

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



Scale: 2 inches equal 1 mile.

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

(Applicant)

NOTICE OF
APPLICATION FOR
WATER RIGHT

The following applica-
tions have been filed to
appropriate the public
waters of the State of
Idaho:

74-7243

TONSMEIRE, JOE
P. O. BOX 871, SALMON,
ID 83467

Source: DRY GULCH trib.
to HAYDEN CREEK

Diversion Pt: NESW
NWNW Sec 13 T 17N R
23E

Use: IRRIGATION (2.0
CFS)

IRRIGATION STORAGE
(49.0 AF)

IRRIGATION FROM
STORAGE (49.0 AF)

Date Filed: 11/27/1985

In: SESE Sec 11 T 17N R
23E SWSW Sec 12 T 17N R
23E NWNW Sec 13 T 17N
R 23E NENE Sec 14 T 17N
R 23E FOR 103 ACRES

The permits will be
subject to all prior water
rights. Protests may be
submitted based on the
criteria of Sec. 42-203A,
Idaho Code and/or the new
public interest criteria of
Sec. 42-203C, Idaho Code.
Protests must be filed with
the Director, Dept. of
Water Resources, 150
Shoup Ave., Suite 15,
Idaho Falls, Idaho 83402 on
or before December 30,
1985.

KEN DUNN
Director

Published 12/2 and 12/
19/85.

12-12-2tc

Affidavit of Publication

STATE OF IDAHO

County of Lemhi

ss.

DEC 23 1985
Department of Water Resources
Eastern District Office

Jerry G. Rosin

_____, being first duly sworn, deposes
and says that he is one of the printers (publisher) of the RECORDER HERALD,
a newspaper published weekly at Salmon, Lemhi County, Idaho, and of general
circulation therein,

That the Notice Of Application For Water Rights 74-7243

_____ a true
printed copy of which is attached to the margin hereof, has been and was correct-
ly printed and published in the regular and entire issue of every number of said
newspaper and not in any supplement thereof or thereto for 2
consecutive issues, commencing with the issue dated Dec. 12, 1985
and ending with the issue dated Dec. 19, 1985

Jerry G. Rosin

Subscribed and sworn to before me, this Nineteenth

day of December, 1985

Neil Armstrong

Notary Public for the State of Idaho,
Residing at Salmon, Idaho

Publication Fee \$ 30.87

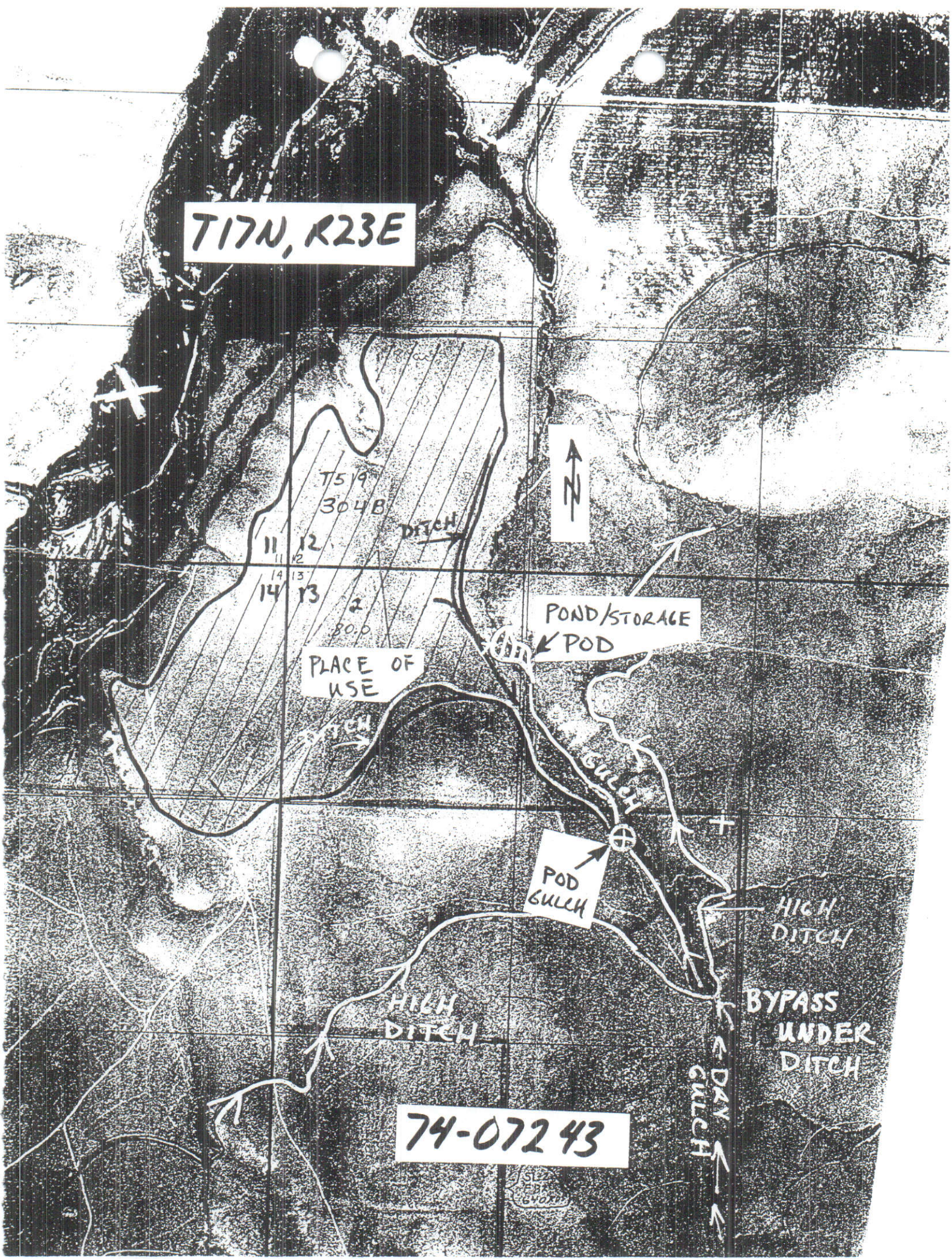
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JUN 28 1990

MD 12/29/85

74-07243

T17N, R23E



74-07243

JOE TONS HEICE

STORAGE / IRRIGATION

10/4

VIEW OF
UPPER POINT
OF DIVERSION
ON DRY GULCH

NWSE NW



PERMIT
NUMBER

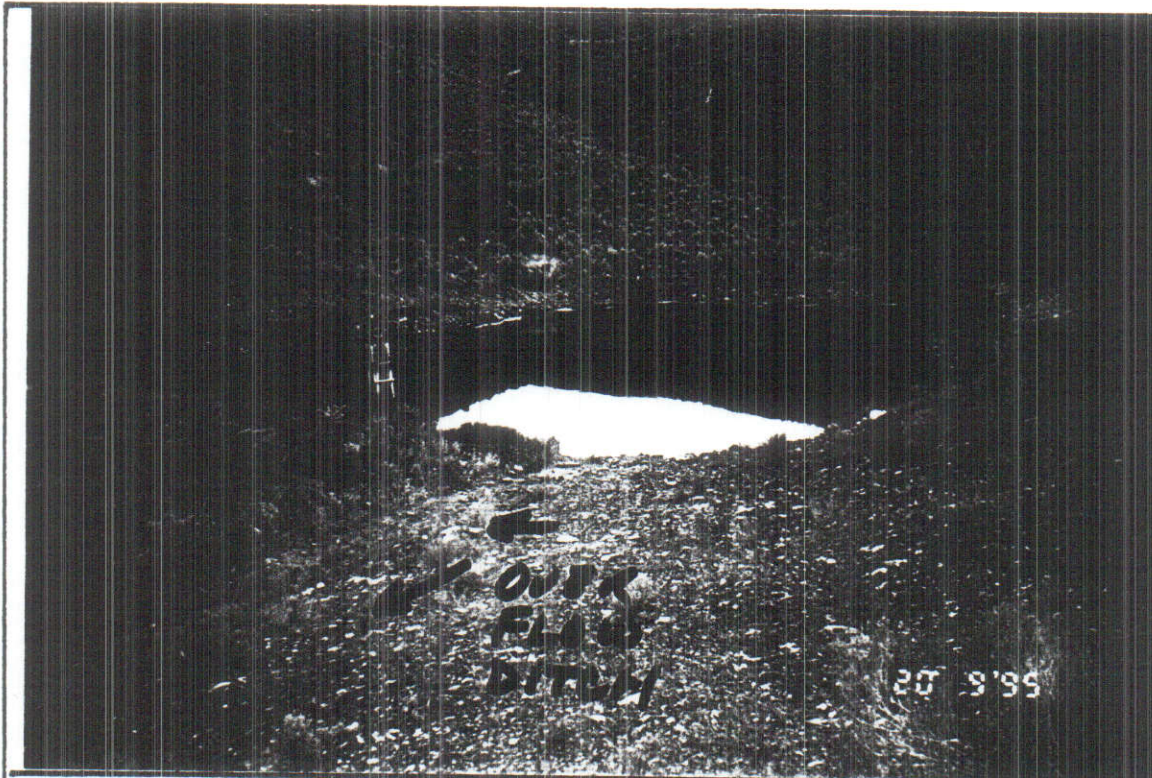
74-07243

JOE TONSMERE

STORAGE / IRRIGATION

2/4

VIEW OF
STORAGE
RESERVOIR
AND HIGH
WATER RUN
OFF DITCH



VIEW OF
OVERFLOW
DITCH.



PERMIT
NUMBER

74-07243

JOE TONSHEIRE

STORAGE / IRRIGATION

NEXT (4) PICTURES ARE
A SCANNING PANNING VIEW
LEFT TO RIGHT.

3/4

① VIEW OF
EXTREME
LEFT SIDE
PLACE OF
USE

NE NE S14

② VIEW OF
PLACE OF
USE

SWSW S12
NW NW S13

PERMIT
NUMBER

74-07243

JOE TONSMEIRE

STORAGE / IRRIGATION

4/4

③

VIEW OF
PLACE OF
USE

EXTREME
RIGHT
SWSW S12



④

OVER VIEW
OF RESERVOIR/
POND - DITCH
AND EXTREME
RIGHT EDGE
OF PLACE OF
USE

SWSW S12
BACKGROUND

NE NW S13
FOREGROUND



PERMIT
NUMBER

74-07243

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

APPLICATION TO CONSTRUCT A SMALL DAM

Required for construction or alteration of a dam 20 feet or less in height
and capable of storing less than 100 acre-feet of water.

1. Name of owner (print or type): JOSEPH & FRANCES TONSMIRE Phone No. 208 756 3959

Post Office address: P O Box 871 SALMON IDAHO 83467

2. Describe the nature of the proposed work (new dam, raise existing dam, etc.): EXISTING ~~NEW~~ DAM

3. RESERVOIR:

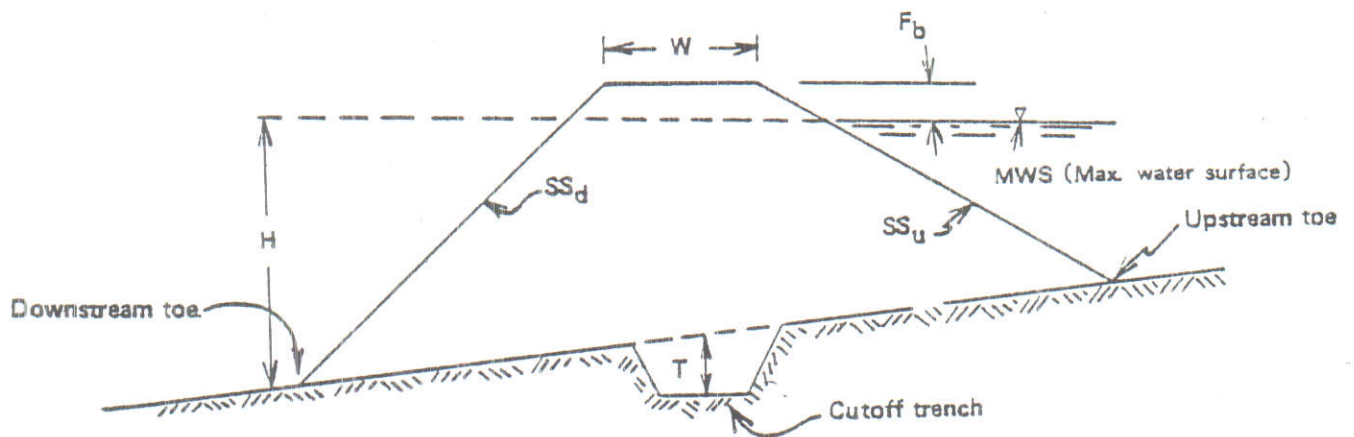
Storage capacity 8 acre-feet.

Surface area 3/4 acres.

Source of water (stream) DRY GULCH

Offstream storage: Yes ☐ No ☒

4. DETAILS OF DAM:



Dam type (earth, concrete, rock, etc.) EARTH

Location: Section 13 Township 17N Range 23E B.M.

Crest width (W) 20 feet.

Freeboard (F_b) 3 feet.

Height of dam (H) 19 feet. Height of existing dam, if being raised _____ feet.

Downstream side slope (SS_d) 2/1

Upstream side slope (SS_u) 2/1

Cutoff-Trench depth (T) 4

Length of dam 150 feet.

