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Ident. No. 22-13285

Department of Water Resources
SOUTHERN IDAHO
Eastern Region

DEPARTMENT OF WATER RESOURCES

APPLICATION FOR PERMIT

To appropriate the public waters of the State of Idaho

Robert G
1. Name of Applicant (JERRY) KIRK Phone (307) 733-8282
Mailing address PO Box 4779, Jackson, WY 83001

2. Source of water supply DICK CREEK which is a tributary of TETON RIVER
3. Location of point of diversion is Township 4N Range 45E Sec. 9, in the SW $\frac{1}{4}$,
NW $\frac{1}{4}$, NE $\frac{1}{4}$, Govt. Lot N/A, B.M., TETON County;
additional points of diversion if any: N/A

4. Water will be used for the following purposes:

Amount 0.45 CFS for DIV. TO STORAGE purposes from 1/1 to 12/31 (both dates inclusive)
(cfs or acre-feet per annum)
Amount 12 ac-ft for STORAGE for WILDLIFE purposes from 1/1 to 12/31 (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)
Amount _____ for _____ purposes from _____ to _____ (both dates inclusive)
(cfs or acre-feet per annum)

5. Total quantity to be appropriated is (a) 0.45 CFS and/or (b) 12 AC-FT
cubic feet per second acre feet per annum

6. Proposed diverting works:

a. Describe type and size of devices used to divert water from the source CONCRETE WATER CONTROL STRUCTURE WITH BOARDS FOR
WATER MANAGEMENT. DESIGNED TO MAINTAIN CONSTANT BASE FLOW IN DICK CREEK, ALLOW FOR FISH PASSAGE IN DICK CK.,
b. Height of storage dam MAX. 3 FEET feet; active reservoir capacity 12 acre-feet; total AND PREVENT
reservoir capacity 12 acre-feet FISH ENTRY
c. Proposed well diameter is N/A inches; proposed depth of well is N/A feet INTO DIVERSION
d. Is ground water with a temperature of greater than 85°F being sought? NO DITCH.
e. If well is already drilled, when? N/A; Drilling firm N/A
Well was drilled for (well owner) N/A; Drilling Permit No. N/A

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

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

a. Hydropower; show total feet of head and proposed capacity in kW. N/A
b. Stockwatering; list number and kind of livestock. N/A
c. Municipal; show name of municipality. N/A
d. Domestic; show number of households. N/A
e. Other; describe fully. PROVIDES WATERING, FORAGE, AND BROOD-
REARING HABITAT FOR WILDLIFE

9. Description of place of use:

- a. If water is for irrigation, indicate acreage in each subdivision in the tabulation below.
- b. If water is used for other purposes, place a symbol of the use (example: *D* for Domestic) in the corresponding place of use below. See instructions for standard symbols.

TWP	RGE	SEC	NE				NW				SW				SE				TOTALS
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
4N	45E	9					W												

Total number of acres to be irrigated N/A

10. Describe any other water rights used for the same purposes as described above. NONE

11. a. Who owns the property at the point of diversion? MR. LEWIS MITHUN

b. Who owns the land to be irrigated or place of use? MR. JERRY KIRK

c. If the property is owned by a person other than the applicant, describe the arrangement enabling the applicant to make this filing: PLACE OF USE OWNED BY APPLICANT

12. Remarks: MITIGATION WATER PROVIDED BY TRANSFER
OF DICK CREEK WATER TO THIS POND;
TRANSFER APPLICATION SUBMITTED
CONCURRENTLY WITH THIS APPLICATION.

13. **MAP OF PROPOSED PROJECT REQUIRED** - Attach an 8½"x11" map clearly identifying the proposed point of diversion, place of use, section #, township & range. (A photocopy of a USGS 7.5 minute topographic quadrangle map is preferred.)

