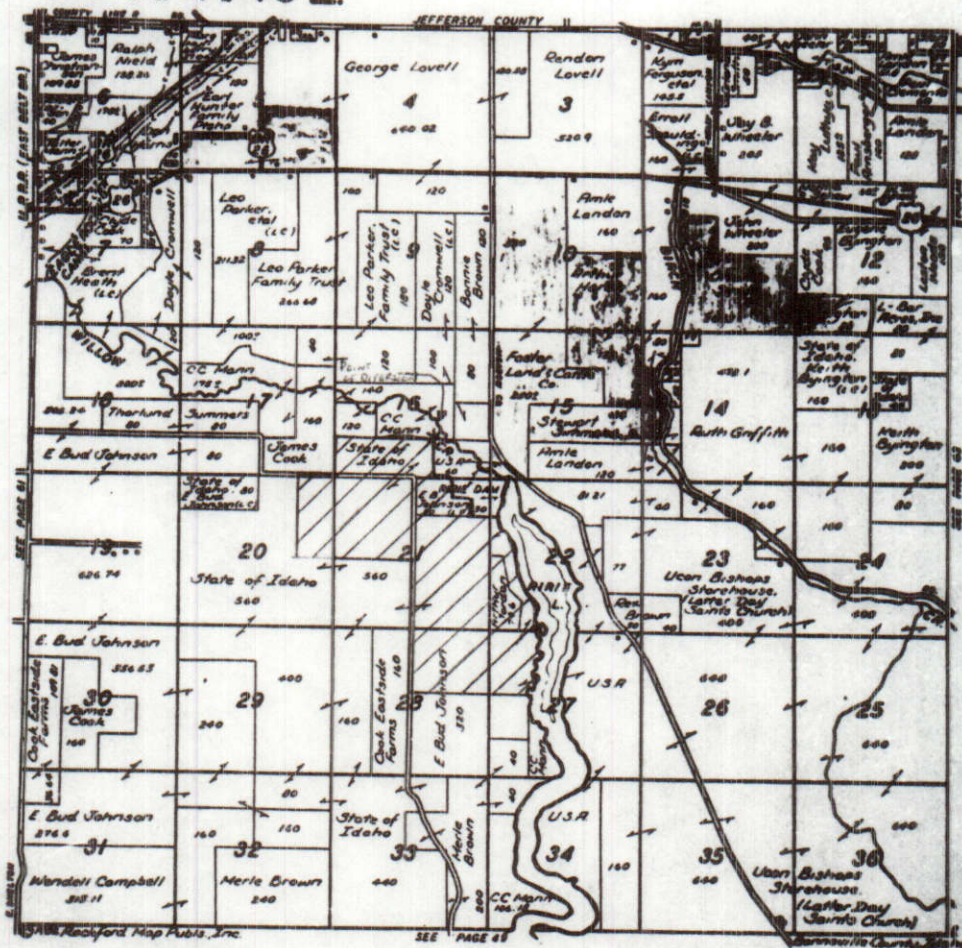
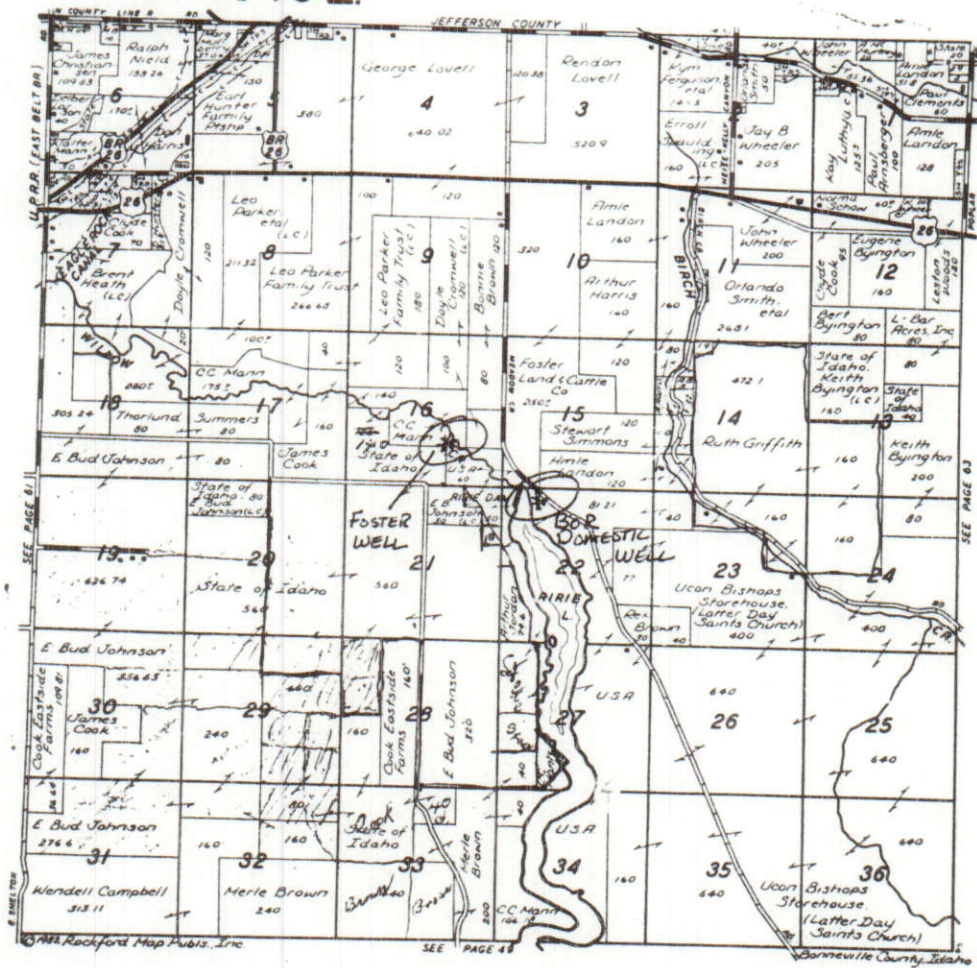


T.3 N-R40E.



T.3 N.-R.40 E.



BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE
STATE OF IDAHO

IN THE MATTER OF PERMIT NO. 25-07567	)	
	)	ORDER OF
IN THE NAME OF BOYD FOSTER	)	REINSTATEMENT
	)	

This matter having come before the Idaho Department of Water Resources (Department), the Department finds as follows:

FINDINGS OF FACT

1. On March 13, 1991, the Director of the Department of Water Resources issued Permit No. 25-07567 with a condition of approval that proof of construction of works and application of water to beneficial use be submitted on or before March 1, 1992.

2. On December 31, 1991, the Department sent a proof due notice to the permit holder.

3. On March 5, 1992, the Department sent a lapse notice to the permit holder.

4. On November 9, 1992, the permit holder submitted Proof of Beneficial Use to the Department.

5. Section 42-218a.2., Idaho Code, authorizes the Department to reinstate a lapsed permit, with the priority date advanced to the date that proof of beneficial use was received, upon submittal of evidence clearly establishing the extent of beneficial use prior to the proof due date and a showing of reasonable cause why the proof was submitted late.

6. The permit holder has submitted evidence to confirm that water has been put to beneficial use prior to the proof due date. Evidence includes two affidavits from separate parties attesting to the fact that water was diverted in May of 1991.

7. The permit holder stated, in correspondence to the Department, that he thought proof had already been filed on this permit. The permit holder owns several water rights and thought that he had filed proof of beneficial use on all of them. Until the Department brought it to his attention, he was unaware that the permit had lapsed.

MICROFILMED

DEC 08 1992

CONCLUSIONS OF LAW

1. The permit holder has submitted proof of beneficial use along with supporting evidence which establishes that water was in fact beneficially used as identified on the permit.

2. The permit holder has shown sufficient cause why the proof of beneficial use was not submitted in a timely manner.

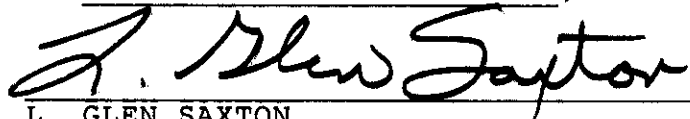
3. The permit can be reinstated with the date of priority advanced to the date proof of beneficial use was received by the Department.

ORDER

IT IS HEREBY ORDERED that Permit No. 25-07567 is REINSTATED.

IT IS FURTHER ORDERED that the date of priority of this permit is advanced to November 9, 1992.

Dated this 12th day of November, 1992.



L. GLEN SAXTON
Chief, Water Allocation Bureau

DEC 08 1992

State of Idaho
Department of Water Resources

Permit To Appropriate Water

NO. 25-07567

Proposed Priority: March 20, 1990 Maximum Diversion Rate: 9.50 CFS
This is to certify, that **BOYD FOSTER**

P.O. BOX 308
RIGBY, ID 83442

has applied for a permit to appropriate water from:

WILLOW CREEK tributary of **SNAKE RIVER**

and a permit is **APPROVED** for development of water as follows:

BENEFICIAL USE	PERIOD OF USE	RATE OF DIVERSION
IRRIGATION	06/01 to 09/01	9.50 CFS

LOCATION OF POINT(S) OF DIVERSION: SWSE Sec. 16, Township 03N, Range 40E
BONNEVILLE County

PLACE OF USE: IRRIGATION		ACRES	ACRES	ACRES	TOTAL
TWP	RGE SEC				
03N	40E 16	SWSW 40	SESW 40	SWSE 12	92
	20	NENE 40	SENE 40		80
	21	NENE 10	NNNE 8	SWNE 40	
		SENE 40	NENW 40	NNNW 40	
		SWNW 40	SENW 40	NESE 40	
		NWSE 40	SWSE 40	SESE 40	418
	22	NENW 40	SWNW 40		80
	27	NNNW 40			40
	28	NENE 40	NNNE 40		80

Total number of acres irrigated: 790

CONDITIONS/REMARKS:

1. Proof of construction of works and application of water to beneficial use shall be submitted on or before March 1, 1992.
2. Subject to all prior water rights.
3. A totalizing measuring device of a type approved by this Department shall be maintained as a part of the diverting works.
4. The right to the use of water acquired under this permit shall not give rise to any right or claim against the holder of a senior right based upon the theories of forfeiture, abandonment, adverse possession, waiver, equitable estoppel, estoppel by laches or customary preference.
5. The Director retains jurisdiction of the permit and any license subsequently issued to incorporate the use into a water district, require streamflow augmentation or other action needed to protect prior surface water and groundwater rights.

Permit To Appropriate Water

NO. 25-07567

6. The rate of diversion of water for irrigation under this permit and all other water rights on the same land shall not exceed 0.02 cubic feet per second for each acre of land.
7. Prior to diversion of water under this permit, the permit holder must obtain adequate supplemental water for the irrigation season when the natural flow is not available. Supplemental water may include leased storage water from the Upper Snake River Supply Bank but shall only be diverted when there is sufficient water available for release from Ririe Reservoir.
8. Diversion of water under this permit or diversion of supplemental water must not reduce flows of Willow Creek below 32 cfs from the point of diversion to the Johnson Road crossing of Willow Creek. Water diverted under this permit and any supplemental water acquired shall be subject to the control of the watermaster of State Water District 01, Snake River.
9. This permit, when combined with all other permits, rights and leased storage water, shall provide no more than 3.5 acre-feet per acre for the lands described under the permit.

