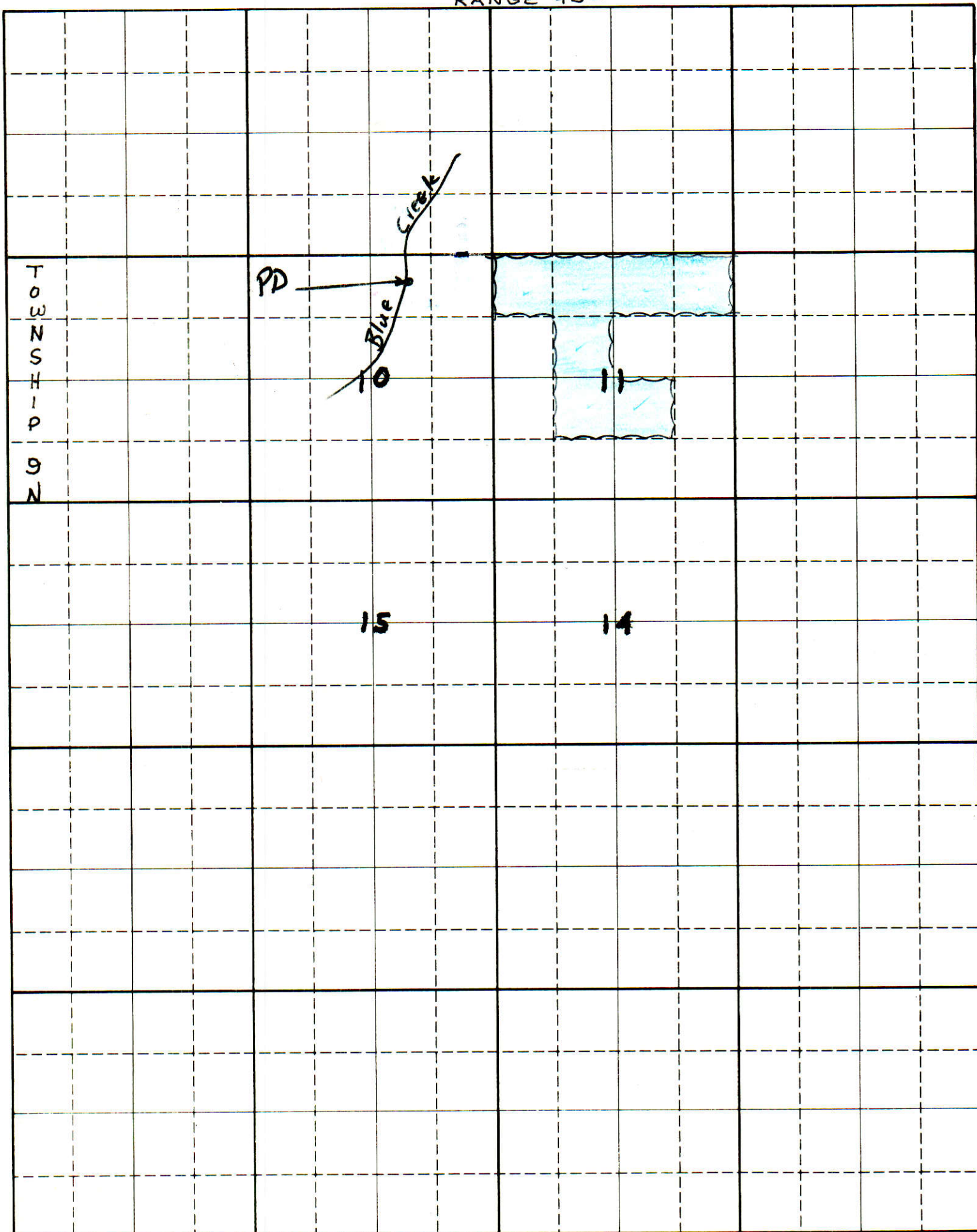


11. Map of proposed project: show clearly the proposed point of diversion, place of use, section number, township and range number.

RANGE 43E



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.

Danna P. Chepy  
(Applicant)  
Danna P. Chepy

1973



78.1

10/11  
15/14

B-334  
2-2

B-339  
3-3

B-335

NOT TO SCALE

AFFIDAVIT OF  
PUBLICATION

State of Idaho

County of Fremont

ss.

*Carol Bessey*  
being first duly sworn, upon her  
oath, deposes and says:

That she is the *editor*...  
of The Ashton Herald, a news-  
paper as defined by Idaho Codes  
Annotated, section 58-106, as  
amended, and that said newspaper  
is a weekly newspaper published  
at Ashton, Idaho, in Fremont  
County, Idaho, having a general  
circulation in said county, and that  
said newspaper has been printed  
and published as a weekly news-  
paper in said county for more than  
78 consecutive weeks prior to the  
first publication of the attached  
notice, advertisement or publi-  
cation of *Notice of*....

*Application for*....  
*Water Permit*....  
*# 21-7076 (Cherry)*

And affiant further says that said  
notice, advertisement or publi-  
cation, as per clipping attached,  
was published in said newspaper,  
in the regular and entire issue  
thereof, and not in any supplement  
issue thereof, for .... *2*....

consecutive issues thereof; first  
publication having been made on

the ... *14* ... day of

*August*, 19. *75*...

and the last publication on the

.. *21* ... day of *August*

19. *75*.

And affiant further says that at the  
times herein mentioned said news-  
paper was made up of at least  
eight pages of at least four col-  
umns each, printed from type  
matter, of at least fifteen inches  
deep.

*Carol Bessey*  
Subscribed in my presence and

sworn to before me this *19*...

day of *Aug*.....

19. *75*.

*James E. Holcomb*

Notary Public for the State  
(SEAL) of Idaho, residence and  
post office address:  
Ashton, Idaho.

*MB* NOTICE OF APPLICATION  
FOR WATER PERMIT

Notice is hereby given that Lavar A.  
&/or Donna P. Cherry, Ashton, Idaho  
have on 8-08-75 submitted Application  
No. 21-7076 for a permit to appropriate  
3.20 cubic feet per second of water from  
Blue Creek tributary to Henry's Fork  
Snake River by means of pump and  
pipeline within the NW $\frac{1}{4}$ NE $\frac{1}{4}$ , Sec. 10,  
T. 9N, R. 43E, B.M., Fremont County; to  
be used from Apr. 15 to Oct. 15 for the  
irrigation of 180 acres within the  
N $\frac{1}{2}$ NE $\frac{1}{4}$ , N $\frac{1}{2}$ NW $\frac{1}{4}$ , SE $\frac{1}{4}$ NW $\frac{1}{4}$ , NE-  
 $\frac{1}{4}$ SW $\frac{1}{4}$ , NW $\frac{1}{4}$ SE $\frac{1}{4}$ , Sec. 11, T. 9N, R.  
43E, B.M.

If issued, this permit will be subject to  
all prior water rights. Protests against  
the granting of the permit must be filed  
with the Idaho Department of Water  
Resources, 1515 Lincoln Road, Idaho  
Falls, Idaho, 83401 on or before  
September 2, 1975.

R. KEITH HIGGINSON  
Director

Published in the Ashton Herald, Ashton.  
Idaho on August 14 and August 21, 1975.

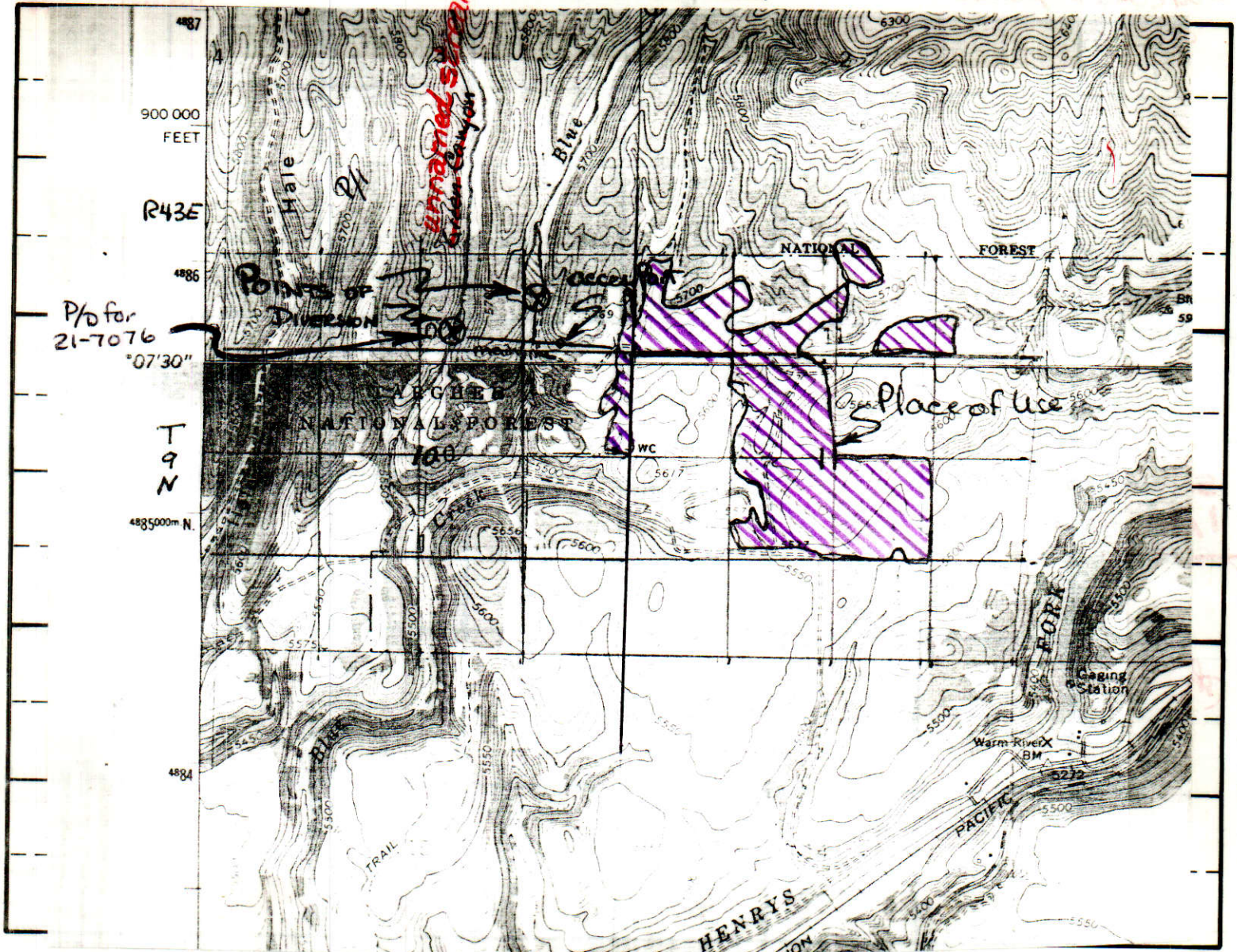
RECEIVED

AUG 22 1975

Department of Water Resources  
Eastern District Office

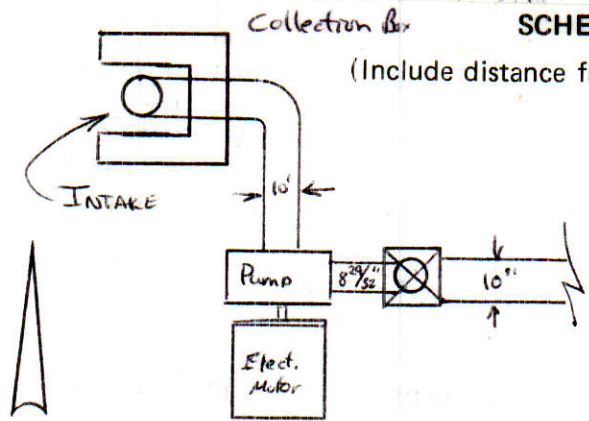
MICROFILMED

MAP (Attach Aerial Photo)



SCHEMATIC DIAGRAM OF SYSTEM

(Include distance from pump to measuring device, if applicable.)



(N)

Point(s) of diversion: ☒ NW 1/4 NE 1/4 Sec 10 T 9 N R 43 E

Place(s) of Use

| TWP. | RGE. | SEC. | NE 1/4 |        |        |        | NW 1/4 |        |        |        | SW 1/4 |        |        |        | SE 1/4 |        |        |        | TOTALS |
|------|------|------|--------|--------|--------|--------|--------|--------|--------|--------|--------|--------|--------|--------|--------|--------|--------|--------|--------|
|      |      |      | NE 1/4 | NW 1/4 | SW 1/4 | SE 1/4 | NE 1/4 | NW 1/4 | SW 1/4 | SE 1/4 | NE 1/4 | NW 1/4 | SW 1/4 | SE 1/4 | NE 1/4 | NW 1/4 | SW 1/4 | SE 1/4 |        |
| 9N   | 43E  | 2    |        |        |        |        |        |        |        |        |        |        |        |        |        |        | 2      |        | 2 ✓    |
|      |      | 10   | 2      |        |        | 10     |        |        |        |        |        |        |        |        |        |        |        |        | 12 ✓   |
|      |      | 11   | 3      | 14     |        |        | 12     | 15     |        | 35     | 22     |        |        |        |        | 38     |        |        | 139    |
|      |      |      |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |
|      |      |      |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |
|      |      |      |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |
|      |      |      |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |
|      |      |      |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |
|      |      |      |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |
|      |      |      |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |
|      |      |      |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |

Recommended Amendments:

- ☐ Change P.D. as reflected above  
☒ Change P.U. as reflected above

- ☐ Add P.D. as reflected above  
☐ Add P.U. as reflected above

- ☐ None  
☒ Other

Source Name ?

