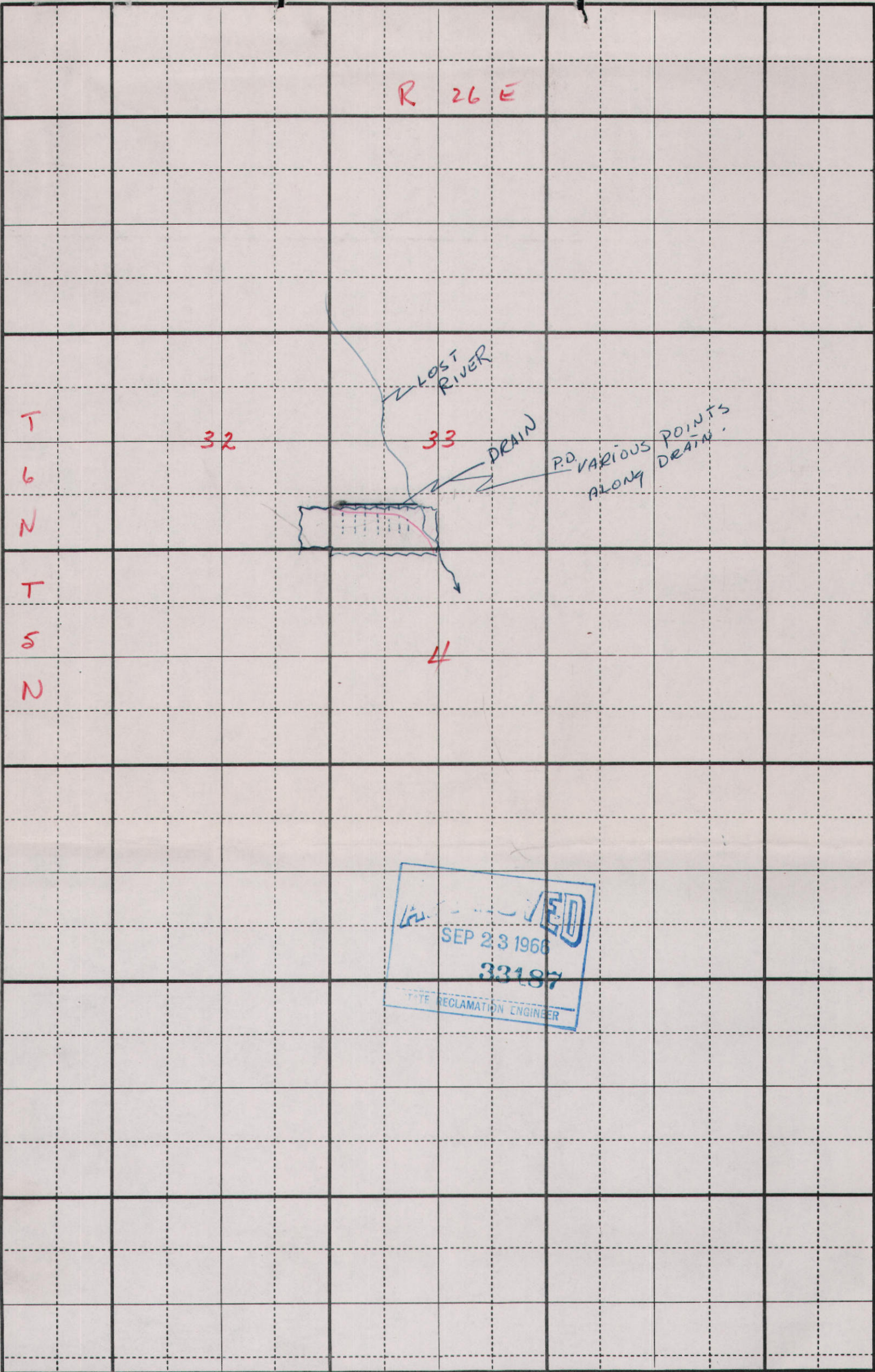
C. STEPHEN ALLRED
Director

Published in the Arco Advertiser,
Arco, Idaho, on September 29 and
October 6, 1977.

MICROFILMED

NAME OF APPLICANT Herman J. Fielding

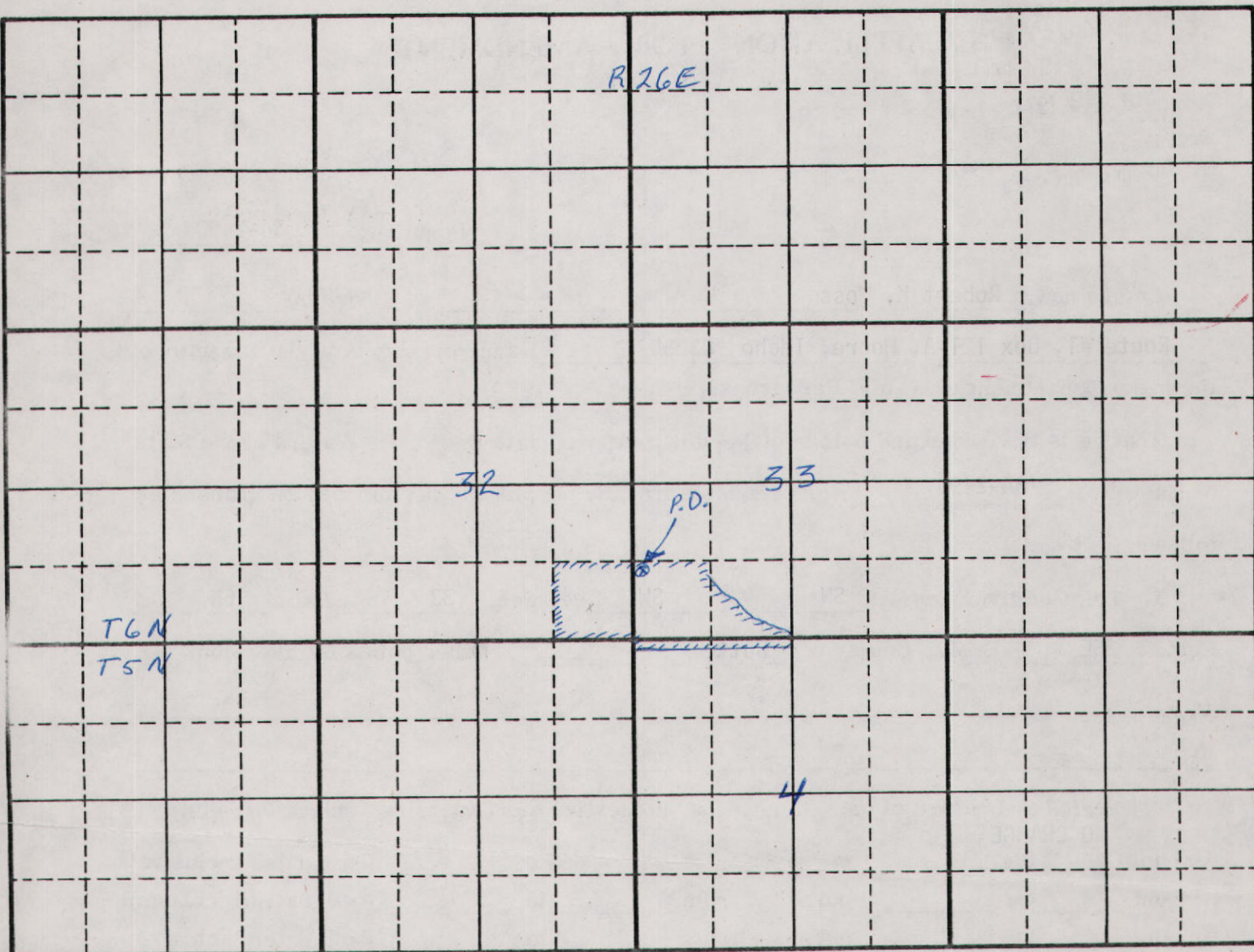
Form No. 0



SCALE: 2 Inches Equal 1 Mile. Draw Plan In Ink.

33187

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 holders own risk.

Signed at Idaho Falls, this 22nd day of Sept., 19 77.

Robert K. Dunn
(signature)

ACTION OF THE DIRECTOR, DEPARTMENT OF WATER RESOURCES

I, A. KENNETH DUNN, Director of the Department of Water Resources hereby Approve the above Application for Amendment for Permit No. 33187/34-2493.

Witness my hand this _____ day of _____, 19 ____.

Director

MICROFILMED

Robert K. Moss
34-2493

92J-83

29 28
32 33

R. 378
W. Terry

A-24
J. Monkin

Robert Moss
Mink

Big Lost
River

Point of diversion

Drain

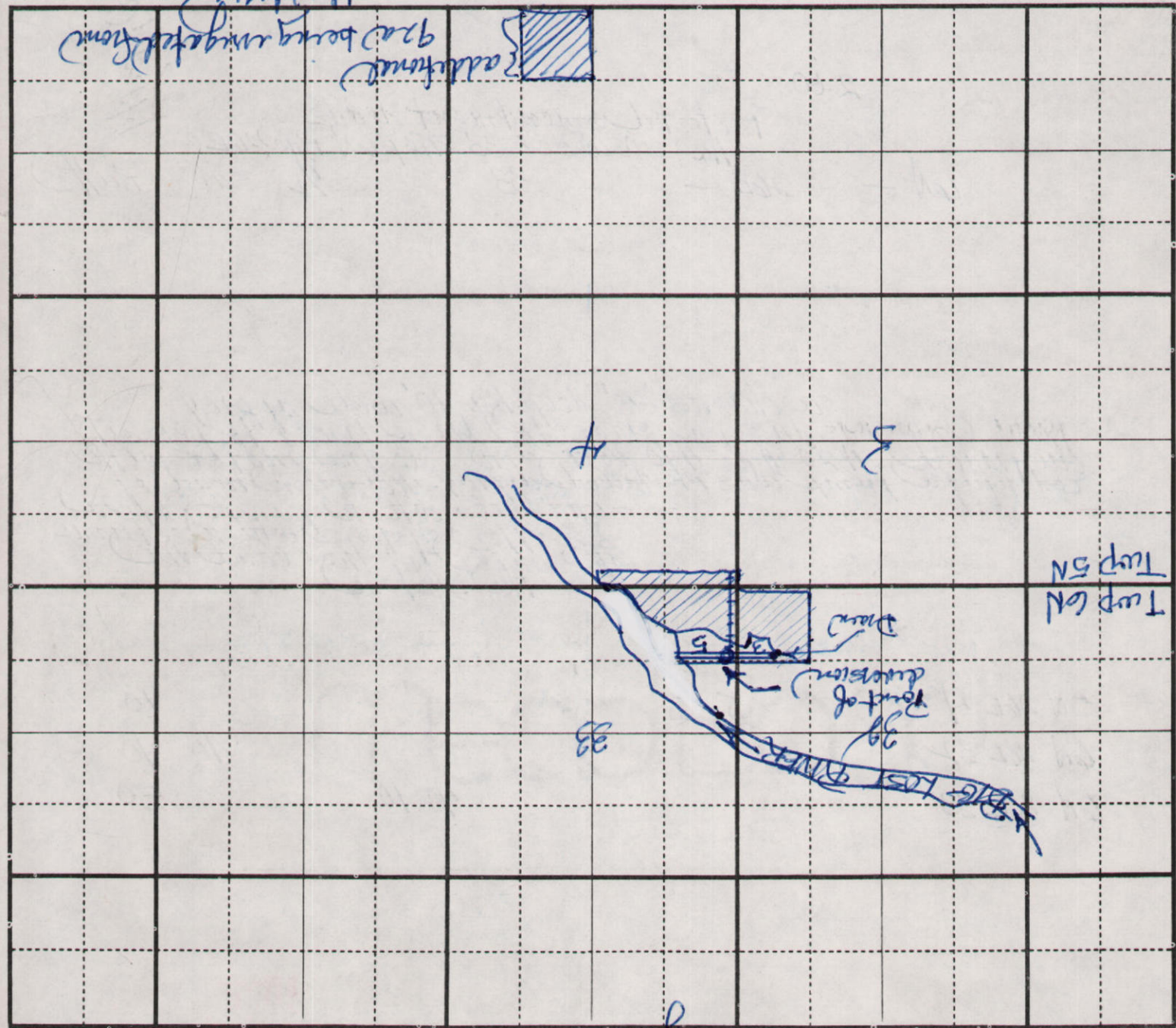
3a

5a A-27
R.E. Moss

additional
920
being irrigated
but these
are lands
not reclaimed
by the drain

Red = Channel
Green = Pump & main line
Lines = Land irrigated

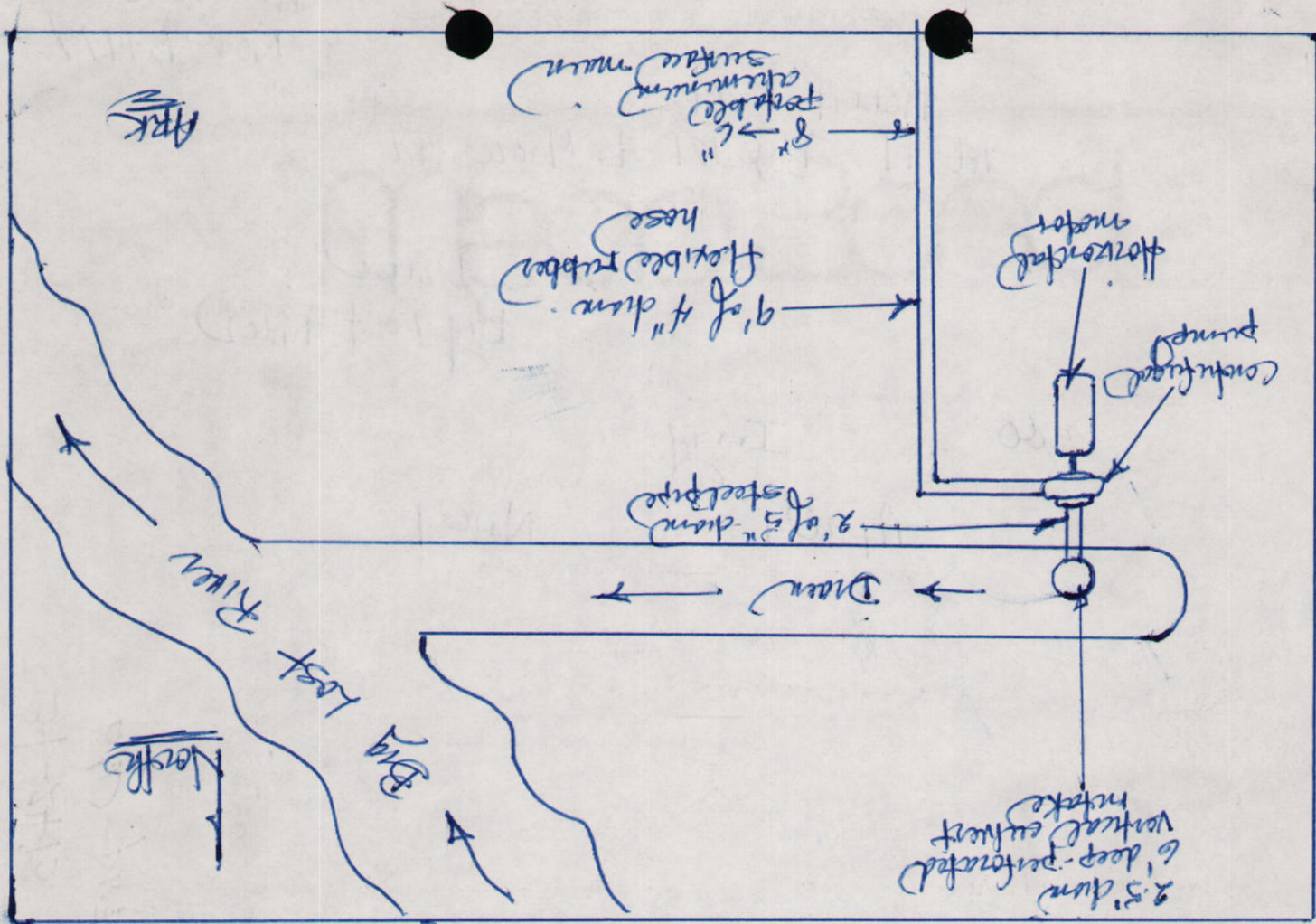
34-2493

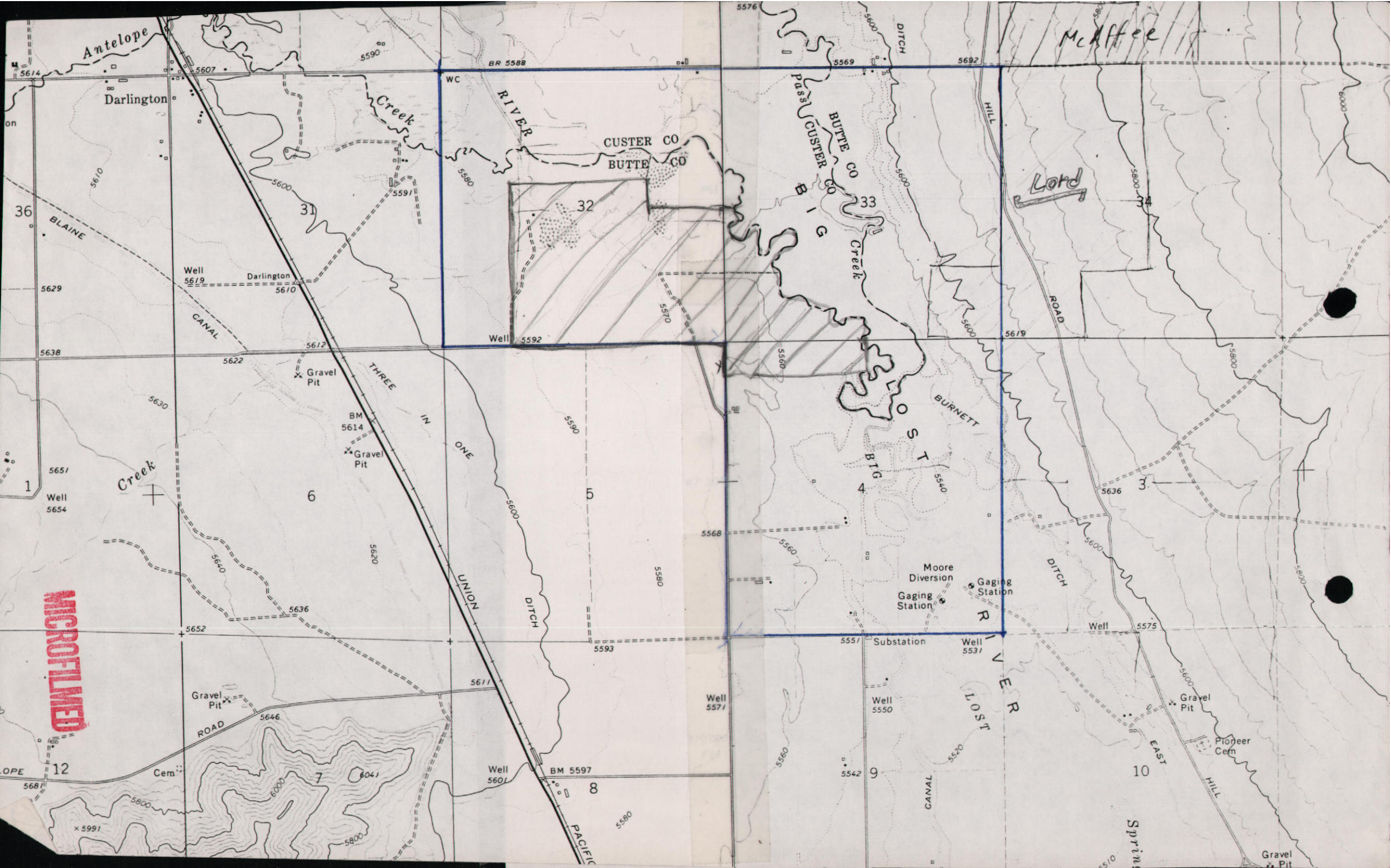


Figure

MICROFILMED

Diagram of System





Robert Moss

29/28

32/33

CV



MICROFILMED

9/28

2033

C.V. 1-2

MICROFILMED

canal & old bays
have been removed



MEMORANDUM

DATE: June 24, 1986

TO: File 34-2493

FROM: BOB FLEENOR *BDF*

RE: Correction on Proposed Memorandum Decision and Order
Conclusions of Law Nos. 4 & 5

Conclusion of Law No. 5 discusses the water which would have reached the Big Lost River without the drain. The second sentence states, "This amount is calculated as 3.45 acre feet/acres x 8 acres = 27.6 acre feet." This sentence was incorrectly included as a part of conclusion No. 5 and should have been added as the final sentence of Conclusion No. 4 which discusses the amount of water the applicant is entitled to that is not subject to the priorities on the Big Lost River.

MICROFILMED

State of Idaho
Department of Water Resources

WATER RIGHT LICENSE

License of Water Right No. 33187/34-2493 Priority October 13, 1966 Amount 1.25 cfs
(Late Proof)

THIS IS TO CERTIFY, that Robert K. Moss
of Moore, Idaho, has complied with the terms and conditions of Permit
No. 33187/34-2493 issued pursuant to Application for Permit dated September 19, 1966,
and has submitted proof to the Department of Water Resources on October 12, 1977,
that he has applied water to a beneficial use; an examination by the Department indicates that the works have a
capacity for the diversion of 1.25 cfs of water from an unnamed drain,
tributary to Big Lost River and that the permit holder has applied to a beneficial use and
established a right to use water as follows:

Beneficial Use	Period of Use	Rate of Diversion	Annual Volume
<u>Irrigation</u>	from <u>April 1</u> to <u>November 1</u>	at <u>1.25</u> cfs and	<u>300.0</u> acre feet
	from _____ to _____	at _____ cfs and	_____
	from _____ to _____	at _____ cfs and	_____

(both dates inclusive)

Subject, however, to the condition that no more than 1.25 cfs of water be diverted at any one time, and
that the amount of water so diverted and to which such right is entitled and confirmed is for the purpose
aforementioned and is limited to the amount which can actually be beneficially used and shall not exceed
300.0 acre feet per year, said waters to be diverted within the SW $\frac{1}{4}$ SW $\frac{1}{4}$ Section 33,
Twp 6N, Rge 26E in the County of Butte

Description and location of place of use:

Twp.	Range	Sec.	NE $\frac{1}{4}$				NW $\frac{1}{4}$				SW $\frac{1}{4}$				SE $\frac{1}{4}$				Totals
			NE $\frac{1}{4}$	NW $\frac{1}{4}$	SW $\frac{1}{4}$	SE $\frac{1}{4}$	NE $\frac{1}{4}$	NW $\frac{1}{4}$	SW $\frac{1}{4}$	SE $\frac{1}{4}$	NE $\frac{1}{4}$	NW $\frac{1}{4}$	SW $\frac{1}{4}$	SE $\frac{1}{4}$	NE $\frac{1}{4}$	NW $\frac{1}{4}$	SW $\frac{1}{4}$	SE $\frac{1}{4}$	
5N	26E	4					5	5											10
6N	26E	32															40		40
		33											40	10					50

Total number of acres irrigated 100

[Handwritten signature]

CONDITIONS OF APPROVAL

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

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

c. Any water right confirmed in this license for hydropower purposes shall be junior and subordinate to all rights to the use of water, other than hydropower, within the State of Idaho that are initiated later in time than the priority of this license and shall not give rise to any right or claim against any future rights to the use of water other than hydropower, within the State of Idaho initiated later in time than the priority of this license.

Use of water under this right is subject to the conditions listed on the Proposed Memorandum Decision and Order of January 7, 1986.

Witness the seal and signature of the Director, affixed at Boise, Idaho, this 21st day of FEBRUARY, 1986.

As the Director Norman C Young

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE
STATE OF IDAHO

IN THE MATTER OF LICENSING OF PERMIT)
NO. 34-2493 IN THE NAME OF)
ROBERT K. MOSS)
_____)

ORDER ADOPTING
PROPOSED MEMORANDUM
DECISION AND ORDER

WHEREAS, A. Kenneth Dunn, Director of the Department of Water Resources having issued and served a copy on the parties on January 8, 1986, a Proposed Memorandum Decision and Order in the above-captioned matter, pursuant to Idaho Code, 67-5211; and,

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

WHEREAS, no exceptions to that Proposed Memorandum Decision and Order have been received;

IT IS, THEREFORE, HEREBY ORDERED that said Proposed Memorandum Decision and Order be adopted and issued as the Final Decision and Order.

Dated this 20th day of February, 1986.



A. KENNETH DUNN
Director

MICROFILMED

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE
STATE OF IDAHO

IN THE MATTER OF LICENSING OF
PERMIT NO. 34-2493 IN THE
NAME OF ROBERT K. MOSS

CERTIFICATE OF MAILING

I HEREBY CERTIFY That on this the 27th day of February, 1986, a true
and correct copy of the ORDER ADOPTING PROPOSED MEMORANDUM DECISION AND ORDER
was mailed postage prepaid to:

Robert K. Moss
Rt. 1, Box 121-A
Moore, ID 83255

Big Lost River Irrigation Dist.
P. O. Box 205
Mackay, ID 83251

Eugene Gabert, Watermaster
Water District 34
P. O. Box 206
Mackay, ID 83251



RLTA I. FLECK
Secretary/Records Manager
Idaho Department of Water Resources

MICROFILMED

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE
STATE OF IDAHO

IN THE MATTER OF LICENSING OF
PERMIT NO. 34-2493 IN THE NAME
OF ROBERT K. MOSS

}
} PROPOSED
} MEMORANDUM DECISION
} AND ORDER

RE: 86-01

On September 23, 1966, Application for Permit No. 34-2493 in the name of Herman J. Fielding was approved for the diversion of 2 cfs of water from a drain tributary to the Big Lost River, with the point of diversion within the S1/2SW1/4, Sec. 33, Twp. 6N, Rge. 26E, B.M., Butte County for the irrigation of 100 acres.