This permit is issued pursuant to the provisions of Section 42-204, Idaho Code.
Witness the seal and signature of the Director, affixed at Boise, this

13TH day of MARCH, 1991.

for 
R. Keith Higginson, Director

25-7567

Ident. No. _____

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
APPLICATION FOR PERMIT

To appropriate the public waters of the State of Idaho

- 1 Name of applicant Noyd Foster Phone 745-7745
Post office address P.O. Box 512 Higby, Idaho 83442
- 2 Source of water supply Willow Creek which is a tributary of Snake River
- 3 Location of point of diversion is 1/4 of S4 1/4 of T1 1/4 Govt. Lot
Sec. 16 Township 3N Range 10E B.M. _____ County; additional
points of diversion if any _____
- 4 Water will be used for the following purposes:
Amount 2.5 for irrigation purposes from 7/1 to 9/1 (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)
- 5 Total quantity to be appropriated is (a) 1.5 and/or (b) _____
cubic feet per second acre-feet per annum
- 6 Proposed diverting works
a. Description of ditches, flumes, pumps, headgates, etc. 1,500 H.P. Turbine Pump
4 center pivot 3 band laterals

b. Height of storage _____ feet; active reservoir capacity _____ acre-feet; total
reservoir capacity _____ acre-feet; period of year when water will be diverted to storage:
_____ to _____ inclusive
c. Proposed well diameter is _____ inches; proposed depth of well is _____ feet.
d. Is ground water with a temperature of greater than 90°F being sought? _____
- 7 Time required for the completion of the works and application of the water to the 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. _____
- b. Stockwatering; list number and kind of livestock. _____
- c. Municipal; show name of municipality. _____
- d. Domestic; show number of households. _____
- e. Other; describe fully. _____

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	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	
3N	40E	16										40	40			12			92
		20	40			40													80
		21	10	8	40	40	40	40	40	40					40	40	40	40	418
		22					40		40										80
		27						40											40
		28	40	40															80

Total number of acres to be irrigated 790

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

11. a. Who owns the property at the point of diversion? Boyd Foster
- b. Who owns the land to be irrigated or place of use? Boyd Foster
- c. If the property is owned by a person other than the applicant, describe the arrangement enabling the applicant to make this filing. _____

12. Remarks: _____

[illegible]

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.

A. B. L.
(Amateur)

LB 3-20-90
Received by OW Date 3-14-90 Time 5:05P Preliminary check by _____
Fee \$ _____ Received by HWS # E012462 Date 3-21-90
Publication prepared by LB Date 6-21-90 Published in Mad Register
Publication approved LB Date 6-21-90

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. _____ and said application is hereby _____.

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 _____, 19 ____.
- c. The rate of diversion, if water is to be used for irrigation under this permit, when combined with all other water rights for the same land shall not exceed 0.02 cubic feet per second for each acre of land.
- d. The water right acquired under this permit if for hydropower purposes shall be junior and subordinate to all rights to the use of water, other than hydropower, within the State of Idaho that are initiated later in time than the priority of this permit and shall not give rise to any right or claim against any future rights to the use of water, other than hydropower, within the State of Idaho initiated later in time than the priority of this permit.
- e. Other:

**NOTICE OF APPLICATION
FOR WATER RIGHT**

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

25-07395
CHURCH OF JESUS CHRIST LATTER
DAY SAINTS
UCON IDAHO STAKE
P.O. BOX 38
UCON, ID 83454
Source: GROUNDWATER
Diversion Pt: SE1/4 Sec 15 T 63N R 30E
Use: IRRIGATION (.140 CFS)
DOMESTIC (.400 CFS)
Total Diversion: (.540 CFS)
Date Filed: 5/3/1994
In: T63N R30E S15 SE1/4
7.0 ACRES TOTAL

25-07366
MC MURTRY, JOSEPH R.
MC MURTRY, ANN MARIE
4286 N. 45 E.
IDAHO FALLS, ID 83401
Source: GROUNDWATER
Diversion Pt: SW1/4 Sec 1 T 62N R 30E
Use: DOMESTIC (.040 CFS)
Total Diversion: (.040 CFS)
Date Filed: 4/4/1990
In: T62N R30E S01 SW1/4
25-07367

FOSTER, BOYD
P.O. BOX 100
RIGBY, ID 83442
Source: WILLOW CREEK; Tributary:
SHAKE RIVER
Diversion Pt: SW1/4 Sec 16 T 63N R 40E
Use: IRRIGATION (9,500 CFS)
Total Diversion: (9,500 CFS)
Date Filed: 3/20/1990
In: T63N R40E S16 SW1/4 SE1/4 SW1/4
S20 NENE SENE
S21 NENE NW1/4 SW1/4 SENE NENE
NW1/4 SW1/4 SE1/4 NENE NW1/4
SW1/4 SENE
S22 NENE SW1/4
S27 NW1/4
S28 NENE NW1/4
790.0 ACRES TOTAL

35-08893
BRINKMANN, GEORGE
822 NEVADA ST.
RATHBUN, ID 83858
Source: GROUNDWATER
Diversion Pt: SE1/4 Sec 1 T 62N R 34E
Use: COMMERCIAL (.010 CFS)
DOMESTIC (.040 CFS)
Total Diversion: (.050 CFS)
Date Filed: 3/25/1990
In: T62N R34E S01 SE1/4

The permittee will be subject to all prior water rights. Permits may be submitted based on the criteria of Sec. 43-203A, Idaho Code and/or the new public interest criteria of Sec. 43-203C, Idaho Code. Permits must be filed with the Director, Dept. of Water Resources, 150 Shoup Ave., Suite 15, Idaho Falls, Idaho 83402 on or before JUNE 25, 1990.

R. Keith Higgins, Director
Published: June 7, 14, 1990

Proof of Publication
The Post-Register

State of Idaho. }
County of Bonneville } ss

I, Ted Delezene, first being duly sworn, depose and say: That I am the Foreman of The Post Company, a corporation of Idaho Falls, Bonneville County, Idaho, publishers of The Post-Register, a newspaper of general circulation, published daily, except Saturday, at Idaho Falls, Idaho; said Post-Register being a consolidation of the Idaho Falls Times, established in the year 1890, The Idaho Register, established in the year 1880 and the Idaho Falls Post, established in 1903, such consolidation being made on the 1st day of November, 1931, and each of said newspapers have been published continuously and uninterruptedly, prior to consolidation, for more than seventy-eight (78) weeks and said Post-Register having been published continuously and uninterruptedly from the date of such consolidation, up to and including the last publication of notice hereinafter referred to.

That the notice, of which a copy is hereto attached and made a part of this affidavit, was published in said Post-Register for 2 consecutive weeks, first publication having been made on the 7th day of June, 1990, last publication having been made on the 14th day of June, 1990, and that the said notice was published in the regular and entire issue of said paper on the respective dates of publication, and that such notice was published in the newspaper and not in a supplement.

Subscribed and sworn to before me, this

15th day of

June, 1990.

Cathy Van Bortel
Notary Public

My commission expires March 5, 1996

November 13, 1992

BOYD FOSTER
PO BOX 308
RIGBY ID 83442

PROOF ACKNOWLEDGMENT LETTER

RE: PERMIT NO. 25-07567

Dear Permit Holder:

The department acknowledges receipt of the proof of beneficial use form submitted for the above referenced permit. Enclosed is an order advancing the priority of the permit since the proof was received after the proof due date. The next step in the process of developing a water right is for the department to conduct a field examination to determine and confirm the use being made of the water.

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

Sincerely,

Karen L. Gustafson
Secretary/Records Manager

c: IDWR - Region

Enclosure

RECEIVED
NOV 16 1992

DEC 01 1992

NOV 09 1992

Department of Water Resources

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

PROOF OF BENEFICIAL USE

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

1. Permit No. 25-07567 Telephone No. 745-7745
2. Name(s) of Permit Holder(s): Boyd Foster
3. Mailing Address: P.O. Box 308 Rigby, Idaho 83442
4. Source of Water: WILLOW CREEK

If **GROUNDWATER**, Well Driller's Name: _____ Date Drilled: _____

OPTIONAL:

Pump horsepower: _____ Pressure (psi): _____ Dynamic pumping level (ft.): _____

5. Extent of Use (as authorized by the permit):

Domestic _____ (No. of households) Stockwater _____ (No. and type of stock)
Irrigation 790 (No. of acres) Other _____

6. Total rate and/or volume for which proof is submitted 9.5 cfs OR _____ acre/feet

7. Refer to the approval conditions on your permit and respond accordingly:

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

OR

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

8. Fee Enclosed: \$ _____ (See License Fee Schedule on back of Instruction Sheet)

9. Person to contact to accompany the Department representative during field examination of the water system.

Boyd Foster 745-6936 (HOME) 525-3510 (MOBILE)
Name Telephone No.

353 N. 4300 E. Rigby, Idaho 83442
Address

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

10/29/92
Date

Boyd Foster
Signature (and title, if on behalf of a company or organization)

DEC 08 1992

ANALYSIS SHEET
FOR
PROOF OF BENEFICIAL USE

Permit No. 25-07567

Reviewed by Rlg

Date 11/12/92

GENERAL CONSIDERATIONS

TYPES OF USE

yes Name same as permit?
yes Address same as permit?
no Proof timely received?
If not, complete calculation below.

irrigate - 790
yes Correct Uses?

SOURCE OF WATER

✓ Surface water source
Ground water source

NA Drilling permit required?
Copy in the file? Drilling Permit No. _____
Amount paid for permit _____ Correct?
Well log in the file?

LICENSE EXAMINATION FEE

yes Required?
325 Amount Submitted
yes Correct?

MEASURING DEVICE

yes Required?
yes Installed?
NA Waiver requested?

PRIORITY CALCULATION

Date proof received Received after permit
Date proof due had lapsed & been
No. of days late filed & destroyed
Priority Date Reinstated & advance priority
New Priority Date to date proof received

DEFICIENCIES OR ACTION ITEMS

proof acceptable

DATA ENTRY

New Address data entry completed 11/12/92

needs a late order
Proof Made 11/9/92
11/13/92 Rlg

Foster Agro, Inc.

392 FARNSWORTH WAY • P.O. Box 308 • RIGBY, IDAHO 83442-0308 • (208) 745-7745

RECEIVED

NOV 09 1992

Department of Water Resources

November 2, 1992

Harold L. Stephenson
State of Idaho
Department of Water Resources
Statehouse Mail
Boise, Idaho 83720-9900

Dear Harold:

It has been brought to my attention that I have failed to file a "Proof of Beneficial Use" for permit AGD-07567. It was not my intention that this happened and was unaware until today that this permit had not been completed. I have completed "Proof of Beneficial Use" forms for other permits and had thought that I was covered on this permit, too.