Examiner's Signature

Checked by

Approved by

Keith C Wilson

HW

Kay Walker

Date

11 Jan 1984

Date

1-16-84

Date

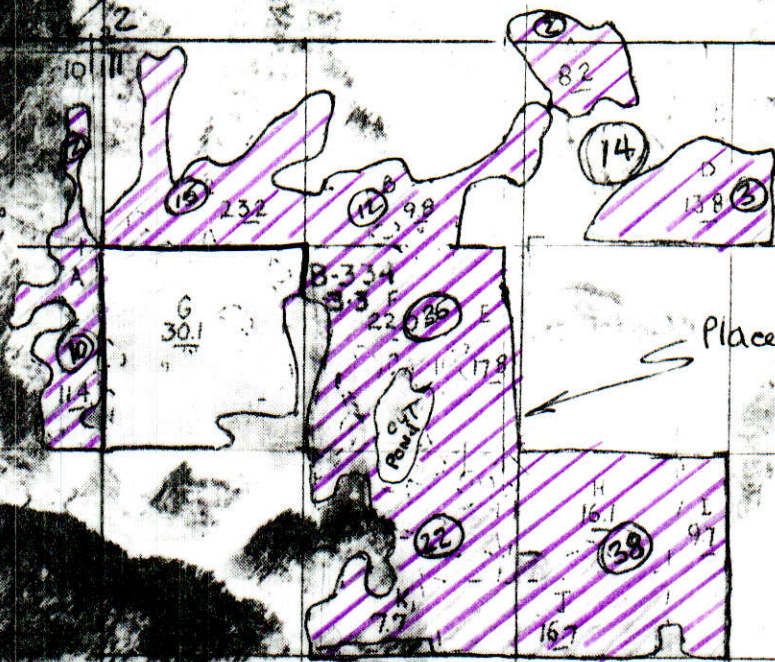
6/23/86

U 10

T 9 N  
R 43 E

Division

Quarry



Place of Use

NOT TO SCALE

MICROFILMED

PERMIT 21-7075  
7076

(Name)

Accompanied by: Layle

EXAMINATION: DATE: 8 July 82

Cherry

| Motor Make         | HP | Motor Serial No. | Pump Make | Pump Serial No. |
|--------------------|----|------------------|-----------|-----------------|
| Green Corp Destr 2 | 88 | 59255 K4         | Cornell   | 26132           |

Green Corp Destr 2

|              |          |    |         |       |
|--------------|----------|----|---------|-------|
| Elect Meters | 97708-46 | 46 | Cornell | 37705 |
|--------------|----------|----|---------|-------|

Elect Meters

Measuring Device Type:

Meter # 091478 Annubar # 6065 Size # 6.065

Remarks:

Measurement calculations:

Green Corp Diesel 1068.7 gpm = 2.38 cfs

40" Annubar 6.065 # 191118

Blue dk Effect 1095 = 2.44

Send Designation  
forms  
Layle Cherry  
Box 218  
Cashier ID 83420

SCHEMATIC DIAGRAM OF SYSTEM

Mainline Diameter 6.625 Length

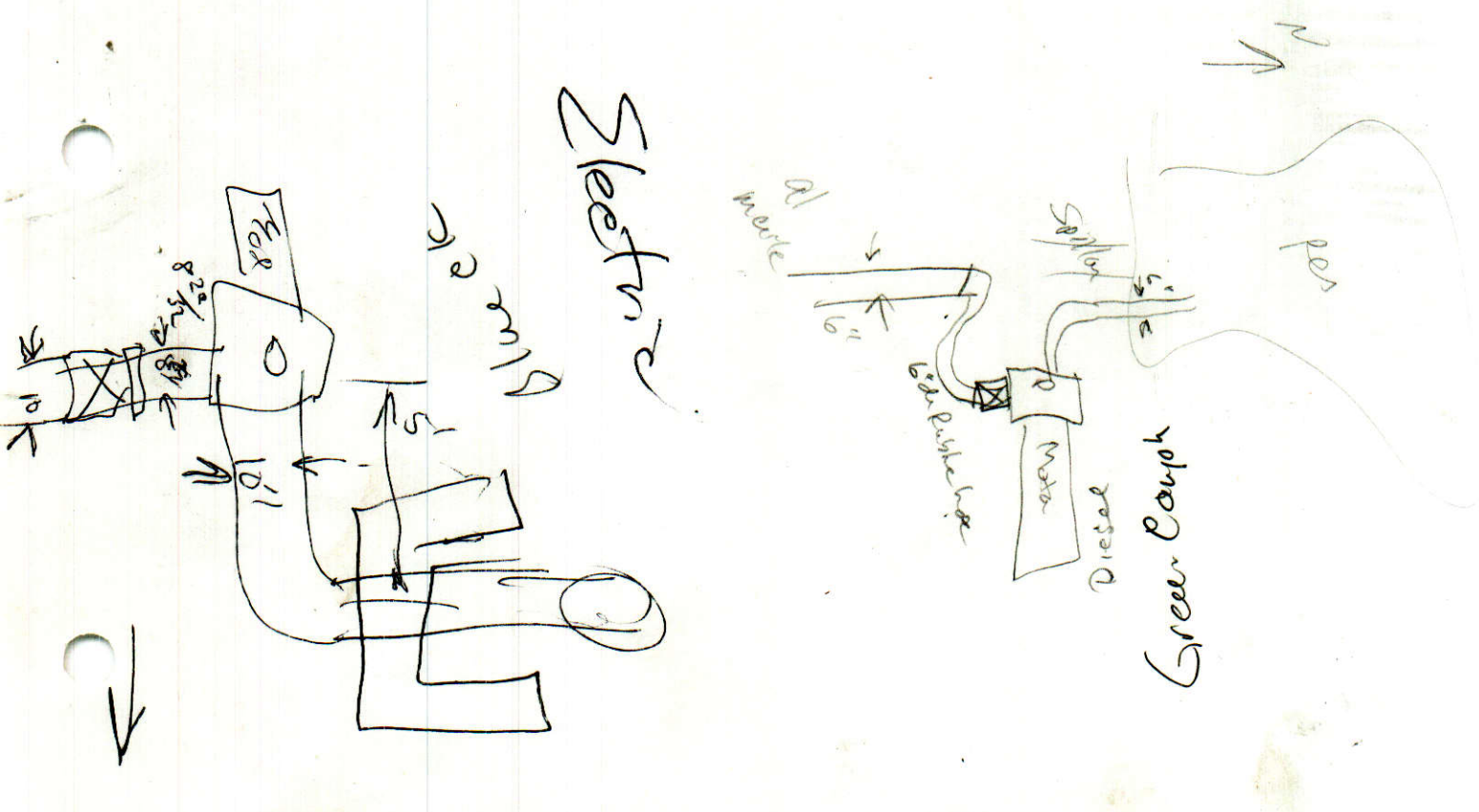
Licane

23234 21-2104

21234 21-2102

Check 21-7141

Check for 1911 Right



**State of Idaho**  
**Department of Water Resources**

**WATER RIGHT LICENSE**

License of Water Right No. 21-7076 Priority August 8, 1975 Amount 2.47 cfs

THIS IS TO CERTIFY, that Layle Cherry  
of Ashton, Idaho, has complied with the terms and conditions of Permit  
No. 21-7076 issued pursuant to Application for Permit dated August 8, 1975,  
and has submitted proof to the Department of Water Resources on May 5, 1980,  
that he has applied water to a beneficial use; an examination by the Department indicates that the works have a  
capacity for the diversion of 2.47 cfs of water from an unnamed stream,  
tributary to Henry's Fork, and that the permit holder has applied to a beneficial use and  
established a right to use water as follows:

| Beneficial Use | Period of Use                            | Rate of Diversion      | Annual Volume          |
|----------------|------------------------------------------|------------------------|------------------------|
| Irrigation     | from <u>April 1</u> to <u>November 1</u> | at <u>2.47</u> cfs and | <u>459.0</u> acre feet |
|                | from _____ to _____                      | at _____ cfs and       |                        |
|                | from _____ to _____                      | at _____ cfs and       |                        |

(both dates inclusive)

Subject, however, to the condition that no more than 2.47 cfs of water be diverted at any one time, and  
that the amount of water so diverted and to which such right is entitled and confirmed for the purpose  
aforementioned and is limited to the amount which can actually be beneficially used and shall not exceed  
459.0 acre feet per year, said waters to be diverted within the NW 1/4 Section 10,  
Twp 9N, Rge 43E in the County of Elmore

Description and location of place of use:

| Twp. | Range | Sec. | NE 1/4 |        |        |        | NW 1/4 |        |        |        | SW 1/4 |        |        |        | SE 1/4 |        |        |        | Totals |
|------|-------|------|--------|--------|--------|--------|--------|--------|--------|--------|--------|--------|--------|--------|--------|--------|--------|--------|--------|
|      |       |      | NE 1/4 | NW 1/4 | SW 1/4 | SE 1/4 | NE 1/4 | NW 1/4 | SW 1/4 | SE 1/4 | NE 1/4 | NW 1/4 | SW 1/4 | SE 1/4 | NE 1/4 | NW 1/4 | SW 1/4 | SE 1/4 |        |
| 9N   | 43E   | 2    |        |        |        |        |        |        |        |        |        |        |        |        |        |        | 2      |        | 2      |
|      |       | 10   | 2      |        |        | 10     |        |        |        |        |        |        |        |        |        |        |        |        | 12     |
|      |       | 11   | 3      | 14     |        |        | 12     | 15     |        | 35     | 22     |        |        |        | 38     |        |        |        | 139    |
|      |       |      |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |
|      |       |      |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |
|      |       |      |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |
|      |       |      |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |
|      |       |      |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |

Total number of acres irrigated 153

**MICROFILMED**

## CONDITIONS OF APPROVAL

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

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

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

Use of water under this license is subject to control by the watermaster of State Water District No. 01, Snake River.

This right when combined with all other rights shall provide no more than .02 cfs per acre nor more than 3.0 afa per acre for the lands above.

The maximum combined rate of diversion under this right and Right 21-2104 shall not exceed 2.47 cfs.

Source also known as Blue Creek.

Witness the seal and signature of the Director, affixed at Boise, Idaho, this 10<sup>th</sup> day of September, 19 86.

Billy D. Flannery  
Acting for the Director

MICROFILMED

STATE OF IDAHO

APPLICATION FOR AMENDMENT  
(For Licensing Purposes)

Ident. No. **RECEIVED**  
AUG 22 1986  
**APPROVED**  
Department of Water Resources

Comes now Layle Cherry Phone \_\_\_\_\_  
of (address) Box 218 Ashton, ID 83420, and represents to the  
Director of the Idaho Department of Water Resources:

That he is the owner and holder of Permit to appropriate the Public Waters of the  
State of Idaho No. 21-7076, and requests that the permit be changed as follows:

1a. Point of diversion: NW 1/4 NE 1/4, Section 10, Township 9N, Range 43E,  
B.M., County of Fremont. Other points of diversion: \_\_\_\_\_

1b. Source: unnamed stream tributary to Henrys Fork

2a. Period and nature of use:

Amount 2.47 for Irrigation purposes from 4/1 to 11/1 (both dates inclusive)  
(cfs or acre feet per annum)  
Amount \_\_\_\_\_ for \_\_\_\_\_ purposes from \_\_\_\_\_ to \_\_\_\_\_ (both dates inclusive)  
(cfs or acre feet per annum)  
Amount \_\_\_\_\_ for \_\_\_\_\_ purposes from \_\_\_\_\_ to \_\_\_\_\_ (both dates inclusive)  
(cfs or acre feet per annum)  
Amount \_\_\_\_\_ for \_\_\_\_\_ purposes from \_\_\_\_\_ to \_\_\_\_\_ (both dates inclusive)  
(cfs or acre feet per annum)

2b. The maximum quantity diverted shall not exceed 2.47 cfs or 459.0 acre feet  
per year.

3. Place of use or land to be irrigated:

| TWP | RGE | SEC | NE     |        |        |        | NW     |        |        |        | SW     |        |        |        | SE     |        |        |        | TOTALS |
|-----|-----|-----|--------|--------|--------|--------|--------|--------|--------|--------|--------|--------|--------|--------|--------|--------|--------|--------|--------|
|     |     |     | NE 1/4 | NW 1/4 | SW 1/4 | SE 1/4 | NE 1/4 | NW 1/4 | SW 1/4 | SE 1/4 | NE 1/4 | NW 1/4 | SW 1/4 | SE 1/4 | NE 1/4 | NW 1/4 | SW 1/4 | SE 1/4 |        |
| 9N  | 43E | 2   |        |        |        |        |        |        |        |        |        |        |        |        |        |        | 2      |        | 2      |
|     |     | 10  | 2      |        |        | 10     |        |        |        |        |        |        |        |        |        |        |        |        | 12     |
|     |     | 11  | 3      | 14     |        |        | 12     | 15     |        | 35     | 22     |        |        |        |        | 38     |        |        | 139    |
|     |     |     |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |
|     |     |     |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |

Total number of acres to be irrigated = 153

4. Date of priority: August 8, 1975

**MICROFILMED**

Remark: Source also known as Blue Creek.

5. Conditions (if any):

Use of water under this license is subject to control by the watermaster of State Water District No. 01, Snake River.

The maximum combined rate of diversion under this right and Right 21-2104 shall not exceed 2.47 cfs.

This right when combined with all other rights shall provide no more than .02 cfs per acre nor more than 3.0 afa per acre for the lands above.

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

Signed at \_\_\_\_\_, this 21 day of August, 1986.

Boyle Cherry  
(Signature)

FOR DEPARTMENT USE ONLY

Preliminary check by #39842 \$20.00 Fee = \$20.00 ✓ Received by MD Date 8-21-86  
KW

ACTION OF THE DEPARTMENT OF WATER RESOURCES

I, A. KENNETH DUNN, of the Department of Water Resources hereby Approve the above Application for Amendment for Permit No. 21-7076.

Witness my hand this 18<sup>th</sup> day of September, 19 86.

Billy D. Flannery  
Acting for the Director

WIPROTH MED

# WATER RIGHT SPLIT

## SUMMARY

| ACTION          | RIGHT NO. | NAME                          | AMOUNT CFS |
|-----------------|-----------|-------------------------------|------------|
| Orginial Permit | 21-7076   | Lavar A. &/or Donna P. Cherry | 3.2 cfs    |
| Full Assignment | 21-7076   | Layle Cherry                  | 3.2 cfs    |

UNRECORDED

State of Idaho  
Department of Water Resources  
ASSIGNMENT OF PERMIT

OK to assign  
JUL 26 1983  
RECEIVED  
Department of Water Resources

I, LaVar Cherry, hereby assign to Layle Cherry  
of Box 218, Ashton, Idaho  
Address

CHECK ONE



All my right, title, and interest in and to Permit No. 21-7076  
to appropriate the public waters of the State of Idaho.



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

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

Made this 16th day of June, 19 83.

LaVar Cherry  
Permit Holder

Donna P. Cherry  
Spouse of Permit Holder

State of Idaho )  
County of Fremont ) ss.

On this 16th day of June, 19 83, personally  
appeared before me the signer(s) of the above instrument, who duly acknowledged to me  
that he (she) (they) executed the same.

seal

[Signature]  
Notary Public residing at

Ashton Idaho

My commission expires:

Life

21 7076

Identification No. \_\_\_\_\_

Application No. \_\_\_\_\_

**STATE OF IDAHO**  
**DEPARTMENT OF WATER RESOURCES**  
**APPLICATION FOR PERMIT**

**APPROVED**

**To Appropriate the Public Waters of the State of Idaho**  
 (TYPE OR PRINT IN INK)

1. Name of applicant Lavar A. &/or Donna P. Cherry Phone: 652-3357  
 post office address Box 472, Ashton, Idaho
2. Source of water supply Blue Creek which is a tributary of Henry's Fork Snake River
3. a. Location of point of diversion is NW  $\frac{1}{4}$  of NE  $\frac{1}{4}$  of Section 10 Township 9N  
 Range 43E B.M. Fremont County; additional points of diversion if any: \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_
- b. If water is not consumed, it will be discharged into \_\_\_\_\_ at a point in \_\_\_\_\_  $\frac{1}{4}$   
 of \_\_\_\_\_  $\frac{1}{4}$  of Section \_\_\_\_\_ Township \_\_\_\_\_ Range \_\_\_\_\_ B.M. \_\_\_\_\_
4. Water will be used for the following purposes:  
 Amount 3.20 for Irrigation purpose from Apr. 15 to Oct. 15 (both dates inclusive)  
(cfs or acre-feet-per-annum)  
 Amount \_\_\_\_\_ for \_\_\_\_\_ purpose from \_\_\_\_\_ to \_\_\_\_\_ (both dates inclusive)  
(cfs or acre-feet per annum)  
 Amount \_\_\_\_\_ for \_\_\_\_\_ purpose from \_\_\_\_\_ to \_\_\_\_\_ (both dates inclusive)  
(cfs or acre-feet per annum)
5. Total quantity to be appropriated:  
 a. 3.20 cubic feet per second and/or  
 b. \_\_\_\_\_ acre feet per annum.
6. Proposed diverting works:  
 a. Description of ditches, flumes, pumps, headgates, etc. 50 Hp. electric centrifugal pump  
with handlines and 4" square concrete check in creek  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_
- b. Height of storage dam \_\_\_\_\_ feet, active reservoir capacity \_\_\_\_\_ acre feet; total reservoir  
 capacity \_\_\_\_\_ acre feet, materials used in storage dam: \_\_\_\_\_  
 Period of year during which storage will occur \_\_\_\_\_ to \_\_\_\_\_ inclusive.  
(Mo. Day) (Mo. Day)
- c. Proposed well diameter is \_\_\_\_\_ inches; proposed depth of well is \_\_\_\_\_ feet.
7. a. Time required for the completion of the works and application of the water to the proposed beneficial use  
 is 5 years.  
 b. Estimated construction cost is \$ \_\_\_\_\_.
8. Description of proposed uses:  
 a. If water is **not** for irrigation:  
 (1) Give the place of use of water: \_\_\_\_\_  $\frac{1}{4}$  of \_\_\_\_\_  $\frac{1}{4}$  of Section \_\_\_\_\_ Township \_\_\_\_\_  
 Range \_\_\_\_\_ B.M. \_\_\_\_\_  
 (2) Amount of power to be generated: \_\_\_\_\_ hp under \_\_\_\_\_ feet of head.  
 (3) List number of each kind of livestock to be watered \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 (4) Name of municipality to be served \_\_\_\_\_, or number of families to be  
 supplied with domestic water \_\_\_\_\_.  
 (5) If water is to be used for other purposes describe: \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

