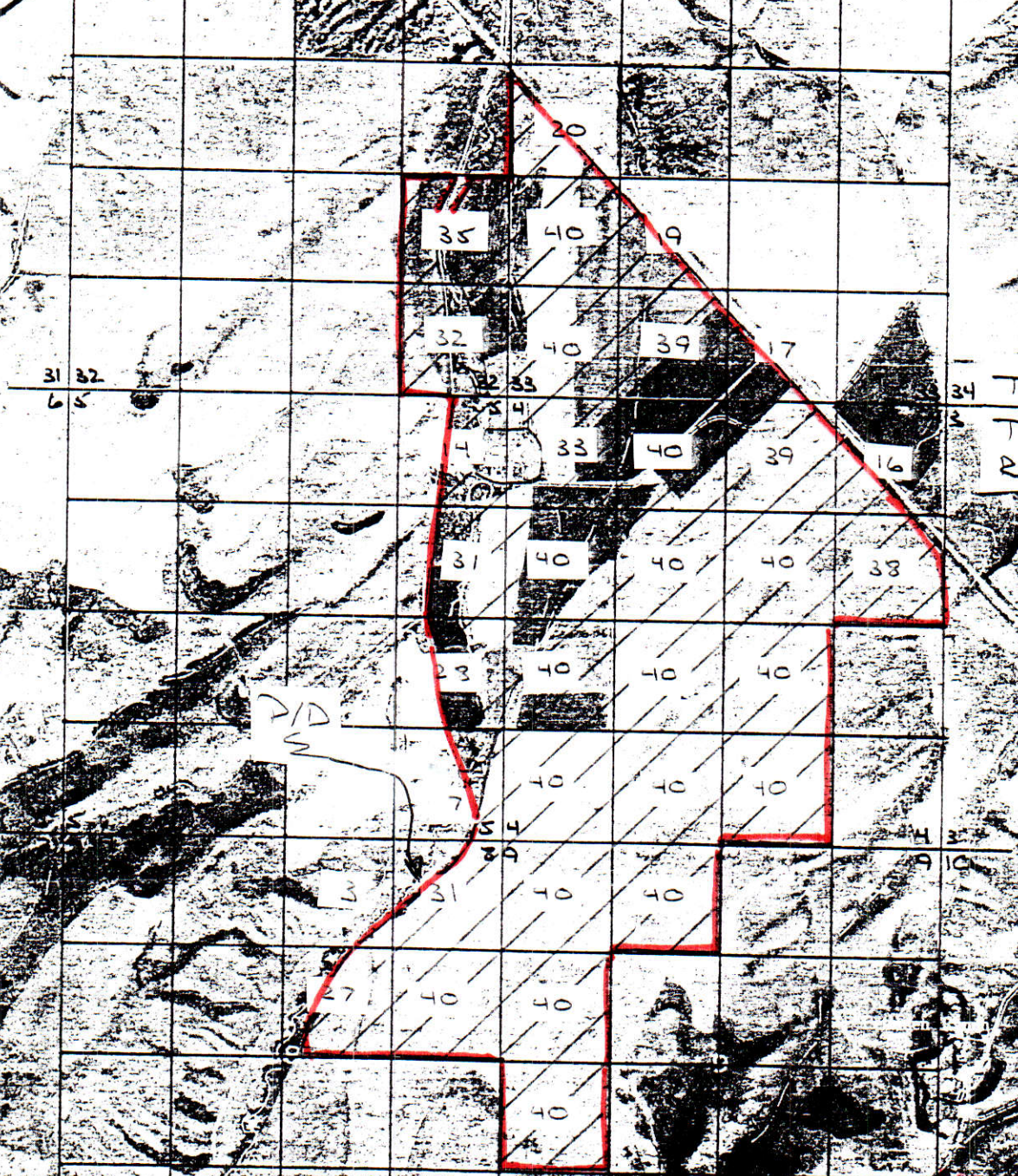


23-07146

30 29 28 27
31 32 33 34



T3N
T2N
R42E

4821
32' 30"

4820

4819

4818

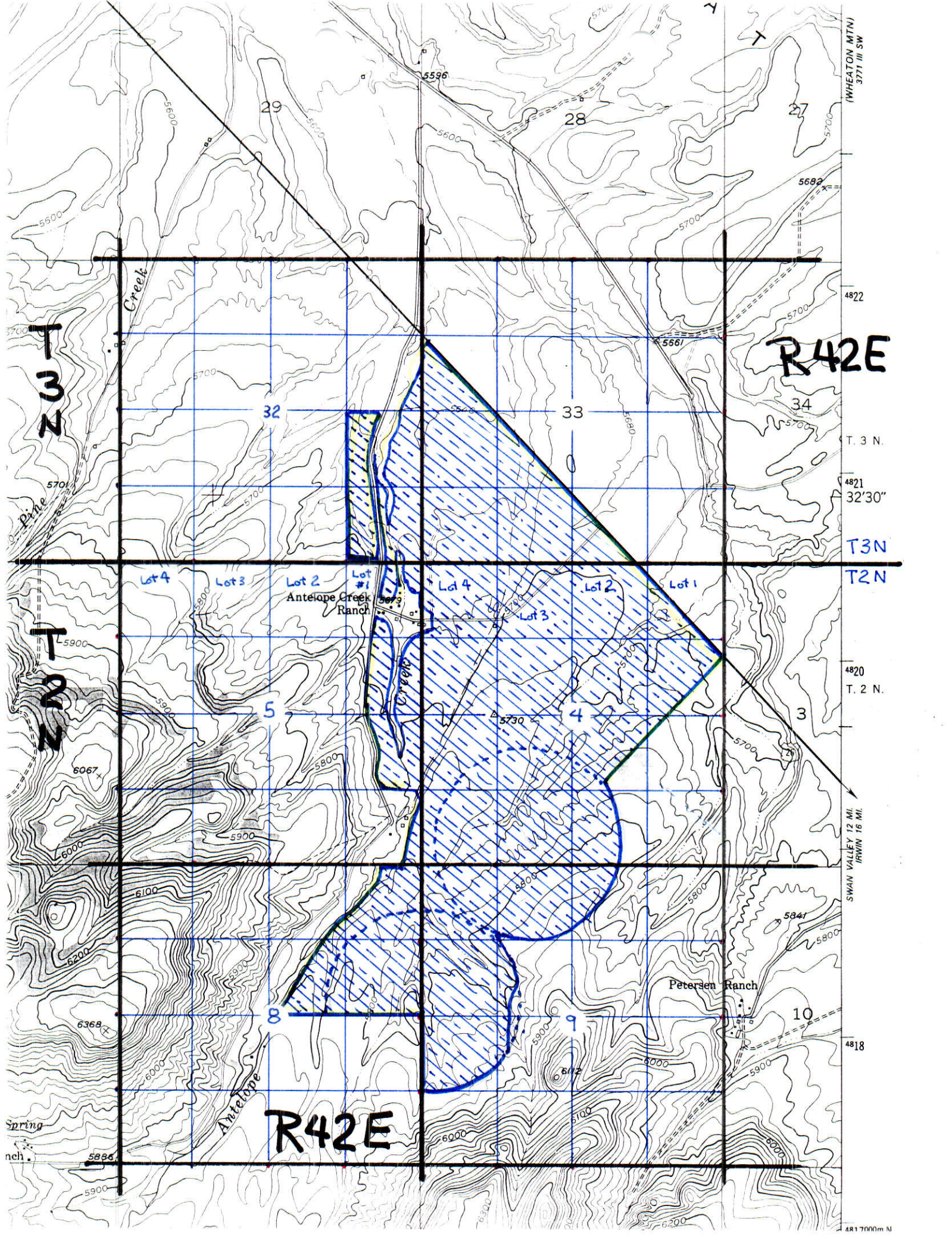
4817000m N

UNCLASSIFIED

152

16

15



(WHEATON MTN)
3771 III SW

4822

T. 3 N.

4821
32'30"

T3N

T2N

4820
T. 2 N.

SWAN VALLEY 12 MI.
IRWIN 16 MI.

4818

481 7000m N

R42E

R42E

T3N

T2N

Spring

Antelope

Creek

Antelope Creek
Ranch

Petersen Ranch

Lot 4

Lot 3

Lot 2

Lot #1

Lot 4

Lot 3

Lot 2

Lot 1

32

33

34

5

4

3

8

9

10

29

28

27

5596

5596

5682

5661

5701

6067

6368

5886

6112

5841

Pine

Antelope

RESERVOIR 2 →



DAM ↑

23-07146

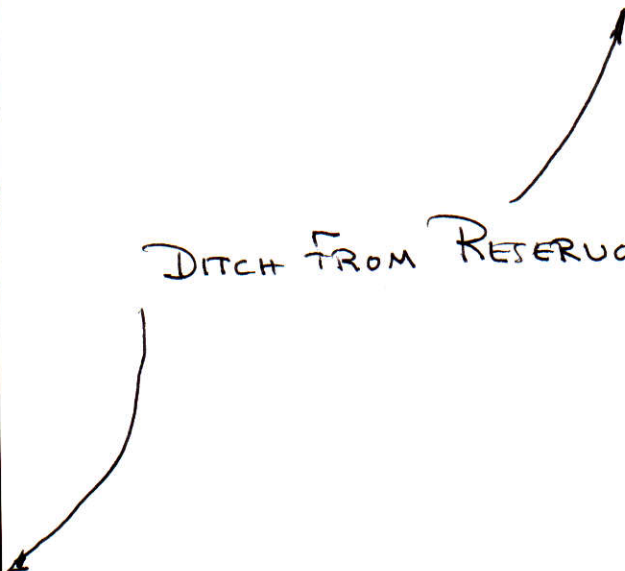
FIRST
REDIVERSION PUMP



PIPELINE TO SECOND
REDIVERSION PUMP



DITCH FROM RESERVOIR



FIRST REDIVERSION Pump



FIRST REDIVERSION
PUMP



Pump intake from
DITCH

23-07146

Mainline from first
REDIVERSION Pump



MAINLINE
FROM FIRST
REDIVERSION PUMP

SECOND REDIVERSION
Pump

23-07146

RECEIVED

JUL 06 1993

Department of Water Resources

OFFICE USE ONLY

Amt. of Fee \$ 100.00
Date 7-6-93
Receipt No. C023066
Receipt by CA

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. 23-07146 Telephone No. (208) 745-7745
2. Name(s) of Permit Holder(s): FOSTER LAND & CATTLE COMPANY
3. Mailing Address: P.O. Box 308 RIGBY, IDAHO 83442
4. Source of Water: ANTELOPE 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 1109 (No. of acres) Other _____

6. Total rate and/or volume for which proof is submitted _____ cfs OR 40 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: \$ 100.00 (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.