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JUN 28 1971

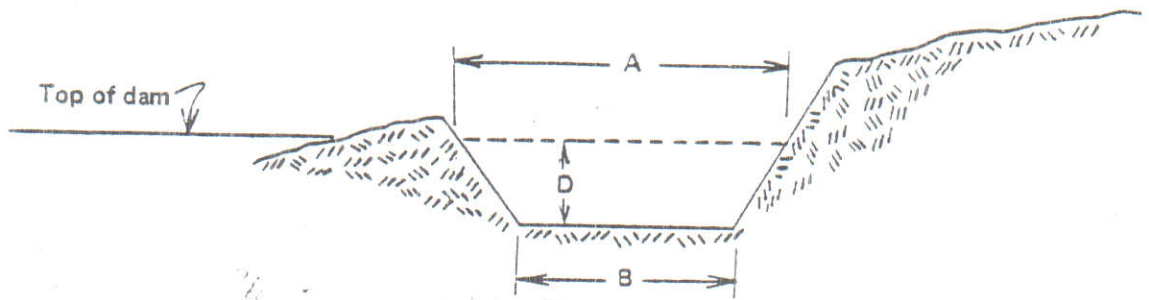
5. OUTLET CONDUIT:

Size and type of pipe 12" STEEL

Size and number of cutoff collars 2 18" - 2

Gate location (upstream, etc.) 12" stand pipe #1 in pond

6. SPILLWAY:



Do you plan to use a gate or flashboards in the spillway? Yes _____ No NO

Approximate natural drainage area above dam 300 acres.

Depth of spillway below top of dam (D) 4 feet.

Bottom width of spillway (B) 2 feet.

Top width of spillway (A) 5 feet.

Location: Abutment _____ Away from dam X Over dam _____ Other (describe) _____

Channel lining (earth, riprap, concrete, solid rock, etc.): EARTH

7. DEVELOPMENT DOWNSTREAM:

Briefly describe the type of development or land use immediately downstream from the dam. Indicate estimated distances to significant area of improvement that could be damaged if the dam failed:

NONE

8. CONSTRUCTION SCHEDULE:

Proposed date for start of construction THIS DAM IS EXISTING - BUILT IN 1988

7 April 1990
Date

[Signature]
Applicant's signature

FOR DEPARTMENT USE ONLY

Date application received 5-8-90

By CA

Fee \$ 10.00

Date receipted 5-8-90

Receipted by CA

ACTION OF THE DIRECTOR, THE DEPARTMENT OF WATER RESOURCES

In accordance with the provisions of Title 42, Chapter 17, Idaho Code and the Department's Rules and Regulations for Safety of Dams, the above proposal is hereby _____, subject to the following conditions:

1. This action does not constitute the required authorization to appropriate water under Idaho Water Law.
2. All construction at dams is subject to approval by the Department of Water Resources which reserves the right to make inspection of such work as often as it deems necessary. The applicant shall notify the Department at the following times, and at such other times as it deems necessary, so that it may conduct inspections.
 - a. After clearing and excavation of foundation, and prior to placing fill material.
 - b. After installation of outlet conduit, and before placing any backfill material around conduit.
 - c. After construction is complete and before any water is stored in reservoir.

Additional conditions:

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

For Office Use Only
Fee Received 125⁰⁰
Date 5-8-90
Receipt # MOD 6940
Receipt by CT
Reviewed by PH-6 25-90
Sent to region

\$ 125⁰⁰

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
PROOF OF BENEFICIAL USE

Department of Water Resources

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

Permit No. 74-7243

Name(s) of Permit Holder: JOSEPH & FRANCES TONSMEIRE

Post Office Address: P O Box 871

SALMON IDAHO 83467 Telephone No. 208 756 3959

Source of Water: DRY GULCH

Extent of Use:

Domestic (number of households)

Stockwater 125 (number and type of stock)

Irrigation ~~100~~ ~~15~~ 103 (acres)

Other/Remark

Total rate and/or volume for which proof is submitted 2.0 cfs 46 acre-feet

Show the date water was first diverted and beneficially used under this permit: MARCH 21 1990

Measuring Device: Required? ☒ Yes ☐ No
Installed? ☒ Yes ☐ No

Fee enclosed \$ 125
(See License Examination Fee Schedule)

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

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

JOSEPH OR FRANCES TONSMEIRE
(Name)

208 756-3959
(Telephone Number)

P O Box 871 SALMON IDAHO 83467
(Address)

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

JUN 28 1990

7 APRIL 1990
Date

[Signature]
Signature of Permit Holder (and title, if appropriate)

STATE OF IDAHO

SOURCE: Dry Gulch
COUNTY: Lemhi

ORDER ADOPTING PROPOSED MEMORANDUM DECISION

The Director has reviewed the protestant's exceptions to the Proposed Decision approving water right Permit No. 74-7243. The exceptions are found to be unpersuasive and are rejected with the following explanation.

The Director of the Department of Water Resources is obligated to enforce and administer the water laws of the State of Idaho. While the protestant claims that the Department's finding regarding the length of time Dry Gulch water has flowed into the "High Ditch" is in error, the Director finds the length of time to be immaterial. Whether the use of this water was started in 1915, as the protestant now asserts, or 1976 as the conference record indicates, cannot change the outcome of this decision. The protestant's predecessors were joined in the Lemhi general adjudication after May 20, 1971, the date after which a water right from a surface water source can only be established under a permit issued by the Department of Water Resources. No application for permit was ever made by the protestant or its predecessors, Parley A. Arave and Robert T. Hemming for the use of water from Dry Gulch. While the protestant may choose to bring this matter before the court through the summary supplemental process provided in Idaho Code, Section 42-1405, the language of 42-1420 appears to clearly bind parties to the results of the general adjudication. Sec. 42-1420

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states:

... (1) The decree entered in a general adjudication commenced under the provisions of sections 42-1406 or 42-1406A, Idaho Code, shall be binding on all persons [parties] and conclusive as to the nature and extent of the water rights of all persons [parties], including all unknown parties ...

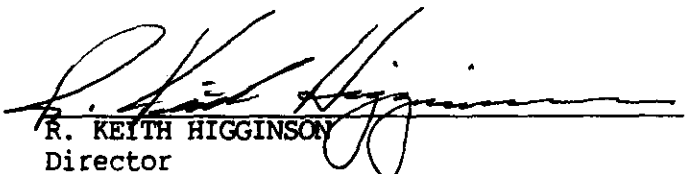
Section 42-1420 replaced former Sec. 42-1411, Idaho Code, repealed in 1986, which provided as follows:

42-1411. Decree-Forfeiture of right.-The decree shall be conclusive as to the rights of all existing claimants upon the water system which shall lawfully embrace any determination. When a decree has been entered, any water user who has been joined and who failed to appear and submit proof of his claim as provided in this act shall be barred and estopped from subsequently asserting any right theretofore acquired upon the waters included within the proceedings, and shall be held to have forfeited all rights to any water theretofore claimed.

The protestant was decreed an adequate supply of water to irrigate all of his land from the East Fork of Hayden Creek through the "High Ditch." The protestant has made use of the water flowing in Dry Gulch during the early irrigation season because the head of High Ditch remains full of snow which prevents the diversion of protestant's full water right of 11.68 cubic feet per second.

The Proposed Memorandum Decision and Order of June 1, 1987 for Permit No. 74-7243 is hereby ADOPTED as the final decision and the time within which to submit proof of beneficial use is extended to April 1, 1994.

Dated this 22ND day of MARCH, 1989.


R. KEITH HIGGINSON
Director

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JUN 28 1990

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this the 28th day of March, 1989, a true and correct copy of the foregoing ORDER ADOPTING PROPOSED MEMORANDUM DECISION was mailed postage prepaid to:

Mr. Joe Tonsmeire
P. O. Box 871
Salmon, ID 83467

Kent W. Foster
Attorney at Law
P. O. Box 129
Idaho Falls, ID 83403



RITA I. FLECK
Secretary/Records Manager

RECEIVED

JUN 1 1989

BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE

STATE OF IDAHO

IN THE MATTER OF APPLICATION FOR
PERMIT NO. 74-7243 IN THE NAME
JOE TONSMEIRE

)
) SOURCE: Dry Gulch
)
) COUNTY: Lemhi
)
)

PROPOSED MEMORANDUM DECISION AND ORDER

On November 27, 1985, Joe Tonsmeire filed Application No. 74-7243 with the Department of Water Resources (department) for a permit to appropriate water from Dry Creek tributary of Hayden Creek. The application indicates 2.00 cubic feet per second would be diverted from the NE1/4SW1/4, Sec. 13, Twp. 17N, Rge. 23E, B.M., and used for the irrigation of 103 acres in the SE1/4SE1/4, Sec. 11; SW1/4SW1/4, Sec. 12; NW1/4NW1/4, Sec. 13; and NE1/4NE1/4, Sec. 14; all in Twp. 17N, Rge. 23E. The application also requests the storage of up to 49 acre-feet of water during the non-irrigation season which subsequently could be released and used for the irrigation of the place of use identified above.

Notice of this application was published on December 12 and 19, 1985 in the Recorder Herald, Salmon, Idaho. A protest objecting to the issuance of the permit was received by the department on December 26, 1985 from Kent Foster, Attorney at Law, on behalf of the Corporation of the Presiding Bishop of the Church of Jesus Christ of Latter-Day Saints. A hearing was scheduled for November 6, 1986, in Salmon, Idaho pursuant to Idaho Code, Sec. 42-1701A. The applicant was present and represented himself. The protestant was represented by Robert Thomas, current manager of the ranch owned by the protestant, and Kent Foster, Attorney at Law. After an informal discussion of the facts, the parties

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waived their right to a formal hearing and stipulated to allow the department to make a decision based upon the information presented at the conference.

Based on information presented, the official records of the department, and upon his understanding of the law, the hearing officer, Ronald D. Carlson makes the following Findings of Fact, Conclusions of Law and Order.

FINDINGS OF FACT

1. The applicant has already started clearing the proposed place of use of sagebrush in the hopes of being able to seed the ground and possibly irrigate next spring. There is an existing ditch from Dry Gulch to the property which the applicant intends to use as part of the diversion system. He estimates the cost of repairing the ditch and constructing a flume to be approximately \$300 and the cost of building the dam would be less than \$1,200. He also stated that he has sufficient funds to complete the project as his net worth is several times greater than the cost of the project.

2. Irrigation water for a portion of the protestant's ranch is conveyed through a gravity flow, open channel locally known as the "High Ditch." For at least the past ten years, water flowing in Dry Gulch has been entirely intercepted by the "High Ditch." This water has been relied on to supplement irrigation water delivered through the ditch, particularly early in the irrigation season when the head of "High Ditch" is still full of snow and it is not possible to divert water from the East Fork of Hayden Creek.

3. On August 13, 1970, an Order was signed by District Judge Arnold T. Beebe authorizing the Department of Water Resources to commence with an investigation and determination of the various rights to the use of water of the Lemhi River and its surface tributaries. Subsequently, the two Orders of Joinder signed on June 17 and November 1, 1971, joined approximately 800 land owners and water right holders as parties to a general adjudication, of water

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rights which included all existing court decrees, all water right permits and licenses, and all beneficial use rights.

4. Joined in the adjudication were Parley A. Arave and Robert T. Hemming, previous owners of the ranch now held by the protestant. Based on the adjudication claims filed by Arave and Hemming for water being diverted and beneficially used in the Hayden Creek drainage, Parley Arave and Robert Hemming were awarded the following water rights:

74-1066 - for the diversion of 16.41 cubic feet per second from Hayden Creek in the NE1/4SE1/4, Sec. 22, Twp. 17N, Rge. 23E.

74-1067 - for the diversion of 1.56 cubic feet per second from Hayden Creek in the NE1/4SE1/4, Sec. 22, Twp. 17N, Rge. 23E.

74-1068 - for the diversion of 5.30 cubic feet per second from Hayden Creek in the NE1/4SE1/4, Sec. 22, Twp. 17N, Rge. 23E.

74-1072 - for the diversion of 0.88 cubic feet per second from East Fork of Hayden Creek in the NW1/4SE1/4, Sec. 34, Twp. 17N, Rge. 23E.

74-1073 - for the diversion of 10.8 cubic feet per second from East Fork of Hayden Creek in the NW1/4SE1/4, Sec. 34, Twp. 17N, Rge. 23E.

74-1074 - for the diversion of 7.04 cubic feet per second from Meadow Creek, tributary of Hayden Creek, in the NW1/4NE1/4, Sec. 23, Twp. 17N, Rge. 23E.

5. The decreed rights held by the protestant indicate the sources of water diverted through the "High Ditch" are limited to the East Fork of Hayden Creek and Meadow Creek. None of their water rights show Dry Gulch as a source of water.

6. A total of 11.68 cubic feet per second (584 miner's inches) was decreed to Parley Arave and Robert Hemming for diversion from the East Fork of Hayden Creek through the "High Ditch." Though there is no device at the head of

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the ditch for the measurement of water, it was acknowledged by the protestant and applicant that the capacity of the ditch is restricted to a lesser amount by a flume at the upper end of the ditch.

7. Dry Gulch is the source of water for one water right listed in the Lemhi Adjudication. This right is referenced by No. 74-7140 in the name of Ronald Tobias and Marlene Tobias. The basis of this right is a permit which allows for the diversion of 1.00 cfs in the NE1/4SW1/4, Sec. 13, Twp. 17N, Rge. 23E, for the irrigation of 65 acres in the S1/2NW1/4, NE1/4SW1/4, Sec. 13, Twp. 17N, Rge. 23E. This right has a priority of June 2, 1981. The point of diversion for this right, is upstream from the applicant's proposed point of diversion.

8. There is no watermaster on Hayden Creek.

CONCLUSIONS OF LAW

1. The Conclusions of Law for Civil Case No. 4948 entitled, Proposed Finding of Water Rights in the Lemhi River Basin, December 30, 1982, reads in part:

This . . . decree includes all of the existing rights to the waters of the Lemhi River and its tributaries and upon its adoption supercedes all prior judgements of the court. Any water user who heretofore diverted water from the Lemhi River or its tributaries or who owns land to which previously established rights were appurtenant and who, upon being joined in this action, failed to claim such water rights has forfeited such rights as provided in Sec. 42-1411, Idaho Code, subject to the provisions of Sec. 42-1405, Idaho Code.