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

| TWP. | RANGE | SEC. | NE¼ |     |     |     | NW¼ |     |     |     | SW¼ |     |     |     | SE¼ |     |     |     | TOTALS |
|------|-------|------|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|--------|
|      |       |      | NE¼ | NW¼ | SW¼ | SE¼ | NE¼ | NW¼ | SW¼ | SE¼ | NE¼ | NW¼ | SW¼ | SE¼ | NE¼ | NW¼ | SW¼ | SE¼ |        |
| 9N   | 43E   | 11   | 20  | 15  |     |     | 15  | 20  |     | 30  | 40  |     |     |     |     | 40  |     |     | 180    |
|      |       |      |     |     |     |     |     |     |     |     |     |     |     |     |     |     |     |     |        |
|      |       |      |     |     |     |     |     |     |     |     |     |     |     |     |     |     |     |     |        |
|      |       |      |     |     |     |     |     |     |     |     |     |     |     |     |     |     |     |     |        |
|      |       |      |     |     |     |     |     |     |     |     |     |     |     |     |     |     |     |     |        |
|      |       |      |     |     |     |     |     |     |     |     |     |     |     |     |     |     |     |     |        |
|      |       |      |     |     |     |     |     |     |     |     |     |     |     |     |     |     |     |     |        |
|      |       |      |     |     |     |     |     |     |     |     |     |     |     |     |     |     |     |     |        |
|      |       |      |     |     |     |     |     |     |     |     |     |     |     |     |     |     |     |     |        |
|      |       |      |     |     |     |     |     |     |     |     |     |     |     |     |     |     |     |     |        |

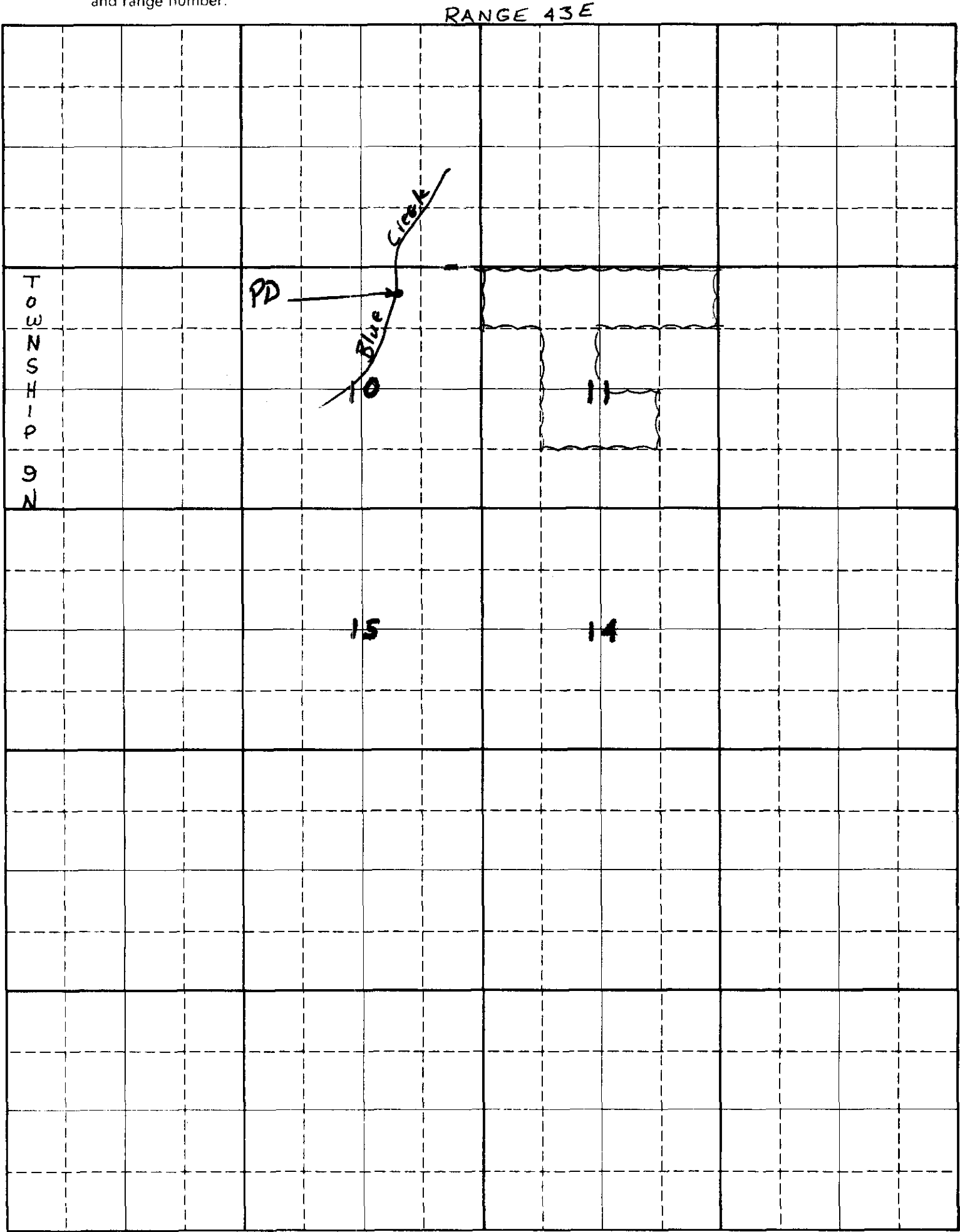
Total number of acres to be irrigated 180

c. Describe any other water rights used for the same purposes as described above.  
License 21-2104 for SW¼NW¼, Sec. 11, Blue Creek; 21-2102 SW¼NW¼, Sec. 11  
Green Canyon Springs

9. a. Who owns the property at the point of diversion Forest Service
- b. Who owns the land to be irrigated or place of use Applicant
- c. If the property is owned by a person other than the applicant, describe the arrangement enabling the applicant to make this filing

10. Remarks

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



Scale: 2 inches equal 1 mile

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

Danna P. Chepney  
(Applicant)  
Danna P. Chepney

Proposed priority: 8/8/1975

Received by OW Date 8-08-75 Time 12:15p.

Preliminary check by SDC Fee \$ 55.00

Receipted by OW Date 8-08-75 #4370

Publication prepared by OW Date 8-08-75

Published in Bozeman Herald

Publication dates Aug. 14 + 21, 1975

Publication approved MB Date 8-22-75

Priority reduced to \_\_\_\_\_ Reason \_\_\_\_\_

Protests filed by High Power & Light Co.,  
Fred & Louis Howell

Copies of protests forwarded by MB

Hearing held by \_\_\_\_\_ Date \_\_\_\_\_

Recommended for approval denial by DET

#### 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. 21-7076, and said application is hereby APPROVED.

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

a. SUBJECT TO ALL PRIOR WATER RIGHTS.

b. Proof of construction of works and application of water to beneficial use shall be submitted on or before March 1, 19 81.

c. Other: (1) The issuance of this permit in no way grants any right-of-way or easement across the land of another party.

(2) A measuring device of a type approved by the Director shall be permanently installed and maintained as part of the diverting works.

(3) Use of water under this permit is subject to control by the water-master of State Water District No. 01, Snake River.

Witness my hand this 2 day of March 19 76.

  
Director

1973



NOT TO SCALE

**SPECIAL USE PERMIT**

Act of June 4, 1897

This permit is revocable and nontransferable  
(Ref. FSM 2710)

|                     |                      |                        |
|---------------------|----------------------|------------------------|
| a. Record no. (1-2) | b. Re. (3-4)         | c. Forest (5-6)        |
| 70                  | 04                   | 15                     |
| d. District (7-8)   | e. Use number (9-12) | f. Kind of use (13-15) |
| 03                  | 2720                 | 912                    |
| g. State (16-17)    | h. County (18-20)    | i. Card no. (21)       |
| 16                  | 043                  | 1                      |

Permission is hereby granted to LaVar A. Cherry

of Ashton, Idaho 83420

hereinafter called the permittee, to use subject to the conditions set out below, the following described lands or improvements:

A water transmission line, dam, reservoir, and structures, as shown in the LaVar A. Cherry application and permit of 5/14/53, which records are transferred to this permit.

**RECEIVED**

AUG 15 1975

Department of Agriculture  
Forest Service  
Eastern District Office

This permit covers approx. 5 acres and/or 1/2 miles and is issued for the purpose of: operating and maintaining irrigation works as follows:

- 1 Pump station and pipeline approximately 1000' long to pump water from Blue Creek to reservoir site in east fork of Blue Creek.
- 1 Dam 8' high x 100' long together with outlet gate and diversion structures to impound approximately 6 acre feet of water.
- 1 Pipeline approximately 1/4 mile long running southeasterly from reservoir to privately owned land.
- 1 Pipeline approximately 1/8 mile long running southeasterly from pump station pipeline to the pipeline running from the reservoir.

1. Construction or occupancy and use under this permit shall begin within \_\_\_\_\_ months, and construction, if any, shall be completed within \_\_\_\_\_ months, from the date of the permit. This use shall be actually exercised at least 365 days each year, unless otherwise authorized in writing.

2. In consideration for this use, the permittee shall pay to the Forest Service, U.S. Department of Agriculture, the sum of Twenty Dollars (\$ 20.00 ) for the period from January 1 1973, to December 31, 1973, and thereafter annually on January 1 Twenty Dollars (\$ 20.00 ):

Provided, however, Charges for this use may be made or readjusted whenever necessary to place the charges on a basis commensurate with the value of use authorized by this permit.

3. This permit is accepted subject to the conditions set forth herein, and to conditions 18 to 31 attached hereto and made a part of this permit.

|                 |                                             |                                                           |                        |
|-----------------|---------------------------------------------|-----------------------------------------------------------|------------------------|
| PERMITTEE       | NAME OF PERMITTEE<br><u>LaVar A. Cherry</u> | SIGNATURE OF AUTHORIZED OFFICER<br><u>LaVar A. Cherry</u> | DATE<br><u>7-25-72</u> |
| ISSUING OFFICER | NAME AND SIGNATURE<br><u>[Signature]</u>    | TITLE<br><u>Acting Forest Supervisor</u>                  | DATE<br><u>1-27-72</u> |

CC: D-B

(CONTINUED ON REVERSE)

2700-4 (10/68)

4. Development plans; layout plans; construction, reconstruction, or alteration of improvements; or revision of layout or construction plans for this area must be approved in advance and in writing by the forest supervisor. Trees or shrubbery on the permitted area may be removed or destroyed only after the forest officer in charge has approved, and has marked or otherwise designated that which may be removed or destroyed. Timber cut or destroyed will be paid for by the permittee as follows: Merchantable timber at appraised value; young-growth timber below merchantable size at current damage appraisal value; *provided* that the Forest Service reserves the right to dispose of the merchantable timber to others than the permittee at no stumpage cost to the permittee. Trees, shrubs, and other plants may be planted in such manner and in such places about the premises as may be approved by the forest officer in charge.

5. The permittee shall maintain the improvements and premises to standards of repair, orderliness, neatness, sanitation, and safety acceptable to the forest officer in charge.

6. This permit is subject to all valid claims.

7. The permittee, in exercising the privileges granted by this permit, shall comply with the regulations of the Department of Agriculture and all Federal, State, county, and municipal laws, ordinances, or regulations which are applicable to the area or operations covered by this permit.

8. The permittee shall take all reasonable precautions to prevent and suppress forest fires. No material shall be disposed of by burning in open fires during the closed season established by law or regulation without a written permit from the forest officer in charge or his authorized agent.

9. The permittee shall exercise diligence in protecting from damage the land and property of the United States covered by and used in connection with this permit, and shall pay the United States for any damage resulting from negligence or from the violation of the terms of this permit or of any law or regulation applicable to the national forests by the permittee, or by any agents or employees of the permittee acting within the scope of their agency or employment.

10. The permittee shall fully repair all damage, other than ordinary wear and tear, to national forest roads and trails caused by the permittee in the exercise of the privilege granted by this permit.

11. No Member of or Delegate to Congress or Resident Commissioner shall be admitted to any share or part of this agreement or to any benefit that may arise herefrom unless it is made with a corporation for its general benefit.

12. Upon abandonment, termination, revocation, or cancellation of this permit, the permittee shall remove within a reasonable time all structures and improvements except those owned by the United States, and shall restore the site, unless otherwise agreed upon in writing or in this permit. If the permittee fails to remove all such structures or improvements within a reasonable period, they shall become the property of the United States, but that will not relieve the permittee of liability for the cost of their removal and restoration of the site.

13. This permit is not transferable. If the permittee through voluntary sale or transfer, or through enforcement of contract, foreclosure, tax sale, or other valid legal proceeding shall cease to be the owner of the physical improvements other than those owned by the United States situated on the land described in this permit and is unable to furnish adequate proof of ability to redeem or otherwise reestablish title to said improvements, this permit shall be subject to cancellation. But if the person to whom title to said improvements shall have been transferred in either manner provided is qualified as a permittee and is willing that his future occupancy of the premises shall be subject to such new conditions and stipulations as existing or prospective circumstances may warrant, his continued occupancy of the premises may be authorized by permit to him if, in the opinion of the issuing officer or his successor, issuance of a permit is desirable and in the public interest.

14. In case of change of address, the permittee shall immediately notify the forest supervisor.

15. The temporary use and occupancy of the premises and improvements herein described may be sublet by the permittee to third parties only with the prior written approval of the forest supervisor but the permittee shall continue to be responsible for compliance with all conditions of this permit by persons to whom such premises may be sublet.

16. This permit may be terminated upon breach of any of the conditions herein or at the discretion of the regional forester or the Chief, Forest Service.

17. In the event of any conflict between any of the preceding printed clauses or any provisions thereof and any of the following clauses or any provisions thereof, the following clauses will control.

18. A service charge in addition to the regular fee shall be made for failure to meet the fee payment due date or any of the dates specified for submission of statements required for fee calculation. The service charge shall be one (1.0) percent per month of the fee from the date statement and fees were due or \$15, whichever is greater. If a due date falls on a nonworkday, the service charge will not apply until the end of the next workday.
19. The permittee shall indemnify the United States against any liability for damage to life or property arising from the occupancy or use of National Forest lands under this permit.
20. Avalanches, rising waters, high winds, falling limbs or trees, and other hazards are natural phenomena in the forest that present risks which the permittee assumes. The permittee has the responsibility of inspecting his site, lot, right-of-way, and immediate adjoining area for dangerous trees, hanging limbs, and other evidence of hazardous conditions and, after securing permission from the Forest Service, of removing such hazards.
21. Unless sooner terminated or revoked by the Regional Forester, in accordance with the provisions of the permit, this permit shall expire and become void on February 2, 1981, but a new permit to occupy and use the same National Forest land may be granted provided the permittee will comply with the then existing laws and regulations governing the occupancy and use of National Forest lands and shall have notified the Regional Forester not less than one year prior to said date that such new permit is desired.
22. This permit is granted with the express understanding that should future location of Government improvements or road rights-of-way require the relocation of the permittee's improvements, such relocation will be done by the permittee at his expense within sixty (60) days following request to relocate.
23. This permit confers no right to the use of water by the permittee.
24. No waste or byproducts shall be discharged if it contains any substances in concentrations which will result in substantial harm to fish and wildlife, or to human water supplies.