LYNN POWELL (208) 745-7745
Name Telephone No.

P.O. Box 308 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.

JUL 22 1993

7/1/93 FOSTER LAND & CATTLE COMPANY - BUSINESS MANAGER
Date Signature (and title, if on behalf of a company or organization)

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO

IN THE MATTER OF PERMIT NO. 23-07146)
IN THE NAME OF FOSTER LAND & CATTLE CO) ORDER OF
REINSTATEMENT)

WHEREAS, the Department issued the above-captioned permit with the condition that proof of construction of works and application of water to beneficial use (proof of beneficial use) be submitted on or before July 1, 1993; and,

WHEREAS, the Department notified the permit holder by certified mail that proof was due and instructed the permit holder of the steps to be taken to submit the proof of beneficial use; and,

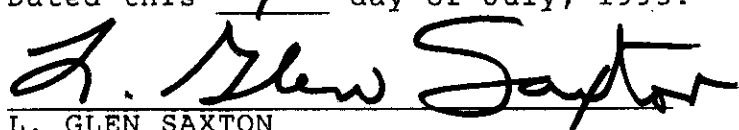
WHEREAS, the Department notified the permit holder that the permit had lapsed for failure to submit the proof of beneficial use; and,

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

WHEREAS, the permit holder has provided a reasonable showing why the permit should be reinstated by submitting proof of beneficial use on July 6, 1993;

IT IS, THEREFORE, HEREBY ORDERED that Permit No. 23-07146 be REINSTATED with an advance in priority to October 9, 1990.

Dated this 7th day of July, 1993.


L. GLEN SAXTON
Chief, Water Allocation Bureau

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JUL 22 1993

State of Idaho
Department of Water Resources

Permit To Appropriate Water

NO. 23-07146

Proposed Priority: October 4, 1990

Maximum Storage Volume:

40.0 AF

This is to certify, that **FOSTER LAND & CATTLE CO**
PO BOX 308
RIGBY ID 83442

has applied for a permit to appropriate water from:

ANTELOPE CREEK

tributary of **SNAKE RIVER**

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

<u>BENEFICIAL USE</u>	<u>PERIOD OF USE</u>	<u>RATE OF DIVERSION</u>	<u>ANNUAL VOLUME</u>
IRRIGATION STORAGE	01/01 to 12/31		40.0 AF
IRRIGATION FROM STORAGE	04/01 to 11/01		40.0 AF
	Totals		40.0 AF

LOCATION OF POINT(S) OF DIVERSION:

NENE , Sec. 8, Township 02N, Range 42E
BONNEVILLE County

PLACE OF USE: IRRIGATION FROM STORAGE

<u>TWN</u>	<u>RGE</u>	<u>SEC</u>	<u>ACRES</u>	<u>ACRES</u>	<u>ACRES</u>	<u>TOTAL</u>
02N	42E	4	NENE 16	NWNE 39	SWNE 40	
			SENE 38	NENW 40	NWNW 33	
			SWNW 40	SESW 40	NESW 40	
			NWSW 40	SWSW 40	SESW 40	
			NWSE 40	SWSE 40		526
		5	NENE 14	SENE 31	NESE 28	
			SESE 7			80
		8	NENE 31	NWNE 3	SWNE 27	
			SENE 40			101
		9	NENW 40	NWNW 40	SWNW 40	
			NWSW 40			160
03N	42E	32	NESE 35	SESE 32		67
		33	SWNW 20	NESW 19	NWSW 40	
			SWSW 40	SESW 39	SWSE 17	175

Total number of acres irrigated: 1109

CONDITIONS/REMARKS:

1. Proof of construction of works and application of water to beneficial use shall be submitted on or before **July 1, 1993**.
2. 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, estoppel by laches or customary preference.

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JUN 24 1992

State of Idaho
Department of Water Resources

Permit To Appropriate Water

NO. 23-07146

3. 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.
4. See adopted Proposed Memorandum and Decision Order for additional conditions of approval.

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

15 th day of June, 1992

R. Keith Higginson
for R. Keith Higginson, Director

MICROFILMED

JUN 24 1992

CERTIFICATE OF MAILING

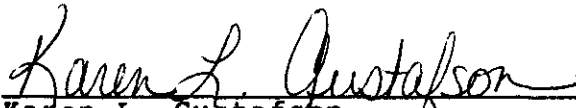
I HEREBY CERTIFY that on this 17th day of June, 1992, I mailed a true and correct copy, postage prepaid, of the foregoing Final Order Adopting the Proposed Memorandum Decision and Order:

Dennis McMurtrey
1728 Camrose
Idaho Falls, ID 83401

IDWR - Easter Region

Kent Foster
P.O. Box 50130
Idaho Falls, ID 83405

Brad Foster
Foster Land and Cattle
P.O. Box 308
Rigby, ID 83442


Karen L. Gustafson
Secretary/Records Manager

NOT RECORDED

JUN 24 1992

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE
STATE OF IDAHO

IN THE MATTER OF APPLICATION FOR	)	FINAL ORDER ADOPTING
PERMIT NO. 23-07146	)	PROPOSED MEMORANDUM
IN THE NAME OF	)	DECISION AND ORDER
FOSTER LAND AND CATTLE	)	

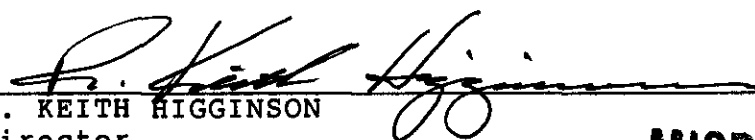
WHEREAS, R. Keith Higginson, Director of the Department of Water Resources, sent a copy of the Proposed Memorandum Decision and Order addressing the above captioned matter to the parties of record on May 27, 1992, pursuant to Section 67-5211, Idaho Code; and,

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

WHEREAS, no exception to that Proposed Memorandum Decision and Order has been received;

IT IS, THEREFORE, HEREBY ORDERED that said Proposed Memorandum Decision and Order be adopted and issued as the Final Decision and Order, and Application for Permit No. 23-07146 is APPROVED, and proof of construction of works and application of water to beneficial use shall be submitted on or before July 1, 1993.

Dated this 15TH day of JUNE, 1992.


R. KEITH HIGGINSON
Director

MICROFILMED

JUN 24 1992

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

IN THE MATTER OF APPLICATION FOR PERMIT
NO. 23-07146 IN THE NAME OF FOSTER LAND AND
CATTLE COMPANY

ORDER ISSUING
PROPOSED MEMORANDUM
DECISION

R. Keith Higginson, Director of the Department of Water Resources, having reviewed the attached proposed decision prepared by this appointee, Ronald D. Carlson, who conducted the hearing or who has read the record in this case, hereby approves the same as a proposed decision pursuant to Idaho Code, Sec. 67-5211.

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

I.
EXCEPTIONS

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

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

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

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

II.
BRIEFS

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

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

MICROFILMED
JUN 24 1992

III.

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

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

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

IV.

CERTIFICATE OF SERVICE

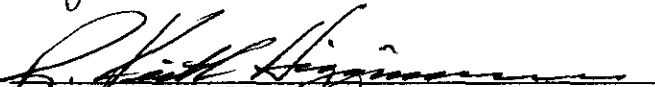
All exceptions, briefs, requests for oral argument and other matters filed with the Director in connection with the proposed decision shall be served on all other parties to these proceedings in accordance with Rule 7.2.

V.

FINAL DECISION

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

Dated this 27th day of May, 19 92.


R. KEITH HIGGINSON
Director

MICROFILMED
JUN 24 1992

BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE

STATE OF IDAHO

IN THE MATTER OF APPLICATION FOR	)	
PERMIT NO. 23-7146 IN THE NAME OF	)	PROPOSED MEMORANDUM
FOSTER LAND & CATTLE COMPANY	)	DECISION AND ORDER

On October 4, 1990, Brad Foster, representing Foster Land & Cattle Company, applied to the Department of Water Resources for a permit to store forty (40) acre-feet of water from Antelope Creek a tributary of the Snake River for the irrigation of 1,109 acres of land. The water is to be stored behind a sixteen (16) feet high dam to be built on the creek.