I met with Harold Jones of Water Resources in Idaho Falls and he told me what I needed to do to get this permit reinstated. I have enclosed in this letter two proofs that I have completed the construction of this water system and have put it to beneficial use. If more information is needed, please contact me.

Sincerely,

Boyd Foster
Boyd Foster

encl: 2

RECEIVED

DEC 08 1992

RECEIVED

NOV 09 1992

AFFIDAVIT OF ALAN SKAAR

Book 22260, Page 105

STATE OF IDAHO)
) ss.
COUNTY OF BONNEVILLE)

I, Alan Skaar, hereby attest that I am a citizen of the United States of America and also that I am over the age of twenty-one years;

I, Alan Skaar hereby attest that I am the Manager of Progressive Irrigation District and that Progressive Irrigation District has a Carrying Right Agreement with Brad Foster and Boyd Foster private individuals doing business as Foster Land & Cattle;

I, Alan Skaar hereby attest that the pumps on the Willow Creek owned by Foster Land & Cattle have been diverting water for beneficial use since May of 1991.

Dated this 3rd day of November, 1992.



Alan Skaar

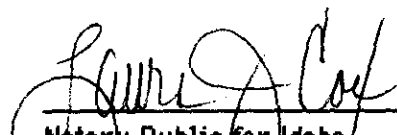
State Of Idaho)
) ss.
County of Bonneville)

On this 3rd day of November, 1992, before me, the undersigned, a Notary Public in and for said State, personally appeared Alan Skaar, 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 first above written.

NOTARY PUBLIC
IDaho

NOV 08 1992



Notary Public for Idaho
Residing at Idaho Falls, Idaho
Commission Expires: 7/14/94

I certify that file No. 25-7567

has been reviewed and is ready to be MICROFILMED
and DESTROYED.

Brenda Miller
Signature

5-30-92
Date

The attached proof report is the water right as it appeared in the database
prior to the final status and deletion from the database.

UN5000up
(00-26)

IDAH0 DEPARTMENT OF WATER RESOURCES
WATER RIGHT PROOF READING REPORT

05/30/92 13:27:50
Page 1

Water Right Number - 25-07567

Prefix Translation: WATER RIGHT

Old (D) Number -

+ - - - - Last Name - - - - + + - First Name - - + + - - - - - Address - - - - - +

*** U - CURRENT OWNER ***
FOSTER

BOYD

1 - P.O. BOX 308
2 -
3 -
City- RIGBY
Phone - 208-745-7745

State- ID Zip- 83442

+ - - Priority Date - - - + + - - Region - - - + + - - Stage - - - + + - - Status - - - +
03/20/1990 15 EASTERN P - PERMIT

+ - - - - Source - - - - - + + - - - - - Tributary - - - - - +
WILLOW CREEK SNAKE RIVER

+ - - - - Point of Diversion - - - - - +
Turn Rng Sec Tract Lot RFlg County Stream Index (Blank if no Index Code)

03N 40E 16 SW SE (19) BONNEVILLE

+ - - - - Water Use - - - - - +
Code Description Period From Period To Diversion Rate Diversion Volume
01 - IRRIGATION 06/01 09/01 9.500

+ - Total Div. Rate - + + - Total Div. Volume - + + - Total Div. Capacity - +
9.500

+ - - - - Place of Use - - - - - +
Turn Rng Sec Tract Lot Acres Code Description County

03N	40E	16	SW SW	40.0	01	IRRIGATION	(19) BONNEVILLE
03N	40E	16	SE SW	40.0	01	IRRIGATION	(19) BONNEVILLE
03N	40E	16	SW SE	12.0	01	IRRIGATION	(19) BONNEVILLE
03N	40E	20	NE NE	40.0	01	IRRIGATION	(19) BONNEVILLE
03N	40E	20	SE NE	40.0	01	IRRIGATION	(19) BONNEVILLE
03N	40E	21	NE NE	10.0	01	IRRIGATION	(19) BONNEVILLE
03N	40E	21	NW NE	8.0	01	IRRIGATION	(19) BONNEVILLE
03N	40E	21	SW NE	40.0	01	IRRIGATION	(19) BONNEVILLE
03N	40E	21	SE NE	40.0	01	IRRIGATION	(19) BONNEVILLE
03N	40E	21	NE NW	40.0	01	IRRIGATION	(19) BONNEVILLE
03N	40E	21	NW NW	40.0	01	IRRIGATION	(19) BONNEVILLE
03N	40E	21	SW NW	40.0	01	IRRIGATION	(19) BONNEVILLE
03N	40E	21	SE NW	40.0	01	IRRIGATION	(19) BONNEVILLE
03N	40E	21	NE SE	40.0	01	IRRIGATION	(19) BONNEVILLE
03N	40E	21	NW SE	40.0	01	IRRIGATION	(19) BONNEVILLE
03N	40E	21	SW SE	40.0	01	IRRIGATION	(19) BONNEVILLE
03N	40E	21	SE SE	40.0	01	IRRIGATION	(19) BONNEVILLE
03N	40E	22	NE NW	40.0	01	IRRIGATION	(19) BONNEVILLE
03N	40E	22	SW NW	40.0	01	IRRIGATION	(19) BONNEVILLE
03N	40E	27	NW NW	40.0	01	IRRIGATION	(19) BONNEVILLE
03N	40E	28	NE NE	40.0	01	IRRIGATION	(19) BONNEVILLE
03N	40E	28	NW NE	40.0	01	IRRIGATION	(19) BONNEVILLE

WRS800WP
(00-26)

IDAH0 DEPARTMENT OF WATER RESOURCES
WATER RIGHT PROOF READING REPORT

05/30/92 13:27:50
Page 2

Water right number - 25-07557

Prefix Translation: WATER RIGHT

Trn	Rng	Sec	Tract	Lot	Acres	Place of Use Code	Description	County
-----	-----	-----	-------	-----	-------	----------------------	-------------	--------

Total Acres: 790.0

- - - Diversion Means - TWO 200 HP PUMPS IN RIVER, PIPELINES TO PIVOTS

- - - Non-Irrigation Use -

- - - Other Rights for Same Use -

----- Remarks -----
Prior to diversion of water under this permit, the permit holder must obtain adequate supplemental water for the irrigation season when the natural flow is not available. Supplemental water may include leased storage water from the Upper Snake River Supply Bank but shall only be diverted when there is sufficient water available for release from Ririe Reservoir.
Diversion of water under this permit or diversion of supplemental water must not reduce flows of Willow Creek below 32 cfs from the point of diversion to the Johnson Road crossing of Willow Creek. Water diverted under this permit and any supplemental water acquired shall be subject to the control of the watermaster of State Water District 01, Snake River.
This permit, when combined with all other permits, rights and leased storage water, shall provide no more than 3.5 acre-feet per acre for the lands described under the permit.

----- Old Water Right Numbers -----
No Old Water Right Numbers found.

----- Conditions of Approval -----
R19 - A totalizing measuring device of a type approved by this Department shall be maintained as a part of the diverting works.
048 - The use of water under this right shall not give rise to any claim against the holder of a senior water right based upon the theories of forfeiture, abandonment, adverse possession, waiver, equitable estoppel, -stopper by laches or customary preference.
049 - The Director retains jurisdiction of the right and any license subsequently issued to incorporate the use into a water district, require streamflow augmentation or other action needed to protect prior surface water and groundwater rights.
05A - The rate of diversion of water for irrigation under this right and all other water rights on the same land shall not exceed 0.02 cubic feet per second for each acre of land.

- - - - Decree Plaintiff - - - -

- - - - Decree Defendant - - - -

- - Decree Date - -
00/00/0000

WR5808ha
(00-26)

INDIANA DEPARTMENT OF WATER RESOURCES
WATER RIGHT PROOF READING REPORT

05/30/92 13:27:50
Page 3

Water right number - 25-07567 Pref. Translation: WATER RIGHT

-----Comments-----
Date: 03/05/1992 User Id: VAULT Subject: Lapse Notice Sent
Lapse Notice Sent

--- Audit Fields --- 05/22/90 BODELL 06/28/90 WRAY 07/09/90 CURTIS 09/05/90 WRAY 03/08/91 SKAGGS
09/05/91 SKAGGS 03/12/91 SKAGGS 03/05/92 COMMENTS

-----Water Rights Dates and Flags Area-----
Proof Due Date - 03/02/1992 Field Exam Made - 00/00/0000 Field Exam Fee -
Approved/Denied - 03/13/1991 Protested Date - 00/00/0000 Swan Falls - 1
Proof Made Date - 00/00/0000 Hearing Date - 00/00/0000 Temporary Right - P
Exam to S.O. Date - 00/00/0000 Verified Date - 00/00/0000 DLE/Carey Act -
Order Show Cause - 00/00/0000 Receipt Number - E012462 Water District - 01
Licensed Date - 00/00/0000 Appl Received - 03/20/1990 Transfer/Assigned -
Decree Date - 00/00/0000 Presumption Flag -

BOYD FOSTER
P.O. BOX 308
RIGBY ID 83442

March 5, 1992

RE: PERMIT NO. 25-07567 LAPSE NOTICE

Dear Permit Holder:

You are hereby notified that under the provisions of Section 42-218A, Idaho Code, the above referenced permit has lapsed and is of no further force nor effect. The department provided the proper forms to you in our proof due notice dated December 31, 1991. No further construction or additional development is authorized under this permit unless it is reinstated.

The permit can only be reinstated if you submit an acceptable proof of beneficial use or an acceptable request for extension of time to the department within sixty (60) days of the mailing of this lapse notice. An acceptable proof of beneficial use submittal must include the examination fee or a completed field examination report. A request for extension of time must be accompanied by a fifteen dollar (\$15) fee.

Enclosed again for your use are a proof of beneficial use form and a request for extension of time form. Please note that only one extension of time can be granted unless the project has not been completed because of lack of a necessary approval by a government agency or by litigation which may bring title to the water in question.

L. GLEN SAXTON
Chief, Water Allocation Bureau

LGS:rf

Enclosures

CERTIFICATION OF MAILING

I hereby certify that on 3/5/92
a copy of this document was
deposited in the United States mail,
postage prepaid addressed to the
individual(s) named above.

[Signature]

138371
December 31, 1991

BOYD FOSTER
P.O. BOX 308
RIGBY ID 83442

RE: PERMIT NO. 25-07567 PROOF DUE NOTICE

Dear Permit Holder:

One of the conditions of approval of the above referenced water permit was that proof of the extent of your beneficial use must be submitted to this office on or before March 1, 1992. (See last page of your approved permit or your last approved extension request.) Enclosed is a form which when accompanied by the license examination fee or a complete field examination report prepared by a certified water right examiner may be used to submit the required proof.

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

Either an acceptable proof of beneficial use submittal or an acceptable request for an extension of time must be received by this department on or before the above described proof due date. If neither is received, the department will send you a lapse notice. Within sixty (60) days of the mailing of the lapse notice, the permit will no longer be of any force nor effect.