Storage facilities for materials capable of causing water pollution, if accidentally discharged, shall be located so as to prevent any spillage into waters, or channels leading into water, that would result in substantial harm to fish and wildlife or to human water supplies.

25. The permittee shall be responsible for the prevention and control of soil erosion and gulying on the area covered by this permit and lands adjacent thereto, and shall provide preventive measures as required by specifications attached to and made a part of this permit.

26. The land herein described is subject to certain rights reserved by or outstanding in parties other than the United States, and nothing herein shall abridge said rights or authorize prevention or obstruction of the reasonable exercise thereof.
27. This permit shall not be exclusive. The Forest Service reserves the right to use or permit others to use any part of the permitted area for any purpose, provided such use does not interfere with the rights and privileges hereby authorized.
28. The Forest Service reserves the right to issue additional permits to other applicants to increase the storage capacity of this site if such action proves feasible. No permit will be granted for additional facilities that will jeopardize the privileges granted by this permit. Any additional permits authorizing larger facilities will provide for payment of costs, including the cost of construction of the original project works, on a cost-benefit ratio mutually agreeable to the permittee and the new applicant. If the permittee and applicant cannot agree on division of costs, the Forest Service shall decide on an equitable division between the old and new works.
29. The permittee agrees that the Forest Service representative may inspect the structures at any time and if not satisfied with the then existing protection to control soil erosion on the dams and in and below the spillways to streambed, upon written notice thereof, the permittee shall take action to provide protection to control soil erosion. If the Forest Service is not satisfied with any safety, operation, maintenance, or other feature or physical condition of the structures and appurtenances, upon written notice thereof, the permittee shall comply with a request to correct, adjust, or change same.
30. The permittee shall protect the scenic esthetic values of the area under this permit, and the adjacent land, as far as possible with the authorized use, during construction, operation, and maintenance of the improvements.
31. The permittee agrees to permit the free and unrestricted access to and upon the premises at all times for all lawful and proper purposes not inconsistent with the intent of the permit or with the reasonable exercise and enjoyment by the permittee of the privileges thereof.

AFFIDAVIT OF  
PUBLICATION

State of Idaho

County of Fremont

ss.

*Carol Berssey*  
being first duly sworn, upon her  
oath, deposes and says:

That she is the *editor*...  
of The Ashton Herald, a news-  
paper as defined by Idaho Codes  
Annotated, section 58-106, as  
amended, and that said newspaper  
is a weekly newspaper published  
at Ashton, Idaho, in Fremont  
County, Idaho, having a general  
circulation in said county, and that  
said newspaper has been printed  
and published as a weekly news-  
paper in said county for more than  
78 consecutive weeks prior to the  
first publication of the attached  
notice, advertisement or publi-  
cation of *Notice of...*

*Application for...*  
*Water Permit...*  
*# 21-7076 (Cherry)*

And affiant further says that said  
notice, advertisement or publi-  
cation, as per clipping attached,  
was published in said newspaper,  
in the regular and entire issue  
thereof, and not in any supplement  
issue thereof, for *2*...

consecutive issues thereof; first  
publication having been made on

the *14*... day of

*August*, 19*75*...

and the last publication on the

*21*... day of *August*  
19*75*.

And affiant further says that at the  
times herein mentioned said news-  
paper was made up of at least  
eight pages of at least four col-  
umns each, printed from type  
matter, of at least fifteen inches  
deep.

*Carol Berssey*  
Subscribed in my presence and  
sworn to before me this *19*...

day of *Aug*.....

19*75*.

*James E. Holcomb*

Notary Public for the State  
(SEAL) of Idaho, residence and  
post office address:  
Ashton, Idaho.

*NO* NOTICE OF APPLICATION  
FOR WATER PERMIT

Notice is hereby given that Lavar A.  
&/or Donna P. Cherry, Ashton, Idaho  
have on 8-08-75 submitted Application  
No. 21-7076 for a permit to appropriate  
3.20 cubic feet per second of water from  
Blue Creek tributary to Henry's Fork  
Snake River by means of pump and  
pipeline within the NW $\frac{1}{4}$ NE $\frac{1}{4}$ , Sec. 10,  
T. 9N, R. 43E, B.M., Fremont County; to  
be used from Apr. 15 to Oct. 15 for the  
irrigation of 100 acres within the  
N $\frac{1}{4}$ NE $\frac{1}{4}$ , N $\frac{1}{4}$ NW $\frac{1}{4}$ , SE $\frac{1}{4}$ NW $\frac{1}{4}$ , NE $\frac{1}{4}$   
SW $\frac{1}{4}$ , NW $\frac{1}{4}$ SE $\frac{1}{4}$ , Sec. 11, T. 9N, R.  
43E, B.M.

If issued, this permit will be subject to  
all prior water rights. Protests against  
the granting of the permit must be filed  
with the Idaho Department of Water  
Resources, 1515 Lincoln Road, Idaho  
Falls, Idaho, 83401 on or before  
September 2, 1975.

R. KEITH HIGGINSON  
Director

Published in the Ashton Herald, Ashton,  
Idaho on August 14 and August 21, 1975.

RECEIVED

AUG 22 1975

Department of Water Resources  
Eastern District Office

September 25, 1986

RE: Permit No. 21-7076

Layle Cherry  
Box 218  
Ashton, ID 83420

Dear Permit Holder(s):

Enclosed herewith is a copy of your Water Right License issued on the above referenced permit along with a copy of your approved application for amendment.

Should you have any questions regarding these documents, please feel free to contact our office.

Sincerely,

JIM JOHNSON  
Water Rights Supervisor

JJ:sc  
Enclosures

**MICROFILMED**



State of Idaho

## DEPARTMENT OF WATER RESOURCES

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

JOHN V. EVANS  
Governor

A. KENNETH DUNN  
Director

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

July 22, 1986

RE: Permit No. 21-7076

Layle Cherry  
Box 218  
Ashton, ID 83420

Dear Permit Holder(s):

The above referenced water right is in the process of being licensed. However, before a license can be issued, your permit must be amended to correspond with the findings of the Department's field examiner.

The enclosed application for amendment contains all of the information that will be included on the license when it is issued. Please review carefully and if you concur, sign the amendment and return with the \$20.00 filing fee within 30 days.

If you do not concur with these findings or if you have any questions, please contact us within the 30-day period.

Sincerely,

JIM JOHNSON  
Water Rights Supervisor

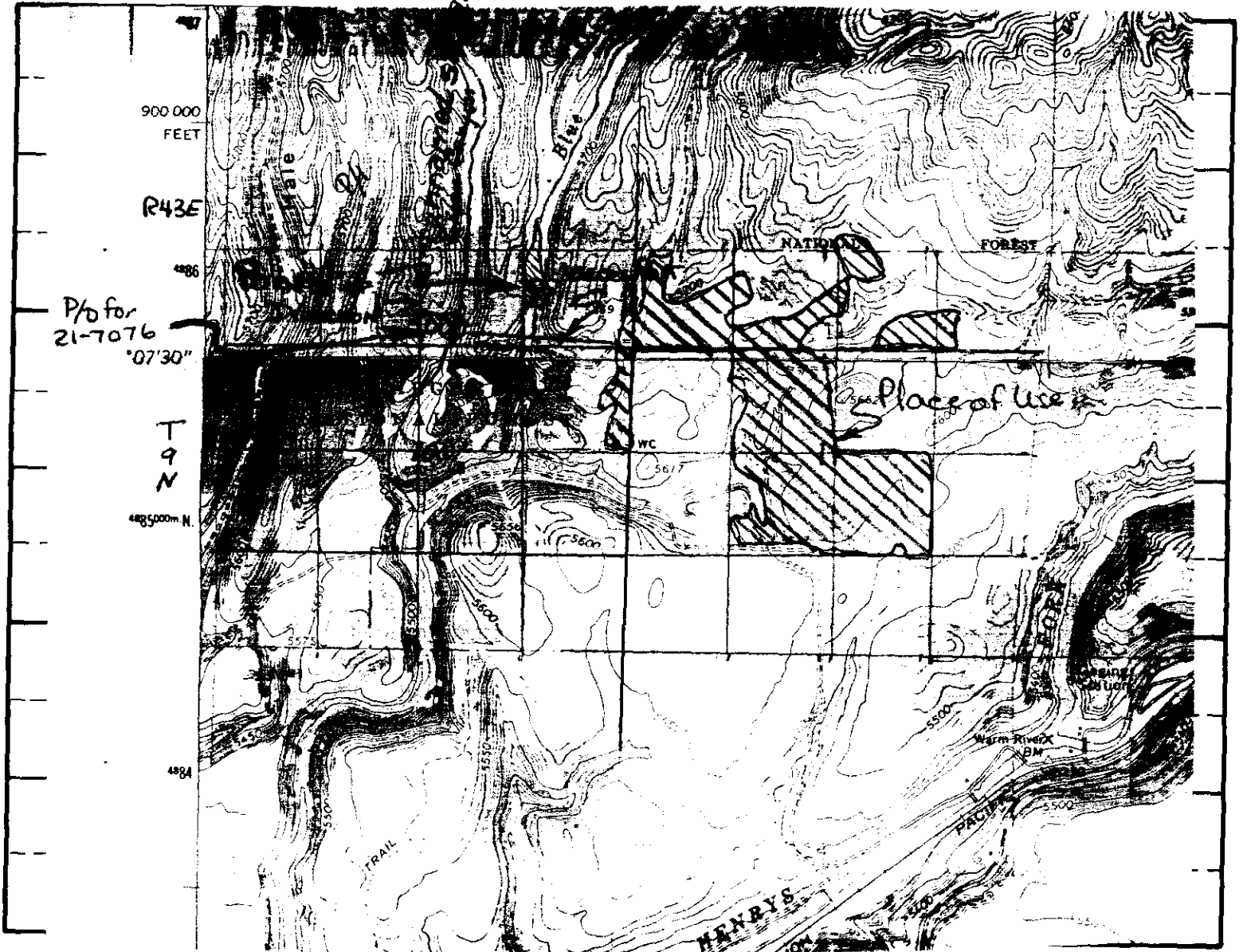
JJ:sc

Enclosure

**MICROFILMED**

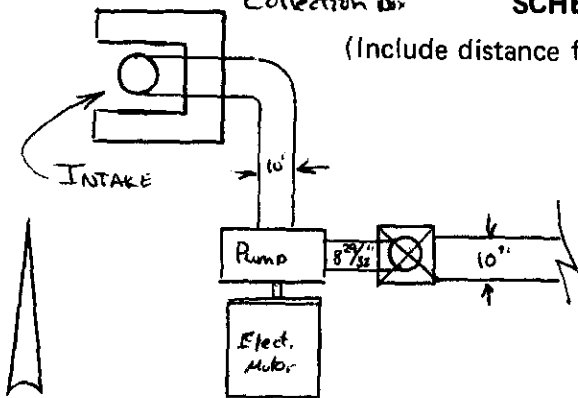


MAP (Attach Aerial Photo)



SCHEMATIC DIAGRAM OF SYSTEM

(Include distance from pump to measuring device, if applicable.)



(N)

Point(s) of diversion: NW 1/4 NE 1/4 Sec 10 T9N R43E

Place(s) of Use

| TWP. | RGE. | SEC. | NE 1/4 |        |        |        | NW 1/4 |        |        |        | SW 1/4 |        |        |        | SE 1/4 |        |        |        | TOTALS |
|------|------|------|--------|--------|--------|--------|--------|--------|--------|--------|--------|--------|--------|--------|--------|--------|--------|--------|--------|
|      |      |      | NE 1/4 | NW 1/4 | SW 1/4 | SE 1/4 | NE 1/4 | NW 1/4 | SW 1/4 | SE 1/4 | NE 1/4 | NW 1/4 | SW 1/4 | SE 1/4 | NE 1/4 | NW 1/4 | SW 1/4 | SE 1/4 |        |
| 9N   | 43E  | 2    |        |        |        |        |        |        |        |        |        |        |        |        |        |        | 2      |        | 2 ✓    |
|      |      | 10   | 2      |        |        | 10     |        |        |        |        |        |        |        |        |        |        |        |        | 12 ✓   |
|      |      | 11   | 3      | 14     |        |        | 12     | 15     |        | 35     | 22     |        |        |        | 38     |        |        |        | 139    |
|      |      |      |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |
|      |      |      |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |
|      |      |      |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |
|      |      |      |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |
|      |      |      |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |
|      |      |      |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |
|      |      |      |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |
|      |      |      |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |

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

Source Name ?

Examiner's Signature

Keith C. Wilson

Checked by

HW

Approved by

Ray Culver

Date

11 Jan 1984

Date

1-16-84

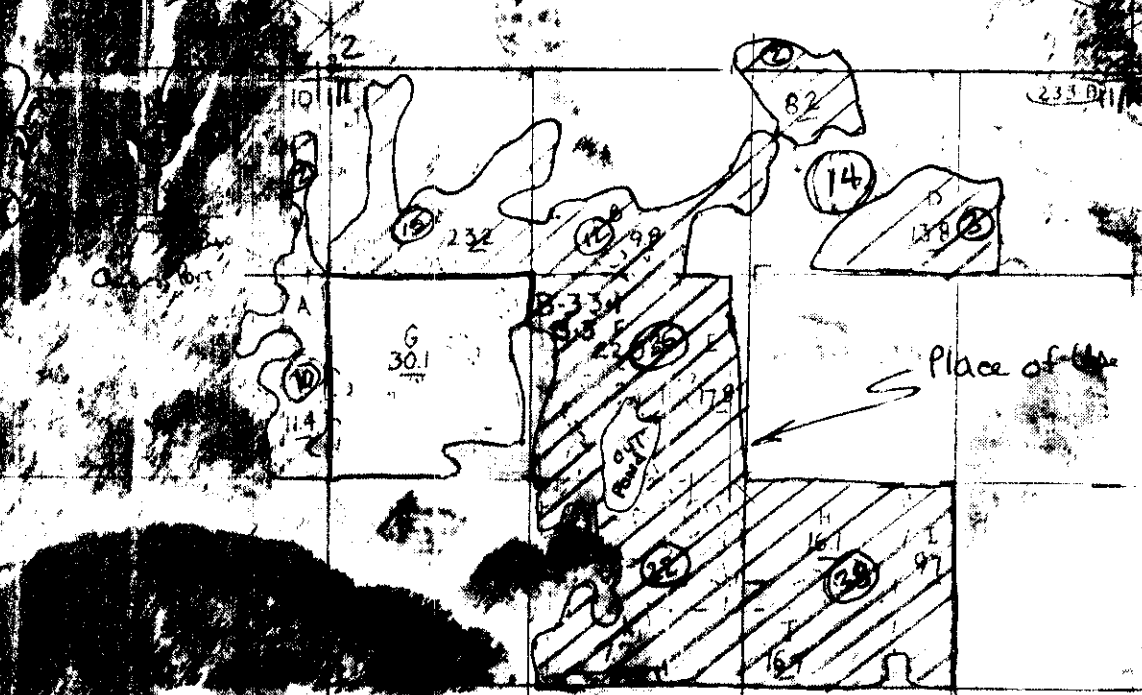
Date

6/23/86

U 16

T R43E  
9  
N

Division



NOT TO SCALE

MICROFILMED

## Overlap Review - Permits 21-7075 & 21-7076

per VAX 6/23/86:

p/d=21-7075 = 21-2102

21-2104

21-4025 - claim, no review req'd

21-7141 - storage right.

p/d=21-7076 = 21-2104 - above also

21-7141 - above also

P/U → 21-7141

21-4025 - claim, no review req'd

21-2045

## Recommend R29 for P/U overlaps

For 21-7075: The maximum combined rate of diversion under this Rt. and Rts. 21-2102, 21-2104 shall not exceed 2.41 cfs.