Notice of this application was published in the Post Register on November 1 and 8, 1990. A protest was subsequently received from Dennis McMurtrey of Idaho Falls. A conference was held in Idaho Falls on February 5, 1991, to identify the issues and acquire information that would be necessary or beneficial in conducting a future hearing. At the conclusion of the conference, the protestant asked that he be given twenty-four hours to consider either withdrawing his protest or submitting the matter to the Department for decision without hearing. On February 6, the protestant contacted the Department and asked that a proposed decision be prepared based upon the information presented at the conference. Therefore, the Department has considered the information presented at the conference, the records of the Department, and based upon the hearing officer's understanding of the law, the hearing officer proposes the following findings of

PROPOSED MEMORANDUM DECISION AND ORDER 1

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JUN 24 1992

fact, conclusions of law, and order:

FINDINGS OF FACT

1. Antelope Creek is an ephemeral stream that is tributary to the South Fork Snake River during the spring of the year. Pine Creek is a tributary of Antelope Creek that enters below the proposed dam.

2. The following Antelope Creek water rights have been claimed in the Snake River Basin Adjudication (SRBA).

<u>Water Right</u>	<u>Owner</u>	<u>Priority</u>	<u>Rate of Diversion</u>	<u>Use</u>
A23-02016	Maxine Clark	11/17/1910	0.40 cfs	irrig
A23-00083	Foster Land & Cattle	06/01/1890	20.00 cfs	irrig
A23-00084	Foster Land & Cattle	06/01/1890	50.00 cfs	irrig
A23-10278	Foster Land & Cattle	06/01/1890	0.07 cfs	stock

Right A23-02016 claimed by Maxine Clark, is diverted below the point where Pine Creek enters Antelope Creek.

The protestant has no recorded water rights on Antelope Creek and has not filed a claim to water rights in the SRBA.

3. While the protestant has no water rights and currently owns no land adjacent to Antelope Creek, his mother owns 78 acres in the area. The protestant anticipates being the heir to this property. A reason given for his protest was his desire to "keep his options open" for development he might wish to make in the future. His mother's 78 acre farm is currently dry farmed.

4. The protestant provided no information that reasonably could be used to establish his standing as a protestant in this matter.

MINOR
JUN 24 1992

5. Idaho Code, §42-203A requires the Director to determine that in all applications whether protested or not protested that:

- a. the proposed use will not reduce the quantity of water under existing water rights.
- b. the water supply is sufficient for the purpose intended.
- c. the application was not filed for the purpose of speculation or delay.
- d. the applicant has sufficient financial resources with which to complete the project.
- e. it will not conflict with the local public interest.
- f. it is not contrary to conservation of water resources within the State of Idaho.

6. The water sought to be appropriated through this application is insufficient to irrigate the 1,109 acres of ground described on the application.

CONCLUSIONS OF LAW

1. There is no evidence that approval of this application will interfere with the rights of others, or could not be adequately controlled and regulated by the watermaster of Water District 1.

2. While the water supply is clearly inadequate to fully irrigate 1,109 acres, the applicant should have the opportunity to develop the water that might be available for storage as a supplemental supply to other water rights he may have. The applicant will have to reduce the acreage, either before or at the time of licensing, to an acreage on which he can reasonably demonstrate the beneficial use of water stored pursuant to this permit.

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JUN 24 1992

3. Storage of water under this water right will be subject to all prior water rights on the Snake River and subject to control of the watermaster of Water District No. 01.

4. The flows from Pine Creek appear to be sufficient at all times to fill the right of Maxine Clark.

ORDER

IT IS, THEREFORE, ORDERED that application for permit no. 23-7146 is hereby APPROVED subject to the following conditions:

1. This permit is subject to all prior water rights on Antelope Creek and on the Snake River.

2. This permit shall be administered by the watermaster of Snake River Water District No. 01.

3. During any year that American Falls Reservoir does not completely fill, the holder of this right must purchase forty (40) acre-feet of water from the Snake River rental pool to replace water stored and used from the proposed reservoir. During each year, the permit holder shall not use water from the reservoir until he has determined, through the Snake River Watermaster, that American Falls Reservoir has physically filled or the permit holder has rented the rental pool water herein required.

4. This right only authorizes a one time annual fill of the reservoir.

5. Prior to or at the time of licensing, the permit holder must reduce the place of use to an acreage that can be reasonably irrigated by 40 acre-feet of storage.

6. A separate approval pursuant to Section 42-1712, Idaho Code, is required for construction of the proposed dam.

RECORDED
FILMED
JUN 24 1992

7. Proof of completion of works and application of water to beneficial use shall be submitted on or before June 15, 1993.

Dated this 27th day of May, 1992.



RONALD D. CARLSON, Hearing Officer

Department of Water Resources

MICROFILMED
JUN 24 1992

CERTIFICATE OF MAILING

I hereby certify that on the 27th day of May, 1992, I mailed a true and correct copy of the Proposed Memorandum Decision and Order and the Order Issuing Proposed Memorandum Decision, postage prepaid, to the following individuals:

Dennis McMurtrey
1728 Camrose
Idaho Falls, ID 83401

IDWR - Eastern Region

Kent Foster
P.O. Box 50130
Idaho Falls, ID 83405

Brad Foster
Foster Land & Cattle
P.O. Box 308
Rigby, ID 83442

Karen L. Gustafson

REPROFILMED

JUN 24 1992

Ident. No. 23-07146

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

APPLICATION FOR PERMIT

To appropriate the public waters of the State of Idaho

1. Name: FOSTER LAND & CATTLE CO. 208-745-7745
Address: P.O. BOX 308
RIGBY, ID 83442
2. Source: ANTELOPE CREEK Trib. to: SNAKE RIVER
3. Location of Point of Diversion: ~~NENE~~ ~~SWNESE~~ ⁸ Sec. 5, Township 02N, Range 42E
BONNEVILLE County
4. Water will be used for the following purposes:
- | Purpose | From | To | CFS | (or) | AF |
|-------------------------|-------|-------|-----|------|-------|
| IRRIGATION STORAGE | 01/01 | 12/31 | | | 40.00 |
| IRRIGATION FROM STORAGE | 04/01 | 11/01 | | | 40.00 |
5. Total quantity to be appropriated is:
CFS (and/or) 40.00 AF
6. Proposed diverting works:
- Description of ditches, flumes, pumps, headgates, etc.
12 FT HIGH DAM FOR IRRIGATION STORAGE
 - Height of storage dam 12 feet; active reservoir capacity 38.00
acre-feet; total reservoir capacity 40.00 acre-feet; period of
year when water will be diverted to storage: 1/01 to 12/31 inclusive.
 - Proposed well diameter is inches; proposed depth of well is
feet.
 - Is groundwater with a temperature greater than 90F being sought? NO
7. Time required for the completion of the works and application of
the water to the proposed beneficial use is 5 years.
8. Description of proposed uses:
12 FT HIGH DAM FOR IRRIGATION STORAGE
9. Place of Use: IRRIGATION

TWN	RGE	SEC	ACRES	ACRES	ACRES	TOTAL
02N	42E	4	NENE 16	NWNE 39	SWNE 40	
			SENE 38	NENW 40	NWNW 33	
			SWNW 40	SESW 40	NESW 40	
			NWSW 40	SWSW 40	SESW 40	
			NWSE 40	SWSE 40		526

MICROFILMED
JUN 24 1992

Place of Use: IRRIGATION

TWN	RGE	SEC		ACRES		ACRES		ACRES	TOTAL
		5	NENE	14	SENE	31	NESE	28	
			SESE	7					80
		8	NENE	31	NWNE	3	SWNE	27	
			SENE	40					101
		9	NENW	40	NWNW	40	SWNW	40	
			NWSW	40					160
03N	42E	32	NESE	35	SESE	32			67
		33	SWNW	20	NESW	19	NWSW	40	
			SWSW	40	SESW	39	SWSE	17	175
Total number of acres irrigated:									1109

Place of Use: IRRIGATION STORAGE, same as IRRIGATION use

Place of Use: IRRIGATION FROM STORAGE, same as IRRIGATION use

10. Describe any other water rights used for the same purposes.
20 CFS & 50 CFS DECREED RIGHTS ON ANTELOPE CR.

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

APPLICANT

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

APPLICANT

c. If the property is owned by a person other than the applicant,
describe the arrangement enabling the applicant to make this filing.

12. Remarks:

13. Map of proposed point of diversion and place of use attached? [X]

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.

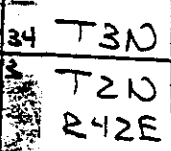
Foster Land & Cattle
Applicant (PARTNER)

Received by Qu Date 10-4-90 Time 12:55 Preliminary check by _____

Fee \$ 45.00 Receipted by Qu # E015303 Date 10-4-90 JUN 24 1992

Publication prepared by LB Date 11-18-90 Published in Red Register

Publication approved Qu Date 11-28-90

[illegible]

4821
32' 35"

4820

489

18

4817000m N

!