Proof of completion of works and application of water to beneficial use was filed with the Department of Water Resources on August 9, 1967. On September 26, 1967, the Department received a protest against the issuance of a water license on Permit No. 34-2493 from Devon Jensen, the watermaster of Water District 34 on behalf of the Water District No. 34, the Big Lost River and tributaries. On September 27, 1967 the Big Lost River Irrigation District submitted a protest on its own behalf.

On December 27, 1967, the permit holder withdrew the completion of works and application of water to beneficial use which was not due until September 23, 1977 under the terms of the permit. The protestants were notified that their protest would be considered at such time as the proof of beneficial use was resubmitted. On September 22, 1977, an application for amendment was

MICROFILMED

filed to more accurately describe the location of the point of diversion and place of use. On October 12, 1977, the permit was assigned to Robert K. Moss. The proof of application of water to beneficial use was resubmitted to the Department on October 17, 1977.

On June 8, 1978, a field examination was made by the department inspector who found that 100 acres of land were being irrigated from the system developed under the permit. Measurements indicated that the diversion capacity was 1.25 cfs.

On March 7, 1979, the Big Lost River Irrigation District withdrew its protest against issuance of a license on the permit. On March 14, 1979, a fact finding conference concerning the protest against issuance of a water license on Permit No. 34-2493 was held in Arco, Idaho. The permit holder, Robert K. Moss was present and represented himself; protestant Water District No. 34 was not present nor officially represented. Because Devon Jensen, the former watermaster, was present, a fact finding conference was held by the Department.

The concern against issuing the license raised by the watermaster was that the water taken in the drain by the permit holder was tributary to the Big Lost River and that any water that would normally reach the Big Lost River if taken under this permit would injure prior rights on the Big Lost River.

The permit holder and the watermaster agreed that the department should reach a decision based upon the information supplied at the conference and the information available within the records of the Department.

The Department requested by letter dated May 20, 1980 that Water District No. 34 clarify whether the District was protesting issuance of license on the permit and if so, to show cause why Water District No. 34's protest should not be set aside for failure to attend the protest hearing. The District has not responded.

MICROFILMED

FINDINGS OF FACT

1. Mr. Devon Jensen filed a protest on behalf of the Water District No. 34; and department records do not indicate that he filed a timely protest on his own behalf. Protestant Big Lost River Irrigation District withdrew its protest on March 7, 1978.

2. Records of the department indicate that the lands irrigated under Permit No. 34-2493 also have a decreed right No. 34-0430 for 1.6 cfs from the Big Lost River with priority date May 1, 1886. The water under this decree is to be diverted from the Burstedt-Johnson Ditch and from the Three-In-One Ditch. The place of use under this decreed right is limited to 98 acres within the same legal description as covered by Permit No. 34-2493.

3. The water diverted under Permit No. 34-2493 is from a drain constructed in 1966 which drains into Big Lost River.

4. The water diverted under Permit No. 34-2493 is used to irrigate 100 acres and the amount diverted is 1.25 cfs.

5. The land through which the drain is constructed was swampy until the drain was installed and was not suitable for cultivation.

6. After the drain was constructed, the land drained was suitable for agricultural purposes.

7. The amount of land drained located south of the drain was found by the department examiner to be 8 acres.

8. Water now intercepted by the drain which was not consumed by evaporation or transpiration of natural wetland plants would have reached the Big Lost River and is subject to diversion under existing rights from Big Lost River.

9. Annual average evapotranspiration from swamp areas in the Big Lost River valley area is 4.2 acre feet per acre. The average annual precipitation

in the area is about 9 inches. The water saved can be estimated as average evapotranspiration minus average precipitation or 41.4 acre inches/acre or 3.45 acre feet/acre.

CONCLUSIONS OF LAW

1. The protest of Water District No. 34 may be set aside for failure to appear at the hearing.

2. Mr. Devon Jensen, the watermaster, is not a protestant of record against issuance of this license, but his concern is also a concern of the hearing officer and is an issue that according to Sec. 42-203A, Idaho Code must be considered in reaching a decision in this matter.

3. The permit holder has diverted and put to beneficial use water in addition to that already decreed to his property.

4. The permit holder is entitled to a license for water which he has diverted and put to beneficial use which would have been evaporated or transpired from the lands which he drained by reason of installing the drain.*

5. Waters which would have reached the Big Lost River without the presence of the drain must be considered as part of the Big Lost River water supply. This amount is calculated as 3.45 acre feet/acre X 8 acres = 27.6 acre feet. *

6. The priority date of Right No. 34-2493 shall be advanced one day for each day the proof of beneficial use was late in accordance with Section 42-218a, Idaho Code.

ORDER

IT IS, THEREFORE, HEREBY ORDERED THAT:

1. The protest against issuance of the license on Permit No. 34-2493 filed on behalf of the Big Lost River Water District No. 34 be set aside for failure to appear at the hearing.

*SEE MEMO OF 6/24/86

MICROFILMED

2. The Application for Amendment filed on September 22, 1977 be approved.

3. That license be issued on amended Permit No. 34-2493 with the following conditions:

a. Subject to all prior rights on Big Lost River and tributaries except that an annual volume of 27.6 acre feet of water can be diverted under Permit No. 34-2493 without regard to other rights as long as the drainage ditch in the SE1/4SE1/4, Section 32, SW1/4SW1/4, Section 33, Township 6 North, Range 26 East is maintained to effectively drain 8 acres as determined by the Director of the Department of Water Resources.

b. That use of water under Permit No. 34-2493 is subject to the control of the watermaster of Water District 34, Big Lost River and tributaries.

c. That a measuring device of a type approved by the Department of Water Resources must be installed and maintained as part of the diverting works.

d. The combined rate of diversion under Rights No. 34-2493 and 34-0430 shall not exceed a total of 2 cfs or 0.02 cfs per acre of irrigated land to which the rights are appurtenant.

e. The priority date shall be advanced to October 13, 1966.

Dated this 7TH day of JANUARY, 1986.


NORMAN C. YOUNG
Hearing Officer

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

IN THE MATTER OF LICENSING OF)
PERMIT NO. 34-2493 IN THE NAME)
OF ROBERT K. MOSS)

ORDER ISSUING
PROPOSED MEMORANDUM
DECISION

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

Each party to these proceedings who appeared at the hearing is given the opportunity, pursuant to Idaho Code §§42-1701A and 67-5211, to file exceptions to the proposed decision and to present briefs and oral arguments. If no timely and proper exceptions are received, an order by the Director will be entered adopting the proposed decision as his final decision.

I.
EXCEPTIONS

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

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

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

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

II.
BRIEFS

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

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

MICROFILMED

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE
STATE OF IDAHO

IN THE MATTER OF LICENSING OF
PERMIT NO. 34-2493 IN THE NAME
OF ROBERT K. MOSS

CERTIFICATE OF MAILING

I HEREBY CERTIFY That on this the 8th day of January, 1986, a true and correct copy of the ORDER ISSUING PROPOSED MEMORANDUM DECISION and PROPOSED MEMORANDUM DECISION AND ORDER were mailed, postage prepaid to:

Robert K. Moss
Rt. 1, Box 121-A
Moore, ID 83255

Big Lost River Irrigation District
P. O. Box 205
Mackay, ID 83251

Eugene Gabert, Watermaster
Water District 34
Box 206
Mackay, ID 83251



RITA I. FLECK
Secretary/Records Manager
Idaho Department of Water Resources

MICROFILMED

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE
STATE OF IDAHO

IN THE MATTER OF PERMIT NO. 34-2493

IN THE NAME OF ROBERT K. MOSS

ORDER OF REINSTATEMENT

WHEREAS, on September 19, 1966, Herman J. Fielding filed with the Department of Water Resources an application for permit to appropriate 2.00 cubic feet per second of water from a drain, tributary to the Lost River, to be diverted within the S $\frac{1}{2}$ SW $\frac{1}{4}$, Sec. 33, Twp. 6N, Rge. 26E, B.M., Butte County, to be used for irrigation purposes; and,

WHEREAS, on September 23, 1966, the Department approved said application and issued Permit No. 34-2493 with the condition that proof of construction of works and application of water to beneficial use be submitted to the Department on or before September 23, 1977; and,

WHEREAS, on June 30, 1977, the Department notified the permit holder by certified mail that proof of beneficial use of water was due and instructed the permit holder as to the steps to be taken to make said proof; and,

WHEREAS, on October 3, 1977, the Department lapsed Permit No. 34-2493 and notified the permit holder of the lapsing for failure to submit the required proof of beneficial use of water; and,

WHEREAS, on October 12, 1977, the Department received an assignment and proof of beneficial use for this permit. This permit was assigned to Robert K. Moss; and,

WHEREAS, Section 42-218a of the Idaho Code provides that a permit may be reinstated upon a showing of reasonable cause within 60 days from the date of the notice of lapsing; and,

WHEREAS, the permit holder has provided a reasonable showing as to why said permit should be reinstated;

IT IS, THEREFORE, HEREBY ORDERED that Permit No. 34-2493 be REINSTATED and the priority advanced to October 13, 1966.

Dated this 26 day of October, 1977.


BOBBY D. FLEENOR
Chief, Operations Bureau

MICROFILMED

RECEIVED

State of Idaho
Department of Water Resources
ASSIGNMENT OF PERMIT

OCT 12 1977
Department of Water Resources
Eastern District Office

I, Herman Fielding, hereby assign to Robert K. Moss
of Rt. #1, Box 121-A, Moore, Idaho 83255
Address

CHECK ONE

- ☒ All my right, title, and interest in and to Permit No. 34-2493
to appropriate the public waters of the State of Idaho.
- ☐ The following described portion of my right, title, and interest in and to Permit
No. _____ to appropriate the public waters of the State of Idaho.
(Describe that portion of the permit being assigned by listing the acreage within
each 40 acre subdivision, the point of diversion and the amount of water in cubic
feet per second for direct diversion, or acre feet for storage)

Made this _____ day of _____, 19____.

Permit Holder

Herman Fielding
Spouse of Permit Holder

State of Idaho)
County of Adams) ss.

On this 5 day of Oct, 1977, personally
appeared before me the signer(s) of the above instrument, who duly acknowledged to me
that he (she) (they) executed the same.

seal

Hugh C. Sloan
Notary Public residing at
Idaho

My commission expires:

7-19-78

MICROFILMED

Affidavit of Publication

RECEIVED

OCT 25 1977

Department of Water Resources
Eastern District Office

Le Ella Cammack
of the Arco Advertiser, a weekly newspaper of
general circulation, published weekly at Arco,
Idaho, since March, 1909, do solemnly swear that
a copy of this notice, 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 *9-29-77*

and ending with the issue dated *10-6-77*
.....

Le Ella Cammack

Subscribed and sworn to before me this

18 day of *Oct* 19 *77*

Charles J. [Signature]
Notary Public

Residence: Arco, Idaho.
My commission expires *5/14, 1978*



MICROFILMED

BEFORE THE DEPARTMENT OF WATER ADMINISTRATION
OF THE
STATE OF IDAHO

IN THE MATTER OF PERMIT NO. 33187/34-2493)

in the name of HERMAN J. FIELDING)

ORDER MODIFYING REQUIREMENTS
FOR COMPLETION OF PERMIT TO
APPROPRIATE WATER

WHEREAS, the 39th Idaho Legislature made certain amendments to the Idaho Water Law; and,

WHEREAS, these changes raised questions as to the procedures to be followed by holders of permits issued prior to the effective date of the amendments, May 31, 1967; and,

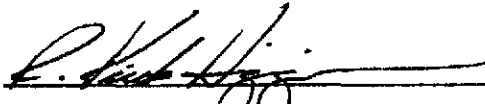
WHEREAS, on August 1, 1968, the Department of Water Administration adopted Rules of Practice and Procedure for the processing of such permits issued prior to May 31, 1967; and,

WHEREAS, Permit No. 33187 was issued previous to that date;

NOW THEREFORE, the requirements for completion of the above numbered permit are hereby modified to conform to the adopted Rules of Practice and Procedure as follows:

1. The above numbered permit will be completed under the terms of Title 42, Chapter 2, Idaho Code, as amended by the 39th Idaho Legislature.
2. The conditions of the above numbered permit are modified as follows:
 - a. Notice of the issuance of the permit will be published at the permit holders expense for two weekly issues in the official newspaper of the county in which the point of diversion lies.
 - b. The permittee will not be required to submit proof of completion of works as originally specified, but will be required to submit proof to the Department of Water Administration of the application of the water to beneficial use on or before September 23, 1977. The permit holder should be aware that failure to complete one-fifth (1/5) of the works within one-half (1/2) of the time originally set for completion of works may be grounds for cancellation at the instance of the Department.

Dated this 12TH day of October, 1970.


R. KEITH HIGGINSON
Director

MICROFILMED

Application For Permit To Appropriate the Public Waters of the State of Idaho

34-2493 ✓

APPLICATION No. 41399
PERMIT No. 33187
DISTRICT No.

1. Name of Applicant: Herman J. Fielding

Postoffice address: Star Route East, Othello

County: Adams

State: Washington

I. If applicant is a corporation, give:

(a) Date and place of incorporation:

(b) Amount of capital stock:

(c) Amount paid in:

(d) Names and addresses of directors:

II. The financial resources of the applicant are:

(a) Cash on hand:

(b) Treasury stock:

(c) Bond to be issued:

(d) Other resources:

2. Quantity of water claimed: 2.0 cubic feet per second.

3. Source of water supply: Drain which is a tributary of Lost River.

4. Location of point of diversion: feet distant from the

→ corner of Section 33, T. 6 N, R. 26 E, B.M., and is in the S $\frac{1}{2}$ SW $\frac{1}{4}$
of section 33, T. 6 N, R. 26 E, B. M., County of Butte

5. Water is to be used for irrigation

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

(a) Point of use of water: feet distant from corner of Section
T. , R. , B.M., in the of Section of , T. , R. , B.M.

(b) Amount of power generated: H.P., under feet head.

(c) Water is to be returned to at a point feet
distant from the corner of Section , T. , R. , B.M., in the
of Section , T. , R. , B.M.

7. Estimated cost of works: \$ 3,000.00

8. Kind of works: portable pump, pipes and sprinklers

9. Height of dam N/A feet; length of dam at top feet; length of dam at bottom
feet; material used in dam:

10. Size of headgate: Width N/A feet; height feet.

11. Ditch: Width at bottom N/A feet; width at water line feet; depth of water feet;
dimensions of flume:

Diameter of pipe inches; length of conduit miles.

Average grade per mile feet.

12. The time required for the completion of such work is 5 years.

13. The time required for the complete application of the water to the proposed use is 6 additional years.

14. The land to be irrigated is described in the following tabulation: See remarks.

15. Existing water rights and/or valid permits appurtenant to the lands to be irrigated are: 55", May 1, 1886 Water from Big Lost Irrigation

16. (a) Is reservoir to be used? N/A If so, fill in (b) and (c) below:
 (b) Name of Reservoir and number of Storage Permit: N/A
 (c) Date of filing of Application for Storage Permit and Name of Applicant: _____

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

/s/ HERMAN J. FIELDING

Applicant.

By

Agent.

Date of first receipt at Department of Reclamation: September 19, 1966 11:00 A.M.

Returned to applicant for correction:

Corrected application received:

Approval of State Reclamation Engineer

The number of this permit is 33187

The number of this permit is 33187
Recorded in Book 116 Page 33187 Approved September 23, 1966

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

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

Work to begin on or before November 23, 1966 and to continue diligently and uninterruptedly to completion, unless temporarily interrupted by circumstances over which permit holder has no control.

One-fifth of the work above specified to be completed on or before **March 23, 1969**

The whole of said work to be completed on or before September 23, 1971

Beneficial use of water appropriated in accordance herewith, to be made on or before September 23, 1977

WITNESS My hand this 23rd day of September, 1966.

/s/ R. KEITH HIGGINSON

State Reclamation Engineer.

IN TESTIMONY WHEREOF, WE, _____ ROBERT E. SMYLIE _____, Governor of the State of Idaho,
and _____ LOUIS E. CLAPP _____, Secretary of State of the State of Idaho, have caused this instrument to

be executed in the name of the State of Idaho, and caused the Great Seal of the State of Idaho to be hereunto affixed, this.....23rd.....
day of September...../.....19.....66
STATE OF IDAHO

STATE OF IDAHO

Countersigned:

(SEAL) By /s/ LOUIS E. CLAPP

By /s/ ROBERT E. SMYLIE

.....
Governor.

Secretary of State.

REMARKS: P.D. Will use portable pump at various points along drain to irrigate by sprinkler lines.

14.

Twp.	Range	Sec.	NE $\frac{1}{4}$				NW $\frac{1}{4}$				SW $\frac{1}{4}$				SE $\frac{1}{4}$				Totals
			NE $\frac{1}{4}$	NW $\frac{1}{4}$	SW $\frac{1}{4}$	SE $\frac{1}{4}$	NE $\frac{1}{4}$	NW $\frac{1}{4}$	SW $\frac{1}{4}$	SE $\frac{1}{4}$	NE $\frac{1}{4}$	NW $\frac{1}{4}$	SW $\frac{1}{4}$	SE $\frac{1}{4}$	NE $\frac{1}{4}$	NW $\frac{1}{4}$	SW $\frac{1}{4}$	SE $\frac{1}{4}$	
5 N	26 E	4					5	5										10	
6 N	26 E	32															20	90 ^{2.5}	
		33																10	
Total number of acres to be irrigated:																		100	

**NOTICE OF PROOF OF COM-
PLETION OF WORKS AND
APPLICATION OF WATER
TO BENEFICIAL USE**

Notice is hereby given that on September 29, 1967, at Arco, County of Butte, State of Idaho, before notary public O. T. Jones, Arco, Idaho, proof will be submitted of the completion of works for the diversion of 2.0 c.f.s. of the waters of a drain, and the application to beneficial use of said water, in accordance with the terms and conditions of permit 33187, heretofore issued by the Department of Reclamation of the State of Idaho.

1. The name and address of permit holder is Herman J. Fielding, Star Route East, Othello, Washington.

2. Said works of diversion will be fully completed on the date for such completion, and the amount of water which said works are capable of conveying to the place of use is 2.0 cubic feet per second.

3. The use to which said water has been applied is irrigation purposes, and the amount applied to beneficial use is 2.0 c.f.s.

4. The point of diversion of said water is S $\frac{1}{2}$ SW $\frac{1}{4}$, Sec. 33, T. 6 N., R. 26 E., B.M., Butte County.

5. The place where said water is used is N $\frac{1}{2}$ NW $\frac{1}{4}$, Sec. 4, T. 5 N., R. 26 E., B.M., and SE $\frac{1}{4}$ SE $\frac{1}{4}$, Sec. 32, S $\frac{1}{2}$ SW $\frac{1}{4}$, Sec. 33, T. 6 N., R. 26 E., B. M.

6. The date of priority which said user is prepared to establish is September 19, 1966.

R. KEITH HIGGINSON,
State Reclamation Engineer.
Pub. 8-17, 24, 31, 2-4 1967.

Rec 33422 - 5.25
given cash

Jan 5 25

Address all communications to

Form No. 1
5M 1-45

P. O.

APPLICATION FOR PERMIT

TO APPROPRIATE THE PUBLIC WATERS OF THE STATE OF IDAHO

RECEIVED

SEP 10 188

11:00 A.M.

Department of Reclamation

Application No. 41399

33187

Permit No.

District No.

1. Name of Applicant: HERMAN J. FIELDING

Post Office address: STAR ROUTE EAST, OTHELLO County ADAMS State WASHINGTON

If applicant is a corporation, give:

(a) Date and place of incorporation:

(b) Amount of Capital stock: \$ (c) Amount paid in: \$

(d) Names and addresses of directors:

The financial resources of the applicant are: (a) Cash on hand: \$

(b) Treasury stock: (c) Bonds to be issued:

(d) Other resources:

2. Quantity of water claimed: 2.0 cubic feet per second

3. Source of water supply: DRAIN
which is tributary of LOST RIVER

4. Location of point of diversion: feet distant from the corner
of Section , Twp. , Rge. , B. M., and is in the 3 1/2 SW 1/4
of Section 33, Twp. 6N, Rge. 26E B.M., County of BUTTE

5. Water is to be used for: IRRIGATION

6. If for any non-irrigation purpose, give:

(a) Point of use of water: feet distant from corner of Section
Twp. , Rge. , B. M., in the of Section , Twp. , Rge. , B. M.

(b) Amount of power generated: H. P., under feet head.

(c) Water is to be returned to at a point feet
distant from the corner of Section , Twp. , Rge. , B. M., in the
of Section , Twp. , Rge. , B. M.

7. Estimated cost of works: \$3,000.00

8. Kind of works: PORTABLE PUMP, PIPES & SPRINKLERS
(Reservoir, dam, ditch, flume, pipe, etc.)

9. Height of dam NA feet; length of dam at top feet; length of dam at bottom
feet; material used in dam
(If height of dam will exceed 10 feet or will store more than 100 acre feet of water, send to Department of Reclamation for
Regulations.)

10. Size of headgate: Width NA feet; Height feet

11. Ditch: Width at bottom NA feet; Width at water line feet; Depth of water feet;

Dimensions of flume ; Diameter of pipe inches;

Length of conduit miles, Average grade per mile feet.

33187

OK

12. The time required for the completion of such work is 5 years.

13. The time required for the complete application of the water to the proposed use is 6..... additional years.

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

(Give irrigable acreage in each 40-acre subdivision)

Twp.	Range	Sec.	NE¼				NW¼				SW¼				SE¼				Totals
			NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	
5N	26E	4					5	5											10
6N	26E	32											35	35				20	20
6N	26	33											35	35				10	

Total Number of Acres to be Irrigated..... 100

15. Existing water rights and/or valid permits appurtenant to the lands to be irrigated are: 55" May 1st

1886 WATER Big Lost IRRIGATION.

33187

16. (a) Is reservoir to be used? N.A. (If so, fill in (b) and (c) below.)
(b) Name of reservoir and number of Storage Permit: N.A.
(c) Date of filing of Application for Storage Permit and Name of Applicant: _____

Remarks: P.D. WILL USE PORTABLE PUMP AT VARIOUS
POINTS ALONG DRAIN TO IRRIGATE BY SPRINKLER
LINES.

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.
William J. Fielding
Applicant.
By _____, Agent

Affidavit of Permission to File on Springs
(Not to be used when spring is situated on lands owned by applicant.)

I, _____, of _____, County of _____, State of _____, do hereby certify that I am the owner of the land on which the spring mentioned in the application of _____ is located, to-wit: _____ and that I do hereby grant unto the said _____ permission to file on the said spring as set forth in the foregoing application.

STATE OF IDAHO }
County of _____ } ss.
On this _____ day of _____, 19____, before me, a Notary Public for the State of Idaho, residing at _____, personally appeared _____ known to me to be the person... whose name... subscribed to the foregoing certificate, and acknowledged to me that ...he... executed the same.
Witness my hand and seal, the day and year in this certificate first above written.
My commission expires _____
Notary Public.

Approval of State Reclamation Engineer

The number of this permit is 33187

SEP 23 1968

Recorded in Book _____ Page 33187 Approved _____

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

Bond in the sum of \$ _____ to be filed before _____

Work to begin on or before November 23, 1966, and to continue diligently and uninterruptedly to completion, unless temporarily interrupted by circumstances over which the permit holder has no control.

One-fifth of the work above specified to be completed on or before March 23, 1969

The whole of said work to be completed on or before September 23, 1971

Beneficial use of water appropriated in accordance herewith, to be made on or before September 23, 1977

Witness my hand this 23rd day of September, 1966

R. Keith Higgins
State Reclamation Engineer.

IN TESTIMONY WHEREOF, We, ROBERT E. SMYLLIE Governor of the State of Idaho,

and LOUIS E. CLAPP Secretary of State of the State of Idaho, have caused this instrument to be executed in the name of the State of Idaho, and caused the Great Seal of the State of Idaho to be hereunto affixed, this 23rd day of September, 1966

Countersigned:

By

Louis E. Clapp
Secretary of State

STATE OF IDAHO

By

Robert E. Smyllie
Governor.

No. 33187

PERMIT

Date of first receipt at office of State
Reclamation Engineer

September 19, 1966 11:00 A.M.

Returned to applicant for correction

Corrected application received

Fees, \$ 5.25

FILING FEES FOR USE PERMIT:

For the first Sec. Ft. \$5.00

For each additional Sec. Ft. or Fraction

Thereof 25

33187

NAME OF APPLICANT

Herman J. Fiedling

Form No. 0

R 26 E

LOST RIVER

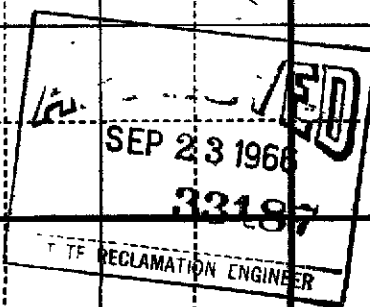
33

DRAIN

P.O. VARIOUS POINTS
ALONG DEATH

32

4



M E M O

RECEIVED
JUN 23 1986

TO: Bob Fleenor

FROM: Ernest Carlsen *Enc*

Department of Water Resources

RE: License 34-2493, Robert K. Moss

DATE: June 11, 1986

Though its always a relief to see a final decision on a protested water right, I have some questions concerning one of the conclusions of law and one of the elements listed on the license relative to 34-2493.

After reading the Findings of Fact, it appears that you have stated the license holder is entitled to divert 3.45 acre-feet per acre of drained land without it being subject to the priorities on the Big Lost River. But, under Conclusions of Law No. 5, you list that same figure as a basis for calculating part of the Big Lost River supply. I am wondering if Conclusion of Law No. 5 would be more correct if it stated, "the waters which would not reach the Big Lost River without the presence of the drain must not be considered as part of the Big Lost River water supply." When this amount is calculated as 3.45 acre-feet per acre x 8 acres = 27.6 acre feet, the 27.6 acre-feet is then the amount Mr. Moss would be entitled to divert under license 34-2493. If you will look at the actual water right license that was issued by the Department, it states the amount which can actually be beneficially used shall not exceed 300 acre-feet a year, and lists that figure as the annual volume that can be diverted under that license. In light of condition No. 3a, listed on the Memorandum Decision, I am wondering if it wouldn't be more appropriate for the 300 to be reduced to 27.6 acre feet.