2. Idaho Code, Sec. 42-201, enacted May 20, 1971 reads in part as follows:

. . . all rights to divert and use the waters of this state for beneficial purposes shall hereafter be acquired and confirmed under the provisions of this chapter and not otherwise Such appropriation shall be perfected only by means of the application, permit and license procedures as provided in this title.

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3. There is not evidence to indicate the protestants or their predecessors beneficially used the waters of Dry Gulch prior to May 20, 1971. Failure of the protestant's predecessors to file a claim in the Lemhi River Adjudication for use of water from Dry Gulch precludes the possible establishment of a water right through diversion and beneficial use. The protestants have not applied for a permit to appropriate the water of Dry Gulch subsequent to the Lemhi River Adjudication.

4. The water in Dry Gulch, which passes the Tobias diversion, is subject to appropriation through the application, permit, and licensing procedures administered by the Department of Water Resources.

5. The diversion of water from Dry Gulch will not reduce the quantity of water under existing water rights.

6. The application was not filed for delay or speculative purposes.

7. The applicant has sufficient financial resources to develop the project.

8. The project proposed by application for Permit No. 74-7243 does not conflict with the local public interest.

9. The applicant is entitled to an approved permit from the Department of Water Resources to appropriate the unappropriated waters of Dry Gulch.

ORDER

IT IS, THEREFORE, HEREBY ORDERED that Application for Permit No. 74-7243 is hereby APPROVED subject to the following conditions:

1. The permit is and shall be subject to all prior water rights.

2. The issuance of the permit in no way grants a right-of-way or easement across the land of another.

3. A measuring device and lockable controlling works of a type acceptable to the department shall be permanently installed and maintained as

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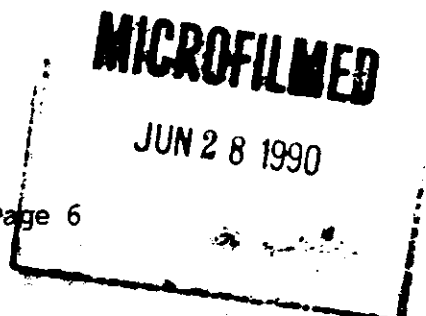
part of the diverting works.

4. Proof of construction of works and application of water to beneficial use shall be submitted on or before the date specified in the Final Memorandum Decision and Order.

Dated this 1st day of June, 1987.



RONALD D. CARLSON
Hearing Officer



STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
APPLICATION FOR PERMIT

Ident. No. 74-7243

APPROVED

To appropriate the public waters of the State of Idaho

1. Name of applicant Joe Tonsmeire Phone 756-3959
Post office address P.O. Box 871, Salmon, Idaho 83467

2. Source of water supply Dry Gulch which is a tributary of Hayden Creek

3. Location of point of diversion is NE SW 1/4 Govt. Lot 13
Sec. 13 Township 17N Range 23E B.M. Lemhi County; additional
points of diversion if any: NWNW Sec 13 T 17N R 23E

4. Water will be used for the following purposes:

Amount 2.00 cfs for Irrigation purposes from 4-1 to 11-1 (both dates inclusive)
(cfs or acre-feet per annum)

Amount 49.0 AF for Irrigation storage purposes from 1-1 to 12-31 (both dates inclusive)
(acre-feet per annum)

Amount 49.0 AF for From Storage purposes from 4-1 to 11-1 (both dates inclusive)
(acre-feet per annum)

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

5. Total quantity to be appropriated is (a) 2.0 and/or (b) 49AF
cubic feet per second acre feet per annum

6. Proposed diverting works:

a. Description of ditches, flumes, pumps, headgates, etc. There will be a headgate and open
ditch in the NESW Sec 13. The dam will be located in the NWNW Sec 13.

b. Height of storage dam 19 feet; active reservoir capacity 49 acre-feet; total
reservoir capacity 49 acre-feet; period of year when water will be diverted to storage:
November to April inclusive.

c. Proposed well diameter is inches; proposed depth of well is feet.

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

7. Time required for the completion of the works and application of the proposed beneficial use is
5 years (minimum 1 year).

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JUN 28 1990

Normally there are large flows of water in March, April, and May, with declining

12. Remarks: All water available in Dry Gulch is from snow melt and precipitation

NEASW4 Sec 13.

If the property is owned by a person other than the applicant, describe the arrangement enabling the applicant to make this filing. Applicant will secure an easement of p.d. in

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

11. a. Who owns the property at the point of diversion?
Ronald Tobias & Applicant

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

None

Total number of acres to be irrigated — 103

[illegible]

ponding place of use below. See instructions for standard symbols.

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

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

9. Description of place of use:

e. Other; describe fully.

d. Domestic; show number of households.

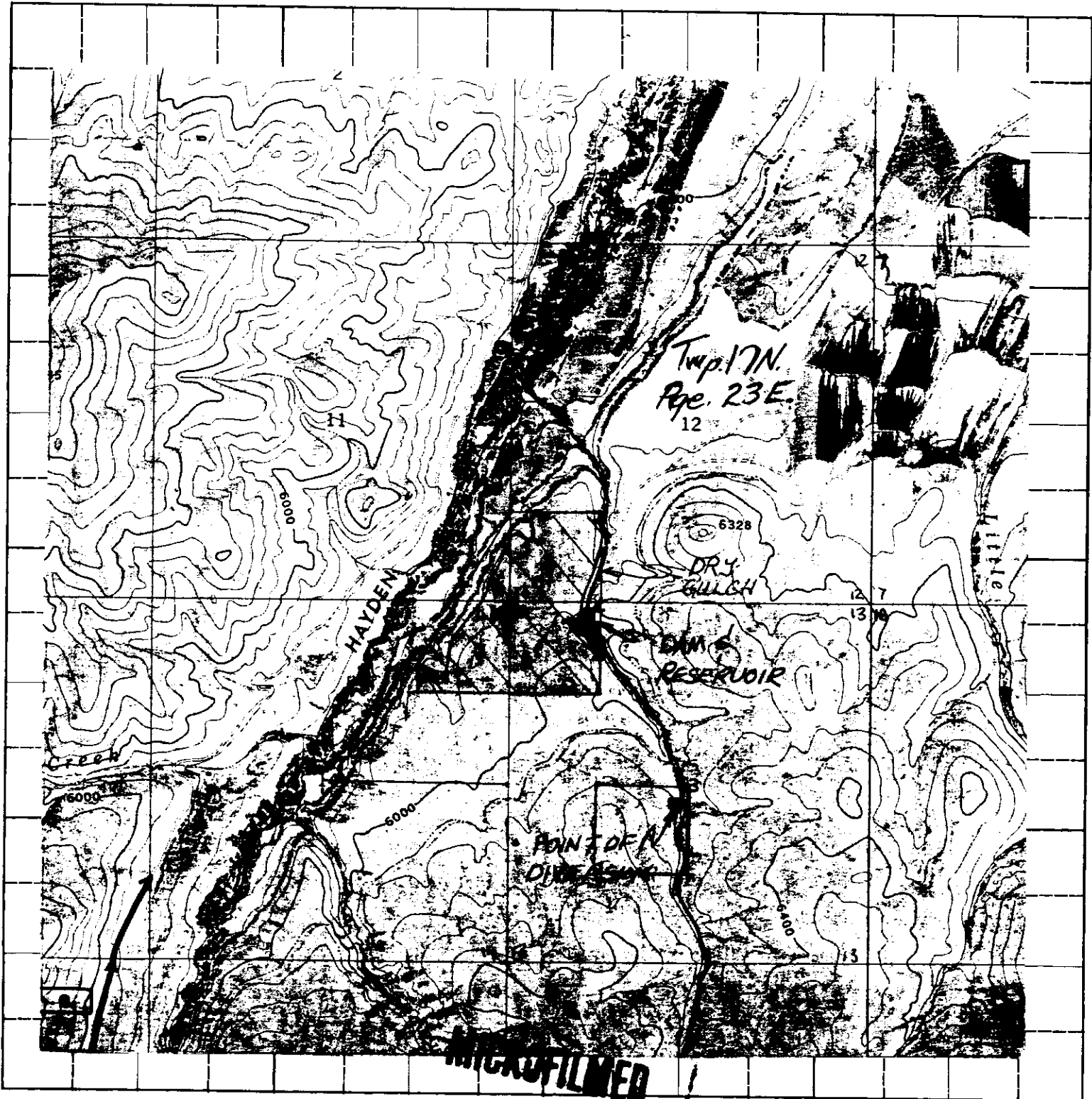
c. Municipal; show name of municipality.

b. Stockwatering; list number and kind of livestock.

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

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

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



Scale: 2 inches equal 1 mile.

JUN 28 1990

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

(Applicant)

Received by MO Date 11/27/85 Time 2:00 pm Preliminary check by Kaw
Fee \$ 65.00 Received by MO # 35530 Date 11/27/85
Publication prepared by MO Date 12-4-85 Published in Records - Idaho
Publication approved _____ Date _____
12-24-85

ACTION OF THE DIRECTOR, DEPARTMENT OF WATER RESOURCES

This is to certify that I have examined Application for Permit to appropriate the public waters of the State of Idaho No. 74-7243, and said application is hereby APPROVED
1. Approval of said application is subject to the following limitations and conditions:

a. SUBJECT TO ALL PRIOR WATER RIGHTS.

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

April 1 _____, 19 94.

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

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

e. Other: PURSUANT TO PROPOSED MEMORANDUM DECISION AND ORDER AND ORDER ADOPTING PROPOSED MEMORANDUM DECISION.

Dated this 22nd day of March, 1989

[Signature]
Director



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

IN THE MATTER OF APPLICATION)
FOR PERMIT NO. 74-7243 IN THE)
NAME OF JOE TONSMEIRE)
_____)

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, Ronald D. Carlson, who conducted the hearing or who has read the record in the this case, hereby approves the same as a proposed decision pursuant to Idaho Code, { 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.

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JUN 28 1990

III.

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

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

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

IV.

CERTIFICATE OF SERVICE

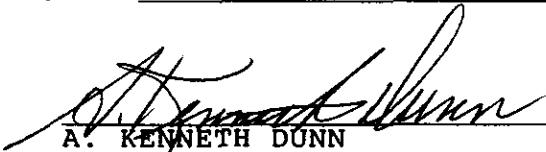
All exceptions, briefs, requests oral arguments and other matters filed with the Director in connection with the proposed decision shall be served on all other parties to these proceedings in accordance with Rule 7.2.

V.

FINAL DECISION

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

Dated this 8th day of June, 1987.


A. KENNETH DUNN
Director

MICROFILMED

JUN 28 1990

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE
STATE OF IDAHO

IN THE MATTER OF APPLICATION FOR
PERMIT NO. 74-7243 IN THE NAME
JOE TONSMEIRE

CERTIFICATE OF MAILING

I HEREBY CERTIFY That on this the 8th day of June, 1987, a true and correct copy of the foregoing PROPOSED MEMORANDUM DECISION AND ORDER was mailed postage prepaid to:

Mr. Joe Tonsmeire
P. O. Box 871
Salmon, ID 83467

Kent W. Foster
Attorney at Law
P. O. Box 129
Idaho Falls, ID 83403



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

MICROFILMED

JUN 28 1990

NOTICE OF
APPLICATION FOR
WATER RIGHT

The following applica-
tions have been filed to
appropriate the public
waters of the State of
Idaho:

74-7243

TONSMEIRE, JOE
P. O. BOX 871, SALMON,
ID 83467
Source: DRY GULCH trib.
to HAYDEN CREEK
Diversion Pt: NESW
NWNW Sec 13 T 17N R
23E
Use: IRRIGATION (2.0
CFS)
IRRIGATION STORAGE
(49.0 AF)
IRRIGATION FROM
STORAGE (49.0 AF)
Date Filed: 11/27/1985
In: SESE Sec 11 T 17N R
23E SWSW Sec 12 T 17N R
23E NWNW Sec 13 T 17N
R 23E NENE Sec 14 T 17N
R 23E FOR 103 ACRES
The permits will be
subject to all prior water
rights. Protests may be
submitted based on the
criteria of Sec. 42-203A,
Idaho Code and/or the new
public interest criteria of
Sec. 42-203C, Idaho Code.
Protests must be filed with
the Director, Dept. of
Water Resources, 150
Shoup Ave., Suite 15,
Idaho Falls, Idaho 83402 on
or before December 30,
1985.

KEN DUNN
Director

Published 12/2 and 12/
19/85.

12-12-2tc

Affidavit of Publication

STATE OF IDAHO }
County of Lemhi }

ss.