FOSTER LAND & CATTLE

GENERAL PARTNERSHIP

BRAD FOSTER

BOYD FOSTER

MELBA PETTINGILL

REPROFILMED
JUN 24 1992

LEGAL NOTICE

FOSTER LAND & CATTLE CO.
P.O. BOX 308
RIGBY, ID 83442

Date filed: 9/25/1990

IN 1968, THE
BUREAU OF THE
FEDERAL BUREAU OF INVESTIGATION
OF THE DEPARTMENT OF JUSTICE
OF THE UNITED STATES OF AMERICA
OF THE DISTRICT OF COLUMBIA
OF THE DISTRICT OF COLUMBIA
OF THE DISTRICT OF COLUMBIA

T02N R42E S04	NENE	NWNE	SWNE	SENE
	NENW	NWNW	SWNW	SENW
	NESW	NWSW	SWSW	SESW
	NWSE	SWSE		
S05	NENE	SENE	NESE	SESE
S08	NENE	NWNE	SWNE	SENE
S09	NENW	NWNW	SWNW	NWSW
T03N R42E S32	NESE	SESE		
S32 S33	SWNW	NESW	NWSW	SWSW
	SESW	SWSE		

1109.0 ACRES TOTAL

HUMPHRIES, W. DEAN
9955 N. 15 E.
IDAHO FALLS, ID 83401

WARD, LYLE L.
6020 W. ARCO HWY.
IDAHO FALLS, ID 83401

YOUNG, REX O.
175 EVERGREEN
IDAHO FALLS, ID 83401

HUMPHRIES, BETTY
9955 N. 15 E.
IDAHO FALLS, ID 83401

WARD, RUBY H.
6020 W. ARCO HWY.
IDAHO FALLS, ID 8340

YOUNG, EVA
175 EVERGREEN
IDAHO FALLS, ID 83401

Source: SPRING; Tributary: WILLOW CREEK; Diversion Pt: NWSE Sec 19 T 01N R 40E; Use: RECREATION (1.00 AF); Total Diversion: (1.00 AF)

Date Filed: 9/19/1990

In: T01N R40E S19 NWSE

The permit(s) will be subject to all prior water rights. Protests may be submitted based on the criteria of Sec. 42-203A, Idaho Code and/or the new public interest criteria of Sec. 42-203C, Idaho Code. Protests must be filed with the Director, Dept. of Water Resources, 150 Shoup Ave., Suite 15, Idaho Falls, Idaho 83402 on or before **NOVEMBER 19, 1990.**

R. Keith Higginson, Director

Published 11/1/1990 & 11/8/1990

JUN 24 1992

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NOV 14 1990

Department of Water Resources
Eastern District Office

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 Two Issues consecutive weeks, first publication having been made on the 1st day of November 19. 90., last publication having been made on the 8th day of November 19. 90., 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 9th day of

November, 19. 90

Ted Delezene
.....
Cathy von Borstel
.....

Notary Public

My commission expires

March 5, 19. 96

B10

MICROFILMED
JUN 24 1992

RECEIVED

NOV 14 1990

Department of Water Resources
Eastern District Office

RECEIVED

MAR 22 1999

Form 219
6/86

Department of Water Resources

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

BENEFICIAL USE FIELD REPORT

A. GENERAL INFORMATION

1. Owner: FOSTER LAND & CATTLE CO
Current Address: P.O. Box 308, RICBY, Id. 83442
2. Accompanied by: BOYD FOSTER
Address: P.O. Box 308 RICBY Id 83442
Relationship to Permit Holder: _____
3. Source: ANTELOPE CREEK tributary to SNAKE RIVER

Permit No. 23-07146
Phone No. 745-7745

EXAM. DATE: 6-22-1998
Phone No. 538-5170
589-1999 (Mobile)

B. OVERLAP REVIEW

1. Other water rights with same place of use: _____
_____ ☐ Copies Attached
2. Other water rights with same point of diversion: _____
_____ ☐ Copies Attached ☐ Copies of Field Exam's Attached

C. SYSTEM DESCRIPTION

1. **Diversion System Diagram:** Indicate all major components and distances between components. Indicate weir size/ditch size/pipe i.d. as applicable. ☐ Alternative diagram attached

SEE ATTACHED PHOTOS & AERIAL PHOTOS

Scale: 1" = _____

2. ☒ Copy of U.S.G.S. Quadrangle Attached
Showing location(s) of point(s) of diversion and
place(s) of use (required). ☒ Aerial Photo Attached
(required for irrigation of 10 acres or more).
- ☒ Photo of Diversion and System Attached
(required for all but single household domestic groundwater, and stockwater).

3. Narrative: Description (As operating at time of measurement. Indicate pressure, number of sprinklers, etc.)

STORAGE DAM ON ANTEROPE (SEEKS TO DITCHES FOR FLOOD IRRIGATION
[FIELDS 5, 7, 8, & 9 (west side of Antelope Creek)] TO UNDERGROUND MAINLINES
TO TWO REDIVERSION PUMPS WITH MAINLINES TO CENTER PLOTS & LATERALS
WITH SPRINKLERS

☐ See Remarks on page 4 for continuation

Well or Diversion No.*	Motor Make	Hp	Motor Serial No.	Pump Make	Pump Serial No. or Discharge Size

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

4. Point(s) of Diversion:

Ident. No.	Gov't. Lot	%	%	%	Sec.	Twp.	Rge.	County	Method of Determination/Remarks
	SE	SE	SE	SE	5	2N	42E	BONNEVILLE	ON SITE

6. Place(s) of Use:

Indicate Method of Determination *FSA Aerial*

Twp.	Rge.	Sec.	NE%	NW%	SE%	SW%	NE%	NW%	SE%	SW%	NE%	NW%	SE%	SW%	NE%	NW%	SE%	SW%	Totals
2N	42E	4	12	38	40	31	40	39	40	40	40	40	40	40	40	40	40	40	501
		5	13			22									22				62
		8	31	3	25	40													995
		9		10			34	40	40	12	7	37							180
3N	42E	32				3									33		38	74	
		33								12		13	39	40	39		13		156
																			1072

DAM SUMMARY SHEET

November 22, 1996

ANTELOPE CREEK

23 - 7146

INVENTORY _____ A
BASIN _____ 23
DAM NUMBER _____ 7146
FED ID NUMBER _____
DAM NAME _____ ANTELOPE CREEK
COUNTY _____ BONNEVILLE
STREAM _____ ANTELOPE CREEK
REGION _____ E
PURPOSE _____ I
RISK CATEGORY _____ 2
SIZE CATEGORY _____ 3
Q-Q SECTION _____ SESE
SECTION _____ 05
TOWNSHIP _____ 02N
RANGE _____ 42E
LATITUDE DEC _____ 43.5253
LONGITUDE DEC _____ 111.5294
DAM TYPE _____ EARTH *

STORAGE CAPACITY	60.00	ACFT
HEIGHT	16.60	FT
DRAINAGE AREA	15.00	SQMI
RESERVOIR AREA	10.00	AC
YEAR COMPLETED	1991	
CREST ELEVATION	5,740.00	MSL
CREST LENGTH	380.00	FT
SPILLWAY TYPE	RPCHAN	
SPILLWAY DEPTH	4.60	FT
SPILLWAY CAPACITY	200.00	CFS
OUTLET TYPE	RNFCNP	
OUTLET SIZE	24	IN
OUTLET CAPACITY	58.00	CFS
IDF	Q100	
IDF MAGNITUDE	370.00	CFS
RELEASE CAPACITY	258.00	CFS

CONDITION _____ GD
MAINTENANCE _____ ROUTINE
INSPECTION DATE _____ 0896 MO/YR
CERTIFICATE EXP DATE _____ 1197 MO/YR
LAST RISK EVALUATION _____ 0990 MO/YR
SURVEY DATE _____ 7/11/91 MO/DD/YR
CALL UP DATE _____ MO/DD/YR
CERT ISSUE DATE _____ 11/ 6/96 MO/DD/YR
INSPECTION INTERVAL _____ 2YR
PHASE 1 INSP DATE _____
OPERATION PLAN _____ N
SEISMIC ANALYSIS _____ N
RESTRICTED _____
JOINT INSPECTION _____
QUAD NUMBER _____ X96
QUAD NAME _____ HEISE SE

DAM OWNER _____ FOSTER LAND AND CATTLE CO
ADDRESS - 1 _____ BRAD FOSTER
ADDRESS - 2 _____ P O BOX 308
CITY _____ RIGBY
STATE _____ ID
ZIP CODE _____ 83442
ZIP SUFFIX _____
PHONE _____ 7457745
AREA CODE _____ 208

GENERAL REMARKS : NO CHANGED FROM 23-0083. APPLICATION APPROVED 11/91 TO RAISE DAM TO INCREASE STORAGE TO 80 ACFT. SPILLWAY MODIFIED IN 1995 FOR PLACEMENT OF FLASHBOARDS. WITH 2 FT. FLASHBOARDS IN PLACE, STORAGE CAPACITY IS APPROX 80 AC-FT.