MICROFILMED

02 OLD (O) NUMBER - 33187

03001 - FIELDING ✓ LAST NAME
03002 - MOSS ✓

04001 - HERMAN J.
04002 - ROBERT K.

ORIG. OWNER
05001 - ~~B~~
05002 - ~~C~~

06 ADD LINE 1 - RT. 1 BOX 121A

07 ADD LINE 2 -

08 ADD LINE 3 -

09 CITY - MOORE

10 STATE - ID 11 ZIP - 83255

12 STAGE - L LICENSE

13 STATUS -

SOURCE
14001 - UNNAMED ORAIN

15001 - BIG LOST RIVER

16 DIVERSION MEANS - PUMP, PIPELINES & SPRINKLERS.

17 COUNTY - 23 BUTTE

18 DIVERSION CAPACITY - 1.250

19 TOTAL DIVERSION RATE - 1.250

20 TOTAL DIVERSION VOLUME - 300.00

21 WATER DISTRICT - 34

TRACT				SEC	TWN	RNG	DIVERSION POINTS		STREAM INDEX FIELDS										
							LOT	RFLG											
22001 -	SWSW	23001 -	33	24001 -	06N	25001 -	26E	26001 -	27001 -										
							28001 -	0	34.0	0.0	0.0	0.0	0.0	0.0	0.0	0	0	0	71.3

29 NON-IRRIGATION USE -

USE CODE / USE	TWN	RNG	PLACE OF USE SEC	TRACT	ACRES	LOT
30001 - 01 IRRIGATION	31001 - 06N	32001 - 26E	33001 - 33	34001 - SWSW	35001 - 40	36001 -
30002 - 01 IRRIGATION	31002 - 06N	32002 - 26E	33002 - 33	34002 - SESW	35002 - 10	36002 -
30003 - 01 IRRIGATION	31003 - 06N	32003 - 26E	33003 - 32	34003 - SESE	35003 - 40	36003 -
30004 - 01 IRRIGATION	31004 - 05N	32004 - 26E	33004 - 04	34004 - NENW	35004 - 05	36004 -
30005 - 01 IRRIGATION	31005 - 05N	32005 - 26E	33005 - 04	34005 - NWNW	35005 - 05	36005 -
						TOTAL ACRES: 100

PERIOD FROM	PERIOD TO	USE CODE / USE	WATER USE	DIVERSION RATE	DIVERSION VOLUME
37001 - 0401	38001 - 1101	39001 - 01 IRRIGATION	40001 -	1.250	41001 - 300.00

42 DECREE PLAINTIFF NAME -

43 DECREE DEFENDANT NAME -

REMARKS

44001 - THE COMBINED RATE OF DIV. UNDER RTS. 34-2493/0430 SHALL NOT
44002 - EXCEED A TOTAL OF 2 CFS OR 0.02 CFS/AC. OF IRRIGATED LAND TO
44003 - WHICH THE RTS. ARE APPURTENANT. ✓
44004 - THIS RT. IS SUBJECT TO ALL PRIOR RTS. ON BIG LOST RIVER &
44005 - TRIB. EXCEPT THAT AN ANNUAL VOLUME OF 27.6 AF OF WATER CAN
44006 - BE DIVERTED UNDER PERMIT 34-2493 WITHOUT REGARD TO OTHER RTS
44007 - AS LONG AS THE DRAINAGE DITCH IN THE SESE, S32, SWSW, S33,
44008 - T6N, R26E IS MAINTAINED TO EFFECTIVELY DRAIN 8 ACRES AS
44009 - DETERMINED BY THE DIRECTOR OF IDWR. ✓

WRR100
34-2493

IDAHO DEPARTMENT OF WATER RESOURCES
WATER RIGHTS PROOF READING REPORT

PAGE 2
11-MAR-1986 08:52:22

APPROVAL CONDITIONS: 45001 R01 ✓
45002 R04 ✓
45003 16 ✓

46 OTHER RIGHTS FOR SAME USE -

----- D A T E S -----		----- D A T E S -----		----- F L A G S -----	
47	PRIORITY - 13-OCT-1966 ✓	55	LICENSE - 21-FEB-1986 ✓	63	TRANSFER/AMENDED -
48	PROOF DUE - 23-SEP-1977	56	APPL RECEIVED -	64	DLE/CAREY ACT -
49	PROOF MADE - 1-JAN-1900	57	FIELD EXAM MADE -	65	FLAG_1 -
50	APPROVE/DENIED- 23-SEP-1966	58	DECREE -	66	FLAG_2 -
51	PROTESTED - 26-SEP-1967	59	START WORK -	67	FLAG_3 -
52	HEARING - 14-MAR-1979	60	ORDER SHOW CAUSE -		
53	VERIFIED -	61	DATE_1 -		
54	LAST UPDATE - 10-MAR-1986	62	DATE_2 -		



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

February 27, 1986

Robert K. Moss
Rt. 1, Box 121-A
Moore, ID 83255

Dear Mr. Moss:

Re: Licensed Water Right No. 34-2493

Enclosed is a copy of the license issued on the above referenced water right along with a copy of the Order Adopting Proposed Memorandum Decision and Order and Proposed Memorandum Decision and Order.

Any person who does not agree with the decision of the department may appeal directly to the district court within thirty (30) days of the date the decision is mailed.

Sincerely,


L. GLEN SAXTON
Chief, Operations Bureau

Enclosures

cc: Eugene Gabert, Watermaster, Water District No. 34
Big Lost River Irrigation District

MICROFILMED

17 DEC 85
RJA

ACCORDING TO USGS WATER SUPPLY PAPER 1412 (MOWER + NACE), AN AVERAGE CONSUMPTIVE USE OF 16 TYPES OF WATER LOVING PLANTS IN THE MALAD VALLEY IS ABOUT 4.2 FEET DURING THE GROWING SEASON. FROM BROCKWAY'S LATEST CONSUMPTIVE USE DATA, REFERENCE EVAPOTRANSPIRATION FOR UNCUT ALFALFA IS ABOUT 4 FEET AT MALAD AND ALSO AT MACKAY. THEREFORE, IT CAN BE ASSUMED THAT MALAD AND MACKAY HAVE VERY SIMILAR OCCURRENCES OF PLANT CONSUMPTIVE USE, AND THAT 4 FEET IS A GOOD ESTIMATE OF A MIXTURE OF WATER LOVING PLANT CONSUMPTIVE USE NEAR MACKAY.

IF, THROUGH DRAINAGE OR OTHER MEANS, THE WATER TABLE AT MACKAY WERE LOWERED SUCH THAT THE WATER LOVING PLANTS WERE ELIMINATED AND THAT THE RESULTANT COVER DID NOT HAVE ACCESS TO THE WATER TABLE, THE NEW CONSUMPTIVE USE WOULD LIKELY BE SLIGHTLY LESS THAN THE AVERAGE ANNUAL PRECIPITATION NEAR MACKAY (9 INCHES) OR ABOUT 8 INCHES. THIS WOULD PRODUCE A TOTAL OF $48 - 8$ OR ABOUT 40 INCHES OF WATER POTENTIAL SAVED. IN ORDER TO MAINTAIN THIS SAVING, HOWEVER, THE WATER TABLE WOULD HAVE TO BE KEPT BELOW THE ROOT ZONE CONSTANTLY SINCE EVEN SHALLOW ROOTED GRASSES WILL USE LARGE AMOUNTS OF WATER IF ALLOWED TO REACH THE WATER TABLE (SEE ATTACHED PAGES).

MICROFILMED

194 phreatophytes cover about 6.4 million hectares (15.6 million acres) in the western states and discharge as much as 30.8 billion cubic meters (25 million acre-ft) of water into the atmosphere annually by transpiration; this is considered by many as intolerable waste, particularly during drought years. Annual use of water by phreatophytes ranges from a few hundred cubic meters to more than 8,631 cubic hectare-meters (hm^3) (7 acre-ft/acre). Some of the more common phreatophytes listed by Robinson (1958) include saltcedar (*Tamarix pentandra*), greasewood (*Sarcobatus vermiculatus*), willows (*Salix* spp.), cottonwoods (*Populus* spp.), saltgrass (*Distichlis stricta*), rabbitbrushes (*Chrysothamnus* spp.), and pickleweed (*Allenrolfea occidentalis*).

Ffolliott and Thorud (1975) have tabulated the results of riparian vegetation water-use studies conducted in the Southwest. They state that, when the source data from the various studies are considered, a trend in the water use by species is apparent. Dense stands of saltcedar, arrowweed, cottonwood, and hydrophytes (tules [*Scirpus* spp.] and cattails [*Typha* spp.]) are the heaviest users of water (annual use of between 1.3 and 2.6 m [4 and 8.5 ft] of water). Intermediate users of water are seepwillow (*Baccharis glumosa*).

Table 1. Physical gain or loss of resource products resulting from mechanical or chemical conversion treatments in riparian zones (from Ffolliott and Thorud 1975). (Divide acre-ft by 3.28×10^{-4} to obtain hm^3).

Resource outputs	Physical gain or loss
Water	Under the most favorable conditions, water yields of up to 2 acre-feet per acre annually may be obtained. However, some of this water will be used by reinvading vegetation.
Wood	At this time, riparian species have little or no commercial value except cottonwood. However, fence posts, firewood, or chips for particle board and mulch are potential products.
Range	Areas which have shallow water tables (5 feet or less) and higher precipitation (10 inches-15 inches) may produce herbage following artificial seeding. The amount of production has not been adequately determined. If grasses have established naturally, it will take about 5 years, and they will consist of warm-season and annuals.
Wildlife	The quality of habitat for fish and wildlife will probably decline, particularly for doves, small game species, songbirds, javana, and migratory waterfowl. Bristow (1968) placed a value of \$150 per acre on phreatophyte lands and a value of hunting days lost and the price which the Arizona Game and Fish Department pays per acre for phreatophyte land. Mitigation of these conflicts in the future becomes more difficult as phreatophyte lands for fish and wildlife habitat decline in area. A positive factor may be use of cleared areas for wintering waterfowl.
Flood prevention	Removal of riparian vegetation prevents blockage of streamflow and the subsequent spreading of flood flows on adjacent floodplains which are sometimes developed.
Recreation and aesthetics	The aesthetic value of the treatment area is lowered in the initial stages. However, cattle grazing on riverine grass land and a view of flowing water may be aesthetically superior to riparian vegetation for some observers.
Other	Erosion rates increase between the initial removal of riparian vegetation and the establishment of grasses.

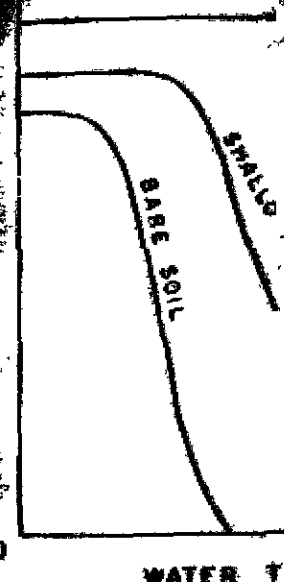


Fig. 7-10. General nature of relationship between water table depth and shallow-rooted vegetation and evapotranspiration.

quique (*Prosopis juliflora*), quail brush (*Atriplex canescens*) and saltgrass (*Distichlis stricta*) (2 and 5 ft) of water). The least users of water are saltgrass (*Distichlis stricta*) and from bare soil. The physical gain or loss of resource products from mechanical conversion treatments is shown in Table 7-1.

The general nature of evapotranspiration is shown in Figure 7-10. Bouwer (1968) shows that the depth of the water table controls the potential evapotranspiration rate. Seepage from a stream or spring into the soil causes evaporation from soil in the riparian zone. The application of the procedure to a hypothetical riparian zone with bare soil or vegetation on the floodplain. The percentage of water saved by phreatophyte control is significant. The amount of water saved by evaporation is much smaller than the amount of water saved by phreatophyte control. The amount of water saved to decrease with the water level in the stream. The amount of water saved by evaporation presented in this section is based on transpiration and evaporation.

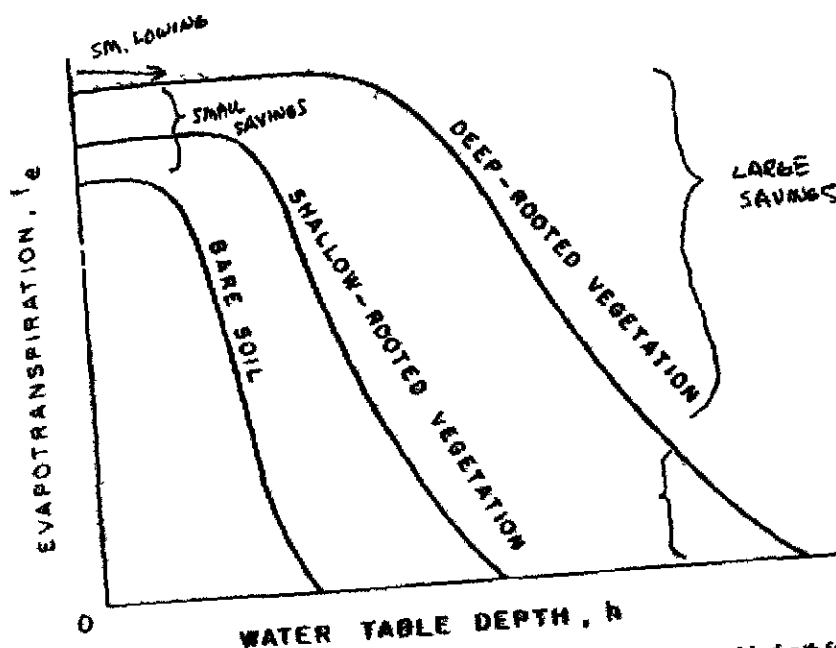


Fig. 7-10. General nature of relations between evapotranspiration (E) and water table depth for deep- and shallow-rooted vegetation and bare soil (from Bouwer 1975).

equite (*Prosopis juliflora*), quailbrush (*Atriplex lentiformis*), fourwing altbush (*Atriplex canescens*) and greasewood (annual use of between 0.6 and 6 m [2 and 5 ft] of water). The least amount of water is transpired by grasses such as saltgrass (*Distichlis stricta*), Bermuda grass (*Cynodon dactylon*), sedges (*Carex* spp.) and from bare soil (annual use of less than 1 m of water). Some physical gain or loss of resource products resulting from mechanical or chemical conversion treatments in riparian zones in the Southwest are given in Table 7-1.

The general nature of evapotranspiration rates and depth of the water table is shown in Figure 7-10. Bouwer (1975) indicates that the deeper the roots, the greater the depth of the water table at which the vegetation can maintain essentially potential evapotranspiration rates. In developing a procedure for calculating seepage from a stream due to uptake of groundwater by vegetation or evaporation from soil in the floodplain, Bouwer states the following:

Application of the procedure to a hypothetical stream and floodplain shows that replacing a deep-rooted vegetation with bare soil or shallow-rooted vegetation causes a rise in the water table of the floodplain. The percentage reduction in seepage losses from the stream by phreatophyte control is significant only if the depth from which groundwater can be removed by evaporation is much smaller after removal than before. The percentage reduction in channel seepage due to phreatophyte control tends to increase, and the actual amount of water saved to decrease with increasing vertical distance between the floodplain and the water level in the stream.

Information presented in this section indicates that some potential exists for reducing transpiration and evaporation water losses. In many instances,

MICROFILMED

STATE OF IDAHO
DEPARTMENT OF RECLAMATION
BOISE

Rel Permit No. 33187

Mr. DeVon Jensen, Watermaster
District No. 27
Box 203
Mackay, Idaho

Dear Mr. Jensen:

I have tried to call you for the last few days but your telephone is apparently out of order. I wanted to discuss with you the complaint you have apparently filed against Mr. Herman J. Fielding in connection with the drain he has built on his property near the Big Lost River.

I advised Mr. Fielding, when he visited this office the other day, that it is our position that he may construct a drain on his property and pump water therefrom to irrigate the lands actually drained without a permit, but that he would have no authority or right to intercept water naturally flowing toward or into the Big Lost River and use such waters on lands not benefiting from the drainage. It, therefore, appears to me a matter of proof as between yourself and Mr. Fielding as to whether he is intercepting waters naturally tributary to the river, or specifically diverting water which was previously consumed on the property due to the high water table.

I would appreciate your advising me as to what your intentions are in pursuing this matter.

Very truly yours,

R. KEITH HIGGINSON
State Reclamation Engineer

RKH:ew

cc: Herman J. Fielding
Star Route East
Othello, Wash.

- Court case info
- case dropped
- no effect on validity
of permit
10-25-85
should this be filmed
as part of file?
KW
5-31-85

554-201
October 10 1966

A brief resume of dates and figures as nearly as I can put together at this time without My operator who was Max Fielding to substantiate the events before and after my arrest.

The sprinklers were to have arrived July 21st but did not arrive until July 22nd. The pipes were uniformly spread and engineered for position this day. Upon trial of the system the drive line broke and they were not able to pump.

July the 23rd another universal was obtained and the pump was turned on only to twist up another improperly installed universal.

The pump was started Monday morning about 7 o'clock
It was July 25th at 11 o'clock Mr Jensen now informs me he had a witness and signed the arrest against me for pumping water illegally. He states that there was no water running in the hole at the time he and his witness were on my property that morning.

I wish to verify that if it wasn't at that time it was shortly after his leaving and had been running in prior to his coming. I have approx. 4 acres of spuds above this hole and the drain water of these spuds and the ditch north around these spuds would supply this hole with water.

Max informs me that prior to this this event Mr. Higgensen and Jensen visited him when the construction had been dug half way up the field and while he and the two were discussing this situation he had never once been informed by either one that we should have a permit to make this construction and that Mr. Jensen-- not Higgensen) did suggest that if he were to dig a hole up at the top of the field and pump out of it instead of the hole dug down close to the river (Approx 100 ft away from the River) that there would be less statif from the public.

The nite, Thursday the 6th of Oct. Max and I went down to discuss these problems with Mr. Jensen, Man to Man I feel that is the way to get at these problems. After a some what heated discussion on the issues he agreed that if he could find on the records of the Big Lost River Irr. district a record where we had water ordered within 48 hrs of the arrest he would recall his complaint. We left at this point. Friday nite he called me and I wasn't home but later about 9 o'clock I arrived home I called him. He informed me that we did have water on this date but it was from the 3 in 1 ditch making it prohibitive to deliver water to the hold. I told him we did have a drain from above the B.J. ditch from this 11 acres and could pick up this water to be delivered to this hole. He said this was not evidence enough and would continue in the arrest.

We did pump off and on during this next week without water going into the hold the delivery into the hole was not important to us because the Higgensen and Jensen both advised not to pump from the drain (not the hole above) Mr. Al Downey from the Idaho State Dept. of Reclamation office had told Max by telephone that if you have a pump condition you may dig a ditch drain Max by

water into this ditch and then pump it any place on your property. I consulted my water office in Buhl, Washington of this very matter and was given a book on the ~~laws of Idaho~~ water laws of Idaho. In my study of this book tho it was a book written during Mark Kupp's time gave me every reason of my condition to go ahead and pump and file on this water.

It was July 29th that after my conversation with Earl Soelburg that he advised me not to fight this problem any further at this time, that the expense may supersede the cost of buying water and rendere an very expensive situation. At this time I informed Max not to pump any more water without first having water running into the hole of which he did and has followed since.

It was August 2nd that Devon came up to the ranch and informed max that the prosecuting attorney had a warrent out for my arrest.

Approval of State Reclamation Engineer

The number of this permit is 33187 SEP 23 1966

Recorded in Book 116 Page 33187 Approved
This is to certify that I have examined the within application for a permit to appropriate the public waters of the State of Idaho, and hereby approve the same, subject to the following limitations and conditions:

Bond in the sum of \$..... to be filed before.....

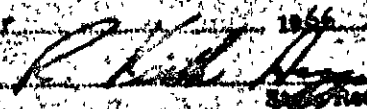
Work to begin on or before November 23, 1966, and to continue diligently and uninterruptedly to completion, unless temporarily interrupted by circumstances over which the permit holder has no control.

One-fifth of the work above specified to be completed on or before March 21, 1967

The whole of said work to be completed on or before September 23, 1971

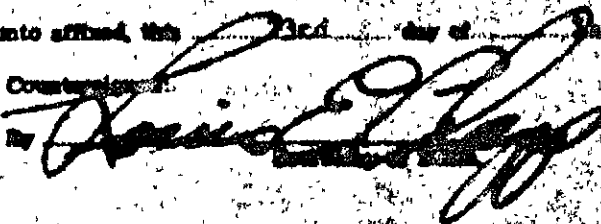
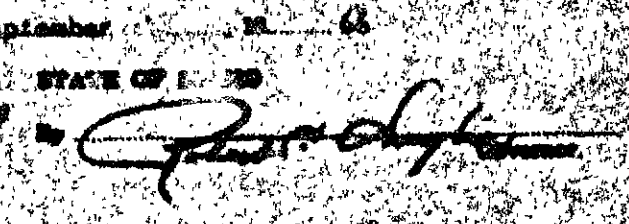
Beneficial use of water appropriated in accordance herewith, to be made on or before September 21, 1977

Witness my hand this 23rd day of September 1966


State Reclamation Engineer

IN TESTIMONY WHEREOF, We, ROBERT E. SMYLYE Governor of the State of Idaho,

and LOUIS E. CLAPP Secretary of State of the State of Idaho, have caused this instrument to be executed in the name of the State of Idaho, and caused the Great Seal of the State of Idaho to be hereunto affixed, this 23rd day of September 1966

Countersigned:
 STATE OF IDAHO


No. <u>33187</u>
PERMIT
Date of first receipt at office of State Reclamation Engineer <u>September 19, 1966 11:00 A.M.</u>
Returned to applicant for correction
Corrected application received
Fees <u>\$5.25</u>
FILING FEES FOR USE PERMIT: For the first Sec. Ft. <u>\$5.00</u> For each additional Sec. Ft. or Fraction Thereof <u>\$0</u>

IN THE JUSTICE'S COURT

OF ARCO PRECINCT, COUNTY OF BUTTE, STATE OF IDAHO

BEFORE GLENN A. PHILLIPS

JUSTICE OF THE PEACE

STATE OF IDAHO,

Plaintiff,

vs.

J.
HERMAN FIELDING

COMPLAINT — CRIMINAL

Defendant

PERSONALLY APPEARED Before me, this 29th day of July
1966, DeVon Jensen, Watermaster of Big Lost River Irrigation District
Moore, of

in the County of Butte, who, being first duly sworn, complains and says

That HERMAN FIELDING

of Moore, Idaho,

on the 25th day of July, 1966,

near Moore, in the County of Butte, and State of Idaho
the said HERMAN FIELDING then and there being, did wrongfully divert
water from waters of Big Lost River in Butte County, State of Idaho,
without the consent of the Watermaster of the District, to his own use
by digging a hole on property belonging to him nearby and adjacent to
the Big Lost River and by pumping water therefrom and using the same
upon lands belonging to the Defendant.

By the aforesaid acts the Defendant impeded the flow of water of the
Big Lost River and deprived other users of Big Lost River Irrigation
District of water rightfully belonging to them and preventing delivery
of their water.

All of which is contrary to the form of the statute in such case made and provided, and against the
peace and dignity of the State of Idaho. Idaho Code, Sections 18-4304 and 18-4310

Said Complaint therefore prays that a warrant may be issued for the arrest of said

HERMAN FIELDING

and that he may be dealt with according to law.

DeVon R. Jensen
Plaintiff.

Subscribed and sworn to before me this 29th day of July, 1966.

Glenn A. Phillips
Justice of the Peace.

IN THE JUSTICE'S COURT

FOR ARCO PRECINCT, BUTTE COUNTY, IDAHOSTATE OF IDAHO, }
County of Butte, } ss.

THE STATE OF IDAHO

To any Sheriff, Constable, Marshal or Policeman of said State, or the County of Butte

A complaint, upon oath, having been this day laid before me by

DeVon Jensen, stating that the crime of

"INTERFERENCE WITH DELIVERY OF WATER"

has been committed in the County of Butte and accusing

HERMAN FIELDING

thereof, you are therefore commanded

to forthwith arrest the above named

HERMAN FIELDING

and

bring him before me forthwith, at my office in said Precinct, in said County of Butte, or in case of my absence or inability to act, before the nearest or most accessible magistrate in this County.

Dated at my office in said Precinct, in said County of Butte, this 29th day of July, A. D. 19 66.

Henry A. Phillips
Justice of the Peace for Said Precinct.

I HEREBY CERTIFY, That I received the within Warrant on the 29th day of July, A. D. 19 66, and served the said Warrant by arresting the within named defendant HERMAN FIELDING and bringing HIM into Court this 5th day of October, A. D. 19 66.

Edw. J. Summers

The within named having been brought before me under this Warrant committed for examination to the of the County of and I have admitted him to bail in the sum of DOLLARS.

Dated this day of, A. D. 19

Justice of the Peace

March 24, 1967

Mr. Herman Fielding
Star Route East
Othello, Washington 99344

Ref: State of Idaho
-vs-
Herman J. Fielding

Dear Mr. Fielding:

In reference to the case of the State of Idaho -vs- Herman J. Fielding, please be advised that this date, the court dismissed the case upon its own initiative and order.

Please find attached hereto the courts check number 2409 in the amount of Two Hundred Dollars (\$200.00) which is the amount of bond posted by you on October 5, 1966. Also enclosed is the resume of the case you left with me for review.

Very truly yours,

Glenn A. Phillips

30 December 1966

Mr. Herman Fielding
Star Route, East
Othello, Washington

Dear Mr. Fielding:

I spent two full days on this problem, but must now begin to prepare for final examinations, so I will be unable to do any more until after January 23rd. This is all my own work, and since we are in vacation, I was unable to contact any of the professors to get their opinion on my conclusions. I am far from an expert on water law, and would not want you to rely too heavily upon my conclusions and opinions. If in reading it you discover that I have misconstrued the facts as you gave them to me, then some of the law may be inapplicable. Also, I am no longer seeing the geologist I told you about, and never had the opportunity to discuss the problem with him. Since there is a lot I do not know about ground waters, I may have missed arguments which would be helpful to you.