SINCERELY,

Karen L. Gustafson
Secretary/Records Manager

Enclosures



State of Idaho
DEPARTMENT OF WATER RESOURCES

1301 North Orchard Street, Statehouse Mail, Boise, Idaho 83720-9000
Phone: (208) 327-7900 FAX: (208) 327-7866

CECIL D. ANDRUS
GOVERNOR

R. KEITH HIGGINSON
DIRECTOR

March 13, 1991

Boyd Fuster
P.O. Box 308
Rigby, ID 83442

PERMIT APPROVAL NOTICE

RE: PERMIT NO. 25-07567

Dear Permit Holder:

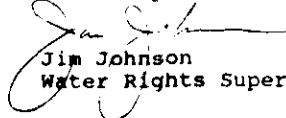
Enclosed is a copy of your approved application for permit. We direct your attention to the conditions of approval on the final page.

Condition no. 7 on the permit requires you to obtain adequate supplemental water for the irrigation season when the natural flow of water is not available. You should be aware that your 3200 acre-feet Upper Snake River storage water lease agreement covers certain lands which are not included on this approved permit. **Due to the conditions of your lease agreement, you are prohibited from using the leased storage water on lands other than those described under permit no. 25-7567.** You should file a second application on Willow Creek and obtain an approved permit to cover the additional lands under the lease agreement which are not identified on permit no. 25-7567. This second application should be approved prior to using the storage water on the additional lands.

Also enclosed is a form entitled "Instructions for Proof of Beneficial Use". Please read the instructions carefully since you must take further action to develop this permit. Also enclosed is a form entitled "Proof of Beneficial Use". If your project is already completed you should complete and submit this form immediately.

Be sure to note the special condition requiring you to install a measuring device and lockable controlling works that will enable the watermaster to control the rate of diversion.

Sincerely,


Jim Johnson
Water Rights Supervisor

NOTE: AN ORIGINAL COPY OF THIS PERMIT WAS SENT TO SENATOR MICHAEL D. CRAPO.

APPLICATION FOR PERMIT REVIEW

Application #: 25-7567
Date: 3-8-91

Reviewer: Pam Skaggs

Existing:

No - 26A-P17
Complete in 1 year - P16

Yes
Proof not submitted - P16
Proof submitted - N/A

Groundwater:
GT. 0.7 cfs - 01G-P03, 01C-P03(existing well)
LT. 0.7 cfs - N/A

Drilling Permit:
Approved w/permit - P99
Not included - 046-P23(All GW, even existing wells)

Location:

Water Districts - WD No. C1
Surface water - 005, 005-01H-P01(LT.7 w/pump)
Groundwater - 005-01H-P01(GT.7)
Irrigation Districts - P05
Canal Co. Areas - 023
Drainage Districts - 023
Boise Front (63) - 024
Svan Falls Flag - 058 (Groundwater)
Trust - (1 or Blank)
Non Trust - 051-052-053-P74(Cons.), 041(DCMI, w/Irr or Irr & Dom)
048-049

River Basins:

(Surface Water) Water District Control Condition &....
Boise (63) - 11D-P72
Payette (65) - 047-P04, 059-P71
Snake (01, 02 & 03) - 11A-P04(01), 061-P07(02/03 No W.D.Cond.)

Use:

Fish Propagation - 002-P06, 06A, 007, 09E-P10, 010, 042, 044
Power - Use Power Review
Mining - 06A, 006, 010, 09E-P10 & 054(req.)
Storage - 18A-for multiple measuring devices(In WD), 18B-P09(Size)
Rec. & Aesthetic - 027(Non-Consumptive)
Domestic - 021(restricted areas)

Ownership:

Non land owner - 004

Protested:

Agreement - 020

Minimum Stream Flow:

Overlapping uses - 029-P20

Beneficial Use Due Date: - C3-C2-1992

Other Conditions Recommended

In Tom Laker letter of 1-31-91.
Use R19 instead of C15 for Tom L.
3-13-91



**State of Idaho
DEPARTMENT OF WATER RESOURCES**

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

CECIL D. ANDRUS

GOVERNOR

R. KEITH HIGGINSON

DIRECTOR

January 31, 1991

Michael D. Crapo
Holden, Kidwell, Hahn & Crapo
P.O. Box 50130
Idaho Falls, ID 83405

RE: Application for Permit No. 25-7567 in the name of Boyd Foster

Dear Mr. Crapo:

The above application filed by Mr. Foster has not yet been approved but is presently being reviewed here at the state office. You will recall that the Idaho Fish and Game Department protested this application with particular concerns about Willow Creek flows and use of storage water from Ririe Reservoir. Game and Fish later proposed to withdraw the protest subject to certain conditions stated in Herb Pollard's letter dated July 24, 1990. On August 10, 1990, you sent correspondence to Ron Carlson at our regional office which sought some clarification to the Game and Fish conditions. I believe Ron may have discussed this matter with you although there is no documentation in the file.

I became involved with this application after it was forwarded to the state office. Due to the amount of the proposed diversion and the large number of acres to be irrigated, the applicant was asked to submit additional information required under Water Appropriation Rule 4,5,3. This information has been received and appears to be complete. We are now in a position to proceed with issuing the permit.

Since the time this application was filed, Boyd and Brad Foster also applied to the Idaho Water Resource Board for a 20 year rental of 3,200 acre-feet of storage water per year from the Upper Snake River Supply Bank. The Board approved this lease earlier this month contingent, upon other things, that the use of water under the lease agreement not be inconsistent with any conditions of approval of application for permit 25-7567.

Since there may still be some misunderstanding about the stipulations agreed upon between your client and Game and Fish, I think it is appropriate at this time to allow you the opportunity to review the proposed conditions of approval of application for

permit no. 22-7567. We propose the following conditions:

1. Prior to diversion of water under this permit, the permit holder must obtain adequate supplemental water for the irrigation season when the natural flow is not available. Supplemental water may include leased storage water from the Upper Snake River Supply Bank but shall only be diverted when there is sufficient water available for release from Ririe Reservoir.

2. Diversion of water under this permit or diversion of supplemental water must not reduce flows of Willow Creek below 32 cfs from the point of diversion to the Johnson Road crossing of Willow Creek.

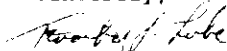
3. Water diverted under this permit and any supplemental water acquired shall be subject to the control of the watermaster of State Water District 01, Snake River.

4. A totalizing measuring device of a type approved by this Department shall be maintained as a part of the diverting works.

5. This permit, when combined with all other permits, rights and leased storage water, shall provide no more than 3.5 acre-feet per acre for the lands described under the permit.

If these conditions are not consistent with agreements reached between your client and Game and Fish, or if you have comments or questions concerning these conditions, please contact me or Ron Carlson at your earliest convenience.

Sincerely,



Tim Luke

Sr. Water Resource Spec.

cc: Boyd Foster
Ron Carlson
Herb Pollard/IFGD Region 6

LAW OFFICES
HOLDEN, KIDWELL, HAHN & CRAPO

FRED J. HAHN
KENT W. FOSTER
ROBERT E. FARNHAM
WILLIAM D. FALER
STEPHEN E. MARTIN
CHARLES A. HOMER
GARY L. MEKLE
MICHAEL D. CRAPO
DAVID A. SORENSON
DONALD L. HARRIS
RANDALL B. REED
MARIE T. FEELEY
JOHN G. SIMMONS
ROBERT M. FOLLETT

WEST ONE BANK BUILDING
P.O. BOX 50130
IDAHO FALLS, IDAHO 83405

TELEPHONE (208) 523-0820
TELEFAX (208) 523-9518

ARTHUR W. HOLDEN (1877-1987)
ROBERT B. HOLDEN (1911-1971)
TERRY L. CRAPO (1929-1982)
WILLIAM S. HOLDEN (1907-1988)

February 20, 1991

Mr. Tim Luke
Department of Water Resources
1301 North Orchard Street
Statehouse Mail
Boise, Idaho 83720

RECEIVED
FEB 22 1991
Department of Water Resources

Re: Application for Permit No. 25-7567 in the name of
Boyd Foster

Dear Mr. Luke:

This letter is in response to your letter of January 31, 1991. This will also confirm that I have spoken directly with Mr. Norm Young and with you concerning the conditions proposed in your letter. Mr. Foster has no objection to the conditions you have proposed, but I wanted to be sure that the following clarifications were made in writing so that there is no misunderstanding:

1. The condition that water will be diverted only when there is sufficient water available for release from Ririe Reservoir is understood to mean only that water must be physically available in the Reservoir for release. It is my understanding that there is no restriction on allocation of water leased between the various reservoirs or storage facilities in the Water Bank. For example, it is our intention that the lease from the Water Bank will designate that the actual water leased will be from the American Falls Reservoir or some other storage facility. Nothing in the permit will prohibit that kind of allocation and the condition would apply simply to the physical presence of water in the Ririe Reservoir.

2. The minimum flow condition of 32 cfs from the point of diversion to the Johnson Road crossing of Willow Creek is acceptable provided that it is understood that this minimum

Mr. Tim Luke
Page Two
February 20, 1991

stream flow is not an existing legal obligation and is not necessarily in full force throughout the entire year. It is an arrangement between the Bureau and the Department of Fish and Game. We are willing to agree to honor the existing arrangement but do not feel that this permit condition should expand it.

If these clarifications are acceptable, we ask that you immediately issue the permit. Also, we would like to discuss with you any final action that might be necessary to complete the documentation of the Water Bank lease that has been approved by the Idaho Board of Water Resources.

Thank you for your prompt assistance on this matter.

Very truly yours,

Michael D. Crapo
Michael D. Crapo *by us*

MDC:as
#5388.00
3907h

cc: Mr. Brad Foster
Mr. Boyd Foster

EXHIBIT "A"

TOWNSHIP 3 NORTH, RANGE 40 EAST, BOISE MERIDIAN

SECTION 16:

The W1/2SW1/4, the SE1/4SW1/4, the W1/2SW1/4SE1/4.

SECTION 20:

The E1/2 of Section 20, Township 3 North, Range 40 East, Boise Meridian, containing 320.0 acres, more or less. Subject to State of Idaho Oil and Gas Lease and to State of Idaho Geothermal Lease No. H-3009-20-79. Also subject to a road right of way reservation of Idaho and/or its assigns for the existing road that parallels the North line of said E1/2 of Section 20, and a road right of way over the westerly 30 feet of said E1/2 of Section 20. Right of way for the existing road shall be 60 feet in width, being 30 feet on each side of the centerline as the road now exists.

SECTION 21:

The W1/2 of Section 21, Township 3 North, Range 40 East, Boise Meridian, containing 320.0 acres, more or less. Subject to State of Idaho Oil and Gas Lease and to State of Idaho Geothermal Lease No. H-3009-21-79. Also subject to a road right of way reservation to the State of Idaho and/or its assigns for the existing road along the North and East sides of the W1/2 of Section 21, said right of way to be 60 feet in width, being 30 feet on each side of the centerline as the road now exists:

The W1/2NE1/4 less the N1/2NE1/4NE1/4 and the SE1/4NE1/4NE1/4;

The SW1/4NE1/4, the SE1/4NE1/4, less the NE1/4SE1/4NE1/4, and the SE1/4 of Section 21, Township 3 North, Range 40 East, Boise Meridian. Subject to State of Idaho Easement No. 664 for a road.