DEC 23 1985
Department of Water Resources
Eastern District Office

Jerry G. Rosin

, being first duly sworn, deposes
and says that he is one of the printers (publisher) of the RECORDER HERALD,
a newspaper published weekly at Salmon, Lemhi County, Idaho, and of general
circulation therein,

That the Notice Of Application For Water Rights 74-7243

_____ a true
printed copy of which is attached to the margin hereof, has been and was correct-
ly printed and published in the regular and entire issue of every number of said
newspaper and not in any supplement thereof or thereto for _____ 2
consecutive issues, commencing with the issue dated Dec. 12, 1985
and ending with the issue dated Dec. 19, 1985

Jerry G. Rosin

Subscribed and sworn to before me, this Nineteenth

day of December, 1985

Neil Armstrong

Notary Public for the State of Idaho,
Residing at Salmon, Idaho

Publication Fee \$ 30.87

MICROFILMED

JUN 28 1990

11/12/24/85

**NOTICE OF
APPLICATION FOR
WATER RIGHT**

The following applications have been filed to appropriate the public waters of the State of Idaho:

74-7243

TONSMEIRE, JOE
P. O. BOX 871, SALMON,
ID 83467
Source: DRY GULCH trib.
to HAYDEN CREEK
Diversion Pt: NESW
NWNW Sec 13 T 17N R
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Use: IRRIGATION (2.0
CFS)
IRRIGATION STORAGE
(49.0 AF)
IRRIGATION FROM
STORAGE (49.0 AF)
Date Filed: 11/27/1985
In: SESE Sec 11 T 17N R
23E SWSW Sec 12 T 17N R
23E NWNW Sec 13 T 17N
R 23E NENE Sec 14 T 17N
R 23E FOR 103 ACRES

The permits will be subject to all prior water rights. Protests may be submitted based on the criteria of Sec. 42-203A, Idaho Code and/or the new public interest criteria of Sec. 42-203C, Idaho Code. Protests must be filed with the Director, Dept. of Water Resources, 150 Shoup Ave., Suite 15, Idaho Falls, Idaho 83402 on or before December 30, 1985.

KEN DUNN
Director

Published 12/2 and 12/
19/85.

12-12-2tc

MICROFILMED

JUN 28 1990

DEC 9 1985
Idaho Department of Water Resources
Idaho Falls, Idaho

protest
12/19/85

MEMORANDUM

DATE: October 13, 1999

TO: Skip Jones

FROM: Shelley W. Keen ⁵⁻¹⁴

RE: Re-examination needed for Permit 74-07243

Thanks for agreeing to send an examiner to take a second look at the development under Permit 74-07243. As we discussed this morning, the permit holder, Joe Tonsmeire, told me he irrigates in the spring with water developed under this permit. The previous field examiner visited in September when the source stream was dry. Mr. Tonsmeire stated on his application that the stream usually goes dry by June or July, so I felt it would be difficult to base a license on a September examination.

When I spoke with Joe Tonsmeire this morning, he said he would welcome a call from you or your staff to schedule an examination for early next May. I told him someone would probably contact him in the next few days.

It appears Mr. Tonsmeire may not have complied with the measuring device and locking controlling works requirement. I recommend that you or your staff tell Mr. Tonsmeire that he needs to have a waiver or comply with the condition before the examination is conducted. Otherwise his permit may be voided for non-compliance.



State of Idaho
DEPARTMENT OF WATER RESOURCES

1301 North Orchard Street, P.O. Box 83720, Boise, Idaho 83720-0098
Phone: (208) 327-7900 FAX: (208) 327-7866

September 29, 1999

DIRK KEMPTHORNE
GOVERNOR

KARL J. DREHER
DIRECTOR

JOSEPH & FRANCES TONSMEIRE
PO BOX 72
LEMHI ID 83465-0072

RE: Water Right No. 74-07243

Dear Mr. and Mrs. Tonsmeire:

The Department of Water Resources (IDWR) is preparing to issue a water right license for the beneficial use of water you developed under Permit No. 74-07243. The permit was issued to you in 1989 for the irrigation of 103 acres with water diverted from Dry Gulch, a tributary of Hayden Creek. The field examiner who visited your property in 1995 reported that you have established a small reservoir on Dry Gulch for stockwater and recreation purposes, but he did not see direct evidence that Dry Gulch water had been diverted and used for irrigation. He did, however, report seeing some ditches, but they did not appear to have been used for some time. Based on the examiner's report, I can recommend issuance of a license for stockwater and recreation storage if you amend your permit to show those uses. If you believe that a water right license should be issued for irrigation purposes as proposed on the permit, then please submit additional evidence or documentation that the proposed irrigation use was actually developed by 1990 when you submitted your Proof of Beneficial Use statement.

I have enclosed an amendment form for you to sign and return if you wish to pursue the license for stockwater and recreation storage purposes. Please review the amendment form carefully. If you concur with the information presented, sign the form and return it with the \$50.00 filing fee.

If I do not receive the amendment form or documentation of irrigation use within thirty days, I will assume that you no longer have an interest in this permit, and I will draft an order voiding it.

If you have any questions about this information, please contact me at (208) 327-7946 in Boise.

Sincerely,

Shelley Walter Keen
Water Rights Supervisor

Enclosure

It does not appear that Applicant has
 conformed to requirements of March 27,
 1989 Letter which specifies measuring
 device & headgate. Also actual use
 appears to be in question via field exams

Def.

CES
 :PORT

RECEIVED
 JUN 04 1997

Department of Water Resources
 Permit No. 74-07243

Phone No. (208) 756-3959
465-0072

EXAM DATE: 9/19/95

Phone No. _____

Relationship to Permit Holder: N/A

3. Source: DRY GULCH tributary to HAYDEN CREEK

B. OVERLAP REVIEW

- Other water rights with the same place of use: 74-00965
- Other water rights with the same point of diversion: NONE

C. DIVERSION AND DELIVERY SYSTEM

- Point(s) of Diversion: "NO GOV LOTS"

Ident No.	Gov't Lot	1/4	1/4	1/4	Sec.	Twp.	Rge.	County	Method of Determination/Remarks
		NW	SE	NW	13	17N	23E	LEMMI	H.S. G.S. TOPO/NAPP PHOTOS. GULCH
		NE	NW	NW	13	17N	23E	"	" " " " " PWD

- Place(s) of Use: "NO GOV LOTS"

Indicate Method of Determination

TWP	RGE	SEC	NE				NW				SW				SE				Totals
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
17N	23E	11																2	2
"	"	12											28						28
"	"	13						26											26
"	"	14	21																21
																			77

TOTAL

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
BENEFICIAL USE FIELD REPORT

RECEIVED
JUN 04 1997

A. GENERAL INFORMATION

Department of Water Resources
Permit No. 74-07243

1. Owner: JOE TONSHEIKE
FRAN TONSHEIKE

Phone No. (208) 756-3959

Current Address: P.O. BOX 72, LEHNI, IDAHO 83465-0072

2. Accompanied by: N/A

EXAM DATE: 9/19/95

Address: N/A

Phone No. _____

Relationship to Permit Holder: N/A

3. Source: DRY GULCH

tributary to HAYDEN CREEK

B. OVERLAP REVIEW

1. Other water rights with the same place of use: 74-00965

2. Other water rights with the same point of diversion: NONE

C. DIVERSION AND DELIVERY SYSTEM

1. Point(s) of Diversion: "NO GOV LOTS"

Ident No.	Gov't Lot	1/4	1/4	1/4	Sec.	Twp.	Rge.	County	Method of Determination/Remarks
		NW	SE	NW	13	17N	23E	LEHNI	H.S. G.S. TOPO/NAPP PHOTOS.
		NE	NW	NW	13	17N	23E	"	" " " "

GULCH

PWD

2. Place(s) of Use: "NO GOV LOTS"

Indicate Method of Determination

TWP	RGE	SEC	NE				NW				SW				SE				Totals
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
17N	23E	11																2	2
"	"	12										28							28
"	"	13						26											26
"	"	14	21																21
																			77

TOTAL

3. **Delivery System Diagram:** Include all major components and distances between components. Indicate weir size/ditch size/pipe I.D. as applicable.

SEE PHOTOS + MAPS

Scale: 1" = _____

_____ Copy of USGS Quadrangle Attached Showing location(s) of point(s) of diversion and place(s) of use (required).

_____ Aerial Photo Attached (required for irrigation of 10+ acres)

_____ Photo of Diversion and System Attached

4.

Well or Diversion Identification No.*	Motor Make	Hp	Motor Serial No.	Pump Make	Pump Serial No. or Discharge Size
<i>N/A</i>					

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

D. FLOW MEASUREMENTS

1.

Measurement Equipment	Type	Make	Model No.	Serial No.	Size	Calib. Date
<i>N/A</i>						

2. Measurements: *SEE NARRATIVE*

E. NARRATIVE/REMARKS/COMMENTS

WATER IS TAKEN OUT OF DRY GULCH AT TWO POINTS OF DIVERSION ① UPPER POND DIRECTLY OUT OF DRY GULCH - WATER ~~TRAVELS~~ TRAVELS TO PLACE OF USE VIA A DITCH WHICH FOLLOWS ~~THE~~ AROUND THE HILLSIDE TO THE WEST AND IF PROPERLY MAINTAINED COULD DELIVER WATER TO THE POND LISTED IN SECTION 13 & 14. ② THIS POINT OF DIVERSION IS FROM OVERFLOW FROM THE STORAGE POND. AT TIME OF MEASUREMENT & INSPECTION, NO HIGH WATER WAS FLOWING PAST DAM. IRRIGATION DITCHES FROM POND COULD IRRIGATE SECTION 11 & 12 ^{LISTED} (IRRIGATED ACREAGE) IF ~~THESE~~ THEY WERE CLEANED OUT AND PROPERLY MAINTAINED. DUE TO TYPE OF SOIL AND CONDITION OF DITCHES THERE DOES NOT APPEAR TO BE ANY BENEFICIAL USE OF WATER EXCEPT FOR STOCKWATER USE AND RECREATIONAL STORAGE (NOTE LIFE VESTS IN PHOTO).

STORAGE RESERVOIR IS APPROXIMATELY 159' WIDE X 282' LONG X 20' DEEP = $896,760 \text{ CU FT} \times .4 = 358,704 \text{ CU FT} / 43,560 = 8.2 \text{ AF}$

(THIS DIMENSION IS GENEROUS, IT ASSUMES SURFACE AREA A RECTANGLE.) MEASUREMENTS - AA METER # 090127

① ^{FLOW} UPPER POND - 1' WIDE X 0.28' DEEP (25 REV. IN 63 SEC) = .884

$$0.28 \text{ AREA} \times .884 = 0.25 \text{ CFS}$$

② ^{RESERVOIR} DIVERSION - MEASURED BELOW DAM (OUTLET)

$$0.70' \text{ WIDE} \times 0.20' \text{ DEEP (40 REV. IN 50 SEC)} = 1.76$$

$$0.14 \text{ AREA} \times 1.76 = 0.246 \text{ CFS}$$

* ^{NOTE} HIGH WATER FLOWS ARE IN EXCESS OF 2 CFS.

Have conditions of permit approval been met? ☒ yes ☐ no

EXCEPT AS NOTED ABOVE

F. FLOW CALCULATIONS

Additional Computation Sheets Attached

Measured Method:

$Q = 0.50$ CFS MEASURED AT 2 SEPARATE POINTS OF DIVERSION.
HIGH WATER FLOWS IN EXCESS OF 2.0 CFS.

G. VOLUME CALCULATIONS

1. Volume Calculations for Irrigation:

$$V_{IR} = (\text{Acres Irrigated}) \times (\text{Irrigation Requirement}) = 77 \text{ ACRES} \times 3.5 = 269.5 \text{ AF}$$

$$V_{D,R} = [\text{Diversion Rate (cfs)}] \times (\text{Days in Irrigation Season}) \times 1.9835 = 1.54 \text{ CFS} \times 183 \times 1.9835 = 558.98 \text{ AF}$$

$$V = \text{Smaller of } V_{IR} \text{ and } V_{D,R} = 269.5 \text{ AF}$$

2. Volume Calculations for Other Uses:

* $77 \text{ ACRES} \times .02 \text{ CFS/ACRE} = 1.54 \text{ CFS}$

H. RECOMMENDATIONS

* QUESTIONAL BENEFICIAL USE DUE TO CONDITION OF
DITCHES (ONLY POORLY MAINTAINED - NO USE 10 YEARS).

1. Recommended Amounts

Beneficial Use	Period of Use		Rate of Diversion Q (cfs)	Annual Volume V (afa)
	From	To		
IRRIGATION	4/15	10/15	1.54 CFS	269.5 AFA
IRR. STORAGE	1/1	12/31		8.2 AF
IRR. FROM STORAGE	4/15	10/15		8.2 AF
Totals:			1.54 CFS	269.5 AFA

2. Recommended Amendments

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

I. AUTHENTICATIONField Examiner's Name DON SIMPKINS Date 12/18/96

Reviewer _____ Date _____

SEAL

74-07243

T17N, R23E



T519
304B

11 12
14 13

PLACE OF
USE

POND/STORAGE
POD

POD
GULCH

HIGH
DITCH

HIGH
DITCH

BYPASS
UNDER
DITCH

DAY
GULCH

74-07243

JOE TONS MEICE

STORAGE / IRRIGATION

15/4

VIEW OF
UPPER POINT
OF DIVERSION
ON DRY GULCH

NWSE NW

25 8 43

PERMIT
NUMBER

74-07243

JOE TONSMERKE

STORAGE / IRRIGATION

2/4

VIEW OF
STORAGE
RESERVOIR
AND HIGH
WATER RUN
OFF DITCH



VIEW OF
OVERFLOW
DITCH.



PERMIT
NUMBER

74-07243

JOE TONSHEIKE

STORAGE / IRRIGATION

NEXT (4) PICTURES ARE
A SCANNING PANNING VIEW
LEFT TO RIGHT.

3/4

① VIEW OF
EXTREME
LEFT SIDE
PLACE OF
USE

NE NE S14



② VIEW OF
PLACE OF
USE

SWSWSW S12
NW NW S13



PERMIT
NUMBER

74-07243

JOE TONSHEIRE

STORAGE / IRRIGATION

4/4

③
VIEW OF
PLACE OF
USE
EXTREME
RIGHT
JWSW S12



④
OVER VIEW
OF RESERVOIR
AND - DITCH
AND EXTREME
RIGHT EDGE
OF PLACE OF
USE
SW SW S12
BACKGROUND
NE NW S13
FOREGROUND



PERMIT
NUMBER

74-07243

June 26, 1990

JOE TONSMEIRE
P.O. BOX 871
SALMON, ID 834670000

PROOF ACKNOWLEDGMENT LETTER

RE: PERMIT NO. 74-07243

Dear Permit Holder:

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

If you have questions concerning this matter, please feel free to contact the EASTERN Regional Office in Idaho Falls at (208)525-7161.