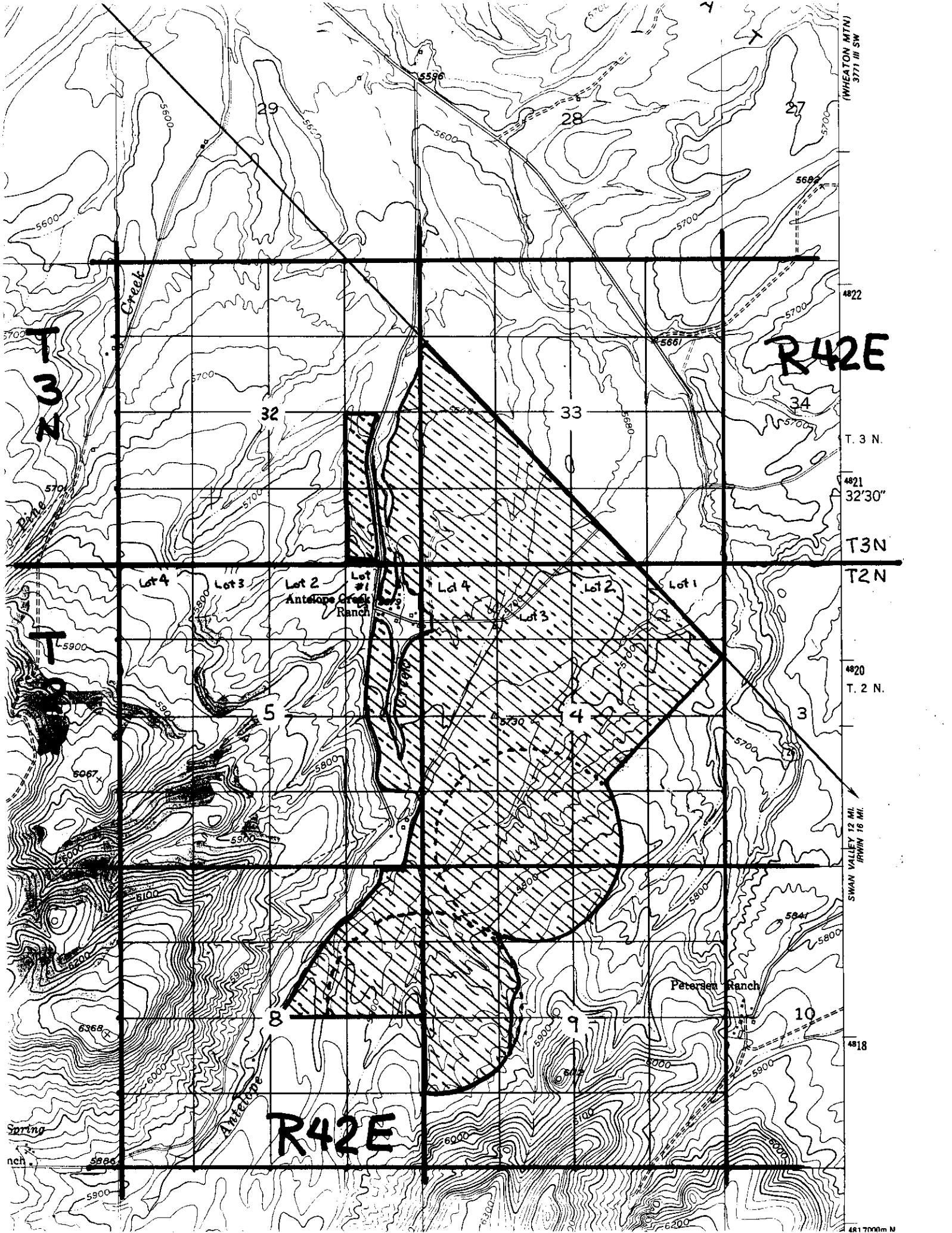
TECHNICAL REMARKS : SPILLWAY AND RELEASE CAP ARE WITH 2.0' FREEBOARD. SPILLWAY WILL PASS Q100 WITH APPROX 1.0' FREEBOARD.

RESTRICTIONS : SEE CONDITIONS OUTLINED IN ACCOMPANYING LETTER DATED NOVEMBER 8TH 1996.

ALTERNATE CONTACTS :

* Current storage Capacity = 60 ac-ft

23-07146



(WHEATON MTN)
3771 IN SW

4822

T. 3 N.

4821
32'30"

T3N

T2N

4820
T. 2 N.

SWAN VALLEY 12 MI.
IRWIN 16 MI.

4818

4817000m N

1945 12N
T-2441
T-2440

64.8

124.8

R42E

T2N

Point of
DIVERSION

REDIVERSION #1

REDIVERSION #2

R42E

T2N

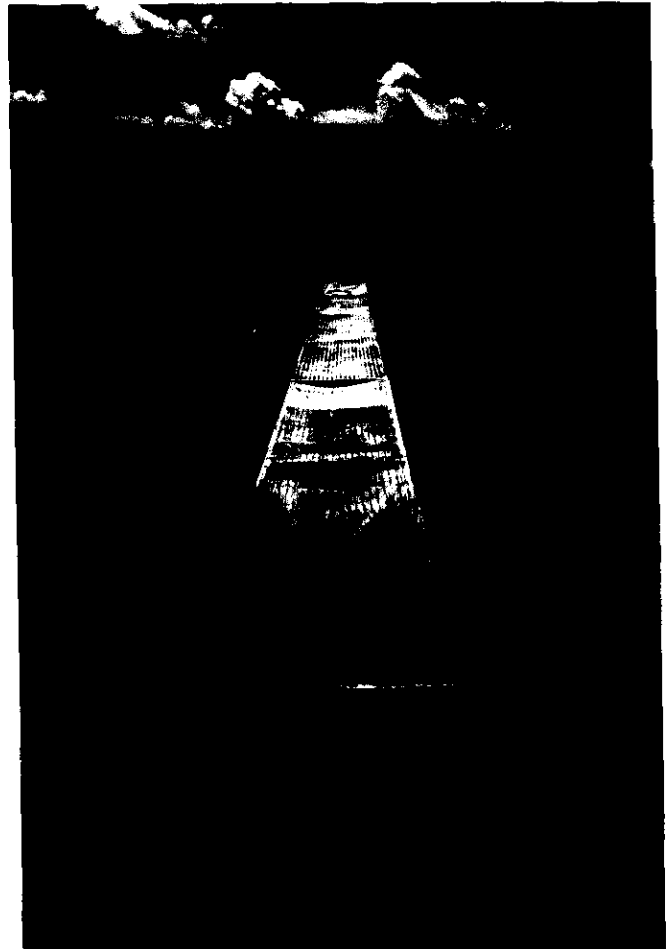
T2N 4 3

HIGHWAY 26

PLACE ON USE



RESERVOIR 2 →



DAM ↑

23-07146

FIRST
REDIVERSION PUMP



PIPELINE TO SECOND
REDIVERSION PUMP

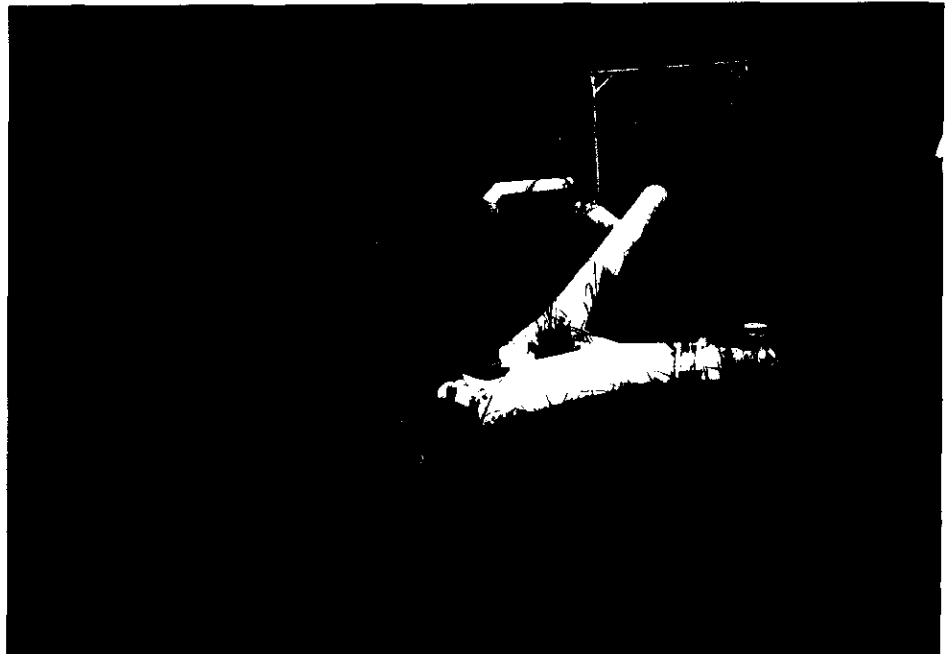


DITCH FROM RESERVOIR

PHOTO
PAGE # 3 of 4

23-07146

FIRST REDIVERSION Pump



FIRST REDIVERSION
PUMP?



Pump intake from
DITCH

23-07146

Mainline from first
REDIVERSION Pump



MAINLINE
FROM FIRST
REDIVERSION PUMP

SECOND REDIVERSION
Pump

23-07146

Do not use this space

D. FLOW MEASUREMENTS

☐ Additional Data Sheets Attached

1.

Measurement Equipment	Type	Make	Model No.	Serial No.	Size	Calib. Date

2. Measurements:

SAFETY OF DAMS SUMMARY SHEET 60af

E. FLOW CALCULATIONS

☒ Additional Computation Sheets Attached SEE SAFETY OF DAMS SUMMARY SHEET

1. Measured Method:

2. Alternate Method for Checking Purposes:

F. PUMP EFFICIENCY DATA (Optional)

Discharge Pressure: _____ psi x 2.31 = _____ ft (1); Dynamic pumping level: _____ ft (2)

Total Head: (1) + (2) = _____ (3) ; Flow rate: _____ cfs (4)

Water HP: (3) x (4) ÷ 8.8 = _____ (5)

Meter Input KW: 3.6 x _____ KH x _____ CTR or _____ MULT x _____ PTR x _____ N/ _____ T = _____ (6)

Meter Input HP: (6) x 1.34 = _____ (7)

Panel Input KW: _____ Ave PF x _____ Ave Volts x _____ Ave Ampsx .001732 = _____ (6)

Panel Input HP: (6) x 1.34 = _____ (7) Efficiency: (5)/(7) x 100 = _____ %

G. VOLUME CALCULATIONS

1. Volume Calculations for Irrigation:

$V_{I.R.} = (\text{Acres Irrigated}) \times (\text{Irrigation Requirement}) =$ _____

$V_{D.R.} = [\text{Diversion Rate (cfs)}] \times (\text{Days in Irrigation Season}) \times 1.9835 =$ _____

$V = \text{Smaller of } V_{I.R.} \text{ and } V_{D.R.} =$ _____

2. Volume Calculations for Other Uses:

H. REMARKS AND OVERLAP REVIEW ANALYSIS

I. RECOMMENDATIONS

1. Recommended Amounts

Beneficial Use	Period of Use		Rate of Diversion Q (cfs)	Annual Volume V (afa)
	From	To		
IRRIGATION STORAGE	1/1	12/31		40 af
IRRIGATION FROM STORAGE	4/1	11/1		40 af
Totals:				40 af

2. Recommended Amendments

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

J. AUTHENTICATION

Field Examiner's Name KEITH C WILSON
Signature Keith C Wilson
Certification Date _____
Field Report Preparation Date _____

CONSULTANT SEAL

- K. Licensing recommendation shall be prepared by an Idaho Department of Water Resources employee on a computer printout attached hereto.