SECTION 27:

SW1/4SW1/4 of Section 27, Township 3 North, Range 40 E.B.M.

ALSO: That portion of the E1/2SW1/4 of Section 27, Township 3 North, Range 40 E.B.M., lying West of the Ricie Reservoir.

The W1/2NW1/4 and the NW1/4SW1/4 of Section 27, Township 3 North, Range 40 E.B.M. EXCEPTING THEREFROM:

That certain tract of land previously conveyed by State of Idaho Deed 10437, said tract lying easterly of the following described line: "Commencing at a point on the Mercator Idaho Grid System East Zone, the y coordinate being North 601,210.00 feet, and the x coordinate being East 612,905.00 feet (said coordinate point lying approximately North 19°09' East, a distance of 3.175 feet from the Southwest corner of said Section 27); thence South 27°03'29" East, to a point on the East line of the W1/2W1/2 of said Section 27, and the TRUE POINT OF BEGINNING; thence North 27°03'29" West to the point of commencing; thence North 10°22'37" East, to a point on the East line of the W1/2W1/2 of said Section 27, and the point of terminus of the above described line." The excepted area contains 8.03 acres, more or less, and the tract to be conveyed herein contains 111.97 acres, more or less. Subject to State of Idaho Oil and Gas Leases.

SECTION 28 and 29:

The E1/2 of Section 28, Township 3 North, Range 40 East of the Boise Meridian;

The W1/2NW1/4 of Section 28; and the N1/2NE1/4 of Section 29, Township 3 North, Range 40 East, Boise Meridian, containing 240.0 acres, more or less. Subject to State of Idaho Oil and Gas Leases and also subject to State of Idaho Geothermal Lease No. H-3009-29-79.

SUBJECT to all existing easements or claims of easements, patent reservations, rights of way, protective covenants, zoning ordinances and applicable building codes, laws and regulations, encroachments, overlaps, boundary line disputes and other matters which would be disclosed by an accurate survey or inspection of the premises.

LEASE AGREEMENT

THIS LEASE AGREEMENT is made and entered into by and between THE IDAHO WATER RESOURCE BOARD, ACTING THROUGH ITS DULY APPOINTED LOCAL COMMITTEE, THE COMMITTEE OF NINE, whose mailing address is 150 Shoup Avenue #15, Idaho Falls, Idaho, 83402, hereinafter referred to as "Lessor", and BRAD FOSTER, an individual, and BOYD FOSTER, an individual, whose mailing address is P. O. Box 308, Rigby, Idaho, 83342, hereinafter referred to collectively as "Lessee".

In consideration of the mutual covenants, conditions and agreements contained herein, and the payment of the rent herein specified, IT IS HEREBY AGREED AS FOLLOWS:

1. AMOUNT OF STORAGE WATER OR WATER RIGHTS LEASED.

Lessor hereby leases to Lessee and Lessee does hereby lease from Lessor three thousand two hundred (3,200) acre feet of stored water (referred to hereinafter as the "Water") for the term and under the conditions specified herein. Lessor hereby agrees to deliver the Water at the point of diversion identified in this Lease Agreement according to the terms, conditions and rules which govern the delivery of water by the Upper Snake Water Supply Bank (hereinafter referred to as the "Water Supply Bank").

2. LEASE PRICE.

The lease price shall be the established base price for water available from the Water Supply Bank generally for agricultural irrigation use as set by the rental pool committee and approved by the Committee of Nine each year. At the date of the execution of this Lease, the parties acknowledge that the base price is Two and 75/100ths Dollars (\$2.75) per acre foot diverted (including administrative charges). Payment shall be due from Lessee to Lessor annually thirty (30) days after receipt of a billing from Lessor.

3. NATURE OF USE/POINT OF DIVERSION/PLACE OF USE.

The nature of use of the Water leased herein shall be for agricultural irrigation purposes. The point of diversion and the place of use shall be at any location specified by the legal description in Exhibit "A" which is attached hereto and incorporated herein by reference.

*By _____, Secretary of the Board
Dated: _____, 2001*

4. TERM OF LEASE.

The term of this lease shall be for a period of twenty (20) years from the effective date hereof, subject to any applicable limitations or restrictions imposed by law and subject to the continuing reappointment of the Committee of Nine as the Local Operating Committee during the term of this Lease.

5. ACKNOWLEDGMENT OF CONTINGENCY AND INDEMNIFICATION BY LESSEE.

Lessee hereby acknowledges that this long-term Lease has been negotiated based on anticipated future annual space or water assignments to the Water Supply Bank or from specific long-term space assignments, or a combination of the two. Lessee further acknowledges that Lessor cannot guarantee the amount of future annual space/water assignments to the Water Supply Bank or that reservoir space will always fill during the term of this Lease. This Lease is contingent upon future annual space/water assignments and filling of reservoir space during its term. Lessee hereby agrees to indemnify and hold harmless Lessor from any and all damages which may be caused to Lessee by the inability of Lessor to provide water to Lessee as a result of inadequate space/water assignments to the Water Supply Bank or the failure of the applicable reservoir space to fill at any time during the term of this Lease.

6. INCORPORATION OF APPLICABLE LAW.

This Lease shall be subject to all applicable provisions of Idaho law, rules and regulations of the Idaho Department of Water Resources, and existing resolutions of the water users of Water District 01. Lessor and Lessee shall be subject to all duties and obligations and shall be entitled to all benefits and protection provided by applicable Idaho law, rules and regulations of the Department of Water Resources, and existing resolutions of Water District 01.

7. IDENTIFICATION OF WATER LEASED.

To the extent available from existing space/water assignments, the Water leased hereunder shall be supplied from space allocated to the following reservoirs in the order listed:

- a. American Falls Reservoir;
- b. Jackson Reservoir;
- c. Palisades Reservoir; and
- d. Ririe Reservoir.

8. SUBSTITUTION OF REQUIREMENTS OF IDAHO CODE §42-222.

The approval of this Lease shall constitute a substitute for the requirements of §42-222, Idaho Code, as authorized in Idaho Code §42-1763 and Idaho Code §42-1764.

9. WARRANTIES BY LESSOR.

Lessor warrants to Lessee that:

a. The Committee of Nine has been appointed by the Idaho Water Resource Board pursuant to §42-1765, Idaho Code as the Local Committee to facilitate the rental of stored water in the Water Supply Bank;

b. For the purpose of acting on behalf of the Committee of Nine in leasing stored water within Water District 01, the Water Master of District 01 has been made a special member of the Committee of Nine and is in all respects authorized to execute this Lease on behalf of the Committee of Nine;

c. All approvals of any government agency, government entity or other governmental or private party which may be necessary as a condition of this Lease Agreement have been obtained;

e. All required committee action necessary to authorize the execution of this Lease Agreement has been properly completed; and

f. The execution and performance of this Lease Agreement by Lessor will not violate any law, regulation or resolution governing the Water Supply Bank.

10. GENERAL PROVISIONS.

a. Lessee may not assign or sublet this Lease Agreement without Lessor's written consent. Any assignment, transfer or subletting without the prior written consent of Lessor whether it be voluntary or involuntary, by operation of law or otherwise, shall be void and shall, at the option of Lessor, terminate this Lease Agreement.

b. Nothing contained in this Lease Agreement shall be deemed to create a partnership, joint venture or employment relationship between Lessor and Lessee. Neither Lessor nor Lessee shall be liable, except as otherwise expressly provided in this Lease, for any obligations or liabilities incurred by the other.

c. This Lease shall be governed, construed, interpreted and enforced in accordance with the laws of the State of Idaho.

d. The failure of either party to comply with the terms of the Lease will obligate that party to pay all the expenses, including but not limited to, a reasonable attorney fee, incurred by the other party because of the failure.

e. This Lease Agreement shall inure to the benefit and bind the heirs, executors, administrators, personal representatives, assignees or successors in interest of the parties hereto.

f. There are no verbal promises, implied promises, agreements, stipulations, representations or warranties of any character excepting those set forth in writing in this Lease Agreement. This Lease Agreement may not be amended or modified except by an agreement in writing signed by the parties hereto.

g. The waiver or failure by either party to insist on strict performance of any covenant or provision of this Lease Agreement shall be limited to that particular instance and shall not be deemed to waive any other breach of that provision or any other provision hereof.

h. If any provisions of this Lease shall be declared invalid or unenforceable, the remainder of this Lease shall continue in full force and effect.

IN WITNESS WHEREOF, the parties have caused their names to be subscribed as of the dates set forth below.

THE IDAHO WATER RESOURCE BOARD,
ACTING THROUGH ITS APPOINTED
LOCAL COMMITTEE, THE COMMITTEE OF
NINE

DATED: Nov. 19, 1990

By: 

Ronald D. Carlson, Watermaster
of Water District 01, Special
Member of the Committee of Nine
and Manager of the Water Supply
Bank

LESSOR

01-15-1991 13:12

20557 7515

HOLDEN KIDWELL

P.08

DATED: Nov. 19 / 1990

Boyd Foster
Boyd Foster

DATED: Nov. 19 1990

Boyd Foster
Boyd Foster

LESSEE

STATE OF IDAHO)
) ss.
County of Bonneville)

On the 19th day of November, in the year of 1990, before me, the undersigned, a Notary Public, in and for the State of Idaho, personally appeared RONALD D. CARLSON, known or identified to me to be a Special Member of the Committee of Nine, the corporation that executed the instrument or the person who executed the instrument on behalf of said corporation, and acknowledged to me that such corporation 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 above written.