Sincerely,

Rita Fleck
Secretary/Records Manager

c: IDWR - Region

RECEIVED

JUN 28 1990

1/88

PROOF OF BENEFICIAL USE

ANALYSIS SHEET

Permit No. 74-7243

Date: 6-25-90

General Considerations:

- ☒ Name same as permit
☒ Signature the same as permit holder
☒ Address change NO If yes, prepare a data entry
☒ Proof received timely
☐ Reinstated

Source of Water:

- ☒ Surface water
☐ Groundwater
☒ 1. well log in file
☒ 2. drilling permit
☒ A. amount of drilling fee paid for proposed uses

Extent of Use and Rate of Diversion:

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

Measuring Device:

- ☒ Is a measuring device or access port required?
☒ Has one been installed?
☒ Waiver or modification of measuring device requested

Remarks:

proof acceptable

Priority Calculation:

Date proof received	<u>NA</u>	
Date proof due		-
No. of days late		=
Priority date		+
NEW PRIORITY DATE		=

SEND FILES TO DATA ENTRY AND THEN TO MICROFILM

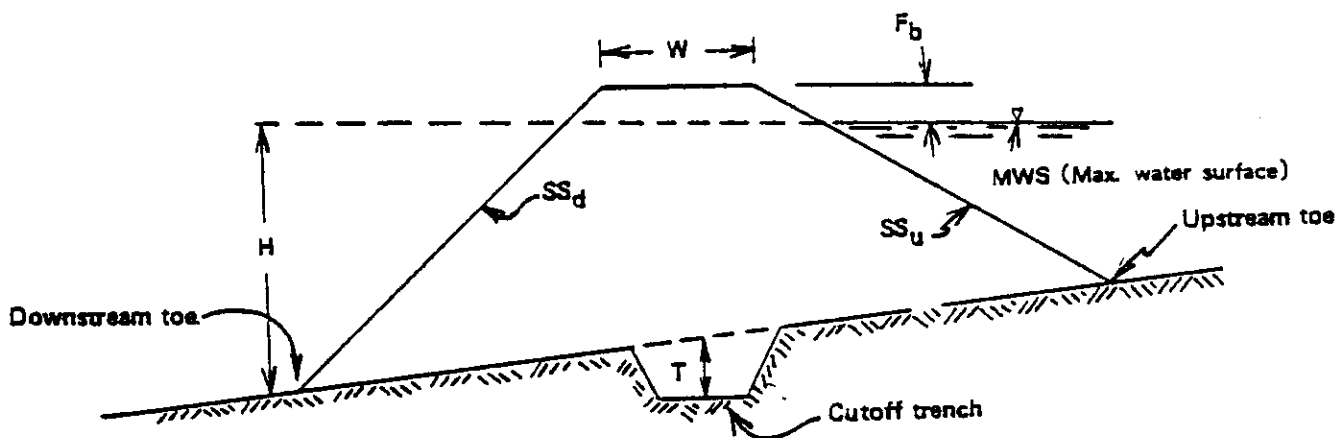
The original of this document
as microfilmed on 6/28/90 is in
Dam Safety's records - they have to have
the original filing, it should not have
been placed in the water right file.

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

APPLICATION TO CONSTRUCT A SMALL DAM

Required for construction or alteration of a dam 20 feet or less in height
and capable of storing less than 100 acre-feet of water.

1. Name of owner (print or type): JOSEPH & FRANCES TONSMEIRE Phone No. 208 756 3959
Post Office address: P O Box 871 SALMON IDAHO 83467
2. Describe the nature of the proposed work (new dam, raise existing dam, etc.): EXISTING ~~NEW~~ DAM
3. RESERVOIR:
Storage capacity 8 acre-feet. Surface area 3 1/4 acres.
Source of water (stream) DRY GULCH Offstream storage: Yes No X
4. DETAILS OF DAM:



Dam type (earth, concrete, rock, etc.) EARTH

Location: Section 13 Township 17N Range 23E B.M.

Crest width (W) 20 feet.

Freeboard (F_b) 3 feet.

Height of dam (H) 19 feet. Height of existing dam, if being raised feet.

Downstream side slope (SS_d) 2/1

Upstream side slope (SS_u) 2/1

Cutoff-Trench depth (T) 4

Length of dam 150 feet.

5. OUTLET CONDUIT:

Size and type of pipe 12" STEEL

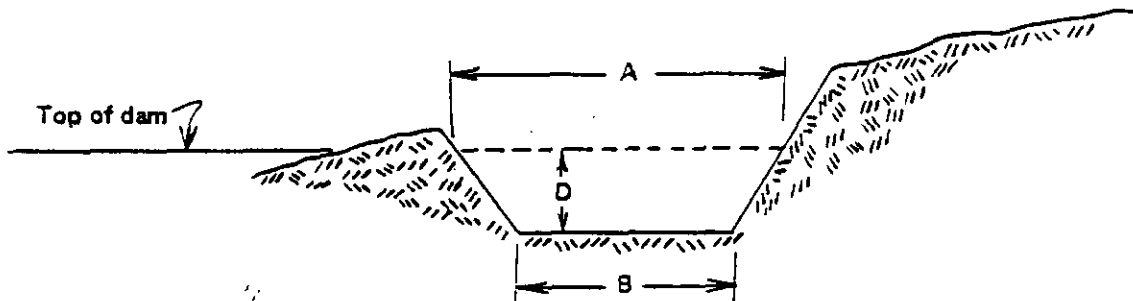
Size and number of cutoff collars 2 18" - 2

Gate location (upstream, etc.) 12" stand pipe ~~at~~ in pond

MICROFILMED

JUN 28 1971

6. SPILLWAY:



Do you plan to use a gate or flashboards in the spillway? Yes _____ No NO

Approximate natural drainage area above dam 300 acres.

Depth of spillway below top of dam (D) 4 feet.

Bottom width of spillway (B) 2 feet.

Top width of spillway (A) 5 feet.

Location: Abutment _____ Away from dam X Over dam _____ Other (describe) _____

Channel lining (earth, riprap, concrete, solid rock, etc.): EARTH

7. DEVELOPMENT DOWNSTREAM:

Briefly describe the type of development or land use immediately downstream from the dam. Indicate estimated distances to significant area of improvement that could be damaged if the dam failed:

NONE

8. CONSTRUCTION SCHEDULE:

Proposed date for start of construction THIS DAM IS EXISTING BUILT IN 1986

29 April 1990

Date

[Signature]

Applicant's signature

FOR DEPARTMENT USE ONLY

Date application received 5-8-90

By CA

Fee \$ 10⁰⁰

Date received 5-8-90

Received by CA

ACTION OF THE DIRECTOR, THE DEPARTMENT OF WATER RESOURCES

In accordance with the provisions of Title 42, Chapter 17, Idaho Code and the Department's Rules and Regulations for Safety of Dams, the above proposal is hereby _____, subject to the following conditions:

1. This action does not constitute the required authorization to appropriate water under Idaho Water Law.
2. All construction at dams is subject to approval by the Department of Water Resources which reserves the right to make inspection of such work as often as it deems necessary. The applicant shall notify the Department at the following times, and at such other times as it deems necessary, so that it may conduct inspections.
 - a. After clearing and excavation of foundation, and prior to placing fill material.
 - b. After installation of outlet conduit, and before placing any backfill material around conduit.
 - c. After construction is complete and before any water is stored in reservoir.

Additional conditions:

MICROFILMED

JUN 28 1991

Witness my hand this _____ day of _____, 19____

Kent W. Foster, Esq.
HOLDEN, KIDWELL, HAHN & CRAPO
P. O. Box 50130
Idaho Falls, Idaho 83405
Telephone: (208) 523-0620

RECEIVED
JUN 10 1989

LEMHI COUNTY DISTRICT COURT

FILED
A.M. P.M. 4:00

JUL - 6 1989

ALBERTA WEIDENRICK, CLERK

DEPUTY

Department of Water Resources

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

IN THE MATTER OF THE)
APPLICATION FOR PERMIT NO.)
74-7243 IN THE NAME OF)
JOSEPH TONSMEIRE)

Case No. 7337

STIPULATION

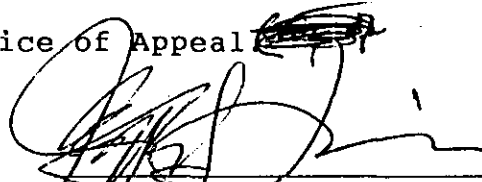
IT IS HEREBY stipulated and agreed, by and between the
Applicant, Joseph Tonsmeire, acting in his own behalf, the
Protestant, the Corporation of the Presiding Bishop of the
Church of Jesus Christ of Latter Day Saints, by and through
Kent W. Foster, Esq. of the law firm of Holden, Kidwell, Hahn &
Crapo, attorneys of record for said Protestant, and the Idaho
Department of Water Resources by and through Phillip A.
Rassier, Deputy Attorney General for the State of Idaho,
attorney for said Idaho Department of Water Resources, as
follows:

MICROFILMED

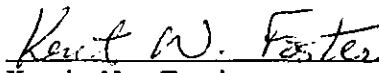
JUN 28 1990

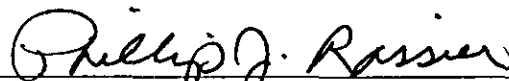
1. The "Petition for Judicial Review and Notice of Appeal" filed herein by the Protestant may be dismissed with prejudice.

2. All parties shall bear their own costs and attorney's fees incurred in connection with the filing of said Petition for Judicial Review and Notice of Appeal ~~_____~~


Joseph Tonsmeire, Applicant

CORPORATION OF THE PRESIDING
BISHOP OF THE CHURCH OF JESUS
CHRIST OF LATTER DAY SAINTS

By: 
Kent W. Foster
HOLDEN, KIDWELL, HAHN & CRAPO
Attorneys for Protestant


Phillip A. Rassier
Deputy Attorney General for the
State of Idaho
Attorney for the Idaho Department
of Water Resources

RECORDED & INDEXED

JUN 28 1960

O R D E R

Upon reading and filing the above and foregoing
Stipulation of the parties hereto, it is so ordered.

DATED this 30 day of June, 1989.

ORIGINAL SIGNED BY
JAMES C. HERNDON

District Judge

MICROFILMED

JUN 28 1990

CLERK'S CERTIFICATE OF MAILING

I certify that I am the duly elected and qualified Clerk of the District Court of the Seventh Judicial District of the State of Idaho, in and for the County of Lemhi; that I mailed a copy of the foregoing Stipulation to the following attorneys this 6th day of July 1989.

Alberta Widerrick
Clerk

By Leri J. Morton

Mr. Joseph Tonsmeire
P.O. Box 871
Salmon, Idaho 83467

Kent W. Foster, Esq.
HOLDEN, KIDWELL, HAHN & CRAPO
P. O. Box 50130
Idaho Falls, Idaho 83405

Phillip A. Rassier, Esq.
Deputy Attorney General
Idaho Department of Water Resources
1301 North Orchard Street
Statehouse
Boise, Idaho 83720

0367h/cm

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[Faint, illegible text]

COPY

Kent W. Foster, Esq.
HOLDEN, KIDWELL, HAHN & CRAPO
P.O. Box 50130
Idaho Falls, Idaho 83405
Telephone: (208) 523-0620

RECEIVED
MAY 05 1989

Department of Water Resources
IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF LEMHI

IN THE MATTER OF THE	)	Case No.
	)	
APPLICATION FOR PERMIT NO.	)	
74-7243 IN THE NAME OF	)	PETITION FOR JUDICIAL REVIEW
JOSEPH TONSMEIRE	)	AND NOTICE OF APPEAL
	)	
	)	

COMES NOW the Protestant, Corporation of the Presiding Bishop of the Church of Jesus Christ of Latter Day Saints, and hereby petitions the above entitled court for review of an administrative decision of the Idaho Department of Water Resources and files its notice of appeal as follows:

1. The name of the administrative body from which this appeal is taken is Idaho Department of Water Resources.
2. The title of the court to which this appeal is taken is the District Court of the Seventh Judicial District of the State of Idaho, in and for County of Lemhi.
3. The date of the decision from which this appeal is taken is March 22, 1989, and the heading is entitled "Before the Department of Water Resources of the State of Idaho--In the Matter of Application for Permit No. 74-7243 in the name of Joe

MICROFILMED

JUN 28 1990

Tonsmeire--Source: Dry Gulch--County: Lemhi--Order adopting proposed Memorandum Decision."

4. This appeal is taken upon all matters both of law and of fact relevant to said agency decision.

5. Pursuant to notice, an informal conference or hearing in this matter was held in Salmon, Idaho, on November 6, 1986. Except for notes made by Idaho Department of Water Resource Hearing Officers, there may not have been any formal record made. If such was made, it was made by Idaho Department of Water Resources by means of an electronic tape recording. To the knowledge of protestant, any such recording would still be in the possession of said agency, Idaho Department of Water Resources.

6. Statement of Issues on Appeal:

a. Whether, as a matter of fact and of law, the entire flow of Dry Gulch was appropriated by protestant's predecessors in interest many years prior to the filing of the Application for Permit No. 74-7243 by Mr. Tonsmeire so that the proposed appropriation by Mr. Tonsmeire would reduce the quantity of water under Protestant's existing right.

DATED this 4 day of May, 1989.