July 9, 1993

FOSTER LAND & CATTLE CO
PO BOX 308
RIGBY ID 83442

PROOF ACKNOWLEDGMENT LETTER

RE: PERMIT NO. 23-07146

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

JUL 22 1993

**ANALYSIS SHEET
FOR
PROOF OF BENEFICIAL USE**

Permit No. 23-07146 Reviewed by 109 Date 7/7/93

GENERAL CONSIDERATIONS

TYPES OF USE

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

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

MEASURING DEVICE

yes Required?
100 Amount Submitted
yes Correct?
NA Required?
/ Installed?
/ Waiver requested?

PRIORITY CALCULATION

Date proof received 7/6/93 187
Date proof due 7/1/93 - 182
No. of days late = 5
Priority Date 10/4/90 + 277
New Priority Date 10/9/90 282

DEFICIENCIES OR ACTION ITEMS

proof acceptable

DATA ENTRY

New Address _____

Proof Made

needs an order
7/6/93
7/9/93 109

July 7, 1993

FOSTER LAND & CATTLE CO
PO BOX 308
RIGBY ID 83442

LAPSE NOTICE

RE: PERMIT NO. 23-07146

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 April 30, 1993. 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

Enclosures

CERTIFICATION OF MAILING

I hereby certify that on 7/7/93
~~a copy~~ an original of this document was
deposited in the United States mail,
postage prepaid addressed to the
individual(s) named above.

RECEIVED
JUL 22 1993

April 30, 1993

FOSTER LAND & CATTLE CO
PO BOX 308
RIGBY ID 83442

PROOF DUE NOTICE

RE: PERMIT NO. 23-07146

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 July 1, 1993. (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.

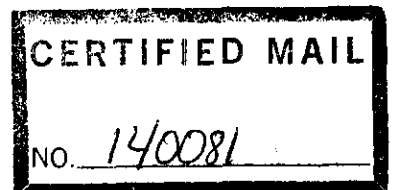
If you have not fully completed your project, and you or a previous owner of this permit have not received a prior extension of time, you may request an extension of time if the delay is for reasonable cause as provided in Section 42-204, Idaho Code. If you have been prevented from proceeding by a governmental 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



RECEIVED
JUL 22 1993

**ROUTING SHEET FOR PROTESTED APPLICATIONS
WHICH REQUIRE A MEMORANDUM DECISION AND ORDER**

Date

Activity

HEARING HELD

FILE RECEIVED AT STATE OFFICE (Cindy)

- Date stamp, label and add file to bar code system
- Attach temporary file from protest drawer
- Route to Brenda for general review

GENERAL APPLICATION REVIEW (Brenda)

- Create "P" file and edit per general review
- Route file to Karen

5/27/92

PREPARE PMD&O (Karen & Hearing officer)

- Log in for tracking through the decision process
- Route file for review of the decision
- Prepare order issuing PMD&O and certificate of mailing, route for signature and mail
- Hold file for 15 days - for exceptions

6/15/92

PREPARE FINAL ORDER (Karen)

- Prepare order adopting PMD&O as the final order or make needed changes to PMD&O and prepare final order
- Route final order for signature
- Route to Brenda for final permit processing

6-17-92

FINAL PERMIT PROCESSING (Brenda)

- Edit and condition "P" file per signed MDO
- Update data base and prepare APPROPRIATE permit document (Use signature stamp on permit).
- Drop "P" from temporary file
- Route to Karen for final order processing

6/17/92

PREPARE FINAL ORDER (Karen)

- Route to Karen for final order processing
- Prepare cover letter ~~for~~ certif. of mailing
- Mail the final MD&O
- Send file to microfilm

MICROFILM

- Film the file
- Route file to vault

VAULT

- Remove out-cards from the protest drawer and hold drawer



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

June 17, 1992

Foster Land and Cattle Company
c/o Brad Foster
P.O. Box 308
Rigby, ID 83442

Re: In the Matter of Application for Permit No. 23-
07146 in the name of Foster Land and Cattle

Dear Permit Holder:

Enclosed is a copy of the Final Memorandum Decision and
Order in reference to the above mentioned permit.

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

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

Sincerely,

A handwritten signature in black ink, appearing to read 'L. Glen Saxton'.

L. GLEN SAXTON
Chief, Water Allocation Bureau

Enc: Final Order
Certificate of Mailing

NOT RECORDED

JUN 24 1992

APPLICATION FOR PERMIT REVIEW

Application #: 23-7146 Reviewer: Brenda Miller
Date: 6-15-92

SYSTEM COMPLETED:

No - 26A-P17
Complete in 1 year - P16
Yes
Proof not submitted - P16
Proof submitted - N/A

GROUNDWATER:

GT. 0.2 cfs <flo-ch> - 01G-P03, 01C-P03 (existing well)
- NMR <fl ch>, A of C
LT. 0.2 cfs - No measurement required <flow chart>

Drilling Permit:

Approved w/permit - P99
Not included - 046-046A-046B-P23 (after 7/1/87), N/A

SURFACE WATER: not in w/d - 01C-P03 (=GT.2 w/pump), NMR <flow chart>

LOCATION:

Water Districts - WD No. 01
Surface water - 005, 005-01H-P01(LT.2 w/pump)
005-01J-P08(GT.2), NMR <flow chart>
Groundwater - P05
Irrigation Districts - 023
Canal Co. Areas - 023
Drainage Districts - 024
Boise Front (63) - 058 (Groundwater)
Swan Falls Flag - 1 (1, Blank or Other)
Trust - 051-052-053-P74(Consumptive Uses)
Non Trust <1> - *048-049

RIVER BASINS:

(Surface Water) Water District Control Condition &....
Boise (63) - 05A & 11E
Payette (65) - 047-P04, 059-P71
Snake (01, 02 & 03) - 11A-P04(01), 061-P07(02/03 No W.D.Cond.)

USE:

Fish Propagation - 06A, 09E-P10 & 010 (WQ/Choose One),
042(req.), 002-P06(MD), 07A(Spec.),
044(Policy 5G)
Power - Use Power Review
Mining - 06A, 010, or 09E-P10 & 054(req.)
Storage - 18A-for multiple measuring devices(In WD),
18B-P09(Size)
Rec/Wildlf/Aes - 027(Non-Consumptive)
Domestic - 021(restricted areas)

OWNERSHIP:

Non land owner - 004

PROTESTED:

Agreement - 020

Beneficial Use Due Date: - 6-15-93
Other Conditions Recommended

07-01-1993

Memorandum Decision & Order



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

May 27, 1992

Foster Land and Cattle
P.O. Box 308
Rigby, ID 83442

Re: Permit No. 23-07146

Dear Permit Holder:

Enclosed is a copy of the Proposed Memorandum Decision and Order and the Order Issuing the Proposed Memorandum Decision and Order.

Section 42,1701A(3), Idaho Code, provides that any person aggrieved by a decision of the Department and has not previously been afforded an opportunity is entitled to a hearing. A written petition stating the grounds for contesting the action and requesting a hearing must be received within 15 days after the receipt of the denial.

If you have any questions or if I can be of any further assistance, please feel free to contact me.

Sincerely,

L. Glen Saxton
Chief, Water Allocation Bureau

Enclosures

c: IDWR - Regional Office

RECEIVED

JUN 24 1992

Form No. 202a
4/87

Dist. for staffing: 10-12-90
Submitted for advertising 10-12-90

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
APPLICATIONS FOR PERMIT ANALYSIS SHEET

INITIAL REVIEW BY HWS DATE 10-12-90 APPLICATION NO. 23-7146
APPLICANT NAME: Foster Land & Cattle Co.

REQUIRED INFORMATION

☒ Name (If applicant is a corporation or partnership, names must be provided for the director, officers, & other partners.) OK
☒ Address OK
☒ Source (See USGS Quad for names of water sources)
☒ Point of Diversion (10 acres for spring, lot & block descriptions for subdivisions, local name, flow and/or volume)
☒ County
☒ Quantity (flow and/or volume)
☒ Period of Use
☒ Nature of proposed use (Include description of use.)
☒ Description of diverting works
☒ Time required for beneficial use of water
☒ Place of use or acres irrigated
☒ Map
☒ Signature (If applicant is corp. partnership, or municipality, title of signator is required)
☒ Fee
☒ Yes ☐ No* In form to receipt

ADDITIONAL INFORMATION

☒ Overlapping place of use (Describe source & relationship to present application on the back.)
☐ Overlapping point of diversion
Yes ☐ No ☐ Field check required
Yes ☐ No ☐ Field check by _____
Yes ☐ No ☐ Field report attached
Yes ☐ No ☐ Critical groundwater area
Yes ☐ No ☐ Groundwater management area
Yes ☐ No ☐ Send dam safety information
Yes ☐ No ☐ Send power requirement letter
Yes ☐ No ☐ Send fish farm requirement letter
Yes ☐ No ☐ Power residency affidavit
Yes ☐ No ☐ Power efficiency form
Yes ☐ No ☐ Within trustwater boundary (If yes, attach trust water supplementary analysis sheet.)
Yes ☐ No ☐ Diversion greater than 5 cfs or 500 acre ft. (If yes, attach large diversion supplementary analysis sheet.)