(seal)

Michael D. Ogden
Notary Public for Idaho
Residing at Idaho Falls, Idaho
My Commission Expires: 6-22-92

5 - LEASE AGREEMENT

EXHIBIT "1"

BEFORE THE WATER RESOURCE BOARD

OF THE STATE OF IDAHO

IN THE MATTER OF APPROVAL OF)
A LONG-TERM RENTAL OF STORAGE)
WATER FROM THE UPPER SNAKE)
RIVER RENTAL POOL FOR USE BY) RESOLUTION
BRAD FOSTER AND BOYD FOSTER)
_____)

WHEREAS, Sections 42-1761 through 42-1766, Idaho Code, authorize the Idaho Water Resource Board to operate the Water Supply Bank; and,

WHEREAS, Section 42-1765, Idaho Code, authorizes the Board to appoint local committees to facilitate the rental of stored water under rules and regulations adopted by the Board; and,

WHEREAS, in the Upper Snake River Basin, the advisory committee for Water District 01, known as the Committee of Nine, serves as the Local Committee to facilitate the rental of stored water; and,

WHEREAS, the current Water Supply Bank Rules and Regulations of the Board limit the term of a rental of stored water by a local committee to a maximum of five years; and,

WHEREAS, no statutory provision or rule limits the authority of the Board to approve the rental of stored water for a longer term of years on a case-by-case basis; and,

WHEREAS, Brad Foster and Boyd Foster have applied to the Committee of Nine for a 20-year rental of 3,200 acre feet of storage water per year from the Upper Snake River Rental Pool with delivery commencing in 1991; and,

WHEREAS, on November 19, 1990 Ron Carlson, Watermaster for Water District 01 on behalf of the Committee of Nine approved the requested rental of water by Brad Foster and Boyd Foster subject to approval of the 20-year term by the Idaho Water Resource Board; and,

WHEREAS, Sections 42-1763 and 42-1765, Idaho Code, require that the Director of the Department of Water Resources must approve the terms and conditions of any rental of water from the water supply bank;

NOW THEREFORE BE IT RESOLVED, that the Idaho Water Resource Board, hereby approves the lease agreement entered into by the Committee of Nine, serving as the Local Committee for the Water Supply Bank in the Upper Snake River Basin, with Brad Foster and

RESOLUTION - Page 1

ATTACHMENT NO. 2 MEETING 1-91
IDAHO WATER RESOURCE BOARD
1-17-91

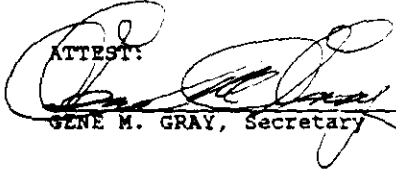
Boyd Foster dated November 19, 1990 for the rental of stored water for a maximum term of twenty (20) years, provided that the following items are included among the provisions of the lease agreement:

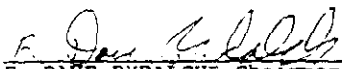
1. Provision providing that the rental of water shall not constitute a dedication of water to the lands of the renter;
2. Provision addressing the annual priority for the use of water from the bank under the rental agreement including the provision number five of the November 19, 1990 Lease Agreement referred to above and which terms thereof shall not be changed or modified without prior approval of the Board;
3. Provision providing for periodic review and adjustment of the rental rate;
4. Provision addressing the authorized place of use of water under the rental agreement;
5. Provision providing for compliance with the requirements of the Reclamation Reform Act of 1982;
6. Provision providing that the use of water pursuant to the lease agreement will not be inconsistent with the conditions of approval of application for permit to appropriate the waters of Willow Creek #25-07567 and that the lease agreement is not effective until application for permit #25-07567 is approved by the Director.
7. Provision providing that the agreement shall not become finally effective until approved by the Director of the Idaho Department of Water Resources, to insure compliance with the requirements of Section 42-1763, Idaho Code, and the provisions of this resolution.

BE IT FURTHER RESOLVED, that the approval of the lease agreement by the Board shall not be deemed a precedent for the approval of additional long-term rentals of water by the Board.

PASSED AND APPROVED This 17th day of January, 1991.

ATTEST:


GENE M. GRAY, Secretary


F. DAVE RYDALCH, Chairman

RESOLUTION - Page 2

ATTACHMENT NO. 2 MEETING 1-91
IDAHO WATER RESOURCES BOARD
1-17-91

**ADDENDUM TO
LEASE AGREEMENT**

THIS ADDENDUM TO LEASE AGREEMENT, entered into by and between THE IDAHO WATER RESOURCE BOARD, acting through its duly appointed LOCAL COMMITTEE, the Committee of Nine functioning as the advisory committee for State Water District 01, whose mailing address is 150 Shoup Avenue #15, Idaho Falls, Idaho, 83402, hereinafter referred to as the "Local Committee" and BRAD FOSTER, an individual, and BOYD FOSTER, an individual, whose mailing address is P.O. Box 308, Rigby Idaho, 83342, hereinafter referred to collectively as "Lessee", is made in reference to the following facts:

RECITALS

A. The parties entered into a Lease Agreement on November 19, 1990, for the rental of water by Lessee from the Upper Snake River Rental Pool for a 20-year term subject to approval by the Idaho Water Resource Board.

B. The Idaho Water Resource Board by Resolution passed on January 17, 1991, approved the November 19, 1990 Lease Agreement, provided that it be modified as necessary to include seven specific provisions listed in the Resolution. A copy of the Resolution is attached hereto as Exhibit "1" and is incorporated herein by reference.

C. The parties desire to make modifications to the Lease Agreement of November 19, 1990, as necessary to satisfy conditions of approval Nos. 1, 2, 5, 6 and 7 contained in the Resolution of the Board. Conditions of approval Nos. 3 and 4 are already addressed by existing provisions of the Lease Agreement.

IN CONSIDERATION OF THE PROMISES STATED, THE PARTIES AGREE THAT THE LEASE AGREEMENT OF NOVEMBER 19, 1990, ENTERED INTO BY AND BETWEEN THE PARTIES IS AMENDED BY THE ADDITION OF THE FOLLOWING TERMS AND CONDITIONS:

1. The following provisions are added as additional General Provisions i, j, k, l, and m to Paragraph 10 on pages 3 and 4 of the Lease Agreement:

- i. The rental of water under the Lease Agreement shall not constitute a dedication of water to the lands of the renter.

- j. The annual priority for receiving Water from the Water Supply Bank under the Lease Agreement shall be governed by the applicable provisions of the approved procedures of the Local Committee as they currently exist or are modified in the future upon approval of the Idaho Water Resource Board.
- k. Lessee shall be subject to the acreage limitation provisions of the Federal Reclamation Reform Act of 1982 with respect to Water acquired from a reservoir with remaining federal repayment contracts and shall be responsible for compliance with any applicable reporting requirements.
- l. The use of water pursuant to the Lease Agreement shall not be inconsistent with the conditions of approval of application for permit to appropriate the waters of Willow Creek No. 25-07567 and the Lease Agreement shall not be effective until application for permit No. 25-07567 is approved by the Director.
- m. The Lease Agreement shall not become finally effective until approved by the Director of the Idaho Department of Water Resources, to insure compliance with the requirements of Section 42-1763, Idaho Code.
2. All other provisions of the Lease Agreement shall remain in full force and effect.
3. This Addendum to Lease Agreement is executed in duplicate. Each of the two documents with an original signature of each party shall be an original.

IN WITNESS WHEREOF, the parties have cause their names to be subscribed as of the dates set forth below.

THE COMMITTEE OF NINE IN ITS CAPACITY
AS THE LOCAL COMMITTEE FOR THE IDAHO
WATER RESOURCE BOARD WATER SUPPLY
BANK

DATED: _____

By: _____
Ronald D. Carlson, Watermaster
of Water District 01, Special
Member of the Committee of Nine
and Manager of the Upper Snake
Rental Pool

LESSOR

DATED: _____ By: _____
Brad Foster

DATED: _____ By: _____
Boyd Foster

IDAHO DEPARTMENT OF WATER RESOURCES
APPROVAL AS TO COMPLIANCE WITH IDAHO
CODE § 42-1763

DATED: _____ By: _____
R. Keith Higginson, Director

STATE OF IDAHO)
County of Bonneville) ss.

On the _____ day of March, in the year of 1991, before me, the undersigned, a Notary Public, in and for the State of Idaho, personally appeared RONALD D. CARLSON, known or identified to me to be the Watermaster of Water District C1 and a Special Member of the Committee of Nine, the entity that executed the instrument or the person who executed the instrument on behalf of said entity, and acknowledged to me that such entity 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 above written.

Notary Public for Idaho
Residing at Idaho Falls, Idaho
My Commission Expires: _____

STATE OF IDAHO)
) ss.
County of Bonneville)

On the _____ day of March, in the year of 1991, before me, the undersigned, a Notary Public, in and for the State of Idaho, personally appeared BRAD FOSTER and BOYD FOSTER, known or identified to me to be the persons whose names are subscribed to the within instrument and acknowledged to me that they 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 above written.

Notary Public for Idaho
Residing at Idaho Falls, Idaho
My Commission Expires: _____

STATE OF IDAHO)
) ss.
County of Ada)

On the _____ day of March, in the year of 1991, before me, the undersigned, a Notary Public, in and for the State of Idaho, personally appeared R. KEITH HIGGINSON known or identified to me to be the Director of the Idaho Department of Water Resources, the entity that executed the instrument, and acknowledged to me that the Idaho Department of Water Resources 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 above written.

Notary Public for Idaho
Residing at Boise, Idaho
My Commission Expires: _____

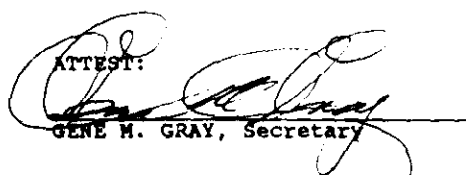
Boyd Foster dated November 19, 1990 for the rental of stored water for a maximum term of twenty (20) years, provided that the following items are included among the provisions of the lease agreement:

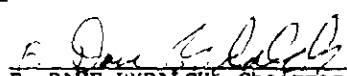
1. Provision providing that the rental of water shall not constitute a dedication of water to the lands of the renter;
2. Provision addressing the annual priority for the use of water from the bank under the rental agreement including the provision number five of the November 19, 1990 Lease Agreement referred to above and which terms thereof shall not be changed or modified without prior approval of the Board;
3. Provision providing for periodic review and adjustment of the rental rate;
4. Provision addressing the authorized place of use of water under the rental agreement;
5. Provision providing for compliance with the requirements of the Reclamation Reform Act of 1982;
6. Provision providing that the use of water pursuant to the lease agreement will not be inconsistent with the conditions of approval of application for permit to appropriate the waters of Willow Creek #25-07567 and that the lease agreement is not effective until application for permit #25-07567 is approved by the Director.
7. Provision providing that the agreement shall not become finally effective until approved by the Director of the Idaho Department of Water Resources, to insure compliance with the requirements of Section 42-1763, Idaho Code, and the provisions of this resolution.

BE IT FURTHER RESOLVED, that the approval of the lease agreement by the Board shall not be deemed a precedent for the approval of additional long-term rentals of water by the Board.

PASSED AND APPROVED This 12th day of January, 1991.

ATTEST:


GENE M. GRAY, Secretary


F. DAVE RYDALCH, Chairman



State of Idaho
DEPARTMENT OF WATER RESOURCES

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

CECIL D. ANDRUS

GOVERNOR

R. KEITH HIGGINSON

DIRECTOR

MEMORANDUM

DATE: January 22, 1991
TO: Ron Carlson
FROM: Norm Young *NY*
RE: Brad Foster/Boyd Foster Lease

The Idaho Water Resource Board approved the Foster 20-year lease with similar provisions as the SWIID lease. Attached is a copy of the resolution.

I have asked Tim Luke to expedite processing of Fosters' Willow Creek application (No. 25-07567).