For 21-7076: The maximum combined rate of diversion under this Rt. and Rt. 21-2104 shall not exceed 2.47 cfs.

tw

MICROFILMED

PERMIT 121-7075  
2070

(Name)

Accompanied by: Layle

EXAMINATION: DATE: 8 July 82

Cherry

| Motor Make        | HP | Motor Serial No. | Pump Make | Pump Serial No. |
|-------------------|----|------------------|-----------|-----------------|
| Green Corp Dext 2 | 88 | 59255 K4         | Cornell   | 26132           |

Green Corp

Elect. Measuring Device Type: 97708-46-40 Cornell 57705

Meter # 091475 Annubar # ~~6065~~ Size # 6.065

# 191118

Remarks:

Measurement calculations:

Green Corp Diesel 1068.7 gpm 2.38 cfs

40" Annubar 6.065 # 191118

Blue dk

Elect 1095 = 2.44

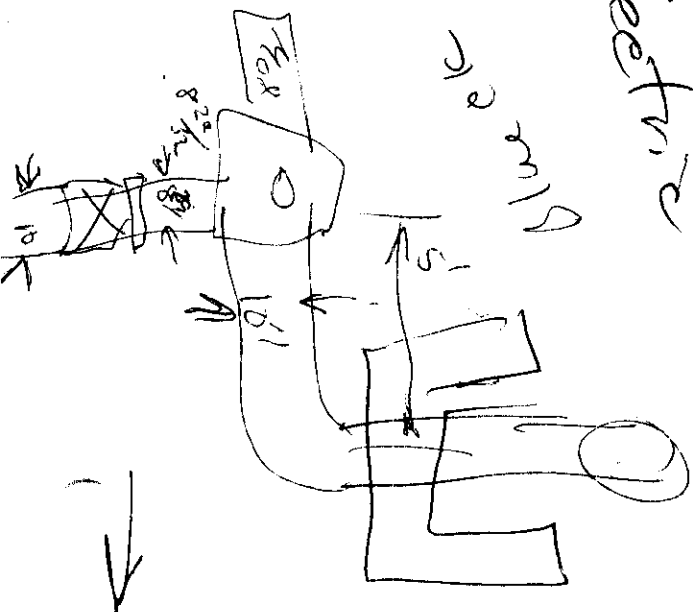
42°

Send Disinfectant for tests

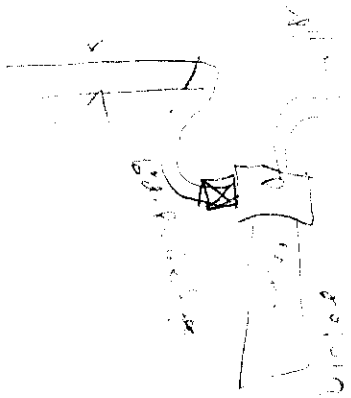
Layle Cherry Box 218 Ashken ID 83420

SCHEMATIC DIAGRAM OF SYSTEM

Mainline Diameter 6.625 Length



Elect



Green Corp

Licence

23234 21-2104

21 254 21-2102

Check 21-7141

Check for 1911 R. 1911

NAP

RGE.

TWP.

RECOMMENDED AMENTMENTS:

☐ Change P/D

☐ Change P/U

☐ ADD P/D

☐ ADD P/U

☐ NONE

☐ Other \_\_\_\_\_



State of Idaho

## DEPARTMENT OF WATER RESOURCES

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

JOHN V. EVANS

Governor

A. KENNETH DUNN

Director

Mailing address:

Statehouse

Boise, Idaho 83720

(208) 334-4440

August 1, 1983

RE: Permit Nos. 21-7076 and 21-7075

Layle Cherry  
Box 218  
Ashton, ID 83420

Dear Permit Holder:

This office acknowledges receipt of the Assignment of the above referenced permits to you.

Enclosed for your records are copies of the permits. Be sure to note the special conditions of approval on the fourth page that identify requirements necessary for developing the permits into licensed water rights.

If you have any questions on this matter, please feel free to contact us.

Sincerely,

ROBYN CARLSON  
Chief Clerk

RC:sc

Enclosures

UNRECORDED



STATE OF IDAHO  
DEPARTMENT OF WATER RESOURCES  
EASTERN REGION

John V. Evans  
Governor

C. Stephen Allred  
Director

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

June 6, 1980

RE: Permit No. 21-7076

LaVar A. or Donna P. Cherry  
Box 472  
Ashton, Idaho 83420

Dear Mr. Cherry:

We acknowledge receipt of the proof of beneficial use card submitted for the above referenced permit.

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

If you have any questions regarding the field examination, please contact our eastern regional office.

Very truly yours,

Bobbie R. Stephens  
Senior Clerk

cc: IDWR - State Office

MICROFILMED

# DEPARTMENT OF WATER RESOURCES

The Idaho Department of Water Resources will consider this card as a statement that the permit holder(s) has completed development to the extent shown below of Permit No. 21-7076.

Name(s) of Permit Holder:

Lavar A. or Donna P. Cherry

Post Office Address:

Box 472-

Ashton Idaho

Tel. No. 652-3357

Source of Water:

Blue Creek

Extent of Use:

☐ Domestic

(number of households)

☐ Stockwater

(number and type of stock)

☒ Irrigation

180

(acres)

☐ Other

Measuring Device:

Required?

☒ Yes

☐ No

Installed?

☒ Yes

☐ No

Access Port:

Required?

☐ Yes

☐ No

Installed?

☐ Yes

☐ No

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

5-1-80

Date

Donna P. Cherry

Signature of Permit Holder

MICROFILMED

Laura A. Cherry  
Box 472  
Ashton, Idaho 83420

PLACE  
TEN CENT  
STAMP  
HERE



IDAHO DEPARTMENT OF WATER RESOURCES  
STATEHOUSE  
BOISE, IDAHO 83720

RECEIVED

MAY 5 1980

Department of Water Resources

Laura A. Cherry

Box 472

Ashton, Idaho 83420

PLACE  
TEN CENT  
STAMP  
HERE



IDAHO DEPARTMENT OF WATER RESOURCES  
STATEHOUSE  
BOISE, IDAHO 83720

RECEIVED

MAY 5 1980

Department of Water Resources

# DEPARTMENT OF WATER RESOURCES

The Idaho Department of Water Resources will consider this card as a statement that the permit holder(s) has completed development to the extent shown below of Permit No. 21-7076.

Name(s) of Permit Holder: Lester A. and Donna Cherry

Post Office Address: Box 472  
Ashton Idaho Tel. No. 652-3357

Source of Water: Blue Creek

Extent of Use: ☐ Domestic (number of households)  
☐ Stockwater (number and type of stock)  
☒ Irrigation 180 (acres)  
☐ Other

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

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

8-1-80  
Date

Donna P. Cherry  
Signature of Permit Holder

MICROFILMED



# STATE OF IDAHO

## DEPARTMENT OF WATER RESOURCES

Cecil D. Andrus  
Governor

R. Keith Higginson  
Director

Statehouse  
Boise, Idaho 83720  
(208) 384-2215

June 2, 1976

Re: Permit No's. 21-7075 and 21-7076  
License No. 1701/21-2012

Blair Grover  
Lee, Ririe & Grover  
Box 36  
Rigby, Idaho 83442

Dear Mr. Grover:

We received your copy of the Memorandum in support of the right that Mr. Howell claims that was established prior to LaVar A. Cherry's right. We have also filed copies of this Memorandum in Permit No's. 21-7075 and 21-7076 and also in License No. 1071/21-2012.

We appreciate receiving that information.

Sincerely,

BOBBY D. FLEENOR  
Chief, Water Rights

BDF:jfr

MICROFILMED

Law Offices  
**LEE, RIRIE & GROVER**  
Chartered Professional Association

T. HAROLD LEE  
JAMES A. RIRIE  
BLAIR J. GROVER

ALLEN SIMS

RECEIVED  
P.O. Box 36  
Rigby, Idaho 83442  
(208) 745-6653

330 Shoup Ave.  
Room 201  
Idaho Falls, Idaho 83401  
(208) 524-2650

Rigby, Idaho 83442

May 27, 1976

Mr. Bobby D. Fleenor  
Chief, Water Rights  
State of Idaho Department of Water Resources  
Statehouse  
Boise, Idaho 83720

Re: Permits No. 21-7075 and  
No. 21-7076

LaVar A. Cherry & Forrest Howell

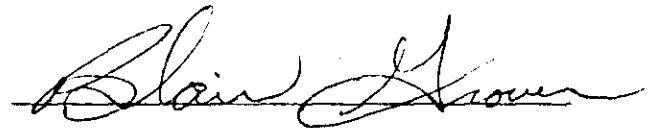
Dear Mr. Fleenor:

Heretofore, the Department of Water Resources has received a Stipulation of Facts dealing with an application for permits filed by LaVar A. Cherry and protests to the same filed by Forrest Howell.

Enclosed herewith is a copy of a Memorandum in support of Howell's protest and his allegations of a prior water right. If there are questions or comments, please feel free to contact the undersigned.

Yours very truly,

LEE, RIRIE & GROVER



BG:pa  
Enclosure  
cc: Forrest Howell  
Ron Carlsen  
Kent Foster

*check to  
see if this  
has already  
been included  
in micro-film  
before filing*

RECEIVED.

MAY 23 1976

Department of Water Resources

BEFORE THE DEPARTMENT OF WATER RESOURCES OF THE STATE OF IDAHO

IN THE MATTER OF PROTESTS AGAINST APPROVAL OF )  
APPLICATIONS FOR PERMITS NOS. 21-7075, 21-7076 )  
in the name of LAVAR A. and/or DONNA P. CHERRY ) HOWELL'S MEMORAND  
and APPLICATION FOR TRANSFER NO. 21-2012 in the ) IN SUPPORT OF A  
name of FORREST HOWELL. ) PRIOR WATER RIGHT

---

COPY

The applicants, LaVar A. and/or Donna P. Cherry, sometimes hereinafter referred to as Cherry, and the protestant, Forrest Howell, have heretofore entered into a short stipulation of the pertinent facts, and for that reason they will not be re-stated here. As set forth in Paragraph 4 of the Stipulation, in 1901 the State Engineer granted water license No. 1071 for 1.9 cfs of the waters of Blue Creek to Howell's predecessor in interest. This application is to acquire that same water. Obviously, grant of the earlier license would end the matter, but for arguments that the right contained therein has been abandoned and/or forfeited.

1. HOWELL'S LICENSED RIGHT HAS NEVER BEEN ABANDONED BECAUSE THERE WAS NEVER ANY INTENT TO ABANDON IT.

In Syster vs. Hazzard, 39 Idaho 580, 229 Pac. 11,010 (1924) the court declared that whether a water right has actually been abandoned "depends upon the facts and circumstances surrounding each particular case, tending to prove the essential elements of abandonment, viz., the intent and the acts of the party charged with abandoning such right." p.585. There have been a myriad of cases since holding intent an essential element of abandonment. Indeed, time is not a factor: Where there is an intent to abandon, a relinquishment of possession, abandonment is complete. (See generally 5 Idaho Law Review 1, p.74, and cases cited therein).

ENCLOSURE

In the instant case, prior to Howell's acquisition of the property in 1948, use of the water ceased in the early 1940's. The probable reason was difficulty of repair and maintenance of a long flume. However, there is no evidence that Howell's predecessor in interest intended to abandon the licensed right.

Howell acquired the property in 1948, together with the water rights appurtenant thereto, which he understood included those granted under License No. 1071. Although he did not make use of the water until 1973, he specifically intended to do so, discussed it occasionally with his wife, and checked with officials of Fremont-Madison Irrigation District who assured him of the right. Thus, once he acquired the property, he maintained a consistent intent to develop and use the water.

2. STATUTORY FORFEITURE, IF IT OCCURRED, IS NOT EFFECTIVE BECAUSE HOWELL RESUMED USE OF THE WATER PRIOR TO ANYONE ELSE.

Idaho Code 42-222 provides in part:

"All rights to the use of water acquired under this chapter or otherwise, shall be lost and abandoned by a failure for the term of five years to apply it to the beneficial use for which it was appropriated, and when any rights to the use of water shall be lost through non-use or abandonment, such rights to such water shall revert to the State and be again subject to appropriation under this chapter. . ."  
(In 1969, change the words abandon and abandonment to forfeited and forfeiture).

In Carrington vs. Crandall, 65 Idaho 525, 147 Pac.1009 (1944) it was argued there had been a statutory abandonment (or forfeiture) of a decreed right. The court held:

"It is also true that, although statutory abandonment did actually occur, the forfeiture is not effective if, after the five year period the original owner or appropriator resumed the use of the water right prior to the claim of right by a third party."  
p. 531-532.

In the Application of Boyer, 73 Idaho 152, 248 P.2d 540 (1952) the court affirmed that rule and declared:

"The correct rule was thus, in essence, announced in Carrington vs. Crandall, 65 Idaho 525, 147 P.2d 1009: 'Although statutory abandonment of a water right has occurred, forfeiture is not effective if, after (the) five year period (the) original owner or appropriator resumes the use of the water prior to claim of right by a third party.'" p.160.

That was and remains the law in the State of Idaho. It should also be pointed out, in connection with forfeitures, that "Forfeitures are abhorrent and all intendments are to be indulged against a forfeiture.", Application of Boyer, supra, p.159.

In the instant case, if a statutory forfeiture had occurred, it was not effective because Howell resumed the use of the water in 1973, prior to the proposed use by Cherry, and prior to Cherrys' application herein which was filed on August 8, 1975. If a forfeiture is recognized, which is abhorred under the law, Howell's resumption of use should be equally recognized and any statutory forfeiture thereby becomes ineffective. Consequently, Howell's right remains prior to Cherrys' application and for that reason the application should be denied.

✓ 3 IF THERE WAS A FORFEITURE, HOWELL NEVERTHELESS HAS A PRIOR RIGHT BASED ON A PRIOR APPROPRIATION BY ACTUAL DIVERSION AND USE.

Historically, water in Idaho could be appropriated by the "constitutional" method or through the statutory permit procedure. From 1903 to 1971, Idaho Code 42-201 provided:

"All rights to divert and use the water of this state for beneficial purposes shall hereafter be acquired and confirmed under the provisions of this chapter. And after the passage of this title, all of the waters of this state shall be controlled and administered in the manner herein provided."

Despite that language, in Nielson vs. Parker, 19 Idaho 727, 115 Pac. 488 (1911), the court declared:

"It has never been the intention, so far as we are advised, of the legislature to cut off the right an appropriator and user of water may acquire by the actual diversion of the water and its application to a beneficial use. This constitutes actual

notice to every intending appropriator of the water of such a stream. It is like a man being actually in possession of realty; indeed, a water right is realty in this state." p.733.

The court has, on many occasions since, upheld appropriation by diversion and use.

In 1971, 42-201 was amended to read:

"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. And after the passage of this title, all waters of this state shall be controlled and administered in the manner herein provided. Such appropriation shall be perfected only by means of the application, permit and license procedures provided in this title; provided, however, that in the event an appropriation has been commenced by diversion and application to beneficial use prior to the effective date of this act it may be perfected under such method of appropriation."