See reverse side for additional information

*REQUEST THE FOLLOWING ADDITIONAL INFORMATION FROM THE APPLICANT _____

Date Requested _____

RECEIVED
APR 28 1992

Department of Water Resources

PROCESSING ☒ Yes ☒ No In form for advertising
☒ Yes ☒ No Statewide advertising
☒ Yes ☒ No Fee amount, receipt date & No. recorded on application

SEND COPIES TO ☐ Idaho Dept. of Health & Welfare ☐ U.S. BLM
☒ Idaho Dept. of Fish & Game ☐ U.S. Forest Service
☐ Idaho Dept. of Lands ☒ Water District 01
☐ Adjudication Bureau Unit ☐ Other

FINAL REGIONAL PROCESSING REVIEW

☒ Yes ☐ No Affidavit of publication received
☒ Yes ☐ No Application published correctly. If not, record action taken.

☒ Yes ☐ No Publication dates & paper, recorded on application
☒ Yes ☐ No Protests received
Final date for protest 11-19-90
☐ Yes ☐ No Protests, dates, resolution of protest, recorded on application
☒ Yes ☐ No Recommendations, attached
☐ Yes ☒ No Measuring device required
☐ Yes ☒ No Access port required
☒ Yes ☐ No Will water be delivered by watermaster? If yes, what Dist. 01
☒ Yes ☐ No Special conditions of approval or cover letter below.

See below for additional information
Date of priority recommended 10-04-90
By HUT Date 4-23-92

STATE OFFICE REVIEW

See below for additional information
By _____ Date _____

ADDITIONAL INFORMATION

* See memorandum decision

LOCAL PUBLIC INTEREST

Comments received from

_____ City	_____ Idaho Fish & Game	_____ Irrigation District
_____ County	_____ Idaho Health & Welfare	_____ Canal Company
_____ Reservations	_____ Division of Environment	_____ Other _____

Project impacts/implications report

COMMENTS

[illegible]

Dennis McMurtrey -

Mother owns property - has some interest in
stockwater (28900 on Antelope) Dry Farm grain

(For Protestant) 1/ No filling on creek for stockwater at this time.

2/ Pine Creek below Foster Dam can feed in
if water available.

3/ Ott Quilling constructed dam & made spillway
for 370 cfs (100 year flood Q). Dave Walrath
on site during several phases of construction.
using 24" concrete cast pipe with rubber seals.
Dam is subject to on site inspection every
two years by Dam Safety.

4/ Would raise 200 acres of Potato (usual max)

5/ No apparent basis for protest as provided
by protestants.

6/ Protestants will consider withdrawal -

Might need Hearing set.

RECORDED

JUN 24 1992

Allow until tomorrow to elect option 4 (Mum Dec.)

2-5-91 Conf. For Applic. 23-07146 - Foster Land & Cattle

- 1/ Adj. claims filed on natural flow on Antelope Creek
- 2/ One rt. on Antelope below Mr. Foster + two above him for small amounts (1" to 1 1/2")
- 3/ Dam will be used to irrigate in late summer + Fall. Also some erosion protection available by Dam Structure.

Dam Safety applic. on file

RECEIVED

JUN 24 1992

23-07146 - FOSTER LAND & CATTLE CO.

Tuesday, February 5, 1991 - 1:30 p.m.
Civil Defense Conference Room, Bonneville County Courthouse,
Idaho Falls, ID

Hearing Officer: Ron Carlson

<u>Name</u>	<u>Representing</u>	<u>Address</u>
-------------	---------------------	----------------

Dennis McMurtry	SELF	1728 Camrose, Idaho Falls, ID.
Lynn Powell	FOSTER AGED	P.O. Box 308 Rigby, IDAHO 83442
Kent W. Foster	Foster Land & Cattle Co	Box 50130 Idaho Falls, 83405
Brad Foster	Foster Land & Cattle Co	P.O. Box 308 Rigby 83442
Ch. Quilling	S+B EX.	Idaho Falls, Idaho. 83401.

MICROFILMED

JUN 24 1992

UNITED STATES POSTAL SERVICE
OFFICIAL BUSINESS

SENDER INSTRUCTIONS

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

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

RECEIVED

JAN 18 1991

Department of Water Resources
Eastern District Office



PENALTY FOR PRIVATE
USE, \$300

RETURN
TO



Print Sender's name, address, and ZIP Code in the space below.

JUN 24 1992

DEPARTMENT OF WATER RESOURCES
EASTERN DISTRICT OFFICE
150 SHOUR AVE. #15
IDAHO FALLS, IDAHO 83402

● **SENDER:** Complete items 1 and 2 when additional services are desired, and complete items 3 and 4.

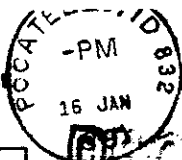
Put your address in the "RETURN TO" Space on the reverse side. Failure to do this will prevent this card from being returned to you. The return receipt fee will provide you the name of the person delivered to and the date of delivery. For additional fees the following services are available. Consult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

1. ☐ Show to whom delivered, date, and addressee's address. 2. ☐ Restricted Delivery
(Extra charge) (Extra charge)

3. Article Addressed to: <i>Dennis Mc Murtry</i> <i>1728 Camrose</i> <i>Idaho Falls, Id. 83402</i>	4. Article Number <i>0541</i> Type of Service: <table border="0"> <tr> <td>☐ Registered</td> <td>☐ Insured</td> </tr> <tr> <td>☒ Certified</td> <td>☐ COD</td> </tr> <tr> <td>☐ Express Mail</td> <td>☐ Return Receipt for Merchandise</td> </tr> </table> REC Obtain signature of addressee or agent and DATE DELIVERED.	☐ Registered	☐ Insured	☒ Certified	☐ COD	☐ Express Mail	☐ Return Receipt for Merchandise
☐ Registered	☐ Insured						
☒ Certified	☐ COD						
☐ Express Mail	☐ Return Receipt for Merchandise						
5. Signature — Address <i>X</i> <i>Dennis Mc Murtry</i> 6. Signature — Agent <i>X</i> 7. Date of Delivery <i>JUN 7 1992</i>	8. Addressee's Address (ONLY if requested and fee paid) <i>23-7146</i>						

SENDER: Complete items 1 and 2 when additional services are desired, and complete items 3 and 4. Put your address in the "RETURN TO" Space on the reverse side. Failure to do this will prevent this card from being returned to you. The return receipt fee will provide you the name of the person delivered to and the date of delivery. For additional fees the following services are available. Consult postmaster for fees and check box(es) for additional service(s) requested. 1. ☐ Show to whom delivered, date, and addressee's address. (Extra charge) 2. ☐ Restricted Delivery (Extra charge)	
3. Article Addressed to: <i>Easter Land + Cattle</i> <i>P.O. Box 308</i> <i>Ridley, Md. 83442</i>	4. Article Number <i>0540</i> Type of Service: ☐ Registered ☐ Insured ☒ Certified ☐ COD ☐ Express Mail ☐ Return Receipt for Merchandise Always obtain signature of addressee or agent and DATE DELIVERED.
5. Signature — Address X	8. Addressee's Address (ONLY if requested and fee paid) <i>23-7146</i>
6. Signature — Agent X <i>[Signature]</i>	
7. Date of Delivery <i>1-15-91</i>	

UNITED STATES POSTAL SERVICE
OFFICIAL BUSINESS



LIFETIME-COLLECT STAMPS

SENDER INSTRUCTIONS

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

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

RECEIVED

JAN 1 1991



PENALTY FOR PRIVATE USE, \$300

Department of Water Resources
Eastern District Office

Print Sender's name, address, and ZIP Code in the space below.

RETURN TO



DEPARTMENT OF WATER RESOURCES

EASTERN DISTRICT OFFICE

150 SHOUP AVE. #15

IDAHO FALLS, IDAHO 83402

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE
STATE OF IDAHO

IN THE MATTER OF APPLICATION FOR	)	
PERMIT NO. 23-07146 IN THE NAME	)	
OF FOSTER LAND & CATTLE COMPANY	)	NOTICE OF CONFERENCE
	)	

On October 4, 1990, Foster Land & Cattle Company, Rigby, Idaho filed an application with the Department of Water Resources to appropriate the public waters of the State of Idaho. The application proposes to divert water from Antelope Creek tributary to the Snake River for 40 acre-feet to be diverted within the NE1/4NE1/4, Sec. 8, T. 2N, R. 42E to be used for irrigation storage and irrigation from storage for 1,109 acres within the N1/2, SW1/4, E1/2SE1/4, Sec. 4, E1/2E1/2, Sec. 5, NE1/4, Sec. 8, NE1/4NW1/4, E1/2NW1/4, NW1/4SW1/4, Sec. 9, T. 2N, R. 42E; E1/2SE1/4, Sec. 32, SW1/4NW1/4, SW1/4, SW1/4SE1/4, Sec. 33, T. 3N, R. 42E. On November 19, 1990, the Department received a protest against approval from Dennis McMurtrey.

The Department has set the matter of protest for an administrative conference to be conducted at 1:30 p.m. on Tuesday, February 5, 1991, in the Civil Defense Conference Room, Bonneville County Courthouse, Idaho Falls, Idaho. The purpose of this conference will include:

1. Identification and/or simplification of issues.
2. Obtaining admissions of fact and of documents which will avoid unnecessary proof.