HOLDEN, KIDWELL, HAHN & CRAPO


Kent W. Foster, a member of the
firm, Attorney for Protestant

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2 - PETITION FOR JUDICIAL REVIEW AND **JUN 28 1998** OF APPEAL

STATE OF IDAHO)
) ss.
County of Bonneville)

LINDA HOLMES being first duly sworn, states that I served
the attached PETITION FOR JUDICIAL REVIEW AND NOTICE OF
APPEAL upon:

Idaho Department of Water Resources
1301 North Orchard Street
Statehouse Mail
Boise, Idaho 83720

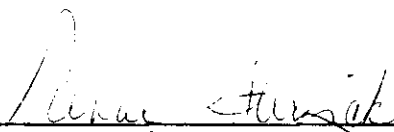
Mr. Joe Tonsmeire
P.O. Box 871
Salmon, Idaho 83467

by depositing a copy thereof in the United States mail at Idaho
Falls, Idaho, on May 4, 1989 enclosed in an envelope addressed
to each of the above named persons at the address set below his
name, with postage prepaid by First Class mail.



Linda Holmes

SUBSCRIBED AND SWORN to before me this 4th day of
May, 1989.



Notary Public for Idaho
Residing at Idaho Falls, Idaho
My Commission Expires: 1-14-92

0747.00
9537g/srr

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JUN 25 1990

3 - PETITION FOR JUDICIAL REVIEW AND NOTICE OF APPEAL



State of Idaho

DEPARTMENT OF WATER RESOURCES

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

CECIL D. ANDRUS

GOVERNOR

R. KEITH HIGGINSON

DIRECTOR

March 27, 1989

Mr. Joe Tonsmeire
P. O. Box 871
Salmon, ID 83467

Dear Mr. Tonsmeire:

Re: Permit No. 74-7243

Enclosed is a copy of the approved Application for Permit No. 74-7243 along with a copy of the Proposed Memorandum Decision and Order and Order Adopting the Proposed Memorandum Decision and Order. Please note the conditions of approval as set forth in the Proposed Memorandum Decision and Order.

Be sure to note the special condition requiring you to install and maintain a measuring device and lockable controlling works. Enclosed is a list of measuring device options.

Enclosed is a form entitled "Instructions for Proof of Beneficial Use". Please read the instructions carefully since you must take further action to develop this permit. Also enclosed is a Proof of Beneficial Use form, which should be submitted when the project is complete.

Your application specifies a storage dam may be constructed which will come under the jurisdiction of the State of Idaho, Dam Safety Program. Dams which are 10 feet or more in height or store 50 acre-feet or more are large enough to come under the jurisdiction of the Department of Water Resources. Dams which are more than 20 feet in height or store 100 acre-feet or more require submittal of plans and specifications, prepared by a professional engineer, to the Department for review and approval prior to start of construction.

Enclosed is a copy of the Rules and Regulations for Safety of Dams for your information. Also find enclosed an application to construct the dam. The application must be filled out completely and returned along with the appropriate fee. The fee is based on the storage capacity of the reservoir and is explained in Sec. 42-1713 of the Idaho Code which is located at the back of the Rules and Regulations. Construction of the dam shall not proceed until the application is submitted to and approved by the Department. Other barriers which are not subject to Department jurisdiction are listed in Rule 2,6,4, page 3.

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JUN 28 1990

March 27, 1989

Any person who does not agree with the decision of the department may request a rehearing before the Director within 20 days, or may appeal directly to the district court within 30 days of the date the decision is mailed.

Sincerely,


L. GLEN SAXTON, Chief
Water Allocation Bureau

LGS:rf

Enclosures

c: Kent Foster
E. Region

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JUN 28 1990

FROM Bob

DATE 7-6-87

TO Ron

SUBJECT Application for Permit No. 74-7243

Here is an exception to the memo decision. A copy was sent to Tonsmeire who has until today to respond and no response has been received by state office.

You need to prepare a response to Kent's exceptions. That could be done by simply answering each point then adopting the proposed decision as the final decision of the Director or if there are ~~minor~~ changes in the proposed decision that not change the final result the proposed decision can be amended and adopted as the final decision or if the exceptions cause a change in the decision then an amended proposed decision should be issued.

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JUN 28 1990

SIGNATURE

LAW OFFICES
HOLDEN, KIDWELL, HAHN & CRAPO

IDAHO FIRST NATIONAL BANK BUILDING
P.O. BOX 129

IDAHO FALLS, IDAHO 83402

TELEPHONE 523-0620
AREA CODE 208

WILLIAM S. HOLDEN
R. VERN KIDWELL, P.A.
FRED J. HAHN
KENT W. FOSTER
ROBERT E. FARNAM
WILLIAM D. FALER
STEPHEN E. MARTIN
CHARLES A. HOMER
GARY L. MEIKLE
CURT R. THOMSEN
MICHAEL D. CRAPO
JAMES D. HOLMAN
GAYLE A. SORENSON
DONALD L. HARRIS
GREGOR S. CHVISUK
RANDALL B. REED
G. LANCE NALDER
J. MICHAEL WHEELER

ARTHUR W. HOLDEN (1877-1967)
ROBERT B. HOLDEN (1911-1971)
TERRY L. CRAPO (1939-1987)

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JUN 22 1987

June 19, 1987

Department of Water Resources

Mr. A. Kenneth Dunn, Director
Department of Water Resources
Statehouse
Boise, Idaho 83720

RE: Matter of Application for Permit No. 74-7243 in the
name of Joe Tonsmeire

Dear Mr. Dunn:

We are writing this letter on behalf of the protestant,
Corporation of the Presiding Bishop of the Church of Jesus
Christ of Latter-Day Saints, to formally set forth its
exceptions to the Proposed Memorandum Decision and Order in the
above entitled matter dated June 1, 1987, and mailed to all
parties on the 8th day of June, 1987.

We wish to state the following exceptions:

A. First to the Proposed Findings of Fact,

1. Our first exception is that pertinent information
as to the length of time during which water flowing in Dry
Gulch has been entirely intercepted by the "High Ditch" in
Finding of Fact No. 2, was omitted. Mr. Bob Thomas who
presently operates the ranch for the LDS Church, and who
appeared at the hearing held in Salmon, testified that the
"High Ditch" had been in existence since at least 1915,
the date of the construction or reconstruction of a flume
on said ditch, and that the "High Ditch" was originally
constructed across Dry Gulch so that it has always
intercepted the entire flow of Dry Gulch since its
construction. All the flows of Dry Gulch have thus been
diverted into the "High Ditch" since at least 1915 and
conveyed to the ranch of the protestant where it has been
used for irrigation purposes when available.

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JUN 28 1990

Mr. A. Kenneth Dunn
June 19, 1987
Page 2

2. Secondly, we take exception to the lack of a finding with respect to the supply of water from Dry Gulch. Again, Mr. Bob Thomas testified that a maximum of 2 cfs is available in Dry Gulch very early during the spring runoff and only for a very short period of time. He testified that this runoff usually comes before any of the other sources for the "High Ditch" such as Meadow Creek or the East Fork of Hayden Creek have commenced running and that all of such water is used on protestant's ranch. He further testified that after the short period of runoff, flows in Dry Gulch drop to .2 cfs or less and that considering the rights of the protestant and the permit granted to Tobias, there would be no water available for the irrigation of the Tonsmeire land.

B. Exceptions to the Conclusions of Law,

1. The inference of the Proposed Memorandum Decision and Order is that the Lemhi River adjudication foreclosed any further claim to water rights haven arisen prior thereto. However, we point out, as is stated in the quoted portion from the Proposed Findings of water rights in the Lemhi River Basin under Conclusions of Law No. 1, that such foreclosure is still subject to the provisions of §42-1405, Idaho Code, which is the summary supplemental adjudication procedure. That procedure still provides a way for formal documentation of a right which came into being prior to May 20, 1971, but which, for whatever reason, was omitted from the Decree of the court in a formal adjudication proceeding.

* 2. We take exception to the statement in Conclusion of Law No. 3 because as we have stated, Mr. Bob Thomas did in fact testify that the protestants and their predecessors have been beneficially using the water of Dry Gulch since at least 1915 which is a long time prior to May 20, 1971. The failure of protestants predecessors to file a claim in the Lemhi River adjudication does not preclude the formal documentation of an o

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JUN 28 1990

Mr. A. Kenneth Dunn
June 19, 1987
Page 3

omitted from that adjudication under the provisions of Idaho Code §42-1405.

3. We take exception to the Conclusion of Law No. 4 for the reasons previously stated, and for the further reason that the facts as we understand them indicate there would be no supply of water passing the diversion of the protestant or for that matter the Tobias diversion which would provide an adequate supply or any application of water to applicant's land.

4. We take exception also to the Conclusion of Law No. 5 on the grounds already stated that the only way applicant could obtain water from Dry Gulch would be to reduce the quantity of water under existing rights.

5. Finally, we take exception for all of the reasons stated to the Conclusions of Law Nos. 8 and 9 and to the Proposed Order creating Permit No. 74-7243.

Yours very truly,



Kent W. Foster

#0747.00
sam/5400e

cc: Mr. Joe Tonsmeire

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JUN 21 1990

RECEIVED

MAY 01 1987

INTER-DEPARTMENT MEMO — 1

DATE 27 April '87

FROM E. Carlsen

TO B. Fleenor.

Department of Water Resources

SUBJECT 74-7243 - Tonsmeire

Attached is the information Mr. Tonsmeire furnished concerning reservoir construction costs & financing.

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JUN 28 1990

June 8, 1987

I returned the individual financial statement with proposed decision on this date.

SIGNATURE



Wilderness River Outfitters

AND TRAIL EXPEDITIONS, INC.

PHONE (208) 756-3959

P. O. BOX 871

SALMON, IDAHO 83467

April 14, 1987

Ernest Carlson
State of Idaho
Water Resources Dept.
150 Shoup Sr. Suite 15
Idaho Falls, Idaho

RECEIVED
MAY 01 1987

Department of Water Resources

RECEIVED
APR 16 1987

Department of Water Resources
Eastern District Office

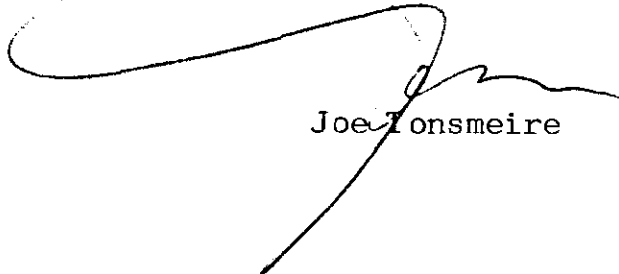
Dear Ernie,

Please find enclosed the information you requested in your letter of April 8, 1987 concerning application for permit 74-7243 Dry Gulch.

Attached is estimated cost of construction and a financial statement for myself.

I don't mind providing this information to the department. However, the financial statement if none of the protestant business and this information is not to be furnished to them.

Sincerely,



Joe Jonsmeire

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JUN 28 1990

Estimated Cost

Diversion Structure (21" culvert at \$10.00/ft.\$200.00

Installation (2 hrs. backhoe - I have my own hoe.....

Ditch Cleaning (Original ditch is already there) 50.00

Reservior- Earthwork (8hrs D6 at \$60/hr.)..... 480.00

Standpipe for overflow(18" pipe x 40' @ \$7.80/ft.. 312.00

Drain pipe (12" pipe with valve- 108.00

Installation of pipes 2 days labor NC

Total of estimate \$954.00

Materials + hired

machinery cost 108.00

Total cost.....\$1150.00

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JUN 28 1990

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MAY 04 1987

Department of Water Resources

April 8, 1987

RE: Application for Permit No. 74-7243, Dry Gulch

Mr. Joseph Tonsmeire
Box 871
Salmon, ID 83467

Dear Mr. Tonsmeire:

One of the considerations which the Department must examine in preparing a decision on the above captioned application concerns your ability to finance development of the project as represented by the application.

Information was presented at the conference concerning the cost of repairing the original ditch and installation of a diversion structure and flume across the High Ditch. There was no mention, however, of the anticipated expense for construction of the dam to store water during the non-irrigation season and a subsequent showing either that you had sufficient financial resources to complete construction or that you have acquired a financial commitment to cover the expected construction costs.

The Department will defer administrative consideration of the application for thirty (30) days from the date of this letter to provide an opportunity for furnishing documentation concerning the anticipated construction costs and a financial statement or a commitment of financing. If the information has not been furnished by then or a date designated when it will be provided, the Department will proceed with its decision based on the available information. When the information is furnished the protestant will be given an opportunity to examine it and indicate whether or not it is found to be acceptable.

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JUN 28 1990

Mr. Joseph Tonsmeire
April 8, 1987
Page 2

RECEIVED
MAY 04 1987

Department of Water Resources

Please feel free to contact me should you have questions regarding this request.

Respectfully submitted,

ERNEST CARLSEN
Water Rights Supervisor

EC:cw

cc: Bob Fleenor

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JUN 28 1990

State of Idaho
Department of Water Resources

APPLICATION FOR PERMIT ANALYSIS SHEET

INITIAL REVIEW BY: KCW APPLICATION NUMBER: _____

CHECK:

- ☒ Source.
☒ Point of diversion.
☒ County.
☒ Quantity of water and period of use.
☒ Description of diverting works.
☒ Time required for beneficial use of water.
☒ Place of use or acres irrigated.
☒ Map.
☒ Signature.
☒ Fee.

Field check by: _____

Date: _____

Comments: _____

☐ Yes ☒ No Field check required.

☐ Yes ☒ No Critical groundwater area.

☐ Yes ☒ No Request dam safety information. Sent by: _____ Date: _____

☒ Yes ☐ No* In form to receipt.