In 1903, the statute seemed clear, namely, all water was to be appropriated as provided in the statutory provisions, to wit: Through a permit procedure. The court, however, refused to acknowledge and abolish the constitutional method of appropriation and in 1971 the legislature tried again to abolish the constitutional method and make the permit procedure mandatory.

✓ The amended statute must be viewed with Article XV, Section 3 of the Constitution in mind which provides:

"The right to divert and appropriate any appropriated waters of any natural stream to beneficial uses, shall never be denied, except that the state may regulate and limit the use thereof for power purposes. Priority of appropriation shall give the better right as between those using the water. . . ." (emphasis added).

✓ The constitutional mandate seems clear: Priority is to be determined on the basis of use of the water. The statute, on the other hand, suggests use of the water does not determine priority, but it is determined by the filing date of an application for a permit. If that is the intent of the statute, it violates Article XV, Section 3 and to that extent is unconstitutional. If, however, as the legislature in Nielson vs.

Parker, supra, observed that was not the legislative intent, then the constitutional method is valid and appropriation may be made by diversion and use.

Howell acknowledges that the court in State, ex rel, Tappan vs. Smith, 92 Idaho 451, 444 P.2d 412 (1968) interpreting 42-229, held that the statutory method of appropriation was the sole method of appropriating ground water, and found no violation of Article XV, Sections 1 and 3. The court later affirmed that position in Baker vs. Ore Ida Foods, Inc., 95 Idaho 575, 513 P.2d 627 (1973). Both of those cases are distinguishable because they involve ground water. Article XV, Section 3 speaks of waters of a "natural stream" and not ground waters. Howell therefore urges that neither Tappan vs. Smith, supra, nor Baker vs. Ore Ida Foods, Inc., supra, control appropriation of waters of a natural stream. Abolishment of the right to appropriate natural flowing water by diversion and use violates Article XV, Section 3, and is therefore unconstitutional.

✓ It is probably not necessary to meet that issue since if there was any forfeiture or abandonment, it was ineffective by Howell's resumed use which precedes applicants' filing by two (2) years.

4. CHERRY IS ESTOPPED FROM DENYING HOWELL'S PRIORITY.

In Carpenter vs. Welsch, 74 Idaho 242, 259 P.2d 814 (1953) the court held:

"The essential elements of an equitable estoppel as related to the party estopped are: (1) Conduct which amounts to a false representation or concealment of material facts, or, at least, which is calculated to convey the impression that the facts are otherwise than, and inconsistent with those which the party subsequently attempts to assert; (2) Intention, or at least expectation that such conduct should be acted upon by the other parties; (3) Knowledge, actual or constructive, of the real facts. As related to the party claiming the estoppel, they are: (1) Lack of knowledge and of the

means of knowledge of the trust as to the facts in question; (2) Reliance upon the conduct of the party estopped; and (3) Action based thereon of such a character as to change his position prejudicially." (quoted with approval in Boesiger vs. Freer, 85 Idaho 551, 381 P.2d 802 (1963)).

In the instant case, HOWELL expended some \$30,000.00 in making a beneficial use of the water. Cherry was aware of Howell's efforts, and in fact assisted him. Howell had no reason to believe that it was Cherry's intent to file an application seeking a priority which would make Howell's investment and diversion pointless, and not having that knowledge, Howell proceeded. It should be remembered, since estoppel is generally equitable in nature, that Howell was acting in good faith, having received assurances from the Fremont-Madison Irrigation District from time to time, that his license for the water was valid and effective. Cherry may have obtained contrary information from the Department of Water Resources, and it was apparently his intent to file an application seeking a priority, but if that is the case, he is estopped from asserting that priority. In substance, it is not fair for one to sit and quietly watch another's investment with plans to eliminate the value of that investment. The law calls on him to act, and since Cherry failed to do so, he is estopped from asserting any water right which precedes Howell's.

In summary, the waters of Blue Creek were the subject of a very early license and became, in effect, decreed waters. Although not used for a considerable length of time, Howell always believed he owned the waters and intended to use them. In fact, in 1973, prior to any action by Cherry, Howell invested \$30,000.00 for the purpose of making a beneficial use of the decreed water right. Two (2) years later, in August, 1975, Cherry filed this application seeking to appropriate the

waters of Blue Creek. Neither the courts nor the legislature intended such a thing be permitted. If the right was ever abandoned or forfeited, it was ineffective because Howell resumed use before any third parties' rights were affected.

- ✓ That resumption of use creates a priority in Howell without regard to the constitutionality of Idaho Code 42-4201, and without the necessity of estopping Cherry. The latter are additional reasons to determine Howell's priority, but the basis for Howell's priority is License No. 1071 and/or a resumption of use of the water granted pursuant thereto prior to any intervening claims or rights, specifically those which are the subject of this application.

Dated this 21 day of <sup>May</sup>~~April~~, 1976.

RESPECTFULLY SUBMITTED,

LEE, RIRIE & GROVER

  
Blair Grover  
Attorney for Forrest Howell

March 2, 1976

Lavar A. &/or Donna P. Cherry  
Box 472  
Ashton, Idaho 83420

Re: Permits No. 21-7075 & 21-7076

Dear Mr. & Mrs. Cherry:

Enclosed herewith are copies of your approved Applications for Permit No. 21-7075 and 21-7076.

Please note that the permits have been conditioned as follows:

- a. Subject to all prior water rights.
- b. Proof of construction of works and application of water to beneficial use shall be submitted to the Department on or before March 1, 1981.
- c. (1) The issuance of this permit in no way grants any right-of-way or easement across the land of another party.  
(2) A measuring device of a type approved by the Director shall be permanently installed and maintained as part of the diverting works.  
(3) Use of water under this permit is subject to control by the watermaster of State Water District No. 01, Snake River.

We direct your attention to the conditions that require you to install a measuring device at the points of diversion. Enclosed is a letter describing different types of measuring devices accepted by the Director.

Sincerely,

BOBBY D. FLEENOR  
Chief, Water Rights

BDF:DR  
Enc: Copy of permit  
Information letter

cc: Utah Power & Light Co.  
Forrest & Louise Howell  
Mr. Blair Greger  
Mr. Kent W. Foster

DEPARTMENT OF WATER RESOURCES  
- STAFF ANALYSIS -

Item Initial Date

Lavar A E/21 Donna B Cherry

Application No. \_\_\_\_\_

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

(1) LDJ 8/8/75

In form to receipt yes

(2) " "

Send Copies to:

- \_\_\_\_ Idaho State Health Department  
\_\_\_\_ Idaho Fish and Game Department  
\_\_\_\_ Bureau of Land Management

(3) " "

☒ Watermaster 01

- ☒ Request Special Use Permit from U.S.F.S.  
\_\_\_\_ Request Easement from B.L.M.  
\_\_\_\_ Request Information from Applicant

(4) " "

In form for advertising yes

(5) " "

Platted on Map No. V-48

(6) " "

Located within Water District No. 01

(7) " "

NA Critical groundwater area: yes \_\_\_\_\_ no \_\_\_\_\_

(8) " "

NA Groundwater levels:

\_\_\_\_ Declining, \_\_\_\_ Stable, \_\_\_\_ Increasing

(comment) \_\_\_\_\_

(9) " "

Other rights on the same place of use None

(10) " "

Comments: 21-2804 from same source.

(11) MB 8-22-75

Affidavit of Publication received (date) Aug 22

(12) ME 8-2-75

Final date for protests September 2, 1975

Protests received: yes ☒ no \_\_\_\_\_

(13) RDC 8/29/76

All requested information received from agencies or applicant: yes \_\_\_\_\_ no \_\_\_\_\_

(14) " "

Action recommended:

☒ Approve \_\_\_\_\_ Deny

8/8/75 Proposed Priority

\_\_\_\_ Reason for Reduction \_\_\_\_\_

☒ Measuring device required

☒ See attached sheet for other conditions of approval

\_\_\_\_ No special conditions for approval

(15) District E

By RDC

Date 8/29/76

#1) No more water may be diverted under this permit, when combined with other right appurtenant to the lands in question (especially 21-7075), than .02 cfs for each acre of land served.

#2) The issuance of this permit in no way grants any right-of-way or easement across the lands of the U.S. Forest Service.

February 24, 1976

RE: Application for Permit No. 21-7075 and 21-7076 CHERRY

Mr. Blair Grover  
Attorney at Law  
P.O. Box 36  
Rigby, Idaho 83442

Dear Mr. Grover:

Please find enclosed a copy of the agreement signed at the conference held in St. Anthony on February 20, 1976.

The Department will now continue the processing of these applications, and if approved will be conditioned pursuant to the Stipulated Agreement.

If you have any questions, please feel free to contact me.

Very truly yours,

RONALD D. CARLSON  
Supervisor,  
Eastern Region

RDC:cw

Enclosure

February 24, 1976

RE: Applications for Permit No. 21-7075 and 21-7076 CHERRY

Mr. Kent W. Foster  
Attorney at Law  
P.O. Box 129  
Idaho Falls, Idaho 83401

Dear Mr. Foster:

Please find enclosed a copy of the agreement signed at the conference held in St. Anthony on February 20, 1976.

The Department will now continue the processing of these applications, and if approved will be conditioned pursuant to the Stipulated Agreement.

If you have any questions, please feel free to contact me.

Very truly yours,

RONALD D. CARLSON  
Supervisor,  
Eastern Region

RDC:cw

Enclosure

IN THE MATTER OF PROTESTS )  
AGAINST APPROVAL OF )  
APPLICATIONS FOR PERMIT ) WITHDRAWAL  
NOS. 21-7075 & 21-7076) OF PROTEST  
IN THE NAME OF LAVAR)  
A. &/OR DONNA P. CHERRY)

WE HEREBY AGREE THAT WE  
WILL WITHDRAW THE PROTESTS  
FILED AGAINST THE GRANTING  
OF THE ABOVE REFERENCED  
APPLICATIONS FOR PERMIT, PROVIDED  
THEY ARE CONDITIONED BY THE  
DEPARTMENT OF WATER RESOURCES  
TO BE "SUBJECT TO ALL PRIOR  
EXISTING WATER RIGHTS."

SIGNED AT ST. ANTHONY THIS 20<sup>th</sup>  
DAY OF FEBRUARY 1976.

UTAH POWER & LIGHT CO.  
BY *James W. Jorgensen* ATTORNEY

*Blain Houser*  
attorney for Forest Howell

21-7075, 21-7076 - LaVar and/or Donna P. Cherry

T 21-2012 - Forrest Howell

Courtroom, Fremont County Courthouse, St. Anthony, Idaho

February 20, 1976 - 9:30 a.m.

ROSTER OF ATTENDANCE

| NAME               | ADDRESS              | REPRESENTING           |
|--------------------|----------------------|------------------------|
| LaVar Cherry       | Ashton Idaho         | LaVar Cherry           |
| Donna Cherry       | Ashton Idaho         | LaVar Cherry           |
| Kent W. Foster     | Idaho Falls          | LaVar Cherry           |
| Thomas W. Forsgren | Salt Lake City, Utah | UTAH POWER & LIGHT CO. |
| J. Golden Haight   | Salt Lake City, Utah | Utah Power & Light Co. |
| Gayle Cherry       | Ashton Idaho         | LaVar Cherry           |
| Forrest Howell     | Ashton Idaho         | Forrest Howell         |
| Forrest Howell     | " "                  | Forrest Howell         |
| Louise Howell      | " "                  | Forrest Howell         |
| Blaine Howell      | " "                  | Forrest Howell         |

BEFORE THE DEPARTMENT OF WATER RESOURCES  
OF THE  
STATE OF IDAHO

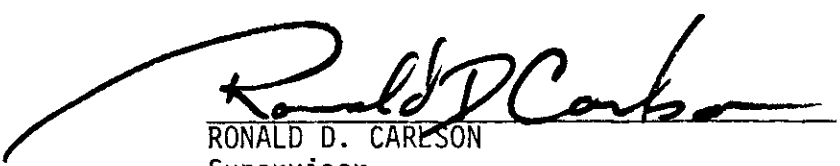
IN THE MATTER OF PROTESTS AGAINST APPROVAL OF  
APPLICATIONS FOR PERMIT NOS. 21-7075, 21-7076  
in the name of LAVAR A. &/or DONNA P. CHERRY  
AND APPLICATION FOR TRANSFER NO. 21-2012  
in the name of FORREST HOWELL

NOTICE OF COMBINED CONFERENCE  
&/or HEARING DATE CHANGE

Notice is hereby given that the Department of Water Resources has delayed the combined conference and/or hearing concerning the above referenced applications for permit and application for transfer at the request of the attorney for Forrest Howell, Blair Grover.

The Department has rescheduled the combined conference and/or hearing for February 20, 1976, at 9:30 a.m. in the Courtroom of the Fremont County Courthouse, St. Anthony, Idaho. This conference and/or hearing will be held in accordance with the Rules and Regulations of the Idaho Code and adopted Rules of Practice and Procedure of the Department of Water Resources as previously indicated in the conference and/or hearing notice dated November 21, 1975.

Dated this 10<sup>th</sup> day of February, 1976.

  
RONALD D. CARLSON  
Supervisor,  
Eastern Region



**STATE OF IDAHO**  
**DEPARTMENT OF WATER RESOURCES**  
EASTERN DISTRICT

Cecil D. Andrus  
Governor

R. Keith Higginson  
Director

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

February 9, 1976

The Fremont County Courthouse  
Clerk of the District Court  
St. Anthony, Idaho 83440

Dear Sir:

This is to confirm the cancellation of the use of your courtroom for February 17, 1976, and the rescheduling of it's use for the 20th of February, 1976, from 9:00 a.m. to 1:00 p.m.

Your cooperation in this matter is greatly appreciated.

Very truly yours,

RONALD D. CARLSON  
Supervisor,  
Eastern Region

RDC:ME



STATE OF IDAHO  
DEPARTMENT OF WATER RESOURCES  
EASTERN DISTRICT

Cecil D. Andrus  
Governor

R. Keith Higginson  
Director

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

February 5, 1976

Fremont County Courthouse  
Clerk of the District Court  
St. Anthony, Idaho 83445

Dear Sir:

This is to confirm the use of the Courtroom for conference and/or hearing to be held by this office on Tuesday, February 17, 1976, from 1:00 p.m. to 5:00 p.m.

Your cooperation in this matter is greatly appreciated.

Very truly yours,

RONALD D. CARESON  
Supervisor,  
Eastern Region

RDC:ME

BEFORE THE DEPARTMENT OF WATER RESOURCES  
OF THE  
STATE OF IDAHO

IN THE MATTER OF PROTESTS AGAIST APPROVAL OF )  
APPLICATIONS FOR PERMIT NOS. 21-7075, 21-7076 )  
in the name of LAVAR A. &/or DONNA P. CHERRY )  
AND APPLICATION FOR TRANSFER NO. 21-2012 )  
in the name of FORREST HOWELL )

---

NOTICE OF COMBINED CONFERENCE  
AND/OR HEARING

Notice is hereby given that the Department of Water Resources has rescheduled the combined conference and/or hearing concerning the above applications for Tuesday, February 17, 1976, in the Courtroom of the Fremont County Courthouse, St. Anthony, Idaho, at 2:00 p.m. Any hearing will be held in accordance with the Rules and Regulations of the Idaho Code and adopted Rules of Practice and Procedure of the Department of Water Resources as previously indicated in the conference and/or hearing notice dated November 21, 1975.

Dated this 5<sup>th</sup> day of February, 1976.