As I told you when you were here, in a criminal action the state has the burden of proving that you diverted waters in the charge of the water master, and you have a right, I believe, to demand that it come forth with an official survey of the area if the prosecution is continued. If the prosecution is dropped, and later a civil action arises, in the district court, I.C. 42-1401 provides that before adjudication is made the judge shall request the department of reclamation to examine the River and your drainage system, and the lands being affected by them. Maps and statements prepared by the department are to be accepted into evidence by the district court. The state shall prepare a statement of the costs of the survey, and the judge will apportion the costs among the parties at the trial.

So you see, in either event, the sole responsibility for paying for an expensive survey will not be upon your shoulders.

I do not see how the justice court can make a decision in your case until the State has provided an official survey showing conclusively what the affects of your drainage system actually are. All the case law

Mr. Herman Fielding
Page 2

I found indicated that it will not be assumed that ground waters are tributary to a main channel. And since this is a criminal trial the state bears the burden of proving its contentions rather forcefully.

As I told you before, this does not appear to me to be a simple problem. The issues are complex, as you will be able to tell by reading the memorandum. Matters of legislative intent are involved which have not been decided yet by the Idaho Supreme Court. Matters of geological natures are at issue. I do not think the justice of the peace will want to try the case without the presence of the prosecuting attorney. I did not know enough about the lower court system when we last talked, but I have discovered that I.C. 31-2604(2) provides that it is the duty of the prosecuting attorney to prosecute all criminal actions before the probate and justice courts of his county when called upon by said courts. The case law under the section says that no duty rests upon the prosecutor to try the case unless so called upon. You told me that Mr. Jensen has been unwilling to drop the charges. Unless the court decides to dismiss the case of its own volition, which it has the power to do (I.C. 19-3504), I think the judge may ask the prosecutor to handle the prosecution, rather than just listening to both you and Mr. Jensen informally, and then making a decision. If he does this, I think you may want to reconsider arguing on your own behalf. I understand your desire to represent yourself. But you must think of how it would be. You would be emotionally involved in the proceedings, and convinced that you are right, and this might prevent you from meeting an argument presented by an experienced attorney in such a manner that failure to answer it would make you look very guilty.

Too, if a jury trial is granted, you must remember that what may seem like a persuasive argument to you can be torn down by a competent lawyer to where you look silly before a jury, even if in actuality justice is on your side. A lawyer sitting beside you could see the matter more objectively. He would know the procedural problems which are bound to arise.

If you are convicted, you may not realize the seriousness of having a criminal record--even for only a misdemeanor. And you would have to have an attorney to help you appeal the conviction. He would start with a strike against him.

Turning this matter over to an attorney would not mean that you would be sitting on the sidelines while matters important to you are handled. You can be informed of all the developments and make most of the decisions yourself. Your attorney won't do anything without your consent. You may do as you like, of course, but after researching the problem for two days, I am convinced that sooner or later you are going to need an attorney to help you litigate the issues.

I am sending you two copies of the memorandum, and of this letter, and it may help both you and the justice of the peace if you send him a copy of it. Do not present it to him as a formal pleading, however, for

Mr. Herman Fielding
Page 3

it is certainly not that. But if it will help him to formulate the issues in his mind, it may be to your benefit. It is between you and any attorney which you may decide to hire, whether or not to use the material or not. You may decide to use a different approach to the case altogether.

As I stated above, my finals will be over sometime the week of January 23rd, and if at that time you have not yet settled the case, you or your attorney may want me to make use of the law library here at the University, and I will be glad to do what I have time for. You will probably have questions as to the meaning of parts of the memorandum. I will be glad to answer them over the phone if I can, or if not, to write them down and try to explain them by letter after my finals are over.

Keep in mind that if you send the memorandum down to the justice court, the judge may show it to the prosecuting attorney. While you do not want to suppress the facts, you have no duty to help the prosecutor prepare a case against you, so I really don't know what to say about this. You should have an attorney, Mr. Fielding. For things which you do now may handcuff him later on. The justice of the peace will look out for your rights as much as he can, but such matters as proper trial tactics and which approach to take in defending yourself are not matters which the judge is obligated to advise you on.

Also, if you decide to use the contentions set out in the memorandum, or any of them, remember that you must back them up with admissible evidence. If you had an attorney to help you prepare your case, he would be able to tell you which evidence is relevant and competent, and which evidence is only hearsay or irrelevant. While the rules of evidence are not so strictly enforced at the justice court level--for one thing the justice of the peace need not be a lawyer or legal expert, it is still important that the evidence you present support what you are arguing. You are going to think I have a one-track mind, but I can't emphasize enough how important I think it is that you hire a good lawyer as soon as possible--that is if you really care about your rights to the water you are using. For one thing, a criminal conviction would possibly prejudice your permit from the state, particularly if the conviction was based upon a decision that the water you used was subject to prior appropriation.

Well---I will quit arguing, for I am convinced that someone who has worked under the irrigation system as long as you have must know much about water law which I do not. I will be interested in the outcome.

Sincerely,

Faye Collier

A Memorandum of contentions and authorities arising out of an action brought by the State of Idaho against Mr. Herman Fielding. This is not a formal pleading, nor is it meant to be filed on behalf of Mr. Fielding. It was prepared by Miss Faye Collier, a senior law student at the University of Idaho, for the purpose of helping Mr. Fielding to clarify the issues. To date Mr. Fielding has been acting in his own behalf, and Miss Collier has received no compensation, nor does she expect any. She specifically refused compensation, and has done the preliminary research in the matter of her own volition as an interested observer, rather than in any representative capacity on behalf of Mr. Fielding. She has no objections to the use of the memorandum by the justice court if it will aid in clarifying the issues, but she does not submit it in the capacity of a formal pleading or argument. The memorandum was prepared after discussing the problem with Mr. Fielding, and without the benefit of hearing the opposing arguments. There may be issues in the case which the facts available to her did not raise, and she offers no opinion as to any such issues.

Table of Contents:

Copy of statutes under which defendant charged-----	page 1
Facts as related by Mr. Fielding 10 December 1966-----	page 1
Analysis of the sections under which defendant charged-----	page 2
Issues as raised by the facts available to writer-----	page 4
Contentions in defense of Mr. Fieldings' activities, with analysis of Idaho cases and statutes on subject-----	page 6
Summary-----	page 14

Memorandum dated 29 December 1966

Mr. Fielding has been arrested and charged with committing a misdemeanor under the following two sections of the Idaho Code:

1) I.C. 18-4304 WRONGFUL DIVERSION OF WATER. Any person who without the consent of the water master of the district, diverts any water from a ditch or channel where it has been placed, or caused or left to run by the water master or his deputies or who shuts or opens any ditch, gate or dam, or in any way impedes or increases the flow of water in any stream or ditch diverting water from a stream, while the same is under the charge of the water master, or who cuts away any embankment of a stream, whereby the water of such stream is diverted, or breaks, injures or removes any gate, flume or other device used for the equitable distribution of the water of such stream by the water master, shall be guilty of a misdemeanor.

2) I.C. 18-4310 NEGLECT TO DELIVER WATER--INTERFERENCE WITH DELIVERY. Any superintendent or any person having control or charge of the said ditch, canal or conduit, who shall wilfully neglect or refuse to deliver water as provided in Ch 9 of Title 42, or person or persons who shall prevent or interfere with the proper delivery of water to the person or persons having a right thereto, shall be guilty of a misdemeanor; and the owner or owners of such ditch, canal or conduit shall be liable in damages to the person or persons deprived of the use of water to which they were entitled as provided in said Ch 9.

A cross-reference section is I.C. 18-113 PUNISHMENT FOR A MISDEMEANOR. Except where a different punishment is provided, this section in effect provides that misdemeanors are punishable by imprisonment in the county jail not exceeding 6 months, or by a fine not exceeding \$300 or both. The imprisonment and fine provisions are maximal--the actual amounts being set by the justice of the peace, in these amounts or less. Evidently, the offense set out in I.C. 18-4304 (1 above), is punishable under I.C. 18-113, while the offense set out in section 18-4310 is punishable only by the damages provision, in that "a different punishment is provided."

FACTS

The charges arose out of the following facts:

Mr. Fielding owns about 100 acres in the Big Lost River area of Idaho. Some 20 acres of this land is swampy, and has been for years unfit for agriculture. He decided to drain the swamp land into the Lost River by digging drainage ditches.

He had talked to DeVon Jensen, the water master, about this a year or more before this time, but Mr. Jensen advised him not to dig the drain. Mr. Fielding felt at that time that rather than having reasons connected with his official capacity, Jensen was afraid that seepage from the swamplands might be benefiting his own lands located below Fieldings, and if the seepage were cut off, Jensen's lands might lose some water. Mr. Fielding did not understand the warnings to be made in an official capacity.

On or about 18 July 1966, at which date Jensen and Mr. Higgenson, an Idaho State Reclamation Engineer, visited the farm, the proposed drainage ditch was about half completed. Mr. Fielding was not present--being at the time in Washington State, where he resides, but his son, Max, was in charge of the digging. Mr. Jensen evidently told Max at this time that he would be taking state water if he drained the land. Max asked Mr. Jensen if he could dig the drain further from the River--the words he used were probably at the "top of the field." Mr. Jensen told him in effect: "You'll get less static if you dig further from the River."

At this time a lot of water was draining off the land and into the Lost River.

Max then dug a hole at the top of the field, into which the water began to drain. The hole was between four and five feet deep. The water was draining off the field and into this hole.

On Friday, 22 July 1966, a sprinkler system which had been ordered arrived, and pipes were laid out to pump from this hole. The pumping did not begin until 25 July, and it continued through the 29th inclusive--a period of five days. During this five-day period Mr. Jensen warned Max again to discontinue pumping and using the water.

On 29 July, Defendant, Mr. Fielding, had a telephone conversation with Max, and upon hearing of the warnings, advised Max to call Mr. Solberg, a state senator and local attorney, to get some advice. Mr. Solberg told the Fieldings that under the circumstances it would be best to discontinue pumping without first buying water. Upon learning this--also on the 29th, Mr. Fielding immediately told Max to stop pumping. No more water was pumped at all until August 2d, after the Fieldings had arranged to purchase water. Mr. Fieldings has records showing the amount of water purchased and the amount he pumped. He claims he pumped only purchased water after August 2d, and was using no water from the drainage system, after 29 July. He made application to the State Reclamation Department for a permit to appropriate water, which permit was approved 23 September 1966. Only after this permit was received did he use any more water from the drainage system. The permit for beneficial use has not yet been applied for.

The warrant of arrest is dated 29 July 1966. It was not served upon defendant until 5 October 1966.

THE SPECIFIC CHARGE

As Mr. Fielding understands the matter, Mr. Jensen is claiming that by draining the field, Mr. Fielding diverted state waters.

A letter from the Department of Reclamation written to the Justice of the Peace who will be hearing the matter, stated that it will be a matter of proof whether defendant intercepted waters naturally tributary

to the River, or whether he specifically diverted waters which were previously consumed on his property due to the high water table. The state did not in this letter take an official stand on the matter. However, sometime prior to 25 July 1966, and probably prior to 18 July 1966, Max called the State Reclamation Department, and talked with an official there by the name of Mr. McEldowney (spelling?) who told him that he could dig a ditch to drain a swamp and pump the water back onto the farm, without a permit. This, of course, is what the Fieldings claim was actually done.

In view of the facts as set out above, and the sections of the Idaho Code under which Mr. Fielding is charged, only certain portions of the sections could possibly apply to the case. These are set out below, paraphrased and with emphasis added:

1. I.C. 18-4304. WRONGFUL DIVERSION OF WATER. Any person who without the consent of the water master of the district diverts any water from a ditch or channel where it has been placed...by the water master...or who impedes or increases the flow of water in any stream or ditch...while the same is under the charge of the water master...whereby the water of such stream is diverted...shall be guilty of a misdemeanor.

In other words, to be guilty under this section defendant must be proved to have (1) diverted water from a ditch or channel where it has been placed by the water master, or (2) impede or increase the flow of water in such ditch or channel so that the waters of the channel are diverted, and (3) all this without consent of the water master.

Mr. Jensen is apparently contending that the water level of the Lost River itself was lowered some one and one-half feet during this five day period when the pumps were used. He necessarily contends that Mr. Fielding tapped an underground channel naturally tributary to the river. Otherwise, Mr. Fielding by draining the swamplands, could not possibly have violated this provision of the law. 2.

2. I.C. 18-4310 INTERFERENCE WITH DELIVERY. Any...person... who shall prevent or interfere with the proper delivery of water to the person or persons having a right thereto shall be guilty of a misdemeanor; and the owner...of such ditch...shall be liable in damages to the person or persons deprived of the use of water to which they were entitled as provided in Ch 9 of Title 42.

Mr. Jensen must be contending that Mr. Fielding by draining his swamplands has interfered with the delivery of water through the River, thus depriving persons below who are entitled to water. The intent of this section is obviously to punish owners of ditches and canals if they obstruct or divert water from the canals to the damage of those below them, and only in a questionably vague

sense can it be said to apply to Mr. Fielding's activities. He in no way obstructed or diverted water from any ditch or canal or conduit through which the water was sent to persons below him. If he in any way obstructed the flow of the River, it was by striking a natural underground channel.

The elements which must be proven to convict Mr. Fielding under this section are as follows: (1) that the section is intended to cover indirect interference of natural channels--that is, that it is not meant to cover interferences with flows of ditches which directly supply water to users below. Note the wording...the first portion of the section refers to superintendents of ditches, canals and conduits who wilfully refuse to deliver water as provided in Ch 9. The second portion of the section includes persons other than superintendents who prevent the proper delivery of water. But no other ditches, canals or conduits are mentioned, and the implication is that the same conduits, canals and ditches mentioned in the first portion are meant. Note that the damages portion of the section makes OWNERS OF SUCH DITCHES OR CANALS liable in damages. Thus, the defendant must (2) be shown to have interfered with a ditch or canal supplying water to users below him. (3) He must have deprived such users of water to which they were entitled to, by which they suffered some measurable damages. (4) The specific persons so entitled to water from the River, must be specified, as must the amount of water they were deprived of, and the exact amount of damages they suffered. (5) It must be shown that these injuries were caused by the defendant's activities of draining the land.

MAIN ISSUES

The issues resolve themselves:

- (1) Did Mr. Fielding have the consent, implied or in fact, of Mr. Jensen to dig the well at the "top of the field?" *Did State Council*
- (2) Did Mr. Fielding divert any water from a ditch or channel in which it had been placed by the water master?
- (3) Did Mr. Fielding impede the flow or increase the flow of the Lost River in such a manner that the waters of the River were diverted? In other words, BY DRAINING HIS SWAMP LAND, DID MR. FIELDING STRIKE A NATURAL UNDERGROUND TRIBUTARY OF THE LOST RIVER, OR WAS HE IN FACT ONLY DIVERTING WATERS WHICH WERE PREVIOUSLY ABSORBED BY HIS SOIL DUE TO THE HIGH WATER TABLE?
- (4) Did the waters of the Lost River in fact recede 1½-feet, as claimed by Mr. Jensen, during the five-day period 25 to 29 July, inclusive? If so, were there other factors which could have caused or contributed to this drop? Can it be shown that by draining his land Mr. Fielding was the sole or major cause of the drop?

(5) Was it the intent of the legislature to control such activities as draining swamplands, by section 18-4310, or did it mean to cover only direct interference with canals transporting waters to users below? If not the latter, then why have a section which is merely repetitive of 18-4304? In view of the fact that the misdemeanor is punishable by damages to those injured, is it not more likely that a different offense from 18-4304 is set out? Punitive damages are generally used to punish wilful wrongdoing. Is it likely that the legislature intended to also punish innocent indirect interferences with streams by attempts to drain swamplands?

(6) Who was damaged by losing water to which he was entitled, due to Mr. Fielding's activities? In what amount?

(7) Does the fact that the State Reclamation Department subsequently granted Mr. Fielding a permit to appropriate and begin construction of the drainage system make it inconsistent to charge him with a crime for these same activities? If by using waters for five days before obtaining such a permit, Mr. Fielding has broken any laws, are those laws the ones set out in the sections under which he was charged? Is a criminal trial the proper method of adjudication of these water rights? Would it not be better to let the State Reclamation Department determine the issues regarding the source of the water used by Mr. Fielding, in its civil procedures, which are subject to further civil judicial review by higher courts?

(8) Mr. Fielding's activities are authorized by I.C. 42-226, 42-228 et. seq., which sections also place ground waters under the exclusive jurisdiction of the state reclamation department. Does a criminal prosecution such as this one conflict with the letter and spirit of these sections in such a manner as to deprive him of due process?

CONTENTIONS IN DEFENSE OF MR. FIELDINGS ACTIVITIES

Mr. Fielding has been charged with criminal activity under the Laws of the State of Idaho. He makes the following contentions in support of his plea of not guilty:

1. MR. FIELDING CLAIMS THAT HE HAD THE IMPLIED CONSENT OF BOTH MR. JENSEN AND THE STATE RECLAMATION DEPARTMENT TO DIG THE WELL AT THE TOP OF THE FIELD.

On or about 18 July 1966, Mr. Jensen and Mr. Higgenson visited the site of the drainage system, and told Max that he would receive "less static" if he dug the hole for draining further from the River. Max acted in accordance with these instructions and dug the ditch and hole for drainage at the top of the field. Although Mr. Jensen had for about a year been expressing reluctance about the drainage system, the Fieldings did not understand his reluctance to be in his official capacity as water master until July 18th, when he told Max he would be interfering with state water if he dug too close to the river. Max assumed he was digging the hole at the top of the field with the consent of these two gentlemen--Mr. Jensen and the state reclamation engineer, Mr. Higgenson.

At the time of the visit, water was draining into the River from the ditch. After Max dug the four-foot deep hole at the top of the field water began also to drain into that hole.

As soon as Mr. Fielding learned of Jensen's objections to the pumping from the hole for irrigation purposes, he ordered Max to discontinue the pumping. This was five days later. Mr. Fielding had been on a camping trip with the church youth group with which he is active, and didn't learn of the actual warning regarding state water until July 29th, on which day he ceased to pump the water.

At no time after the water master's expression of disapproval reached him, did Mr. Fielding pump water from the hole for use in irrigation, except such waters as he purchased from other farmers in the area. He can produce records to show the amount of water so purchased and consumed.

I.C. 18-4304 provides that anyone who WITHOUT THE CONSENT OF THE WATER MASTER diverts water under the control of the water master has committed a misdemeanor. As soon as Mr. Fielding learned of Mr. Jensen's attitude he ceased to use the water--leaving for later determination the issue of who had a right to the water. He at all times used the utmost good faith in draining the soil and using the water. Only after his permit to appropriate was approved by the state reclamation department did he use any of this drainage water for irrigation purposes.

2. MR. FIELDING CLAIMS HE HAD CONSENT FROM THE STATE RECLAMATION DEPARTMENT TO DRAIN THE SWAMPLANDS AND TO USE THE WATER SO DERIVED TO IRRIGATE HIS FARMLANDS, BEFORE HE BEGAN TO USE THE WATER IN THIS MANNER. THIS CONSENT WAS ORALLY GIVEN BY TELEPHONE TO MAX. LATER THE CONSENT WAS FURTHER CONFIRMED BY ISSUANCE OF A PERMIT TO APPROPRIATE. IT WOULD THEREFORE BE INCONSISTENT FOR THE STATE TO PROSECUTE MR. FIELDING UNDER ITS CRIMINAL STATUTES FOR THESE ACTIVITIES.

Max Fielding conferred with the State Reclamation Department by telephone before July 25, 1966, and probably even before July 18, 1966, speaking with Mr. McEldowney (spelling?), a clerk in the department, who told him that it was all right to drain swamplands and to use that water for irrigation purposes without a permit. After the confusion arose over the incidents of July 25th through the 29th, Mr. Fielding applied for a permit to appropriate, which the state approved on 25 September 1966. Such permits, of course, give Mr. Fielding no property rights as such, but they do give him the right to acquire property rights by constructing and use of the drainage system. As far as Mr. Fielding knows, there has never been an adjudication of water rights concerning this water. He does not have available to him at this time any survey maps or reports which the state may have made concerning the water he is draining from his lands.

There are two possibilities as to the ownership of the waters:

(1) These waters may be privately owned by Mr. Fielding, in that they derive from percolation, or high water tables, rather than from a natural tributary to the Lost River. In such event, the first consent from the state by telephone conversation should preclude it from prosecuting him under these sections. Also, if these are indeed privately owned waters, Mr. Fielding as owner of the land has the right to use them.

The state sets out its laws as to public waters in several sections of the Idaho Code, set out below along with annotations of case law under the provisions:

I.C. 42-101 NATURE OF PROPERTY IN WATER. This section provides that water is essential to the industrial prosperity of the state, and that agriculture depends upon the just apportionment of water. The control of public waters is in the state, which in providing for its use shall equally guard all the various interests involved. "All the waters of the state when flowing in their natural channels (emphasis added), including the waters of all natural springs and lakes within the boundaries are declared to be the property of the state....the right to use of any waters of the state for useful or beneficial purposes is recognized and confirmed...."

It has been held that this section does not apply to waste water from the irrigation systems, even though this waste water may be flowing in a natural channel or stream. Bennett v. Twin Falls North Side Land Co., 27 Idaho 643, 150 Pac. 336 (). If by draining the swamplands, Mr. Fielding utilized waste waters from the River, he used no public waters, and Mr. Jensen had no authority over the waters. The River is used for irrigation purposes, and water may percolate or seep into adjoining lands as waste water. If the waters do so percolate, they may be used by the landowner.

It has also been held that this section does not include percolating waters. Public Utilities Comm. v. Natatorium Co., 36 Idaho 287, 211 Pac. 533 (). Percolating waters are defined by the textwriters and courts as those waters percolating or seeping through the soil which form no part of an underground subterranean stream in a natural channel. Such waters are often the cause of swampy areas.

Water percolating up through the soil from an underground stream is considered seepage, rather than part of the stream itself. It becomes private water. Whether the swamp condition resulted from percolation from the main channel of the river, or from an underground tributary of the main channel, or from irrigation wastes which seeped down from lands above this field, Mr. Fielding contends that such waste waters were his private property. The case law supports this contention.

See: Pool v. Olaveson, 82 Idaho 496, 356 P. 2d 61 (1960) This case involved the right of the defendant to use a drainage system set up by the plaintiff to divert defendant's waste water from irrigation back to the main channel. Plaintiff's land was very swampy, due to the high water table which resulted when other users operated the headgate. This made farming difficult, so Plaintiff constructed a drainage system, which he connected up with the main channel, so that his soil did not have to depend only upon seepage for natural drainage. Defendant also had waste water, and began to use plaintiff's drainage system for his water too. In holding for the defendant, the Idaho Supreme Court stated:

"The policy of the state is to secure the maximum use and benefit and least wasteful use of its water resources (citing cases). Under penalty of misdemeanor statute defendant was obligated not to waste waters of any stream used for irrigation...."

The plaintiff's drainage system was found to be part of the stream itself. A stream does not lose its attributes as a water course merely because some of its channel may have been artificially

created. In this case springs arose in the area of defendant's land, and these springs were tributary to the main course of the creek. Waste waters arising from these tributaries were found to be waste waters from irrigation. Reclaiming such waters was found to be within the express policy of the state

Although the Poole case was founded upon evidence which showed that the waters percolated up from an actual tributary of the main channel, and although it has not yet been determined in Mr. Fielding's case the exact source of the percolated waters in his soil, the case has strong persuasive powers on behalf of Mr. Fielding.

There is a strong policy to prevent wasting of waters. Mr. Fielding drained the waters into the Lost River except for the brief period when he irrigated his crops with the drainage water. He was definitely within his rights in so draining into the river. This drainage into the river will be important later in the argument.

Until percolated waters actually seep into a natural channel they do not become public waters. Nordick v. Sorenson, 81 Idaho 117, 338 P. 2d 766 (1959). If by draining off the swamplands and thus diverting the waters from a natural course of seeping into the main channel, or seeping onto lands below Mr. Fieldings, he deprived anyone below him of water they had been receiving before, such lower landowners have no cause of action. Use of seepage from the waste waters of another is subject to the right of the owner to cease wasting it and put it to beneficial use. Colthrop v. Mt. Home Irr. D., 65 Idaho 173, 157 P. 2d 1005 (1945).

IN SUMMARY, IF THE WATERS ARE PRIVATELY OWNED, IN THAT THEIR SOURCE IS PERCOLATION FROM ONE OF SEVERAL SOURCES, MR. JENSEN AS WATER MASTER HAS NO AUTHORITY OVER THEM. THEY ARE NOT PUBLIC WATERS. NEITHER WOULD ANY LANDOWNER BELOW MR. FIELDING HAVE A CIVIL REMEDY IN DAMAGES IF BY USING HIS OWN WASTE WATER HE DEPRIVED THEM OF SEEPAGE OR WATER FROM ANOTHER SOURCE. IF MR. FIELDING WAS USING HIS OWN WATER, OF COURSE, THERE IS NO CRIME COMMITTED BY HIM.

(2) The second possibility as to ownership of these waters is that they may be public waters owned by the state.

Ordinarily the burden of proving ownership of water is upon the one who appropriated it. However, since Mr. Fielding is charged with a crime, the burden is upon the state to prove that the waters were public waters. The state must prove, in order to convict Mr. Fielding, that he tapped an underground tributary when he dug the hole four to five feet deep at the top of the field. He must have

directly tapped the tributary in order to have diverted public waters. Many years ago the Supreme Court of Idaho decided, or at least implied, in the case of LeQuime v. Chambers, 15 Idaho 405, 98 Pac. 415 that even percolating waters could be public waters if they gravitated to a certain point and there constituted a volume of water known and designated as a stream. But this particular element of LeQuime has been undermined by more recent and better reasoned cases, in which the courts had the advantage of more modern geological surveying techniques.