You, Phil and I need to discuss how to revise the lease agreement to meet the Board's concerns so that the Director can approve it. Phil has the SWIID lease on his terminal. I have asked him to take the first cut at the revisions for your input. When we are satisfied, I will forward it to Mike Crapo for his concurrence.

cc: Phil Rassier
Tim Luke

December 26, 1990

Tim Luke
Sr. Water Resource Agent
Idaho Department of Water Resources
Statehouse Mail
Boise, Idaho 83720

RECEIVED
DEC 31 1990
Department of Water Resources

Dear Mr. Luke:

In response to your letter dated November 15, 1990 requesting information on ground water application number 25-74948 and additional information needed on our surface water application number 25-7567. The information is as follows:

Rule 4,5,3,1-1. I am renting water from the District Water Bank. The surface water diversion point is Willow Creek. There are several other water owners on Willow Creek but the closest diversion point is four miles downstream. The information of these water owners is not available to me but since I am using rented water from the Water Bank instead of decreed water these other users should not be affected.

2. I am also applying for a groundwater permit and if feasible will be pumping water from this source. There is one domestic well within the 1/2 mile radius and a map is included to show the location of this well.
3. Irrigation Project. The project will consist of a combination of one underwater well and surface water for irrigation purposes. Steel mainline will be used to the diversion points and PVC mainline to Valley low pressure center pivots. Low pressure center pivots will decrease evaporation and with extended booms and good farming practices will limit soil erosion. I believe, as do fellow water users, that there is no evidence of ground water decline in this area and this project will not affect them in any way.

Rule 4,5,3,2-1. The peak diversion will be 9.3 CFS on both ground and surface water and will use 1,400 to 1,500 A. F. per year. For surface water, Willow Creek has a minimum flow of 35 CFS And that amount will be adjusted to provide for our use.

2. Well will be drilled to 400 feet. The aquifer

consists of black lava and gray sandstone and broken lava.

Rule 4,5,3,3.1. I own the ground free and clear of any mortgages.

2. No other permits required. There were no protests to my application.

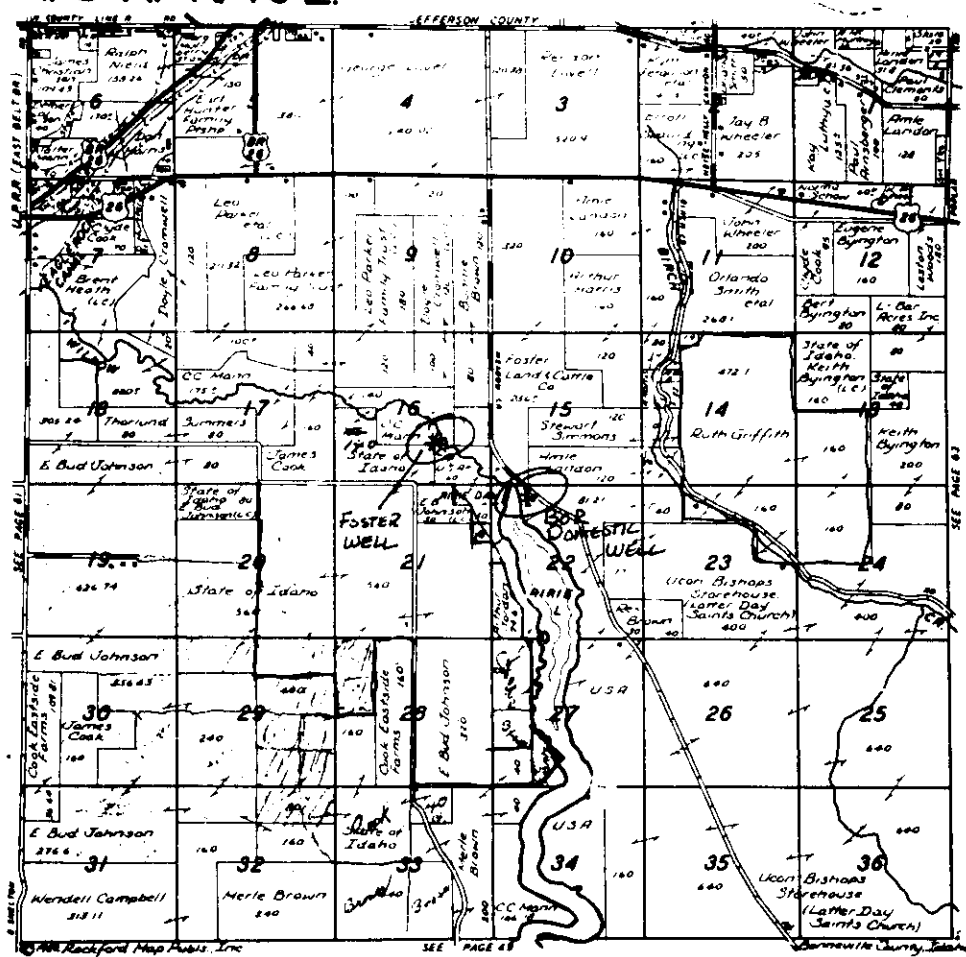
Rule 4,5,3,4.1. The irrigation equipment is installed and functional and there is no debt against it. Total cost of projects was \$406,000.

Rule 4,5,3,5.1. I know of no adverse impact that the project will have on the local public interest. This project does not fall within jurisdiction of any water district. Local county leaders have made improvements on roads to the project for better public use. Property taxes will be increased and will benefit local schools and governments.

Sincerely,

Boyd Foster

Boyd Foster





State of Idaho

DEPARTMENT OF WATER RESOURCES

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

CECIL D. ANDRUS

GOVERNOR

R. KEITH HIGGINSON

DIRECTOR

November 15, 1990

Boyd Foster
P.O. Box 308
Rigby, ID 83442

RE: Application for Permit Nos. 25-7494B & 25-7567

Dear Mr. Foster:

I have received your letter dated November 9, 1990 requesting a thirty day extension of time in which to submit additional information required by Water Appropriation Rule 4,5,3.

In reviewing your file again and in my recent discussion with Mr. Powell, I realized that you also have an application on file for diversion of water from Willow Creek for irrigation of the same 800 acres under your groundwater application. The Willow Creek application is identified by the department as application no. 25-7567. The rule 4,5,3. information which you previously submitted with the Willow Creek application appeared to be information on a groundwater system, rather than a surface water system. Again, that information was incomplete and did not address all of the questions under rule 4,5,3.

Please be advised that in addition to submitting information for the groundwater filing, you must also submit information about your proposed surface water system. Since both systems would be used for irrigating the same lands, you may submit all of the necessary information together.

The department will grant you a 45 day extension in which to submit the information for both the groundwater and surface water filing.. The information should be submitted by January 1, 1991.

Please contact me at this office if you have further questions concerning this matter.

Sincerely,

Tim Luke

Sr. Water Resource Spec.

RECEIVED
NOV 14 1990

Department of Water Resources

November 9, 1990

Boyd Foster
P.O. Box 208
Birby, Idaho 83414

Tim Lyle
Sr. Water Resource Spec.
Department of Water Resources
1301 North Orchard Street
Statehouse Mall
Boise, Idaho 83720

Dear Tim:

This letter is in response to your letter dated October 24, 1990 titled "Notice of Pending Order Voiding Application" concerning application for permit no. 25-7494B. I would request permission for a thirty day extension to answer the questions required by Water Resources pertaining to this application. Thanking you in advance for your consideration.

Sincerely,

Boyd Foster
Boyd Foster

MEMORANDUM

TO: FILES 25-7495, 25-7567 AND 25-7494

FROM: KAY WALKER

RE: PROCESSING

DATE: 19-SEP-1990

=====

These files should all be processed together when the Rule and Regulation information comes in from Mr. Johnson and Mr. Foster.

September 5, 1990

RE: Application for Permit No. 25-07567

Mr. Boyd Foster
P.O. Box 308
Rigby, ID 83442

Dear Mr. Foster:

This letter is to advise you that the protest filed against approval of the above referenced application has been withdrawn. The Department has resumed the processing of this application.

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

Very truly yours,

HAROLD W. JONES
Water Right Supervisor

HWJ:CW

September 4, 1990

RE: Application for Permit No. 25-07567 BOYD FOSTER

Mr. Herbert A. Pollard II
Regional Supervisor
Idaho Fish & Game
1515 Lincoln Road
Idaho Falls, ID 83401

Dear Mr. Pollard:

This letter is to acknowledge receipt of the withdrawal of protest against the above referenced application. The Department is now continuing processing of this application.

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

Very truly yours,

HAROLD W. JONES
Water Rights Supervisor

HWJ:CW

cc: Michael D. Crapo

LAW OFFICES
HOLDEN, KIDWELL, HAHN & CRAPO

WEST ONE BANK BUILDING
P.O. BOX 50130
IDAHO FALLS, IDAHO 83405

TELEPHONE (208) 523-0620
TELEFAX (208) 523-9518

ATTORNEYS AT LAW
HOLDEN, KIDWELL, HAHN & CRAPO
P.O. BOX 50130
IDAHO FALLS, IDAHO 83405
VERNON KIDWELL, OF COUNSEL

ERNEST HAHN
KENT W. KIDWELL
ROBERT E. HAHN, III
JAMES E. KIDWELL
THOMAS E. MARTIN
HAROLD A. HAHN
JERRY M. KIDWELL
MICHAEL D. CRAPO
JAMES A. KIDWELL
DONALD L. HARRIS
JREGOR S. THOMSON
RANDALL B. REED
MARIE T. REED
ROBERT M. KIDWELL

August 10, 1990

RECEIVED

AUG 13 1990

Department of Water Resources
Eastern District Office

Mr. Ron Carlson
Idaho Department of Water Resources
150 Shoup Avenue, Suite 15
Idaho Falls, Idaho 83402

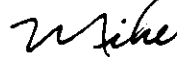
Dear Ron:

I am in receipt of Herb Pollard's letter of July 24, 1990, to Harold Jones concerning the Foster water right application, No. 25-7567. In this letter, it is stated that there was an agreement that any storage water which would be leased to the Fosters would come from Ririe Reservoir as opposed to elsewhere from the Water Bank. It was not my understanding during our meeting that we had agreed to use only Ririe Reservoir's storage in our efforts to obtain water from the water bank. In fact, as you know, we hope to be able to use other storage water because of Reclamation Reform Act concerns. In addition, we would not want to have such restrictions placed on the Water Bank lease.

Do you recall that we agreed to these restrictions?
Please give me a call so that I discuss these issues and the entire application with you.

Thank you for your attention to this matter.

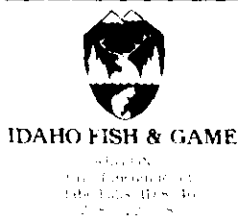
Very truly yours,



Michael D. Crapo

MDC:as
#5388.00
3907h

cc: Foster Agro, Inc.



RECEIVED

JUL 21 1990

Idaho Department of Water Resources
Eastern District Office

July 24, 1990

Mr. Harold Jones
Water Rights Supervisor
Idaho Department of Water Resources
150 Shoup Avenue, Suite 15
Idaho Falls, ID 83402

Dear Skip:

After our conference on Friday, July 13, with Brad Foster, Ron Carlson and Mike Crapo, our concerns and questions regarding Mr. Foster's water right application No. 25-7567 have been addressed.