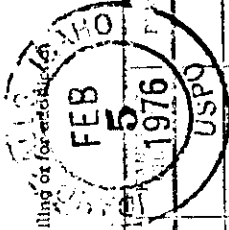
  
RONALD D. CARLSON

Supervisor,  
Eastern Region

Name and Address of Sender

Indicate type of mail:  
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☐ REGISTERED ☐ C.O.D.  
☐ CERTIFIED

Alize stamp here if issued as certificate of mailing or forwarding of this bill. POSTMARK AND DATE OF RECEIPT



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| 3                 | Mark R. + Melvin J. Nickerson, Strass             | 13      | 30  | 15       |              |
| 4                 | Harry + Val Steel, Box 338, Lage, Strass          | 13      | 30  | 15       |              |
| 5                 | Ken C. Guter, Rt. #3, Box 375, Cranston           | 13      | 30  | 15       |              |
| 6                 | Karl Gavril, Rt. #3, Cranston                     | 13      | 30  | 15       |              |
| 7                 | Andre Saldaña, Box 266, Sutton City               | 13      | 30  | 15       |              |
| 8                 | William d. Davis, Cherry, Box 472, Cranston       | 13      | 30  | 15       |              |
| 9                 | James d. Davis, Rt. #1, Cranston                  | 13      | 30  | 15       |              |
| 10                | Walter Davis, Rt. #1, Box 899, S.P.C.             | 13      | 30  | 15       |              |
| 11                |                                                   |         |     |          |              |
| 12                |                                                   |         |     |          |              |
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| 18                |                                                   |         |     |          |              |
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(Declaration of value is required on international registered mail)

PS Form 3877, Dec. 1973

FORM MUST BE MADE OUT IN INK OR BALL POINT PEN

Mailing List

Kent W. Foster, Attorney for Cherry's  
P.O. Box 129  
Idaho Falls, Idaho 83401

Blair Grover, Attorney for Howell's  
P.O. Box 36  
Rigby, Idaho 83442

LaVar and Donna Cherry  
Box 472  
Ashton, Idaho 83420

Forrest Howell  
Rt. #1  
Ashton, Idaho 83420

Utah Power and Light  
P.O. Box 899 (Protestant's)  
Salt Lake City, Utah 84110

Atten: Thomas Forsgren, Attorney

BEFORE THE DEPARTMENT OF WATER RESOURCES  
OF THE  
STATE OF IDAHO

IN THE MATTER OF PROTESTS AGAINST APPROVAL  
OF APPLICATIONS FOR PERMIT NOS. 21-7075, 21-7076,  
in the name of LAVAR A. &/or DONNA P. CHERRY  
AND APPLICATION FOR TRANSFER NO. 21-2012  
in the name of FORREST HOWELL

NOTICE OF CANCELLATION

Notice is hereby given that the Department of Water Resources has cancelled the combined conference and/or hearing concerning the above applications and transfer which was to have been held Thursday, January 22, 1976, at 9:00 a.m., in the Courtroom of the Fremont County Courthouse, St. Anthony, Idaho, at the request of Kent W. Foster, attorney for Lavar and Donna Cherry.

The Department will reschedule the conference and/or hearing in the near future, at which time all interested parties will again be notified.

Dated this 21<sup>st</sup> day of January, 1976.



RONALD D. CARLSON

Supervisor,  
Eastern Region

PS Form 3811, Jan. 1975

RETURN RECEIPT, REGISTERED, INSURED AND CERTIFIED MAIL

|                                                                                                                                                                                                                                                                                                                                                                                                                                                      |               |                                                   |                |               |             |  |   |  |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------|---------------------------------------------------|----------------|---------------|-------------|--|---|--|
| <p>● SENDER: Complete item 1 and 2.<br/>Add your address on the "RETURN TO" space on reverse.</p>                                                                                                                                                                                                                                                                                                                                                    |               |                                                   |                |               |             |  |   |  |
| <p>1. The following service is requested (check one):</p> <p><input checked="" type="checkbox"/> Show to whom and date delivered..... 15¢</p> <p><input type="checkbox"/> Show to whom, date, &amp; address of delivery..... 35¢</p> <p><input type="checkbox"/> RESTRICTED DELIVERY.<br/>Show to whom and date delivered..... 65¢</p> <p><input type="checkbox"/> RESTRICTED DELIVERY.<br/>Show to whom, date, and address of delivery..... 85¢</p> |               |                                                   |                |               |             |  |   |  |
| <p>2. ARTICLE ADDRESSED TO:</p> <p><i>Blair Hower</i></p>                                                                                                                                                                                                                                                                                                                                                                                            |               |                                                   |                |               |             |  |   |  |
| <p>3. ARTICLE DESCRIPTION:</p> <table border="1"> <tr> <td>REGISTERED NO.</td> <td>CERTIFIED NO.</td> <td>INSURED NO.</td> </tr> <tr> <td></td> <td>4</td> <td></td> </tr> </table>                                                                                                                                                                                                                                                                  |               |                                                   | REGISTERED NO. | CERTIFIED NO. | INSURED NO. |  | 4 |  |
| REGISTERED NO.                                                                                                                                                                                                                                                                                                                                                                                                                                       | CERTIFIED NO. | INSURED NO.                                       |                |               |             |  |   |  |
|                                                                                                                                                                                                                                                                                                                                                                                                                                                      | 4             |                                                   |                |               |             |  |   |  |
| <p>(Always obtain signature of addressee or agent)</p>                                                                                                                                                                                                                                                                                                                                                                                               |               |                                                   |                |               |             |  |   |  |
| <p>I have received the article described above.</p> <p>SIGNATURE <input type="checkbox"/> Addressee <input type="checkbox"/> Authorized agent</p> <p><i>Blair Hower</i></p>                                                                                                                                                                                                                                                                          |               |                                                   |                |               |             |  |   |  |
| <p>4. DATE OF DELIVERY</p> <p><i>1/8/76</i></p>                                                                                                                                                                                                                                                                                                                                                                                                      |               | <p>POSTMARK</p> <p><i>IGB JAN 8 1976 DAHO</i></p> |                |               |             |  |   |  |
| <p>5. ADDRESS (Complete only if requested)</p>                                                                                                                                                                                                                                                                                                                                                                                                       |               |                                                   |                |               |             |  |   |  |
| <p>6. UNABLE TO DELIVER BECAUSE:</p>                                                                                                                                                                                                                                                                                                                                                                                                                 |               | <p>CLERK'S INITIALS</p>                           |                |               |             |  |   |  |

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SENDER INSTRUCTIONS

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

- Complete items 1, 2, and 3 on reverse side.
- Moisten gummed ends and attach to back of article.

PENALTY FOR PRIVATE  
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OF POSTAGE, \$300



RETURN  
TO

RECEIVED

JAN 9 1976

DEPARTMENT OF WATER RESOURCES  
EASTERN DISTRICT OFFICE  
1515 LINCOLN ROAD  
IDAHO FALLS, IDAHO 83401

Department of Water Resources  
Eastern District Office

STATE OF IDAHO

DEPARTMENT OF WATER RESOURCES

Eastern District Office

1515 Lincoln Road • Idaho Falls, Idaho  
83401

Returned

Receipts

Name and Address of Sender

Indicate type of mail:  
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☐ C.O.D.  
☒ CERTIFIED

Affix stamp here if issued as certificate of mailing or for additional copies of this bill.  
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| NUMBER OF ARTICLE | NAME OF ADDRESSEE, STREET AND POST OFFICE ADDRESS  | POSTAGE | FEE | R.R. FEE | ACTUAL VALUE | HANDLING CHARGE | REMARKS* |
|-------------------|----------------------------------------------------|---------|-----|----------|--------------|-----------------|----------|
| 1                 | Robert A. Bellmont, P.O. Box 266, Boston City, 10  | 13      | 30  | 15       |              |                 | 21-2077  |
| 2                 | Farrell, Russell, Rt. #1, Boston, 10               | 13      | 30  | 15       |              |                 | 21-2078  |
| 3                 | Mr. & Mrs. Edwin Cherry, Box 472, Dalton, 10       | 13      | 30  | 15       |              |                 | 21-2079  |
| 4                 | Blair, Steven, Box 36, Dalton, 10                  | 13      | 30  | 15       |              |                 | 21-2080  |
| 5                 | Walter Brown & Sons, P.O. Box 379, Dalton City, 10 | 13      | 30  | 15       |              |                 | 21-2081  |
| 6                 |                                                    |         |     |          |              |                 |          |
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| 20                |                                                    |         |     |          |              |                 |          |

TOTAL NO. OF PIECES LISTED BY SENDER

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PS Form 3877, Dec. 1973

APPLICATION FOR REGISTERED, REGISTERED C.O.D. AND CERTIFIED MAIL

\* U. S. GOVERNMENT PRINTING OFFICE: 1974-0-329-726

FORM MUST BE MADE OUT IN INK OR BALL POINT PEN

BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE

STATE OF IDAHO

IN THE MATTER OF PROTESTS AGAINST APPROVAL OF  
APPLICATIONS FOR PERMIT NOS. 21-7075, 21-7076

in the name of LAVAR A. &/or DONNA P. CHERRY

AND APPLICATION FOR TRANSFER NO. 21-2012

in the name of FORREST HOWELL

NOTICE OF COMBINED CONFERENCE

AND/OR HEARING

Notice is hereby given that the Department of Water Resources has rescheduled the combined conference and/or hearing concerning the above applications for Thursday, January 22, 1976, at 9:00 a.m., in the Courtroom of the Fremont County Courthouse, St. Anthony, Idaho. Any hearing will be held in accordance with the Rules and Regulations of the Idaho Code and adopted Rules of Practice and Procedure of the Department of Water Resources as previously indicated in the conference and/or hearing notice dated November 21, 1975.

Dated this 7<sup>th</sup> day of January, 1976.

  
RONALD D. CARLSON

Supervisor,  
Eastern Region



**STATE OF IDAHO**  
**DEPARTMENT OF WATER RESOURCES**  
EASTERN DISTRICT

---

Cecil D. Andrus  
Governor

R. Keith Higginson  
Director

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

January 7, 1976

Fremont County Courthouse  
Clerk of the District Court  
St. Anthony, Idaho 83445

Dear Sir:

This is to confirm the use of the Courtroom for conference and/or hearing to be held by this office on Thursday, January 22, 1976, from 9:00 a.m. to 1:00 p.m.

Thank you for your cooperation in this matter.

Very truly yours,

RONALD D. CARLSON  
Supervisor,  
Eastern Region

RDC:ME

BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE

STATE OF IDAHO

In the Matter of Protests Against Approval )  
of Applications for Permit Nos. 21-7075, 21-7076 )  
in the name of LAVAR A. AND/OR DONNA P. CHERRY )  
\_\_\_\_\_ )

NOTICE OF CANCELLATION

Notice is hereby given that the Department of Water Resources has cancelled the conference and/or hearing concerning the above applications which was to have been held Monday, December 1, 1975, at 2:00 p.m., in the courtroom of the Fremont County Courthouse at the request of Kent W. Foster, attorney for the applicant.

The Department will reschedule the conference and/or hearing in the near future, at which time all interested parties will again be notified.

Dated this 26<sup>th</sup> day of November, 1975.

  
RONALD D. CARLSON

Supervisor  
Eastern Region

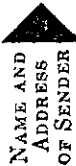
21-7076 - LaVar A. and/or Donna P. Cherry

Courtroom, Fremont County Courthouse, St. Anthony, Idaho

December 1, 1975 - 2:00 p.m.

ROSTER OF ATTENDANCE

| NAME  | ADDRESS | REPRESENTING |
|-------|---------|--------------|
| <hr/> |         |              |



NAME AND ADDRESS OF SENDER

Indicate type of mail:  
☐ REGISTERED ☐ G.O.D.  
☐ CERTIFIED

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POSTMARK AND DATE OF RECEIPT

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| NUMBER OF ARTICLE | NAME OF ADDRESSEE, STREET, AND POST OFFICE ADDRESS   | POSTAGE | FEE | R. R. FEE | REST. DEL. FEE | ACTUAL VALUE | SURCHARGE | REMARKS     |
|-------------------|------------------------------------------------------|---------|-----|-----------|----------------|--------------|-----------|-------------|
| 1                 | Mr. Blair, Thorens, P.O. Box 36, Highway 100         | 10      | 30  | 15        |                |              |           | 21-10-75 76 |
| 2                 | Utah Power & Light Co. Box 899, Salt Lake City, Utah | 10      | 30  | 15        |                |              |           | " 75-76 77  |
| 3                 | Mr. Andrew Bullard, P.O. Box 266, Henry City, ID     | 10      | 30  | 15        |                |              |           | 21-10-77    |
| 4                 | Mr. Gordon S. Thatcher, 25 N. 2nd E, Berkeley, ID    | 10      | 30  | 15        |                |              |           | 21-10-12    |
| 5                 | Mr. & Mrs. John Cherry, 2472, Astoria, ID            | 10      | 30  | 15        |                |              |           | 21-10-75 76 |
| 6                 | Mr. Forrest Knapp, Rt #1, Astoria, ID                | 10      | 30  | 15        |                |              |           | " 75-76 77  |
| 7                 |                                                      |         |     |           |                |              |           |             |
| 8                 |                                                      |         |     |           |                |              |           |             |
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| 15                |                                                      |         |     |           |                |              |           |             |
| 16                | Sent by Certified Mail 11-24-75                      |         |     |           |                |              |           |             |
| 17                |                                                      |         |     |           |                |              |           |             |
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| 20                |                                                      |         |     |           |                |              |           |             |

TOTAL NO. OF PIECES LISTED BY SENDER: 6 TOTAL NO. OF PIECES REC'D AT P.O.: 6 POSTMASTER, P.P.S. (Name of receiving employee) [Signature]

APPLICATION FOR REGISTRATION OR CERTIFICATION (Surcharges are not required on international registered mail)

BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE

STATE OF IDAHO

|                                                  |   |                      |
|--------------------------------------------------|---|----------------------|
| In the Matter of Protests Against Approval       | ) |                      |
|                                                  | ) |                      |
| of Applications for Permit Nos. 21-7075, 21-7076 | ) | NOTICE OF CONFERENCE |
|                                                  | ) |                      |
| in the name of LAVAR A. &/or DONNA P. CHERRY     | ) | AND/OR HEARING       |
|                                                  | ) |                      |
|                                                  | ) |                      |

---

On August 8, 1975, LaVar A. and/or Donna P. Cherry filed with the Department of Water Resources two applications to appropriate the public waters of the State of Idaho. On September 2, 1975, the Department received protests against approval of said applications from Blair Grover on behalf of Forrest and Louise Howell, and from Utah Power & Light Company.

The Department has set the matter of protests for conference and/or hearing for Monday, December 1, 1975, at 2:00 p.m., in the courtroom of the Fremont County Courthouse, St. Anthony, Idaho. Any hearing will be held in accordance with the Rules and Regulations of the Idaho Code and adopted Rules of Practice and Procedure of the Department of Water Resources. Opportunity shall be afforded all parties to respond and present evidence and argument on all issues involved.

Any party may request in writing five (5) days before any hearing that the oral proceedings thereof be taken in the form of stenographic notes. Any party may have such stenographic notes of the oral proceedings, or part thereof, transcribed at his own expense. A taped record of the proceedings will be maintained for the appeal period.

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

Dated this 21<sup>st</sup> day of November, 1975.

  
RONALD D. CARLSON

Supervisor  
Eastern Region



# STATE OF IDAHO

DEPARTMENT OF WATER RESOURCES  
EASTERN DISTRICT

IDAHO FALLS, IDAHO 83401

November 24, 1975

C  
Fremont County Courthouse  
Clerk of the District Court  
St. Anthony, Idaho 83440

Dear Sir:

O  
This is to confirm the use of the Courtroom for conference and/or hearing to be held by this office on Monday, December 1, 1975, at 2:00 p.m.