*REQUEST THE FOLLOWING ADDITIONAL INFORMATION FROM THE APPLICANT: _____

SEND COPIES TO:

- ☐ Idaho State Health Department.
☐ Idaho Fish and Game Department.
☐ Idaho Department of Lands.
☐ U.S. Bureau of Land Management.
☐ U.S. Forest Service.
☒ Other Dam Safety

Copies sent by: _____ Date: _____

PROCESSING:

☐ Yes ☒ No Platted by: _____ Map No. _____
☐ Yes ☒ No Other rights on same place of use. _____

☒ Yes ☐ No* In form for advertising.

Final date for protests: _____

☒ Yes ☐ No Protests received. If yes, record information on 4th page of application.

FINAL REGIONAL PROCESSING REVIEW:

☒ Affidavit of publication received. Date: 12-23-85

☒ Application published correctly. If not, record action taken: _____

☒ Fee amount, receipt date & number, recorded on application.

☒ Publication dates and paper, recorded on application.

☒ Protests, dates, withdrawal, etc., recorded on application.

☒ Recommendation & initial, recorded on application.

☒ Yes ☐ No Measuring device required.

☐ Yes ☒ No Access port required.

☐ Yes ☒ No Will water be delivered by watermaster? If yes, what district? _____

11-27-1985 Date of priority recommended.

Special conditions of approval or cover letter. _____

STATE OFFICE REVIEW:

109
*use paragraph from
have it's memo of 3/18/87

☐ See attached sheet for more information.

By: _____

Date: _____

RECEIVED

MAR 16 1987

Department of Water Resources

see
mem.
dec. &
order
signed
by RDC
KW
3/18/87

file copy
destroyed-
3/18/87

5 yrs. Seems reasonable for B/U
development since dam will
be constructed.

POINT OF DIVERSION AND STREAM INDEX INFORMATION

TRACT SEC TWP RGE gov't rediv. REACH
lot (R)

IDAHO STREAM CODE INDEX

TRACT SEC TWP RGE gov't rediv. REACH
lot (R)

IDAHO STREAM CODE INDEX

TRACT SEC TWP RGE gov't rediv. REACH
lot (R)

IDAHO STREAM CODE INDEX

TRACT SEC TWP RGE gov't rediv. REACH
lot (R)

IDAHO STREAM CODE INDEX

TRACT SEC TWP RGE gov't rediv. REACH
lot (R)

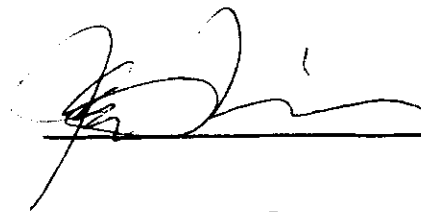
IDAHO STREAM CODE INDEX

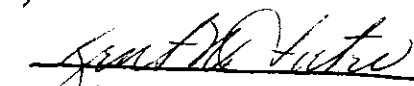
IN THE MATTER OF)
APPLICATION FOR PERMIT)
74-7243 IN THE NAME)
OF JOE TONSMEIRE)

STIPULATION &
AGREEMENT

We hereby agree to allow the dept.
of Water Resources to make a decision
on application 74-7243 based upon the
information presented at the
conference held in Salmon Idaho
on Nov. 6, 1986, and waive our right
to a hearing.

SIGNED AT SALMON, IDAHO THIS 6th DAY
OF NOVEMBER 1986





att'y for Protestant, Church
of Jesus Christ of Latter Day Saints

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JUN 28 1990

Application for transfer 74-1243
JOSEPH TONSMEIRE

CONFERENCE

Nov. 6, 1986

Protests:

- 1. will reduce quantity under existing water rights
- 2. Water supply insufficient for Purpose intended
- 3. Application is not made in good faith, is made for delay or speculative purposes
- 4. Applicant does not have sufficient financial resources w/ which to complete the work
- 5. will conflict w/ local/public interest

Joseph Tonsmeire - Said there is evidence of irrigation ~~from~~ old ditches. Has cleaned one of the old ditches - figures costs at \$300

Bob Thomas → Kent Foster - There is a ditch called the high ditch which (is 9 miles long) cuts across Dry Gulch. Ditch intercepts Dry Gulch & picks up entire flow of Dry Gulch. Ron Tobias has constructed a ditch and is now diverting water from D. Gulch.

Kent Foster - 901.2 Acres 74-1066*
1067*, 1068*, 1072*, 1073*, 1074*
meadow Creek, Hayden Creek, Little Sawmill

MICROFILMED

JUN 26 1990

No rights for Dry Gulch specified in Lemhi Decree.

Bob - roadwork Dry Gulch has been main source of irrigation water early.

JOE T:

Proposed PD will be below church's ditch but if application approved he would flume water across high ditch.

Foster - whose land will ditch be on? Tonsmeire says he has verbal permission from Tobias.

Treasure - Leased land from Church - Church bought land 10-15 years. Parley Arvie owner at time of adjudication. Objection to Dept's findings. Stipulations modified Dept's recommendations.

High ditch all ~~MICROFILMED~~ Church farm

JUN 26 1990

There are no measuring devices. Pipe lines limit the amount of water that can be diverted from Hayden Creek. There has never been a water master on Hayden Creek.

Church has to seal ditch to get water to ranch.

Church has a prescriptive easement.
Foster asks if easement needed
to cross Church's ditch.

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JUN 28 1990

#74-7243

6 Nov 86.

Applicant - Joe Torrence.

Protestant -

- L.D.S. church represented by Kent Foster.

Applicant -

No claims or claimed rights on Dry Gulch.

Sited for water to irrigate 103 acres. There is an existing ditch on the property. Estimates it will require about \$300⁰⁰ to install headgate and clear ditch. No estimate on cost of constructing dam.

Protestant - Kent - The High Ditch cross through Dry Gulch. The ditch intercepts water from the gulch. ~~The High Ditch is used by the Protestant for irrigation of 201.2 acres from 6 rights listed in Lambi Pierce.~~
The gulch has been one of the sources contributing to the flow in the ditch. High Ditch is used by the Protestant for irrigation of 201.2 acres from 6 rights listed in Lambi Pierce.

The High Ditch is intercepts the flow of East fork of Appleton Creek & Meadow Creek. Ditch is about 9 miles long. None of the rights designated Dry Gulch as a source of water.

* Early ~~run off~~ in Meadow irrigation from the ditch has helped on Meadow Creek & Dry Gulch for water because the head of High Ditch is still full of

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JUN 28 1990

74-1066 74-1074
-1067
-1068
-1072
-1073

Applicant - to use existing ditch, water in Dry Gulch would be flumed across ~~dry~~ High Ditch and be diverted from Dry Gulch.

initial research failed to ~~have~~ locate reference to a water right from Dry Gulch.

-Protestant- Chuck has owned property for about 10 years - it was purchased from Parley Arroyo's Debt Insurance. There are no measuring devices on the High Ditch. The ditch is limited in the amount of water it can carry because of a pipeline the water goes through. The ditch is not large enough to carry ~~the~~ the quantity of water desired from Hayden Creek.

-Applicant- There is water rising in Dry Gulch below High Ditch. Water is sufficient to fill a reservoir. But early spring flows would be needed for ~~initial~~ irrigation to be feasible.

-Parties agree to letting department ^{write} a decision and conduct a field inspection. Both parties must consent to the use of data compiled subsequent to conference.

Check date of first application - The High Ditch has no been changed with respect to intercepting Dry Gulch in the past ten years.

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JUN 28 1990

74-7243 - Tonsmeire

Commissioner's Room, Lemhi County Courthouse
Salmon, Idaho

Thursday, November 6, 1986 - 10:00 a.m.

ROSTER OF ATTENDANCE

Hearing Officer: Ren Carlson ERNEST CARLSEN

<u>Name</u>	<u>Representing</u>	<u>Address</u>
JOSEPH TONSMETRE		P O Box 871 SALMON ID. 83467
Robert S. Thomas		RTI Box 112 Salmon Idaho 83467
KENT W. FOSTER	LDS CHURCH	IDAHO FALLS IDAHO 83402

MICROFILMED

JUN 28 1990

October 22, 1986

Lemhi County Courthouse
Lemhi County Clerk's Office
Salmon, ID 83467

Gentlemen:

This is to confirm the use of the Commissioner's Room for a water right hearing to be held by this Department on November 6, 1986, beginning at 10:00 a.m.

Thank you for your cooperation in this matter.

Very truly yours,

COLLEEN WRAY
Adm. Secretary

MICROFILMED

JUN 28 1990

PS Form 3811, July 1983

SENDER: Complete items 1, 2, 3 and 4.

Put your address in the "RETURN TO" space on the reverse side. Failure to do this will prevent this card from being returned to you. The return receipt fee will provide you the name of the person delivered to and the date of delivery. For additional fees the following services are available. Consult postmaster for fees and check box(es) for service(s) requested.

1. ☐ Show to whom, date and address of delivery.

2. ☐ Restricted Delivery.

3. Article Addressed to:
 Kent W. Foster
 P.O. Box 129
 Lake Falls, MN 55402

4. Type of Service:
☐ Registered ☐ Insured
☒ Certified ☐ COD
☐ Express Mail

Article # 23
 JUN 28 1986
 DELIVERED

Always obtain signature of addressee or agent and **DATE DELIVERED.**

5. Signature — Addressee
 X

6. Signature — Agent
 X Cam Holbrook

7. Date of Delivery
 10-21-86

8. Addressee's Address (ONLY if requested and fee paid)

14-7245
 13-1

DOMESTIC RETURN RECEIPT

UNITED STATES POSTAL SERVICE

OFFICIAL BUSINESS

SENDER INSTRUCTIONS

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

- Complete items 1, 2, 3, and 4 on the reverse.
- Attach to front of article if space permits, otherwise affix to back of article.
- Endorse article "Return Receipt Requested" adjacent to number.

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JUN 28 1990



DEPARTMENT OF WATER RESOURCES

EASTERN DISTRICT OFFICE

150 CHLOUP AVE. #15

IDAHO FALLS, IDAHO 83401

RETURN

TO
Department of Water Resources
Eastern District Office

OCT 22 1986

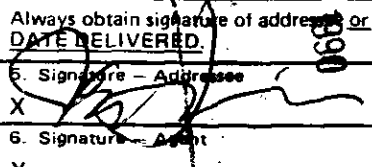
RECEIVED

(Name of Sender)

(No. and Street, Apt., Suite, P.O. Box or R.D. No.)

(City, State, and ZIP Code)

PS Form 3871, July 1983

1 SENDER: Complete items 1, 2, 3 and 4. Put your address in the "RETURN TO" space on the reverse side. Failure to do this will prevent this card from being returned to you. <u>The return receipt fee will provide you the name of the person delivered to and the date of delivery.</u> For additional fees the following services are available. Consult postmaster for fees and check box(es) for service(s) requested. 1. ☐ Show to whom, date and address of delivery. 2. ☐ Restricted Delivery.	
3. Article Addressed to: Joe Tensmeire P.O. Box 871 Salmon, ID 83467	
4. Type of Service: ☐ Registered ☐ Insured ☒ Certified ☐ COD ☐ Express Mail	Article Number 115580 8 890 DELIVERED
Always obtain signature of addressee or agent and DATE DELIVERED.	
5. Signature - Addressee X 	
6. Signature - Agent X	
7. Date of Delivery OCT 21 1986	
8. Addressee's Address (ONLY if requested and fee paid)	

DOMESTIC RETURN RECEIPT

11-1-86

UNITED STATES POSTAL SERVICE
OFFICIAL BUSINESS

MICROFILMED



SENDER INSTRUCTIONS

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

- Complete items 1, 2, 3, and 4 on the reverse.
- Attach to front of article if space permits, otherwise affix to back of article.
- Endorse article "Return Receipt Requested" adjacent to mailing slot.

JUN 28 1990

DEPARTMENT OF WATER RESOURCES
USE 1300

EASTERN DISTRICT OFFICE

150 SHOSH AVE. #15

IDAHO FALLS, IDAHO 83401

(Name of Sender)

(No. and Street, Apt., Suite, P.O. Box or R.D. No.)

(City, State, and ZIP Code)

RETURN

Department of Water Resources
Eastern District Office

OCT 22 1986

RECEIVED

NAME AND ADDRESS OF SENDER

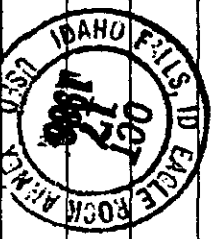
EASTERN ROCK OF OFFICE
150 CHURCH AVE.
IDAHO FALLS, IDAHO 83401

Indicate type of mail:
☐ Registered
☐ Insured
☒ COD
☐ Certified

I certify that we have:
☐ Commercial Insurance
☐ A deductible clause of \$

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

NO.	NUMBER OF ARTICLE	NAME OF ADDRESSEE, STREET, AND POST-OFFICE ADDRESS	POSTAGE	FEE	Handling Charge	Actual Value (if Registered)	DUE SENDER IF C.O.D.	R. R. FEE	S. D. FEE	S. H. FEE	REG. DEL. FEE	REMARKS
1	13511	Paul Lundgren Box 816 Home	22	75								81-2338
2	13512	Paul Lundgren, Home, Id.										"
3	13513	Heenie Green, Home, Id.										"
4	13514	Heenie Green, Home, Id.										"
5	13515	Heenie Green, Home, Id.										"
6	13516	Heenie Green, Home, Id.										"
7	13517	Paul Lundgren Box 816 Home										"
8	13518	Paul Lundgren Box 816 Home										"
9	13519	Paul Lundgren Box 816 Home										"
10	13520	Paul Lundgren Box 816 Home										"
11	13521	Paul Lundgren Box 816 Home										"
12												
13												
14												
15												
TOTAL NUMBER OF PIECES LISTED BY SENDER		11	TOTAL NUMBER OF PIECES RECEIVED AT POST OFFICE		POSTMASTER, PER NAME of receiving employee							



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JUN 28 1990

The full declaration of value is required on all domestic and international registered mail. Commercial Insurance—Payment of the full registry fee is required on articles valued up to \$1,000 or the full amount of the deductible if the deductible exceeds \$1,000. The maximum indemnity payable is \$25,000 for registered mail, \$400 for COD and \$400 for insured mail. Special handling charges apply only to third- and fourth-class parcels. Special delivery service also includes special handling service.