A good example of such a recent case is Nordick v. Sorenson, cited above, in which the court reasoned as follows:

"There was no evidence beyond mere conjecture that the waters of springs arising on defendant's land formed a natural stream flowing into the natural channel of the creek. Evidence at most showed that the water from the springs if unmolested or not interfered with by the man-made ditch originally spread out upon the land rendering it somewhat swampy, and that if any waters of those springs found their way into the natural channel of the creek it was by way of underground seepage. Any waters seeping into the creek are not measured and have never been accounted for. The finding of the lower court that the waters of these springs were tributary was therefore erroneous (emphasis supplied) for it rested upon mere inference or conjecture and not upon established fact. An inference resting upon an inference is not proof, and the burden of proof cannot be so sustained."

The federal courts are in accord. In United States v. Hege, 276 Fed. 41 (D. Idaho 1921), a case involving priorities in seepage waste from an irrigation project, the government attempted to demand that seepage waters from the irrigation wastes must be allowed to go to the main channel of the river. Defendant had diverted some of these waste waters onto his crops. The wastes actually ran down a dry creek bed during the irrigation season directly into the main channel. The court found that the creek bed was naturally tributary to the river, although dry most of the year. The government contended that this was necessary in order that there might remain at its point of diversion higher up the river, an amount equal to what would have seeped into the river at the lower level. The federal district court found this contention untenable. Seepage from irrigated lands above defendants did not constitute flow in a natural channel. These wastes seeped into the dry creek bed, and from there directly into the river, and yet the court still found that these were not public waters, even after they reached the tributary.

Unless Mr. Fielding tapped directly an underground stream, he cannot be said to have appropriated public waters by draining his lands. 14-4304 must necessarily refer to public waters only. For it has long been recognized in Idaho that there is nothing wrong with impounding waste waters upon one's own land. Public Utilities Comm. v. Natatorium Co., 36 Idaho 287, 211 Pac. 533 (1922)

However, even if Mr. Fielding did accidentally tap a natural channel when he dug the four-foot deep hole, the state's action in (1) allowing or impliedly consenting to the digging of the hole where it was--by the presence of its reclamation engineer, Mr. Higgenson when Max asked if he could dig the hole up there; (2) informing Max Fielding that he could drain swampland and re-use the water without a permit; and (3) granting a permit to appropriate to Mr. Fielding on 23 September 1966 should preclude it from bringing a criminal action against Mr. Fielding under either of the sections by which he is charged.

At the very least, any criminal action should await determination by the state as to the source of the water it has granted the permit to appropriate against. The state should be given time to conduct geological surveys in the area if it has not already done so. For it must prove every element of the crime against Mr. Fielding, and it must bear the expense of such a survey in order to convict him. As was stated in the Sorenson case, cited above, a finding that waters are tributary cannot rest upon conjecture alone.

If Mr. Fielding has broken any laws by beneficially using any waters from the drainage system, it must be very certain that these laws are the sections under which he is charged. Putting public waters to beneficial use before a permit is granted is a very different thing from diverting waters which are actually in the charge of the water master. It must be conclusively shown that even if Mr. Fielding did directly tap an underground natural channel, that these waters were under the charge of the water master, Mr. Jensen. A criminal record is a serious burden for a man to carry for the rest of his life, and due process demands that offenses be precisely defined and that convictions be for activities which fit the letter and spirit of the statutes.

The provisions of several relatively new sections to the Idaho Code may be relevant. I.C. 42-226 provides that ground waters (all waters under the surface of the ground, whatever may be the geological structure under which it is standing or moving) are public waters. However, the new provisions expressly exclude drilling and use of wells for drainage purposes, in section 42-228: "The opening and excavation of wells and the withdrawal of water therefrom for the sole purpose of improving or preserving the utility of lands by draining them shall not be forbidden or governed by this act, and likewise there shall be excepted from the provisions of this act the excavation and opening of wells and withdrawal of water therefrom...for the sole purpose of recovering ground water resulting from irrigation...for further use on or drainage of lands to which the established water rights of the parties constructing the wells are appurtenant." (emphasis supplied)

3. HENCE WE SEE THAT BY THIS SECTION THE LEGISLATURE HAS EXPRESSLY AUTHORIZED THE VERY ACTIVITIES WHICH THE STATE NOW ATTEMPTS TO PROSECUTE AS CRIMINAL. All waters below the surface are ground waters subject to state control, but expressly excepted are waters drained from the soil for the purpose of improving the utility of such soil; likewise excepted from wrongful activity is the use of such waters by the one constructing the drainage system for further irrigation of his lands. 42-237g *misdeemeanor penalties*

4. MR. FIELDING CONTENTS THAT HE USED NO WATERS UNDER THE CONTROL OR AUTHORITY OF THE WATER MASTER. The water master is in charge of ditches, canals and reservoirs in his district, but in I.C. 42-231, another of the new provisions mentioned above, it is provided that "It shall be the duty of the state reclamation engineer to control the appropriation and use of the ground water of this state." Mr. Jensen has no interest in the waters beneath the surface of the earth, in his official capacity as water master. Section 42-606 sets out the duties of the water master. He is to distribute waters of public streams, in accordance with adjudicated rights. Even as to waters under his control, he has no interest in them, for he is only an administrative officer. Nampa & Meridian Irr. D. v. Barclay, 56 Idaho 13, 47 P. 2d 916 (1935) If Mr. Jensen has brought this prosecution on the assumption that he had some control over the waters used by Mr. Fielding, the charges should be dropped. Unless Mr. Fielding has diverted waters under the charge of the water master the provisions of I.C. 18-4304 do not apply.

5. IF MR. JENSEN PURPORTS TO BRING THESE CHARGES UNDER SECTION 18-4310 ALONE, IN HIS CAPACITY AS A PRIVATE CITIZEN DAMAGED BY A WRONGFUL DIVERSION OF PUBLIC WATERS, MR. FIELDING CLAIMS THAT THE CHARGES SHOULD BE DROPPED, SINCE THE WATERS HE USED ARE SPECIFICALLY EXEMPTED FROM PUBLIC WATERS BY SECTION 42-228. And, of course, if Mr. Jensen in his private capacity as a landowner situated below Mr. Fielding, he has no cause of action if he is damaged by Mr. Fielding's act of putting his waste waters to use. Colthrop v. Mt. Home Irrig. D., 66 Idaho 173, 157 P. 2d 1005 (1945). If Mr. Jensen desires to adjudicate priority issues, his remedy is a civil action under the auspices of I.C. 42-237b, or through the courts in a non-administrative proceeding.

6. MR. FIELDING CONTENTS THAT EVEN IF A GEOLOGICAL SURVEY SHOULD REVEAL THAT THE WELL FROM WHICH HE PUMPED WATERS DURING THE FIVE DAY PERIOD WAS A DIRECT TAP UPON A NATURAL UNDERGROUND TRIBUTARY OF THE RIVER, THE WATERS WHICH HE PUMPED OFF THE LAND DIRECTLY INTO THE RIVER BOTH BEFORE AND AFTER THIS FIVE DAY PERIOD INCREASED THE FLOW OF THE RIVER, AND THAT HE WAS ENTITLED TO USE THE WATERS EVEN

FROM SUCH A TRIBUTARY FOR HIS OWN BENEFIT TO THE EXTENT OF THE AMOUNT BY WHICH HE INCREASED THE FLOW OF THE RIVER BY SUCH DRAINAGE.

The case law in Idaho is in accord with this contention, and has been from early times.

Reno v. Richards, 32 Idaho 1, 178 Pac. 81 (1918), for example, involved a suit for adjudication of water rights. Birch Creek is a stream in Lemhi County, which at the time of the decision flowed in a southeasterly direction for approximately 30 miles before it gradually sank into the ground. One of the defendants cleaned out Pass Creek, a tributary to Birch Creek, and removed various obstacles, causing an increase in the flow of the waters of the tributary. Much of Pass Creek was lost by percolation and seepage before the channel was improved. Even though the seepage might eventually reach the river, the improvements greatly speeded its course. Defendant then claimed a right to take out of Birch Creek an amount approximately equivalent to the amount he had caused to flow into it, and this right was upheld. The court recognized the validity of having a policy which would give incentive to prevent waste and inefficiency in the water systems of the state.

It is logical to surmise that Mr. Fielding increased the efficiency of seepage into the main stream, and thus increased its flow. He pumped water into the river for a longer period than he pumped water out of his well. Even if Mr. Jensen is able to prove that (1) Mr. Fielding diverted waters in his charge; and (2) that thereby the river receded appreciably to the damage of those entitled to its waters, Mr. Fielding was entitled to these waters to the extent he pumped water into the river. If Mr. Jensen's measurements are so precise as to prove beyond reasonable doubt that Mr. Fielding's activities during July 25 through 29th lowered the level of the river, his records must also show an increase in the level due to amounts pumped in by Mr. Fielding.

Section 42-606 of the Code provides that water masters shall make reports to the state department of reclamation containing such information as the amount of water necessary to supply all of the ditches, canals and reservoirs in the district; the amount of water actually coming into the district to supply such conduits; whether such supply is on the increase or decrease; what ditches, canals and reservoirs are at times without their proper supply, etc. These reports are filed by the state department, and should be available to Mr. Fielding for examination. A Mr. Peirson, the water master before Mr. Jensen, has indicated to Mr. Fielding that he believes that such a drainage system as his could make no appreciable difference in the level of the river, and that there must have been other factors to cause a drop of 1½ feet, if such a drop actually occurred.

Since the doctrine of riparian interests is not recognized in Idaho, where rather the so-called appropriation doctrine (see "Research in Idaho Water Law, by J.F. Crowwell, privately published materials) even one who has rights in the flow of a stream is not entitled to the full flow; he is entitled to a cause of action only in that he suffered actual injury. Even if the provisions of I.C. 18-4310 are found to apply to Mr. Fielding's activities, unless named parties suffered injuries in measurable amounts due to his diversion of their water, Mr. Fielding cannot be convicted under the terms of that section.

SUMMARY

In Summary, Mr. Fielding contends that the charges brought against him should be dismissed, either by consent of Mr. Jensen, or upon his own motion under the provisions of I.C. 19-3504, for the following reasons:

1. Mr. Fielding had the implied consent of Mr. Jensen and Mr. Higgenson in their official capacities to dig the well at the top of the field. The State should be bound by the acts of its agents.
2. When Mr. Fielding found that he did not have the actual consent of Mr. Jensen in his official capacity, he ceased his pumping operations, leaving for future resolution the ownership of the water.
3. Mr. Fielding had oral consent from the state reclamation department to conduct the drainage operations without a permit; he later acquired the permit to appropriate which he now holds. Since the state department of reclamation has actual control over ground waters, this consent should bar the state from prosecuting Mr. Fielding under the two sections of the Idaho Code set out on page 1 above.
4. Ground waters in the state, as distinguished from waters in ditches, canals and streams in the irrigation district, are not under the control of the water master. Rather by statute they are under the control of the state reclamation department. Statute also provides for misdemeanor penalty for violating provisions of the new law, but specifically excepts Mr. Fielding's activities from the law. Mr. Fielding cannot be punished under the misdemeanor statute covering ground waters. It would be a denial of due process to punish him under the misdemeanor statute covering waters under control of the water master, since he did not disturb such waters.
5. If the waters used by Mr. Fielding were private as opposed to public waters, they were not under the charge of the water master and he cannot be prosecuted under these sections, even if there was some indirect effect upon the main channel.
6. If the waters used by Mr. Fielding were public in the sense that the state has control over their use, he was entitled to them, since he had been before and continued to afterwards, pump extra water off the swamplands into the river itself.

8. Even if the waters used by Mr. Fielding were public waters, since Mr. Jensen has no authority over them in his official capacity, if he contends some private right in the waters, his remedy is a civil action to attempt to keep Mr. Fielding from getting a permit for beneficial use. Mr. Fielding would welcome a chance to resolve the issues in a proper manner, which would keep his record clear of a criminal conviction.

9. Specifically, the requirements of the two sections under which Mr. Fielding is charged are not met. He cannot be convicted under Section 18-4304, since he did not divert water from a channel where it had been placed by the water master; nor did he impede the flow of a stream under the charge of the water master. He cannot be convicted under Section 14-4310 in that that section is intended to cover wilful obstruction of a canal, ditch or stream in a direct manner so as to prevent users below from receiving their rightful waters. It cannot be meant to cover indirect obstructions caused by ceasing to waste irrigation surpluses or privately owned ground waters--even though those ground waters are controlled by the state. For the ground water provisions directly authorize Mr. Fielding's use of the water.

10. FINALLY, THE POLICY OF THE STATE IS TO ENCOURAGE DRAINAGE AND BETTER UTILITY OF FARMLANDS. MR. FIELDING WAS ABLE TO PLOW THE DRAINED ACRES FOR THE FIRST TIME IN THE FALL OF 1966 AS A DIRECT RESULT OF THE DRAINAGE OPERATIONS. This is further indication that the waters he diverted were percolated and waste waters, for by such drainage the land became usable. Mr. Fielding has owned this land for more than 20 years, and it had been unusable swamp until the fall of 1966. Heavy plowing equipment would bog down in its soggy wastelands. Had he tapped an underground natural tributary, it is doubtful that the improvement in the soil would have been so spectacular. To twist and construe the provisions of sections 18-4304 and 18-4310 to punish such constructive efforts would be a gross inconsistency and injustice.

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

RECEIVED

SEP 22 1977

Department of Water Resources
Eastern District Office

Permit No. 34-2493

Comes now Robert K. Moss 554-4302 of (address) _____

Route #1, Box 121-A, Moore, Idaho 83255, 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. 34-2493, and requests that the permit and permit map be changed as follows:

1. Point of diversion: SW $\frac{1}{4}$ SW $\frac{1}{4}$, Sec. 33 Twp. 6N
Rge. 26E, B.M., County of Butte. Other points of diversion:

2. Period and nature of use: (irrigation, domestic, stockwatering, industrial, etc.)
NO CHANGE

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

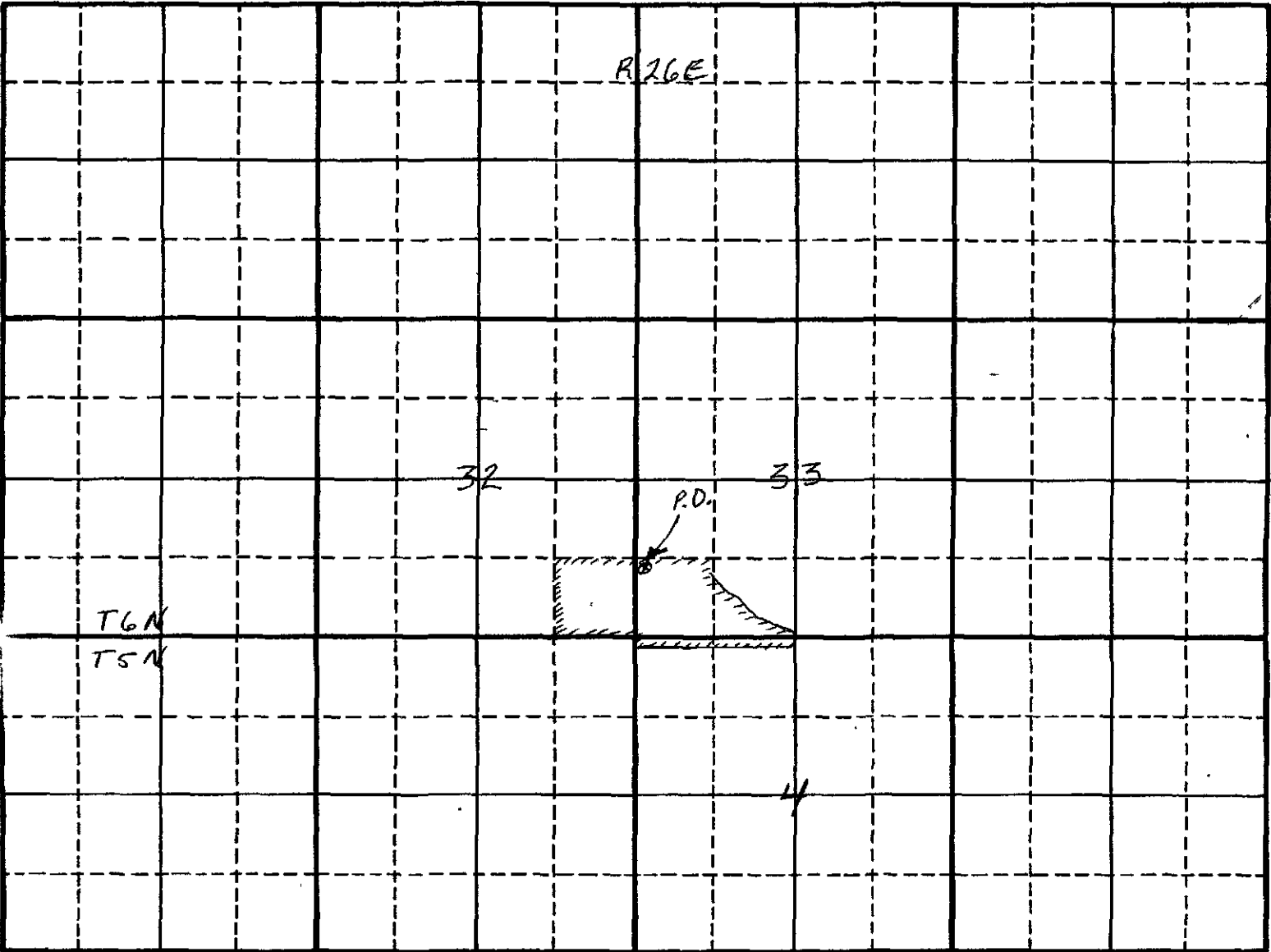
3. Place of use or land to be irrigated:

[illegible]

Total number of acres to be irrigated	100
---------------------------------------	-----

MICROFILMED

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 holders own risk.

Signed at Idaho Falls, this 22nd day of Sept., 19 77.
Robert K. Dunn
 (signature)

ACTION OF THE DIRECTOR, DEPARTMENT OF WATER RESOURCES

I, A. KENNETH DUNN, Director of the Department of Water Resources hereby Approve the above Application for Amendment for Permit No. 33187/34-2493.

Witness my hand this _____ day of _____, 19 _____.

 Director

Robert K. Moss
34-2493

97J-B3

29 28
32 33

A. 378
W. Terry

A. 24
J. Mankin

Robert Moss
Mankin

Bro. 48

D 48

additional
920
being irrigated
by these
are lands
not reclaimed
by the dam

133



Red = Channel
Green = Pump & main line
Lines = Land irrigated

34-2493

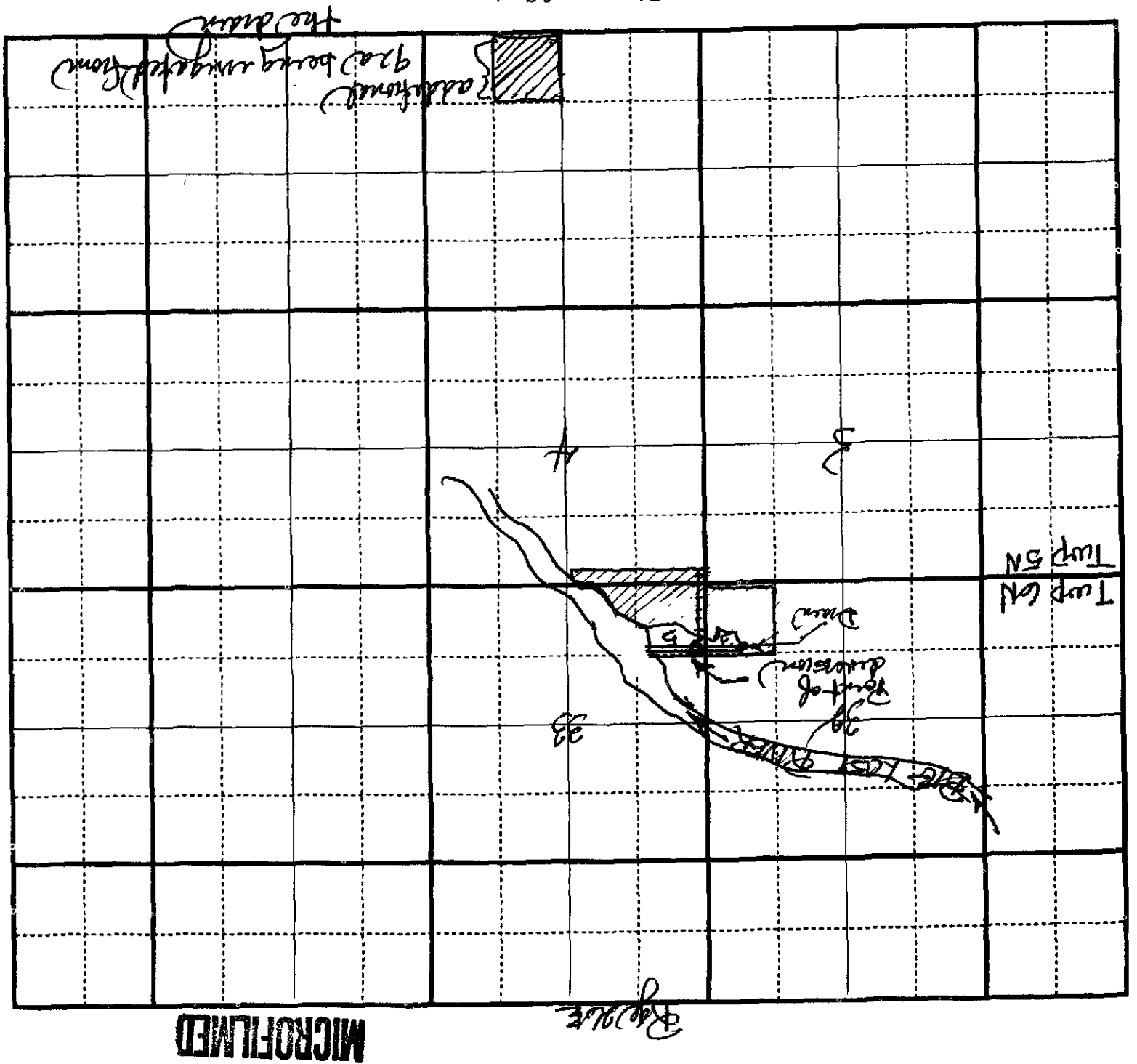
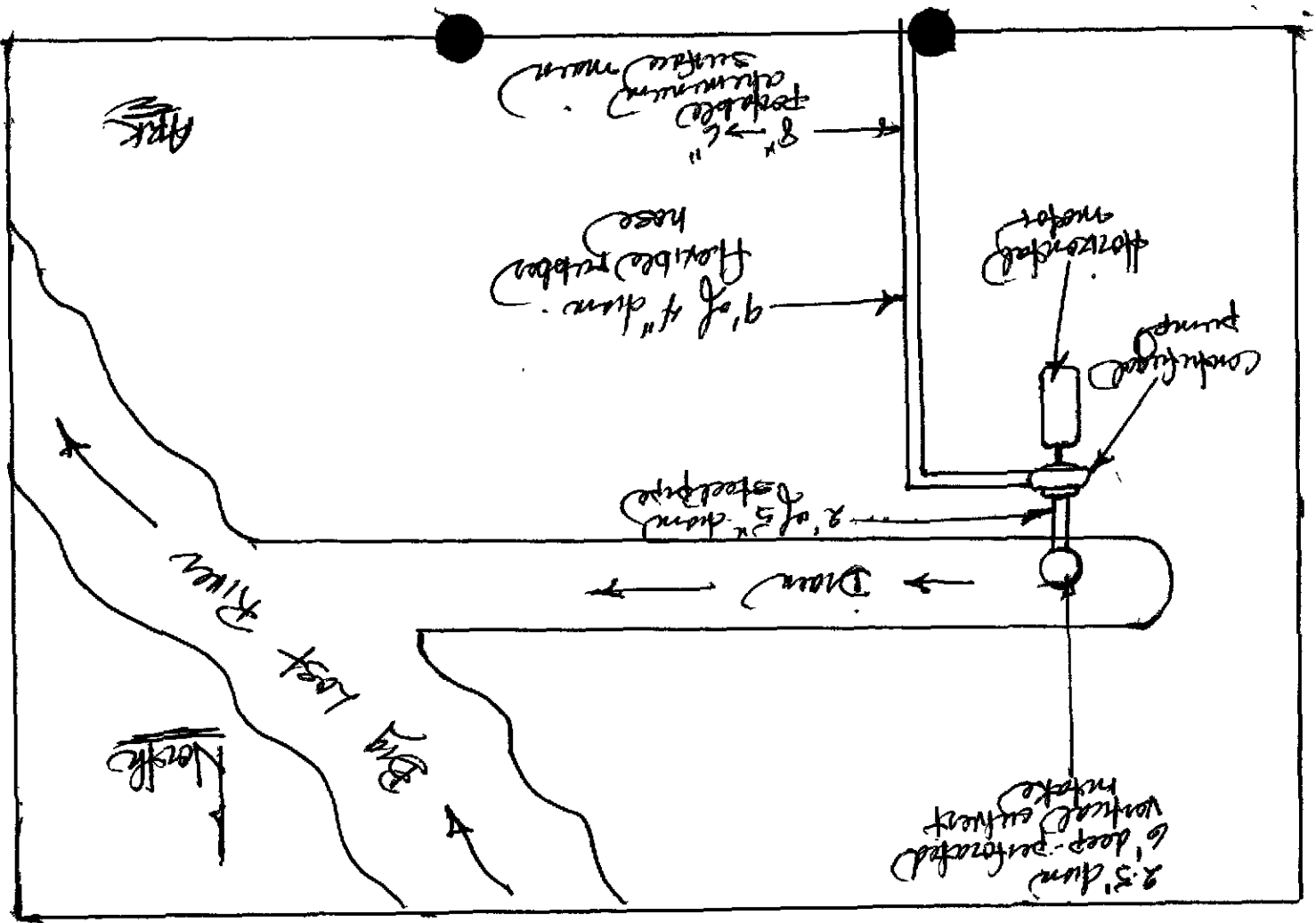


Diagram of System



DATE OF EXAM 8th day of June, 1978

ACREAGE

Found 100a - ALLOWED 8a ✓

Recommended 8a ✓

Irrigation Requirement 3.0 ✓

USE

Irrigation Q = 1.25 c.f.s.