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

Robert Kirk
 Signature of Applicant (and title, if applicable)

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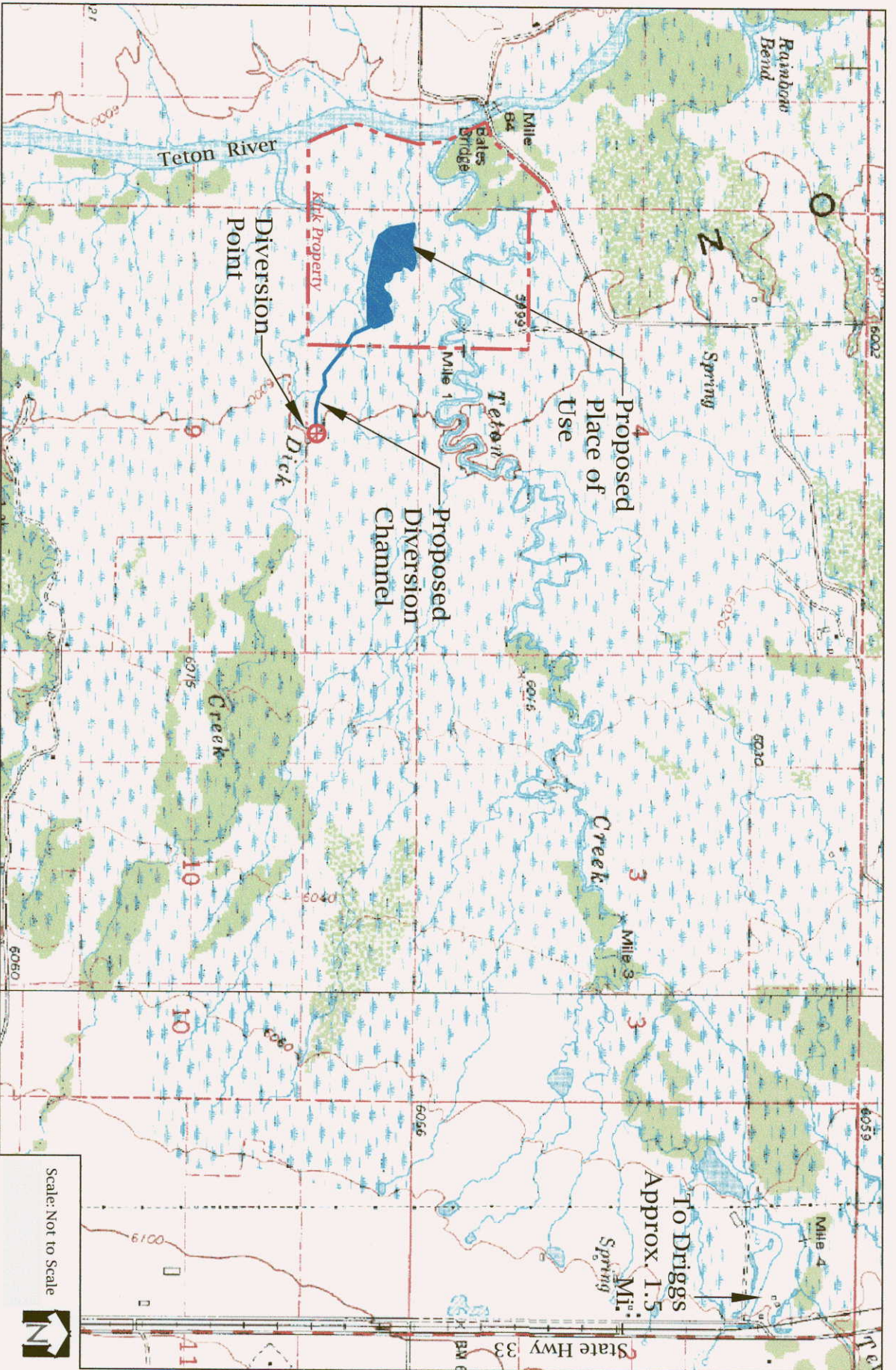


Figure 1

Kirk Pond Permit Application

Concept Plan: Pond

EASEMENT AND WATER RIGHTS AGREEMENT

THIS AGREEMENT, made and entered into this ____ day of October, 2003, by and between the LEWIS M. MITHUN TRUST u/a 10/6/03, Lewis M. Mithun, Trustee (hereinafter "MITHUN") and JERRY KIRK and _____, husband and wife (the "KIRKS"), WITNESSETH:

WHEREAS, MITHUN is the owner of the following described real estate:

WHEREAS, the KIRKS are the owners of a parcel of real estate immediately West of and adjacent to the West boundary of the "MITHUN" real estate, described as follows:

WHEREAS, MITHUN presently has an access easement across a portion of the KIRKS' real estate, which easement is described as follows:

WHEREAS, MITHUN agrees to convey a certain water right to the KIRKS for the purpose of enhancing the wetlands on the KIRKS' real estate; and in exchange for the conveyance of the water right the KIRKS agree to grant MITHUN a different access easement across the KIRKS' real estate;

NOW, THEREFORE, in consideration of the terms, covenants and conditions hereinafter set forth, THE PARTIES AGREE AS FOLLOWS:

1. SALE AND TRANSFER OF WATER RIGHTS.

MITHUN agrees to sell and transfer to the KIRKS the following described water right:

A portion of Water Right 22-00049, described as 0.45 CFS from the spring creek tributary of Teton Creek, known as "Dick Creek", which water is currently being used to irrigate 20 ac. in the SW $\frac{1}{4}$, NW $\frac{1}{4}$ Section 10, T. 4N, R. 45 E Teton County ID. The point of diversion is located in NW $\frac{1}{4}$, SW $\frac{1}{4}$, NE $\frac{1}{4}$ Section 10, T. 4N, R. 45 E Teton Co ID.

In consideration for MITHUN'S conveyance of the aforementioned water right, the KIRKS shall convey to MITHUN two grants of easement access as described herein.

The KIRKS agree to use the aforementioned water right solely for the purpose of irrigation to support wetland enhancement as administered by the Teton Regional Land Trust.

The new place of use for the aforementioned water right encompasses twenty (20) acres located in the NW¼, NW¼ Section 9 (13 acres) and the SW¼, SW¼ Section 4 (7 acres), T. 4N, R. 45 E Teton County, Idaho. The new point of diversion will be from Dick Creek, tributary to the Teton River, located in the SW¼, NW¼, NE¼ Section 9, 4N, R. 45 E Teton County, Idaho. The new diversion point is located on MITHUN'S Teton Creek Parcel.

MITHUN'S grant of water to KIRKS is conditioned upon the adequate flow of water in Dick Creek during any given year.

KIRKS agree that their diversion of MITHUN'S water from Dick Creek will not disturb the "baseline" flow of Dick Creek. Pursuant to this requirement, KIRK'S transfer point of diversion shall not exceed an elevation which would disturb the baseline flow of Dick Creek.

MITHUN grants the KIRKS the right to periodically maintain the diversion works and canal. The KIRKS agree to notify MITHUN in writing prior to performing any such maintenance work.

2. GRANT OF ACCESS EASEMENT

As further consideration for MITHUN'S conveyance of the aforementioned water right the KIRKS agree to grant a reserved easement for an access in favor of MITHUN'S real estate adjoining the KIRKS' real estate which easement shall be created over the KIRKS' real estate and shall be thirty (30) feet in width, as described herein:

See Exhibit A attached including the map attached thereto.

Such easement is for the purpose of creating an access thirty (30) feet in width for the benefit of MITHUN'S real estate. Such easement shall be appurtenant to and for the benefit of MITHUN'S real estate, and the parties further agree that it is a covenant that shall run with the land.

It is expressly understood and agreed by and between the parties that the easement described herein, with regard to the KIRKS, their heirs, executors, administrators, and assigns, is for the purpose of assuring ingress and egress for all purposes, to the real estate owned by MITHUN, his heirs, executors, administrators, and assigns.

It is expressly understood and agreed by and between the parties that the easement described herein is not an exclusive easement, but is subject to the equal right of the

KIRKS, their heirs, executors, administrators, and assigns, of ingress and egress over and upon said access easement.

It is expressly agreed by and between the parties hereto that this easement is superior and paramount to the rights of any of the parties hereto to the easement property described and that the right of ingress and egress along said access easement is a covenant running with the land and shall be binding on and shall inure to the benefit of the parties hereto, their heirs, successors, or assigns.

The KIRKS and MITHUN shall use the rights granted above with due regard for the rights of the other party respectively, and shall not use the access easement in any way that will impair the rights of the other party to use it, and shall not obstruct passage thereon.