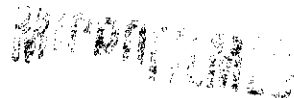
JUN 24 1992

3. Arranging for the exchange of proposed exhibits.
4. Designate date for identifying witnesses.
5. Designate target date for conducting administrative hearing if resolution is not possible during the conference.

The conference will be held in accordance with provisions of the adopted Rules of Practice and Procedure of the Department of Water Resources.

Dated this 14th day of January, 1991.


RONALD D. CARLSON
Eastern Regional Manager

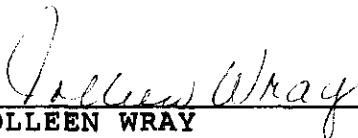

JUN 24 1992

CERTIFICATE OF MAILING

I, hereby certify that on this 15th day of January, 1991, I mailed a true and correct copy by certified mail, postage prepaid, of this Notice of Conference for Application for Permit No. 23-07146:

Foster Land & Cattle Company
PO Box 308
Rigby, ID 83442

Dennis McMurtrey
1728 Camrose
Idaho Falls, ID 83402



COLLEEN WRAY
Adm. Assistant
Department of Water Resources

RECEIVED MED

JUN 24 1992

January 15, 1991

ATTN: Lisa
Civil Defense Office
Bonneville County Courthouse
605 N. Capital
Idaho Falls, ID 83402

Dear Lisa:

This is to confirm the use of the Civil Defense
Conference Room for water right conferences to be
held by this Department beginning at 10:00 a.m.,
Tuesday, February 5, 1991.

Thank you for your cooperation in this matter.

Very truly yours,

COLLEEN WRAY
Adm. Assistant

ENCLOSURE

JUN 24 1992

November 28, 1990

Foster Land & Cattle Company
P.O. Box 308
Rigby, ID 83442

Gentlemen:

Enclosed is a copy of a protest filed against the issuance of a permit pursuant to application No. 23-7146. 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?
6. That it is contrary to conservation of water resources within the State of Idaho.

MICROFILMED
JUN 24 1992

Foster Land & Cattle Co.
November 28, 1990
Page 2

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

Sincerely,

HAROLD W. JONES
Water Rights Supervisor

HWJ:CW

pc: IDWR - State Office

Enclosure

RECEIVED
JUN 24 1992

November 28, 1990

RE: Application for Permit No. 23-7146 FOSTER LAND & CATTLE

Dennis McMurtrey
1728 Camrose
Idaho Falls, ID 83402

Dear Mr. McMurtrey:

Your protest against approval of the above referenced application have 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?
6. That it is contrary to conservation of water resources within the State of Idaho.

MICROFILMED

JUN 24 1992

Mr. Dennis McMurtrey
November 28, 1990
Page 2

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

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

Very truly yours,

HAROLD W. JONES
Water Rights Supervisor

HWJ:CW

pc: IDWR - State Office

Enclosure

RECEIVED
JUN 24 1992

RECEIVED

NOV 19 1990

**Department of Water Resources
Eastern District Office**

Dennis McMurtrey
1728 Camrose
Idaho Falls, Idaho
83402
November 19, 1990

Director, Department of Water Resources
150 Shoup Avenue
Idaho Falls, Idaho 83402

Reference: Legal Notice 23-07146 published November 1st and 8th,
1990 in the Post Register on diversion of Antelope Creek.

Dear Sir:

The purpose of the following letter is to protest the actions proposed in the referenced notice.

One basis of the protest is that the Idaho Code 42-203A, part 5 does not appear to have been followed. Those items (a through f) in abridged form are: (a) Will the proposed use reduce the quantity of water under existing water rights? (b) Is the water supply sufficient for the purpose for which it is sought to be appropriated? (c) Has the application been made in good faith or is it made for delay or speculative purposes? (d) Has the director determined that the applicant has sufficient financial resources to complete the proposed action? (How was this accomplished?) (e) Has the director determined if the proposed action will conflict with the local public interest? If yes, how was or will this be accomplished and when? (f) Has the director made a determination if the proposed action is contrary to conservation of water resources within the state of Idaho? How was or will this be accomplished?

The Idaho Department of Water Resources (Form 6) dated 4/79 and titled, DAM Safety Hazard Classification Worksheet, appears incomplete. For example, in Part IV - Transportation - has an entry for the hazard to highways from the proposed effort. I ask the following questions: Why are no points assigned for potential damage to US Highway 26 from failure of the proposed dam? Has the Department of Transportation been consulted on and agree with this decision? Part V - Environmental and Miscellaneous - has entries for Scenic and Fish and Wildlife. Cometh another series of questions: Do you really believe Fish and Wildlife warrant a value of "0"? If so, on what basis is such valued as worthless? Does such an evaluation agree with similar evaluations offered by the Idaho Fish and Game Department? Under the category of "OTHER" no indication has been provided that the existing county road was going to be rerouted. From where did the authority come to reroute the road (an improvement in my estimation)? Were the proper individuals in the Bonneville County Commissioners Offices notified of the requirement to reroute the existing road because of the dam and were permits required before the work was initiated? Was a notice placed in the paper advertising the rerouting of the road, were all affected local people notified, and was a hearing conducted on the proposed rerouting before the work was undertaken?

RECEIVED

JUN 24 1992

A third part of this protest involves items I regard as unresolved safety issues. The issues fall into two categories, namely, Environmental and Dam Safety. Each issue is discussed below:

ENVIRONMENTAL

It is my understanding that some buildings that would be under the "pond" were destroyed by open burning. Those buildings were equipped with shingles. Has anyone verified if the shingles on those buildings did not contain "asbestos"? If the shingles contained "asbestos" what would be the effect/affect downstream on animals and people? Also, were the buildings checked for other "toxic and or hazardous" materials before they were destroyed? If so by who and what were the findings?

SAFETY

After reviewing the booklet entitled "Safety of Dams; Rules and Regulations", it is uncertain how you are going to insure that the rules and regulations set forth therein are going to be followed, since the dam is already under construction. For example, how is the fill material going to be compacted and to what amount (this implies numerical measurements using recognized engineering tests)? How is the amount of water going through, under, or around the dam (details provided in the sketch entitled "Antelope Creek", are woefully inadequate. How will you determine if water is leaking around the west end of the dam, where it is being tied into a shale rock hill? [The Teton Dam may have in part failed because of this type of leaking.]

I am eagerly awaiting written responses to the above questions.

Warmest Regards,


Dennis McMurtrey

cc: Lt. Col. James Welker
Department of the Army
Corp. of Engineers
Walla Walla District
Walla Walla, Washington
99362 - 9265

Clyde Burtenshaw, Chairman
Bonneville County Commissioners
Court House
605 NO. Capital Avenue
Idaho Falls, Idaho
83401

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JUN 24 1992

WATERMASTER COMMENTS

I have reviewed Application for Permit No. 23-7146 and have the following comments/objections to the approval of this application for permit:

AS I NOW UNDERSTAND THIS
PROPOSAL & THE WATER SUPPLIES
ON ANTELOPE CK, I BELIEVE
IT IS UNLIKELY THAT THIS
PROJECT WILL INTERFERE
W/ OTHER WATER RIGHTS.
IT SHOULD, HOWEVER BE
SUBJECT TO WATERMASTER
CONTROL

11/14/90

Date



RONALD D. CARLSON, WATERMASTER
Water District No. 01

MICROFILMED

JUN 24 1992

29-Oct-1990

DEPT OF FISH & GAME
REGION 6
1515 LINCOLN RD
IDAHO FALLS, ID 83401

RE: Application for PERMIT NO. 23-07146, 25-07580

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 NOVEMBER 19, 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.

RECEIVED
JUN 24 1992

JUN 24 1992

29-Oct-1990

FOSTER LAND & CATTLE CO.
PO BOX 308
RIGBY, ID 83442

RE: Application for Permit No. 23-07146

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 POST-REGISTER on NOVEMBER 1 & 8, 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

HWJ/rb

MICROFILMED

JUN 24 1992

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
Eastern Region
150 Shoup Ave., Suite 15

Idaho Falls, Idaho 83402
(208) 525-7161

OCTOBER 24, 1990

THE POST-REGISTER
P.O. BOX 1800
IDAHO FALLS, ID 83403

Gentlemen:

Enclosed you will find a legal notice which we wish to have published on the dates indicated (once a week for two consecutive weekly issues) in your newspaper. If you cannot publish the notice on the proposed dates, please contact us immediately.

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

Please send the affidavit of publication and publication billing to this office before NOVEMBER 19, 1990.

Yours truly,

Rita Bodell
Secretary

Encl.

MICROFILMED

JUN 24 1992

23-07146

FOSTER LAND & CATTLE CO.
P.O. BOX 308
RIGBY, ID 83442

Source: ANTELOPE CREEK

Tributary: SNAKE RIVER

Diversion Pt: NENE Sec 8 T 02N R 42E

Use: IRRIGATION STORAGE	(40.00 AF)
IRRIGATION FROM STORAGE	(40.00 AF)
Total Diversion:	(40.00 AF)

Date Filed: 9/25/ 1990

In: T02N R42E S04	NENE	NWNE	SWNE	SENE
	NENW	NWNW	SWNW	SENW
	NESW	NWSW	SWSW	SESW
	NWSE	SWSE		
S05	NENE	SENE	NESE	SESE
S08	NENE	NWNE	SWNE	SENE
S09	NENW	NWNW	SWNW	NWSW
T03N R42E S32	NESE	SESE		
S33	SWNW	NESW	NWSW	SWSW
	SESW	SWSE		

1109.0 ACRES TOTAL

APPROVED

JUN 24 1992