Domestic Q = 1/4 c.f.s.

Livestock Q = 1/4 c.f.s.

V = 300 - 24 ^{also see of}

V = 24

V = 24

Ac Ft/Ac condition of issuance

AF/Ann. from April 1 to Nov 1 - 214 days

AF/Ann. from April 1 to Nov 1 - 214 days

AF/Ann. from April 1 to Nov 1 - 214 days

airial photograph reveals that only 8a of land have been drained and reclaimed. Drained water can only be applied to the lands drained in 1978.

Is water co-mingled? yes no X

Name source: n/a

twp. N/S, Rge E/W, B.M., Sec. 1/4, Sub. 1/4 County

Exchange? yes no X

Name source exchanged with: n/a

twp. N/S, Rge E/W, B.M., Sec. 1/4, Sub. 1/4 County

Point of injection: n/a

twp. N/S, Rge E/W, B.M., Sec. 1/4, Sub. 1/4 County

Point of exchange: n/a

twp. N/S, Rge E/W, B.M., Sec. 1/4, Sub. 1/4 County

Total Q measured 1.25 cfs

Method of measurement Pitot tube

Total Q recommended 1.25 cfs

Meter No. MR-111

Type Marshall Condition std.

Total V recommended 300 24 AF/yr

Recommended Amendments:

(P.D.) Should be surveyed sec 33 Twp 6N Rge 26E B.M. Butte ✓

Place of Use

Other

None

MEASUREMENT CALCULATION:

See reverse side for pitot tube measurement. Q = 1.25 cfs

V = 8a x 3.0 AF/a = 24 AF/yr = 1.9835 x 214 d/yr x 1.25 cfs = 61.97 AF/yr

SYSTEM DESCRIPTION:

Water is diverted from a manmade drain by a 20H.P. 3ph Christensen Horizontal pump motor, mfr - AA254 TT DR T320HMA and by a 20H.P. Berkeley Centrifugal pump, s/n - 1260087 mfr - 6101. Average is irrigated by 2 handline sprinklers and 2 wheelline sprinklers of varying lengths

REMARKS:

System shown and described by Robert K. Moss

Examiner's Signature Anthony R. Kozlowski

Date 8-4-78

Checked by John D. Carson

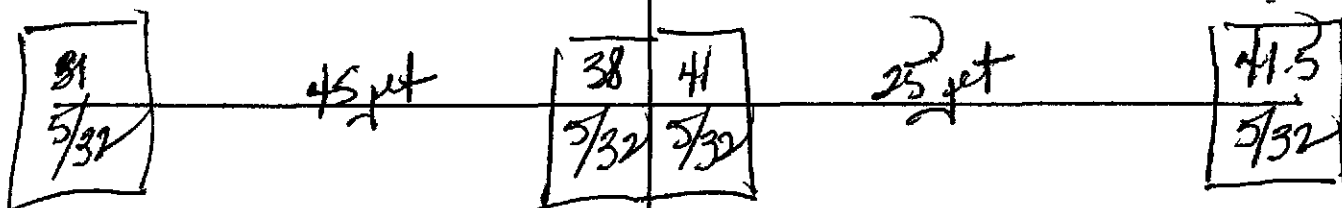
Date 7/2/80

Approved by K. Walker

Date 10/24/85

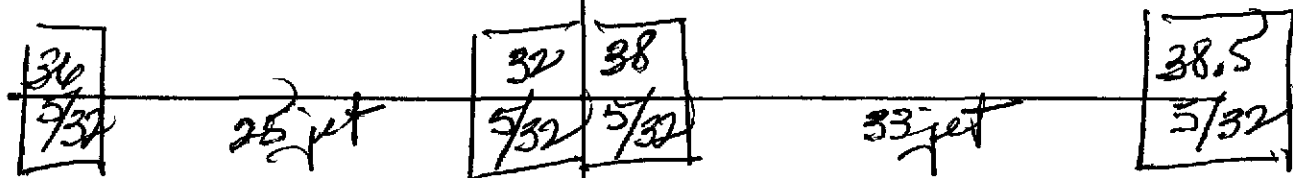
MICROFILMED

Point of
diversion



$$\begin{aligned} \text{Avg psi/jet} &= 34.5 \\ \text{Avg gpm/jet} &= 4.28 \text{ gpm} \\ &\times 45 \text{ jet} = \boxed{192.6} \end{aligned}$$

$$\begin{aligned} \text{Avg psi/jet} &= 41.25 \text{ psi} \\ \text{Avg gpm/jet} &= 4.69 \\ &4.69 \times 25 = \boxed{117.25} \end{aligned}$$



$$\begin{aligned} \text{Avg psi/jet} &= 34 \\ \text{Avg gpm/jet} &= 4.25 \\ &4.25 \times 25 = \boxed{106.25} \end{aligned}$$

$$\begin{aligned} \text{Avg psi/jet} &= 38.25 \\ \text{avg gpm/jet} &= 4.44 \\ &4.44 \times 33 \text{ jet} = \boxed{146.52} \end{aligned}$$

$$\begin{aligned} \text{Total} &= 192.60 \\ &117.25 \\ &106.25 \\ &146.52 \end{aligned}$$

$$562.62 \div 448.8 \text{ gpm/efs} = \underline{\underline{1.25 \text{ efs}}}$$

MICROFILMED

IN EQUITY NO. 222

DECREE

IN THE UNITED STATES DISTRICT COURT, IN
AND FOR THE DISTRICT OF IDAHO, EASTERN
DIVISION

THE UTAH CONSTRUCTION COMPANY, a corporation, Plaintiff,

vs.

John F. Abbott, William Adams, A. P. Adair, Esther L. Adair (successor in interest of A. P. Adair, Eugene A. Ahern, Andreas Aikele (or A. Aiken), Calvin S. Allen, Frank A. Allen, Gladys Allen, L. C. Allen, Richard Roe Alson, George L. Ambrose, Charles B. Anderson, Francis G. Anderson (or Francis C. Anderson, F. Gus Anderson (or F. G. Anderson or Gus Anderson,) H. W. Anderson, Hyrum Anderson, James E. Anderson, Jas. Earl Anderson, J. L. Anderson, James P. Anderson, Josephine Anderson, J. Wesley Anderson, Jos. W. Anderson (or J. W. Anderson), N. A. Anderson, Niels R. Anderson, Peter C. Anderson (or P. C. Anderson), S. W. Anderson, W. W. Anderson, Louis Andreason (or Lewis Andreson), H. W. Angelo (or Wallace Angelo), Frank Anthony, Marie L. Anthony, Arco Townsite Company, an unincorporated Association; Eleazer Asay, Ernest W. Asay, Emma M. Ashton, Margaretta S. Askew, Anna Atha (or Annie Atha), Ivan J. Atwood, J. H. Augustine.

Mrs. Hannah Babcock (or Mrs. Albern Babcock, A. Rowley Babcock (or R. Babcock), William Babcock (now deceased), Jaacob F. Baird, Bank of Nyssa, an Oregon Banking corporation; John L. Bardsley, Josie Bardsley, Jerome K. Bartlett (or J. K. Bartlett), A. H. Bascom, E. W. Bascom, Pete Basick, Harlow Bassett (Or H. Bassett), Clara M. Bate, J. M. Bate (or Joseph M. Bate), Ralph Bate, E. J. Bates, Leslie Bates, Erin Beal (or Aron Beal) or C. Beal, Eldon E. Beck; J. W. Beck and John Doe (Or John Pingree) and Richard Roe (or F. S. Lack,) as statutory trustees of Beck Land/Livestock Company, a defunct Idaho Corporation; William Beck, Beck Land and Livestock Company, an Idaho corporation; A. W. Bell, Lee Bell, John C. Bell, J. L. Bell, George Bennett (or George Bennetts), James Bennetts, F. S. Bernard, John Bernard (successor in part to New World Life Insurance Company); Gus Bertsch, Agnes T. Best (or Agnes Best), Harold C. Best (or Harold Best), Alexander Beverland, Francis Beverland (successor in interest of James Beverland), George Beverland, Effie Beverland (or Mrs. George Beverland) James Beverland, as executor of the estate of Charles Beverland, deceased; James Beverland, Joana Beverland, Henry Bews (or Harry Bews), Peter Bidegain, Lota C. Billings, Elizabeth Bills, John L. Bills, Norman Bills, Ole Bills, Albert F. Bischoff (or A. F. Bischoff), Lewis A. Bitton (or John Doe Britton), Zina Bitton (or Zina Britton), B. Bjornson (or B. Bjornsen), Blackfoot City National Bank, an Idaho Banking corporation (successor in interest to Heber G. Johnson); Charles H. Black, Mary E. Black, Nils S. Bladh (successor in interest of Ole Bills), John L. Blosser (or John L. Blasser), Henry Blattner, Lulu E. Bliss, Phillip R. Bliss, Arthur L. Bodine, John J. Bodine, Oscar Bodine, William T. Bodine, Joseph A. Boillin, Rhoda Boling, Rachael Boone, Wm. A. Boone; David S. Boyack (or D. Boycock or David D. Boycock, Jr.), Sylvanus Boyack (or S. Boycock), Mary E. Boyd, Robert G. Boyd (successor in interest of Charles H. Rampton), I. W. Boyer, Elizabeth Bradshaw (now deceased), George Bradshaw, John Bradshaw, Pearl Bradshaw, William Bradshaw, William Bradshaw, as administrator of the estate of Elizabeth Bradshaw, deceased (substituted for Elizabeth Bradshaw deceased); Francis Braithwaite, R. F. Braithwaite (or Robert Braithwaite), William F. Braithwaite, H. C. Brake, William H. Brashear, H. T. Brengman, Charles Brown, Edna Brown, Edna E. Brown, as executrix of the estate of Martin W. Brown, deceased (substituted for

JAMES L. KING

1884-June 1 ✓ 34 0426 ✓ 2.6 c.f.s.

Trans 732 - 0.6 c.f.s.

1886-May 1 ✓ 34 0427 ✓ 3.2 c.f.s.

No. 268

(See Amendment)
Page 226

Marian King as Administratrix of the
Estate of James Beverland, Deceased

(a) 1894-June 1 ✓ 34 0428 ✓ 1.2 c.f.s.

(b) 1912-February 10 ✓ 0.4 c.f.s.

34 0429 ✓

No. 269

WM. C. KING ✓

(a) 1886-May 1 ✓ 34 0430 ✓ 1.6 c.f.s.

To be diverted from Antelope Creek through a private ditches having their points of diversion in Section 2, Township 4 North, Range 24 East, B. M., for the irrigation of the following described land, to-wit:

Lot 3 except 10 acres owned by Waddoups. Lot 4, Southwest quarter of the Northwest quarter, South half of the Northeast quarter of Section 1, Northwest quarter of the Southeast quarter of Section 2, Township 4 North, Range 24 East, B. M., and the East half of the Southwest quarter of Section 36, Township 5 North, Range 24 East, B. M.

To be diverted from Lost River through the Burstedt-Johnson Ditch having its point of diversion in the Northwest quarter of Section 32, Township 6 North, Range 26 East, B. M., for the irrigation of the following described land, to-wit:

West half of the Southeast quarter of Section 4, Township 5 North, Range 26 East, B. M., and

To be diverted from Big Lost River through the Burstedt-Johnson Ditch having its point of diversion in the Northwest quarter of Section 32, Township 6 North, Range 26 East, B. M., for the irrigation of the following described land, to-wit:

East half of the Southwest quarter of Section 14, Township 5 North, Range 26 East, B. M.

To be diverted from Big Lost River as follows 1.1 c.f.s. through the Burstedt-Johnson ditch having its point of diversion in the Northwest quarter of Section 32, Township 6 North, Range 26 East, B. M., and 0.5 c.f.s. to be diverted through the Three-in-One Ditch having its point of diversion in the Southeast quarter of Section 14, Township 6 North, Range 25 East, B. M., for the irrigation of the following described land, to-wit:

Southeast quarter of the Southeast quarter of Section 32, and the Southwest quarter of the Southwest quarter of Section 33, Township 6 North, Range 26 East, B. M., and also the following tracts: Commencing at the Northwest corner of Section 4, Township 5 North, Range 26 East, B. M., and running thence South 3 rods, thence East 160 rods; thence North 3 rods; thence West 160 rods to the place of beginning, containing 3 acres, more or less, and beginning at the Southeast corner of the Southwest quarter of Section 33, Township 6 North, Range 26 East, B. M., and running thence West 80 rods; thence North 54 rods; thence Southeast along Big Lost River to the place of beginning, and containing 15 acres, more or less to total acres of said tracts being 98 acres, more or less.



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

MEMORANDUM

TO: File No. 34-2493

FROM: Norman C. Young *NCY*

DATE: December 18, 1980

RE: Field Inspection, December 16, 1980

I traveled to Moore, Idaho and met with Bob Moss to determine what water rights Mr. Moss held for the lands affected by this permit and to view the drain and evaluate its affect on Big Lost River flows. Attached is a map which shows the ownerships in pencil of the land that Mr. Moss operates as a unit. The land covered in the land list of Permit No. 34-2493 is approximately the eastern half of the property that's operated by Mr. Moss.

The following rights are pertinent to the entire unit shown on the map:

Amount	Priority	Source
60 inches	5-1-1905	Antelope Creek
160 inches	6-1-1887	Big Lost River
80 inches	5-1-1886	Big Lost River
100 inches	9-13-1965	Drain, tributary to Big Lost River
96 inches	7-7-1955	Groundwater

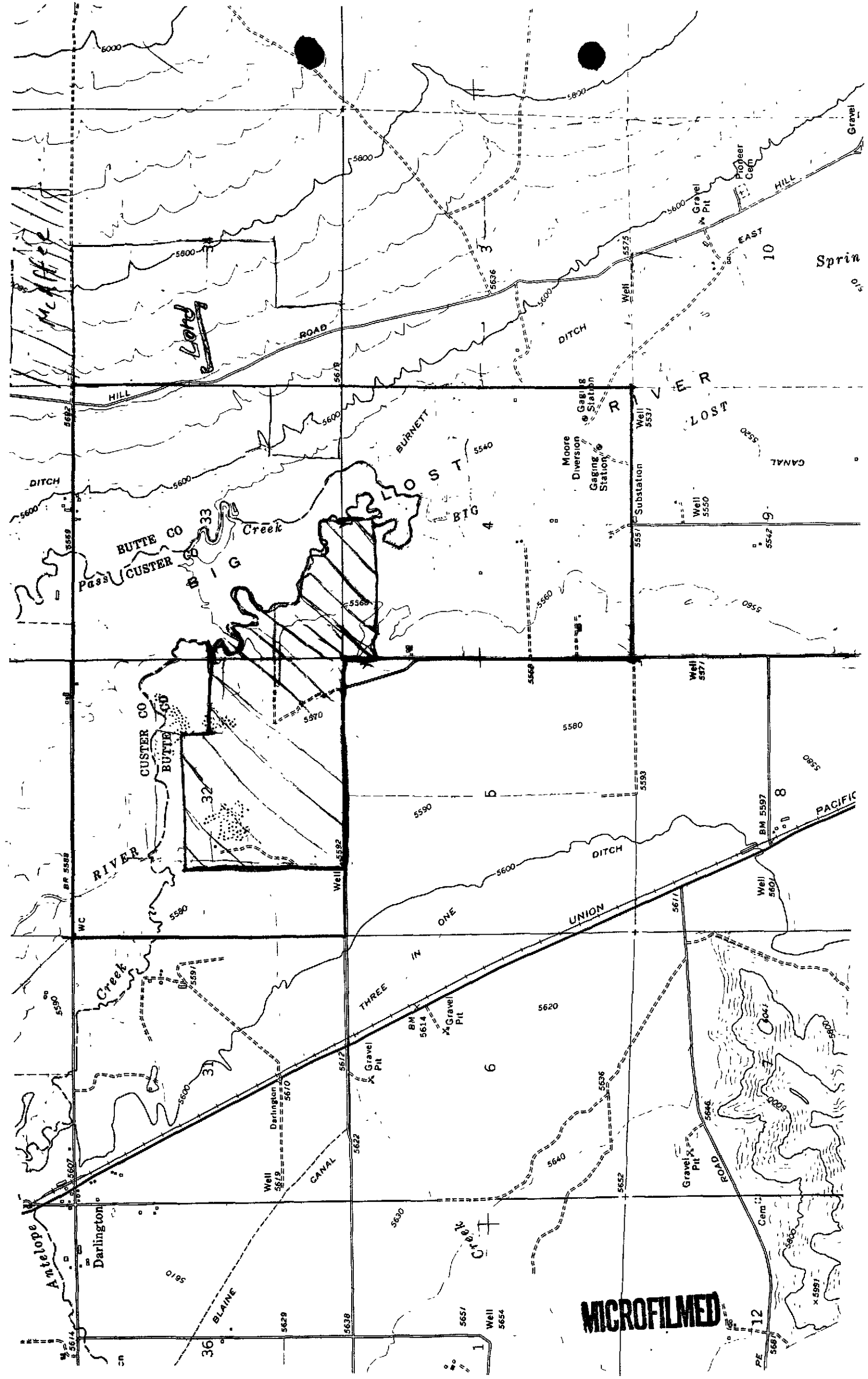
It appears that the drain was dug through a gravelly topsoil, but I could not see any gravel layers exposed by the drain. The drain was discharging directly into the Big Lost River with a flow of perhaps 5 to 10 cfs and the river was flowing perhaps 200 to 300 cfs. Thus, it would be difficult to measure accurately the impact on the river of constructing the drain.

Mr. Moss will be contacting the Soil Conservation Service to obtain their input as to the duty of water required for his lands with his irrigation system, and also to get an idea of the area of land that the drain effectively drains.

MICROFILMED

I indicated to Mr. Moss that I would withhold the drafting of the memorandum decision until he could provide the input from the SCS or other sources until about January 15, 1980.

MICROFILMED



Robert Moss

29/28

3/33





May 20, 1980

Eugene Gabert, Watermaster
Water District 34
433 Elm
Mackay, ID 83251

Dear Mr. Gabert:

The Water District several years ago, 1967, protested the appropriation of water by Mr. Herman J. Felding under Permit No. 34-2493. This permit has been assigned to Mr. Robert K. Moss.

A hearing on the licensing of this permit was held on March 14, 1980 but neither you nor any representative of the Water District was present. We did, however, receive a withdrawal of the protest from the Big Lost River Irrigation District and that letter indicates that the protest filed by Devon Jensen, which was the Water District protest, was also withdrawn.

Please let us know within twenty (20) days if this was a misunderstanding and the Water District did not intend to withdraw their protest. And further, if the protest was not withdrawn, then you must show cause within twenty (20) days why the Water District did not appear at the hearing.

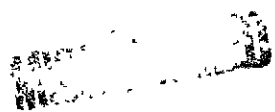
If we hear nothing from you, we will assume that the protest of the Water District was withdrawn by the March 7, 1979 letter.

Please do not hesitate to contact me if you have any questions.

Sincerely,

BOBBY D. FLEENOR
Chief, Regional Offices Bureau

cc: Eastern Region



MEMO TO FILE

DATE: April 30, 1979

RE: Permit 34-2493

On Thursday, April 27, 1979, I personally visited the Butte County Courthouse in Arco, Idaho in order to determine the outcome of a criminal case entitled "State of Idaho vs. Herman Fielding." The charge was made that the defendant had interfered with the delivery of water. I was able to determine that the case had been dismissed by Justice of the Peace Glenn A. Phillipa, and that no decision had been made in court to revoke, cancel, or nullify Permit 34-2493. Therefore, the permit is still valid and, as I have completed a water right field examination on the 8th day of June, 1978 for this permit, now assigned to Robert K. Moss, it should be ready for final licensing.

Anthony R. Kozlowski
ANTHONY R. KOZLOWSKI
Sr. Water Resource Agent

RECEIVED
JUN 11 1979
FBI - ARCO

To : 34-2493

From : NCG

Date : 3/14/79

Re : Conference 3/14/79

Applicant present AND represented himself. Protestant Big Lost Iron's Dist withdrew protest by letter 3/8/79. Big Lost water District was not represented. Devon Jensen indicated that he considered himself a personal protestant.

Agreed verbally by Jensen and Applicant to let department make decision, based upon conference.

Carlson will draft decision.

RECORDED

HEARING PROTEST AGAINST LICENSE
34-2493 Robert K. Moss

20 HP Pump — 1.26 CFS —
100 ACRES —
80 IN of 1890

Purpose of development is to
drain land
has been taking water from
drain in law of 1890 decree.

Devon Jensen — ground water
in Crosswaite & Dyer shown to
surface in area of Moss
Drain

Moss land was swampy
until drain was installed

MICROFILMED

R O S T E R O F A T T E N D A N C E

34-2493 - Robert Moss

Conference Room, Butte County Bank, Arco, Idaho

March 14, 1979 - 9:30 a.m.

<u>NAME</u>	<u>ADDRESS</u>	<u>REPRESENTING</u>
Alton R. Jensen	Arco	Myself
L. Vaughn Jensen	Moore	Myself
Jack H. Jensen	Moore, Idaho	my self
Robert K. Moss	Moore Id	Myself

MOORE ID

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
Eastern District Office
1515 Lincoln Road • Idaho Falls, Idaho
83401

RETURNED RECEIPTS

34-2493

MICROFILMED

- 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. 45¢
☐ 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:
Robert K. Moss
Route #1, Box 121-A
Moore, ID 83256

3. ARTICLE DESCRIPTION:
REGISTERED NO. CERTIFIED NO. INSURED NO.
1265

(Always obtain signature of addressee or agent)

I have received the article described above.
SIGNATURE ☐ Addressee ☐ Authorized agent

4. *Carol C. Moss*
DATE OF DELIVERY

3-9-79

5. ADDRESS (Complete only if requested)

6. UNABLE TO DELIVER BECAUSE:

CLERK'S
INITIALS
Km

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
- Moisten gummed ends and 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**



(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..... 45 ¢ ☐ 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: DeVon Jensen Mackay, ID 83251		
3. ARTICLE DESCRIPTION: REGISTERED NO. CERTIFIED NO. INSURED NO. 1266		
(Always obtain signature of addressee or agent)		
I have received the article described above. SIGNATURE ☐ Addressee ☐ Authorized agent <i>DeVon Jensen</i>		
4. <i>R. M. Munday</i> DATE OF DELIVERY 03-09-79		
5. ADDRESS (Complete only if requested)		
6. UNABLE TO DELIVER BECAUSE:		

POSTMARK
MAR 9 1979
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, 2, and 3 on the reverse
- Moisten gummed edge and 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**



(Name of Sender)

(Street or P.O. Box)

(City, State, and ZIP Code)

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
- Moisten gummed ends and 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**



(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). 45¢
- ☐ 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:
Big Lost River Irrig. Dist.
P. O. Box 205
Mackay, ID 83251

3. ARTICLE DESCRIPTION:

REGISTERED NO.	CERTIFIED NO.	INSURED NO.
	1267	

(Always obtain signature of addressee or agent)

I have received the article described above.

SIGNATURE ☐ Addressee ☐ Authorized agent

Big Lost River Irrig. Dist.
R. G. Erickson

4. DATE OF DELIVERY
03-09-79

5. ADDRESS (Complete only if requested)

6. UNABLE TO DELIVER BECAUSE:

CLERK'S
INITIALS



Name and
Address
of Sender

Indicate type of mail:

☐ REGISTERED ☐ REGISTERED
C.O.D. ☐ CERTIFIED

Place stamp here if issued as certificate of mailing or for additional
copies of this form
POSTMARK AND DATE OF RECEIPT

NUMBER OF ARTICLE	NAME OF ADDRESSEE STREET AND POST OFFICE ADDRESS	POSTAGE	FEE	RE FEE	RE FEE	ACTUAL VALUE	HANDLING CHARGE	REMARKS*
1 1257	Ronald Budge, Alky, P.O. Box 833, Santa Fe, N.M. 87206	15	80	45				27-7129
2 1258	Bill Davidson, Del. Fish & Game 636 Pershing, P.O. Ky	"	"	"				"
3 1259	Fort Hall Water Users, Box 1090, Pocatello, ID	"	"	"				"
4 1260	N.R. Wright, Rt. 2 Box 66, Blackfoot, ID	"	"	"				"
5 1261	Clyde Tuttle, Rt. 2 Box 256, Blackfoot, ID	"	"	"				"
6 1262	Uval Bradley, Box 45, Springfield, ID	"	"	"				"
7 1263	Chesterfield Road & Lincoln, Rt. 3 Box 85, Blackfoot, ID	"	"	"				"
8 1264	Juan Corbin, 1741 N 1500, Provo, UT 84601	"	"	"				"
9 1265	Robert K. Moss, Rt. 1, Box 121-A, Morehead, Del 83256	"	"	"			34-2493	
10 1266	DeVos Jensen, Mackay, Del 83251	"	"	"			"	
11 1267	Byrd River, Inc., Dist. Box 205, Mackay, Del 83251	"	"	"			"	
12						\$15.40		
13								
14	Sent not certified						34-2493	
15	Gene Gebert, Watermaster, Water District 34, Mackay							
16	Sent not certified							
17	Ed Hall, Watermaster, Water District 27, P.O. Box 6, Fish							27-7129
18								
19								
20								

TOTAL NO. OF PIECES
BY SENDER

TOTAL NO. OF
PIECES RECD AT P.O.