Based on the information at that meeting and information subsequently provided by the Bureau of Reclamation, Idaho Department of Fish and Game has the following comments. Under a natural flow right, Mr. Foster will seldom have water available for diversion. His diversion will by necessity be filled from storage water from the water bank. To eliminate impacts to the fishery below Mr. Foster's diversion, it was agreed to provide storage water from Ririe Reservoir as opposed to elsewhere from the water bank. The Bureau of Reclamation has an informal agreement with our Department to provide 32 cfs as a minimum flow in Willow Creek below Ririe Reservoir. It was agreed Mr. Foster's diversion would be provided for in releases from Ririe Reservoir which would maintain a 32 cfs minimum flow below Mr. Foster's point of diversion.

Idaho Department of Fish and Game withdraws its protest to water right 25-7567 provided the following conditions are included: 1) the right will be filled from storage from the water bank only if such storage is available in Ririe Reservoir and 2) any diversion associated with this right must not reduce flows below 32 cfs from the point of diversion to the Johnson Road crossing of Willow Creek.

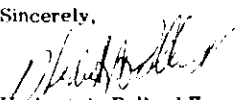
Cecil D. Andrus, Governor
Jerry M. Conley, Director



Mr. Harold Jones
July 24, 1990
Page 2

Thank you for the opportunity to comment.

Sincerely,


Herbert A. Pollard II
Regional Supervisor
Region 6

HAP:SE:ab

cc: U.S. Fish and Wildlife Service (Lobdell)
Bureau of Reclamation (Jim Budolfson, Boise)
Bureau of Reclamation (John Dooley, Burley)
Bureau of Reclamation (Paul Clements, Ririe)
Brad Foster
Mike Crapo
Bureau of Program Coordination
Bureau of Fisheries

June 27, 1990

Boyd Foster
P.O. Box 308
Rigby, ID 83442

Dear Mr. Foster:

Enclosed is a copy of a protest filed against the issuance of a permit pursuant to application No. 25-7567. The Department suggests you contact the protestant directly in an effort to determine the nature of the protest and to attempt to resolve the protest.

Unless this office is advised that either the matter has been resolved or there exists extenuating circumstances requiring additional time, our objective is to schedule a conference and/or hearing to consider the protests within 60 days. At a conference and/or hearing, the following are the principle items the Department can consider in either approving or denying the application for permit (Sec 42-203, Idaho Code):

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

The applicant must be prepared to present evidence and/or testimony addressing each of the five items. Although representation by legal

June 27, 1990
Page 2

counsel is not mandatory at a proceeding before the Department, you may retain an attorney in your behalf.

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

Very truly yours,

HAROLD W. JONES
Water Rights Supervisor

HWJ:GW

Enclosure

cc: IDWR - State Office
Michael Crapo, Attorney

June 27, 1990

RE: Application for Permit No. 25-07567 FOSTER

Mr. Herbert A. Pollard II
Regional Supervisor
Idaho Fish & Game
1515 Lincoln Road
Idaho Falls, ID 83401

Dear Mr. Pollard:

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

Unless this office is advised that either the matter has been resolved or there exists extenuating circumstances requiring additional time, our objective is to schedule a conference and/or hearing to consider the protests within 60 days. At such a conference and/or hearing, the following are the principle items the Department can consider in either approving or denying the application for permit (Sec. 42-203, Idaho Code): the following are the principle items the Department can consider in either approving or denying the application for permit (Sec. 42-203, Idaho Code):

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

June 27, 1990
Page 2

The protestant must be prepared to present proof of allegations involving one or more of the five items.

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

Very truly yours,

HAROLD W. JONES
Water Rights Supervisor

HWJ:CN

Enclosure

cc: IDWR - State Office



IDAHO FISH & GAME

REGIONAL
1. William H. Foster
1001 E. 1st St., Suite 101
208-321-1111

RECEIVED

JUN 4 1990

Department of Water Resources
Eastern District Office

June 21, 1990

Mr. Harold Jones
Idaho Department Water Resources
150 Shoup Avenue, Suite 15
Idaho Falls, ID 83402

RE: Water right application 25-7567, Boyd Foster.

Dear Skip:

Idaho Department of Fish and Game has reviewed Mr. Foster's application for water withdrawal on Willow Creek. At this time, we protest the issuing of this right based on the following factors.

1. In discussing this application with Mr. Foster's attorney, we were told that the water withdrawn from Willow Creek would be replaced by Palisades Reservoir storage delivered through a canal downstream from this diversion site. We would like to see documentation that this exchange has occurred. Without such an exchange and agreement from other water right holders in Willow Creek, I do not believe there is sufficient water to fill this application.
2. During the months late July, August and September, the natural flow of Willow Creek decreases to only 10 to 20 cfs. Granting a 9.5 cfs water right would drastically reduce flows below Ririe Reservoir without release of storage water. To our knowledge, Ririe Reservoir storage has not been allocated to irrigation.
3. The application indicates one 500 hp pump. Currently at the point of diversion, two pumps are being installed. Before granting this permit, we would request Water Resources to confirm the pumping capacity of this project as it relates to the applied water right.

Based on face value of the application, we must protest this application until these questions can be resolved.

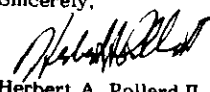
Cecil D. Antrus - Governor
Jerry M. Conley - Director



Mr. Harold Jones
June 21, 1990
Page 2

We request a meeting with your agency, the applicant, Bureau of Reclamation and our Department to resolve these questions.

Sincerely,


Herbert A. Pollard II
Regional Supervisor
Region 6

HAF:SE:dnb

cc: U.S. Fish and Wildlife Service (Lobdell)
Bureau of Reclamation, John Dooley (Burley)
Bureau of Reclamation, Paul Clements (Ririe)
Bureau of Program Coordination
Bureau of Fisheries
Dan Duggan

WATERMASTER COMMENTS

I have reviewed Application for Permit No. 25-2567 and
have the following comments/objections to the approval of this
application for permit:

Dept. Water has permitted water
from the water works for 1990.
While I do not expect to ever
deliver water to this pump &
will have good water in 1990.
Priority for application is:
Probably appropriate since
stated water under U.S. Contracts
is supposed to be supplemental

6/11/90

Date

R. Carlson

RONALD D. CARLSON, WATERMASTER
Water District No. 01

RECEIVED
JUN 11 1990
OW
Department of Water Resources
Eastern District Office

IDAHO DEPARTMENT OF WATER RESOURCES
NEW WATER RIGHT FILINGS

DATE: 05/29/90
PAGE: 3

RIGHT NUMBER	NAME & ADDRESS	PRIORITY DATE	WATER USE	USE PERIOD FROM TO	MAXIMUM DIVERSION	STAGE
--------------	----------------	---------------	-----------	--------------------	-------------------	-------

25-07567 BOYO FOSTER
P.O. BOX 308
RIGBY ID 83442

03/20/1990 IRRIGATION

06-01 09-01

9.50 CFS

9.50 CFS TOTAL
0.00 AFA TOTAL

SOURCE: WILLOW CREEK

TRIBUTARY: SNAKE RIVER

REMARKS:

POINT OF DIVERSION:
T03N R40E S16

SWSE

PLACE OF USE: IRRIGATION

T03N R40E S16
S20
S21

SWSW 40.0
NENE 40.0
NENE 40.0
NNNW 40.0
SWSE 40.0
NENW 40.0
NNNW 40.0
NENE 40.0

SESW 40.0
SENE 40.0
NENE 8.0
SNNW 40.0
SESE 40.0
SNNW 40.0
NENE 40.0

SWSE 12.0
SWNE 40.0
SENN 40.0

SENE 40.0
NESE 40.0

NENW 40.0
NWSE 40.0

790.0 ACRES TOTAL

RECEIVED

JUN 6 1990

Department of Water Resources
Eastern District Office

Glen
This water is fully appropriated
throughout most of the year. Unless
there is a plan to convey a
water bank purchase I would not
approve

P 49
6-14-90

01-Jun-1990

DEPT. OF FISH & GAME REGION 6
ATTEN: HERB POLLARD
1515 LINCOLN RD.
IDAHO FALLS, ID 83401

RE: Application for Permit NO. 25-7567, 74-7285

Dear Sir:

We are enclosing a copy of the applications that may be of interest to your department. Please review the applications and submit any comments you may have to our Department as soon as possible. The last date of protest is JUNE 25, 1990, and we are required to take final action shortly thereafter.

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

Respectfully submitted,

HAROLD W. JONES
Water Rights Supervisor

HWJ/rb
enc.

23-May-1990

Boyd Foster
P.O. Box 308
Rigby, ID 83442

RE: Application for Permit No. 25-7567

Dear Water Right Applicant:

The Department of Water Resources acknowledges receipt of your water right permit. This office is currently in the process of advertising the application in the Post-Register on June 7 & 14, 1990. The advertisement will be published for two consecutive weeks, and a period of ten days following the second publication will be allowed for the submittal of protests.

If the application is protested, you will be sent a copy of the protest. The protest must be resolved before the application is approved or denied. If the protest is not resolved voluntarily, this Department will conduct a conference and/or hearing on the matter.

If the application is not protested, it will be forwarded to our state office in about five weeks. State office personnel will conduct a complete review prior to final processing of the application and will notify you of the outcome of this review. When a permit is issued, you will be sent a copy. A typical processing time for an unprotested application is about eight weeks.

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

Sincerely,

HAROLD W. JONES
Water Rights Supervisor

NWJ/rb

25-07567

FOSTER, BOYD
P.O. BOX 308
RIGBY, ID 83442

Source: WILLOW CREEK

Tributary: SNAKE RIVER

Diversion Pt: SWSE Sec 16 T 03N R 40E

Use: IRRIGATION (9.500 CFS)
Total Diversion: (9.500 CFS)

Date Filed: 3/20/ 1990

In: T03N R40E S16	SWSW	SESW	SWSE	
S20	NENW	SENE		
S21	NENE	NWNE	SWNE	SENE
	NENW	NWNW	SWNW	SENW
	NESE	NWSE	SWSE	SESE
S22	NENW	SWNW		
S27	NWNW			
S28	NENE	NWNE		

790.0 ACRES TOTAL

Foster Agro, Inc.

392 FARNSWORTH WAY • P.O. Box 308 • RIGBY, IDAHO 83442-0308 • (208) 745-7745

Foster Agro, Inc.
Questions for application of water

4.5.3.1.1. Low pressure center pivots with high rotation tires will be installed. Water saving tillage practices will be implemented over center pivot and deep soil tillage.

4.5.3.1.2. Flow diversion Rate: 7.5 CFS
Average Diversion Rate: 4.5 CFS
Total annual volume to be diverted: 1,200 acre feet
Annual annual consumptive use: 1,000 acre feet

Diversion Use: September 1 to June 1: 0 Use
June 1 to June 20: 50% Use
June 20 to August 10: 100% Use
August 10 to September 1: 50% Use

4.5.3.2.2. Flow rate for surface water: None
Type of equipment: see attached well log
Other supplemental water sources: None

4.5.3.3. The total development will be 800 acres and have a crop rotation of potatoes and barley, of which, half of the acreage will be potatoes and the other half in barley each year.