The parties agree further, as a part of the consideration of this conveyance that the KIRKS as the owner of the real property encumbered by the easement shall so operate the right of way herein granted in such a manner that the operation thereof will in no way hinder or prevent the proper and reasonable use and enjoyment of the access easement by MITHUN, including MITHUN'S right to improve the access easement which would include, but is not limited to grading, filling, graveling and installing any necessary culverts, and the right to install an access gate on the easement at the eastern boundary line of Tract 1 in Section 9. MITHUN shall solely bear the cost of such improvements, except the parties agree to share the cost of maintaining, repairing or replacing the existing bridge on the easement access.

3. ATTORNEY'S FEES.

In the event an action is brought to enforce any of the terms, covenants or conditions of this Agreement, or in the event this Agreement is placed with an attorney for collection or enforcement, the successful party to such an action or collection shall be entitled to recover from the losing party their reasonable attorney's fees, together with such other costs as may be authorized by law.

4. NOTICE.

Any and all notices required under the terms of this Agreement shall be given by the KIRKS to MITHUN by certified mail, return receipt requested, postage prepaid, in care of the following name and address:

Lewis M. Mithun
P.O. Box 765
Teton Village, WY 83025

Any and all notices required under the terms of this Agreement shall be given by MITHUN to the KIRKS by certified mail, return receipt requested, postage prepaid, in care of the following names and addresses:

or at any other address subsequently furnished in writing by either party. Notice shall be deemed given on its date of mailing, or upon written acknowledgment of its receipt by personal delivery, whichever shall be earlier.

5. CONTROLLING LAW.

This Agreement is to be construed, governed and enforced in accordance with the laws of the State of Idaho.

6. WAIVER.

Waiver by any party of any breach of any term, covenant or condition herein contained shall not be deemed to be a waiver of such term, covenant or condition, or of any subsequent breach of the same or of any other term, covenant or condition herein contained.

7. COMPLETE AGREEMENT.

There are no promises, implied promises, agreements, stipulations, representations or warranties of any character or kind between the parties hereto, except those set forth in writing in this Agreement.

8. MODIFICATION AND BINDING EFFECT.

All of the terms, conditions and covenants of this Agreement shall be binding upon and shall inure to the benefit of all successors and assigns of the respective parties hereto. This Agreement may only be modified by written agreement signed by all of the parties hereto or their duly authorized representatives.

In witness whereof, the parties hereto have set their hands the day and year first above written.

Lewis M. Mithun, Trustee
LEWIS M. MITHUN, Trustee for the LEWIS
M. MITHUN TRUST u/a 10/6/03

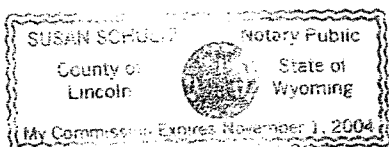
Robert (Jerry) Kirk
JERRY KIRK

Wyoming
STATE OF ~~IDAHO~~)
) ss.
County of Teton)

On this 10th day of October, 2003, before me, the undersigned, a Notary Public in and for the State of Idaho, personally appeared LEWIS M. MITHUN, Trustee for the LEWIS M. MITHUN TRUST u/a 10/6/03, known to me to be the person whose name is subscribed to the within instrument, and acknowledged to me that he executed the same.

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

S
E
A
L



Susan Schultz
Notary Public for ~~Idaho~~ Wyoming
Residing at: Lincoln County
My commission expires: 11/1/04

STATE OF IDAHO)
) ss.
County of Teton)

On this _____ day of October, 2003, before me, the undersigned, a Notary Public in and for the State of Idaho, personally appeared JERRY KIRK known to me to be the person whose name is subscribed to the within instrument, and acknowledged to me that he executed the same.

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

S
E
A
L

Notary Public for Idaho
Residing at:
My commission expires:

STATE OF ~~IDAHO~~ Wyoming

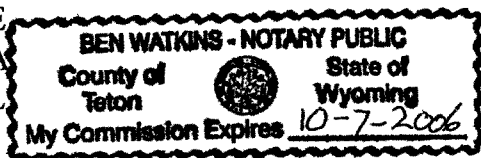
) ss.

County of Teton)

On this 30th day of October, 2003, before me, the undersigned, a Notary Public in and for the State of Idaho, personally appeared Robert G Kirk known to me to be the person whose name is subscribed to the within instrument, and acknowledged to me that she executed the same.

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

S
E
A
L



B. Watkins

Notary Public for ~~Idaho~~ Wyoming
Residing at: Teton County
My commission expires: 10-7-2006