POSTMASTER, PREPARE (if mailing employee)

*Show under "Remarks" class postage paid if other than first or
if international

Form 3877, 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: 1973-0-529-725

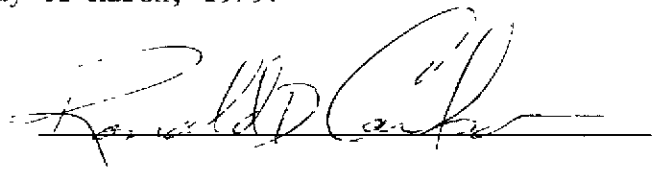
FORM MUST BE MADE OUT IN INK OR BALL POINT PEN

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE
STATE OF IDAHO

In the Matter of Protests Against the	)	
	)	NOTICE OF CONFERENCE
Issuance of a Water License for Permit	)	
	)	AND/OR HEARING
No. 34-2493 in the Name of ROBERT K. MOSS	)	
_____	)	

Notice is hereby given that the Department of Water Resources has rescheduled the conference and/or hearing concerning the above referenced issuance of a water license for Wednesday, March 14, 1979, at 9:30 a.m., in the Conference Room of the Butte County Bank, 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 March 2, 1979.

Dated this 9th day of March, 1979.


RONALD D. CARLSON
Supervisor, Eastern Region

J. DOYLE JENSEN
President
Division No 2, Moore

RICHARD C. ROTHWELL
Secretary - Treasurer
Division No 4, Leslie

VERNON E. WARNER
Director
Division No 5, Leslie

JAMES S. BABCOCK
Director
Division No 3, Moore

WILLARD O. BELL
Director
Division No 1, Arco

Big Lost River Irrigation District

Phone 588-2231 — P. O. Box 205

Mackay, Idaho 83251

March 7, 1979

Department of Water Resources
1515 Lincoln Road
Idaho Fall, Idaho 83401

Attention: Mr. Ron Carlson

reference: permit 34-2493 Robt. Moss

Dear Ron:

In regard to the hearing to be held on March 14, 1979 at Preston Idaho for the protest filed by the Big Lost River Irrigation District and Deyon Jensen.

At the regular meeting held on March 6th, 1979 the Board of Directors voiced their decision to withdraw this protest by motion of Director Vernon E. Warner; seconded by Director Willard O. Bell and motion passed with an AYE vote.

Yours truly,



Rita M. Lundy

Assistant Secretary-treasurer

CC: Chairman of the Board
J. Doyle Jensen
Moore, 83255

RECEIVED

MAR 8 1979

Department of Water Resources
Eastern District Office

MICROFILMED

March 7, 1979

Butte County Bank
205 West Grand Avenue
Arco, Idaho 83213

Dear Sir:

This is to confirm the use of your conference room for conference and/or hearing to be held by this office on Wednesday, March 14, 1979 at 9:30 a.m.

Thank you for your cooperation in this matter.

Very truly yours,

RONALD D. CARLSON
Supervisor
Eastern Region

RDC:dh

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
- Moisten gummed ends and 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, \$3.00



**RETURN
TO**



DEPARTMENT OF WATER RESOURCES
FEDERAL OFFICE

(Name of Sender)

(Street or P.O. Box)

(City, State, and ZIP Code)

PS Form 3811, Apr. 1977 RETURN RECEIPT, REGISTERED, INSURED AND CERTIFIED MAIL

● 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). **45** ¢
- ☐ 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:
**Big East Dr, Dist
Mackay, ID 83251**

3. ARTICLE DESCRIPTION:
REGISTERED NO. | CERTIFIED NO. | INSURED NO.
| **1247** |

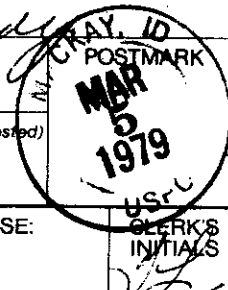
(Always obtain signature of addressee or agent)

I have received the article described above.
SIGNATURE ☐ Addressee ☐ Authorized agent

4. **R. M. Hundley**
DATE OF DELIVERY
03/05/79

5. ADDRESS (Complete only if requested)

6. UNABLE TO DELIVER BECAUSE:



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
- Moisten gummed ends and 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



DEPARTMENT OF WATER RESOURCES

REGIONAL DISTRICT OFFICE

1215 N. COLN ROAD

(Name of Sender)

1742 FALLS, IDAHO 83401

(Street or PO 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). **45**¢
☐ 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:

Robert K. Moss
RT #1, Box 121-A
Moore, Wd 83255

3. ARTICLE DESCRIPTION:

REGISTERED NO.	CERTIFIED NO.	INSURED NO.
	1248	11111

(Always obtain signature of addressee or agent)

I have received the article described above.

SIGNATURE ☐ Addressee ☐ Authorized agent

4. *Carol C. Moss*

DATE OF DELIVERY

3-6-79

5. ADDRESS (Complete only if requested)

6. UNABLE TO DELIVER BECAUSE:

CLERK'S
INITIALS
BY

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
- Moisten gummed ends and attach to front of article if space permits. Otherwise affix to back of article
- Endorse article "Return Receipt Requested" adjacent to number



**RETURN
TO**



DEPARTMENT OF AGRICULTURE

FOREST SERVICE

(Name of Sender)

DAHU FALLS, WASH. 98821

(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). **45**
☐ 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:
De Van Jensen
Mackay, Hoff
83251

3. ARTICLE DESCRIPTION:
 REGISTERED NO. | CERTIFIED NO. | INSURED NO.
 | *1249* | *|||||* |

(Always obtain signature of addressee or agent)

I have received the article described above.
 SIGNATURE ☐ Addressee ☐ Authorized agent

4. *[Signature]*
 DATE OF DELIVERY
MAR 6 1979

5. ADDRESS (Complete only if requested)

6. UNABLE TO DELIVER BECAUSE:

CLERK'S
INITIALS
KBP

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

Apply stamp here if issued as certificate of mailing or for additional
copies of this bill.
POSTMARK AND DATE OF RECEIPT

NUMBER OF ARTICLE	NAME OF ADDRESSEE, STREET AND POST OFFICE ADDRESS	POSTAGE	FEE	R.R. FEE	APMT DEL. FEE	ACTUAL VALUE	HANDLING CHARGE	REMARKS*
1	1232	Wheeler & Sons, Hollinger, Rt. #1, Box 126, MT	15	80	45			29-7454
✓ 2	1233	Myrtle Prince, P.O. Box 165, McCammon, ID						"
✓ 3	1234	J. Henry Williams, 20. Box 191, Preston						13-7237
✓ 4	1235	Frank Johnson, Preston, ID						"
✓ 5	1236	Blaine D. Rankin, Preston, ID						"
✓ 6	1237	Blanche M. Webster & Alex Webster, Preston, ID						"
✓ 7	1238	David H. Katcher, Cole St. #7, Preston						"
8	1239	Thomas W. Trogren, 1407 W. North Temple, Salt Lake City						"
9	1240	Ethel Erhardt, 1029 E. Main, Weiser						13-7238
10	1241	Thomas W. Trogren, 1407 W. North Temple, Salt Lake City						"
11	1242	Mervin Bayless, P.O. Box 855, Soda Spgs., ID						"
12	1243	Dept. Indian Affairs, Ft. Hall, ID						27-7127
13	1244	Wayne A. Chasler, P.O. Box 307, Fremont, MT						"
✓ 14	1245	Eldon R. Benson, Rt. #3, Preston						13-2282
✓ 15	1246	Eric D. Griffith, 58 2nd E. Preston, ID						"
16	1247	Big Lost Dr. Dist Mackay, ID						34-2493
17	1248	Robert E. Moss, RT#1, Box 121A						"
18	1249	Delvon Geman Mackay, ID						"
19		Sent not certified watermeter, May E. Wall						
20								

TOTAL NO. OF PIECES
LISTED BY SENDER

18

TOTAL NO. OF
PIECES REC'D AT P.O.

18

POSTMASTER, PER (Name of receiving employee)

Indicate

*Show under "Remarks" class postage paid if other than first or
if international

PS Form 3877, 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: 1974-0-529-724

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 the)
Issuance of a Water License for Permit)
No. 34-2493 in the Name of ROBERT K. MOSS)
_____)

NOTICE OF CONFERENCE

AND/OR HEARING

On September 23, 1966, application for permit No. 34-2493 was approved for the diversion of 2.00 cubic feet per second of water from a drain which is a tributary of Lost River with the point of diversion within the S $\frac{1}{2}$ SW $\frac{1}{4}$, Section 33, T. 6N, R. 26E, B.M., for the irrigation of 100 acres.

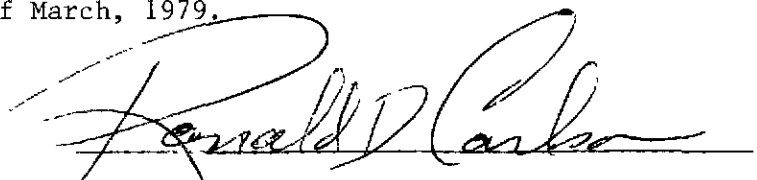
Proof of completion of works and application of water to beneficial use was filed with the Department of Water Resources on August 6, 1967. On September 26, 1967, the Department received protests against the issuance of a water license on permit No. 34-2493 from DeVon Jensen. The Big Lost River Irrigation District filed a protest on September 27, 1967.

The Department has set the matter of protest for conference and/or hearing for Wednesday, March 14, 1979, at 9:00 a.m., in the Jury Room, Franklin County Courthouse, Preston, 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.

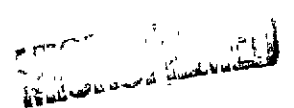
Any party may request in writing five (5) days before any hearing that the oral proceedings thereof be taken in the form of stenographic notes. Any party may have such stenographic notes of the oral proceedings, or part thereof, transcribed at his own expense. A taped record of the proceedings will be 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 protest. Any and all cost incurred by reason of such non-appearance may be assessed against such non-appearing parties.

Dated this 2nd day of March, 1979.



RONALD D. CARLSON
Supervisor, Eastern Region





STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
EASTERN REGION

John V. Evans
Governor

1515 Lincoln Road
Idaho Falls, Idaho 83401
(208) 523-7186

C. Stephen Allred
Director

February 27, 1978

RE: Permit No. 34-2493

Mr. Robert K. Moss
Rt. #1, Box 121-A
Moore, Idaho 83255

Dear Mr. Moss:

Our records reveal that a proof exam still needs to be completed for your permit No. 34-2493 to appropriate the surface waters of the State of Idaho. As this exam has been in our files for many years we are looking forward to its completion this coming irrigation season. Upon completion of the exam a water right license will be issued to you for the amount of water you are actually putting to a beneficial use.

Your permit describes the diversion of surface water from a drain tributary to the Big Lost River. Please contact this office as soon as it is possible to complete this examination.

Thank you for your assistance in this matter.

Very truly yours,

ANTHONY R. KOZLOWSKI
Water Resource Agent

ARK:cw

RECEIVED
FEB 28 1978

November 7, 1977

Re: Permit No. 34-2493

Robert K. Moss
Route 1, Box 121-A
Moore, Idaho 83255

Dear Mr. Moss:

We acknowledge receipt of the affidavit submitted as proof of beneficial use for the above referenced permit. Enclosed is an Order of Reinstatement; please note that the priority has been advanced to October 15, 1966.

After resolving the protest on the amendment filed on this permit, a field examination will be made by a representative of this Department so a license to water right might be issued. We cannot tell during which part of the irrigation season this examination will be made, but our examiner will try to contact you at the time he makes the exam so that you may show him the system.

If you have any questions regarding the field exam, please contact our Eastern Regional Office in Idaho Falls.

Sincerely,

JANICE RENK
Water Rights Bureau

Encl.

NOV 10 1977

October 17, 1977

RE: Application for Permit No. 33-7059 JNY
34-7208 S. BAKER
Transfer 34-2368 "
Amendment 34-2493 MOSS

Arco Advertiser
Box "C"
Arco, ID 83213

Gentlemen:

Would you please submit an affidavit of publication and certified bill in connection with the above referenced application. The legal notice was to have been published in your paper on September 29 and October 6, 1977.

Your cooperation in this matter is greatly appreciated.

Very truly yours,

RONALD D. CARLSON
Supervisor
Eastern Region

RDC:CD

Handwritten signature or initials.

Any protest to the proposed amending of the permit must be filed with the Idaho Department of Water Resources, 1515 Lincoln Road, Idaho Falls, Idaho, 83401, on or before October 17, 1977.

Director

Published in the Arco Advertiser, Arco, Idaho, on September 29 and October 6, 1977.

2000

me. J.
me. H.
me. Q.

SEP 22 1977

Identification No. _____

Permit No. 34-2493

Idaho Department of Water Resources
Eastern District Office

STATE OF IDAHO

DEPARTMENT OF WATER RESOURCES

PROOF OF APPLICATION OF WATER TO BENEFICIAL USE

RECEIVED
OCT 27 1977
Department of Water Resources

1. a) Name of Permit Holder Robert K. Moss
b) Post Office Address Rt. #1, Box 121-A, Moore, Idaho 83255

2. Permit Number 34-2493

3. Date of Priority that you are prepared to establish September 19, 1966

4. a) Source from which water was appropriated unnamed drain tributary to Big Lost River

b) Location of the point of diversion: SW 1/4 SW 1/4, Section 33
Township 6N, Range 26E Boise Meridian, Other points of diversion: _____

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

Amount 2.00 for Irrigation purposes from Apr. 1 to Oct. 1 incl.
(cfs and/or acre-feet per annum) (Month-Day) (Month-Day)

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

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

b) Total amount appropriated 2.00 cfs and/or acre-feet per annum

c) Describe how and by whom measurement of rate of flow or amount of storage was made and the qualifications of the person making the measurement: _____

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

a) Give the name or description of the canal, ditch or other works by which the water is conducted to the place of use: _____

b) Describe the agreement or understanding by which you take water from the works: _____

7. a) Briefly describe the works for diverting and conveying the water to the place of use, (if from a subterranean source, give the pump size, motor size, size of well casing, depth of well; if from surface water, give brief description of diversion structure and/or canal or ditch) A channel 5' deep by 10' wide approximately 1800' long

was dug in order to drain the land to permit cultivation. A 20 hp 440 volt 3-phase electric motor with centrifugal pump was installed approximately 900 feet from the head of channel which pumps into a sprinkler system which returns the water to the land via the system

b) Describe the type and size of measuring device which you have installed at your point of diversion: N.A.

c) Give well driller's name and address and the date the well was completed: N.A.

8. If for other than irrigation, describe the beneficial use to which you have applied the water and the place of use: _____

Exam typed

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

T	R	SEC.	NE¼				NW¼				SW¼				SE¼				TOTAL
			NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	
5N	26E	4					5	5											10
6N	26E	32															40		40
6N	26E	33											40	10					50

Total number of acres irrigated 100

10. Remarks: _____

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

Sept 22, 1977
(Date)

Robert K. Mann
(Signature)

State of Idaho)
) ss.
County of Bonneville)

On this 22nd day of September, 19 77, personally appeared before me the signer(s) of the above instrument, who duly acknowledged to me that he (she) (they) executed the same.

Loren O. Halmer
Notary Public residing at
Idaho Falls, Id.

My commission expires Mar. 21, 1979

MICROFILMED

100

~~7-1-1971~~



STATE OF IDAHO

DEPARTMENT OF WATER RESOURCES

Cecil D. Andrus
Governor

R Keith Higginson
Director

Statehouse
Boise, Idaho 83720
(208) 384-2215

October 3, 1977

Herman J. Fielding
Star Route East
Othello, Washington 99344

Dear Mr. Fielding:

You are hereby notified that under the provisions of Section 42-218a of the Idaho Code, Permit No. 34-2493 has lapsed since you have not notified us that you have completed the project by the date required on your permit. You were provided forms for that purpose in our notice to you dated June 30, 1977.

Your permit cannot be reinstated unless you submit the proof of beneficial use affidavit, enclosed, or show other reasonable cause why the permit should be reinstated within 60 days from the date of this lapse notice.

A handwritten signature in dark ink, appearing to read "C. Stephen Allred", is written over a horizontal line.

C. STEPHEN ALLRED
Director

CSA:jfr

Encl.

27
44346-6-10-77



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 23, 1977

RE: Permit No. 34-2493

Mr. Herman J. Fielding
Star Route East
Othello, Washington 99344

Dear Mr. Fielding:

This office is in receipt of your telegram requesting assignment of water permit No. 34-2493 to Robert K. Moss. Mr. Moss has completed proof of beneficial use, however, it is necessary to assign the permit by a notarized affidavit. Therefore, please sign the enclosed form before a notary and return it to this office as soon as possible.

Your cooperation in this matter would be greatly appreciated.

Very truly yours,

LOREN O. HOLMES
Assistant Regional Supervisor

LOH:CW

Enclosure

cc: IDWR - State Office

RECEIVED
MICHIGAN

ROUTING SLIP

DATE

9-30-77

TIME

TO

REF. No (if any)

FROM (show title)

34-2493

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

Am holding a proof
form & am advertising
an amendment - pending
receipt of this assignment.

☐ Will Call Again☐ Returned Your Call☐ Called to See You☐ Please Call☐ Telephoned

EXT

NUMBER

AREA CODE

PHONE

OF

M

DATE

TIME

WHILE YOU WERE OUT

TO

SECRET

NOTICE OF EXISTING WATER PERMIT

Notice is hereby given that Herman J. Fielding, Star Route East,
Othello, Washington has received an approved Permit No.
33187/34-2493 issued by the Idaho Department of Water Administration authorizing the diversion ~~storage~~ of 2.0 cubic feet per second ~~acre/feet~~
~~per/annum~~ of water from a drain, trib. of the Lost River.
The priority to be established under this permit is September 19, 1966
and the permit was approved September 23, 1966.

Water is to be diverted by pump, pipes, and sprinklers
from a point within the S $\frac{1}{2}$ SW $\frac{1}{4}$, Sec. 33, T. 6 N, R. 26 E, B. M., Butte
County
to be used for irrigation
in the N $\frac{1}{2}$ NW $\frac{1}{4}$, Sec. 4, T. 5 N, R. 26 E, B. M.; and the S $\frac{1}{2}$ SW $\frac{1}{4}$, SE $\frac{1}{4}$ SE $\frac{1}{4}$,
Sec. 32, T. 6 N, R. 26 E, B. M.

Proof of the application of the water to beneficial use is to be submitted to the Department on or before September 23, 1977. Any protests against the issuance of the license for the above referenced permit should be filed with the Idaho Department of Water Administration within ten (10) days of the last date of publication of this notice or prior to the licensing of the permit. Licensing may commence prior to the date beneficial use proof is due without further notice.

R. KEITH HIGGINSON, Director
Idaho Dept. of Water Administration
STATEHOUSE, Boise, Idaho

Published in the Arco Advertiser, Arco, Idaho

on _____

RECORDED

September 23, 1977

RE: Application for Amendment No. 34-2493

Arco Advertiser
Arco,
Idaho 83213

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
Supervisor,
Eastern Region

Bill submitted 10-25-77 by CW

RDC:CW

Enc: Legal Notice (1)

MICROFILMED

PUBLIC NOTICE *copy*

NOTICE OF PROPOSED AMENDING OF WATER PERMIT

Notice is hereby given that Permit No. 34-2493 in the name of Robert K. Moss was issued for the diversion of 2.00 c.f.s. of water from an unnamed drain tributary to Big Lost River with the point of diversion within the S $\frac{1}{2}$ SW $\frac{1}{4}$, Sec. 33, T. 6N, R. 26E, B.M., Butte County; to be used for the irrigation of 100 acres from Apr. 1 to Oct. 1 within the N $\frac{1}{2}$ NW $\frac{1}{4}$, Sec. 4, T. 5N, R. 26E, S $\frac{1}{2}$ SW $\frac{1}{4}$, SE $\frac{1}{4}$ SE $\frac{1}{4}$, Sec. 32, T. 6N, R. 26E, B.M.

The permit holder now proposes to amend Permit No. 34-2493, changing the point of diversion to the SW $\frac{1}{4}$ SW $\frac{1}{4}$, Sec. 33, T. 6N, R. 26E, B.M., Butte County, and the place of use to the N $\frac{1}{2}$ NW $\frac{1}{4}$, Sec. 4, T. 5N, R. 26E, SE $\frac{1}{4}$ SE $\frac{1}{4}$, Sec. 32, S $\frac{1}{2}$ SW $\frac{1}{4}$, Sec. 33, T. 6N, R. 26E, B.M.

Any protest to the proposed amending of the permit must be filed with the Idaho Department of Water Resources, 1515 Lincoln Road, Idaho Falls, Idaho, 83401, on or before October 17, 1977.

C. STEPHEN ALLRED
Director

Published in the Arco Advertiser,
Arco, Idaho, on September 27 and
October 6, 1977.

Copy of permit
proof of b/u
form w/instr.

Sent Mr.
Robert Moss the
above items on
9/20/77.

jc

June 30, 1977

CERTIFIED MAIL 138650

Re: Permit No. 34-2493 (Old No. 33187)

Herman J. Fielding
Star Route East
Othello, Washington 99344

Dear Mr. Fielding:

One of the conditions of approval of your water Permit No. 34-2493 (see last page of your approved permit) was that evidence of the extent of development be submitted as proof of application of water to beneficial use to this office on or before September 23, 1977. Enclosed is an affidavit form which must be used to submit the required proof of beneficial use.

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

Either the beneficial use affidavit or a request for an extension of time must be received by this Department on or before the above mentioned date, otherwise the permit will lapse and be of no further force or effect.



C. STEPHEN ALLRED
Director

CSA:jfr

Enc: Proof affidavit

MICROFILMED

October 21, 1970

Re: Permit No. 33187/34-2493 - PROTEST

Mr. Herman J. Fielding
Star Route, East
Othello, Washington

Dear Mr. Fielding:

During the 1967 session of the Idaho Legislature, certain amendments were made in the law pertaining to the procedures for making proof of beneficial use of water. In order for the Department to comply with these changes, Rules of Practice and Procedure were adopted on August 1, 1968. Generally, these procedures and the amended law make it simpler for a person to make proof and relieve the permit holder from making separate proofs of completion of works and beneficial use of water.

The enclosed order modifies your permit to comply with these rules and regulations. As a part of the new procedure, you will be required to publish a notice at your expense for two consecutive weeks in a paper as prescribed by the Department; previously, a permit holder had to publish a notice for four weeks when he submitted proof under his permit.

If you will complete the enclosed forms, we will cause the notice to be published. Should you require additional forms or information, we will be glad to supply them upon request at any time.

Very truly yours,

Donald W. McEldowney
Appropriation Supervisor

DWM/DG

Enc: order
advertising package

MICROFILMED

December 27, 1967

Re: Permit No. 33187
Herman J. Fielding

Big Lost River Irrigation District
Mackay,
Idaho

Gentlemen:

Please be advised that the conference and hearing scheduled to review the protests filed in opposition to the proof of completion of works and application of water to beneficial use for Permit No. 33187 is hereby cancelled.

The department has been notified by Mr. Fielding that he is withdrawing the proof which he has submitted. Inasmuch as proof of completion of works is not required until September 23, 1971 and the proof of beneficial use is not due until September 23, 1977, Mr. Fielding is within his right to withdraw his proof.

The department will maintain as a matter of record, the protests that have been submitted. At such time as official action is pending in connection with Permit No. 33187, the department shall reschedule a conference and hearing.

Please contact us if we may be of further assistance.

Very truly yours,

Donald W. McEldowney
Water Rights Clerk

DWM:ks

Enclosure: none

33187

December 27, 1967

Re: Permit No. 33187
Herman J. Fielding

DeVon R. Jensen
Watermaster
Water District #27
Mackay, Idaho

Dear Mr. Jensen:

Please be advised that the conference and hearing scheduled to review the protests filed in opposition to the proof of completion of works and application of water to beneficial use for Permit No. 33187 is hereby cancelled.

The department has been notified by Mr. Fielding that he is withdrawing the proof which he has submitted. Inasmuch as proof of completion of works is not required until September 23, 1971 and the proof of beneficial use is not due until September 23, 1977, Mr. Fielding is within his right to withdraw his proof.

The department will maintain as a matter of record, the protests that have been submitted. At such time as official action is pending in connection with Permit No. 33187, the department shall reschedule a conference and hearing.

Please contact us if we may be of further assistance.

Very truly yours,

Donald W. McEldowney
Water Rights Clerk

DWM:ks

Enclosure: none

33187

December 27, 1967

Re: Permit No. 33187

C
O
P
Y

Herman J. Fielding
Star Route East
Othello, Washington

Dear Mr. Fielding:

Please be advised that the conference and hearing scheduled to review the protests filed in opposition to the proof of completion of works and application of water to beneficial use for Permit No. 33187 is hereby cancelled.

The department has been notified by Mr. Fielding that he is withdrawing the proof which he has submitted. Inasmuch as proof of completion of works is not required until September 23, 1971 and the proof of beneficial use is not due until September 23, 1977, Mr. Fielding is within his right to withdraw his proof.

The department will maintain as a matter of record, the protests that have been submitted. At such time as official action is pending in connection with Permit No. 33187, the department shall reschedule a conference and hearing.

Please contact us if we may be of further assistance.

Very truly yours,

Donald W. McEldowney
Water Rights Clerk

DWM:ks

33187

October 11, 1967

Re: Permit No. 33187
Herman J. Fielding

O. T. Jones
Lost River Real Estate Agency
Arco, Idaho

Dear Mr. Jones:

Pursuant to your letter of August 10, 1967, on the above referenced permit, we are forwarding the required sets of depositions for your use in submitting the required proof of completion of works and beneficial use. In as much as Mr. Fielding was to have completed the depositions on September 29, 1967, at Arco, and whereas the depositions had not been completed to date, you, as notary public, are required to supply an affidavit of why the depositions were not taken on the correct date. This affidavit must be returned to this department along with the depositions and the affidavit of publication.

Please contact us if we may be of further assistance.

Very truly yours,

Donald W. McEldowney
Water Rights Clerk

DWN:ks

Enclosure: Depositions

cc: Herman J. Fielding

33187

November 2, 1967

Re: Permit 33187

Herman J. Fielding
Star Route East,
Othello, Washington

Dear Mr. Fielding:

We are in receipt of your letter of October 7, 1967 on the
above referenced permit.