P  
Thank you for your cooperation in this matter.

Y  
Very truly yours,

RONALD D. CARLSON  
Supervisor  
Eastern Region

RDC:ME



STATE OF IDAHO  
DEPARTMENT OF WATER RESOURCES  
EASTERN DISTRICT

Cecil D. Andrus  
Governor

September 2, 1975

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

R. Keith Higginson  
Director

Mr. & Mrs. Lavar A. Cherry  
Box 472  
Ashton, ID 83420

Dear Mr. & Mrs. Cherry:

We have enclosed a copy of the protest filed against the issuance of a permit pursuant to your Application No. 21-7076. You should be aware that the following are the principle items we can consider at a conference and/or hearing in either approving or denying an application for permit (Section 42-203, Idaho Code):

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

The Department cannot allow a permit for irrigation purposes which would entail the use of more than a continuous flow of 0.02 cubic feet per second of water for each acre of land, or an annual amount of 5 acre feet for each acre of land, unless the applicant can show that more is required (Section 41-202, Idaho Code).

A permit issued by this office is subject to all prior water rights and does not in any way convey or establish a right-of-way over private or governmental lands. Any right-of-way or easement must be obtained by the applicant through action outside of the water right proceedings.

You will be notified at a later date as to the time and place set for a conference and/or hearing to discuss the matters of protest. Legal counsel is not mandatory at any proceeding before the Department, although you may desire to employ an attorney in your behalf.

If we may be of any assistance, please contact us.

Very truly yours,

RONALD D. CARLSON  
District Engineer

RDC:MB

cc: IDWR - Boise  
Enc: Copy of Protest(s)



**STATE OF IDAHO**  
**DEPARTMENT OF WATER RESOURCES**  
EASTERN DISTRICT

Cecil D. Andrus  
Governor

September 2, 1975

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

R. Keith Higginson  
Director

Mr. Blair Grover  
Attorney at Law  
P.O. Box 36  
Rigby, ID 83442

RE: Application for Permit No. 21-7076

Dear Mr. Grover:

This is to acknowledge receipt of your protest to issuance of a permit pursuant to the above referenced application. The following are the principle items we can consider at a conference and/or hearing in either approving or denying an application for permit (Section 42-203, Idaho Code):

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

The Department may reject an application and refuse issuance of a permit, partially approve the permit, approve the permit for a quantity of water less than applied for, or approve the permit subject to special conditions.

A permit issued by this office is subject to all prior water rights and does not in any way convey or establish a right-of-way over private or governmental lands. Any right-of-way or easement must be obtained by the individuals concerned through action outside of the water right proceedings.

You will be notified at a later date as to the time and place set for conference and/or hearing to discuss the matters of protest. If we may be of further assistance, please contact us.

Very truly yours,

RONALD D. CARLSON  
District Engineer

RDC:MB

cc: IDWR - Boise  
Forrest & Louise Howell



**STATE OF IDAHO**  
**DEPARTMENT OF WATER RESOURCES**  
EASTERN DISTRICT

Cecil D. Andrus  
Governor

September 2, 1975

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

R. Keith Higginson  
Director

Utah Power & Light Co.  
P.O. Box 899  
Salt Lake City, Utah 84110

**RE: Application for Permit No. 21-7076**

**Gentlemen:**

This is to acknowledge receipt of your protest to issuance of a permit pursuant to the above referenced application. The following are the principle items we can consider at a conference and/or hearing in either approving or denying an application for permit (Section 42-203, Idaho Code):

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

The Department may reject an application and refuse issuance of a permit, partially approve the permit, approve the permit for a quantity of water less than applied for, or approve the permit subject to special conditions.

A permit issued by this office is subject to all prior water rights and does not in any way convey or establish a right-of-way over private or governmental lands. Any right-of-way or easement must be obtained by the individuals concerned through action outside of the water right proceedings.

You will be notified at a later date as to the time and place set for conference and/or hearing to discuss the matters of protest. If we may be of further assistance, please contact us.

Very truly yours,

RONALD D. CARLSON  
District Engineer

RDC: MB

cc: IDWR - Boise

**RECEIVED**

**SEP 2 1975**

T. HAROLD LEE  
JAMES A. RIRIE  
BLAIR J. GROVER

Department of Water Resources  
Idaho District Office

Law Offices  
**LEE, RIRIE & GROVER**  
Chartered Professional Association

P.O. Box 36  
Rigby, Idaho 83442  
(208) 745-6653

330 Shoup Ave.  
Room 201  
Idaho Falls, Idaho 83401  
(208) 524-2650

**Rigby, Idaho 83442**

August 27, 1975

State of Idaho  
Department of Water Resources  
1515 Lincoln Road  
Idaho Falls, Idaho 83401

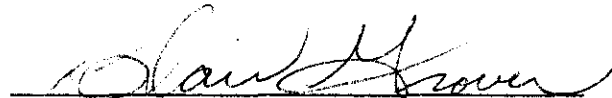
ATTENTION: Ronald D. Carlson

Dear Mr. Carlson:

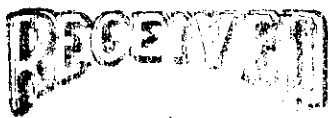
Enclosed please find Two (2) Protests signed by  
myself on behalf of Mr. and Mrs. Forrest Howell.

Yours very truly,

LEE, RIRIE & GROVER



BG:pa  
Enclosures  
cc: Forrest Howell



SEP 2 1975

Department of Water Resources  
Eastern District Office

BEFORE THE IDAHO DEPARTMENT OF WATER RESOURCES

IN THE MATTER OF THE APPLICATION OF ) APPLICATION NO. 21-7076  
LAVAR A. and/or DONNA P. CHERRY. ) PROTEST

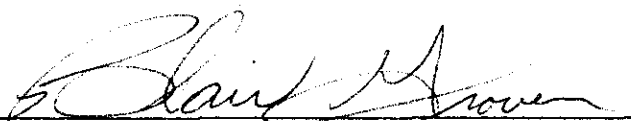
FORREST HOWELL and LOUISE HOWELL, his wife, hereby protest the application of LaVar A. and/or Donna P. Cherry for a permit to appropriate 3.2 cfs of water from Blue Creek, a tributary of Henry's Fork of the Snake River for the following reasons.

1. Protestants hold a 1905 water right for 1.9 cfs of water in Blue Creek and the waters therein are subject to protestants' decreed rights.

2. There is not enough water to fill applicants' request of 3.2 cfs, and to supply protestants' decreed rights. Therefore, if the application is permitted, there will be substantial injury and damage to protestants' decreed rights.

Forrest Howell and Louise Howell, his wife, are represented in this protest by LEE, RIRIE & GROVER, Attorneys at Law, 102 North Clark, P. O. Box 36, Rigby, Idaho, 83442.

Dated this 27th day of August, 1975.

  
Blair Grover, Atent and Attorney for  
Forrest Howell and Louise Howell

# UTAH POWER & LIGHT COMPANY

P. O. BOX 889  
SALT LAKE CITY, UTAH 84110

**RECEIVED**

SEP 2 1975

Department of Water Resources  
Eastern District Office

LEGAL OFFICES  
SIDNEY G. BAUCOM  
SENIOR VICE PRESIDENT  
AND  
GENERAL COUNSEL

August 29, 1975

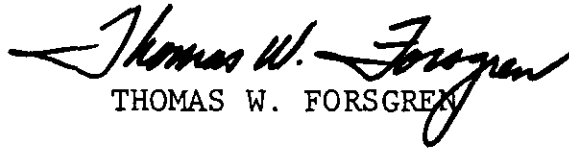
ROBERT GORDON  
350-3214  
  
THOMAS W. FORSGREN  
350-3213  
  
VERL R. TOPHAM  
350-3850  
  
SAM F. CHAMBERLAIN  
350-3825

Mr. R. Keith Higginson, Director  
Idaho Department of Water Resources  
1515 Lincoln Road  
Idaho Falls, Idaho 83401

Dear Mr. Higginson:

Enclosed for filing please find Protests of Utah  
Power & Light Company concerning application Nos. 21-7075,  
21-7076 and 21-7077.

Very truly yours,

  
THOMAS W. FORSGREN

TWF:hlb  
Enclosures

RECEIVED

SEP 2 1975

Department of Water Resources  
Eastern District Office

IN THE OFFICE OF THE IDAHO DEPARTMENT OF WATER RESOURCES

IN THE MATTER OF THE APPLICATION  
OF LAVAR A. AND DONNA P. CHERRY  
FOR A PERMIT TO APPROPRIATE 3.20  
CUBIC FEET PER SECOND OF WATER  
FROM BLUE CREEK TRIBUTARY TO  
HENRY'S FORK TRIBUTARY TO THE  
SNAKE RIVER

APPLICATION NO. 21-7076

PROTEST OF  
UTAH POWER & LIGHT COMPANY

COMES NOW the protestant, UTAH POWER & LIGHT COMPANY  
(Utah Power) and protests Lavar A. and Donna P. Cherry's applica-  
tion and alleges as follows:

1. Utah Power holds Water Right No. 21-2164 for the  
storage of 2,000 acre feet of water for use for power purposes  
at its Ashton Power Plant and Water Right No. 01-2025 for 700  
cubic feet of water for use for power purposes at its St. Anthony  
Power Plant, both of which plants are located on Henry's Fork on  
the Snake River.

2. On or about the 21st day of August, 1975, Lavar A.  
and Donna P. Cherry filed an application with the Idaho Department  
of Water Resources numbered 21-7076 seeking to appropriate 3.20 cubic  
feet per second of water from the Blue Creek tributary to the Henry's  
Fork tributary to the Snake River by means of a pump and pipeline  
within the NW1/4 NE1/4, Section 10, T. 9 N., R. 43 E., B.M., Fremont  
County, to be used from April 15 to October 15 for the irrigation of  
180 acres of real property located within the N1/2 NE1/4, N1/2 NW1/4,  
SE1/4 NW1/4, NE1/4 SW1/4, NW1/4 SE1/4, Section 11, T. 9 N., R. 43  
E., B.M.

3. The application of Lavar A. and Donna P. Cherry for  
appropriation of 3.20 cubic feet per second of water would adversely  
affect the water rights of Utah Power hereinabove described.

WHEREFORE, protestant prays that Lavar A. and Donna P.  
Cherry's application be denied or alternatively that said application  
be set for hearing in order that the matters contained therein as

they affect protestant's hereinabove described water rights may be fully explored.

DATED this 29th day of August, 1975.

UTAH POWER & LIGHT COMPANY

By Thomas W. Forsgren  
T. W. Forsgren  
Attorney for Utah Power  
& Light Company

STATE OF UTAH            )  
                              : ss.  
COUNTY OF SALT LAKE )

On the 29th day of August, 1975, personally appeared before me T. W. FORSGREN, signer of the foregoing Protest, who duly acknowledged to me that he executed the same.

Helen Louise Bailey  
NOTARY PUBLIC  
Residing at Salt Lake City, Utah

My Commission Expires:

3/5/77

UNITED STATES DEPARTMENT OF AGRICULTURE  
FOREST SERVICE

TARGHEE NATIONAL FOREST  
St. Anthony, Idaho 83445

RECEIVED

AUG 15 1975

Department of Water Resources  
2540 Eastern District Office

August 13, 1975



Mr. Ronald Carlson  
District Engineer  
Department of Water Resources  
1515 Lincoln Road  
Idaho Falls, Idaho 83401

Dear Mr. Carlson:

Reference your letter and applications 21-7075, 21-7076.

The use applied for under these applications predates the applications. The improvements on National Forest Land has consequently been covered by special use permit to the Cherry's for some time. Copy of that permit is enclosed for your record. It appears to cover both diversions.

We have no objections to these applications.

Sincerely,

ORLO JOHNSON  
Branch Chief

Enclosure

August 11, 1975

RE: Application for Permit No. 21-7075  
" " " No. 21-7076

Targee National Forest  
St. Anthony  
Idaho 83445

Gentlemen:

Enclosed please find copies of applications that may be of interest to your agency. Please review the applications and if you have any comments, submit them to our Department as soon as possible. The last date of protest is September 2, 1975, and we are required to take final action shortly thereafter. However, since the points of diversion are located on Forest Service property, these applications cannot be approved until we receive a copy of the easement granting the applicant access to the land.

If we may be of further assistance, please feel free to contact us.

Very truly yours,

RONALD D. CARLSON  
District Engineer

RDC:MB

Enclosures

August 11, 1975

RE: Application for Permit No. 21-7075, 21-7076, & 21-7077

C  
Mr. Arthur L. Larson, Watermaster  
Water District 01  
Box 1099  
Idaho Falls, Idaho 83401

Dear Art:

We are enclosing copies of applications that may be of interest to your water district. Please review the applications and if you have any comments, please submit them to our Department as soon as possible. The last date of protest is September 2, 1975, and we are required to take final action shortly thereafter.

If we may be of further assistance, please contact us.

Very truly yours,

Y  
RONALD D. CARLSON  
District Engineer

RDC:CW

Enclosures (3)

August 8, 1975

RE: Application for Permit No. 21-7075 CHERRY  
" " " No. 21-7076 CHERRY  
" " " No. 21-7077 BOLLAERT

Ashton Herald  
Box 258  
Ashton, Idaho 83420

Gentlemen:

Enclosed you will find a legal notice which we wish to have published once a week for two consecutive weekly issues of your newspaper. We have inserted the publication dates allowing time for you to submit us a galley proof for review before publication.

After sending us a galley proof, proceed with the publication on the dates we have inserted, assuming the notice is correct. If we have any corrections, we will notify you before the first publication. If you cannot publish the notice on the proposed dates, please contact us immediately.

An affidavit of publication must be submitted to the Department along with the publication bill.

Very truly yours,

RONALD D. CARLSON  
District Engineer

RDC:CW

Bill submitted 8-22-75 by MB

Enc: Legal Notice (3)

**NOTICE OF APPLICATION  
FOR WATER PERMIT**

108  
Notice is hereby given that Lavar A. & or Donna P. Cherry, Ashton, Idaho have on 8-08-75 submitted Application No. 21-7076 for a permit to appropriate 3.20 cubic feet per second of water from Blue Creek tributary to Henry's Fork Snake River by means of pump and pipeline within the NW $\frac{1}{4}$ NE $\frac{1}{4}$ , Sec. 10, T. 9N. R. 43E. B.M., Fremont County; to be used from Apr. 15 to Oct. 15 for the irrigation of 180 acres within the N $\frac{1}{2}$ NE $\frac{1}{4}$ , N $\frac{1}{2}$ NW $\frac{1}{4}$ , SE $\frac{1}{4}$ NW $\frac{1}{4}$ , NE $\frac{1}{4}$ SW $\frac{1}{4}$ , NW $\frac{1}{4}$ SE $\frac{1}{4}$ , Sec. 11, T. 9N. R. 43E. B.M.

If issued, this permit will be subject to all prior water rights. Protests against the granting of the permit must be filed with the Idaho Department of Water Resources, 1515 Lincoln Road, Idaho Falls, Idaho, 83401 on or before September 2, 1975.

**R. KEITH HIGGINSON**  
Director

Published in the Ashton Herald, Ashton, Idaho on August 14 and August 21, 1975.

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within the N<sup>1</sup>/4NE<sup>1</sup>/4, N<sup>1</sup>/4NW<sup>1</sup>/4, SE<sup>1</sup>/4NW<sup>1</sup>/4, NE<sup>1</sup>/4SW<sup>1</sup>/4, NW<sup>1</sup>/4SE<sup>1</sup>/4, Sec. 11, T. 9N, R. 43E, B.M.

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MB-B  
MB-A