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE
STATE OF IDAHO

IN THE MATTER OF APPLICATION FOR)
PERMIT NO. 74-7243 IN THE NAME OF) NOTICE OF HEARING
JOSEPH TONSMEIRE)
_____)

On November 27, 1985, Joseph Tonsmeire filed with the Department of Water Resources an application to appropriate the public waters of the State of Idaho. On December 26, 1985, a protest was received by the Department from Kent Foster, Attorney at Law, in behalf of the Church of Jesus Christ of Latter Day Saints.

The Department has set the matter of protest for hearing for 10:00 a.m., Thursday, November 6, 1986, in the Commissioner's Room, Lemhi County Courthouse, Salmon, Idaho. The hearing will be held in accordance with provisions of Chapter 2, Title 42, of the Idaho Code and adopted Rules of Practice and Procedure of the Department of Water Resources. Opportunity shall be afforded all parties to respond and present evidence and argument on all issues involved.

Dated this 17 th day of October, 1986.

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JUN 28 1987



RONALD D. CARLSON

Eastern Regional Supervisor

September 22, 1986

RE: Application for Permit No. 74-7243

Mr. Joseph Tonsmeire
P.O. Box 871
Salmon, ID 83467

Dear Mr. Tonsmeire:

To recommend final action on the above captioned application a conference and/or administrative hearing must be held to examine the issues of protest against granting the permit. November 6, 1986, has initially been selected as the date for conducting this meeting which will be held in Salmon.

To provide adequate time for implementing a change to this schedule, please advise this office of your availability to be present on the above date.

Certified notices confirming the date, place, and time must be mailed ten (10) days prior to the conference and/or hearing. Once the certified notices are mailed, a postponement will require prior consent of the applicant.

Respectfully submitted,

ERNEST CARLSEN
Assistant Regional Supervisor

EC:cw

MICROFILMED

JUN 28 1990

September 22, 1986

RE: Application for Permit No. 74-7243 JOSEPH TONSMEIRE

Mr. Kent Foster
Attorney at Law
P.O. Box 129
Idaho Falls, ID 83403

Dear Kent:

To recommend final action on the above captioned application a conference and/or administrative hearing must be held to examine the issues of protest against granting the permit. November 6, 1986, has initially been selected as the date for conducting this meeting which will be held in Salmon.

To provide adequate time for implementing a change to this schedule, please advise this office of your availability to be present on the above date.

Certified notices confirming the date, place, and time must be mailed ten (10) days prior to the conference and/or hearing. Once the certified notices are mailed, a postponement will require prior consent of the applicant.

Respectfully submitted,

ERNEST CARLSEN
Assistant Regional Supervisor

EC:cw

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JUN 28 1988

WILDERNESS RIVER OUTLETTERS

AND TRAIL EXPEDITIONS, INC.

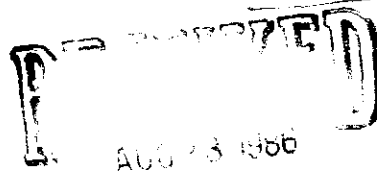
P.O. BOX 871

SALMON, IDAHO 83467

PHONE (208) 756-3959

TO *Ernie Carlson*
Dept Water Resources
150 Shoup/Asahs Falls/ID

DATE *26 Aug*
SUBJECT *Permit # 74-7243*



Dear Ernie -

Thanks for your note of Aug 22 regarding
hearing dates for Permit # 74-7243.

Most anytime in October preferably before the
15th or early November. I'll be out of
town the later part of November and early
December.

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JUN 28 1990

had a good trip to Lake Powell.
Thanks -

SIGNED

Joe Tonsmire

August 22, 1986

RE: Application for Permit No. 74-7243

Mr. Joseph Tonsmeire
P.O. Box 871
Salmon, Idaho 83467

Dear Mr. Tonsmeire:

In order for the Department of Water Resources to proceed with processing of the above captioned application, it will be necessary for either an administrative hearing to be held or the protestant to withdraw their protest. Since we have no indication that the latter alternative is likely to occur, we would appreciate your providing a list of dates when it would be possible for you to attend an administrative hearing on the application. If possible, the list should cover the months of October, November, and December.

Your cooperation in providing this information will be appreciated.

Respectfully submitted,

ERNEST CARLSEN
Assistant Regional Supervisor

EC:cw

MICROFILMED

JUN 28 1990

CONVERSATION MEMO

Name of Party: Mrs. Joseph Tonsmeire

July 23, 1986

Employee: Ernest Carlsen

RE: Application for Permit 74-7243

Mrs. Tonsmeire called the office this afternoon in response to my inquiry about scheduling an administrative hearing in order to consider the protest filed against the above captioned application. Mrs. Tonsmeire advised me her husband, Joe, would not be available to attend a hearing until later this fall. At her request I, therefore, agreed to continue holding the application until it was more convenient to schedule a hearing.

MICROFILMED

JUN 28 1990

January 20, 1986

Mr. Joseph Tonsmeire
P.O. Box 871
Balmon, ID 83467

Dear Mr. Tonsmeire:

Enclosed is a copy of a protest filed against the issuance of a permit pursuant to your Application No. 74-7243. The Department suggests you contact the protestant directly in an effort to determine the nature of the protest and to attempt to resolve the protest.

If you do not advise us within twenty (20) days that the protest has been resolved, the matter will be scheduled for conference and/or hearing. At such a conference and/or hearing, the following are the principle items the Department can consider in either approving or denying the application for permit (Section 42-203, Idaho Code):

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

If this office can be of further assistance, please contact us.

Very truly yours,

RONALD D. CARLSON
Eastern Regional Supervisor

RDC:cw

Enclosure

cc: IDWR - State Office

MICROFILMED

JUN 28 1990

January 20, 1986

REB Application for Permit No. 74-7243 TONSMEIRE

Mr. Kent Foster
Attorney at Law
P.O. Box 129
Idaho Falls, ID 83402

Dear Kent:

Your protest against the approval of the above referenced application has been received and a copy has been sent to the applicant. The Department suggests you contact the applicant directly in an effort to determine what is proposed by the application and to attempt to resolve the protest.

If you do not advise us within twenty (20) days that the protest has been resolved, the matter will be scheduled for conference and/or hearing. At such a conference and/or hearing, the following are the principle items the Department can consider in either approving or denying an application for permit (Section 42-203, Idaho Code):

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

If this office can be of further assistance, please contact us.

Very truly yours,

RONALD D. CARLSON
Eastern Regional Supervisor

RDC:cw

cc: IDWR - State Office

MICROFILMED

JUN 28 1986

WILLIAM S. HOLDEN
R. VERN KIDWELL, P.A.
FRED J. HAHN
KENT W. FOSTER
ROBERT E. FARNAM
WILLIAM D. FALER
STEPHEN E. MARTIN
CHARLES A. HOMER
GARY L. MEIKLE
CURT R. THOMSEN
RANDALL K. BARTON
MICHAEL D. CRAPO
JAMES D. HOLMAN
GAYLE A. SORENSON
DONALD L. HARRIS
GREGOR S. CHVISUK
RANDALL B. REED
G. LANCE NALDER

LAW OFFICES
HOLDEN, KIDWELL, HAHN & CRAPO

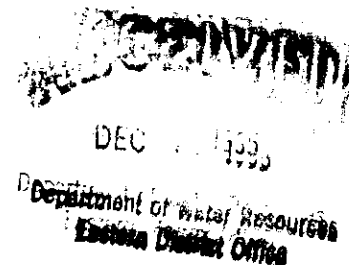
IDAHO FIRST NATIONAL BANK BUILDING
P.O. BOX 129

IDAHO FALLS, IDAHO 83402

TELEPHONE 523-0620
AREA CODE 208

ARTHUR W. HOLDEN (1877-1967)
ROBERT B. HOLDEN (1911-1971)
TERRY L. CRAPO (1939-1982)

December 24, 1985



Idaho Department of Water Resources
150 Shoup Avenue, Suite 15
Idaho Falls, Idaho 83402

RE: Application No. 74-7243--Joseph Tonsmeire

Gentlemen:

We are writing this letter on behalf of the corporation of the presiding bishop of the Church of Jesus Christ of Latter Day Saints, which is the owner of certain ranching property located near Hayden Creek near Lemhi County, Idaho.

We ask that this letter be considered a protest to the above referenced application, for the reason that the proposed use will reduce the quantity of water under the existing water rights, that the water supply itself is insufficient for the purpose for which is sought to be appropriated, that such application is not made in good faith, is made for delay or speculative purposes, that the applicant does not have sufficient financial resources with which to complete the work involved therein and that it will conflict with the local public interest.

We would very much appreciate it if you would notify our office directly of the time and place when the hearing is scheduled on the protests.

Thank you for your kind cooperation in this matter.

Yours very truly,


Kent W. Foster

KWF:cl

RECEIVED

JUN 28 1986

WILLIAM S. HOLDEN
R. VERN KIDWELL, P.A.
FRED J. HAHN
KENT W. FOSTER
ROBERT E. FARNAM
WILLIAM D. FALER
STEPHEN E. MARTIN
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GREGOR S. CHVISUK
RANDALL B. REED
G. LANCE NALDER

LAW OFFICES
HOLDEN, KIDWELL, HAHN & CRAPO
IDAHO FIRST NATIONAL BANK BUILDING
P.O. BOX 129
IDAHO FALLS, IDAHO 83402

TELEPHONE 523-0620
AREA CODE 208

ARTHUR W. HOLDEN (1877-1967)
ROBERT B. HOLDEN (1911-1971)
TERRY L. CRAPO (1939-1982)

December 27, 1985

RECEIVED

DEC 30 1985

Department of Water Resources
Eastern District Office

Mr. Ernest Carlson
Assistant Regional Supervisor
Idaho Department of Water Resources
150 Shoup Avenue, Suite 15
Idaho Falls, Idaho 83402

Dear Mr. Carlson:

You mentioned in your letter to us of December 18, 1985, a permit No. 74-7410 which was apparently issued in the name of Ronald Tobias. We would appreciate it if you would send us a copy of that permit for our records.

Thank you very much for your kind assistance, and if you will advise of the cost we will promptly send our check for reimbursement.

Yours very truly,

Kent

Kent W. Foster

KWF:cl
#747.00

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JUN 28 1990

74-7141
Sent

December 18, 1985

Kent Foster
Holden, Kidwell, Hahn & Crapo
P.O. Box 129
Idaho Falls, Idaho 83402

Dear Kent:

A copy of application No. 74-7243 for the appropriation of water on Dry Gulch is enclosed for your review.

Department records show Dry Gulch is also the source of water for permit no. ~~74-7410~~⁷⁴⁴² in the name of Ronald Tobias. This permit was approved for the diversion of 1 cfs in the NE1/4SW1/4 Sec 13 T 17N R 23E, to be used for irrigation of 65 acres in the S1/2NW1/4 NE1/4SW1/4 Sec 13 T 17N R 23E.

It is my understanding Mr. Tobias has not developed the irrigation project and unless beneficial use is filed by July 1, 1986 the permit will lapse.

If you have questions concerning permit no. 74-7140, or the application filed by Mr. Tonsmeire feel free to contact me.

Respectfully submitted,

Ernest Carlsen
Assistant Regional Supervisor

EC/md

Enclosure

MICROFILMED

JUN 28 1990

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
Eastern Region

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

DECEMBER 4, 1985

The Recorder-Herald
P. O. Box 310
Salmon, Idaho 83467

Gentlemen:

Enclosed you will find a legal notice which we wish to have published on the dates indicated (once a week for two consecutive weekly issues) in your newspaper. We have allowed ample time for you to submit a galley proof to this office for review before the first publication date. If you cannot publish the notice on the proposed dates, please contact us immediately.

An affidavit of publication must be submitted to the Department along with the publication bill. Your cooperation is appreciated.

Please send the affidavit of publication and publication billing to this office before DECEMBER 30, 1985.

Yours truly,

RONALD D. CARLSON
Supervisor
Eastern Region

Encl.

MICROFILMED

JUN 28 1990

NOTICE OF APPLICATION
FOR WATER RIGHT

The following applications have been filed to appropriate
the public waters of the State of Idaho:

74-7243

TONSMEIRE, JOE

P.O. BOX 871, SALMON, ID 83467

Source: DRY GULCH trib. to HAYDEN CREEK

Diversion Pt: NESW NWNW Sec 13 T 17N R 23E

Use: IRRIGATION (2.0 CFS)
IRRIGATION STORAGE (49.0 AF)
IRRIGATION FROM STORAGE (49.0 AF)

Date Filed: 11/27/1985

In: SESE Sec 11 T 17N R 23E SWSW Sec 12 T 17N R 23E NWNW Sec 13 T 17N R 23E
NENE Sec 14 T 17N R 23E FOR 103 ACRES

The permits will be subject to all prior water rights.
Protests may be submitted based on the criteria of Sec. 42-203A,
Idaho Code and/or the new public interest criteria of
Sec. 42-203C, Idaho Code. Protests must be filed with the
Director, Dept. of Water Resources, 150 Shoup Ave., Suite 15,
Idaho Falls, Idaho, 83402 on or before December 30, 1985.

KEN DUNN

Director

JUN 26 1990

Published 12/12 and 12/19/85.

WATER RIGHT
DATA ENTRY LOG[illegible]