Please be advised that the hearing in question is that to
be conducted in the presence of Mr. O. T. Jones in connection
with submission of proof of completion of works and application
of water to beneficial use under your permit.

Inasmuch as the proof was to have been taken on September 29,
1967, a date which is long since past, you are requested to
either submit the required proof or to advise the department
that you are withdrawing your intent to submit such proof.

Your prompt attention will be greatly appreciated.

Very truly yours,

Donald W. McIdow ~~ings~~
Water Rights Clerk

DWM:ks

Encl: E. T. Jones
Lost River Agency
Arco, Idaho 83213

33187

November 2, 1967

Re: Permit 33187
Herman J. Fielding

Big Lost River Irrigation District
Mackay,
Idaho 83251

Attention: Eileen Lemmon, Assistant Secretary-Treasurer

Gentlemen:

The Department of Reclamation is in receipt of the protest filed in connection with the submission of proof of completion of works and application of water to beneficial use on the above referenced permit.

Please be advised that as of this date, the Department of Reclamation has not received the proof indicated in the notice which was published September 1967, in the Arco Advertiser. Therefore, your protest will be filed in Permit Folder 33187 until such time as official action is pending on the issuance of the license and the certificate of completion of works on Permit No. 33187.

On the scheduling of the hearing to be held in connection with your protest, the Department of Reclamation will advise you as to the date and place of the hearing.

Please contact us if we may be of further assistance.

Very truly yours,

Donald W. McElDowney
Water Rights Clerk

DWM:ks

33187

November 2, 1967

Re: Permit No. 33187
Herman J. Fielding

DeVon R. Jensen, Watermaster
Water District 27
P. O. Box 205
Mackay, Idaho

Dear Mr. Jensen:

We are in receipt of your protest filed against the issuance of the license in connection with the above referenced permit.

Please be advised that the protest will remain in the folder until such time as the department receives the required proof of completion of works and application of water to beneficial use.

Inasmuch as your protest was prompted by the notice of intent to file such proof, published in the Arco Advertiser, you should be advised that the Department of Reclamation has not received the required proof. Since the proof of completion of works is not required under the permit until September 23, 1971 and the proof of beneficial use is not required until September 23, 1977, the Department of Reclamation cannot insist that this proof be submitted. However, as soon as action is pending on this permit, the department will schedule a hearing in connection with the protest you have filed. You will be advised of the time, place and date of the hearing.

Please contact us if we may be of further assistance.

Very truly yours,

Donald W. McEldowney
Water Rights Clerk

DWM:ks

33187

December 3, 1967

Re: Permit No. 33187

Herman J. Fielding
Star Route East
Othello, Washington

Dear Mr. Fielding:

Enclosed are copies of the protests filed in connection with your notice of completion of works and application of water to beneficial use. The protests were filed by DeVen R. Jensen, Watermaster, Water District #27, P. O. Box 27, Mackay, Idaho and the Big Lost River Irrigation District, Mackay, Idaho.

The Department of Reclamation has scheduled a conference and hearing to be held on January 3, 1968, at 10:00 a.m. in the Butte County Courthouse, Arco, Idaho. You or your representative are required to attend.

Very truly yours,

Donald W. McEldowney
Water Rights Clerk

DWM:ks

Enclosures: Copies of protests (2)

33187

December 8, 1968

Re: Permit No. 33187

Big Lost River Irrigation District
Mackay,
Idaho

Gentlemen:

Please be advised that the Department of Reclamation has received your protest in the matter of Permit No. 33187. The applicant has been forwarded a copy of the protest and has been advised of a scheduled conference and hearing in connection with the protest.

Please be advised that the conference and hearing will be held January 3, 1968 at 10:00 a.m. in the Butte County Courthouse, Arco, Idaho. Your or your representative are required to attend.

Very truly yours,

Donald W. McElowney
Water Rights Clerk

DWM:ks

33187

December 8, 1967

Re: Permit No. 33187

DeVon R. Jensen
Watermaster
Water District #27
Mackay, Idaho

Dear Mr. Jensen:

Please be advised that the Department of Reclamation has received your protest in the matter of Permit No. 33187. The applicant has been forwarded a copy of the protest and has been advised of a scheduled conference and hearing in connection with your protest.

Please be advised that the conference and hearing will be held January 3, 1968 at 10:00 a.m. in the Butte County Courthouse, Arco, Idaho. Your or your representative are required to attend.

Very truly yours,

Donald W. McElowney
Water Rights Clerk

DW:ks

33187

December 8, 1967

Re: Permit No. 33187

Herman J. Fielding
Star Route East
Othello, Washington

Dear Mr. Fielding:

The Department of Reclamation has not yet received the depositions taken in proof of Permit No. 31387. These depositions must be received by December 27, 1967 in order that we may have all the necessary material in connection with the scheduled conference and hearing.

Very truly yours,

Donald W. McElidowney
Water Rights Clerk

DWM:ks

33187

RECEIVED
OCT 11 1967

Othello, Washington
October 7, 1967

Dear Mr. M cEldowney,

In Your letter of August 10, 1967 you have a P. S. asking if the hearing date meets with my approval.

I am not familiar with what date this is, and what is involved at such a hearing, and where this will be held. Would you please give me further information in this regard.. I was recently thru Boise and had planned to stop in but my hours going thru didn't conform to your office hours..

Sincerely yours,

Herman J. Fielding
Herman J. Fielding

33187

REAL ESTATE

Lost River Agency

Serving Central Idaho . . . Land of Opportunity

O. T. JONES
REAL ESTATE BROKER
LICENSED AUCTIONEER

PHONE 527-3150

ARCO, IDAHO

October 10th, 1967

NOTARY PUBLIC
LONG TERM REAL ESTATE
LOANS
BUSINESS OPPORTUNITIES

Dept of Reclamation
State House

Boise, Idaho 83700

Re-Permit Number 33187
for Herman J. Fielding

Dear Mr Higginson -:

With reference to the above permit, we have never received the documents for the Holder and the two witnesses to sign before a Notary Public.

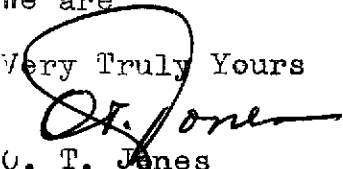
We do have the Affidavit of publication from the Arco Advertiser, and also we have the two witnesses who are ready to sign.

As Mr Fielding lives in Othello Washington, we are Mailing him a copy of this letter so that he will understand why we have been unable to complete this matter.

Please send us the necessary Blanks, and advise us how to continue. Thanking you for your help in this matter,

We are

Very Truly Yours


O. T. Jones

CC-to Herman J. Fielding
Star Rt East
Othello, Washington.

CENTRAL IDAHO . . .

Production center for High Class Livestock;
Commercial and Certified Potatoes; Hay
and Grain.

THE HEART OF THE BEST HUNTING
AND FISHING COUNTRY

ATOMIC INDUSTRIAL AREA . . .

Center of Idaho AEC Operations
Extensive Development Possibilities

RECEIVED

33187

ARTHUR W. QUIST
President
Arco, Idaho

ALFRED L. KING
Moore, Idaho

S. E. HINTZE
Mackay, Idaho

RICHARD E. BEAL
Moore, Idaho

Big Lost River Irrigation District

Olyde McAfee, Secretary-Treasurer — Darlington, Idaho
Address All Correspondence to Office at Mackay — Phone 2231

Mackay, Idaho 83251

September 26, 1967

SEP 27 1967

Department of Reclamation

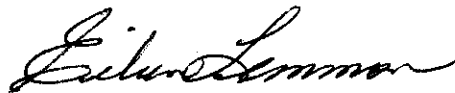
Mr. Keith Higginson
State Reclamation Engineer
107 State House
Boise, Idaho 83701

Dear Mr. Higginson:

We are enclosing a Protest by the Big Lost River Irrigation District against the filing by Mr. Herman J. Fielding - Notice of Proof of Completion of Works and Application of Water to Beneficial Use - Permit No. 33187.

Very truly yours,

BIG LOST RIVER IRRIGATION DISTRICT



Eileen Lemmon,
Assistant Secretary-Treasurer

BLRID:el

Enclosure

33187

200
1967

Department of Reclamation

PROTEST

COMES NOW the Big Lost River Irrigation District, by and through its President, Arthur W. Quist, and files a protest against the "Notice of Proof of Completion of Works and Application of Water to Beneficial Use", concerning Permit No. 33187, heretofore issued by the Department of Reclamation of the State of Idaho, in the name of Herman J. Fielding, Star Route East, Othello, Washington, and for basis of protest represents:

I.

That Notice of Proof of Completion of Works and Application of Water to Beneficial Use has been published by public notice setting the 29th day of September, 1967, at Arco, Idaho, as the time and place for the submission of proof of the completion of works for the diversion of 2.0 cubic feet per second of the waters of a drain, and the application to beneficial use of said water, in accordance with the terms and conditions of Permit No. 33187, heretofore issued to one Herman J. Fielding, Star Route East, Othello, Washington; said public notice further states that the point of diversion of the said waters is the S 1/2 SW 1/4, Section 33, Township 6North, Range 26 E.B.M., Butte County, Idaho, and that the place where said water is used is N 1/2 NW 1/4, Section 4, Township 5North, Range 26 E.B.M. and SE 1/4 SE 1/4 Section 32; S 1/2 SW 1/4 Section 33, Township 6North, Range 26 E.B.M.

II.

That the drain constructed by the applicant, was constructed in the area adjacent to Big Lost River, within the rising water area above the Moore Diversion of the Big Lost River Irrigation District. This drain is between 700 to 800 feet long and 6 to 8 feet deep; the water accumulated in this drain is then pumped from the drain and used for irrigation of the fields. That said drain intercepts the natural rising water that would flow into the Big Lost River; that said rising water pursuant to the decreed rights granted to the Big Lost River Irrigation District and to other water users in the area, is appropriated water, said water being declared to perform "double duty", and being used by the Big Lost River Irrigation District to fulfill its storage rights and decreed right to the members of said District.

III.

That the Big Lost River Irrigation District has protested to the applicant herein to no avail; that this Protest is filed by the Big Lost River Irrigation District to the end that the said District cannot forfeit its right, title and interest in and to said waters that are being diverted by the use of this drain and appropriated in part to use of the Big Lost River Irrigation District.

DATED this 26 day of September, 1967.

BIG LOST RIVER IRRIGATION DISTRICT.

By Arthur W. Quist President

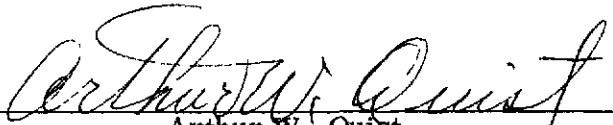
33187

Department of Notary Public

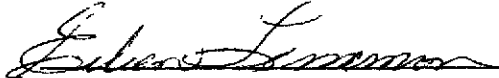
STATE OF IDAHO)
COUNTY OF BUTTE) ss

ARTHUR W. QUIST, being first duly sworn, deposes and says:

That he is the President of the Big Lost River Irrigation District and makes this protest on behalf of the said Big Lost River Irrigation District: that he has read the protest above, knows the contents thereof from his own personal knowledge, and that the statements therein are true as he verily believes.


Arthur W. Quist

SUBSCRIBED AND SWORN TO before me this 26th day of
September, 1967.


NOTARY PUBLIC for Idaho
Residence: ^{Mackay} ~~Arco~~, Idaho
Commission Expires: 6-7-69

33187

WATER DISTRICT 27

P. O. BOX 205

MACKAY, IDAHO

September 25, 1967

RECEIVED
SEP 25 1967

Mr. Keith Higginson
State Reclamation Engineer
107 State House
Boise, Idaho 83701

Dear Mr. Higginson:

I am sending you a protest against Filing No. 33187; this filing was made by Herman J. Fielding, Star Route East, Othello, Washington.

Very truly yours,

WATER DISTRICT 27


DeVon R. Jensen,
Watermaster

DRJ:el

Enclosure

33187

PROTEST

The Advisory Board of Water District 27, State of Idaho, duly met on September 19, 1967. Those being present were:

Harvey Walker, Arco, Idaho
H. Parke Butcher, Moore, Idaho
Orville Smith, Darlington, Idaho
Jimmy Waddoups, Darlington, Idaho
George Wheeler, Moore, Idaho
Kenneth Stewart, Mackay, Idaho
Jay Pearson, Moore, Idaho

At said meeting, a motion was made by Harvey Walker and seconded by George Wheeler to protest a filing by Herman J. Fielding, Star Route East, Othello, Washington, for Application of Water to Beneficial Use concerning Permit No. 33187; said motion passed unanimously, and for basis of protest represents:

I.

That Notice of Proof of Completion of Works and Application of Water to Beneficial Use has been published by public notice setting the 29th day of September, 1967, at Arco, Idaho, as the time and place for the submission of proof of the completion of works for the diversion of 2.0 cubic feet per second of the waters of a drain, and the application to beneficial use of said water, in accordance with the terms and conditions of Permit No. 33187, heretofore issued to one Herman J. Fielding, Star Route East, Othello, Washington; said public notice further states that the point of diversion of the said waters is the S 1/2 SW 1/4, Section 33, Township 6 North, Range 26 E.B.M., Butte County, Idaho, and that the place where said water is used is N 1/2 NW 1/4, Section 4, Township 5 North, Range 26 E.B.M. and SE 1/4 SE 1/4, Section 32; S 1/2 SW 1/4 Section 33, Township 6 North, Range 26 E.B.M.

II.

That the drain constructed by the applicant, was originally constructed to drain over-subbed land. This land is within the rising water area above the Moore Diversion of the Big Lost River. This drain being several hundred feet long and 6 or 8 feet deep, intercepts the natural rising water that would flow into the Big Lost River; that said rising water pursuant to the decreed rights granted to the water users of Water District 27, is appropriated water, said water being declared to perform "double duty", and is used to fill the Utah Construction Company versus John Abbott Decree - issued March 15, 1923.

33187

III.

That the Watermaster of Water District 27 has protested to the applicant herein to no avail; that this protest is filed by DeVon R. Jensen, Watermaster of District 27, per instructions he has received from said Advisory Board; said Watermaster feels he cannot forfeit existing water rights to fill said application.

Dated this 25 day of September, 1967.

WATER DISTRICT 27

By

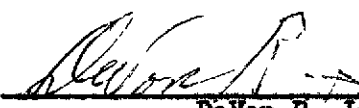
DeVon R. Jensen
Watermaster

33187

STATE OF IDAHO)
COUNTY OF CUSTER) ss

DEVON R. JENSEN, being first duly sworn, deposes and says:

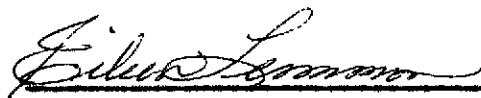
That he is the Watermaster of the Water District 27 and makes this protest on behalf of the said Water District 27; that he has read the protest above, knows the contents thereof from his own personal knowledge, and that the statements therein are true as he verily believes.



Devon R. Jensen

SUBSCRIBED AND SWORN TO before me this 25th day of September,
1967.

(Seal)



NOTARY PUBLIC for Idaho
Residence: Mackay, Idaho
My Commission Expires: June 7, 1969

33187

WATER DISTRICT 27
P O. BOX 205
Mackay, Idaho 83251

CERTIFIED

No. 800169

MAIL



Mr. Keith Higginson
State Reclamation Engineer
107 State House
Boise, Idaho 83701

24-2493
25:85

August 10, 1967

Re: Permit No. 33187
Herman J. Fielding

Area Advertiser
Arco, Idaho 83213

Gentlemen:

Enclosed is a legal notice which we wish to have published for four consecutive weeks prior to September 29 1967. The expense of the publication is to paid by Herman J. Fielding, Star Route East, Othello, Washington,

to whom you should furnish the affidavit of publication on or before the above date. Please acknowledge receipt of this notice by furnishing this office with a tear sheet for checking prior to the first publication.

Very truly yours,

Donald W. McEldowney
Water Rights Clerk

DWM:dj

33187

DON SAMUELSON
GOVERNOR



R KEITH HIGGINSON
State Reclamation Engineer.

STATE OF IDAHO

DEPARTMENT OF RECLAMATION
107 STATE HOUSE
BOISE, IDAHO 83701

August 10, 1967

Re: Permit No. 33187

Mr. Herman J. Fielding
Star Route East
Othello, Washington

Dear Mr. Fielding:

This acknowledges receipt of the notice of intent to make proof of completion of works and application of water to beneficial use for permit 33187.

We have mailed the notice to the Arco Advertiser to be published once a week for four consecutive weeks prior to September 29, 1967, which is the hearing date when the permit holder Herman J. Fielding and two disinterested witnesses must appear before O. T. Jones, Arco, Idaho, notary public, to complete the enclosed depositions. The witnesses must be familiar with the works and permit.

After the hearing, the depositions and an affidavit of publication must be submitted to this office. The affidavit may be obtained from the newspaper when the advertising bill is paid by Herman J. Fielding. Be sure all the forms have the notary's seal and are signed.

Please feel free to contact us if we may be of any assistance.

Very truly yours,

Donald W. McEldowney
Water Rights Clerk
DWM:dj

Enc: Depositions

cc: Notary

P. S. Please notify us if the hearing date we have set is inconsistent with your plans.

33187

Othello Washington
August 7, 1967

RECEIVED
AUG 9 1967
Department of Reclamation

State Reclamation engineer
Boise, Idaho

Dear Mr. Higginson,

Enclosed please find papers signed to authorize the department to advertise at my expense the proof of completion of works according to permit no. 33187.

I am also returning the additional papers sent me of which I have added the name of a notary public name but didn't add any time or place. The procedure was not clear to me as to whether this is a future procedure or if you wanted this back now. A definite time and place is difficult this far away to determine.

Will you let me know further procedure and what I should have done regarding finishing these planks out. For the time being the advertising may proceed..

Sincerely yours,

Hermon J. Fielding
Hermon J. Fielding

P.S.. It may be necessary to send me another form 36. as I may not be able to use this notary at the time I complete this form.

*Sent to date & advise
Hermon J. Fielding*

33187

(This completed form authorizes the Department of Reclamation to publish the required notice at your expense.)

State Reclamation Engineer:

You are hereby authorized to have the attached notice published at my expense in the Arco Advertiser of Arco, Idaho; published in the county in which the works are situated.

Harmon J. Fielding
(signature)

Star Pt East, Idaho, work
(address)

Aug 7, 1967
(date)

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

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

Engineer

33187

NOTICE OF PROOF OF COMPLETION OF WORKS AND
APPLICATION OF WATER TO BENEFICIAL USE

Notice is hereby given that on September 29, 1967 at Arco,
County of Butte, State of Idaho, before notary public ~~(name & address)~~
D. T. Jones, Arco, Idaho, proof will be
submitted of the completion of works for the diversion of 2.0 c.f.s. of the waters
of a drain, and the application to beneficial use of said water,
in accordance with the terms and conditions of permit 33187, heretofore issued by
the Department of Reclamation of the State of Idaho.

1. The name and address of permit holder is Herman J. Fielding, Star
Route East, Othello, Washington.

2. Said works of diversion will be fully completed on the date for such completion,
and the amount of water which said works are capable of conveying to the place of use is
2.0 cubic feet per second.

3. The use to which said water has been applied is irrigation
purposes, and the amount applied to beneficial
use is 2.0 c.f.s.

4. The point of diversion of said water is S $\frac{1}{2}$ SW $\frac{1}{4}$, Sec. 33, T. 6 N, R. 26 E, B.M.,
Butte County.

5. The place where said water is used is N $\frac{1}{2}$ NW $\frac{1}{4}$, Sec. 4, T. 5 N, R. 26 E,
B.M.; and SE $\frac{1}{4}$ SE $\frac{1}{4}$, Sec. 32; S $\frac{1}{2}$ SW $\frac{1}{4}$, Sec. 33, T. 6 N, R. 26 E, B.M.

6. The date of priority which said user is prepared to establish is _____
September 19, 1966.

R. KEITH HIGGINSON
State Reclamation Engineer

33187

Re: Permit No. 33187

July 26, 1967

Mr. Herman J. Fielding
Star Route East
Othello, Washington

Dear Mr. Fielding:

Proof of completion of works and application of water to beneficial use for the above referenced permit is due not later than September 23, 1971 and September 23, 1977.

Under the terms of your permit, it is required that a notice be published once a week for four consecutive weeks in a local newspaper showing your intent to submit proof. The proof will consist of depositions which the permit holder and two disinterested witnesses must complete before the listed notary public, and must be accompanied by an affidavit of publication of the legal notice.

We have prepared the enclosed notice from the information on your permit. The complete name and address of a notary public of the State of Idaho must be entered together with a date for you to appear before the notary. Allow at least 40 days from the date the notice is mailed to this department for your appearance before the notary.

If you find any discrepancy in the notice or have made any changes, please advise this department and we will assist you in doing whatever may be necessary to assure correct publication.

If the enclosed notice is correct, complete the blank spaces and sign the form authorizing us to publish the notice at your expense and return all forms. At the time we send the notice to the newspaper, you will be supplied with further instructions.

If you do not desire to complete the proofs and obtain a license of water right, you are requested to complete the relinquishment portion of this form below and return it to the Department of Reclamation.


State Reclamation Engineer

RELINQUISHMENT

I hereby relinquish to the State of Idaho, all my right, title and interest in and to Permit to Appropriate the Public Waters of the State of Idaho, No. _____.

Dated _____.

permit holder

RECEIVED
JUL 25 1967

Department of Reclamation

Othello, Washington
Star Route East
July 22, 1967

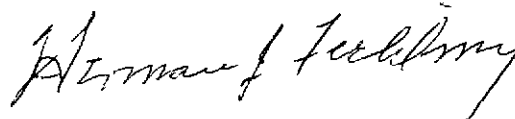
Dear Mr. Bosch,
Boise, Idaho

Will you please, send me papers and instructions to complete the permit to file on the water on our farm in Moore, Idaho in the Lost River Valley?

I was issued a permit 23 September 1966 that was signed by the Governor of the State and Mr. Higginson. I would like to complete this permit at this time.

33187

Sincerely yours,



Herman J..Fielding
Star Route East
Othello, Washington

33187

RECEIVED
NOV 14 1966

Department of Reclamation

WELL LOG AND REPORT TO THE
STATE RECLAMATION ENGINEER OF IDAHO

SUBMIT WITHIN 30 DAYS AFTER COMPLETION OF WELL: SEE IDAHO STATUTES 42-238

Permit No. 2-1857 Well No. _____ County CaribouOwner Joe EliasonAddress Bancroft IdahoDriller Ivan RothAddress Grace Idaho Box 226Well location SW 1/4 NW 1/4 Sec. 72, T. 8 N/S, R. 39 E/2RSize of drilled hole 16"

Locate well in section

NW 1/4	NE 1/4
Sec. _____	
SW 1/4	SE 1/4

Total depth of well 122 ft.Give depth to standing water from the ground 72 Water temp. _____ °Fahr.Test delivery was _____ g.p.m. or _____ c.f.s. Drawdown was _____ feet. Pump? _____ Bail? XSize of pump and motor used to make test no test made

Length of time of test _____ hours _____ minutes.

If flowing well, give flow _____ c.f.s. or _____ g.p.m. and of shut off pressure _____

If flowing well, described control works _____

Water will be used for Irrigation + Domestic (TYPE AND SIZE OF VALVE, ETC.)

Weight of casing per lineal foot _____

Thickness of casing 1/4" Casing material Black Steel Pipe

(STEEL, CONCRETE, WOOD, ETC.)

Diameter, length and location of casing 16" - 1' to 35 ft.(CASING 12" IN DIAMETER OR LESS, GIVE INSIDE DIAMETER;
CASING OVER 12" IN DIAMETER, GIVE OUTSIDE DIAMETER)

CASING RECORD

Diam. Casing	From Feet	To Feet	Length	Remarks—seals, grouting, etc.
16"	~1'	34'	35'	Cuttings filled around casing.

Number and size of perforations none located _____ feet to _____ feet from groundDate of commencement of well Oct. 14, 1966 Date of completion of well Nov. 1, 1966

33187

WELL LOG

[illegible]

WELL DRILLER'S STATEMENT

This well was drilled under my supervision and the above information is complete, true and correct to the best of my knowledge and belief.

Signed: Dean Bort

By _____

Dated _____, 19____.

License No. 51

Well Driller's Helper_____

33187

October 20, 1966

Rel Permit No. 33187

Mr. DeVon Jensen, Watermaster
District No. 27
Box 205
Mackay, Idaho

Dear Mr. Jensen:

I have tried to call you for the last few days but your telephone is apparently out of order. I wanted to discuss with you the complaint you have apparently filed against Mr. Herman J. Fielding in connection with the drain he has built on his property near the Big Lost River.

I advised Mr. Fielding, when he visited this office the other day, that it is our position that he may construct a drain on his property and pump water therefrom to irrigate the lands actually drained without a permit, but that he would have no authority or right to intercept water naturally flowing toward or into the Big Lost River and use such waters on lands not benefiting from the drainage. It, therefore, appears to me a matter of proof as between yourself and Mr. Fielding as to whether he is intercepting waters naturally tributary to the river, or specifically diverting water which was previously consumed on the property due to the high water table.

I would appreciate your advising me as to what your intentions are in pursuing this matter.

Very truly yours,

R. KEITH HIGGINSON
State Reclamation Engineer

RKH:ew

cc: Herman J. Fielding
Star Route East
Othello, Wash.

33187

October 4, 1966

Re: Permit No. 33187

Herman J. Fielding
Star Route East
Othello, Washington

Dear Mr. Fielding:

We enclose Permit No. 33187 in which we direct your attention to the limitations and conditions as given on the fourth page under approval of the State Reclamation Engineer.

~~XXXXXXXXXXXX~~ Departmental Receipt No. 33422 which was issued covering payment in the amount of \$ 5.25 for the filing fee of the above mentioned permit, was given to you at the time you were in our office.

Very truly yours,

Enc. permit,
MRB:ejw

M. RUSSELL BOSCH
Office Manager

33187